

Leith B. Edgar

Loyola University New Orleans (United States of America)

<https://orcid.org/0000-0003-1565-9759>

34/2023

Political Dialogues

DOI: <http://dx.doi.org/10.12775/DP.2023.004>

Saving Scarce Species from Extinction through Free Enterprise

Abstract:

Clearly defined private property rights allow owners to calculate their profits and losses. Ownership, therefore, enables the rational allocation of scarce capital toward profitable ends. Production of biological organisms are not exceptions to economic calculation. If the present prohibitions on the mass production of rare living creatures were repealed, profit-seeking entrepreneurs might choose to mass produce so-called endangered species on a competitive market. Naturally, some of the resulting non-human, living pieces of private property might well trespass, attack, and predate on the properties of other entrepreneurs. Staving off extinctions through a free-market approach to declining biodiversity would require a new legal framework. Indeed, well-defined property rights in privately owned fauna and flora would become an essential lynchpin in the legalized market of rare animal and plant production. The author offers some starting points toward a *laissez faire* capitalist structure of property rights principles under the law to increase incentives toward greater production of commodifiable species.

Keywords: environmentalism, economics, wildlife, conservation, capitalism, extinction

“I have asked for a new and more effective federal law to protect endangered species of wildlife – by covering species likely to become endangered as well as those more immediately threatened, and by imposing federal penalties [on humans] for taking of such species.” – Richard Milhous Nixon, deceased president of the United States of America (Endangered Species Coalition, 2013, p. 82).

“Living wild species are like a library of books still unread (by humans). Our heedless destruction of them is akin to burning that library without ever having read its books.” – John Dingell, deceased former U.S. Congressman who helped promulgate the Endangered Species Act and creator of Endangered Species Day, which is celebrated



by some environmentalists each year on the third Friday of May (Kalyanpur, 2021, quote 8).

“On the whole what really diminishes biodiversity is a large but poor population [of humans] trying to live off the land.” – Matt Ridley, British author (Ridley, 2019, para. 9).

Where Have All the Cowboys Gone?

When the western United States (U.S.) was less inhabited by settlers than is the case today, security of private property – especially livestock – proved challenging for the homesteaders of the land. Many of their animals roamed the landscape freely. Until the advent of barbed wire eventually eliminated demand for bovine security guards, cowboys were in the business of protecting owners’ living, non-human properties (Anderson & Leal, 2015). Thanks in part to the diligence of these heroes of humanity, beef is a staple on the dinner plates of many Americans, and people the world over.

Tragically, no cowboys are riding to the rescue of many scarce species the world over in the present. Time is up for some wild animals. Extinction prevailed. However, the prevention of extinction is the remedy for scarcity: abundance. Therefore, the conversion of scarce to abundant species would thwart potential extinctions. Importantly, extinctions are inherently alleged because to prove that something ceases to exist is to prove a negative to be true. How much time, energy and resources must go into proving that a species no longer exists before this is a certainty? The answer lies somewhere between zero and infinity. How can one or more extinctions be certified as for certain? Thus, claims of extinction ought to be regarded with a healthy skepticism since humanity has not poured all its collective time, energy, and resources into proving what exists at any given moment and what has ceased to inhabit man’s planet. “Scarce species” is therefore a more accurate term than the more commonly used “endangered species”, which implies a probability of extinction.

A scarce species is a biological being that is either naturally rare, declining in number due to environmental changes, or on the brink of becoming extinct. By incentivizing the greater production of scarce species, the tendency would be for a decrease in the cases of such species’ scarcity, if not bring about an abundance of the hitherto uncommon plants and critters. In short, greater abundance of scarce species via production eliminates the natural scarcity caused by changes in the natural world and the artificial scarcity caused by prohibitions on production.

On the other hand, the commonly used term “endangered species” is loaded on account of it being associated with the Endangered Species Act (ESA), one of many



pieces of legislation currently inhibiting and prohibiting the mass production of scarce species throughout the world, especially in the U.S. and its protectorates. Moreover, the term “endangered species” is also a legal designation within the ESA canon of so-called conservation laws. Thus, when used in this paper, “endangered species” refers to species that are either proposed or designated for statist regulations by anti-market governmental officials.

In effect, anti-market laws, such as the ESA, prevent would-be market actors, such as cowboys, from producing many scarce species into greater abundance. For example, it is too little, too late for the southern mountain population of woodland caribou (*Rangifer tarandus ssp. caribou*), reindeer that no longer roam “[...] the northern Rockies in Washington, Idaho and Montana, the upper Midwest and the northeast” (Ridler, 2019, para. 10) as they once did. No “caribou-boys” came to the aid of the gray ghosts of the Lower 48. “Nicknamed, ‘Gray Ghosts,’ the Southern Mountain Caribou are secretive, shy and rarely observed in these large, high elevation landscapes and are therefore described with phantom-like qualities” (Usfwspacific, 2018, para. 3). Now these ghostly caribou have indeed lived up to their nickname of “gray ghosts” because they have vanished from the contiguous U.S. altogether. “When in 2019 Canadian biologists captured the sole surviving member of a caribou herd that still occasionally wandered into Idaho, a species disappeared from the contiguous United States” (Francovich, 2021, para. 1). Notably, “[...] the South Selkirk sub-population [those then believed to be inhabiting the U.S. at least from time to time] was listed under the Endangered Species Act in 1983 [...]” (Usfwspacific, 2018, para. 7). However, as of 2018, the subspecies was extirpated, i.e., zero known caribou were inhabiting the Lower 48 by admission of the federal agency – the U.S. Fish & Wildlife Service – that first added the subspecies to the List of Threatened and Endangered Species (Usfwspacific, 2018; Pacific Region, 2018). To sum up, approximately 35 years of being listed – that is, receiving the so-called protections of the ESA – ended with the herd’s extirpation from its former American habitats.

Indeed, since vanishing from the Lower 48, the southern mountain population of woodland caribou has vanished from the wilds of Canada, effectively departing the natural world altogether (Francovich, 2019):

The sole surviving member [the very last of the gray ghosts] of the South Selkirk caribou herd [AKA the subspecies southern mountain population of woodland caribou (*Rangifer tarandus ssp. caribou*)] was captured by Canadian officials recently. The capture marks the end of the only herd that still occasionally crossed back and forth between Canada and the Lower 48 states. (Francovich, 2019, para. 1–2)



Thus, the last member of the herd is not only no longer inhabiting the wilds of the contiguous U.S., but the last caribou of America lives in Canadian captivity.

The gray ghosts are not exceptions; they are, more so, the rule for wild critters in the U.S. Numerous scarce species do not benefit from privately funded range riders, paid protectors, benefactors of beasts, or guardians. Such is the case for the ultra-rare, wild wolverine (*Gulo gulo luscus*), which roams North America without the protective services of warriors hired by private owners. Hence, the North American skunk bears of nature struggle for survival in the unforgiving wild. Even federal government officials with statutory authority to enact prohibitions once claimed wolverines were too scarce. In 2013, U.S. federal wildlife officials considered an ESA listing proposal of the wolverines inhabiting the Lower 48 (Endangered and Threatened Species, 2013).

The pelts of the solitary scavenger are prized possessions. To wit: Wolverine pelts may be purchased as commodities¹ online according to quality and quantity. For example, fur traders offer consumers a range of pelts harvested from both within and outside the U.S. As an economic illustration, the following is a range of the price points for pelts available to consumers with summarized descriptions posted online at the time of this writing:

- \$149.95/each – Lot # 7505-0297. Canada, 49” total length; Nose to butt is 37 inches; extra light color; extra super heavy winter fur; ~abdominal cut. No Feet. Abdominal cut along right flank; both legskins; abdomen on left side of cut. This animal was dried too close to fire with result that part of leather cooked and will crack if bent (includes head, underside of head, area immediately adjacent to longitudinal cut). Good back, good tail. Lots and lots of good useable select quality fur (Moscow Hide & Fur, 2021).
- \$549.99/each – NF 226. Wolverine skins full diamond Skins (Northern Fur, 2021).
- \$679.95/each – Premium label wolverine pelt #113751. From tip of nose to tip of tail: 51 inches; first quality fur: X-heavy, XX-glossy and X-silky; Color: Pale brown; complete life size – all paws, claws and pads, (8 broken claws on front paws) and lips split; origin: Arctic Canada; good wall hanger/garments and accessories; fresh commercial garment tanned (Glacier Wear, 2021).

A noteworthy fact regarding wolverine pelts is that they are heterogeneous goods in that consumers pay according to the condition, means of acquisition, size, location of acquisition, etc. Therefore, the price of a wolverine pelt is predicated upon the

¹ See Anderson and Hill (1995) for numerous examples of how commodification benefits wildlife species and prohibitions cause them harms.



pelt being offered for sale to potential purchasers and the subjective evaluation of potential buyers.

Yet, despite their prized pelts fetching handsome sums at market, the iconic species may not be privately owned without state permission even though wolverine pelts comprise part of the international fur industry (Peterson, 2010). Currently, pelts may either be produced, i.e., ranched where permitted by government officials, or pelts may be harvested by legal trappers where they are permitted to do so by governmental authorities. In short, the industry for wolverine pelts is subject to government regulation. Consequently, mass production of wolverine pelts is subordinated to a government-managed market, quite the contrary to the proposed free market of scarce species.

Tragic outcomes for scarce species are nothing new. Long extinct species, such as the passenger pigeon (*Ectopistes migratorius*), were also not mass produced in time. Passenger pigeons officially departed the wild more than 120 years ago (The Passenger Pigeon, n. d.). Not enough “passenger-pigeon-boys” captured the once common creature of the sky in time.

However, in a limited number of cases, enviropreneurs did extend their protective powers to native wildlife of North America. These successful enviropreneurs serve as important exemplars of how free markets in scarce species function. Anderson and Leal (2015) describe enviropreneurs as the market actors who, in economic terminology, internalize externalities:

Between these two institutions – property rights and markets – are environmental entrepreneurs who reduce the friction, which economists call transaction costs. These enviropreneurs observe when natural conditions or human demands change, discover new environmental resources, see new opportunities for existing resources, discover demands for environmental goods, and find ways to get demanders to pay suppliers. All of these entrepreneurial actions work best when property rights are well defined, enforced, and marketable. (p. 163)

Naturally, enviropreneurs are the enemies of all non-use environmentalists, the preserve-everything-as-is types. “[No-use] environmentalists oppose production and use of natural resources” (Rothbard, 2006, p. 91), as opposed to free enterprise environmentalists, who favor use according to private property rights rooted in homesteading and voluntary exchange (Block, 2021). This private-property-rights approach to environmentalism, including ownership of scarce species, ought to be distinguished from the more popular *dirigisme* model. The *raison d'être* for the book *Free Enterprise Environmentalism* (Block, 2021):

[...] is to save the word ‘environmentalist’ for the good guys. Right now, to be an ‘environmentalist’ is to favor air pollution to the amount of water in a toilet bowl, and more and more



‘public’ encroachments on the private sector. But ‘environmentalism is an approbation. Why should we stand idly by and allow the enemies of a civilized order to steal it for their own deleterious purposes? If there is such a thing as a ‘free enterprise environmentalist’ then there cannot, logically, be any plain old ordinary ‘environmentalists.’ (p. x)

Clearly, enviropreneurs exercising free enterprise meet the criteria as environmentalists, albeit outside the movement’s mainstream approach of limited to no uses of natural resources.

As an example of enviropreneurism’s effects on wildlife, consider the iconic American buffalo – technically the wild plains bison (*Bison bison bison*), a once ubiquitous land mammal that became scarce as an unowned and over harvested natural resource until profiteering people, eager entrepreneurs, acquired the animals as private properties:

Motivated primarily by profit, the bison’s recovery began with a few western cattle ranchers, Charles Goodnight in Texas and Frederick Dupree in Montana, who thought the novelty value of saving the last remaining bison might be high. Both men captured a handful of wild bison that eventually became the seed herds for ranches and government preserves. (Yablonski 2013, para. 11)

Thanks to the profit motives of ranchers Goodnight and Dupree, many consumers today have the choice between beef and bison when ordering red meat. Had the bison gone bye-bye, the enviropreneurial firm Turner Enterprises Inc. (2021) would be without the 45,000 head inhabiting some of the 15 Turner Ranches that span five western states. Indeed, bison are now vital assets to Turner’s profitable ecological enterprise:

With approximately two million acres of personal and ranch land, Ted Turner is the second largest individual landholder in North America. Turner lands are innovatively managed to unite economic viability with ecological sustainability. Turner ranches operate as working businesses, relying on bison, hunting and fishing, and ecotourism as principal enterprises. In addition, Turner ranches support many progressive environmental projects including water resource and timber management, and the reintroduction of native species to the land. (Turner Enterprises Inc., 2021)

Additionally, had the wild plains bison not been saved from extinction by cattle ranchers, Ted’s Montana Grill (Our story, 2021) would be without its signature protein – the motto of the restaurant chain is “Preserving an American Original: Nothing is more authentically American than bison” (para. 2). Currently, Ted’s Montana Grill (Locations, 2021) sates consumer demand for bison and other foods at 39 locations in 16 states. Indeed, Turner Enterprises Inc. and Ted’s Montana Grill are not the



only concerns in the business of bison. According to the latest U.S. Department of Agriculture Census (2017), 1,775 private U.S. ranches and farms are raising 183,780 head of bison.

Would that all scarce species, whether wolverine, caribou, or passenger pigeon, had the protectors that cattle, and later bison, enjoyed. Had there been more cowboys and ranchers paid by profit-seekers to protect other, potential living properties, some of the vanished species would still exist today for people to enjoy. Such is the power of the profit motive to preserve scarce species.

The dearth of crusading cowboys for all critters that people want to preserve is no accident. Preservationist-minded, progressive types prohibited the incentives for people wanting to hire conservationist cowboys long ago (Rothbard, 2017). Unfortunately, those who would prohibit their fellows from profiting from the uses of living things pay no price for enacting such prohibitions. If anything, regulators are apt to increase their budgets the more prohibitions that they can promulgate. Supply curves slope upwards, even for regulators. Thus, they do not pay the price or face the consequences for their failed decisions as entrepreneurs and enviropreneurs must. Sowell (2000) pointed out how illogical such a setup of incentives is in practice: “It is hard to imagine a more stupid or more dangerous way of making decisions than by putting those decisions in the hands of people who pay no price for being wrong” (para. 5). Nonetheless, anti-market regulation of scarce species persists. Hence, the options for those with the means to spend money to fuel the propagation of non-domesticated flora and fauna continues to be curtailed. Thwarted are the protective services capable guardians would like to provide – for profits of course. Caring capitalists who want to possess imperiled species as pieces of property cannot hire cowboys at any price, less they fall afoul of myriad governmental conservation laws. Such market-interventionist regulations keep would-be cowboys from being paid to ride to the rescues of many an animal, even the plants, and invertebrates in dire straits.

In Favor of Free Trade of Non-human, Living Things

As the aphorism goes: wealthy is healthy. Affluent purchasers can afford the slaughtered cattle once produced by funders of cowboys; now supplied by those running ranches, and corporations operating factory farms. Production of non-human, living properties of the barnyard variety is commonplace. The rich enjoy the offerings of such concerns. When people have more to spend, they tend to purchase more of what pleases them. More wealth means more health for not only consuming people, but for non-human living things, the eventual products, which are produced *en masse* for sale.



On the other hand, some of the wealthy forego the consumption of wild consumables because living off the land is no longer a necessity, but a luxury good. For example, hunting is no longer strictly a means of survival. Rather, people pay top dollars to experience the thrill of hunts, joy of harvesting their own food, and nourishment of the harvested meat. The same is true for fishing and gathering. Hunting, fishing, and gathering in rich countries became leisure activities, no longer necessities for survival. Few, if any, North Americans subsist wholly from nature's bounty. On the contrary, most residents of wealthy countries consume calories produced by corporations, concerns, and local producers who operate for profits.

However, as the poverty and mortality rates of man decline and the living standards, life expectancies and incomes of consumers rise, non-human living things are not benefiting as much as they could from free trade. To benefit from trade, one necessarily must be a participant – even if one is being traded as a non-human, living piece of property. The axiom that free trade benefits all market participants in the *ex-ante* sense is apodictically true because were this not so neither of the exchanging parties would have partaken, assuming both sides are voluntarily participating. Whether the parties to an exchange benefited *ex post* is a moot point since the exchangers made the transaction thinking that doing so would be beneficial to them. That someone with capital has produced a good from scratch or acquired it means that the would-be seller values it enough to possess it or trade it at a future date of his choosing. Anything artificially excluded from markets cannot be so valued, even coveted, by a procurer. This is the conundrum with removing non-human, living beings from the realm of legal transactions. In other words, to prohibit something from being traded robs that thing of its value to a person who would have otherwise acquired, propagated, or produced more of that thing for trade.

The crux of establishing a market for a scarce species comes down to the subjective value each consumer has for the economic good derived from the invertebrate or vertebrate organism. According to Menger (2007):

If a thing is to become a good, or in other words, if it is to acquire goods-character, all four of the following prerequisites must be simultaneously present:

1. A human need.
2. Such properties as render the thing capable of being brought into a causal connection with the satisfaction of this need.
3. Human knowledge of this causal connection.
4. Command of the thing sufficient to direct it to the satisfaction of the need. (Menger, 2007, p. 52)



In the case of scarce species as economic goods, the enviropreneur plays the pivotal role of undertaking the uncertainty of first occupying the scarce species, then mixing his labor with the acquired piece(s) of property to produce an economic good, and, finally, bringing what he hopes will satisfy a consumer want to market where buyers may purchase the final good(s) for consumption. However, what species to produce what products with for which consumer wants using what available means are the type of questions the enviropreneur answers with his human actions in the process of production. In the present, the enviropreneur must profitably anticipate how to meet future consumers' want satisfactions. If he anticipates correctly – his total revenues exceed total costs – he makes profits as the residual income claimant. If incorrect, he loses what was invested in the enterprise, or at best breaks even.

Necessarily, the production process involves some degree of trial and error, or research and design. It takes time to go from raw inputs, producer/capital goods, to finished outputs, consumer/economic goods. Thus, enviropreneurs must make a multitude of choices throughout the often-extended production process, including which ingredients, in this case non-living human properties, to manipulate, and in what amounts. Many enviropreneurs create a complex structure of production. If the enviropreneur foresees what consumers demand accurately and successfully produces satisfactory products at low enough prices, he earns profits. However, if he brings products to market that no one wants to purchase or that cost too much, he makes losses. As a result, the successful enviropreneur produces only economic goods that consumers demand lest he lose his business to bankruptcy. This would be no less true in the case of producing scarce/endangered species for the presently prohibited markets:

Rather than expending resources to protect all species and prevent all extinctions, we must focus on deciding which species to protect and, more importantly, on how to protect them.

We believe privatization is the best answer. By creating a market for animals, all of them, we allow ownership of endangered species. In such a market, the value of an animal will rise as it gets closer to extinction, giving private enterprise [enviropreneurs] an incentive for figuring out ways to increase the animal's numbers. If the animal is not worth anything, or even harmful such as the mosquito, then it will be left to dwindle. (Davison et al., 2014, p. 3)

If enviropreneurs owned all the non-human, living properties on Earth, those most desired by consumers would tend to increase in abundance, while those least desired would tend to become scarcer, if not go extinct. Absent statist coercion, the designation of endangered would have no legal teeth, and the relative scarcity of species coupled with consumer demand would determine the prices of vertebrates and invertebrates on a free market.



The market value of a caribou, wolverine, passenger pigeon, or cow is realized when exchanges are allowed between voluntary transactors who own them. If people are allowed to value these creatures according to markets' valuations, entrepreneurs will protect and produce more of them. If people are prosecuted as criminals for so doing, they will produce less of them, if any. The supply of cattle is healthy, while the supply of many other less often-owned animals is precarious at best. Thus, free trade benefits non-human, living things, even when they are the goods being exchanged.

Cowboys of Capitalism Critiqued

Free trade faces numerous critics. Free enterprise is the enemy of many a late and living politician. However, one lifelong detractor has made a much-celebrated career of caricaturing capitalism at every stop and turn. The senior Senator of Vermont vividly diagnosed the illnesses he claims free enterprise causes:

Capitalism does a number of things very well: it helps create an *entrepreneurial* spirit, it gets people motivated to come up with new ideas and that's a good thing. But on the other hand, especially since the Reagan era, what we have seen in this country is an unfettered type of *cowboy capitalism*, and the result of that has been, that the people on top have made out like bandits and many of them are bandits. Today in America we have a situation that is quickly moving out of control. [italics added for emphasis] (Real Clear Politics, 2009, para. 1)

Contrary to the anti-market position staked out by the self-described Democratic Socialist, Sanders, *entrepreneurial cowboy capitalism* could have saved the caribou and wolverine. The passenger pigeon might have been preserved by free enterprise. Certainly, cattle benefited from cowboys who were paid by capitalists. Ditto for the buffalo after the species' precipitous decline.

The profit-hungry entrepreneurs – modern-day capitalist cowboys – are the human resources imperiled species need most. Contrary to the preservationist mentality, the proper incentives are crucial to motivating human action toward entrepreneurial endeavors:

Skilled persons require a framework that provides incentives for working hard and taking risks, enabling their talents to flower and come to fruition. The key elements of such a framework are economic liberty, respect for property, and fair and sensible rules of the market that are enforced equally for all. (Simon, 1996, p. 11)

To be sure, the assertion that capitalism can cure what ails scarce species is more than an exercise in economic theory. Examples of curative privatization include:



- American alligator (*Alligator mississippiensis*) – Seasholes (2013) documented how the populations of American alligators rebounded despite, not because of, federal prohibitions on trade of the crocodilian species. Rather, “the real story involves science, federalism, and the use of markets and commerce to achieve policy goals” (p. 1).
- American bison (*Bison bison bison*) (Anderson & Hill, 1995; Benjamin, 2012; Block, 1990, 2013, 2021; DiLorenzo, 1998; Malek, 2007; Simon, 1981, 1996; Smith, 1981B; and Yablonski, 2013).
- African elephant (*Loxodonta africana*) in some African countries (Anderson & Hill, 1995; Bandow, 2016; Block, 1990, 2013, 2021; Edgar, 2020; French, 2012; Kreuter & Platts, 1996; Larson, 1991; Lora, 2007; Simmons & Kreuter, 1989; Smith, 1981a/b, 2016; and Sugg & Kreuter, 1994).

This list of success stories of no-longer-scarce species ought to be longer. This is necessarily true since black markets are illustrative of unmet consumer demand for flora and fauna being inhibited by the present prohibitions.

However, promulgations presently prohibit the legal production of most critters, creepy crawlers, and plants outside of the realms of the home or farm. That should change. Legal allowances for the ownership of scarce species, just courts that resolve disputes between owners, and adequate enforcement of substantiated property rights violations comprise a proposed free-market legal framework.

***Cuius Est?* – Latin for Who Owns It**

Pets epitomize the principle of owned animals benefiting from the husbandry of man. The domesticated dog is the posterchild for how an animal, owned as property by people, thereby benefits. Canines and man co-evolved as reciprocal species (Chase, 2017):

Somewhere around 12,000 years ago dogs and people began to learn the mutual advantages of cooperation. The wolf-like ancestors of modern dogs found that scavenging in villages and joining human hunts was a more reliable way to find food than killing game themselves; and the early hunter-gatherers learned it was to their advantage to take dogs as hunting partners. A few thousand years later, the advent of agriculture offered still more ways to cooperate. In exchange for food and shelter, dogs herded and guarded livestock and killed varmints that threatened crops. (p. 40)

For without an owner, many dogs – especially those of the diminutive breeds – would be food for the wildlife accustomed to eating prey off the land, from waters, and out of the air.



The benefits of human ownership may even extend into the wild for once-domesticated animals. In some cases, domesticated animals have been known to interbreed with wild animals, such as dogs, coyotes, and wolves (Nature, 2014). Therefore, the possibility of dogs surviving in the wild exists since at least one dog mated with wild animals. Moreover, this hybrid species – part genetically of domesticated stock and part wild – persists amidst the manmade world: “while one of the least protected species, the coywolf (*Canis latrans var.*) is among the most thriving in North America” (Nature, 2014, last bullet of infographic). Indeed, even Aristotle (1992) noted the benefits bestowed on beasts owned by men: “[...] for tame animals are by nature better than wild and it is better for them all to be ruled by men, because it secures their safety” (p. 68).

Moreover, the application of private property rights to those freely roaming beasts that might munch on mutts without owners has been deterred by agents of the state. Suppose that this were not the case; any living, non-human thing could be homesteaded in the Lockean sense by various yet unrealized means. Depredations would be in fact property crimes. For example, a wild wolf depredating a domesticated dog could then be counted as a crime committed against the privately owned canine companion by the privately owned wolf. Perhaps the wolf’s owner would be deemed negligent for not having excluded his property from the other privately owned canid. Under such a scenario as envisioned, no longer would a privately owned predator marauding other owned animals simply be attributable as an unavoidable act of God. Rather, the private property on the loose would be the asset and liability of its owner. Hence, the owner of an animal inflicting damage on the properties or persons of others could be found at fault for the destruction wreaked. Enter an age of animal accountability.

Indeed, under a regime intent on the enforcement of strict property rights in the ownership of animals and plants, who owns which living thing would be pivotal to adjudication of property-violation disputes. Put more precisely, at the center is the salient question: Who is the rightful homesteader of the animal(s) at issue? According to the Lockean homesteading principle, he who first mixes his labor with the animal occupying his previously homesteaded land could claim the natural resource’s title as a commodifiable property:

The Lockean homesteading principle of wildlife proper flows from the fact that land-dependent animals are features of the natural resource of homesteaded land, a factor of production. A landowner may elect to take up or ignore wildlife opportunities on his land according to his scarce means and chosen ends. (Edgar, 2020, p. 19)



In addition, a landowner may sell access to his property for the capture of non-human, living things by an enviropreneur seeking out homesteading opportunities acquired on others' private properties through first use.

Enforcement of property rights over non-human, living things under a *laissez faire* regime of free enterprise would require no coercive local, state, or federal wildlife management agencies. Interventions would be unnecessary because state-appointed caretakers overseeing the management of the natural resources would have nothing to regulate – all animals being privately owned or yet-to-be-homesteaded, i.e., up for grabs by enterprising enviropreneurs. Rather, as pointed out in the case of pollution (Rothbard, 2002), enforcement is not a matter for agents of the state, but a simple matter of upholding private property rights:

Basic to libertarian theory of property rights is the concept of homesteading, in which the first occupier and user of a resource thereby makes it his property. Therefore, where a 'polluter' has come first to the pollution and has preceded the landowner in emitting air pollution or excessive noise onto empty land, he has thereby homesteaded a pollution or excessive noise easement. (p. 51)

Of course, as evidenced throughout human history, animals are uncooperative with becoming obedient pieces of property. Therefore, the crucial challenge for an enviropreneur privatizing an animal is establishing control. Establishment of control denotes ownership in that its obtainment excludes others from access. Property rights thereby contribute to a just, ordered and more peaceful world (Kinsella, 2001):

When property rights in scarce means are allocated in accordance with first-occupier homesteading rules, property borders are visible, and the allocation is demonstrably just. Conflict can be avoided with such property rights in place because third parties can see and, thus, sidestep the property borders, and be motivated to do so because the allocation is just and fair. (p. 21)

Thus, ownership ends the Tragedy of the Commons²: situations in which the homesteading of natural resources such as animals is forbidden by authorities or precluded by insufficient technology.

As is customary in courts of law, the circumstances, context, and specifics of the case on hand would be germane to the rendering of just verdicts. For the argument being made here, the author adopts the Justinian (2013) definition of justice for courts to follow in rendering verdicts: "Justice is the set and constant purpose which gives to

² See Hardin (1968) for a full treatment on the Tragedy of the Commons.



every man his due” (para. 1). To this end, who homesteaded which animal is the crux of such a theoretical case. Under a regime committed to the maintenance of private property rights of people over living, non-humans, the ruling court’s charge would be to ensure justice be delivered to rightful owners of the private properties at issue:

Law is common force organized to prevent injustice – in short, Law is Justice [...]. Its [the law’s] mission is to prevent the rights of one from interfering with those of another [...]. So far from being able to oppress the people, or to plunder their property, even for a philanthropic end, its [the law’s] mission is to protect the people, and to secure to them the possession of their property. (Bastiat, 2011, p. 89)

The owner of a non-human, living thing would have the same protections against property crimes under the law as an owner of a house, car, or pocket watch. Non-human, living properties would be protected under the law from theft, damage, and destruction by non-owners and their properties.

Resolving Trespass Violations by Properties

Once ownership is legally determined, the fault of the violator and the damages awarded to the plaintiff could be deliberated by a judge or jury. Likewise, arbitration could be a less expensive means of resolving the dispute. An even less litigious option would be for owners to have prearranged a remedy for trespass violations, depredation damages and the like. In fact, court proceedings might become more efficient over time as case laws establish precedents to which owners willingly acquiesce. Wildlife producers could tailor their structures of production to mitigate the possibility of their living properties causing them to make losses. Owners of animals would be incentivized to *barnyard-ize* (domesticate the species and de-wild) their beasts lest they be held responsible for damages to (the properties of) others perpetrated by their living liabilities.

The proposed burden of proof to be reached by a judge or jury regarding crimes by and against living properties is strict causal liability. According to the legal doctrine, apportionment of blame and burden ought to be made “[...] on the basis of identifiable cause: Who shot whom? Who assaulted whom? [Under courts applying the legal standard of strict causal liability,] Only defense of person and property was a proper defense against a charge of using force” (Rothbard, 2002, p. 133). To apply this approach more widely, some of the questions to be raised are: What animal ate which? What bird damaged which property? Self-defense and defense of property would be constants concerning the legal use of force though the liability



of homesteaded properties committing acts of aggression against other people and properties would increase.

Importantly, how cases would be resolved between the owners of non-human living properties would be situationally specific. Dog bites man – nothing new, but man biting a dog is an atypical case. Similarly, a privately owned bald eagle (*Haliaeetus leucocephalus*) maiming an innocent newborn would be a case without precedent. In the same vein, a privatized grizzly bear (*Ursus arctos horribilis*) breaking and entering a neighbor's kitchen would need to receive legal treatment. As would an infestation of a property by a privately owned horde of noxious insects (creepy crawlers). Such case law does not yet exist. Under present law, an un-homesteaded act of aggression perpetrated by an eagle, grizzly bear, or horde of noxious insects leaves the victims and their properties with little to no recourse since, in each instance, the aggressing critter is unowned by any private individual. Rather, government officials at the local, state, federal, and international levels currently claim to be managing biological entities hostile to man for the greater good of biodiversity. In a free-enterprise system, over time, through the establishment of precedents, customary dispute resolutions would evolve. Customary case law would result from whatever conflicts concerning homesteaded living properties are resolved through litigation and arbitration as warranted.

Penalties for Substantiated Violations

After a court reaches a verdict concerning the involved privately-owned properties, the presiding judge would be duty bound to mete out retributive punishment. Given the specifics of the case, the judge would aim at the promotion of justice by handing down punishment(s) to the rights' violator(s), force the guilty to produce restitution to the victim(s) for the damages, and compensate the aggrieved for the trouble of the legal ordeal.

First, punishment and defense must be distinguished.

Punishment is an act of retribution after the crime has been committed and the criminal apprehended, tried, and convicted. Defense while the crime is being committed, or until property is recovered and the criminal apprehended, is a very different story. The victim should be entitled to use any force, including deadly force, to defend or to recover his property so long as the crime *is in the process of commission* – that is, until the criminal is apprehended and duly tried by legal process. [*italics in original*] (Rothbard, 2002, p. 135)

Secondly, restitution might take many forms depending on the severity of what was perpetrated on the plaintiff's property. Possibilities might range from a fine or



forfeiture of properties up to the ultimate punishment: execution of the offending property and/or its responsible owner(s). Circumstances would dictate what the just restitution commensurate with the crime ought to be.

Finally, the process of seeking out justice under the law may in and of itself be deemed a form of punishment. Here, the aphorism that the process is the punishment applies. In such cases, where the plaintiff spent sufficient time, money, and resources, a judge might tack on additional penalties to the defendant's debt to the victim, thereby enhancing overall compensation beyond restitution. In fact, an economically literate judge might even compensate the aggrieved for his opportunity cost in so much as that might be demonstrable and verifiable in a court of law.

In cases in which living, non-human properties have been damaged, the specific details of the case would be determinant of how the plaintiff would be made as whole as possible. Take the market price for an endangered black-footed ferret (*Mustela nigripes*) when privately produced by an enviropreneur. Such a price cannot be adduced without an existing market for the predator of prairie dogs. How much money a manufacturer of decreasingly existent plants – like the narrowly endemic Slickspot peppergrass (*Lepidium papilliferum*) – could be compensated for damage done to its produce is unknown under the present legal regime. Finally, the cost of an illegally harvested fish, such as a Bull trout (*Salvelinus confluentus*), pulled from a private pond propagating *pisces* for profit is a mystery. Each of these hypothetical cases currently has question marks for prices since the price system has been hitherto now negated by a blanket prohibition on free enterprise. A free market in all non-human, living properties would need to form before a court could use the resulting market signals to determine dollar amounts for property damages.

Prohibition of Production Versus Properties and Profits for People

For going on 50 years, the scarcest non-human living things inhabiting North America have been legally barred from the benefits of markets; trade of them having been declared *verboden* by state fiat. The ESA codified a legal prohibition on *laissez faire* capitalism in the private production of fish, wildlife, and plants for profits. Instead, the ESA is *dirigisme* by federal officials, the antithesis of *laissez faire*. For this principled reason, the author advocates for the ESA's total abolition, whereas some of its critics, such as Wood (2021), assert that the statute ought to retain its regulatory teeth, but undergo revision: "A reformed Endangered Species Act that respects property rights and rewards private landowners for their role in conserving species would work better for both landowners and wildlife" (p. 30). Furthermore, Wood (2021) pushes for greater



compensation for the takings of landowners' properties caused by the ESA. In other words, a more expensive ESA would be more effective.

Since its passage in 1973, Congress has amended the ESA under various administrations. However, alleged extinctions of native fish, wildlife, and plants persist. The time to call on the awesome powers of entrepreneurial cowboy capitalists is nigh. The rising quality of life increasingly enjoyed by most of the planet's population is thanks to the efforts of the most productive people on the planet. By exercising their profit motives to serve their fellow men consensually through voluntary exchange, the so-called robber barons of the 19th century enhanced individual prosperity writ large. The titans of today's most sophisticated industries might also be incentivized to bring markets to bear on what biodiversity alarmists have claimed is an ongoing mass extinction of non-human life forms caused by anthropogenic impacts, i.e., wonton human exploitation of planet Earth. The likes of Jeff Bezos, Elon Musk, and other accomplished mass producers ought to consider the challenge of conservation a calling worthy of their consideration in the vein of Ted Turner. Were the legal system sufficiently structured, the creation of more creatures might be an undertaking they would readily take up.

While the idea of free enterprise offering solutions to the alleged extinction crisis may seem far-fetched to some, those who deny the existence of economic laws become culpable for the predictable consequences. That prohibition causes a shortage in production of what is being prohibited, and the resulting black markets to satisfy the unmet consumer demand holds true *ceteris paribus*. Therefore, prohibition is not the way to incentivize the production of anything scarce, including the non-human constituent parts of nature: fauna and flora. Disincentives simply do not lead producers to invest more in what is less profitable. On the contrary, incentives always matter, and producers require a profit motive to enter any market. The yet-to-be-realized market for non-human living properties would be no exception.

Envisioning a post-prohibitionist legal structure for the free trade of non-human living things is but a first step toward arresting the alleged decline of fish, wildlife, and plants often ballyhooed by watermelons. A watermelon (Feine, 2012) is an advocate of anti-market policies who appears on the outside to be green – environmentally oriented – but is in fact red – socialist/communist/fascist/totalitarian – on the inside. Block (2021) contends that the desire to control other people is at the core of the watermelon mindset:

In the view of the 'watermelons' (green on the outside, red on the inside) free enterprise environmentalism is a contradiction in terms. If a person favors the one, he necessarily



opposes the other. This is because, in my view, such people have an indomitable desire to control the lives of others; they are merely looking for a new means to achieve this end, now that communism has been shown unable to do so. (p. ix)

Because incentives matter and markets work best when property rights are protected, the watermelons' penchant for control of natural resources ought to be counteracted in favor of enviropreneurship. A crucial step toward the loosening of watermelons' power to control others is ending the ESA altogether; in other words, the legislation's root-and-branch dismantling to restore enviropreneurs' dominion over scarce species.

If producers are to bear the burden of producing what is scarce in the present for what will be consumed in the future, the incentive structure must be made conducive. Strong private property rights in non-human, living properties are the inducements essential for would-be enviropreneurs to undertake production of what is currently being prohibited under existing law. Thus, a legal system under which the right of an owner over any non-human, living thing legitimately homesteaded by first occupier would be upheld is a prerequisite for fish, wildlife, and plant enviropreneurship to flourish. Legalized ownership, effective dispute resolution, and the enforcement of remedies for private property rights violations are the proposed ingredients toward realization of a just legal structure favorable to the enviropreneurs willing to risk their scarce capital to produce greater abundance of rare fauna and flora.

If the biological clocks are indeed winding down, it is best to implement an alternative incentive structure for enviropreneurs to exploit for profits before time expires. Indeed, *laissez faire* capitalism may be the last, best hope for the least, the last, and the hopefully-not-yet-lost, non-human, homestead-able properties gracing planet Earth. May the dominion of acting man bring these beings in need of owners into the warm embrace of free enterprising cowboy capitalists.

Acknowledgments: Thanks to Brandon Tate and Professor Walter E. Block for substantive suggestions without which this paper would be less cogent, cohesive, and complete. Of course, all mistakes herein are solely the author's responsibility.

Bibliography

- Anderson, T. L., & Hill, P. J. (eds.) (1995). *Wildlife in the Marketplace*. Rowman & Littlefield.
- Anderson, T. L., & Leal, D. R. (2015). *Free Market Environmentalism for the Next Generation*. Palgrave Macmillan.
- Aristotle (1992 [1982, 1962]). *On Politics*, transl. T. A. Sinclair. Penguin Books.
- Bandow, D. (January 21, 2016). *When you ban the sale of ivory, you ban elephants*. Cato Institute. Retrieved December 13, 2021, from <https://www.cato.org/commentary/when-you-ban-sale-ivory-you-ban-elephants#>.
- Bastiat, C. F. (2011). *The Bastiat Collection*. Ludwig von Mises Institute. <https://mises.org/library/bastiat-collection>.
- Benjamin, D. (April 1, 2012). *Bye, bye bison*. “PERC Reports”. Retrieved December 13, 2021, from <http://perc.org/articles/bye-bye-bison>.
- Block, W. E. (1990). *Environmental problems, private property rights solutions*. [In:] W. E. Block (ed.), *Economics and the Environment: A Reconciliation*, pp. 281–332. Fraser Institute. <http://walterblock.com/wp-content/uploads/publications/EconomicsandtheEnvironment.pdf>.
- Block, W. E. (October 22, 2013). *Tragedy of the commons and species extinction*. LewRockwell.com. Retrieved December 13, 2021, from <https://www.lewrockwell.com/2013/10/walter-e-block/that-sexist-walter-block/>.
- Block, W. E. (2021). *Free Enterprise Environmentalism*. Lexington Books.
- Chase, A. (2017 [2008]). *We Give Our Hearts to Dogs to Tear: Intimations of their Immortality*. Taylor & Francis.
- Davison, D., Mukherjee, J., Simpson D., & Block, W. E. (2014). *Preserving species*. “Dialogue”, 2 (2), pp. 1–16. <https://dialogue.uni-svishtov.bg/title.asp?title=250>.
- DiLorenzo, T. J. (January 1998). *The Feds versus the Indians*. “Free Market”, 16 (1). Retrieved December 13, 2021, from <https://mises.org/library/feds-versus-indians?control=99>.
- Edgar, L. B. (2020). *Of Elephants and Economics: Why Crushing White Gold Fails the Market Test*. [Unpublished manuscript].
- Endangered and Threatened Species; Threatened Status for the Distinct Population Segment of the North American Wolverine Occurring in the Contiguous United States, 50 C.F.R. § 17 (2013). <https://www.fws.gov/mountain-prairie/es/species/mammals/wolverine/78FR7864.pdf>.
- Endangered Species Coalition (2013). *A Wild Success: The Endangered Species Act at 40* (e-book). Retrieved November 11, 2021, from <https://www.endangered.org/campaigns/wild-success-endangered-species-act-at-40/>.
- Feine, P. (January 2012). *Green on the outside, red on the inside*. Reason. Retrieved November 11, 2021, from <https://reason.com/2011/11/20/green-on-the-outside-red-on-the-inside/>.
- Francovich, E. (January 28, 2019). *Sole surviving member of the South Selkirk caribou herd captured*. International Caribou Foundation via “The Spokesman-Review”. Retrieved December 5, 2021, from <https://www.internationalcariboufoundation.org/grey-ghosts>.
- Francovich, E. (July 15, 2021). *Oral history project focuses on now-absent caribou in Idaho’s Selkirk Mountains*. “The Spokesman-Review”. Retrieved December 5, 2021, from <https://www.spokesman.com/stories/2021/jul/15/oral-history-project-focuses-on-now-absent-caribou/>.

- French, D. (May 31, 2012). *Property means preservation*. "Mises Daily". Retrieved December 13, 2021, from <http://mises.org/daily/5960/>.
- Glacier Wear (2021). Premium label wolverine pelt #113751. Retrieved December 5, 2021, from <https://www.glacierwear.com/wolverine-pelt-422900-10049.html>.
- Hardin, G. (December 13, 1968). *The tragedy of the commons*. "Science, New Series", 162 (3859), pp. 1243–1248. https://pages.mtu.edu/~asmayer/rural_sustain/governance/Hardin%201968.pdf.
- Justinian, C. F. (2013 [2009] [1913]). *The Institutes of Justinian*, transl. J. B. Moyle. Project Gutenberg. <https://www.gutenberg.org/files/5983/5983-h/5983-h.htm>.
- Kalyanpur, S. (May 21, 2021). *15 inspiring national Endangered Species Day quotes to share on social media*. RepublicWorld.com. Retrieved November 11, 2021, from <https://www.republicworld.com/lifestyle/festivals/15-inspiring-national-endangered-species-day-quotes-to-share-on-social-media.html>.
- Kinsella, N. S. (2001). *Against intellectual property*. "Journal of Libertarian Studies", 15 (2), pp. 1–53. <https://mises.org/library/against-intellectual-property-2>.
- Kreuter, U. P., & Platts, L. E. (March 20, 1996). *Why the ivory ban is failing*. "Christian Science Monitor". Retrieved December 13, 2021, from <https://www.csmonitor.com/1996/0320/20191.html>.
- Larson, E. (July 1991). *Elephants and ivory: How to save the African elephant*. "Freeman", 41 (7), pp. 261–263.
- Lora, M. (May 10, 2007). *If you love nature, desocialize it*. "Mises Daily". Retrieved December 13, 2021, from <https://mises.org/library/if-you-love-nature-desocialize-it>.
- Malek, N. P. (April 2, 2012). *To protect and conserve*. "Mises Daily". Retrieved December 13, 2021, from <https://mises.org/library/protect-and-conserve>.
- Menger, C. (2007). *Principles of Economics*. Ludwig von Mises Institute. Retrieved December 13, 2021, from <https://mises.org/library/principles-economics>.
- Moscow Hide & Fur (December 5, 2021). *Tanned furs: Wolverine*. Retrieved December 5, 2021, from <https://www.hideandfur.com/inventory/75050297.html>.
- Nature (January 26, 2014). *Meet the coywolf: A field guide to the coywolf* [Infographic]. PBS.com. Retrieved November 11, 2021, from <https://www.pbs.org/wnet/nature/meet-the-coywolf-infographic-a-field-guide-to-the-coywolf-or-eastern-coyote/8663/>.
- Northern Fur (2021). *Dressed/tanned skins*. Retrieved December 5, 2021, from <http://www.northernfur.com/pelts.html>.
- Pacific Region (2018). *Caribou (Rangifer tarandus)* [Fact sheet]. US Fish & Wildlife Service <https://www.fws.gov/pacific/images/feature/2018/forms/CaribouFactSheet.pdf>.
- The Passenger Pigeon (n.d.). Smithsonian. Retrieved November 11, 2021, from <https://www.si.edu/spotlight/passenger-pigeon>.
- Peterson, L. A. (2010). *Detailed discussion of fur animals and fur production*. Michigan State University College of Law. Retrieved December 5, 2021, from <https://www.animallaw.info/article/detailed-discussion-fur-animals-and-fur-production#s1>.
- Real Clear Politics (October 2, 2009). *Sen. Bernie Sanders on Capitalism*. Retrieved November 11, 2021, from <https://rb.gy/amxc60>.

- Ridler, K. (October 2, 2019). *US announces caribou protections for Idaho, Washington*. KOMO News via Associated Press. Retrieved November 11, 2021, from <https://komonews.com/news/local/us-announces-caribou-protections-for-idaho-washington>.
- Ridley, M. (May 9, 2019). *Dismantling free markets won't solve biodiversity threat: The biodiversity threat won't be tackled by alarmist biologist hype and dismantling capitalism*. Human Progress. Retrieved November 11, 2021, from <https://www.humanprogress.org/dismantling-free-markets-wont-solve-biodiversity-threat/>.
- Rothbard, M. N. (2017). *The Progressive Era*. Ludwig von Mises Institute. <https://mises.org/library/progressive-era-0>.
- Rothbard, M. N. (2002 [1997] [1982]). *Law, property rights, and air pollution*. Original publication "Cato Journal", 2 (1), pp. 55–99. Reprinted in *The Logic of Action Two*. Edward Elgar, pp. 121–170. Reprinted by Ludwig von Mises Institute. <https://mises.org/library/law-property-rights-and-air-pollution-0>.
- Rothbard, M. N. (2006 [1995]). *Making Economic Sense*. Ludwig von Mises Institute. <https://mises.org/library/making-economic-sense>.
- Seasholes, B. (February 2013). *The great gator hoax*. Green Watch, 1–8. Retrieved December 11, 2021, from <https://capitalresearch.org/article/the-great-gator-hoax-the-american-alligator-is-thriving-no-thanks-to-the-endangered-species-act/>.
- Simmons, R., & Kreuter, U. P. (1989). *Herd mentality: Banning ivory sales is no way to save the elephant*. "Policy Review", 50 (3), pp. 46–49. Retrieved December 13, 2021, from http://agrificedn.tamu.edu/kreuter/files/2013/01/Simmons-Kreuter-1989_3.pdf.
- Simon, J. L. (1981). *The Ultimate Resource*. Princeton University Press.
- Simon, J. L. (1996). *The Ultimate Resource II*. Princeton University Press.
- Smith, R. J. (1981a). *Earth's Resources: Private Ownership vs. Public Waste*. Libertarian National Committee.
- Smith, R. J. (1981b). *Resolving the tragedy of the commons by creating private property rights in wildlife*. "Cato Journal", 1 (2), pp. 439–468. <https://www.cato.org/sites/cato.org/files/serials/files/cato-journal/1981/11/cj1n2-7.pdf>.
- Smith, R. J. (2016). *Burning ivory is not the solution*. Competitive Enterprise Institute. Retrieved December 13, 2021, from <https://cei.org/blog/burning-ivory-is-not-the-solution/>.
- Sowell, T. (August 18, 2000). *Wake up, parents!* Jewish World Review. Retrieved December 13, 2021, from <https://www.jewishworldreview.com/cols/sowell081800.asp>.
- Sugg, I. C., & Kreuter, U. P. (1994). *Elephants and ivory: Lessons from the trade ban*. IEA Studies on the Environment, 2. Institute of Economic Affairs.
- Ted's Montana Grill (December 12, 2021). *Locations*. Retrieved December 12, 2021, from <https://tedsmontanagrill.com/locations.html>.
- Ted's Montana Grill (December 12, 2021). *Our story*. Retrieved December 12, 2021, from <https://tedsmontanagrill.com/our-story.html>.
- Turner Enterprises Inc. (December 11, 2021). *Turner ranches*. Retrieved December 11, 2021, from <https://www.tedturner.com/turner-ranches/>.
- U.S. Department of Agriculture (2017). *Census of Agriculture*. Retrieved December 12, 2021, from https://www.nass.usda.gov/Publications/AgCensus/2017/#full_report.



- Usfwspacific (June 26, 2018). *Saving the 'gray ghosts': How the U.S. Fish and Wildlife Service is Working with a Bi-national Coalition to Save the Southern Mountain Caribou*. USFWS Pacific Region. Retrieved December 5, 2021, from <https://usfwspacific.tumblr.com/post/175252486790/saving-the-gray-ghosts>.
- Wood, J. (2021). 'Yellowstone' and the Endangered Species Act: Incentives for species recovery need more carrot and less stick. "PERC Reports", 40 (2), pp. 28–35. <https://www.perc.org/2021/12/06/perc-reports-winter-2021/>.
- Yablonski, B. (2007). *Bisonomics*. "PERC Reports", 25 (3), pp. 5–9. <http://perc.org/articles/bisonomics>.