



# The Ways to Improve the Legal System for Wildlife Protection—From the Perspectives of "Animal Rights Theory" and "Modern Anthropocentrism"

Fuqing Zhang

China State Construction Xinjiang Construction Engineering(Group) CO., LTD Urumqi, Xinjiang 830000, China

**Abstract:** China's current wildlife protection legislation is imperfect, there are multiple contradictions between human and wildlife resources. Scientific and reasonable protection of wildlife resources is conducive to economic development and ecological civilization construction. As to whether China should adopt the "theory of animal rights" to formulate relevant laws, this paper discusses the "theory of animal rights" and the legal status of China's wildlife resources protection, and puts forward reasonable suggestions to build a scientific and effective legal system of wildlife resources management and protection.

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**\*Corresponding author:** Fuqing Zhang, 3178321877@qq.com

In 2020, the outbreaks of new coronavirus pandemic in various parts of the world has led to immeasurable economic losses. On February 24, 2020, the Sixteenth Meeting of the Standing Committee of the 13th National People's Congress voted and approved the "The Decision of the National People's Congress Standing Committee's Proposal for a Comprehensive Prohibition of Illegal Wild Animal Trade, Elimination of Bad habits of Overeating Wild Animals, and Effective Protection of People's Lives and Health" (hereinafter referred to as the "Decision"), banning the consumption of wild animals completely. The new coronavirus has been circulating in wild animals

for many years, and studies have shown that it can infect people through contact with wild animals. Human beings are at the top of the food chain, and we have the right to hunt, sell, and eat any wild animal resources on the earth. Facing the endless plunder of human beings, some scholars put forward the "animal rights theory" to promote the reform of the legal system for wildlife protection.

## 1 Problem Statement

The nature has cleverly set up a model of "natural law-behavior model-natural prohibition", and human development must conform to natural laws. How can we use legal means to effectively manage the numerous wild animal resources on the earth that carry dangerous pathogens, and realize the sustainable use of wild animal resources? Some scholars have proposed "animal rights theory" to construct a legal protection system for wildlife, but from the analysis of "non-anthropocentrism", "animal rights theory" violates basic legal ethics. "Animal rights theory" is a sign of the progress of civilization in the new era, but the adverse consequences of it being brought into practice should be considered thoroughly.

## 2 The Contradictions in Legal Ethics of "Animal Rights Theory"

Law is a kind of social relationship, and social relationship is based on material foundation. Society originates from nature, and social development originates from nature's development. The future trend of wildlife resource protection is about striking a fine balance between human development and

wildlife resource protection. In the future, respect for nature will be a requirement of human development.

### **2.1 The Contradictions between Animal Rights Theory and Legal Ethics**

The "Animal Rights Theory" is actually an animal liberation movement giving animals legal subject status. Whether legislation can be made on the basis of "animal rights theory" should start from the source of the rights and the course of their history. In the early slave-owning societies, slaves were the objects of property rights, and slave owners controlled the fate of slaves. Slaves were equivalent to animals and had the same status as animals. As the human rights movement deepened, slaves began to have the rights that people enjoyed. The 1982 "World Charter for Nature" stated that "every life form is unique, no matter what its value to humans, it should be respected. Regardless of whether it is wild or domestic, all life forms must maintain at least enough numbers to survive and multiply. For this purpose, the necessary habitat should be secured<sup>[1]</sup>."

What kind of rights do animals have? Is it the right to life, health or other rights? "Right" is a privilege of the social superstructure and exclusive to human beings. All superstructures are built on a material basis. From ancient times to the present, all legal theories are based on "anthropocentrism" or "modern anthropocentrism". "Animal rights theory" not only denies the uniqueness of human beings as the subjects of rights, but also violates "anthropocentrism", and it should be ended by now. Animal rights contradict with human rights, so "animal rights theory" is suspected of being anti-human.

### **2.2 The Dilemma in Realizing Animal Rights**

In "Reflections of a Young Man on The Choice of a Profession", Karl Marx first expressed his understanding of the ideal state of man by his free consciousness: "Man can choose his own destiny, and he has the freedom to choose<sup>[2]</sup>". In legal relation, the difference between humans and animals lies in the following: First of all, humans exercise corresponding rights based on their own intelligence. So far, it has not been found that animals have reached the level of freedom comparable to human. It is easy for animals to obtain rights, but it is difficult for them to possess behavioral capabilities to exercise their rights; secondly, the objects of animal rights are difficult to determine, as rights generally refer to specific

or general objects, the objects of animal rights are difficult to specify.

For example, regarding the infringement and public interest litigation under the "Civil Code", it is stated that the rights of animals must be attached to people, and requests of animals should be put forward by their owners, or public interest litigation should be filed by social groups based on the mechanism of protecting nature. The author believes that the theory of animal rights is not feasible at all. Legal rights are the product of the development of human society, and the ability to possess rights and behavioural capacity is the meaning of the existence of rights. Since rights refer to the objects, and as the objects of animal rights cannot be determined, the theoretical basis of the "animal rights theory" is flawed. The advocates of the "animal rights theory" need to solve the problem of the objects of animal rights. In any case, animal rights are the transfer of human rights.

In China, wild animal resources are owned by the country. The protection of wild animal resources can refer to the protection rules of "property rights" and apply the civil rights protection laws, such as "removal of nuisance request" and "return request". The design of this path is more in line with the law ethics. The denial of "animal rights theory" does not mean the loss of the theoretical basis for animal protection.

## **3 The Era Significance of "Modern Anthropocentrism"**

There are mainly two types of relationship between humans and wild animal resources: "anthropocentrism" and "non-anthropocentrism". After the emergence of modern society, "anthropocentrism" has emerged through the collision and integration of ideas. Analyzed from the perspective of dialectical materialism, human productivity is limited by the natural resources of the earth, and the relationship between human and wild animal resources should develop in accordance with the path of "anthropocentrism → non-anthropocentrism → modern anthropocentrism". Once human productivity breaks through the limitation of the earth's resources, that is, to survive without the earth, the relationship should then develop in accordance with the path of "anthropocentrism → non-anthropocentrism". "Modern anthropocentrism" is a current compromise between human beings and

nature and it is a deviant form of "anthropocentrism", it can never develop beyond "anthropocentrism" at any time.

### 3.1 The Historical Development of “Anthropocentrism”

Following the theocracy in the Xia, Shang and Zhou periods, the Western Zhou Dynasty put forward the idea of "respecting nature and protecting the people", indicating that the rights of ordinary people were protected and "anthropocentrism" had begun to bud. Taoism places "Tao" at the core of its thinking. "Tao" has infinite connotations. "Tao" is the way of all things in nature and the eternal way of the universe. "Tao" is the Taoist understanding of the origin of nature and believes that all things operate according to "Tao". The laws all obey the laws of nature. Confucianism advocates "the unity of man and nature" and proposes "the differentiation of human from nature", which is similar to "humanism". In the pre-Qin book "Mencius: The kingdom governance for me (Gua Ren Zhi Yu Guo Ye)", it was written: "Do not exhaust the grains, fish and turtles, do not exhaust timber resources. This shall make the people live and die without regrets" and "sometimes carry an axe into the mountains, sometimes carry an axe into the forest, do not exhaust the timbers", which embodies the principles of "moderate thriftiness" and "sustainable development" of the pre-Qin ecological thoughts.

### 3.2 The Value of “Modern Anthropocentrism”

In the late period of the first industrial revolution, human beings unscrupulously exploited and utilized natural resources, which caused development difficulties and the world entering the stage of "modern anthropocentrism". Xi Jinping put forward the idea that "not only should we have gold and silver mountains, but also green water and green mountains", and its intended meaning is to protect wild animal resources reasonably. The Life Community is an innovative concept in Xi Jinping's new era of socialism with Chinese characteristics, and a basic category of Xi Jinping's thoughts on ecological civilization. In the process of systematically thinking about the relationship between man and nature, Xi Jinping's ecological civilization thought treats wild animal resources with an open vision and mind, and creatively put forward the theory of "Life Community"<sup>[3]</sup>.

Article 2 of the "Decision" clearly states that the consumption of terrestrial wild animals with important ecological value is completely prohibited. This means that the scope of protected wild animals must be expanded. Ecological functions are the most basic functions of each organism. The standards for protecting wildlife are the embodiment of the socialist ecological concept in the field of legislation. The use of the term "ecology" marks the gradual transformation of China's wildlife protection to "modern anthropocentrism", but the premise is "ecological value". In fact, all wild animals have "ecological value" and humans should play the role of "ecological guardians".

"Modern anthropocentrism" theory is the mainstream of contemporary theory of the relationship between humans and nature. "Anthropocentrism" theory emphasizes that people have the right to manage wild animal resources, while "modern anthropocentrism" theory weakens the human rights to unrestrained abuse of wild animals and increases the obligations to protect wildlife resources.

## 4 Insufficient Protection of Wildlife Resources

Currently, China's wildlife protection legal system does not adopt the "animal rights theory" or "non-anthropocentrism", which is a kind of lucky for the country. However, there are still problems in the protection of wildlife, such as basic principles, management responsibilities, management methods, penalties and the linkage between penalties etc.

### 4.1 Narrow Scope of Monitoring

Article 16 of the "Wildlife Protection Law" states that "the wildlife protection department, veterinary department, and health department of the people's government at or above the county level shall be responsible for the prevention and management of zoonotic diseases in accordance with the assigned responsibilities<sup>[4]</sup>". Article 1 of the "Wild Animal Protection Law" stipulates the principle of this law: "To protect wild animals, save precious and endangered wild animals, maintain biodiversity and ecological balance, and promote the construction of ecological civilization". This is the purpose of the law. It can be seen that only known infectious diseases have been controlled, and the term "control" means "post-incident control", which generally refers to management after an incident has occurred,

without prior monitoring and prevention.

#### **4.2 Small Scope of Authorization**

In 2007, the Wild Animal Epidemic Disease Monitoring Main Station of the State Forestry Administration issued the "Notice on Clarifying the Implementation Units and Strengthening System Construction of 350 National Terrestrial Wild Animal Epidemic Disease Monitoring Stations", establishing a rudimentary epidemic monitoring system in China. According to current regulations, the animal epidemic monitoring functional department belongs to the Wildlife Protection and Science and Technology Department under the Forestry Department. One of its responsibilities is the monitoring, prevention and control, and emergency response to the epidemic source and disease. In 2012, Fujian Province issued the "Emergency Plan for Terrestrial Wild Animal Epidemic Diseases in Fujian Province" stipulating that "county-level forestry authorities and implementation units of terrestrial wildlife epidemic disease monitoring sites should immediately conduct on-site investigations in conjunction with the local animal epidemic prevention department when abnormal casualties in terrestrial wildlife is observed, in accordance with relevant national and provincial regulations, and professional and technical personnel should collect samples for testing in time." When wild animals die abnormally, the animal epidemic prevention department will conduct on-site investigation and sampling. The lack of initiative in work makes it difficult to expand the scope of monitoring.

#### **4.3 Incompatibility between "Crimes, Responsibilities and Penalties"**

The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) (hereinafter referred to as the "Convention") was signed in 1973. The convention divides species under its jurisdiction into three categories and lists endangered species in three appendices<sup>[5]</sup>. Article 1 of the "Interpretation of the Supreme People's Court on Several Issues Concerning the Specific Application of Law in the Trial of Criminal Cases Concerning the Destruction of Wildlife Resources" implemented on December 11, 2000 stipulates that hunting and killing "wild animals listed in Appendix 1 and Appendix 2 of the 'Convention', and the domesticated and bred stock of the species stated above" constitute the crime of

illegal hunting and killing of precious and endangered wild animals. Article 2 of the "Decision" clarifies that the law applies to species "with important ecological value", meaning that the scope of protected wildlife resources is expanded. Ecological value is the most basic function of each species. In the criminal law, the definition of "precious and endangered wild animals" no longer meet the requirements of the modern socialist ecological view, and the adoption of "ecological value" as the standard for protecting wild animals does not conform to the socialist ecological view.

The criminal laws in China stipulate the "crime of illegal hunting and killing of precious and endangered wild animals". The objective of protection is the state's management order of wild animals. From the description of the crime, it can be seen that the severe punishment is imposed on illegal hunting and killing of precious and endangered wild animals. No punishment shall be imposed on legal hunting and killing of precious and endangered wild animals. The term "illegal" first affirms that there are actions which are "legal", but there is a large gap between "legal" and "reasonable". The term "legal" is undoubtedly a protection law for overeating wild animals.

### **5 Suggestions**

#### **5.1 Amending relevant laws and regulations to expand the scope of monitoring**

The first is to "update the list of zoonotic diseases is regularly and using scientific sampling methods for epidemic monitoring, to eliminate consequences of post-incident monitoring." The second is to increase the input of manpower and equipment in grassroots monitoring agencies to regularly track and predict the health of wild animal populations to prevent their deterioration, and to make wild animal populations a "community of common destiny" sharing weal and woe with mankind.

#### **5.2 Increasing investment in grassroots epidemic prevention and appropriate legal authorization**

First of all, investment in grassroots epidemic prevention should be increased. The lack of grassroots animal epidemic prevention institutions, personnel, and equipment are important factors restricting the development of animal epidemic prevention work, and they are indispensable. Secondly, based on the

principle of "unauthorized law cannot be done, and statutory duties must be done", the behavioral norms of grassroots epidemic prevention organizations are refined, sampling performed regularly, and disease surveillance for "zoonotic" diseases is to be carried out.

### **5.3 Revising the relevant provisions in the Criminal Law to adapt to related crimes**

The first is to amend the "crime of illegal hunting and killing of precious and endangered wild animals" in Article 341 of the Criminal Law to the "crime of illegal hunting and killing of wild animals", which will conducive to the implementing complete prohibition of wild animals consumption and raising the level of wild animals protection. Secondly, as the "Decision" raises the level of protection of wild animals, the Criminal Law should raise the statutory penalty to severely punish the social harm of "hunting, killing, and eating wild animals", and ultimately achieving "compliance with crime, responsibility and punishment."

## **6 Conclusion**

From the viewpoint of "modern anthropocentrism", "animal rights theory" is undesirable. Everything in the world has two sides, the "animal rights theory"

cannot solve the problem of protecting wild animals, and may even bring about legal and ethical problems. The improvised "anthropocentrism", known as "modern anthropocentrism", centers on "human" and emphasizes the important role of wild resources in human society. Optimization of the judicial system must be based on "modern anthropocentrism" to realize the vision of sustainable development.

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