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Nonhuman animals and sovereignty: On *Zoopolis*, failed states and institutional relationships with free-living nonhuman animals[1]

Josh Milburn

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A problem for those – academics and activists – concerned with human relationships with nonhuman animals (NHAs) is the nature of our relationship with free-living, or "wild", NHAs, especially given the huge levels of NHA death and suffering in nature. There are at least two ways we can think about this issue. One is at the individual, "moral" level; we can ask questions about the relationship we should *as individuals* have with free-living NHAs, and concerning our individual response to suffering and death in nature. The other way to think about this is at the collective, political, *institutional* level. This entails asking questions about what kind of relationship it is appropriate for us *as states and societies* to have with free-living NHAs, and about what, if anything, the state should do about the suffering and death of free-living NHAs. The two are, of course, linked, as political change relies upon the actions of individuals. Thus, one could be an activist for free-living NHAs by helping them directly, or by agitating for political reform.

My focus in this chapter will be upon the political aspect of the question. When thinking through the kinds of institutional relationships humans can have with free-living NHAs, one normative tool which is potentially useful is *sovereignty*. Free-living

[1] This chapter was written while I was reading for a doctorate in the School of Politics, International Studies and Philosophy (PISP), Queen's University Belfast. Thanks are owed to my supervisors, David Archard and Jeremy Watkins, and my funder, the Department of Employment and Learning, Northern Ireland. Many of the arguments in this chapter were presented at a seminar in the PISP Research in Progress series; I thank those present for their comments. Finally, special thanks are owed to the editors of the present volume for their recommendations.

"communities" of NHAs, it might be suggested, should be conceived of as sovereign over certain territories, and this dictates (or, minimally, has a bearing on) what kinds of intervention and aid are appropriate. This is the view of Sue Donaldson and Will Kymlicka (hereafter, D&K), whose *Zoopolis* (2013d) presents a normative vision of three kinds of recognisably *political* rights possessed by various kinds of NHAs, based on these NHAs' relationship with the mixed human/NHA community. NHAs who are a part of this community are conceived of as *citizens*, giving them certain rights and responsibilities. NHAs who are to some level dependent upon this community without being a part of it (including the likes of "feral" cats, garden birds and urban foxes) are conceived of as *denizens*. Denizens have some but not all of the citizenship rights afforded to NHA citizens, but are not bound by the same responsibilities. It is the final category with which I will be primarily concerned in this chapter. NHAs who live free from dependency on the mixed human/NHA society ("wild" or "free-living" NHAs) are conceived of as sovereign over their territory. On the one hand, this conception offers a principled reason to support the traditional animal rights assumption that free-living NHAs should, for the most part, be left alone (Regan 2004, p. 363). On the other, claim D&K, it gives us guidance concerning when it is permissible, or even mandatory, to intervene on these NHAs' behalf. Small-scale non-institutional interventions, such as saving a particular NHA with whom we have some connection, are acceptable as long as they are done in a way that is respectful to the sovereignty of the NHA "community" and the individual rights of NHAs affected. On the other hand, large-scale intervention by the international community is *required* when the NHA "community" faces a challenge with which it is not equipped to successfully deal; for example, natural disasters, pandemics, or catastrophic levels of climate change. This is especially true when these events are triggered or exacerbated by human (in)action.

I will expand no further here on precisely when this sovereignty model does or does not permit and/or endorse intervention, as D&K's own words on the subject in *Zoopolis* give a strong indication of this. Instead, I am interested in critically assessing the success and conceptual coherence of this model of sovereignty, with the aim of better understanding our normative obligations to free-living NHAs. Specifically, I am interested in the political question of institutional relationships with free-living NHAs, and especially the extent to which proposed institutional relationships are coherent, desirable and/or practical. To be clear, I share with D&K – and the other contributors to the present volume – a strong commitment to working towards a world respectful of NHAs. In order to reach this better

world, we need a clear and coherent understanding of what represents, or is entailed by an idea of, a respectful political relationship with free-living NHAs. My criticism of D&K should be understood in this context. To that end, I hope that this chapter can be read partially as a response to D&K's hope to inspire theoretical work on alternative political theories of animal rights to their own (2013b, p. 214; 2013c, p. 772). If read in this way, the present enquiry should not be considered a response to *Zoopolis* as such, but part of a conversation about the best way of understanding our relationship with NHAs, and so what we as academics and activists can do to improve this relationship in practice.

The chapter will progress as follows. First, I will set out what I call the "failed state objection" (FSO) to D&K's picture of NHA sovereignty and/or its consequences. Second, I will outline their various responses to the FSO: the supposed hypocrisy in declaring NHA states failed while not doing the same for human states, the distinction between intra- and inter-species violence, and the fact that free-living NHAs do not exist in the circumstances of justice. I suggest that these responses are not compelling, and so conclude that the FSO reveals problems with D&K's use of the concept of sovereignty. This, however, should not be understood as damning for the project of *Zoopolis*. Instead, we can move beyond the dichotomous conflict between the sovereignty model and the FSO: namely, we can critically think about how we should be interacting with free-living NHAs if we take it to be the case that NHA "communities" are in some way analogous to failed states. In closing, I will ask the practical question of what institutions, if any, we should be establishing to protect free-living NHAs. I compare the sovereignty model with the "rival" account of "animal property theory" (Hadley 2015), suggesting that these theories share a number of important premises and that their disagreement may be more pragmatic than substantive, before concluding that we do not today find ourselves in a position to satisfactorily implement either proposal. In practice, this means that if we wish to work towards this kind of institutional protection of NHAs, we have to work towards changing everyday attitudes towards NHAs, most basically by adopting veganism and spreading a pro-vegan message.

The failed state objection

In the course of outlining their model of NHA sovereignty, D&K consider but reject the possibility that the violence inherent in nature – especially the violence inherent in

predator/prey relationships – might entail that free-living NHAs live in "failed" states. "If a human community failed in this regard", they observe,

> [W]e would likely view it as a 'failed state', or in any event one that requires some degree of external intervention. But in the context of ecosystems, food cycles and predator-prey relationships are not indicators of 'failure'. Rather, they are defining features of the context within which wild animal communities exist; they frame the challenges to which wild animals must respond both individually and collectively, and the evidence suggests that they respond competently. (Donaldson, Kymlicka 2013d, p. 176)

Nonetheless, those critically engaging with the position presented in *Zoopolis* have presented concerns about this issue. First, Oscar Horta (2013) and Andriano Mannino (2015) stress that the existence of near-universal NHA suffering, including suffering that is a result of various species' reproductive strategies, may be indicative of state failure. These authors draw attention to the difference between "*K*-selected" animals, including humans, who have a small number of young of whom a comparatively large proportion survive into adulthood, and "*r*-selected" NHAs, who can have many thousands or millions of young, of which an average of only one or two will reach adulthood and breed. Thus, Horta writes that, given the nature of population dynamics,

> [A]nimals in nature are in a permanent state of humanitarian catastrophe. If we follow *Zoopolis* in employing political categories to illuminate animal ethics, then most animals in the wild are living in *irretrievably failed states* incapable of ever being transformed into sovereign communities that respect their members' interests. There is no just previous non-catastrophic state that might be desirable to restore. To avoid catastrophe, we need to bring about a completely new scenario. (2013, p. 119)

On the other hand, I have elsewhere (2015) presented a version of the FSO stressing the problematic relationships between beings who, under the authors' model, are equally

members of a particular sovereign community, or, to put it another way, are both citizens of a certain NHA state. I compared the example of an island "state" containing rabbits and stoats (Rabbit Isle) to a human state containing farmers and marauders (Husbandria). In both cases, the populations are well-balanced "ecologically"; the stoats/marauders have enough rabbits/farmers to kill for survival, while the rabbits/farmers never die out, though most are eventually killed by the stoats/marauders. Drawing upon the words of D&K's already quoted pre-emptive response to the FSO, I suggested that:

> [T]he marauders might understand their relationship with the farmers as a 'defining feature' of life in the nation. The farmers may even shrug their shoulders philosophically and agree. Furthermore, Husbandria's farmers survive generation to generation, even if most are eventually murdered, and so 'respond competently' to the constant threat, in the same way that the rabbits of Rabbit Isle 'respond competently' to stoat attacks. None of this would mean that we have no obligation to intervene in Husbandria, and so it is difficult to see how it could mean that we have no obligation in the case of Rabbit Isle. (2015, p. 280)

It is important to note that Horta's FSO is made in the context of an ethical framework highly supportive of greater intervention to aid NHAs, while mine is made in conjunction with an alternative (but still animal-rights-based) argument against widespread intervention in nature. The significance of this point will become clear later in the chapter. Others, including Per-Anders Svärd (2013) and Marcel Wissenburg (2014), also raise variations of the FSO.

D&K have responded to the FSO, apparently labelling Horta, Svärd and I "hypocritical";

> After all, human societies engage in massive inter-species violence: we deliberately kill billions of animals each year for food, yet no one thinks our propensity to kill other species[2] disqualifies *us* from claiming sovereignty. … [Free-living NHAs] are not in the circumstances of justice, and are not able to survive except by harming others. Our killing of animals, by contrast, is voluntary, done for no reason other than our pleasure in eating their flesh. Under conditions of necessity, predation by one species of another species is a necessary evil. … To disqualify orcas from sovereignty

[2] The talk of "species" here is somewhat misleading; what is at stake is *members of* one species killing *members of* another.

> because they kill other species out of necessity, while upholding human sovereignty even though we kill other species out of choice, involves breathtaking hypocrisy. (2015, p. 336, emphasis D&K's)

There appear to be three separate objections, here. First, there is the accusation of hypocrisy – the oddity in declaring NHA states failed while opting not to do the same for human states. Second, there is the difference between intra-species violence and inter-species violence. This second objection is made more explicitly by Donaldson (private correspondence[3]), who writes that my Rabbit Isle/Husbandria example confuses "an inter-species example (stoats and rabbits), with an intra-species example (humans and humans)". "It's true", Donaldson says, "that we would judge a human state structured on a relationship of murder and cannibalism as a failed state, but that's because it's a case of intra-human violence". Third, there is the claim that NHA states are not failed, because NHAs do not exist in the circumstances of justice, which is closely related to the idea of the "necessity" of NHA-on-NHA violence. I will deal with each of these responses in turn.

Hypocrisy

The accusation of hypocrisy rests upon the assumption that proponents of the FSO do not characterise human states as failed in the same way that they characterise NHA states as failed.[4] There are at least two ways that the proponent of the FSO can respond to this point. The first is to bite the bullet and accept that human states *are* failed. This is not utterly implausible, but I will not defend it here. Instead, I think that there is a morally relevant difference between human states and NHA states that can justify declaring the latter, but not the former, failed. As Bernd Ladwig observes, the accusation of hypocrisy misses the point, as it "confounds humans' moral *failures* with animals' *incapability* to act morally … human communities are capable of moral learning" (2015, p. 295, emphasis Ladwig's). The fact that a state has failed in some very important regard does not entail that it is a failed state; actually-existing states, in addition to (all) failing catastrophically with regard to what is owed to NHAs, often fail with regards to what is justly owed to women, homosexuals and so forth. D&K recognise this: "The reality is that all societies, human or animal, are likely to fail some tests of competence" (2013a, p. 158). This does not mean that they are failed states.

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[3] Email dated 12 June 2015; cited with permission.

[4] Or, alternatively, the way they *would* characterise NHA states as failed *if* they accepted the broader framework presented in *Zoopolis*.

Perhaps it would be useful to differentiate clearly between two separate claims: sometimes a state *has failed* to do something; other times the state *is failed*. The former does not entail the latter. Though there is a broader open question about the necessary and sufficient conditions for state failure which I will not here attempt to answer, I suggest that there is clearly some assumption of the loss of control (not merely unjust and/or illegitimate government) and the inability (or high unlikelihood) of regaining control in the claim that a state *is* failed. NHA states have never had this control, and are unable to seize it; the idea is almost meaningless. On the other hand, human states still possess this control, they simply fail to use it appropriately. Sovereignty is granted to human groups partially out of a respect for the ability of political actors to engage in moral learning – something for which NHAs have no ability and in which they have no interest (Ladwig 2015, pp. 295-6) – human states can come to recognise the wrongness of their actions, while NHA "communities" cannot. This means that there is a morally relevant difference between the human (or mixed) states that fail to respect or protect animal rights and the NHA states that fail to respect or protect animal rights; though both *have* failed (in this regard), it is plausible that only the latter *are* failed.

D&K may nonetheless object to this characterisation on the grounds that I have arbitrarily selected one area of activity – violence – for determining whether or not a state is (not *has*) failed. Donaldson notes that "there are crucial other measures, such as sustainability and leaving enough and as good for others in which sovereign wild animal communities also clearly constitute much better functioning states [than] human-led ones, and no need to be 'improved' by us" (private correspondence). I am unconvinced that these problems are of the same *kind* as issues of inter-subject violence. Issues of violence on thinking, feeling beings (and, specifically and importantly, citizens and subjects of justice) are issues for which the state has primary responsibility, and are clearly issues *within, for and about* the state, and if the state can have no grasp on them, it has and is failed.

Species

The second response to the FSO rests on the claim that there is some moral difference between inter- and intra-species violence. While it is true that a focus on predation may shine a light primarily on inter-species violence, there are plenty of examples of horrific intra-species violence in nature. For example, many fish practice cannibalism, including filial cannibalism – the eating of their own offspring. Non-filial infanticide is also common among

many species, including social species: that male lions, for instance, will kill the cubs of others is well-known. Even if this kind of intra-species violence were not common, however, D&K's response would still be unconvincing. It is not clear why it should make a difference whether violence is perpetrated by conspecifics or not. The authors are non-speciesists, and are rightly keen to move away from the Aristotelian "fixation with species difference" in political theory (Donaldson, Kymlicka 2015, p. 323). This move is evident in much of the rest of their framework. For example, companion animals are to be fed vegan diets (Donaldson, Kymlicka 2013d, pp. 149-53) and socialised to be respectful of other citizens and denizens (Donaldson, Kymlicka 2013d, pp. 123-6), regardless of the species categorization of the companions and their potential food sources. If species difference is generally unimportant, it is hard to see why it should play such an important role when it comes to mixed states not involving humans.

Circumstances of justice

The final response to the FSO is that free-living NHAs do not live in the circumstances of justice.[5] While it is wholly plausible that beings who do not live in circumstances of justice have different kinds of normative obligations to one another (if they have any at all), it is curious to use this claim to object to categorising a state as failed. As observed by Svärd, the move is very much contrary to the typical historical assumptions of state theory, in which the state exists precisely to protect its citizens from the war of all against all (2013, p. 198). In particular, Svärd observes, we may have an obligation to bring about circumstances of justice if we can (2013, p. 198); elsewhere, D&K argue that this is indeed the case when it comes to problematic *human* actions (2013d, 48-9). It does not seem that the (surely accurate) observation that NHA "communities" do not exist in the circumstances of justice challenges the claim that sovereign NHA "communities" would be failed states; it seems to be precisely the evidence that the FSO needs. If a community of humans did not exist in the circumstances of justice,[6] we would surely have good reason to say that their state – if they had one – both *had* and, likely, *was* failed.

[5] That is, they do not exist in a situation in which cooperation is possible and/or necessary (Rawls 1999, chap. 22).

[6] With the exception, perhaps, of those who do not live in the circumstances of justice because they have no *need* of justice; i.e., they are all able to get along perfectly fine without any kind of justice.

It seems, then, that D&K are suggesting that we judge the failure of NHA states in a different way to how we would judge the failure of human states. Svärd suggests – with good reason – that the authors have seemingly slipped into the kind of "ecological" thinking that they initially rejected (Svärd 2013, p. 198), though I think an alternative reading is possible: D&K, I suggest, lean on a problematic account of *necessity*. In *Zoopolis*, predation (and, more generally, the likelihood of an early, violent, painful death) is framed as a part of what it means to exist as a sovereign member of a successful NHA state in a way that it is not framed as a part of what it means to exist as a sovereign member of a successful human (or mixed) state. It is only in this context that the authors can plausibly make sense of the claim that free-living NHAs inflict violence upon each other out of necessity. I find the account unconvincing not least because NHAs do not make decisions on the basis of necessity; they have no *conception* of necessity. Instead – and D&K accept this[7] – the extent to which violence, suffering and early death is part of their life is, in a very large way, down to humans: we are the beings with the power and, potentially, the will to do something to limit these things. If we choose to do nothing, then NHAs will continue to inflict violence upon each other, and so will continue to exist outside of the circumstances of justice (cf. Taylor 2013, pp. 150-1). If we choose to do something, we can move NHAs into the circumstances of justice, or, at the very least, remove the thought of their violent relationships being "necessary". *What* we do is a separate question; the current point is that the "necessity" of the violent relationships between NHAs dissolves once we begin to question the assumption that we should not be interfering.

The failed state objection as an internal critique

I have argued that D&K's responses to the FSO are unsuccessful. However, the FSO – or, minimally, the claims in the present chapter – can meaningfully be read as an *internal* critique of *Zoopolis.* If so, we can frame the problem like this: D&K's basic ideas – about animal rights, citizenship, sovereignty – are accepted (purely for the sake of dialogue, if necessary) but the way they are used is argued to be problematic. Specifically, the FSO suggests that the authors' application of sovereignty is a weak point in the argument. If the failed state objection is understood as an internal critique, there are two broad approaches that

[7] A power relationship with NHAs is inevitable; the question is the nature of the power relation. We need, they say, "to get away from the fantasy that we can avoid exerting power over animals" (Donaldson ad Kymlicka 2013c, p. 770).

we could take; though I can only speak for myself, I suspect that this is where Horta and I would diverge.

First, we could say – with, I suspect, Horta – that D&K have failed to provide a compelling argument against day-to-day intervention. Thus, the practical upshot of the sovereignty model would be day-to-day intervention, but *a day-to-day intervention respectful of the interests that sovereignty was instituted to protect*. Day-to-day intervention need not be fundamentally incompatible with respectful relationships with NHAs. We already accept that intervention in human states – even quite wide-scale intervention – can be done in a way respectful of, and compatible with, the interests humans have in sovereignty.[8] The same kind of thing is true of NHA states. When we are permitted/obliged to intervene, D&K say, we should intervene in a way respectful of the sovereignty and "dignity"[9] of the community and its members. For example, we should not simply use intervention as a cover for furthering our own imperialistic interests (Donaldson, Kymlicka 2013d, pp. 180-2). Someone objecting to this model of day-to-day but respectful intervention might claim that switch from occasional, emergency intervention to day-to-day intervention would be sufficient to make the intervention disrespectful. However, this does not seem to be implied by what D&K actually say about the purpose of sovereignty – that is, the reason they offer NHAs sovereignty, and the reason they think it will be beneficial:

> Our claim is that sovereignty rights—like indeed all rights—should be understood as protecting certain important interests against certain standard threats. In this case, sovereignty protects interests in maintaining valued forms of social organization tied to a particular territory against the threat of conquest, colonization, displacement and alien rule. This moral purpose, we argue, is equally applicable to humans and to wild animals. Indeed, animals arguably have even stronger interests in maintaining these territorially-specific modes of organization, since they are often more dependent on specific ecological niches. (2013a, pp. 151-2)

This broad point is repeatedly made. In one place, D&K write that their account "insists that the moral purpose of sovereignty *is to prevent injustices*, in particular injustices of

[8] For a discussion of this issue, see Lauren Traczykowski's contribution to the present volume.

[9] Donaldson and Kymlicka write, for instance, that unsolicited assistance "can be undertaken in ways that respect the dignity of those being assisted (including their right to be citizens of self-determining communities) or ways that undermine their dignity" (2013, pp. 181-2). *Dignity* is a highly contested term in the human context, and perhaps even more so in the NHA context. I confess to being unclear on what Donaldson and Kymlicka here mean by it.

colonization, despoliation, or domination" (2015, pp. 340-1, emphasis D&K's). In another, they stress that "[w]hen humans conquer, colonize, settle and develop [free-living NHAs'] territories, they harm free-living animals not only by killing them or reducing their food supply but also by denying them the right to maintain the ways of life they have developed in relation to their territory"; the recognition of sovereignty "would serve as a powerful check on this injustice" (2013b, p. 215).

Sovereignty, then, is a tool used to protect NHAs' interests; it is not claimed that NHAs have an *intrinsic* interest in sovereignty in the way that human groups might.[10] The question is whether day-to-day intervention could be compatible with the interests that sovereignty is deployed to protect. It does not seem impossible that it could be, though it would not be easy. Day-to-day aid for free-living NHAs could be structured so that it did not involve and was not a screen for conquest, colonization, domination, human settling or human "development". It could also be structured to avoid displacement of NHAs and disruption of NHA ways of life and their relationships with each other, except insofar as any displacement or disruption were necessary to protect NHAs from the kinds of harms that the intervention is meant to protect against.[11] If there is nothing necessarily objectionable about day-to-day intervention in theory, the remaining issues would be practical: the pertinent questions would now be about how we can design wide-scale intervention strategies to be respectful, or about how we can safeguard against these interventions inadvertently (or, worse, through nefarious design) becoming schemes of settlement and colonization (and so on). Remaining theoretical questions might include the question of the extent to which we are *obliged* to intervene, rather than just being permitted to do so, and questions of priority.

There is a second way to respond to the issue, and this would not require D&K to concede their (broadly) non-interventionist commitments. We could say that the sovereignty model does not preclude day-to-day intervention (that is, the FSO has merit), but that there is

[10] Ladwig observes that one of the purposes of sovereignty in human cases is to allow space and recognition of self-identity (2015, pp. 298-7). Collective self-identities, forged and protected through sovereignty, are plausibly important for humans in a way that they are not for NHAs. Similarly, though Donaldson and Kymlicka stress the importance of NHAs' relationship with *territory* as an underpinning for sovereignty, territory is, plausibly, *intrinsically* important for humans while merely *instrumentally* important for NHAs, especially when considered through the question of sovereignty (cf. Cooke, forthcoming). Though NHAs need the right kind of habitat, it does not matter where this habitat is; a suitable habitat for a European hedgehog is suitable whether it is in Britain or Canada. The same is not true of humans; if an English person wants to live in her home country, she does not want to live somewhere indistinguishable from England, she wants to *actually* live in England.

[11] Again, we could think about the treatment of free-living NHAs in contrast with the treatment of domesticated NHAs; according to Donaldson and Kymlicka, we *must* influence and adjust the ways of life of domesticated NHAs so that they are respectful to others, or at least live in a way compatible with respect of others. Donaldson and Kymlicka are right about this, and this means that there is nothing intrinsically wrong with exerting this kind of power and control over NHAs. That said, we do have good reason to be highly *wary* of it in the case of free-living NHAs.

nonetheless some *other* reason to oppose day-to-day intervention. Interestingly, D&K offer reasons to oppose intervention *beyond* the sovereignty arguments upon which they focus. Basically, they are of the view that any feasible intervention would involve the violation of the *individual* rights of NHAs. So, for example, they claim:

> We could only prevent predation by (a) forcibly separating all predator and prey species and then confining each to an allotted space; (b) forcibly preventing prey species from reproducing (since without predation their numbers would outstrip resources), which could only be done by separating males and females or sterilization (or infanticide); (c) finding alternative nutrition for predators; (d) controlling for all the knock-on effects of predation (feeding scavengers and so on). In short, we could only prevent predation by turning nature into a zoo, and by violating fundamental rights to mobility, association, and bodily integrity. (2015, pp. 338-9; cf. Donaldson, Kymlicka 2013b, pp. 216-7)

We therefore have good reasons, if the authors are right, to object to intervention *even if* the FSO holds.[12]

The focus on the violation of *individual* NHAs' rights when we intervene could be supplemented with consideration about the nature of rights. Elsewhere (2015), I defend and develop Tom Regan's classic response to the so-called "predator problem": that predatory NHAs, as moral patients but not moral agents, are incapable of *violating* rights, even though they can *possess* them (Regan 2004, p. 285).[13] Specifically, I – in that paper – suggest that we should take account of the fact that moral agency is a matter of degree. For example, if a mouse is killed by a wildcat, no agent is responsible, and if a mouse is killed by a human agent, that agent is responsible. However, if the mouse is killed by the cat companion of a human agent, it seems that the cat's guardian is responsible *to a degree*. As such, although NHAs in nature may suffer and may inflict great violence upon each other, it is not necessarily the case that their rights are violated – to put it another way, not all death and

[12] I do note, however, that this particular reply is most relevant to intervention with the aim of protecting prey from predators, and not the kind of interventions, such as medical aid, upon which many pro-intervention theorists focus.

[13] A moral agent is a being able to understand the rightness or wrongness of their actions, and so a being who can *wrong* someone as well as (presumably) *be wronged*. A moral patient is unable to understand the rightness or wrongness of their actions, and so cannot wrong anyone, but they are nonetheless someone to whom we owe certain duties. A newborn baby is an example of a moral patient; a baby cannot wrong someone else, but she can surely be wronged.

suffering which is equally *bad* is equally *wrong*. Thus, suffering in nature does not trigger a duty of intervention in the way that some other actions might, simply because there is no violation of negative rights involved.[14]

It is possible that suffering in nature could trigger a duty of assistance insofar as free-living NHAs have a *positive* right to assistance. Even if they do possess such a right, however, we would have to intervene in a manner that did not violate the negative rights of free-living NHAs. For example, it would not be acceptable to respect a deer's (putative) positive right to assistance by shooting dead a wolf; even if the deer has a right to our assistance when she is seriously threatened, the wolf has a right not to be shot, and so this immediately precludes us from using that as a means to aid the deer. When it comes to understanding these potential positive rights, we can return to the citizen/denizen/sovereign divide – though the negative rights of different NHAs may be more or less the same, the different kinds of relationship we have with different groups of NHAs suggests different kinds of positive rights in each case. In some ways, this is the starting point of *Zoopolis*.[15] Thus, for example, while D&K provocatively hold that NHA citizens have a positive "right to communal resources and the social bases of well-being, such as medical care" (2013d, p. 142), the authors do not suggest that this same right is possessed by free-living NHAs.

Thus, it is my claim that D&K's approach would be improved by greater attention to questions of moral agency. Someone could respond to the authors' use of the rights of individual NHAs (that is, not sovereignty as such) to reject day-to-day intervention by saying that protecting the very important negative rights possessed by prey against death and suffering could surely justify the limitation of predators' rights to mobility. But once we recognise that the violent deaths of NHAs in nature are typically not *wrongfully inflicted* deaths – they do not involve (negative) rights violations – this disappears. The positive rights to assistance of free-living NHAs (to be explicit, D&K presumably hold that these are quite minimal positive rights, at least when compared with the positive rights of co-citizens) are much less likely to be able to outweigh the negative rights of individual predatory NHAs. As such, we would have good principled reason to reject interference with NHA-on-NHA violence (or at least the *necessity* of such intervention) in states other than our own (such as "states" over which NHAs are sovereign) while retaining a reason to interfere with the

[14] A negative right is a right not be treated in a certain way, while a positive right is a right to a certain kind of assistance. Paradigm negative rights include rights against murder, assault and theft, while paradigm positive rights include rights to healthcare, social security and assistance when under threat.

[15] An alternative approach of this sort is offered by Clare Palmer (2010). The opposite view is defended by Alasdair Cochrane (2013).

predatory activities of *humans* in other states – in the latter case, there is the violation of fundamental negative rights, while, in the former, there is not.[16] Importantly, this holds even if we understand these states as failed, meaning that the possibility of (some forms of) intervention has been disentangled from questions about sovereignty.

It is worth mentioning that a nuanced account of the significance of moral agency could even be useful in getting to grips with other aspects of *Zoopolis*; for instance, it could be helpful in explaining why we have a duty to protect denizen NHAs from our companions while we do not have a duty to protect them from each other. D&K hold that humans have a duty to socialise NHA citizens so that they are respectful towards denizen NHAs (2013d, pp. 123-6). Nowhere, however, do they suggest that we have similar duties to socialise denizens. This suggests that a squirrel living in a city park is not the victim of injustice if killed by an urban fox in the same way as if she is killed by an under-supervised dog companion. Importantly, though, it would surely not matter whether this was the under-supervised companion of a human citizen or human denizen, or, indeed, whether a squirrel was killed by a *human* citizen or a *human* denizen; in all cases, the squirrel is surely the victim of an injustice. This means that the citizen/denizen distinction presumably cannot do the work here that it is required to do. However, if we were to supplement D&K's model with an account of moral agency, we could make sense of the injustice that the squirrel faces when killed by a human or a dog companion (citizens or denizens) but not by an urban fox (a denizen).

These two answers to the failed state objection as an internal critique of sovereignty are not even incompatible with each other – it is possible that they offer insight on *different kinds* of intervention. So, the first approach – supporting day-to-day intervention – might be a useful way of thinking about obligations to provide free-living NHA "communities" with some level of food and medical aid. Whether this is true would depend on precisely which positive rights are possessed by free-living NHAs (a question outside the scope of this chapter). Meanwhile, the second approach – rejecting day-to-day intervention for reasons other than sovereignty – might be helpful in understanding why we are not obliged to protect NHAs from each other.

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[16] Does this commit me to saying that we have no reason to interfere in, for example, infant-on-infant violence? In all but the most contrived of scenarios, it does not, for at least three reasons. First, though infants cannot violate rights, it is entirely possible that some agent has violated rights in the circumstances, analogous to how a cat's guardian is responsible for the rights-violations the cat inflicts upon mice. Second, infants, as members of our community and our families, have particularly strong claims to positive rights. Third, even if infant's rights are in the offing, there may be other reasons to intervene. Rights are not the whole of morality, and the special relationships agents have with infants ground particularly strong (moral) obligations. These considerations surely apply to some NHAs (our companions, for example) but generally not to free-living NHAs.

Sovereignty, property and the real world

We have seen that sovereignty theory is, for D&K, a tool to be deployed to protect certain fundamental NHA interests. When we understand the proposal in this sense, it is easy to see parallels with another recent proposal concerning free-living NHAs; namely, "animal property rights theory" (Hadley 2015). John Hadley proposes that, due to the important interests free-living NHAs have in access to their habitats and use of the natural resources contained therein, we should conceive of them having (something like) property rights. Namely, animal property rights theory suggests that we should consider the "territory" of NHAs as their property. However, Hadley allows that NHAs' property may be geographically coextensive with the property of humans, and so instead of simply saying that humans are not permitted to make use of NHA property, Hadley suggests that NHAs' important interest in using the "natural goods" of their territory be protected by a system of guardianship. Appointed guardians, Hadley says, could speak on behalf of NHAs with a property right, allowing the possibility of the use/development of land in a way that is respectful to resident NHAs (2015, chap. 2).

Despite mutual criticism (Donaldson, Kymlicka 2013d, pp. 160-1; Hadley 2015, pp. 85-93), I suggest that D&K on the one hand and Hadley on the other are, in an important sense, fundamentally in agreement. Both parties recognise that NHAs have key interests in freedom from certain kinds of human interference, and both tie this closely with these NHAs' use of land/territory. Both deploy tools from liberal theory (and real-world political practice) to protect these NHA interests. If we look at the debate this way, their disagreement seems to be pragmatic; there is simply a disagreement about *which* tool will be most effective when it comes to protecting NHA interests, rather than a dispute about what interests NHAs have or whether we should be paying attention to them.[17] I do not intend to come down on one side or the other, but I do note that the two are a long way from incompatible. Steve Cooke (forthcoming) offers his own account of NHA property and sovereignty such that NHAs are

[17] This is one way of thinking about broadening political tools and concepts to protect/include NHAs – first, we ask what interests NHAs have, and, second, we ask what tools we have that could effectively protect them. We could also think about it in the other direction by *beginning* with tools and using them to ask about interests. For example, it would be odd indeed to support handing out ballot papers to NHAs, but we could meaningfully ask if there is any interest possessed by NHAs that, in a human context, is protected by the right to vote. As such, we could talk of "votes" for NHAs – in an academic or activist context – because we think that NHAs' political actions are meaningful and warrant attention. Donaldson and Kymlicka talk about the idea of NHA citizens being politically active (2013d, pp. 112-116), and other theorists have produced sophisticated and compelling work in this area (e.g., Driessen 2014, Meijer 2013). Hadley seems to be an interest-first thinker, while Donaldson and Kymlicka seem to use both approaches.

considered property-bearers with a right to secede if their property rights are not respected. Another way to bring together the theories might be found in thinking through D&K's "utopian" (Milligan 2015) style when contrasted with Hadley's strong pragmatism. Perhaps the dispute disappears if we think of Hadley as presenting a non-ideal theory of territory rights and D&K as offering an ideal theory.[18]

Regardless of the lens through which this is considered, animal property theory seems, *pro tanto*, to be the easier, more practical, "first" step when it comes to protecting the interests NHAs possess in their territory. Animal sovereignty theory, the critic may observe, seems to be logically subsequent to the application of basic negative rights to NHAs; even if they may present novel and compelling ways to move beyond basic negative rights, D&K clearly *begin* with them.[19] This, the critic might continue, gives us another compelling reason to favour animal property rights as a practical solution to the question of how we should *currently* protect free-living NHAs. "Logically", Hadley tells us, "animal property rights theory is silent about whether animals have universal rights" (2015, 23), and he is open to justifying animal property rights without *any* reference to the interests of NHAs (2015, 104-9). This suggests that we can introduce animal property rights theory to our current political/legal infrastructures without having to first introduce animal rights more broadly, and this is clearly something that Hadley wishes to endorse. Consequently, it may appear to be an excellent first step on the road to protecting the interests possessed by free-living NHAs.

I do not find this argument convincing. This is because animal property rights theory without animal rights more broadly invites serious problems; namely, a kind of "repugnant conclusion".[20] If NHAs have a right to access their land and enjoy the natural resources contained therein – the essence of animal property rights theory – but no right not to be killed by humans, then it follows that humans wishing to encroach upon the NHAs' land can simply kill them. The human guardian/advocate tasked with protecting the property claims of the NHAs living in a particular area will find herself on the losing side of the argument once it turns out that there are no NHAs left whose claims she defends. The conclusion is made more

[18] The non-ideal/ideal theory distinction is familiar but contentious in liberal political philosophy. I am inclined to think that the difference comes down to the kind of questions that are being asked; nonideal theorists ask what we can do to deal with a particular injustice, while ideal theorists attempt to sketch a picture of how the best possible state would deal with an issue.

[19] Robert Garner draws attention to this part of Donaldson and Kymlicka's approach, suggesting that "the case for regarding their approach as genuinely different and innovative can be challenged" (2013, p. 102).

[20] Although I borrow the term from Derek Parfit (1987), my use of it here is not related to his. For a discussion of Parfit's repugnant conclusion in animal ethics, see Višak 2013.

repugnant when we realise that an argument could be constructed entailing that the NHAs' advocate should *support* the mass-slaughter of her charges. Let me explain: the advocate defending the property claims of NHAs' is tasked with ensuring that NHAs' property rights are not violated. While she could diligently and articulately defend the interests of the NHAs by challenging the plans of humans that threaten the NHAs' interests in their property, she could instead do what she can to ensure that all of her charges are killed, because, once they are killed, their property rights cannot be violated. In practice, she could do this by ensuring that the land is developed but *on the explicit condition* that all of the NHAs who have a property right in this land are killed. After all, assuming that NHAs have a right to property but no right not be killed, better they are killed as soon as possible to ensure that their property rights are not violated. This is a modification of a more familiar argument against the claim that it is bad for NHAs to suffer but not bad for them to be killed. If this were so, it would surely follow that it is "best" to kill NHAs as quickly as possible so that they do not suffer at all.[21] The idea that we might kill NHAs as quickly as possible so that they do not suffer/cannot have their property rights violated, in my view, entirely subverts the idea of animal rights. This gives us reason to doubt the claim that we do not wrong NHAs when we kill them, and reason question any animal rights system that does not protect NHAs' right not to be killed.[22]

The two elements of this repugnant conclusion, I think, show us that we are making some kind of mistake in attempting to deploy animal property rights theory without some kind of broader animal rights theory (by which I mean a politico-ethical framework genuinely respectful of NHAs – it need not be a "rights" theory strictly speaking). Any theory that says that human developers can fulfil their duties to free-living NHAs by killing them or says that we should as a matter of course protect NHAs by killing them appears to be importantly incomplete. As such, whatever the merits of animal property rights theory, it seems, like sovereignty theory, that it must be based upon a broader account of animal rights.

This leaves us in a difficult position when it comes to asking about what we can do today, here and now, in institutional terms to protect free-living NHAs' interests in freedom from human domination and interference. Seemingly, the two theories here presented are both predicated upon ideas that are not, in practice, accepted. This leads me to my ultimate

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[21] This argument was made (Godlovitch 1971) in *Animals, Men and Morals*, a book that helped push animal ethics into mainstream philosophy. Compare the work of Christopher Belshaw (2016), who is willing to bite the bullet and concede that, often, death will be a good thing for NHAs.

[22] I draw attention to this puzzling aspect of Hadley's account in my review (forthcoming) of his *Animal Property Rights*. I do not think it damning of his arguments, but I do think it a genuine problem.

conclusion: before we can seriously commit to protecting the interests of free-living NHAs in the systematic ways envisioned by sovereignty theory and animal property rights theory, we have to work towards changing the way NHAs are perceived and treated more generally. The negative consequence of this is that we must dismantle the myths of human exceptionalism, of the incommensurably high "value" and "dignity" of humans and human interests when contrasted with NHAs and NHA interests, and of the moral relevance of species membership. The positive consequences of this are that we should be reframing the way that we (as individuals, societies, academic disciplines) think about NHAs and the issues that concern them. On a very practical level, this means adopting vegan lifestyles, and encouraging those around us to do the same. It means doing what we can as political agents to discourage and block policies and proposals that will adversely affect NHAs, from decisions about environmental policy to laws around animal testing to decisions about subsidies. It means changing the way we talk about and refer to NHAs.

This approach represents the immediate practical and realistic changes that we should make if we are interested in protecting free-living NHAs through the introduction of large-scale institutional measures;[23] we are not, yet, in a position where we can realistically expect the introduction of institutions like D&K's sovereignty theory or Hadley's animal property rights theory – or at least not versions of them that we could expect to effectively protect the very interests that motivate their introduction. While most continue to disregard the interests of NHAs, these kinds of institutional interventions will fail to accumulate the necessary support for implementation. Even if this barrier could be overcome, the policies would be unlikely to be accepted in good faith, meaning that people would be motivated to disregard or circumvent the protections when it was in their interests to do so. Given that both systems rely upon humans to speak on behalf of NHAs – whether this is in property-related mediation or representation in the international arena[24] – this worry is particularly acute.

Concluding remarks

In line with one of this book's central themes – intervention in nature – I have critically assessed a major proposal for understanding the appropriate level of human involvement in the lives of free-living NHAs; namely, D&K's proposal that free-living NHA "communities"

[23] I have, I note, remained quiet on the topic of small-scale, individual interventions. My focus has explicitly been on politics, not morality.

[24] Donaldson and Kymlicka acknowledge in passing (2013d, pp. 208-9) that their system requires advocates to speak on behalf of sovereign NHA communities as an example of an issue yet to be explored as much as it should be. The point is more clearly developed by Cooke (forthcoming).

be conceived as sovereign. Leading on from this, and in line with another of this book's central themes – the question of how we should respond to the problems of NHA suffering and mistreatment in the real world – I have asked if we should support the establishment of the institution of NHA sovereignty, the "rival" institution of animal property rights, both, or neither. In the first part of the chapter, I concluded that D&K have not successfully responded to the FSO, but that this is not catastrophic for their project. Indeed, once we appreciate the significance of moral agency when it comes to questions of intervention, we are nonetheless able to support many of the practical consequences of the sovereignty account without needing to deny that NHA "communities" are somewhat analogous to failed states. In the latter part of this chapter, however, I suggested that both sovereignty theory and animal property rights theory are (or should be) predicated upon a more basic account of animal rights, and that this more basic account is a long way from contemporary practice. As such, it is appropriate that we target our efforts at moving towards this more basic account before we expend too much capital pursuing these kinds of systematic protections of NHA territory. This means, most simply, adopting and encouraging veganism, and, somewhat less simply, inculcating and developing more respectful modes of thought about NHAs.

It may seem curious that I finish a chapter on intervention in nature with the fairly typical call for veganism and more respectful attitudes towards NHAs, but this should not be read as condemnation of the thinkers expending time pursuing a greater understanding of our obligations towards free-living NHAs. Without doubt, all good work in this area will contribute to more thoughtful and respectful ways of thinking about NHAs and their interests. Further, the work has considerable value in its own right by helping us come to terms with what an ideal (or "more ideal") institutional relationship with free-living NHAs will look like. My worry is simply that, while we continue to live in societies that disregard the interests of NHAs so completely, these proposals will have limited applicability in the world as it actually is. When the societies in which we live come closer to offering NHAs the respect they deserve, we will have a multitude of carefully worked-out proposals ready for deployment. Importantly, though, the intellectual seeds being sown today need to find a more fertile ground on which to grow; if we long for practical change in this area, our first step has to be coming together to create that fertile ground.

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