

"The Territorial Rights of Animals: Zoopolis and Beyond"

S2 Wild animal populations are collapsing. By and large, we are destroying them. According to the most recent *Living Planet Report*, by 2020 wild animal populations will have dropped by 67% just since 1970.¹ And 1970 was no great shakes. By contrast, in that time, human population will have more than doubled from 3.7 billion to almost 8. This catastrophic loss of biodiversity barely registers in our economics or politics because living wild animals have neither political voice nor economic value. “Ecosystem services” and “natural capital” are counted for zero in mainstream Economics, which is to say that mainstream Economics is built on the delusion of Earth’s infinitude.

Philosophical liberalism is also built on denying this disecology. One aspect of liberalism’s “Earth question” is the sharp divide between humans and everything else, including all other living things, which are treated as part of the natural background over and against which humans can assert and negotiate normative and political claims, but which are not accorded any political status or rights in themselves. Consequently, for liberals, humans are as gods on Earth; liberal capitalism unleashes humans’ potential to amass wealth and spread it widely. Liberals tend to view more growth, better distributed, as the solution to global poverty. Liberal arguments on all fronts – for open immigration, for a global resource dividend, for health justice, basic income, what have you – virtually all presuppose that the extractionist growth economy can and will continue apace and grow in perpetuity. But as Tim Hayward asks, **S3**

how is that growth in fact going to be maintained, let alone something saved [for future generations], when the consequences of economic growth to date are already—as is now,

¹ World Wildlife Fund, *Living Planet Report 2016: Risk and Resilience in a New Era*. Gland, Switzerland: WWF International, 2016: 12.

belatedly, recognized—threatening the very biophysical basis of human life on this planet?²

Faced with the challenge of spreading prosperity, liberalism robs from the future to pay the presently impoverished without sacrificing any of the wealth of the presently affluent. Liberalism licenses and indeed celebrates, depends on, what amounts to murder-suicide on a planetary scale.

S4 Liberal theories of territory are no exception to this pattern. This may be surprising because territorial rights theorists, more than perhaps any other group of political philosophers, have thought about what could link people to particular places. These theorists – trying to answer the fundamental question of how we might resolve territorial disputes among contending polities – have zeroed in on, in effect, two core problems:

Social Ontology: In virtue of what does any combination of things count as the kind of corporate or collective agency that could claim territorial rights?

Attachment: In virtue of what does any particular agency of this kind count as *connected* or *linked* to any particular place, such that anyone outside the group could be bound to respect that link?

S5 Despite their official concern for linkages between people and places, liberal theorists of territory have not departed from liberal anthropocentrism. On the social ontology question, every single approach to date that I know of is anthropocentric. Individualist Lockean theories, such as those of Hillel Steiner and A. John Simmons, treat all and only individual human beings as the fundamental bearers of rights; everything nonhuman is a resource. Cara Nine, Margaret Moore, Paulina Ochoa Espejo, Anna Stilz, and other theorists of “peoples” generally give no thought to

² Tim Hayward, “Some Critical Questions for Liberal Cosmopolitans,” *Journal of Social Philosophy* (2009): 284.

nonhumans, but are concerned to explain how an individualist ontology can yield a collective “people.” Nationalist work is the same: nations are intergenerationally unified collections of individuals who have a kind of mutual recognition and a sense of shared history and political destiny. Their mutual recognition is realized in the form of a “daily plebiscite” or an “imagined community”. Nothing and no one who lacks the intellectual capacity for such national imaginaries or acts of daily assent could be a full or direct member of the nation. Even, to be frank, my own account of ‘ethnogeographic communities’ seems to make room only for human beings, since it is we who materially interact and have an as-if shared ontology of land.

Things only get worse for liberal theories of *attachment*. Here, theorists of territory say little that could slow, let alone halt, the liberal murder-suicide. Simmons holds that stewardship is at least a permissible end, but his requirement of efficient use that leaves enough and as good for others who are currently living suggests that stewardship will be the poor stepchild among allowable uses. We may not, on his view, say that the oil that is under our feet is off-limits; if someone else can “drink our milkshake,” then the oil is theirs.³ Left-libertarians like Steiner have perhaps more resources with which to build stewardship into the equation; but while Steiner’s ‘global fund’ might ensure that enough and as good is left for others in perpetuity, it comes at the cost of having any attachment criterion at all – there is no particularity. And in both Lockean cases, as long as everything that is nonhuman counts as a resource, the question is not *whether* it can be exploited but only *when* and *by whom*.

Similarly, although Nine has recently refined her collectivist semi-Lockean theory by thinking holistically about riverbeds and watersheds and their implications for the object of territorial claims, I still see no indication that the criterion of attachment requires recognition of nonhuman

³ A. John Simmons, *Boundaries of Authority* (New York: Oxford University Press, 2016).

claims or stewardship in perpetuity. Nine's account, however, at least grounds attachment in the establishment of justice in a place; this could enable her to strengthen this demand to require not only justice but also sustainability. Other Occupancy theorists have less capacity to do so. For whereas occupancy for Nine means that the people does something special to the land – namely, establishes justice there – for Moore and Stilz, as well as for nationalists like Meisels and Gans, Occupancy means that the *land* does something special for the *people*.⁴ Yet it might do that special thing to them only by giving up more than it can sustain. And the people seem to have no special obligation to return the favor.

Indeed – lest this seem unfair or straw-mannish – let me emphasize that if anything, theorists of territory have moved *away* from stewardship, and they have done so *intentionally*. The reason is that Lockean theories are seen as having imposed an unshared and Eurocentric conception of “efficiency,” and as having imposed that conception on non-Europeans, with the consequence that First Nations and other non-European peoples are regarded as using their land inefficiently, or indeed, as not being there at all.⁵ Non-Lockean theorists of territory have largely responded to this by abjuring any efficiency criterion – by denying that there was anything that anyone had to do to *merit* a territorial claim other than simply to *be there*, and indeed, what counts for being there has also been hollowed out.⁶ Consequently even the most rapacious, environmentally cataclysmic uses of land count as evidence of presence. One potential exception to this trend, David Miller, has moved from being an Occupancy theorist to requiring the creation of ‘value’ in a place, but his criterion of ‘universal value’ seems to assume, and perhaps privileges, mainstream economic and political values, so he does not challenge those whose conception of

⁴ Chaim Gans, *Limits of Nationalism* (New York: Oxford University Press, 2001).

⁵ Margaret Moore, *1999 book*.

⁶ See Tamar Meisels, *Territorial Rights*; David Miller, *National Responsibility and Global Justice*.

value-creation is environmentally destructive, provided it does not worsen the situation for liberal values.

The motive for this retreat from stewardship has been laudable – namely, the rejection of Eurocentrism and the desire to treat indigenous claims as territorial rights. And while I think the strategy fails even at this, my concern here is that the retreat from stewardship ends up giving territorial claimants a license to commit environmental destruction. In short, then, despite the fact that their subject-matter should be about linking people to particular places, and so they should be thinking carefully about the nature of place and the environment to which people are thereby linked, liberal theorists of territory have not departed from the standard liberal embrace of perpetual growth and the extractive economy.

This orientation contrasts with a wide range of critics of liberalism and anthropocentrism more broadly, who deny that humans are gods but instead regard us as ensconced within and responsible to a more-than-human world.

To be sure, the liberal might reply, liberalism has work to do. Yet there are good anthropocentric reasons to care for the land; that liberals have learned this late does not impugn liberalism, but is part of the tragedy of the human condition in the 21st century. And it will be liberal values that rescue us, if anything can, from this impending catastrophe without sacrificing all we have gained, from democracy and independent judiciaries to civil society to free markets. The problem is that anthropocentric liberal environmentalism can only caution against the risk of blowback. But then the risk of blowback is just a cost that has to be weighed against other human aspirations, and our care for nature can only be instrumental. Even a precautionary principle

seems to be on dubious liberal footing.⁷ At each moment the near-term gains will loom larger than the long-term losses – not least because so much long-term loss is already locked in⁸ – and once again animals and the larger environment will bear the cost. We need instead a *political* theory of the more-than-human world, which accords to that world a kind of political agency – claim rights and powers that can carry weight against human aspirations.

S6 In their landmark book *Zoopolis*, Sue Donaldson and Will Kymlicka defend a compelling account of political agency for nonhuman animals that supports a genuinely liberal nonanthropocentrism – a liberal theory of limits on human rapacity. Their liberal political theory of animal rights expands the polity to include nonhuman animals and respect for their rights as political actors, while also avoiding romanticism or so-called ‘eco-fascism’.⁹ Their strategy is to use citizenship theory to divide the animal kingdom into three political categories: domesticated citizens, liminal denizens, and wilderness sovereigns.¹⁰ Each class of animals is politically equal to humans, though what this equality entails differs by category. Consequently, domesticated animals are elevated to the status of coequal citizens of an interspecies human-animal society, liminal animals are regarded as ‘resident aliens’ within that interspecies society, and wilderness animal populations are single-species sovereigns whose territories densely overlap those of other species.

Zoopolis represents not just an emancipatory theory of animal citizenship and sovereignty, but a liberal theory of human limits. By *directly* including and recognizing animals, Donaldson and

⁷ John Broome, *Climate Matters* (New York: Norton, 2011), p.

⁸ See Stephen M. Gardiner, *A Perfect Moral Storm* (New York: Oxford University Press, 2010).

⁹ This charge is due to Tom Regan, *The Case for Animal Rights* (Berkeley and Los Angeles: University of California Press, 1983). For more recent discussion see Seth Crook, “Callicott’s Land Communitarianism,” *Journal of Applied Philosophy* 19 (2002), 175-84.

¹⁰ Sue Donaldson and Will Kymlicka, *Zoopolis: A Political Theory of Animal Rights*. New York: Oxford University Press, 2011.

Kymlicka deliver an *indirect* concern for wild nature as a whole, since that is animal territory. And by shying away from full-on liberal cosmopolitanism they at least make possible an escape route from the murder-suicide.

In the current paper I assume that Donaldson and Kymlicka are right that nonhuman animals must be integrated, somehow or other, into political theory not just as moral patients but as political agents. Yet I argue that their mode of doing so – principally in the form of the tripartite division and the priority given to domesticated animal citizens – ultimately yields an incomplete and ecologically inadequate normative theory. My principal focus will be the territorial rights of wilderness animals, for I want to demonstrate that by asking questions that are germane to territorial rights in the human context, we get a better picture of wild animal sovereignty. Yet more importantly for me going forward, by asking these questions *about* wild animal sovereignty, we also get a better picture of human territorial rights. Ultimately, the alternative I propose will jump off from the situation of what Donaldson and Kymlicka call liminal denizens, because these animals merit respect as part of a multispecies community integrated in virtue of material interaction rather than mutual recognition. In making this case I use some concepts that I have developed for human territories, namely, those of ethnogeography, ethnogeographic community, and plenitude, connecting these concepts to ecological ones such as resilience. In this way I'll try to give some specific meaning to Aldo Leopold's call for us to be "plain member[s] and citizen[s] of the biotic community."¹¹ At the same time, it is my intention to honor the moral vision of *Zoopolis* by insisting on the recognition of nonhuman animals as political actors in their own right – whether or not they are domesticated.

¹¹ Aldo Leopold, "The Land Ethic," in *A Sand County Almanac* (New York: Oxford University Press, year), page.

Zoopolis: insiders vs. outsiders

I begin with an extended discussion of the theory in *Zoopolis*. Donaldson and Kymlicka are liberal democrats about how contemporary postindustrial democracies should be organized. Hence on their view the state should be evaluated on the basis of its contribution to the welfare of its citizens and the justice of its institutions. Their great leap is to insist that animals, too, can count as citizens. The argument for this is not simply the traditional Animal Rights Theory claim that animals are moral patients, or subjects of a life, but the liberal one that domesticated animals, at least, are active contributors to society. They are our family members, our friends, and our coworkers. Like humans, domesticated animals are capable of regulating their natural instincts and willingly complying with social norms. Moreover, such incapacities as they do manifest may well be tied to their oppression; for instance, domesticated animals remain incapable of finding their own food and slavishly dependent on human affection, but this is a *consequence of*, not a *justification for*, the fact of their being dominated by us. Humans who belittle animals' intellect and self-efficacy are following a long line of arrogant victim-blamers that includes Aristotle, Jefferson, and far too many philosophers. Domesticated animals have been incorporated into our society as an oppressed caste, and it is time for emancipation.¹²

S8 But although Donaldson and Kymlicka extend the polity in this important way, they are inconsistent on what it means to be a people or polity as such. *Internally*, in the multispecies human-animal polity, they treat citizenship as having two distinct grounds: freedom of association, and contribution. Freedom of association is a bidirectional right – a right that each individual has, but that each can exercise only if it is consummated by another who wants to associate with them. Where two willing associates meet, society becomes possible. But full

¹² This paragraph is a précis of the *Zoopolis* argument for citizenship for domesticated animals.

citizenship requires more than free association; it requires in addition *contribution*. Liminal animals, for instance, live amongst us. They participate in society in various ways and could even be thought to contribute to it by, for instance, clearing litter, aerating soil, and so on. Their way of life is closely connected to ours. But they do not, by and large, want to interact with us on shared terms of cooperation, and the feeling tends to be mutual. In *Zoopolis* these denizens are thus resident aliens; they have a right to life and to place, but not to full citizenship. Thus the mutual desire to associate also grounds shared membership. Domesticated animals, on the other hand, also contribute to society, but they do so on shared terms of cooperation subject, for the most part, to mutual freedom of association. They are our family members, friends, and coworkers, and we are theirs. Thus full membership in the multispecies human-animal society has a dual foundation in freedom of association and contribution.¹³

Wilderness animals, by contrast, are distinct peoples with political status, not mere individuals. Yet in their case the criterion of membership shifts from freedom of association and cooperation to simple species membership. Individual nonhuman animals are capable of mutually consensual interaction and contribution to joint ventures on shared terms of cooperation. But they do not undertake these activities as species. By the same token, animals often do cooperate and interact across species lines. But they do not thereby come to share polities. For Donaldson and Kymlicka wilderness animal polities are species, irrespective of the scope of cooperation or association.

¹³ Donaldson and Kymlicka do not, as far as I can see, specify whether liminal animals should be understood as *peoples* or as individuals. Perhaps it depends on whether and to what extent individual raccoons or rabbits want to live together; in this case peoplehood would continue to be built on freedom of association. But either alternative seems odd. If they are free agents, members of no polity, then they are political anomalies. Even Lockean voluntarists do not fathom anarchist independents living among us. But if they are members of polities, it remains unclear what constitutes them as such. And in this case, though not anarchist independents they are stateless peoples.

Following the bifurcated social ontology is a bifurcated theory of attachment. Whereas citizens and denizens have rights to place that require humans' respect for their practices, wilderness sovereigns have *territorial* rights. These rights are held by the species as a whole. And instead of multispecies shared territories, Donaldson and Kymlicka envision the world as carved up into densely overlapping but politically distinct territories, each belonging to a particular species. Thus only internally are there nonbiological criteria of membership, and only internally can a society be a multispecies polity. Externally, among wilderness animals, the membership criteria are biological and the territory is, too.

Thus *Zoopolis* is built on a tripartite division of nonhuman animals, but a dual political structure, with one set of rules internally and another set externally.

Occupancy and the Territorial Rights of Wilderness Animals

S9 The first question is whether any available theory of territorial rights can account for *Zoopolis* by treating nonhumans as political agents with valid claims to territory. And the second, inverse, question is whether any class of animals – under the tripartite division – can claim territorial rights. In this section I want to show that the answer to each of these questions seems to be negative; that Donaldson and Kymlicka lack the resources to affirm that animals have rights to, as they say, “be there and to determine the shape of their communal life,” and even that wilderness animals are “territorial-based communities.”

S10 Donaldson and Kymlicka offer an extended defense of the territorial rights of wilderness animals, and so it is on this class that I will focus here. Following a strategy familiar in the animal rights literature, they argue that extending recognition to animals is analogous to the prior and morally required extension of recognition to non-European peoples. They admit that animals

are incapable of achieving a level of institutional realization of the sort that characterizes the modern state, but they insist that it is not required, noting that “most human communities throughout history” “fail to pass this threshold.” **S11** Instead, borrowing from Jo-Anne Pemberton, Donaldson and Kymlicka propose a social ontology of peoplehood meriting sovereignty that rests on four criteria: in order to have a valid claim to sovereignty, a community, be it human or animal, must:

- i) have an independent existence;
- ii) place value upon it,
- iii) resist alien rule, and
- iv) have recognizable interests in their social organization.¹⁴

When these tests are passed, “we have the moral purposes that call for sovereignty” (173). And – though most of their examples are birds or mammals – Donaldson and Kymlicka insist that by and large wild animals pass these tests.

Species are not Political Communities

S12 Each of these criteria is problematic in the case of people, and is even more so in the case of animals. With regard to the first criterion, the concept of species is no more natural than race or gender. Biologists treat species as an essentially *plural* notion; what is meant by ‘species’ depends on what field one is in or what question one is asking – questions of energy transfer, of reproduction, of genetic derivation, etc.¹⁵ In many cases, for ecological purposes the species is far too large a category because what become threatened are particular populations; by numbers,

¹⁴ Donaldson & Kymlicka 173, citing Jo-Anne Pemberton, *Sovereignty: Interpretations* (Basingstoke: Palgrave MacMillan, 2009), p. 130. I have suppressed their quotation marks for clarity and fluidity.

¹⁵ Jon Jensen, “Cutting Nature at the Seams,” in *Nature’s Edge*, ed. Charles Brown and Ted Toadvine (Albany: SUNY Press, 2007), 61-82.

a species might seem to be perfectly healthy even as every single population of that species is threatened. This seems to be the case with Pacific salmon.¹⁶ In other cases, the species is far too *small* a category for political or ethological purposes, because most if not all animals live in densely intermingled interspecies social environments. For every herd of bison or pod of whales or gaggle of geese, there are numerous and overlapping relationships of predation, symbiosis, and competition both within and across species lines. For one reason or the other, then – it is too broad or too narrow – there is no polity, no community, called *the species*.

Also like race and gender, shared species membership does not predict whether any given pair of organisms is likely to live together, behave similarly for political purposes, or interact socially. Consequently, there is no reason to suppose that animals will value their species-level independence. Donaldson and Kymlicka claim that animals meet the minimal sovereignty threshold of “the ability to respond to the challenges that a community faces, and to provide a social context in which its individual members can grow and flourish.”¹⁷ This seems true; but it seems typically false that *the species* meets this criterion. Animals do not organize at the species level.

In other words, it is as much of a mistake to treat animals as single-species communities as it is to treat all humans as a single-species community. We are separated from one another, and unified with other species. One might say that Donaldson and Kymlicka are ironically guilty of a kind of *intrinsic political speciesism* here: treating species as a politically and ultimately morally significant difference between organisms, when it is not one.¹⁸

¹⁶ Ibid.

¹⁷ *Zoopolis*, 175.

¹⁸ On ‘intrinsic racism’ see K.A. Appiah, *In My Father’s House* (INFO).

S13 Yet if it is hard to theorize species as peoples, it is also hard to see exactly how to theorize ‘peoples’ so as to include animals at all. There is too much diversity for any one account of the people to capture all and only those groupings that are politically salient. It is not exactly that nature is boundaryless; nature is shot through with boundaries of all kinds, on all scales. It is rather that no set of boundaries is consistent and canonical for any general purpose, the way political boundaries are, or purport to be, among people. What is needed is an account that can accommodate the manifold divisions and unities in the natural world.

Presence is not Occupancy

Even if we granted to Donaldson and Kymlicka this social ontology of sovereign peoplehood, we would still need to consider their account of attachment to territory. Recall that, for territorial rights – rights to particular places – we need to show not just that someone needs, wants, or even has a right to be *somewhere or other*; we need to show, in addition, that they have a right to be somewhere *in particular*. This is the problem of attachment. And even if animal species meet the four criteria of sovereign peoplehood, that would not attach them to any particular territory.

S14 To address the latter question, Donaldson & Kymlicka adopt an *occupancy* account. Occupancy theorists are unified by the fact that, in one way or another, *being there* is what grounds a territorial claim to a particular place. This may, but need not, run in a bottom-up direction, where collective occupancy supervenes on sites of individual residency; and as noted earlier the significance of the link may rest in what the people do for the place, or in what the place does for the people. The latter is most common; Moore, Meisels, and Stiliz, for instance, give rich accounts of how the place matters for the people, and then argue that those aspects of people’s lives are morally significant and hence should be protected and promoted by state institutions.

Like Moore and Stilz, Donaldson and Kymlicka propose a bottom-up, place-for-people account of Occupancy. Other things equal, they argue, both human and animal communities have a prima facie claim to be where they find themselves.¹⁹ Notwithstanding the unjust history of settler colonialism that has reshaped the environment often beyond repair,

[a] plausible political theory of territory has to start from the facts on the ground (where people currently live, and the boundaries of existing communities and states).²⁰

S15 Grant for a moment that this is correct: that current presence is the first fact of political recognition.²¹ Occupancy might then seem to be especially convenient because it is directly observable: if people *X* is there, then the place is occupied by *X*; if not, then not. Unfortunately, things are not so easy. Some peoples are – perhaps most peoples throughout history have been – nomadic, and where they are *now*, in their daily lives *during this season*, says little about their larger “located life plan.” If this is true of humans it is all the more so of animals, since most wilderness animal species don’t live in complex sedentary societies, and many of them migrate thousands of miles from one season to the next.²²

What Donaldson and Kymlicka seem to have in mind, however, is that we can pin peoples and groups down to core habitats:

It is one thing to say that a bird has a property right in its nest, or that a wolf has a property right in its den—specific bits of territory used exclusively by one animal family.

But the habitat that animals need to survive extends far beyond such specific and exclusive bits of territory—animals often need to fly or roam over vast territories shared

¹⁹ *Zoopolis*, 192.

²⁰ *Zoopolis*, 193.

²¹ Though I’ll challenge it in a moment.

²² Donaldson and Kymlicka do, of course, acknowledge this. My point, as developed below

by many other animals. Protecting a bird's nest is of little help if the nearby watering holes are polluted, or if tall buildings block its flight path.²³

This is surely correct, but nailing down animals' habitats does not determine occupancy. Our account of their habitat will be a theory of what they use, where they get it, what they are using it for, and whether that use constitutes meeting needs. These are social and political judgments, encompassing both the animals' *decisions* as well as certain counterfactuals such as whether their decisions are constrained by anything significant, and whether those constraints are morally tolerable or constitute wrongful restrictions. When salmon confront dams, over time they lose their migratory instinct such that they don't come back even when the dam is removed. Whether the erstwhile salmon run is still a salmon run seems to depend on which evolutionary stage is regulative and whether human intervention that alters reproductive habits is itself natural, and so part of a dynamic equilibrium, or an external intervention that undermines that equilibrium.

These are again complex theoretic, and indeed normative questions, not simple empirical ones.

The implication is that, in each case, the mere presence or absence of a population in a place – again, supposing we knew what polity the population constituted, and even whether the population was anything other than an artifact of our counting – is not a natural observable fact but already presupposes both moral evaluation and specification of social ontological questions on which different societies will diverge.

Occupancy is not Attachment

S16 Supposing again that we could settle the nature of group ontology and the location that any given group occupied, however, we would still need to determine whether the group was

²³ *Zoopolis*, page.

attached in a normatively significant way to the place that it occupied. What this problem demands is a distinction between a *political right* – sovereign power over a constituted juridical territory – and something more ethological, like mere habitat.

Consider cats and rabbits. In North America and Australia, domestic and feral cats are an invasive species. In Australia, rabbits are an invasive species. In each case, it was European expansion that brought these invaders to lands where they have no or few natural predators, and where they lay waste the natural environment. Cats are mass murderers and vectors of extinction. In the US, domestic and feral cats kill up to 3.7 billion birds and anywhere from 6.9 billion to 20.7 billion small mammals every year.²⁴ They are hardly less destructive in Australia, but there the story of rabbits is better known. Since introduction some 150 years ago, rabbits have laid waste the natural environment of virtually the entire continent, causing desertification, making vast swathes of Australia uninhabitable for many other animals and ruining the terrestrial base of indigenous livelihoods.²⁵ Yet it is not just invasives that have gone wild in the face of European encroachment. Australia is now a far better habitat for the kangaroo than it ever was before. According to the government of New South Wales, the population of red kangaroos has trebled in the past decade while grey kangaroos have more than doubled, with each species topping the 6 million mark.²⁶

Alas, cats are now in North America, and rabbits are in Australia, and the *fact* of their presence is unlikely to change. But do they have a *right* to be there? Donaldson and Kymlicka

²⁴ Juliet Eilperin, “Outdoor Cats Kill between 1.4 billion and 3.7 billion birds a year, study says.” *Washington Post* 1/31/13 (https://www.washingtonpost.com/national/health-science/outdoor-cats-kill-between-14-billion-and-37-billion-birds-a-year-study-says/2013/01/31/2504f744-6bbe-11e2-ada0-5ca5fa7ebe79_story.html). Accessed 11/1/16.

²⁵ Wendy Zukerman, “Australia’s battle with the bunny,” *ABC Science* 4/8/09 (<http://www.abc.net.au/science/articles/2009/04/08/2538860.htm>). Accessed 11/1/16.

²⁶ <http://www.environment.nsw.gov.au/wildlifemanagement/KMPPopulationEstimatesWest.htm> (accessed 2/27/17).

seem required to treat domesticated cats as our fellow citizens, whereas feral cats and rabbits are denizens, and most of the rabbits that destroy the Outback are wilderness sovereigns. Treated as political agents, cats and rabbits epitomize settler colonialism with its concomitant ethnic cleansing and ecological imperialism. They extirpate competitors and reshape entire environments. From a bird's perspective, by protecting feline citizens we are harboring terrorists that make irregular forays out into avian communities to kill innocent civilians. If it was legitimate for the US-led coalition to strike Afghanistan for harboring Al-Qaida, then, it would seem that the birds and the rats would be justified in launching a Hitchcockian assault on us.

More to the point, these occupants are not culpable for their presence in the Americas or Australia, or for the natural instincts that lead them to act as they do. But most people also deny that contemporary Euro-Americans are *culpable* for their presence in the Americas or Australia. All these groups nonetheless remain settler colonialists. Their occupancy is morally problematic for that reason. Which is to say that occupancy does not *answer* the moral question of attachment, but leaves it open. Hence occupancy is not a successful theory of attachment. Moreover, completely absent from the occupancy criterion is the question of sustainability. Inasmuch as the scope of occupancy is given not by the specific concatenation of sites on which people are resident, but rather the zone required for meeting needs in the way that the given group does so, the Occupancy criterion creates a moral hazard as groups gain an incentive for needing more space.

Against the Tripartite Division

If species are not peoples, presence is not occupancy, and occupancy is not attachment, then how can we recognize animal sovereignty or animals' political rights at all? To be sure, it remains possible to concede that we humans are the only *real* political agents, the *real* citizens, the only

ones who, in Aristotelian terms, share both in rule and in being ruled. The ongoing collapse of wild animal populations is dangerous enough for human survival that we can derive purely anthropocentric reasons for opposing it.

Yet it is worth rehearsing some of the good reasons to join Donaldson and Kymlicka in going beyond anthropocentrism. First, the Aristotelian conception of citizenship infamously makes that status unavailable even to all humans. As animal rights theorists have argued all along, there is no line such that all humans are “above” it and all animals “below”. Second, the flipside of the first point: if regarding certain beings as political agents is necessary for treating them with due respect and dignity, rather than just paternalistically, and if all sentient or self-moving creatures at least are entitled to being treated with due respect and dignity, then political recognition must be pursued for that reason. Natural facts about each – for instance, distinctive cognitive capacities and forms of flourishing – help determine what is required for due respect and dignity, and hence for political agency, but within the realm of self-moving creatures we do not condition respect and dignity on any further performance criterion.²⁷ And finally, in an anthropocentric world, at bottom everything nonhuman is a resource; in addition to the epistemic or practical risk that we will underestimate the real value of these nonhuman things, there is the deeper worry, emphasized by ecofeminists, that the logic of domination cannot be kept outside the human community – that this ideology seeps in at the cracks and underwrites oppressive relations among humans. Viewing ourselves as gods on Earth, or as God’s representative on Earth, is bad for everyone.

So if we accept that it is important to include animals in political theory as political agents rather than mere moral patients, the remaining question is *how* we should do so. Although I have

²⁷ For discussion see Michael Bérubé, [cite].

focused on the problem of recognizing the territorial rights of wilderness animal sovereigns, I think the *root* problem for *Zoopolis* is the dual structure of the polity – a multispecies polity founded on free association and contribution for insiders, and a single, intrinsically speciesist order for outsiders – and more deeply, the tripartite division that generates it. **S17** The tripartite division treats as a prepolitical fact what is actually a political one, namely, the place of animals within and around our political life. By *beginning* the theory of animal inclusion from that division, Donaldson and Kymlicka define animals in terms of their relationship to human society. This seems to turn Zoopolitanism into what Charles Mills has called a *Herrenvolk* ethic, with humans as the master race.²⁸ Lest the anthropocentrist see this fact and take heart that Zoopolitanism turns out to be a smaller tent than it seemed, there is a further problem that perhaps illustrates the ecofeminist point that you can't stop dominating at the species boundary. That is, the tripartite division does not even make all humans into the *Herrenvolk*. Rather, as Paul Nadasdy has pointed out, this supposedly empirical criterion is in fact a western liberal one, rejecting First Nations accounts according to which “the land and all beings upon it” are recognized as fellow citizens.²⁹

We are all Liminal Denizens Now

If we are committed to move beyond anthropocentrism, and yet by the same token we cannot adopt the tripartite division, what is the alternative? We need to determine the nature and scope of animal polities, our place in those polities, the nature of attachment to particular places, and what claims follow on such attachment.

²⁸ Charles Mills, *Blackness Visible* (Ithaca: Cornell University Press, 1999).

²⁹ Paul Nadasdy, “First Nations, Citizenship, and Animals, or Why Northern Indigenous People Might Not Want to Live in Zoopolis,” *Canadian Journal of Political Science/Revue canadienne de science politique* 49 (2016), 1-20.

In answering these questions I think particular insight comes from the situation of what Donaldson and Kymlicka call liminal denizens. In *Zoopolis* these creatures turn out to be genuinely liminal, a boundary case. On an Occupancy theory like those of Moore and Stilz, which value humans' 'located life plans,' we are stuck with the uncomfortable fact that liminal denizens tend to enter human plans as enemies, nuisances, or playthings rather than as neighbors or immigrants. Their presence among us is grounded in our material interaction, often wary or hostile, rather than in mutual recognition, a desire to associate, or any shared history, biology, or destiny. Yet despite our at-best ambivalent attitude toward liminal denizens, our interactions are genuinely dense; walking in the city we are arguably more likely to interact, or come into close contact, with liminal denizens than with domesticated animals, and in many cases, more likely denizens than people.

S18 At the outset I noted that the difference between liminal denizens and domesticated citizens was not mutual interaction or even contribution, since both of those characterize our relations with denizens, but voluntary association. At this point we must return to that observation and point out that voluntary association has little to do with the unification of human society either. Social ontologies that rely on a mutual recognition condition, such as those of Moore and Miller, founder on this point. For Rawlsian liberals, the hypothetical contract structure is an attempt to render our political association acceptable enough that we *would* or *could* choose it, even though we were never given the chance to opt in or out. So it seems odd to make the free association criterion a disqualifier for nonhumans. Rather, we should pursue a social ontology grounded in *productive material interactions* rather than in voluntary association. By that criterion, so-called liminal denizens would be at home in multi-species human-animal

societies as much as you or I. Indeed, given Rawls's point that none of us really ever chose one another, it might be better to affirm that we are all liminal denizens now.

S19 My own approach to territorial rights is grounded in a social ontology of productive material interactions rather than mutual recognition. I proposed the concept of an “ethnogeographic community” – a group with an “as-if” shared ontology of land and deeply interacting land-use practices. Just in virtue of existing, ethnogeographic communities are in two respects intrinsically connected to places. For they are structured by ontologies of land in the sense that they are the legal, economic, and social manifestation of certain beliefs – about what has value, about how roles and entities are to be distributed in space, about what to put onto and into the Earth and what to take out of it. Not everyone has to share these beliefs, but they end up compelled to act as if they did. For instance, although I reject contemporary liberal capitalism as a mode of political and economic organization, I live in a house that I own on a residential street, I commute to a job where I work for pay, I send my kids to school on a school bus, I buy most of my groceries from a supermarket, I fly long distances to meet with colleagues, and so on. Notwithstanding some minor tweaks and some political action to oppose it, I live it although I think it is fatally and fundamentally flawed. Hence, that ontology of land accounts for my behavior irrespective of my attitudes. Moreover, the values and structures that are manifest in this shared form of life are built out of mutually formative interactions with the land, often at a very localized level. The Midwestern flat grid city that began as a grain market, a post office, and a railroad junction is a different beast from the rust belt industrial city of hills that began as a river port and a meat processing center. This is not to say that just anyone who settled in what's now Indianapolis or Cincinnati would have done the same thing. To the contrary. The land and the people interact in mutually formative ways, which means that people who had arrived with

different assumptions and values would have interacted in different ways with the same place, changed it and been changed by it in different ways, and so on.

S20 Ethnogeographic communities, then, are populations built up around a dense network of evolving land-use practices, practices that imply evolving values and ontologies. People share an ethnogeographic community solely in virtue of being in the same dense network and living in pretty much the same way. Though mutual recognition is, of course, a likely effect of sharing an ethnogeographic community, it is not required. Nor is attachment to land a matter of occupancy. Occupancy demands both too much and too little: too much because communities might carve out large areas, such as the Yellowstone to Yukon Ecoregion, where human settlement is discouraged and built-up areas are intentionally sparse. The Occupancy theorist has to regard this as a kind of emptiness or expensive taste, open to challenge in the event that settlers arrive. By the same token, Occupancy demands too little because it requires *mere* presence. In my view, it is legitimate to expect that ethnogeographic communities will plan their interactions with their environment so as to achieve what I call ‘plenitude’ or fullness. The idea here is not that the place has been filled with stuff, but that the claimants can see it as such because they recognize the internal diversity of the place, and its distinctness from other places, and they have a plan to maintain the diversity and distinctness in perpetuity. Plenitude is ultimately a kind of knowledge of diversity; that diversity may be intentionally constructed, but it might also be learned and recognized. Like the ethnogeography and the land itself, plenitude evolves; what is required is not the maintenance of land uses as they’ve always been, though that is not ruled out, but rather the maintenance of internal diversity and external distinctiveness.

There are, of course, open questions about ethnogeographic communities, including, I admit, whether they are social-scientifically valid – whether ‘ethnogeographic community’ ever enters

as an independent variable in any valid causal explanation. Of course, concepts like ‘nation’, ‘culture’, and ‘people’ are in at least as much trouble on this score, as are social networks and, as I argued above, species, populations, and so on. It seems likely that neither in the human sciences nor in Ecology are there any social categories that serve as independent variables in exceptionless causal generalizations. Yet these categories do too much work for us to deny that they have theoretic use. Another point to flag is that plenitude requires perpetuity. I cash out perpetuity in terms of community or ecological resilience.³⁰ Resilience is a kind of sustainability – the capacity to return to equilibrium after shock or disruption. Resilience is essential to territorial rights for two reasons. First, intrinsically, human locusts – those who arrive, lay waste, leave brownfields, and move on – do nothing that merits respect from the perspective of territorial rights. Such use or occupancy cannot justify a right to the territory one is destroying. Second, no one from outside the locust group could possibly accept such a territorial claim, because as long as it is implicit in the claim that the people will move on, this approach to land renders everyone else insecure in their own territory.

Before saying more about resilience we must address head-on the challenge of *Zoopolis*. The ethnogeographic community seems to be an anthropocentric concept inasmuch as it is supposed to account for *human* interaction with the land taken as shorthand for the environment as a whole. To be sure, if ontologies of land differ then the line between ‘human’ and ‘environment’ will be drawn in different places and with different effects. But this just exacerbates the anthropocentrism, because it does not seem as though nonhumans count as ethnogeographic communities, and given differing ethnogeographies we have to imagine that at least some if not all of these will treat nonhuman animals as entities that can be used for work and killed for food

³⁰ These are distinct notions but I have not yet worked out whether I think the distinction makes a difference here.

and other products. I need here to try to theorize the multispecies polity within the framework of ethnogeographic communities pursuing plenitude.

The solution is to ground shared polities in a kind of contribution or causal interaction, and to cash out contribution in terms of plenitude. Take these in reverse order.

Contribution to Plenitude

My strategy is to build an account of plenitude out of Aldo Leopold's conception of the land pyramid. I want to emphasize at the outset that I do not do this because I think Leopold has *the correct* ecological approach to the natural environment. To the contrary, as I noted above in critique of the tripartite division, ecological approaches to the natural environment are already structured by normative and ontological commitments. Rather, I use the land pyramid because it supports a powerful and feasible account of a multispecies polity, and generates two crucial measures of resilience.

S21 The Land Pyramid is a system for cycling solar energy through trophic levels, first into plants from the sun, then into animals either directly or indirectly from plants, and then back down into the soil from the waste and decomposition of plants and animals. The proper functioning of this system makes all life possible.

S22 The multispecies community represented by the land pyramid has more of a case to be recognized as a politically significant organized collective than does the species or the nation, and each individual's place in the Land Pyramid locates that individual relative to the production and maintenance of important goods in a way that mere "occupancy" of a particular place does not. By the same token, the land pyramid is intrinsically located, in several respects. First, although the pyramid itself is socially constructed, it is constructed out of a particular material

environment that exists at a particular time. The time in question is both about what Leopold called “succession”, which he thought was inherent in the land, and about time scales, specifically geological, evolutionary, historical, and biographical time. Thus the land pyramid of the buffalo commons of the Great Plains is distinct from that of the Rocky Mountains and that of the Great Lakes. Nonetheless, neither spatially nor temporally does the land pyramid have impermeable boundaries. The boundaries between time scales and places are rough, and although they refer to natural phenomena they are not themselves fully natural. It is through the social construction of the located land pyramid, and the enhancement of biodiversity within, that plenitude – internal diversity and external distinctiveness – is achieved in the land pyramid. And given that the land pyramid then embodies plenitude, it can be a source of norms.

The question is what these norms demand of any of us – humans as well as nonhumans. The answer to that question will generate a theory of territorial rights in the multispecies polity.

S23 The Land Pyramid is not static, but dynamic. Not just the energy circulating through it but the size of the pyramid is in flux over time. Evolution, as Leopold tells us, tends to increase the size of the pyramid, make it higher and wider. This means that trophic levels are added over evolutionary time, and the number of species at each level increases. At the same time, in geological time, the fundamental character of the pyramid changes through erosion, sedimentation, volcanic and seismic events, and so on.

By stark contrast, humans, at least in industrialized societies, tend to make the pyramid shorter and narrower by driving mass extinctions and speeding up processes of geological change. J. Baird Callicott has proposed grounding a Leopoldian Land Ethic in temporal scales rather than spatial ones. The idea is that daily life is carried out in biological time, yet one of the principal ways humans ruin the environment is by speeding up geological time until it moves as

fast as biological time, such that living things are unable to adapt. Beach erosion, as he notes, is natural, and so a certain amount of beach use is compatible with the maintenance of the boundary between temporal scales; but what we do is use beaches so intensively that the erosion of an epoch happens over a single summer. Similarly, extinction is a normal occurrence, and normally does not undermine the resilience of ecosystems because niches are taken over by newcomers. But we accelerate extinction to such a rate that whole ecosystems collapse as niches cannot be filled due to reduced numbers and variety.³¹

S24 To be a “plain member and citizen” of the biotic community can be understood, then, as contributing to the Land Pyramid by expanding it or at least not shrinking it – constructing and maintaining spatial and temporal boundaries, increasing or not decreasing the diversity at each trophic level, and expanding or not reducing the number of trophic levels. This, I suggest, is the appropriate performance criterion to demand not just of people but of animals. Our enmity toward cats and rabbits – or at least, *my* enmity toward them – is then founded in the same commitments as my enmity toward postindustrial capitalism. By contrast, apex predators and other keystone species, as well as human communities that have managed ecosystems in diversity-enhancing ways, thereby gain territorial rights.

S25 I noted at the outset that territorial rights theories have moved away from performance criteria because those seem to impose unshared conceptions of the good and particularly to valorize Euro-American land-use patterns. Yet I have embraced a performance criterion. But here, resilience cuts most deeply against the contemporary practices of industrialized societies, and it is we whose right to place is most in doubt. And that is as it should be.

³¹ J. Baird Callicott, “,” in Charles S. Brown and Ted Toadvine (2008).

S26 In explaining contribution I have suggested the conception of the multispecies polity. As I've sketched it, this polity is contained within the land pyramid. Our interactions are dense inasmuch as we are nodes in a cyclical energy transfer. The stuff of my body was once the soil and the air and the water and the plants and the animals, and will be again.

Territorial rights thus link particular subjects to particular places, but those places are characterized in ecological and ethnogeographic terms. There is no one globally shared conception of land. To be attached to some land is to cocreate it, both cognitively, through the ontology of land that evaluates and explains what is done there, and practically, by doing or failing to do those things.

Objections and Limits

27 It may be objected that this account relies on an outdated and romanticized ecological notion, that of the Land Pyramid, and also grabs onto another concept, resilience, that is dangerously underspecified and subject to misapplication or worse. It is true that our most beloved ecological concepts are shot through with normativity.³² Ecology cannot *ground* political morality because ecology already is, in part, a political morality. But nor can we go forward without ecology, continuing the liberal myth of infinitude. Inasmuch as ecological notions are normative and the science of ecology is a constructed enterprise with no single correct taxonomy or model, ecology itself falls within the scope of the as-if shared ontology of land. What we can demand of societies making territorial claims is that they manifest *some one or other* of the available ecologies of finitude, rather than that they all be subjected to the

³² See Ted Toadvine, "Biodiversity at 25: Revolution or Red Herring?" *Ethics, Policy, and Environment*.

Leopold-Callicott model or something else. We might then even accept that the *Zoopolis* model, with its tripartite division and its reliance on a notion of species, is one available ontology of land, one option for ethnogeographic communities, but that other communities can adopt the Leopold-Callicott model, others endorse ecofeminism, or ecospace, or whatever. The key challenge – what plenitude demands – is *that there be* an ecology of finitude, and that, having articulated one or another such ecology, the society be demonstrably committed to it.

It might be objected, alternatively, that my attempt to theorize political rights to territory for the more-than-human world includes nonhumans in the wrong way, for I have done either too little or too much to integrate them. Take these in order. The first worry is that this is an ethic of stewardship from above – that we are not ‘plain members and citizens of the biotic community’ but instead we would become benign, *agapic* gods on Earth instead of the wrathful and jealous ones we are under liberalism. The test for this is, I think, in whether animals and plants can be conceived as political agents contributing to or undermining resilience, rather than simply natural automatons contributing to resilience by default, simply by performing their bare ethological role. I think it’s clearly *not* inevitable that nonhuman animals and plants contribute to resilience. Kudzu, cats, and rabbits are examples of creatures that, in certain contexts, reduce resilience. When that happens, the current approach would not regard them as having a territorial right in the place in which they find themselves. Insofar as they have other habitats in which they do contribute to resilience, then those habitats would be the site of their territorial rights. If there is no place where these creatures contribute, then we can work to enable them to fill an ecological niche in a way that does contribute. Or we might need to fight them in self-defense.

But are we not, the objector rejoins, the only *real* political actors in the bunch? We take turns ruling and being ruled, but nonhumans do not. It’s true that when it comes to writing laws

and voting on them, only humans can do the work. This is as true in *Zoopolis* as it is in Aristotle's *Politics*. But what makes nonhumans into political actors is that their contributions are recognized as such, their territorial rights are made into a challenge that they can meet, and their having met it limits our zone of freedom.

The flipside of the challenge is that we have gone too far to integrate animals, with the consequence that we are now committed to eco-fascism. Should the territorial rights of animals prevent our mining the rare earths that make smartphones possible? Should their territorial rights be such that a human being who has entered grizzly bear territory may rightly be killed as a political invader?

This challenge is a version of the familiar “eco-fascism” charge leveled at Leopold. My reply is that liberalism stops short of doing everything it can to save everyone; that an alternative approach also does so, but that the brunt falls on different people, cannot then count against the alternative approach unless there is surplus misery, harming of named individuals as opposed to statistical ones, unnecessary rationing, or some other familiar form of wrongful treatment. I don't see that the current account – by, for instance, refusing to kill grizzlies who maul unfortunate hikers – would commit any of these wrongs. To the contrary, a significant part of the motivation for the current approach is precisely to overcome the murder-suicide on a planetary scale that liberalism is unable to avoid. One might reverse the charge of eco-fascism.

A related concern is that animals cannot be part of our ethnogeographic community because they have no capacity for a shared ontology of land. I suspect that this is incorrect, though I do not need to prove that; instead I need merely show that they can be ascribed an *as-if* shared ontology of land. And this seems plainly true. As Donaldson and Kymlicka note regarding domesticated animals, these creatures are capable of a complex ‘social ballet’, of knowing where

to relieve themselves and where to eat, where to sleep and where to play off leash, which dogs rule which blocks, and whereabouts the vet's office is. I have no doubt that a wide variety of animals are capable of similar multispecies social ballets.

Conclusion

S28 I began by claiming that *Zoopolis* is a watershed in that it forces political philosophers to theorize animals as political agents rather than as toys or simply part of the background environment. Both because Donaldson and Kymlicka explicitly theorize wilderness animal species as sovereign polities with territorial rights, and because theories of territory are supposed to link human beings to particular places, the most immediate political impact of this Zoopolitan shift should appear in theories of territory. Unfortunately, so far from having risen to the challenge, theories of territory have tended to maintain and, in a confused attempt to reduce ethnocentrism, even exacerbate their longstanding anthropocentrism.

Here I have tried to begin a conversation about remedying these problems by revising my own theory of territory in light *Zoopolis*. I first challenged two essential aspects of Donaldson and Kymlicka's vision, namely, the tripartite division among kinds of animals in virtue of how they want to relate to us, and the model of wilderness animal sovereignty. I then proposed a new multispecies social ontology built on the Leopoldean Land Pyramid and my antecedent concept of the ethnogeographic community. And I proposed a new conception of attachment to territory based on the promotion of, or nonderogation from, resilience within. We gain territorial rights by constructing and maintaining the spatial and temporal boundaries of a Land Pyramid and either expanding it or at least not shrinking it, along both horizontal and vertical dimensions.