Wildlife Management, Species Injustice and Ecocide in the Anthropocene

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Abstract

Norway has been signatory to the Council of Europe's Convention on the Conservation of European Wildlife and Natural Habitats (1979) (otherwise known as the "Bern Convention") since 1986. Nevertheless, every year, Norwegian authorities authorize the killing of brown bears, lynx, wolves and wolverines, which are listed as strictly protected fauna species by the Bern Convention. Norway has a responsibility to protect these species and has several times been brought to court by nongovernmental organizations (NGOs) for failure to satisfy their duties under this international legal instrument. This article discusses Norway's large predator policy and its compliance with the Bern Convention through an analysis of court decisions and judicial reasoning from the perspective of species justice for nonhumans.

Introduction

In the past 40 years alone, the world has witnessed a 60% decline in the population of vertebrate species (WWF 2018). To a large extent, this has been brought about by loss of habitat. For example, 20% of the Amazon is gone. Human activities have not only polluted air, land and water, but also altered the world's topography, destroyed habitats, contributed to the insecurity of all of Earth's species, and caused widespread extinction (Bar-On et al. 2018; Harari 2015; Shearing 2015; White 2012). Indeed, the situation for free-born ("wild") nonhuman animals is dramatic.

Growing concern about the implications of the human footprint for the nonhuman world is exemplified by the proposed epochal term, the *Anthropocene*. The concept has been popularized by Paul Crutzen (2002) and has gained some currency in criminology (see, e.g., South 2010) because it acknowledges and expresses the impact of the human species on Earth's geology and ecosystems, including its nonhuman species. Such an impact can also

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be seen in Norwegian “nature management” practices, which prevent free-born animals from exercising their inherent rights to live peacefully in their natural habitats.

There are several international conventions in place to prevent the extinction of “wildlife”¹ species and the destruction of habitats, such as the Council of Europe’s Convention on the Conservation of European Wildlife and Natural Habitats (1979) (otherwise known as the “Bern Convention”).² The Bern Convention aims to conserve wild flora and fauna and their natural habitats in Europe and some African countries. Norway’s ratification of the Bern Convention in 1986 means that Norway is required to take “appropriate and necessary legislative and administrative measures” to “ensure the conservation of the habitats of... wild flora and fauna” (Article 4.1) and to “ensure the special protection of wild flora species” (Article 5) and “wild fauna species” (Articles 6 and 7). Under Article 9.1, exceptions to the provisions of Articles 4, 5, 6 and 7 may be made:

provided that there is no other satisfactory solution and that the exception will not be detrimental to the survival of the population concerned:

- for the protection of flora and fauna;
- to prevent serious damage to crops, livestock, forests, fisheries, water and other forms of property;
- in the interests of public health and safety, air safety or other overriding public interests;
- for the purposes of research and education, of repopulation, of reintroduction and for the necessary breeding;
- to permit, under strictly supervised conditions, on a selective basis and to a limited extent, the taking, keeping or other judicious exploitation of certain wild animals and plants in small numbers.³

Although the Bern Convention celebrated its 40th anniversary in September 2019—and although the past decades have also shown increased attention to animal rights, as exemplified by the expanding vegan movement, the compassionate conservation movement⁴ (Bekoff 2013), and a plethora of publications within different fields of academia, including green criminology (e.g., Beirne 1999, 2009; Beirne et al. 2018a, b; Nurse 2015; Sollund 2012, 2013, 2017, 2019; White 2013a, b, 2018)—there remains growing concern about the rate and extent of extinction. Indeed, despite international laws intended to protect non-human animals, changes in public attitudes and behavior, and increased interest in academic disciplines, millions of individual, free-born nonhuman animals are killed each year (Lynch et al. 2015). In this article, I discuss the successes and failures of the implementation of the Bern Convention in Norway. Assessing compliance with the Bern Convention may also help predict the future for European wildlife because it can demonstrate what is

¹ To refer to animals that are not domesticated as “wildlife” is anthropocentric in that this alienates them and treats them as “other” or different from domesticated species and humans. The term, “wildlife,” suggests that animals who are not under human control are somehow acting only according to their needs. Much “wildlife” poses no threat to humans, but the term suggests that such animals may be dangerous or harmful to humans—a perspective that often leads humans to kill or mistreat such wildlife. For simplicity, however, and because “wildlife” appears in the language of the Bern Convention, I will use this term in this article.

² <https://www.coe.int/en/web/bern-convention>.

³ See Trouwborst and colleagues (2017) for a discussion of Norway’s wolf policy as it pertains to these exceptions.

⁴ <http://compassionateconservation.net/about/>.

tolerated within its framework. Moreover, because Norway is home to certain critically endangered large species, how the country complies is important for it may set an example for other European countries where resettlement of large carnivores is taking place (e.g., Denmark, Germany).

In the next section of this article, I present some background information on Norway's approach to the conservation of wild fauna and natural habitats under the Bern Convention, before turning to a description of my methods. From here, I explain my theoretical framework and then turn to examples of Norwegian predator policy in practice. Next, I discuss and analyze the opinions of the judges in court cases brought by nongovernmental organizations (NGOs) against the Norwegian state concerning wolf management. I conclude with recommendations for future research.

Background and Methods

As noted above, Norway joined the Bern Convention in 1979, ratified it in 1986 and began protecting large carnivores: brown bears, golden eagles, lynx, wolves and wolverines. Since then, conflicts, controversies and debates have developed concerning the ways in which Norway has fulfilled or failed to satisfy its international obligation to preserve these species, particularly wolves (Krange and Skogen 2011; Sollund 2016, 2017). Indeed, prior to this protection, many Norwegians had become used to living in a country without large predators that they believed would disturb their livestock or hunting activities (Skogen 2001). In general, the different attitudes toward predators (and their resettlement) fall along rural–urban lines. Rural populations want to see their lifestyles and economic interests preserved and often object to the predators, while urban dwellers, who are more likely to be nature conservationists and animal rights advocates, want the state to take greater measures to protect endangered predators (cf. Skogen et al. 2010).

In order to “balance” these different interests—between farmers and forest owners, on one side, and conservation obligations, on the other (Sollund 2017; von Essen and Allen 2017)—environmental authorities in Norway allow the yearly hunting of wolves. While estimates of the numbers of wolves living in Norway vary, they tend to hover around 100. Despite this small number, Norwegian authorities permit the killing of approximately fifty wolves each year. Decisions about killing these large carnivore species are delegated to regional predator boards (the *Roviltnemdene*) (Sollund 2017). These boards usually consist of local politicians, who are often people with a special interest in the matter, such as farmers and hunters (Sollund 2016). The conflict, protests and media debates intensify when decisions are made about the number of endangered predators to be exterminated. Thousands of people protest outside the Norwegian Parliament (the *Stortinget*)—including both those who believe that the authorities allow the killing of *too few* predators and those who object to allowing these predators to be killed *at all*.

NGOs, such as the animal rights organization NOAH (<https://www.dyrsrettigheter.no/noah/noah-for-animal-rights/>) and the World Wildlife Foundation (WWF Norway) (<https://www.wwf.no>), have accused the Norwegian state of breaching the Bern Convention and the Nature Diversity Act (*Lov om forvaltning av naturens mangfold Naturmangfoldloven*⁵), and failing to provide the required protection to ensure the wolves' existence in Norway. In

⁵ <https://lovdata.no/dokument/NL/lov/2009-06-19-100>.

particular, they have claimed that the state has failed to comply with Article 2 of the Bern Convention, which provides:

The Contracting Parties shall take requisite measures to maintain the population of wild flora and fauna at, or adapt it to, a level which corresponds in particular to *ecological, scientific* and cultural requirements, while taking account of *economic and recreational requirements* and the needs of sub-species, varieties or forms at risk locally. [emphasis added]

This has been the issue in several recent court cases, including in the Oslo District Court—196251TVI-OTIR/08 (January 2018), TOSLO-2017-196251 (May 2018), and 18-194766TV1-OBYF (January 2019)—all of which were decided in favor of the state. The decision in May 2018 was appealed by the NGOs and will be heard in the Borgarting Court of Appeal in Oslo (*Borgarting lagmannsrett*) in December 2019. I accessed these rulings directly either from Oslo District Court or from the database <https://lovdata.no/>, which contains Norwegian verdicts and legislation. In this article, I examine these three most recent court decisions concerning licensed hunting because they represent the most current perspective on how Norwegian courts have ruled with respect to Norway's compliance with the requirements of the Bern Convention. As I attempt to demonstrate, these cases signal a change in the interpretation of Norway's obligations toward the Bern Convention with respect to what may count as "overriding public interests" (Linnell et al. 2017). While the hope is that the outcome in December 2019 will clarify Norway's obligations under the Bern Convention, for now, we can draw conclusions about how lower-level Norwegian courts have interpreted these responsibilities.

More specifically, through textual analysis (see, e.g., Bratberg 2017), I explore the holdings of the district courts in the three cases, while also paying specific attention to strategically selected themes. For example, in addition to discussions of the Bern Convention and the Nature Diversity Act, I looked for any reference made to the Animal Welfare Act (*Lov om dyrevelferd*⁶), the Wildlife law (*Lov om jakt og fangst av vilt*) and any expressed concern for the *individual* wolves' welfare or death. This was undertaken not only to assess the judges' interpretations of the laws and their underlying reasoning, but also to understand the relationship of these laws to Norwegian state predator policy.

To be sure, other cases from Norwegian courts concern the killing of endangered predators (some of which appear in the "Court Cases" section of the References below). I chose the three cases here because they concern the specific question of the *Norwegian state's* obligations, rather than, for example, the culpability of individual offenders who have killed predators illegally—an issue that I have discussed elsewhere (see, e.g., Sollund 2015, 2016, 2017). The overall goal, then, is to analyze how the Norwegian state and judicial system currently interpret the country's obligations to the Bern Convention, as well as to evaluate Norwegian wildlife management from a theoretical perspective. In so doing, I seek to answer the following question: What should count as the "overriding public interest" in regard to the conservation of endangered species?

⁶ <https://lovdata.no/dokument/NL/lov/2009-06-19-97>.

Theoretical Perspectives and Conceptual Terminology

While Trouwborst and colleagues (2017) have provided a legal analysis of Norway's predator policy regarding the Bern Convention, they have not examined the most recent court decisions, nor have they engaged in any criminologically informed theoretical considerations. In this article, I rely on green criminology, specifically its non-speciesist approach (e.g., Beirne 1999; Beirne et al. 2018a, b; Sollund 2019; White 2013a, b), because this perspective serves to broaden our understanding of both the legal and illegal killing of the animals, who are the victims of modern "conservation" policies, and because green criminology considers how and why such policies can be improved. An important element of green criminology is its interest in both criminalized acts and those acts that are harmful but lawful (e.g., Beirne and South 2007; Sollund 2015; White 2013a, b). Green criminology recognizes that the law can change—that acts and omissions that are criminalized may become decriminalized at a later juncture, while acts that are criminalized today, such as the killing of endangered predators, were previously legal and may again be (Sollund 2017). Green criminology also acknowledges that many acts and omissions defined as crimes and proscribed by law may be far less harmful than acts that are not (e.g., Hillyard and Tombs 2004; Walters 2010). Consequently, the concern lies with the *harms* that are committed or produced and their consequences, rather than the ways in which such acts are defined by law (see generally Halsey and White 1998). To this end, green criminology has explored how legislation accomplishes or falls short of its intended purpose, and what or whom it benefits. For example, in the three cases, the state has vested interests in securing meat production for its citizens, which farmers claim is threatened by predators.

Green criminology has developed significantly over the past two decades, as exemplified by many monographs (e.g., Beirne 2009; Sollund 2019), special issues in journals (e.g., Beirne et al. 2018; Sollund and Brisman 2017) and edited volumes (e.g., Beirne and South 2007; South and Brisman 2013; White 2010, 2012). Several publications have a particular focus on ecological justice, species justice and animal rights (e.g., Benton 1998; Beirne 2011; Beirne et al. 2018a, b; Beirne and South 2007; Donaldson and Kymlicka 2011; Lynch et al. 2015; Maher et al. 2017; Sollund 2008, 2012, 2019; White 2013a, b). A non-anthropocentric, species justice approach ascribes moral value to nonhuman life, and incorporates the view that harms should not be inflicted on nonhuman animals within their environments and that they have an intrinsic right not to suffer from abuse, whether this occurs as one-on-one harm, institutionalized harm, or harm arising from human actions that affect climates, ecosystems and habitats on a local, regional or global scale (Beirne 1999; Beirne et al. 2018a, b; White 2013a, b).

A number of key concepts or terms are relevant to my particular orientation within green criminology. *Ecological citizenship* and *ecological justice* are concepts that acknowledge that complex ecosystems should be preserved for their own sake and they stress the duties of humans to coexist in harmony with the Earth (White 2013a, b). *Ecological justice* encompasses the specific responsibility humans have, given their self-proclaimed "moral and intellectual superiority" of acting as guardians for other species and securing their survival (White 2013a, b). While nonhuman animals can kill other nonhuman animals, this is usually done directly and one at a time for food or in self-defense. Humans, on the other hand, can individually and collectively kill many nonhuman animals at once and/or gradually—often without knowing the consequences of their actions (e.g., Halsey and White 2003). *Ecological citizenship*, as I conceive of it, entails a recognition of the right that a nonhuman animal has to live safely in his/her natural environment (see also Donaldson and

Kymlica 2011). Because animals have important roles in ecosystems, protecting their lives will also preserve the ecosystem to which they belong (e.g., Brisman and South 2019).

Another relevant term, for my purposes, is *ecocide*, which has been defined as “the extensive damage to, destruction of or loss of ecosystem(s) of a given territory, whether by human agency or by other causes, to such an extent that peaceful enjoyment by the inhabitants of that territory has been severely diminished” (Ecocide Law; see also Crook et al. 2018). While this includes nonhuman animals, *ecocide* is more often contemplated in anthropocentric terms and the impact on nonhuman animals is considered instrumentally—in contrast to my concern for nonhuman animals, themselves—the endangered predator species.

Speciesism refers to discrimination by humans against nonhuman animals simply by virtue of the latter’s status as not human. Much the way differences in the color of the human skin in previous times “justified” racism, differences in taxonomy “legitimize” speciesism. A non-speciesist-oriented green criminology requires exposing the injustices produced by the language and use of euphemisms that contribute to concealing the nature of harmful acts. For example, instead of terms, such as “destroy,” “euthanize,” or “take,” or more provocative words, such as “kill” or “murder,” Beirne (2014) and Beirne et al. (2018a, b) has coined the term “theriocide,” which he employs to specify and distinguish the deaths of nonhuman animals at the hands of humans. Beirne contends that nonhuman animals, just like human animals, can be victims of violence and murder because they are sentient, intelligent beings with an interest in self-preservation and living lives unharmed; they are, in Regan’s (2004) terminology, “subjects in a life.” Following Beirne and Regan, other scholars in green criminology have employed a critical victimology perspective—one that treats nonhuman animals as victims of harm, rather than as “property” or “resources” (Fitzgerald 2010; Sollund 2011, 2016, 2019; Maher et al. 2017; Maher and Sollund 2016; White 2013a, b, 2018).

Animal welfare, in contrast to *animal rights*, has, to some degree, been incorporated into the legislation of most countries as a consequence of greater understandings of the capacity of nonhuman animals to experience pain (e.g., Beirne 2009; Bekoff 2006; Pepperberg 2009; Regan 2004); some countries’ legislation is particularly ambitious in accordance with animals intrinsic value, such as Section 3 of the Norwegian Animal Welfare Act. Despite this, animal welfare legislation remains anthropocentric in its orientation (Beirne 2009; Beirne et al. 2018a, b) and is described by Francione (2008) as self-contradicting. It is supposed to protect animals, but their intrinsic value is ignored and their worth linked to human interest. Moreover, concerning wildlife, *individual* nonhuman animals receive little attention or protection; the concern is at the population level and the extent to which a species is endangered (Sollund 2013, 2017).

Finally, *environmental insecurity* is an anthropocentric term—one that fails to incorporate the interests of species other than humans. It is perceived as a source and outcome of biodiversity decline and social conflict. From a conservation criminology perspective, the term often arises in the context of development policy (Lute et al. 2016). All definitions of environmental security seem to include the common theme of whether or not *people* have enough food, water and natural resources to live. Animals, thus, are seen as resources because of their use or value for humans. Consequently, when species become extinct because of excessive levels of hunting and trade, this is regarded as a threat to *humans* and *their* loss, rather than acknowledging the harms to the animals themselves. In this article, the issue of *environmental security* concerns nonhuman species and is viewed from the perspective of species justice. Accordingly, when employing the term, *environmental*

security, to nonhuman animals, I refer to the need and right of nonhuman animals to live in their natural habitats without threats from destructive human intervention and the danger of being assaulted, injured, abducted or killed. The following section explores how this right of the large predators is respected in Norway.

Wildlife “Management”

The Bern Convention has been signed by fifty countries and the European Union (EU) and obliges signatories to ensure the protection of plants and animals listed in three appendices, as well as prohibits specific means and methods of killing, capture and exploitation. In order to accommodate the varying interests of contracting parties, however, some species can be exploited legally in a particular state. For example, Norway takes great liberties in its interpretation of how the country is to ensure the conservation of endangered predators under the Bern Convention. The Norwegian Nature Diversity Act, which was passed in order to comply with the Bern Convention, provides animals with some degree of legal protection, but it is precisely how this law should be interpreted, and whether this interpretation comports with the requirements of the Bern Convention, that has been and continues to be addressed in the courts, as well as made subject to public debate. Examining the different obligations and interests—and the ways in which some groups of humans are given preference over others and over nonhuman animals—is key to understanding the pressure on endangered predators in the Norwegian context.

The Animal Welfare Act and the Wildlife Law, mentioned in the Introduction, have different purposes, but are both central to establishing rules for the treatment of animals in Norway. The Animal Welfare Act (2009), which revised an earlier version of this legislation, includes conditions that affect the welfare of, or respect for, amphibians, birds, decapods, honey bees, mammals, octopus and reptiles. The goal of this law is to “advance good animal welfare and respect for animals.” It also states that animals have intrinsic value irrespective of their use value for humans. “Animals shall be treated well and be protected from the danger of unnecessary harm and strain [*påkjenninger og belastninger*].”

The purpose of the Wildlife Law is, as stated in above, to manage wildlife and wildlife habitats in a manner consistent with the Nature Diversity Act in order to preserve nature’s productivity and species diversity. Nevertheless, the Wildlife Law still provides that “wildlife” can be “harvested” for the benefit of the agriculture sector and for leisure activities.⁷ The goal of the Animal Welfare Act is to ensure the protection of *individual animals*, particularly those used in food and clothing production and research, while the Wildlife Law establishes the requirements and conditions for how/when *wildlife* can be killed, as does the Nature Diversity Act.⁸ The intent of the Wildlife Law, like that of the Nature Diversity Act, is to *conserve* wildlife and their habitats, rather than to *protect* wildlife. The Nature Diversity Act also states that during any activity, “unnecessary harm and suffering” to wild animals and their nests or dens should be avoided, and pursuit should be avoided.

Due, in part, to the Bern Convention, large predators have experienced a resurgence in many European countries. This is no small matter as many are victims of theriocides rather

⁷ https://lovdata.no/dokument/NL/lov/1981-05-29-38#KAPITTEL_1.

⁸ <https://lovdata.no/dokument/NL/lov/2009-06-19-100>.

than from natural causes (Liberg et al. 2011; Trouwborst 2010). The Bern Convention has shaped the legislation and wildlife conservation policies of parties to the convention, and consequently killing wolves is now a punishable offense in Norway so long as the state has not licensed a hunt. When Norway licenses hunts on critically endangered species, however, the state demonstrates a lack of regard for the dignity and lives of individual nonhuman animals. What message does this send to Norwegians, then? That it is permissible to kill large predators provided entire species are not wiped out?

This approach to wildlife will now be discussed from a species justice perspective and based on a legal interpretation of the Nature Diversity Act because this law has been central in court rulings concerning Norwegian wolf management. What follows is first an overview and assessment of Norway's predator management policies and then an analysis of court cases.

Norwegian Large Predator Policy in Practice

The Norwegian Parliament has established minimum goals for how many large carnivores may be allowed to breed and live in the country, and where. About 5%⁹ of Norway is a "wolf zone" (Sollund 2016, 2017), meaning that wolves are allowed to settle only in these areas. When wolves—as well as brown bears, lynx and wolverines—have more litters than allowed by the state or try to establish territories outside the zones designated for their species, the state will immediately authorize killing them. As shown in 2018–2019, however, these species are no longer protected even within predator zones because packs within the "wolf zone" have also been authorized to be killed. The rationale for the restrictions on numbers and location is most often that this will prevent damage to livestock. The theriocides are performed either by licensed hunts or by the *Statens naturoppsyn* (SNO)—the state's nature surveillance organization—which executes the animals itself.

Licensed Hunts

On December 1, 2017, then-Norwegian Minister of Climate and Environment, Vidar Helgesen, decided that 42 wolves should be killed in licensed hunts during the winter of 2017–2018. These wolves were estimated to constitute more than 75%¹⁰ of the Norwegian wolf population. Twenty-eight of the wolves were shot, including all the wolves belonging to two packs (the *Julussa* and *Osdalen* packs) who lived partly within the designated "wolf zones." As mentioned above, WWF Norway and NOAH sought an injunction to stop the hunts, but this injunction was denied by the Oslo District Court on January 5, 2018. I will

⁹ https://kartkatalog.miljodirektoratet.no/MapService/Details/forvaltningsomrader_rovdyr?lang=en-us.

¹⁰ According to Rovdata (responsible for the surveillance of large predators in Norway), on March 5, 2018, there were 70–72 wolves registered by SNO in Norway, of whom 23 were shot in licensed hunts; three were shot on "extraordinary hunts"—for example, when predators may threaten livestock. In addition, there were 38 wolves living on both sides of the Norwegian-Swedish border (<https://rovdata.no/Nyheter/Nyhetsartikkel/ArticleId/4465/Uendrede-ulvetall.asp>). For the 2018–2019 season, 26 wolves are to be killed outside designated wolf zones, in addition to 17 wolves *within* designated wolf zones—the Slettås, Mangen and Hobøl territories (<http://www.miljodirektoratet.no/no/Nyheter/Nyheter/2018/Oktober-2018/Oversikt-over-lisensfellingsvoter-utenfor-ulvesonen/>).

briefly sketch out how Norway “manages” its other endangered carnivore species because its treatment of the wolves is not an isolated practice.

Wolverine “Den Withdrawals”

In 2017, the number of wolverines in Norway was estimated at 319 individuals (Rovdata 2018). While wildlife should enjoy protection in the spring when they have litters, according to Section 9 of the Wildlife Law, the same does not apply for wolverines. If the SNO finds that “too many” wolverines are reproducing—only 39 litters are allowed per year—the SNO’s employees will kill the “surplus” animals in so-called *hiuttak* (“den withdrawals”).

For example, on April 20, 2018, inspectors from SNO unexpectedly encountered a lactating wolverine female. They came across her in the municipality of Soldal in Rogaland—an area where no wolverine had been seen in decades (NRK Hordaland 2018). Because this was outside the designated wolverine zone, the inspectors then sedated her and followed her to the den, where they found two pups and killed them. This appears to be standard protocol: The hunters dig into the den, remove the pups by force, and shoot them before killing the mother. From 2001 until the time of this writing, more than 142 such wolverine executions have taken place (NRK Hordaland 2018).

Quota Hunts and Damage Killing (*Skadefelling*)

The Norwegian predator boards decided that in addition to the 42 wolves, 105 wolverines should be killed in 2017–2018 (Aftenposten 2017). In 2018, they permitted a quota¹¹ of only 38 wolves of the total population of 330 to be killed because the population had been reduced in relation to their goals. The Norwegian Parliament had a goal set on 65 family groups of lynx, but there were only 57.5.¹²

The total number of brown bears in Norway—only 125 individuals (Miljødirektoratet 2018)—is also considerably lower than the established goal of 13 yearly litters. The local predator boards were allowed to make decisions concerning the number of bears that could be hunted only in Hedmark County, where the goal of three litters had been reached; the goals for bear litters in bear zones were not met nationally. This does not mean that brown bears have not been killed, however. If they are considered a potential threat to livestock, they may be shot. One male bear was shot from a helicopter by one of SNO’s hunters at the beginning of April 2018. Another male bear was shot from a helicopter on April 16. In the next section, we shall see whether the courts condone such predator management.

¹¹ Quota hunts are allowed under Section 9 of the Wildlife Law. The intention behind the law is “management of wildlife and their habitats in order to secure nature productivity and species diversity.” License hunts are decided according to Section 18 of the Nature Diversity Act in order to prevent damage to livestock or to secure general health and security concerns or other overriding public interests. So-called damage killing will be undertaken if a predator has taken or is considered a threat to livestock. Quota hunts are only allowed for lynx, even though goals for reproducing are not met (<https://rovdyrsenter.no/rovdyrforvaltning/hva-er-skadefelling-kvotejakt-og-lisensfelling/>).

¹² <http://www.miljodirektoratet.no/no/Nyheter/Nyheter/2018/Januar-2018/Reduserer-gaupekvoten-i-2018/>.

The Decisions by the Oslo District Court in January and May 2018: What Are the “Overriding Public Interests”?

To analyze the decision of May 2018, one must first examine the arguments made in the January 2018 decision because these are referred to in the May 2018 court’s broader decision. In both of these court rulings, the judges acknowledged that the Ministry of Climate and Environment found that these wolves represented only a limited potential threat to livestock because their territories were not grazing grounds for sheep; therefore, the Ministry of Climate and Environment did not have justification to license hunts under Section 18 ¶1 of the Nature Diversity Act, which concerns hunts in order to prevent damage to livestock. Nevertheless, the Ministry of Climate and Environment determined they should be killed due to “overriding public interests” (*offentlige interesser av vesentlig betydning*)—a decision that was upheld by the judges of the Oslo District Court in January and May 2018.

Before discussing these cases further and the competing interests of the parties involved, some more information concerning the conflict between sheep owners and wolf supporters is necessary because this is allegedly the root of the conflict and was an issue raised in the court cases. Norwegian sheep owners seldom herd their sheep. They simply release them to pasture in the spring and collect those who remain (survive) in the fall. Individual wolves may prey on them, but established packs tend to prey on elk (Lenth et al. 2018). While farmers complain that wolves (and other predators) kill their sheep, in reality, predators cause very few deaths. In 2016, experts from SNO could document wolf injuries on only 367 sheep of the two million released to pasture—roughly 0.02% of the population (Lenth et al. 2018; Skipphamn 2016). The state policy is to be generous in order to reduce social conflicts over predators. Therefore, it compensated farmers for 18,000 predator attacks, although most of the 100,000 lost sheep died because they fell off cliffs, were infected by ticks, or broke their legs.¹³ Norway overproduces lamb/sheep meat, with 26,300 tons of meat produced yearly for a population of roughly 5 million people. Therefore, meat is exported at trivial prices. Farmers receive as little as 5 øre to 2NOK¹⁴ per kilo. For example, one farmer received on average 4 NOK per sheep for slaughter; for 25 sheep, he was paid 315 NOK¹⁵—about US\$35.00. This massive exploitation of nonhuman animals for an oversized meat industry is not a central topic for this article, but it demonstrates further another instance of speciesism, as well as an unacceptable reason for the extermination of Norwegian endangered predators because the amounts of meat produced are already excessive. Those who attempt to make a living from meat production find themselves unable to do so, while millions of sheep are slaughtered unnecessarily. Despite this, in court in May 2018, the judge agreed with the state policy of maintaining sheep pasturing, regarding this as a relevant point (p. 40 of the decision).

During the debates and protests that arose as a result of the January 2018 decision not to stop the ongoing wolf hunts, it became apparent that the interests of hunters counted as “overriding public interests.” The wolves were accused of taking hunters’ prey (i.e., elk). There are, however, roughly 100,000 elk in Norway; killing wolves is not necessary in order to ensure a sufficient number of elk for hunters (Lenth et al. 2018). Indeed, there are about half a million people registered as hunters, of whom 202,300 paid for a hunting

¹³ Norwegian sheep are bred to develop as much muscle as possible so that more meat can be produced, making them unfit for different landscapes and unable to escape predators.

¹⁴ There are 100 øre in one NOK, with one GBP equivalent to roughly ten NOK.

¹⁵ <https://www.aftenposten.no/norge/i/qnaWoO/Sauebonde-fikk-19-ore-kiloen-for-sauekjott>.

license in 2017–2018 (SSB 2018a). In addition to the aforementioned reduction of conflict and trust in predator “management,” the killing is also presumed to relate to other “community interests”—namely, the commercial interests of forest owners in selling hunting rights. Furthermore, hunters use dogs when hunting for birds and hares, and when dogs encounter wolves, they may be attacked themselves. In May 2018, the judge agreed with the hunters and forest owners, who relied on the testimony of an expert witness, sociologist Ketil Skogen. Skogen has found that “[h]unting with loose dogs has a long tradition in Norway, which is irreconcilable with the presence of wolves. These hunters will therefore choose other territories and the forest owners will have reduced income as consequence” (p. 42 of the decision). In other words, the hunters, their dogs and forest owners were prioritized over the predators who naturally belong to and live in the forest.

Previously, the Ministry of Climate and Environment had stated, in relation to the wolf killings, that people in “wolf zones” consider the wolves to be a burden. The judge in the May 2018 decision relied on this information, as well as the statement of mayor of the Trysil municipality, Erik Sletten, who had said that people send their children to school in taxis, allegedly out of fear of wolves. The judge held:

The court finds that there are no errors connected to the assessment of the Ministry in this regard and that it is highly probable [overveiende sannsynlig] that people experience wolves as a burden and this is one of more considerations which deserves weight. [17-196251TVI-OTIR/08, p.43]

The court did not consider whether this fear is a subjective experience based on superstition and folklore rather than a practical fear of the wolves, who do not regard humans as natural prey (Lenth et al. 2018; Linnell and Alleau 2016). Neither did the court contemplate the interests of the rest of the Norwegian population. The majority, including some people living in predator zones, are in favor of preserving the wolf population and that of other large predators, and find pleasure in knowing these predators are present in the Norwegian wilderness (Skogen and Krangle 2003; Skogen et al. 2010).

Because there are many “passive hunters” who do not attempt to kill animals on a regular basis, “active hunters” do not represent an “overriding public interest”; rather, they represent only a small percentage (3.8%) of the total population of 5,295,619 (SSB 2018b) because the majority of Norwegian citizens do not kill for pleasure. What mattered in the May 2018 court decision, however, were the interests of those who want to *kill* animals, rather than the interests of those who want to *protect* animals from human harm, and preserve the species and the ecosystems of which they are a vital part. The judges emphasized the interests of hunters—and a subset of hunters, at that—rather than stressing the importance of preventing species extinction, fulfilling national and international obligations, and securing individual animal rights (Benton 1998; Beirne et al. 2018a, b; Regan 2004).

In the same May 2018 court decision, the judge also found persuasive the weight of the principle of “geographically differentiated management”—that decisions concerning the killing of critically endangered predators should be made by the local predator boards and that their determinations should hold weight: “Attention to predictability, conflict reduction and trust in predator management thus implies that wolves can be shot *only* because they are outside the designated predator zones” (17-196251TVI-OTIR/08, pp. 43–44, author’s translation and emphasis).

The judge seems to think that the geographically differentiated delegation of responsibility to the local predator boards ensures predictability in that those who wish the wolves killed will have a guarantee this will happen because this is the general policy of the boards. In other words, conflict between large predators and humans will be reduced

because local communities will not feel that their interests are being overridden by the central authorities. This is a familiar argument, such as in the context of Finnish and Swedish human–wolf conflicts (von Essen et al. 2016; Pohja-Mykrä 2016). The point, however, is debatable (Sollund 2017). Rather than quelling the conflicts, a vocal majority in the local communities near “wolf zones” will not be content until the last wolf is gone. An example of this appeared in the yearly national meeting of the populist Center Party (*Senterpartiet*)—the former Peasants’ Party in 2019, and their argument that Norway should not have breeding wolves.¹⁶

This judge further stated that what may be considered “overriding public interests” is subject to the Norwegian Parliament’s discretion, which the court would not second-guess. It appears as if the number of wolves that should exist is a *political* decision—one that is made with the sole goal of complying with the bare *minimum* requirements of the Bern Convention. It is important to underscore, however, that these decisions are not based on science. The politicians involved do not consult with biologists who specialize in research on Norwegian and Scandinavian wolves, and who have documented that the Norwegian/Scandinavian¹⁷ wolves suffer severely from inbreeding due to their low numbers (e.g., Ellegren 1999; Liberg et al. 2011). In addition, and somewhat peculiarly, the judge in the January 2018 decision turned to a *Swedish* decision from *Högsta Förvaltningsdomstolen* (the Supreme Administrative Court) in 2016 to support her finding that licensed hunts reduce social conflicts surrounding wolves.

Animal Abuse and Breaches of Species Justice and Eco-Justice

In its decision in May 2018, the court did not take into account the interests of the animals—something that is also not considered when quota hunts or preventative killings are authorized. The wolf packs who lived on elks in their natural habitats had an interest in continuing to live with their packs; the lynx wanted to continue their lives just as much; the wolverine mother wished to live and raise her pups, who also had an interest in life; and the bears hoped to face a new summer and a continued life, as they had just left their dens. Mother wolverines, just as other mother mammals, intended to protect their offspring; witnessing their offspring being killed is unnecessary and cruel, and should therefore be condemned as a breach of the Animal Welfare Act, as well as of the Nature Diversity Act and Wildlife Law.

During the wolf hunt in 2017, several wolves were shot and injured. They, like the bears, were pursued by helicopters, which must have caused them additional distress. They constituted no threat other than to their *natural* prey. Because no one can predict the future—the bears were executed to prevent *potential* crimes—the bear theriocides cannot be regarded as justified either. These theriocides are breaches of species justice and

¹⁶ The party also wants to increase the hunting of whales and seals and continue fox and mink breeding for the fur industry despite a decision made by Norwegian Parliament that bans fur farming. The party intends to reduce all the populations of large predators and also expand Norway’s mining industry, and thus has little regard for the natural environment (https://www.aftenposten.no/norge/politikk/i/7035X4/Dette-har-Sps-landsmote-vedtatt-om-skog_-olje_-ulv_-sel_-gruver_-politi-og-14-andre-ting).

¹⁷ Norwegian wolves are part of the Scandinavian wolf population. Wolves will, for example, wander from Sweden, Finland and even Russia to establish a territory when they leave their family group, and some will come to Norway.

environmental security (as I have conceived of it above), and of the legal and moral rights these animals should have to live unharmed in their habitats (Beirne et al. 2018a, b; Sollund 2016). The impact on the wolves when they saw their packs being torn apart and killed must have been severe.

Whether the wolf hunt was a breach of the Animal Welfare Act was not raised in either of the court cases, but theriocides are a breach of the premise of Section 3 of the Norwegian Animal Welfare Act that animals have intrinsic value. Respecting an animal's intrinsic value means not using him or her as a means to an end (Beirne et al. 2018a, b; Francione 2008). Hunters hunt and kill for pleasure exemplified by their posing proudly with their trophies (Nationen 2019). What matters to the hunters is comradeship with other hunters, experience of nature, increased social status among other hunters through trophy hunting (see, e.g., Nurse 2015; Sollund 2019) and performing masculinity (see, e.g., Presser and Taylor 2011; Kheel 2008; Sollund 2019). This was exemplified during the lynx and wolf hunts in the spring of 2018, when pictures of hunters posing with dead lynx and wolves appeared frequently on social media.

As mentioned above, the goal of the licensed wolf hunts is to reduce human–wildlife conflict. No matter how disputable it is that the hunt would reduce conflict in this contested area, this was still the reason why these judges found it legitimate for the state to kill all of these wolves, even in an area where they were supposed to enjoy protection. The reason for the conflict was not action on the part of the wolves, but apparent wolf hatred, which is how this appears in social media and protests. It seems that it is not so much what wolves *do* or *might do*; rather, it is their *existence* that creates conflict.¹⁸

The hunts of critically endangered species also represent a breach of eco-justice principles because the ecosystems to which these animals belong are destroyed. For example, by killing their natural predators, elk populations swell. The elk then starve because the forests cannot sustain them. Because “wildlife” refers to a “mass” of animals, the concern seems to be only with whether the *group* is protected (Sollund 2017). An issue of interest, however, is how the Standing Committee of the Bern Convention (the “Standing Committee”) conceives of the Norwegian large predator policy.

The Bern Standing Committee's Failure to Reprimand Norway for Its Wolf Management

The “management goal” of the Norwegian state is four to six litters of Norwegian wolves every year; in practice, this minimum number is also treated as the maximum (Trouwborst et al. 2017), which is the reason NGOs accuse Norway of aiming to *keep* the species at a critically endangered level. Nonetheless, Norway has never been reprimanded by the Standing Committee of the Bern Convention for its wolf management. The fact that it has not has been proffered as a reason for its continued practices regarding wolf management (Trouwborst et al. 2017: 158). In the May 2018 decision by the Oslo District Court, the judge referred to a statement made to the newspaper *Nationen* by Eladion Fernandez-Galiano from the Council of Europe, who stated that there “seemed to be no problem with the ways in which Norway complies with the convention.” The judge also emphasized

¹⁸ For example, the Facebook page, *Nullvisjon* (Vision Zero), asserts that *all* wolves should be exterminated (https://www.facebook.com/pg/nullvisjon/posts/?ref=page_internal).

that in regard to the system of differentiated geographical local management, the Standing Committee had not opened any case against Norway for failure to comply (p. 20 of the decision). In addition, she further observed that the Standing Committee had never specified *exactly* how many wolves there should be in Norway. She did, however, agree that the Norwegian government should take into account the overarching objectives of the Bern Convention and aim for targets that would permit these species to reach a desirable conservation status (p. 22 of the 2018 decision). Therefore, the judge concluded that as long as the killing does not threaten the survival of the population, these hunting decisions are not a breach of Article 2 of the Bern Convention. She supported the judge from the previous January court decision in ruling that that “population” included not only the Norwegian population, but the entire South Scandinavian population. The judges thus chose to ignore a former Norwegian Supreme Court decision from 2016 [HR-2016-1857-A (see Sollund 2017 for a discussion)]. This case concerned the degree of guilt in regards to illegal wolf killing, and it was established that the court must take into account the *Norwegian* wolf population, rather than the total South Scandinavian wolf population because of Norway’s individual obligations to the Bern Convention. The 2018 Court decision contradicts a legal analysis commissioned by the Standing Committee in 2005 about the national responsibility that member states have for populations that transgress borders (Trouwborst et al. 2017: 163). In sum, by finding that “population” means the *entire South Scandinavian population*, rather than just Norway’s population, the judge essentially held that Norway is not compelled to take independent responsibility for safeguarding wolves.

Effectively, the judge in May 2018 failed to make an independent decision; rather, she took an active stance supporting the Norwegian state’s policy, despite its obvious legal flaws. Norwegian NGOs have filed several complaints with the Council of Europe—a process in which the Standing Committee may examine potential violations and may issue on-the-spot appraisals if necessary; the Standing Committee may also recommend a particular course of action for the party responsible for resolving the situation (Trouwborst et al. 2017: 165). Generally, the Standing Committee opens case files of only a small number of the total complaints made. This is because the Standing Committee generally has tended to operate on the basis of dialog and diplomacy rather than confrontation. Hence, its decisions concerning most case files have been advisory rather than binding, and only under exceptional circumstances has it issued clear statements that a breach of obligation has occurred (Trouwborst et al. 2017). This means that the reasoning of the judge, upon which so much of the court decision was based, becomes almost irrelevant because such a measure is seldom—if ever—applied. It thus appears that the judge supported Norway’s bending of the rules, taking advantage of the Bern Convention’s “lack of teeth” or the will to use them.

The Standing Committee is a political rather than a legal body. Consequently, violations of the Bern Convention can be determined only by domestic courts, by arbitration tribunals established under Article 18 of the Bern Convention and, theoretically, by other international courts and tribunals (Trouwborst et al. 2017: 165). When the judges put so much weight on the lack of reprimand from the Standing Committee and no weight on a Norwegian Supreme Court decision, or, as in the case of the January 2018 decision, grant greater deference to a Swedish Court decision than a Norwegian one, one may suspect that the judges have a hidden agenda. For example, the fact that the Standing Committee has never opened a case file against Norway does not mean that Norway has not violated the Bern Convention; it means only that due to the dialog-based practice of the Bern Convention, Norway has not been reprimanded officially.

Trouwborst and colleagues (2017) conclude in their legal analysis that Norwegian wolf management is at odds with the Bern Convention, particularly with respect to the low target for four to six yearly litters. Although Norway is not signatory to the Vienna Convention on the Law of Treaties (VCLT), the VCLT sets forth rules for interpreting international instruments and these are regarded as reflecting universally applicable customary international law. This means that a treaty “shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose” (Trouwborst et al. 2017: 158) which, in this case, should result in interpretations in favor of wildlife conservation rather than for the interests of forest owners and hunters.

In the Oslo District Court, an expert witness from the Norwegian Environment Agency stated that the wolves could be “taken out” because they were not particularly valuable genetically. This implies that the wolves were considered *resources* who could be killed despite their own individual interests in pursuing their lives as “subjects in a life” (Regan 2004). Free-born animals are de facto excluded from welfare considerations. This is, of course, also the case for all other “hunnable” species, such as crows, deer, elk, foxes, geese, hares, magpies, partridges and many more. That the large predators are not genuinely protected despite the Bern Convention, the Wildlife Law, the Nature Diversity Act and the Animal Welfare Act should come as no surprise, however, in a country where the Environment Agency (2016) suggested that blackbirds and other songbirds were “hunnable” because they were numerous. Only when wolves or other endangered predators are killed or abused illegally will the court consider using the Animal Welfare Act (Sollund 2015).

Conclusion

Nonhuman species are losing their habitats, and conflicts between humans and large predators have escalated. Large predators are barely surviving in Europe’s fragmented ecosystems. In Norway, this process is demonstrated by the implementation of the designated predator zones. While considerably larger areas could provide habitats for endangered carnivores, they are expected to abide by our rules; any misreading of the map entails certain death. The Norwegian authorities’ interpretation of the country’s obligations toward the Bern Convention, supported by the judges in the court decisions discussed earlier, through which even the predator safe zones are no longer respected, leaves these critically endangered species without protection. Norway exploits the Bern Convention’s nonexistent enforcement mechanism and misinterprets the dialogical character of the Bern Convention as an acceptance of its extinction policies (Trouwborst et al. 2017). The Standing Committee should instruct Norway about its obligations under the Bern Convention and insist that it follows scientific advice concerning what constitutes a viable population, rather than allowing the goals of anthropocentric conservation to be established by unknowledgeable and opportunist politicians who want to satisfy the wishes of urban anti-predator groups and hunters, and thereby collect their votes in the next election.

The Bern Convention loses its importance in protecting endangered species and preventing the extinction of species in the Anthropocene when the mechanisms to criticize parties to the convention are not in place, and policies are left entirely to the parties’ own discretion. Conflicts over predators are unlikely to disappear, but these cannot be solved by means of Norway’s present policies. Moreover, by being party to the Bern Convention and claiming to respect it, Norway gains legitimacy for its extinction policies. And in terms of

rewilding in Europe, Norway may serve as a very bad model for other countries who look for ways to resolve their own predator conflicts.

That nature and wildlife need “managing” is an anthropocentric idea that produces more harm than good, and causes severe attacks on ecosystems and on the environmental security of large, critically endangered carnivores who live under constant threat and attacks. In Norway, the interests of hunters, forest owners and farmers are prioritized over the conservation of ecosystems and endangered species, but also over the interests of members of society who desire the existence of large predators as part of Norwegian nature.

From a harm-based green criminological perspective (e.g., White 2013a, b), what takes place in Norwegian forests is no less terrible for the animal victims—whether the theriocides are carried out according to the law or as a breach of it. Sheep and humans invade wolves’ territory. As a consequence, they suffer anthropogenic colonialism through which they are either killed or driven from their land (Donaldson and Kymlicka 2011). Indeed, the Norwegian large predator policy can be regarded as ecocidal (e.g., Larsen 2012) because state policy leads to or endangers the survival of a species. Wolves are of undeniable importance for ecosystems (Carroll et al. 2006), but their species, as well as the bears, lynx and wolverines, should be protected in their own right. Their human-caused extinction would imply a wolf eco-genocide, which can be regarded as a moral category of crime and a violation of ecological justice, ecological citizenship, environmental security and species justice.

Norway fails to respect individual animal rights, as well as species justice; its actions and inactions thus constitute a form of “organized state theriocide” (see generally Beirne et al. 2018a, b; Sollund 2017). From an animal rights perspective, ensuring these predators’ rights to a truly and sufficiently large, safe territory seems the only way to secure their future. Should the state ever grant such rights, which is unlikely due to the anthropocentrism of nature conservation in general (Svård 2008), there would still be no guarantee that these rights would be respected (Beirne et al. 2018a, b; Benton 1998; Michalowski 2018). To establish that they have such rights would nonetheless be a beginning, but elaboration of how such rights could be granted to all animals and how such rights might be realized in practice is outside the scope of this article (for initial efforts, see, e.g., Beirne et al. 2018a, b; Donaldson and Kymlicka 2011; Sollund 2019). Future research could also consider whether the situation is equally bleak in other countries that are parties to the Bern Convention in order to assess best practice. Until then, the Standing Committee of the Bern Convention should take an active role in ensuring Norway’s compliance.

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