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Towards an interspecies health policy : great apes and the right to health

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6. The right to health in the wild

If one holds sufficient interests in health to the effect of imposing duties upon others, then a *prima facie* right to health is generated. If, however, interests do determine who holds a right, what does this imply as to the scope of the right and its implications for great apes positioned outside intermixed human-animal societies? Is the right to health indeed cosmopolitan to the extent that great apes active outside human society are also included? To begin with, do we have any positive obligations towards animals living in the wild? And, if arguments denying such positive obligations fail, what does the right to health comprise specifically in the context of the wild?

6.1 Do we owe anything to animals in the wild?

Reasons for restricting obligations to a particular group are often controversial. Where once, in Ancient Greece, the scope of justice was limited to wealthy men (Lane 2018), one has witnessed a relatively swift expansion especially during the 20th century, hereby including humanity in its entirety as is reflected in the concept of human rights. Nevertheless, the reasons for restricting the scope of justice with regard to humans do not appear to be sufficiently robust. Does the tentative cosmopolitanism formulated at the end of chapter 4 (see 4.6) provide us with reasons to widen the scope in order to include animals wherever they are found?

Do we owe anything to animals living in the wild at all? Certain researchers strongly reject any human interference in nature or the lives of wild animals. According to this viewpoint, nature is to be preserved in its pristine state, whereby any form of human management including the numerous conservation efforts are ruled out too (Minteer & Miller 2011). This viewpoint occasionally dovetails with the opinion that it is wrong to interfere with evolutionary processes, as if they represent matters of moral value (Torres 2015). These objections to interference in nature can however not be sustained within an approach that sets off from the claim that sentient beings have a moral status (DeGrazia 1996; Torres 2015). Interfering in natural processes can indirectly violate the interests of great apes, for example, by means of the fragmentation of their habitat. However, in other instances, one can positively affect the interests of these apes through interference. What if one could drain a swamp with the outcome being that a specific group of chimpanzees would suffer less from vector-borne diseases? In addition to the question whether one has the moral imperative to

take such an action, would it be wrongful towards the natural environment, in this case, the swamp? My point of view is: (a) we only have indirect duties towards non-sentient entities and collectives and (b) there is nothing morally wrong with draining swamps provided that the sole impact of this action will benefit the health of chimpanzees.

A very strong argument against human intervention in nature is human fallibility. Multifariously diverse ethicists and political theorists all underline the importance of this argument (Singer 2011; Donaldson & Kymlicka 2011; Palmer 2010). The objection of human fallibility captures the epistemic uncertainty associated with ecological interference but also the more general normative principle of refraining from actions that make matters worse. These considerations put a hold on interventionist ambitions but, importantly and in principle, do not rule it out. Indeed, the argument supports “fallibility-constrained interventionism” rather than non-intervention: based on the interests of individual animals “intervention in nature is desirable but should be constrained by our ignorance of the inner workings of ecosystems” (Johannsen 2016: 333). In other words, because the interests of individual animals living in the wild demand our moral consideration, we may well be duty bound to investigate whether it would be possible to develop ways to intervene to their benefit without causing ecological upheaval (Fink 2005).

6.2 The right to be left alone: individual flourishing?

We are apparently left without a principled argument against interference. The argument stemming from fallibility is pragmatic and in principle does not rule out human intervention. However, other principled arguments have been suggested. For example, instead of arguing it is wrong to interfere with nature, one can opine that interfering with the lives of animals living in the wild wrongfully disturbs their *flourishing*. Perhaps “what we need to acknowledge is that the deer is a wild animal and, as such, the sort of creature whose flourishing is generally thought incompatible with widespread human intervention. Deer, that is, do flourish qua deer without human protection from nonhuman predators” (Everett 2001: 54). Jennifer Everett argues here that (a) the flourishing of an individual is linked to a specific conception of what flourishing entails for a certain species and (b) this conception does not allow for “widespread human intervention”. Do these observations provide us with a compelling argument to refrain from any human meddling with the lives of animals in the wild?

Why would the conception of flourishing qua one's species membership be action-guiding? Why does behaving in ways characteristic of its conspecifics in the absence of human interference matter to the individual (Cochrane 2013a; Ladwig 2015)? Everett's reasoning steers close to the "appeal to nature fallacy," which amounts to an unexplained leap from how things are or were in nature (deer living out their lives undisturbed by human meddling) to how they should be. Understanding flourishing as a prohibition on any interference "runs dangerously close to sanctifying natural processes as inherently morally good or benign" (Donaldson & Kymlicka 2011: 165). It is unclear why behavior encountered in nature also dictates moral prescriptions. Arguing that flourishing as a concept also includes the horror of being devoured alive is controversial (Hadley 2006: 449). It is not in the interest of that particular individual. In addition, an individual should be the one to, as much as is reasonably possible, determine what lies in his or her personal interest. Accounts of flourishing that rule out human intervention risks doing so at the disadvantage of the interests of individual animals.

It is thus far from clear that flourishing prohibits human intervention. When evaluating if the interests of animals living in the wild should indeed enter into our moral deliberations, we must also address the question: to what extent does context matter? Perhaps flourishing means something else to animals living amongst humans when compared to what it entails if pertaining to those living rather independently from human affairs?

6.3 The right to be left alone: collective flourishing?

What if individual flourishing is inseparable from collective flourishing? According to Donaldson and Kymlicka, animals living in the wild are entitled to a sovereignty based on their collective interests as a community. The sovereignty of these animals regulates a fair interaction with the human sovereign communities, prohibiting any systematic interference. As they put it, "We ought not to intervene in the internal workings of wild animal communities (e.g., predation, food cycles) in ways that undermine their autonomy, effectively placing them under permanent and systematic human management" (Donaldson & Kymlicka 2011: 187). Whereas a certain level of paternalism is inevitable when we interact with domesticated animals, it is argued that wild animals are categorically different as they have to fend for themselves and generally speaking are able to do so (Donaldson & Kymlicka 2011: 177). On the other hand, domesticated animals have been made fully dependent on human care and supervision, implying obligations to be fulfilled by humans.

Before looking further into the argumentation Donaldson and Kymlicka present we must note that they develop the following two kinds of argumentative strands against the right to health as an entitlement for great apes in the wild. Both points of view entail that:

(a) the right to health (more precisely on their account, the right to healthcare) follows from one's membership of a mixed human-animal society. The positive argument for this right to is limited to animals which exclusively belong to such a community. Great apes in the wild, as well as those perhaps more accurately described as liminal, lack membership and therefore a right to health. This group-based differentiation of the right to health is unconvincing (see 4.5), as it understands the right to health as something that has to be earned either by means of complying with social norms or by the mere contingency of being a member of a particular group. Health represents a standard that lies in the interests of all individuals, irrespective of their specific environment. A right to health is grounded to the extent that these interests are sufficiently important to impose duties on others.

b) great apes in the wild are members of a multispecies sovereign community, a political structure that imposes limitations on human interference. Therefore, even if one rejects membership as well as cooperation as being necessary conditions for holding a right to health, animals in the wild could indeed categorically differ from domesticated animals in terms of our moral obligations towards them. The moral purpose of sovereignty is to “protects interests in maintaining valued forms of social organization tied to a particular territory against the threat of conquest, colonization, displacement and alien rule” (Donaldson & Kymlicka 2013: 151). Sovereignty involves both a territorial claim and the right to lead an autonomous life. Before considering the criticisms raised against the concept of wildlife sovereignty, we need to unpack it a little bit further.

Starting with the territorial claim, Donaldson and Kymlicka (2011: 170) opine that animals have a rightful claim to their environment; it is their space, which humans have no right to encroach. In doing so, they also reject a stewardship model, including those best described as benign alien rule. Wildlife habitats across the globe are under threat of the ever-expanding human activities, rendering stewardship too contingent on whether individual humans wish to protect animals in the wild and their habitat. The stewardship model simply does not provide a robust protection of wildlife habitat.

Does this position presuppose the concept of sovereignty? In recognition of the uncertain and/or contingent benefits of stewardship, other theorists (e.g., Hadley 2015) have argued for animal property rights. Rather than relying on the goodwill of humans in managing wildlife habitats, property rights fend off any harmful human interference to begin with. However, certain specifics pertaining to recognizing a property right cast a shadow on its potential for animals living in the wild. Full property rights ordinarily include the power to either sell one's property or to waive one's legal ownership (Cooke 2017). To what extent do animals either have such a power or an interest in full ownership? Perhaps,

the interests non-human animals have in their habitats can be met by ensuring they have use of the habitat rather than having powers to sell their property. This means that full property rights are not necessary to protect habitats, and that mere usufructuary rights paradoxically represent a stronger rights configuration for animals. Furthermore, provided they are unharmed by it, these usufructuary rights can be shared with others, allowing humans and non-humans to live together in mutually beneficial ways and potentially generating revenue streams for animal trustees to manage habitats with. (Cooke 2017: 58)

In line with Donaldson and Kymlicka, Cooke takes issue with stewardship-models as these fail to provide any robust protection of the interests of animals in the wild. Stewardship is subject to interpretation, ranging from non-intervention to substantial human presence. However, instead of sovereignty, Cooke identifies usufructuary rights as a means to provide the required protection. Animals do not have rights to any habitats irrespective of whether it lies in their interests but exactly because of the way the environment supports these (basic) interests. The rights claim is generated in terms of the utility of the environment for the animals which facilitates human presence as long as the interests of animals do not unjustifiably come into conflict. Such usufructuary rights, however, have their weak spots when compared to sovereignty, because whereas

states have jurisdictional power to alter property rights within their territory, they are able to strip animals of any property rights they have gained. Animals are uniquely vulnerable to injustice because they have no political voice of their own (nor the possibility of one). Non-human animals rely upon humans to speak up for them, and it is thus easier to ignore or overlook their claims. In human cases, individuals or groups

can challenge the decisions of states and seek compensation for property that is compulsorily purchased or taken from them. However, the interest non-human animals have in their habitats cannot be compensated for in the same way since they depend upon it for survival or wellbeing. Unless non-human animals can be transplanted into a similar habitat with little or no loss to their wellbeing, the idea of restitution or compensation is meaningless. Non-human animals are therefore at greater risk of rights violations in respect of their property than human owners. (Cooke 2017: 59)

Such precariousness can tip the scale in favor of a robust account of wildlife sovereignty. However, Cooke's suggestion of usufructuary rights is in part a response to controversial presuppositions encountered in the concept of sovereignty. Cooke takes issue with the reference to autonomy in particular. The majority, if not all animals, lack this capacity if autonomy not only involves the ability for second-order reflection but also willfully shaping one's life according to one's considered values and beliefs.

Usufructuary rights can be buttressed without relying on strong concepts of autonomy. Cooke suggests establishing remedial rights to secession whenever serious violations of usufructuary rights occur. Hereby secession does not presuppose autonomy. Animals cannot decide to secede, rendering primary secession less compelling. However, humans can do so by proxy if the usufructuary rights of animals have been, or still are, under a serious threat of being violated entailing secondary secession. Sovereignty thus appears to be either unnecessary or the most plausible grounds for securing habitat rights. The question now rises: does Cooke's proposal cause sovereignty to be entirely redundant?

Donaldson and Kymlicka applaud the concept of animal property rights because of its recognition of the importance of habitat, but nonetheless criticize the concept for permitting animal communities to be vulnerable to other kinds of influences. It is precisely Cooke's willingness to allow for shared as well as multispecies landscapes that triggers their concern, as it echoes the willingness of colonial authorities to recognize the property rights of indigenous people. While acknowledging the property rights for indigenous peoples, Donaldson and Kymlicka (2011: 178) point out that "Europeans imposed their own laws, culture, and language on indigenous peoples". Social dynamics of incoming cultural settings can pose a threat to the collective autonomy of the native communities. More, it appears, than mere legal ownership of land or habitat is required. Thus, whereas habitat rights may

successfully capture the territorial or geographical dimension of sovereignty, sovereignty also protects valued forms of social organization in addition to any territorial claims. Human meddling with the social organization of wild animal communities is prohibited as it undermines their autonomy and liberty not only at individual but also at collective levels.

Is this argument able to hold its ground? Several interest-based theorists (Cooke 2017; Cochrane 2013a; Ladwig 2015) oppose this assertion. For example, if interests must guide our moral actions, it remains unclear how sovereignty as a reflection of collective flourishing is relevant to individuals, which is especially evident when collective flourishing occurs to then disadvantage individual interests. Or as Cochrane (2013a: 138) puts it, “at the very least, it is extremely hard to make sense of the idea that those wild animals who suffer terribly and face death directly as a result of the current conditions of their community also have an interest in the preservation of that community in its current form”. Just as individual animals do not have interests in flourishing in terms of being eaten alive, they do not appear to have interests in sovereignty and throwing overboard their own individual interests.

Problems therefore arise when collective thriving conflicts with individual flourishing. It is a win-win scenario if, for example, a football team is highly successful while at the same time all the players and staff members prosper. However, if the success of the team leads to a significant disadvantage of one or more individuals, whereby certain changes to the organization would solve issues, the latter are in the interest of the individual. Needless to say, this is not a perfect analogy to animal communities living in the wild. It does however prompt the question why Donaldson and Kymlicka are so concerned about leaving the inner workings of animal communities intact even at the disadvantage of individuals. Sovereignty reflects the membership of a wild animal community and a flourishing collective. The underlying justification of wild animal sovereignty involves the claim that animals are entitled to their autonomy and liberty. We should respect the autonomy and liberty of wild animals, which is supported at the collective level in terms of sovereignty. If we were to systematically interfere in the inner workings of animal communities, we would ultimately infringe upon their liberty and autonomy. Following other interest-based theorists, we have already established that these notions do not gain much traction not only with regard to the majority but perhaps also to all non-human animals (Cooke 2017). The case for wild animal sovereignty is hereby left in peril. The fact that great apes have interests in their habitat beyond positively contributing to their health and well-being is far from being clear-cut. Cooke’s proposal on usufructuary

rights protect these interests.⁷⁶ In other words, the added value of sovereignty for great apes is not well-defined.

Moreover, sovereignty rests on assumptions concerning the capacities and interests of great apes that are controversial and pierced by scientific uncertainty. Whether or not great apes are autonomous in the sense of second-order reflection remains controversial (see 2.3). Taken together, there appears insufficient grounds to acknowledge the existence of great ape sovereignty. Opining that great apes do have rightful claims to self-determination, I argue that these claims should be understood in terms of agency and not of autonomy. If sovereignty is linked to the latter, which I assume is indeed the case, then sovereignty does not gain sufficient traction with regard to non-autonomous animals, including (most) great apes (cf. Ladwig 2015; Cooke 2017). Finally, it may be concluded that, although fallibility and feasibility both impose significant constraints, the arguments against intervention have not survived. As a result, a cosmopolitan perspective remains on the table. We must now assess the implications for the right to health.

6.4 Considering the right to health in the wild

The right to health for animals, let alone for those in the wild, has not received much attention yet. This is surprising, considering the special status of human health in debates of justice (e.g. Daniels 2007; Wolff 2012b; Venkatapuram 2013). To a certain degree health does emerge in recent work presented by theorists dealing with the entitlements of animals. Nussbaum (2006), for example, enlists a health capability on a list of capabilities without describing details regarding what this would entail for animals in specific contexts. Donaldson and Kymlicka (2011) both understand the right to health care to be a citizenship right to which domesticated animals as members of society should also be entitled. The corresponding duties should be aligned with the human health justice debate. To date, their account provides the most detailed discussion on an animal right to health care, hereby providing an important reference point for further discussion.

The citizenship right to health care as envisioned by Donaldson and Kymlicka has attracted some criticism. Cochrane (2013a: 134) objects against a group-differentiated understanding of

⁷⁶ Especially in conjunction with the right to ecological space, which (as argued, see 5.5) introduces relevant socio-ecological factors from outside the habitat, too. Habitat and biophysical functioning both matter because of the way they contribute to the interests of great apes.

the right to health-care, because “given the powerful interest that all sentient animals have in being healthy, it is certainly plausible that the right to health is at least a *prima facie* right enjoyed by them all”. In disagreement with restricting access to health care to domesticated animals only and hinting at a cosmopolitan alternative instead, he assumes that “at least in some situations, wild animals can and ought to be granted a concrete right to healthcare” (Cochrane 2013a: 134). Going even further, he claims that animals in the wild (as well as liminal animals) may be entitled to a larger share of public resources than their domesticated counterparts, as the latter have guardians to take care of them. This philosophical exchange on the right to health care provides us with an interesting starting point to further engage with the right to health of wild animals. After discussing Donaldson’s and Kymlicka’s reply to the objections leveled by Cochrane I will then add my own considerations.

Donaldson and Kymlicka argue that Cochrane’s above-described objection is first of all speciesist if he does not apply the same line of reasoning to human children too. Donaldson and Kymlicka distinguish between the individual right to health care and the issue of allocating its corresponding duties. Indeed, parental obligations cannot be overlooked. Parents nonetheless only bear a number of duties which correspond to the right to health care. The health care of orphaned children will form a societal responsibility. Why, if collective responsibility kicks in for children without parents and/or guardians, “should domesticated animals be abandoned to the vagaries of individual guardians? Why should humans have access to the cooperative scheme of public health care, while their domesticated animals are left out?” (Donaldson & Kymlicka 2013: 149).

Indeed, Cochrane places too much emphasis on the responsibilities imposed upon the guardian of the individual animal. This is the reason why he also misses out on the broader implications pertaining to the right to health and the corresponding duties. The issue of developing interspecies health research strategies and health insurance schemes remains unaddressed. In addition to the duties of guardians, the right to health will significantly affect health institutions.

Nonetheless, as domesticated animals do have guardians, the latter may very well pay the lion’s share of costs of providing health care to the animals under their supervision. Therefore, if wild animals do have *prima facie* right to health care based on their interests, Cochrane is correct in arguing that relatively more public funding should be made available

for animals that live largely independent from human affairs. Why not start from the health interests of animals in the wild and allocate a portion of health funding towards their needs?

Donaldson and Kymlicka (2013: 150) address this criticism head-on, postulating that

we could only include wild animals in this scheme [medicare plan] if we trapped and caged and trained them not to engage in risky behaviours, regulated their food and movement, and forced them to undergo the appropriate check-ups and inoculations. All of these norms are a precondition for a viable scheme of health insurance for humans, and these preconditions are also in place to extend it to domesticated animals. But we could only include wild animals into such a scheme through radical abridgement of their individual freedom and collective sovereignty rights.

The above citation portrays the demands of right to health in rather absolute terms, exaggerating the extent of actions required as well as the impact on the individual animals in terms of their freedom.

Before discussing these concerns, we must address certain background assumptions. Are the conditions and the institutional framework Donaldson and Kymlicka presuppose necessary in order to support a right to health and its corresponding duties? We may think of other institutional settings for health policy. For example, nations could make funds available to carefully bolster any internationally coordinated health measures and policy aimed at the health of great apes living outside of mixed human-animal societies. Efforts to sustain the health of great apes in the wild often entirely depend on financial support comprising donations, rather than public resources or international assistance provided by wealthy countries. When merely considering a right to health care within current institutional settings and ways of financing health care, it is no surprise that only domesticated animals fit the description. The range of possibilities expands if these presuppositions are altered. Donaldson and Kymlicka do not consider this perspective which presents us with an alternative.

Let us now address the other concerns pointed at above. Donaldson and Kymlicka describe the right to health care as an all or nothing affair. If a right to health care for animals living in the wild is acknowledged, we will end up with trapping and caging individual creatures merely for the reason of bringing them up to a certain standard of health. Does it have to be

that way? Wolff's account of the right to health combined with my extrapolation of his research entails protection against standard threats to health, which are to a certain level contextual. Health policy should be attentive to the specific context of individuals, rather than merely project a standard onto each and every context. The right to health not necessarily requires the transformation of the lives of animals in the wild in order to completely match their domesticated counterparts. Instead, it demands not only the recognition of the health interests of individuals but also, an assessment of (a) the threats to health and (b) the degree of their susceptibility regarding reasonable measures within the specific contexts. This account need not entail animals being trapped and caged. Imposing the above-mentioned measures may however be advised in certain cases. Nonetheless the corresponding duties concerning a right to health could prove to be far less interventionist.

However, as duties corresponding to the right to health are contained in terms of feasibility, any such concrete right for animals living in the wild could become nonsensical. For example, knowledge pertaining to the health of individuals will form the starting point for any meaningful way to provide contents to a right to health. This process will involve health monitoring on a regular basis, which is no mean feat whenever animals in the wild are concerned. For numerous animal species living at a distance from human societies, these monitoring procedures will simply prove infeasible on any reasonable account. So before starting to take action based on the health interests of animals living relatively independent from humans, feasibility related concerns interrupt us. This outcome alone can indeed appear to disqualify a right to health for wild animals across the board, apart from safeguarding their ecological space.

The philosophical reasons for denying a concrete health right to wild animals differ but appear not to result in much difference in practice. Recall the assertion made by Cochrane that "at least in some situations, wild animals can and ought to be granted a concrete right to healthcare" (2013a: 134) Do these cases turn out to be exceptions to the rule? With regard to wild animals, it is perhaps fair to remark that the theoretical disagreement between Donaldson and Kymlicka on the one side and Cochrane on the other ultimately turn into consensus as far as practical matters are concerned.

As Cochrane merely scratches the surface of what a right to health could entail, we need to explore this area more thoroughly in order to discern its practical import. When, we could ask,

in “at least in some situations, wild animals can and ought to be granted a concrete right to healthcare” (Cochrane 2013a: 134), which kind of conditions would have to apply to render feasibility not insurmountable? One factor consists of geographical proximity. If animals live near humans, it generally is more feasible to monitor their health or to intervene if necessary. Many animals living on the borders of human societies can be monitored and/or managed in various ways.⁷⁷ The size of an animal is relevant, too, as large mammals can often be easier observed than smaller species. Whether animals are approachable is another significant factor. In addition, the kind of environment may also affect the extent to which health monitoring is feasible. Dense tropical forests may forward a greater challenge when compared with wide-open landscapes. Taken together, relatively large animals with no fear of humans while residing in the vicinity of human societies established in accessible environments, may provide a situation in which monitoring the health of these creatures may be feasible.

This also places a certain level of pressure on the concept of delineating the categories of animals. A continuum can be observed between entirely domesticated and entirely wild creatures whereby those positioned just outside of a society perhaps represent the strongest challenge to restrictions of obligations to group-members only. Although Donaldson and Kymlicka attempt to make sense of our obligations by dividing animals into three groups (to wit, domesticated, liminal and wild) they also realize that many creatures traverse the boundaries between these groups. This acknowledgement requires, as Donaldson and Kymlicka argue, a case-by-case evaluation of our obligations towards such in-between-groups-animals. I hold the view that with regard to these animals – especially if the above-mentioned factors apply – the right to health as a concrete right also becomes more compelling. In order to further explore this issue, and further contrast the three views (as held by Cochrane, Donaldson and Kymlicka and the present author) we will now look closer at Donaldson’s and Kymlicka’s discussion of obligations pertaining to the Assateague horses, which will later be brought to bear on obligations concerning great apes.

⁷⁷ This procedure prompts the question: when can animals be considered wild? Palmer (2010: 85) distinguishes between three forms of wildness whereby an animal (a) can be wild in terms of its conduct (b) can be wild as a result of its habitat i.e., locational and (c) that he or she is not influenced in a certain way by means of a process of domestication. It is herewith implied that animals may be wild in various degrees depending on how we interpret the adjective “wild”. On the one hand, an animal may be entirely wild in behavioral terms but live in the midst of human society e.g., in a zoo. On the other hand, animals may live near human dwellings resulting in their not being entirely wild in terms of either behavior or location.

6.5 Freedom and health: the Assateague horses

Donaldson and Kymlicka (2016b) discuss the situation of the horses populating Assateague Island. They focus on horses on its northern part, which belongs to the state of Maryland (USA). These feral horses, descendants from formerly domesticated horses now reintroduced to the wild, lead their lives in a relatively unrestrained manner and share their habitat with humans who visit this island for recreational purposes. Educating the public on visitation rules, which include cautious driving and observing a minimum distance from the horses, limits the level of disturbance. Donaldson and Kymlicka argue: mainly because of ecological constraints (e.g., limited carrying capacity, interests of other animals depending on the ecosystem) humans should continue to be involved in the lives of those feral horses. Without any human management, the population will outgrow the available ecological conditions, not only to the disadvantage of these horses but also disturbing the ecosystems and all those who depend on it. In order to manage the population, mares that have given birth once are darted with a contraceptive. Donaldson and Kymlicka indicate that euthanasia is performed now and again. However, the exact conditions for this intervention and how often it takes place remain unclear. Veterinary interventions are thus limited to population management by means of contraceptive measures and, on occasion, euthanasia.

In making their case for respecting animal agency, Donaldson and Kymlicka do not propose any changes to the current veterinary involvement with the Assateague horses. Although contraception limits the ability to reproduce, mares are allowed to give birth to a single foal. Implementing this contraceptive strategy has led to better health and longer lifespans of the mares (Zimmerman et al. 2006). Donaldson and Kymlicka do not further discuss the issue of euthanasia other than mentioning it only occurs when a horse is “suffering a painful decline/death” (2016b: 234).

Is this indeed all that is required in terms of veterinary management? At the very least, a number of further questions need to be asked. First of all, it remains unclear to which level any up-to-date knowledge exists concerning the health of individual horses. Do park officials monitor them on a regular basis? To what extent do horses suffer from ill health? It would also be relevant to learn more about the euthanized horses. Which conditions did they suffer from? Could veterinary treatment in an earlier stage have prevented the need for euthanasia? Did visiting tourists or park officials spot these animals? A significant difference exists between, on the one hand, responding to suffering one is confronted with by chance and, on

the other, a permanent policy imposed in order to protect individual health hereby reducing suffering as much as reasonably possible. Donaldson and Kymlicka do not pose these questions nor do they address the issue of tourism other than noting the possibility of conflict between humans and horses at campsites.

Needless to say, these questions and the lack of raising them do not necessarily undermine the overall approach to these animals that Donaldson and Kymlicka endorse. Perhaps this case was selected primarily for demonstrative purposes, rather than as a full discussion of the fate of the Assateague horses. However, the lack of engagement with these questions suggests a specific understanding of what it means to respect the agency of these horses. Such a view also falls in line with their support of dependent agency if pertaining to domesticated animals, and not to animals living outside of any mixed human-animal societies.

Donaldson and Kymlicka highlight the need to acknowledge domesticated animals as presumptive agents. Whereas we do not have to “liberate” these animals in the strict sense, severing all ties between humans and animals to then liberate them, we owe these animals positive duties allowing them to employ their agency.⁷⁸ Certain animals may choose to interact more with humans, whereas others might opt for less. These animals fully depend upon humans for opportunities to employ their agency, rendering them vulnerable to restrictions of their freedom motivated by interests other than their own. The idea of dependent agency prompts the question: has enough been done to allow animals to utilize their agency and to pursue the lives they truly desire?

Nonetheless, freedom in terms of opportunity to develop and explore one’s agency is not the only matter of importance. Domesticated animals should be able to employ their agency, but not at all costs; their choices should be scaffolded. This process entails a gradual exposure to new situations permitting these animals to develop their own agency within reasonably safe environments. Their freedom should not entail any significant risks to their own health. As long as certain basic interests (e.g., health) are reasonably protected, domesticated animals should not only be enabled but also free to make their own choices (see 3.5).

⁷⁸ Cochrane does not include this interest in freedom in his account. Based on the account of well-being as proposed in the present thesis, an interest-based theory of rights should acknowledge the right to freedom of opportunity.

How does this relate to our interactions with animals leading rather independent lives?

Donaldson and Kymlicka consider this a completely different situation. Wherever domesticated animals by nature are socialized into mixed human-animal societies, animals living outside of such communities

often actively avoid human contact and settlement; they resist captivity; they possess physical capacities or behavioral traits which are incompatible with human proximity; and they rely on highly specific ecological niches which cannot be manufactured under captive circumstances. Models of dependent agency that work in the case of domesticated animals are simply not applicable here. (Donaldson & Kymlicka 2016b: 156)

The same applies to the Assateague horses, as they avoid human contact and are highly dependent on their specific ecological surroundings. The question now rises: why exactly can “models of dependent agency” not be applied to these horses? Although there is nothing intrinsically wrong with being dependent, they argue that “it is wrong (i) to treat individuals as dependent in areas where they are capable of exercising meaningful autonomy (unjustified paternalism), and (ii) to induce dependency (as has been done through the history of domestication and selective breeding)” (Donaldson & Kymlicka 2013: 155). As Assateague horses are relatively independent, there is no need to foster their agency as in the case of domesticated animals. Assateague horses are largely judged to be capable of fending for themselves. Any further interference with their lives could perhaps entail “unjustified paternalism” and simultaneously induce dependency in a problematic way.

I agree with Donaldson and Kymlicka when they state that (a) these horses can fend for themselves in many ways and (b) respect for their agency should affect the extent of human interference. However, I disagree with their plea for agency when it comes to the disadvantage of individual health. Donaldson and Kymlicka start from the presumption that (a) these horses already have a sufficiently wide range of opportunities to decide on matters regarding their own lives and (b) a gradual shift to even more freedom would be desirable. However, to the extent that individuals are vulnerable to standard health threats (e.g., parasitic infestations, dental problems potentially leading to starvation, infected or otherwise complicated bodily injuries), I opine it is plausible to argue that a certain level restriction of

agency is permissible or even required.⁷⁹ Whereas the ability of the Assateague horses to decide on how they wish to live should be respected and facilitated, the fact that they cannot assess their own health interests provides a reason to restrict their freedom to some extent.

Moreover, in contrast to entirely wild animals, health monitoring may be feasible for the Assateague horses. These large mammals live close to humans in an environment that would be accessible for medical professionals to monitor the health of these horses from a certain distance. If it is indeed feasible to not only monitor individual health on a regular basis but also to provide treatment in indirect ways, or, if necessary, to anesthetize and treat individual horses when affected by a standard health threat, then based on the individual interests of the animal involved, there are now strong reasons to support such action.

Based on the view developed in the thesis, interventions are required in order to protect against standard health threats. Contrary to all Donaldson and Kymlicka hold in this respect, we need not necessarily capture and confine animals (albeit required in a number of cases). Monitoring individual health as well as targeted intervention in case of standard threats allows ample opportunity for animals to employ their agency. Thus, while this view acknowledges the importance of agency, it does so within certain limits, resulting in a qualified account of permissible and justified intervention.⁸⁰

Donaldson and Kymlicka understand the right to health care to imply a standardization of lives that are very different to begin with. Instead the right to health calls for a protection against standard health threats which can differ depending on the context. A number of differences are obvious, as for example, “no one in Iceland need worry about the threat of malaria, unlike sub-Saharan Africa” (Wolff 2012a: 222-3). This phenomenon is not limited to geographical aspects. Social as well as ecological factors determine the range of standard threats to health in a specific environment. Obesity entails a standard threat in developed countries, but not in most developing countries. Therefore, each context has certain threats. However, it is argued that contextual differences need not be overstated:

⁷⁹ Largely agreeing with published objections (see Horta 2013a) against views held by Donaldson and Kymlicka, my account focuses on the right to health and how it relates to agency.

⁸⁰ The way has been paved for the recognition of a wild animal’s right to health care, as tentatively indicated in Cochrane 2013a. My account builds upon Wolff’s research in order to present a more specific survey of what a right to health implies with regard to wild animals.

take HIV/AIDS. It is routinely treated now in the developed world, and those unable to find treatment may justly complain that they are not being protected from a standard serious threat. But in Swaziland, say ten years ago, almost no one received treatment. Should we say that, though very common, it was not a standard threat in the required sense? This seems to me the wrong conclusion. (Wolff 2012a: 223)

I agree that there should be no difference between developing and developed countries with regard to threats to health such as HIV/AIDS. We should strive to ascertain universal availability of these forms of medication. Moreover, we need to look for ways to transform our institutions allowing medicines to become available to those in disadvantaged situations. It would be highly unjust to permit background conditions (e.g., patent regulations and business models geared towards maximum profits) rather than health needs determine the demands of a right to health.

Similarly, we must realize that certain presuppositions are at play when considering threats to the health of animals positioned outside human societies, such as the Assateague horses. For example, if one argues that treating individual horses for dental problems or infected wounds cannot or should not be done, we should figure out not only why but also if these reasons hold up when put to the test. A lack of sufficient capacity in terms of personnel to monitor their health does not entirely convince in and of itself.

To what extent do threats to health remain context-dependent? If a horse lives longer in confinement when compared to its conspecific in the wild, does the right to health not automatically imply that we need to capture an animal living in the wild to then see to it receives the same kind of care?

Health is generally understood in terms of a statistical assessment of functioning within a specific context (see chapter 4). Considering the influence humans have by creating a specific socio-ecological environment and technological advancements, the baselines of health are not value-free (Venkatapuram 2013). Therefore, in the future, death resulting from old age may presumably become a standard threat to health (Wolff 2012b). Technology could drastically transmute the parameters of our lifespans, affecting what we would deem a healthy life.

In a certain sense, the health of animals in the wild can be defined almost without the involvement of values. The baseline of their health is predominantly unaffected by humans, in contrast to domesticated animals, whose health parameters are extraordinarily defined along the lines of human interests. Because humans can now affect the lives of great apes in the wild in both negative and positive ways, we need to determine the adequate baselines of health, which involves values. Donaldson and Kymlicka argue that a right to health must be supported by a single baseline, whereby the health of domesticated animals serves as the appropriate standard. Considering the implications of this claim, Donaldson and Kymlicka reject a right to health for animals outside of mixed human-animal societies.

Perhaps we need to allow for more pluralism and contextualism regarding the baselines of health. For animals living relatively independent lives, the right to health may imply increasing their baselines of health rather than projecting the health standards of domesticated animals across the board. The right to health demands protection against standard threats to health, not a specific health status. Over time, these baselines may converge⁸¹ hereby providing a more nuanced stance when compared with the “all or nothing” interpretation as proposed by Donaldson and Kymlicka.

The above discussion has mainly focused on the account which Donaldson and Kymlicka presented. But what is the outcome of Cochrane’s viewpoint? Whereas Donaldson and Kymlicka require too little, Cochrane may allow too much. His understanding of the entitlements of animals to freedom does not create much of a boundary pertaining to intervention. Furthermore, it facilitates transforming the lives of animals in order to match human interests. Applying Cochrane’s reasoning to this particular case, individual horses only have instrumental interests in freedom, implying that as long as they do not suffer or become frustrated, their entitlements to freedom are satisfied (see 3.5). Opportunities to roam, for example, can be restricted as long as they do not affect their well-being in a too negative manner. Furthermore, changing the behavior of animals does not impose any problems of moral relevance. Imagine plans for the development of tourism on the island that involves the feeding of horses, not to avert malnutrition, but to enable closer interaction with these animals. If they become less fearful of humans, opportunities for tourism would evolve. The

⁸¹ Similar to providing domesticated animals with more opportunities to develop and explore their agencies while at the same time safeguarding their health, animals living relatively independent lives should have their health safeguarded wherever possible, too, while simultaneously respecting their individual agencies.

animals may become more dependent on human provision, which is not problematic as long as a long-term commitment to safeguard their needs exists. Over time, the animals will slide along the continuum between wild and domesticated moving towards the latter end of the spectrum. The management of procreation can be adjusted to the demands of tourism as well as to ecological and individual concerns.

The contrast between the two approaches becomes apparent. Donaldson and Kymlicka steer towards a collective self-determination in the light of ecological concerns. On the other hand, Cochrane's account allows for more intensive management that may be informed by other considerations (e.g., tourism) as long as the welfare of individual animals is not negatively affected. Where Donaldson and Kymlicka appear to move towards the "wild" side of the continuum, Cochrane ends up more on the "domesticated" side.

I suggest a kind of middle ground. A respect for agency entails allowing individual animals to determine the shape of their own lives as much as possible. Any restrictions of freedom whenever not premised on basic interests of the individual in question (e.g., tourism) do not contribute much in terms of normative weight. Shaping the lives of horses rendering them more suitable for tourism is not a justifiable restriction of agency, as it limits the opportunity range for the interests of others. Protecting health against standard threats to health, however, is compatible with a respect for agency.

The exchange between Cochrane, and Donaldson and Kymlicka highlights that:

(a) one should discuss the content of a right to health (care). Both above-mentioned parties limit their arguments to the access to healthcare. As argued throughout chapter 4, the right to health needs to accommodate various determinants of health as well. The ecological and interspecies determinants of health have in particular been underappreciated.

(b) most prominently, the disagreement centers on the conditions for holding a right to health. Whereas Donaldson and Kymlicka develop a citizenship account, Cochrane criticizes such a group-differentiation of interest-based rights. I support Cochrane's arguments in favor of a cosmopolitan understanding of the right to health. However, I also hold the view that his account of the right to health is underdeveloped and I furthermore propose a richer understanding of instrumental interests in freedom. Cochrane's account leaves animals vulnerable to changes in their lives that conflict with respect for agency. Moreover, the right

to health needs to be further specified and discussed in relation to the animal's interests in freedom.

(c) Donaldson and Kymlicka discuss the right to health care primarily against the background of current health policy, including institutions and ways of funding. The fact that domesticated animals can be included in current health-care insurance schemes does however not provide an argument to deny resources to animals that live more independently from human affairs. I have argued that alternative institutions could very well provide animals positioned just outside society with health care as well as policy aimed at the multifarious determinants of health.

Although the theory presented by Donaldson and Kymlicka conflicts fundamentally as to the scope of justified intervention into the lives of wild animals with Cochrane's theory, considerations of fallibility and feasibility largely align the practical implications of both points of view. Much more divergence arises when considering animals that traverse the boundary between the wild and the domesticated. Indeed, the practical implications of both views differ significantly when discussing the obligations towards animals whose lives interface with that of humans. I have launched an attempt to provide a middle ground by means of not only specifying the right to health as a context-dependent normative demand but also by emphasizing the need for a justified reason to restrict the agency of animals. Efforts to protect against standard threats to health fit this requirement.

6.6 Concluding remarks

In the present chapter, several arguments in favor of non-interference with the lives of animals outside of mixed human-animal societies have been discussed and found lacking. Justice expands beyond the confines of society and of the human species. Based on a cosmopolitan line of reasoning, I have explored the plausibility of a right to health for great apes living in the wild. Feasibility as well as fallibility impede recognizing a concrete right to health for the majority of great apes living relatively independent lives, with the notable exception of safeguarding their ecological space. However, for those living closer to human societies, these problems may not arise. Adopting the case of the Assateague horses, I have assessed both Donaldson and Kymlicka's as well as Cochrane's accounts in order to sketch the contours of a right to health in the wild and contrasted them with my own proposal. Restriction of agency with the aim to protect against standard threats is compatible with

respect for agency. The right to health calls not only for assessing the relevant threats but also for the institutional configuration required when protecting against standard threats. I will bring the above reasoning to bear on great apes specifically in the following chapter.

