Law & Ethics: Deep Ecology, Climate Change, and Norway's Wolf Policy

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> "Thanks to the capacities of the human brain, full realization of our potentialities—if there is any limit—cannot be anything like an ego trip but must be a joint venture with other beings, both human and nonhuman."
> A. Næss, *Deep Ecology of Wisdom*, p. 137[1]

1 Introduction

Fear is mounting over the rise of animal-to-human, so-called zoonotic, diseases, in which category the 2019 coronavirus falls. This "once-in-a-century" pandemic, according to some politicians,[2] is a quite foreseeable consequence in the eyes of scientists, due to climate change and biodiversity disturbance.[3] Preventing the next pandemic by reconsidering practices toward animals and shared resources is thus the new imperative, as the United Nations' Environment Program has readily stated to policymakers.[4] In the meantime, the International Panel on Climate Change (IPCC) has announced that its sixth Assessment Report, to be published in 2021, will consider the link between pandemics and human pressures on the natural world.[5] Moreover, during the course of the present coronavirus pandemic, animals have occupied the minds of not only academics, environmental officers, and scientists, but also the press, which reported on goats taking over the streets in Wales and coyotes in the urban landscape of San Francisco.[6]

What does the growing importance of animals in the policy and information space tell us about law? In this paper, I sketch some considerations on law and ethics, specifically on how the Norway-born philosophical movement known as Deep Ecology can suggest some ways forward for law and policy during the time of climate change.

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1 A. Næss, "Deep Ecology of Wisdom" in A. Drengson and A. Næss, *The Selected Works of Arne Næss* (Springer), vol. 10, p. 137.

2 P. Franklin, "No, Matt Hancock, this is not a 'once-in-a-century event'" (The Post, 20 Mar 2020).

3 See, e.g., Gary Wong and others, "Zoonotic origins of human coronavirus 2019 (HCoV-19 / SARS-CoV-2): Why is this work important?" (2020) 41 Zool Res 213, p. 216, and studies predating the latest coronavirus: e.g, D.W. Redding and others, "Impacts of environmental and socio-economic factors on emergence and epidemic potential of Ebola in Africa" (2019) 10 Nature Communications 4531 and Aneta Afelt, Roger Frutos and Christian Devaux, "Bats, Coronaviruses, and Deforestation: Toward the Emergence of Novel Infectious Diseases?" (2018) 9 Front Microbiol 702.

4 UNEP and International Livestock Research Institute, *Preventing the Next Pandemic : Zoonotic diseases and how to break the chain of transmission* (2020), p. 7, 9.

5 A. Doyle, "Next UN climate science report to consider lessons from coronavirus" (Climate Home News, 23 Apr 2020).

6 S.E. Garcia, "When Humans Are Sheltered in Place, Wild Animals Will Play" (New York Times, 1 Apr 2020).

This paper is premised on a number of assumptions and limitations. It stems from the failure of the current legal frameworks and associated ethical assumptions to explicitly address the needs and survival of non-human species, prompting an exploration of alternative paradigms.[7] The chosen methodology is an exploration of Deep Ecology, entwined with relevant aspects of animal rights (*infra* 2); a focus on the role of animals in climate change law (*infra* 3); and policy changes, as fostered by Deep Ecology thinking to address specific issues subject to public debate, e.g., the protection of gray wolves in Norway (*infra* 4). I argue that Deep Ecology holds undisclosed potential for policymaking to tackle ethical matters in climate and animal-related law. In this regard, Norway's present wolf policy will be benchmarked and evaluated against the Deep Ecology tenets, as well as the international law obligations with which Norway is bound to comply. The conclusion takes stock of the article's findings by elucidating whether Deep Ecology can be a key policy-enabler within an ethical, ecocentric, and transcultural platform.

The choice of the Deep Ecology perspective springs from my understanding and teaching of the subject in relation to environmental justice. I had the privilege to teach an elective course on the "Environment *in* Justice" at the National University of Juridical Studies in Kolkata, as Visiting Faculty in spring 2017. On that occasion, I was not only inspired by the knowledge that my students shared about Arne Næss's life and Deep Ecology theorization, but also the transcultural platform that Deep Ecology enabled in our conversations.

Moreover, due to its Socratic traits, Næss's approach fosters a particularly open and heedful discussion on environmental ethics, provoking continuous questioning and the understanding of one's own worldview on Nature.[8] In this understanding, Ecosophy T—Næss's personal approach among the various types of "ecosophies" within Deep Ecology—is included in overall Deep Ecology theory.[9]

Furthermore, for a contribution to Scandinavian Studies in Law, Norway-born Arne Næss can prove once again a source of inspiration and conversation for lawyers and policymakers in Scandinavia and beyond.[10] Deep Ecology appears an appropriate perspective as it applies semiotics, the study of signs and symbols and their use or interpretation, which is crucial for ecology in general.[11] Semiotics can offer at once flexibility and cogency, which will emerge in the overview of the Deep Ecology Platform (*infra* 2).

Deep Ecology is not an alternative to other philosophical approaches, notably philosophical and legal reactions to the Anthropocene. In the Anthropocene, humans have changed and continue to change Earth, fundamentally transforming the current geological epoch—the Holocene, which began at the end of the last

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7 See similarly H. Kopnina, "The Lorax complex: deep ecology, ecocentrism and exclusion" (2012) 9 Journal of Integrative Environmental Sciences 235, p. 236.

8 A. Næss, "The Deep Ecological Movement: Some Philosophical Aspect" in D.R. Keller, *Environmental Ethics: The Big Questions* (Wiley-Blackwell 2010), p. 243.

9 Ibid, p. 243.

10 See calls for legal change, as based on Deep Ecology, in E. Colombo – J.Ø. Sunde, "Jussen, makta og havet" (Klassekampen, 5 Feb 2020).

11 S. Levesque, "Two versions of ecosophy: Arne Næss, Félix Guattari, and their connection with semiotics" (2016) 44 Σημειωτκή Sign Systems Studies 511, pp. 526ff.

ice age—rapidly and irreversibly to an unknown state.[12] Conversely, Deep Ecology can enrich existing literature on the Anthropocene.[13]

Lastly, Deep Ecology seems appropriate to tackle some of the specific issues that have been publicly debated and are discussed here (*infra* 4), in particular the human response toward wild animals.[14] Deep Ecology and animal rights may be seen as antithetical. Some Deep Ecology proponents overlook the full significance of animals' individual suffering and factory farming, which is dear to animal rights proponents. Conversely, animal rights proponents at times lean on the opposite direction, neglecting the full importance of the wilderness and biodiversity.[15] On essential matters, however, the two strands of thought share striking similarities: they both deem sustainability ambiguous and subject to diametrically opposite understandings, as well as social and political influences with contradictory purposes.[16] Similarly, the two strands of thought converge in non-anthropocentric views of the natural world.[17]

This contribution addresses a wide public of lawyers and non-lawyers, including educators who may be grappling with the frequent neglect of rights views related to the non-human world, especially in current education curricula for sustainable development.[18] Joining Deep Ecology with the philosophy on animal rights thus proves all the more momentous.[19]

2 Law & Ethics: Deep Ecology

2.1 Deep Ecology as a Movement for Policy Change

As the *Dictionary of Environment and Conservation* notes, Norwegian philosopher Arne Næss coined the term "deep ecology to express a vision of the world in which we protect the environment as a part of ourselves, never in

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12 Louis J. Kotzé and Wendy Muzangaza, "Constitutional international environmental law for the Anthropocene?" (2018) 27 Review of European, Comparative & International Environmental Law 278, p. 278. K.C. Sokol, "Rethinking Rights in the Age of the 'Anthropocene': The Potential of a Gandhian-Informed Jurisprudence for Forging Robust Environmental and Public Health Protections" in G. Ziccardi Capaldo (ed), *The Global Community Yearbook of International Law and Jurisprudence 2016* (OUP 2017), p. 140.

13 M. Oelschlaeger, "Deep Ecology and the Future of the Wild in the Anthropocene" (2014) 30 Trumpeter 231, *passim*.

14 Næss, "The Deep Ecological Movement: Some Philosophical Aspect" (n. 8), p. 240.

15 On both points, see J. Davis, "Why Followers of Deep Ecology Should be Animal Rights Proponents and Vice Versa" (1993) 10 The Trumpeter 1, p. 2.

16 H.N. Kopnina and M. Gjerris, "Are some animals more equal than others? Animal Rights and Deep Ecology in environmental education" (2015) Canadian Journal of Environmental Education 108, p. 112. See similar critiques to sustainable development among international and comparative lawyers, e.g., J.E. Viñuales, "The Rise and Fall of Sustainable Development" (2013) 22 RECIEL 3.

17 Kopnina and Gjerris (n. 16), p. 114.

18 Ibid, p. 112. Cf recent developments concerning education on Earth jurisprudence, D. Boyd (Special Rapporteur), Supplement to the Report on Harmony with Nature (A/75/266), p. 11.

19 See the similar interplay of theories Kopnina and Gjerris (n. 16), *passim*. See also R.S. Abate, *What Can Animal Law Learn From Environmental Law?* (ELI 2020, 2nd edn), Chs 26–27.

opposition to humanity, based on a personal philosophy that he called ecosophy."[20] The heart of Deep Ecology is its *platform*, constituted of normative and descriptive claims about humans and their relationship with the natural world. Arne Næss articulated this non-technical account with George Sessions in 1984 during a camping trip to the Death Valley.[21] Slightly revised in the 1990s, what follows is the eight-point proposal for a Deep Ecology Platform:

> 1. The flourishing of human and non-human life on Earth has inherent value. The value of non-human life-forms is independent of the usefulness of the non-human world for human purposes.
> 2. Richness and diversity of life forms are also values in themselves and contribute to the flourishing of human and non-human life on Earth.
> 3. Humans have no right to reduce this richness and diversity except to satisfy vital needs.
> 4. The flourishing of human life and cultures is compatible with a substantial decrease of the human population. The flourishing of non-human life requires such a decrease.
> 5. Present human interference with the non-human world is excessive, and the situation is rapidly worsening.
> 6. In view of the foregoing points, policies must be changed. The changes in policies affect basic economic, technological, and ideological structures. The resulting state of affairs will be deeply different from the present and make possible a more joyful experience of the connectedness of all things.
> 7. The ideological change is mainly that of appreciating life quality (dwelling in situations of inherent value) rather than adhering to an increasingly higher standard of living. There will be a profound awareness of the difference between big and great.
> 8. Those who subscribe to the foregoing points have an obligation directly or indirectly to participate in the attempt to implement the necessary changes.[22]

These eight general assertions work as axioms to hierarchize values for individuals and communities.[23] The normative system ensuing from the Deep Ecology Platform is thus semiotic, where changes in priorities can be signaled, bringing about new value priorities.[24] For Næss, only through new value priorities can a given society change its organizational and economic

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[20] C. Park and M. Allaby, "Næss, Arne" in id (eds) *A Dictionary of Environment and Conservation* (2 edn, OUP 2017) [online].

[21] A. McLaughlin, "The Heart of Deep Ecology" in G. Sessions, *Deep ecology for the twenty-first century* (Shambhala 1995), p. 86. See the non-technical account, A. Næss and G. Sessions, Ecophilosophy VI (Newsletter, May 1984).

[22] A. Næss, "The Basics of Deep Ecology" (2005) 21 The Trumpeter 61, p. 68. See a revisitation of the platform also in, e.g., A. Næss and P.I. Haukeland, *Life's Philosophy: Reason and Feeling in a Deeper World* (University of Georgia Press 2002, tr. by R. Huntford), pp. 108–109. See also specifications in A. Næss, "Deepness of Questions and the Deep Ecology Movement" in G. Sessions, *Deep Ecology for the Twenty-First Century* (Shambhala 1995), pp. 213ff.

[23] Levesque (n. 11), p. 526.

[24] Ibid.

structures.[25] A coherent and internalized ecosophy, moreover, is the only way for dissimilar people to *naturally* coordinate for change.[26]

The platform of Deep Ecology was originally grounded in religious or philosophical teachings, but is culturally open and aims at no homogenous view of the world, with culture being part of the "ecosphere" to be protected.[27] Such a trait facilitates the *transcultural* character of the movement.[28] Moreover, the Deep Ecology Platform constitutes only one of the levels of public and private reflection on environmental ethics: beyond the role of fundamental religious or philosophical views as a grounding for the platform, the platform itself includes a derivable series of consequences for lifestyle, concerning private life, and policy, concerning public life.[29] Finally, based on this sequence of reflections, individuals can make decisions and fulfill a course of action in line with their deep ecological views in concrete situations. The *multilevel* character of the movement is classically represented by the so-called Apron Diagram.

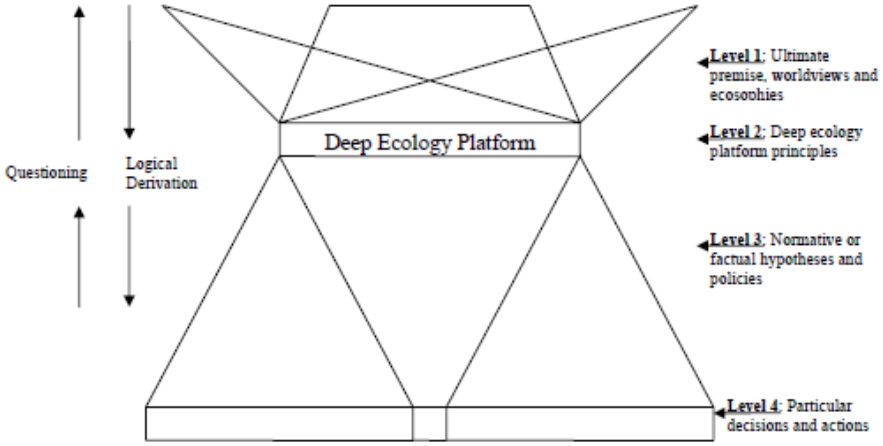

Fig.1: The Apron Diagram, Næss, "The Basics of Deep Ecology" (n. 22), p. 63.

Seen through the optics of the Apron Diagram, the Deep Ecology Platform manifests several levels. Tenets 1–3 belong to the upper level and are meant to assert that life has value in itself, with all its diversity. At this general level, a norm against undue human interference is already derivable.[30] In climate change matters, such norm finds reflection, for instance, in Henry Shue's plea against superfluous emissions, as distinguishable from necessary, subsistence emissions.[31]

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25 Ibid.

26 Ibid, p. 528.

27 N.M. Kettle, *Climate, Neo-Spinozism, and the Ecological Worldview* (ProQuest Dissertations Publishing 2013), p. 74ff.

28 Næss, "The Basics of Deep Ecology" (n. 22), p. 62.

29 Ibid.

30 On both points, see Næss, "The Deep Ecological Movement: Some Philosophical Aspect" (n. 8), p. 242.

31 H. Shue, *Climate Justice: Vulnerability and Protection* (OUP 2014), p. 7.

Tenets 4–7 belong to the middle range, as they make factual claims and projections about the consequences of present policies in industrialized and non-industrialized countries.[32] At this level, claims are similar to those that can be supported through scientific, non-managerial approaches to the natural world, which have proved influential in climate change matters. As an example, one for all, the planetary boundaries' theory, studies the limits of the Earth's system within which global society can develop, short of substantially altering the functioning of the system.[33]

Lastly, tenet 8 lies at the lowest derivational level because it is only one of the possible consequences of the upper principles, imposing an obligation to take part in policy changes.[34] Such claims bring to the fore a normative understanding of *individual* action that is somewhat rare in climate justice instruments,[35] usually tailored to what *governments* shall do. Similarly, the relevant literature abounds with practical derivational rules on what *businesses* can do about climate change.[36]

Overall, through the Apron Diagram, Næss explicates the process of deriving environmental norms, from the more general to the more specific levels. However, this is nothing more than a process of *justification* by which a single individual or a community determines their relation to the natural world.[37]

This cursory overview of Deep Ecology as a movement leaves us with at least one take-away to be carried over to subsequent sections: Deep Ecology is non-anthropocentric, non-homogenous, and entails a movement for policy change.

2.2 What Makes Deep Ecology "Deep"?

Deep Ecology is *deep* because it asks and takes seriously deep questions,[38] rejecting managerial approaches to Nature, so-called *shallow* ecology. While shallow ecology is focused on the short-run and depends on a type of rationality based on the argumentative force of economic growth,[39] Deep Ecology warns against anthropocentrism and prompts critiques of any proposed political or

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[32] On both points, see Næss, "The Deep Ecological Movement: Some Philosophical Aspect" (n. 8), p. 242.

[33] Johan Rockström and others, "Planetary Boundaries: Exploring the Safe Operating Space for Humanity" (2009) 14 Ecology and Society 32, pp. 1–33. See an application consideration footprint and population in H. Dao, P. Peduzzi, and D. Friot, "National environmental limits and footprints based on the Planetary Boundaries framework: The case of Switzerland" (2018) 52 Global environmental change 49, p. 53.

[34] Næss, "The Deep Ecological Movement: Some Philosophical Aspect" (n. 8), p. 242.

[35] See, e.g., Mary Robinson Foundation Climate Justice, *Declaration on Climate Justice* (Sept 2013).

[36] See, e.g., R.H. Henderson and others, *Climate Change in 2018: Implications for Business* (Harvard Business School, 30 Jan 2018).

[37] On both points, see Næss, "The Basics of Deep Ecology" (n. 22), pp. 66–67.

[38] Næss, "Deepness of Questions and the Deep Ecology Movement" (n. 22), p. 210.

[39] On both points, see Næss, "The Deep Ecological Movement: Some Philosophical Aspect" (n. 8), p. 240.

economic policy.[40] In a way, Deep Ecology echoes specialists in international law who criticize how international and national laws have framed environmental, including climate, matters as managerial issues, with "powerful actors engaged in strategic games with their eye on the Pareto optimum."[41] To a certain extent, the hiatus between deep and shallow ecology can be paralleled to thick versus thin sustainability, where "[s]trong sustainability assumes that human capital and natural capital are complementary but not interchangeable nor equal," while thin sustainability asserts the complete substitutability of natural capital and does not visualize ecological boundaries to growth.[42]

To such radical critique, Deep Ecology adds at least two considerations: one is a scientific insight into the *interrelatedness* of the ecosphere, joined with the idea that anthropocentrism has detrimental effects upon other forms of life and the quality of human life itself.[43] Connected to this first claim, the second consideration is embedded in Næss's ecosophy, called Ecosophy T, where T stands for Tvergastein, a mountain cabin in Tvergastein—in southcentral Norway—where Arne Næss developed much of his thinking. The second consideration concerns human Self-realization, where the self is larger than oneself, hence the capitalization.[44] Understanding our co-dependence on Nature, we would not identify with our egos or immediate families, but rather learn to identify with other living beings, trees, animals, and plants—the whole ecosphere (*ecospheric belonging*)—because we do not exist independently of a given environment.[45] Næss modeled Self-realization explicitly on Spinoza's concept of *conatus*, meaning the inclination of everything to strive to persevere in its being.[46]

The exposed two considerations of Deep Ecology help us further explore the role of non-humans. In Næss's understanding of Self-realization, all ecospheric forms of life have the universal right to live and unfold their specific capacities, which cannot be quantified, nor ranked, for at least one reason: no single species

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40 See, e.g., Næss, "Deepness of Questions and the Deep Ecology Movement" (n. 22), pp. 211–212.

41 See, e.g., M. Koskenniemi, "The Fate of Public International Law: Between Technique and Politics" (2007) 70 Modern Law Review 1, p. 14. Placing the international climate regime within the managerial approach, ibid, p. 13.

42 N. Rühs and A. Jones, "The Implementation of Earth Jurisprudence through Substantive Constitutional Rights of Nature" (2016) 8 Sustainability 174, p. 4.

43 On both points, see A. Næss, "The shallow and the deep, long-range ecology movement. A summary" (1973) 16 Inquiry 95, p. 96.

44 Næss, "The Deep Ecological Movement: Some Philosophical Aspect" (n. 8), pp. 243–244. On the derivation of the concept of Self from Gandhi, see also A. Næss, "*Self* Realization: An Ecological Approach to Being in the World" in J. Seed and others (eds), *Thinking Like a Mountain: Towards a Council of All Beings* (New Society Publishers 1988), pp. 24ff.

45 A. Næss, *Ecology, Community and Lifestyle: Outline of an Ecosophy* (CUP 1989, tr. by D. Rothenberg), pp. 163ff.

46 "Unaquæque res, quantum in se est, in suo esse perseverare conatur," which is translated into "[e]ach thing, as far as it can by its own power, strives to persevere in its being", see B. de Spinoza, *A Spinoza Reader: The Ethics and Other Works* (Princeton University Press 1994, ed. and tr. by E.M. Curley), Part III - Proposition 6, p. 159. On the derivation of Næss' Self-realization from Spinoza, see Næss, *Ecology, Community and Lifestyle: Outline of an Ecosophy* (n. 45), p. 166.

has more of a right to live and unfold than any other.[47] The "[e]qual right to unfold potentials," however, is a principle, "not a practical norm about equal conduct towards all life forms."[48] Self-realization thus does not offer a toolkit for all relations with all life forms, but "suggests a guideline limiting killing, and more generally limiting obstruction of the unfolding of potentialities in others."[49]

Næss's conception of equal rights among species, as tailored to each species' characteristics, seems mindful, or at least aware, of a seminal work in literature on animals' rights: Peter Singer's "Animal Liberation," published in 1973. According to Singer, extending "the basic principle of equality" from one group to another (e.g., from men to women; from human beings to animals) does not require sameness of treatment: it requires equal consideration, which can have various implications for different beings.[50] Singer holds that it is the capacity for suffering and enjoyment (the fact of being sentient) that gives a being the right of equal consideration,[51] whereas Næss extends equal consideration to all beings, including non-sentient ones. It is noteworthy that, along with the similar egalitarian language, Næss and Singer both consider the killing of animals as necessarily limited by the purpose of the action: "[w]hat we must do is bring nonhuman animals within our sphere of moral concern and cease to treat their lives as expendable for whatever trivial purposes we may have."[52]

Similarly, Næss's decisive thrust toward policy change brings him closer to other philosophers of animal rights, notably the radical equalizer Tom Reagan. Differently from Reagan, however, Næss did not spell out such policy changes as "the total abolition of the use of animals in science, the total dissolution of commercial animal agriculture, and the total elimination of commercial and sport hunting and trapping."[53] All these issues have concerned deep ecologists, even though no definitive policy answer has ensued.

In conclusion and as clarified above, Deep Ecology and animal rights-based philosophy display differences, but share essential tenets, converging on non-managerial and non-anthropocentric views of the natural world.

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47 Næss, *Ecology, Community and Lifestyle: Outline of an Ecosophy* (n. 45), p. 166.

48 Ibid, p. 167.

49 Ibid. On equality, see also A. Næss, "Equality, Sameness, and Rights" in G. Sessions, *Deep Ecology for the Twenty-First Century* (Shambhala 1995), pp. 222–224.

50 P. Singer, "All Animals Are Equal" in M. Boylan, *Environmental Ethics* (Wiley Blackwell 2014, 2nd edn), p. 278.

51 Elaborating on Jeremy Bentham, ibid, p. 282.

52 Ibid, p. 289. On Næss's view on killing other life forms, see the previous paragraph in this section.

53 T. Reagan, "The Radical Egalitarian Case for Animals" in M. Boylan, *Environmental Ethics* (Wiley Blackwell 2014, 2nd edn), p. 291. On the radical egalitarian case for animal rights, see especially ibid, pp. 297ff.

2.3 Critiques

In the face of neoliberal cost-benefit arguments, Deep Ecology is often considered too gentle.[54] Conversely, for some, the philosophy of animal rights has emerged as overly aggressive and demanding.[55] One limitation to both strands of thought is that they will continue to lie on the margins of dominant morality until these and other theories attain "institutional guarantees that other species will be considered in decision-making processes."[56]

Further critiques that are more specific to Deep Ecology number at least two, as philosopher Richard Sylvan explain them. First, Deep Ecology presents an unnecessary "total-field" esoteric holism. We can continue to talk about the world in current terms, short of modifying our worldview, the critique goes, for moderate holism suffices to reject individualism.[57] Second, the theory lacks some systematic character, for instance in its neglect of the fabricated environment, such as small parks and household gardens.[58]

Replying to the first critique, it reveals the premise of Sylvan's reasoning, namely his personal understanding of ecosystems. For instance, he maintains that "trees in temperate forests often exist independently of other trees in a forest, and isolated trees survive virtual clear-felling of a forest, i.e. they continue a clearly independent existence."[59] Hence, the difference lies in degrees of interrelatedness: high, for deep ecologists; lower, for some of its critics.[60]

As to the second critique, the focus that Deep Ecology holds for wild animals is only one of the most recurrent aspects of existing ecosophies, but is not meant to exclude other considerations, for instance the urban environment. What Deep Ecology excludes is the need to exhaust all possible issues concerning Nature. In fact, deep ecologists tend to view systematic philosophy as a problem because it risks reducing the natural to an abstract concept.[61]

In conclusion, as other philosophies, Deep Ecology upholds the intrinsic value of all forms of life, including the interrelatedness of the ecosphere. It adds the original concept of Self-realization in a broad sense, including the equal right that all forms of life hold to allow their potential to unfold and, hence, the commitment against the unnecessary obstruction of this potential for all forms of life. Existing critiques, which have touched on the asserted lack of

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54 Kopnina and Gjerris (n. 16), p. 116.

55 Ibid.

56 Ibid, p. 115.

57 R. Sylvan, "A Critique of Deep Ecology, Part II" (1985) 41 Radical Philosophy 10, p. 10.

58 Ibid, p. 13.

59 Ibid, p. 10.

60 But see how the allegedly "independent" existence can be compromised by the tree clearing in L. Grønflaten, E. Steinnes and G. Örlander, "Effect of conventional and whole-tree clear-cutting on concentrations of some micronutrients in coniferous forest soil and plants" (2008) 48 Metsanduslikud uurimused 5.

61 Kettle (n. 27), p. 87.

philosophical systematization or the holistic approach to the ecosphere, do not seem to have thwarted the interest in Deep Ecology.[62]

3 Law & Animals: Climate Change

3.1 Earth Jurisprudence, Earth-Centered Law, and Animals Rights

It is fascinating to learn that, from the 9th to the 19th century, some Western European countries tried animals in court proceedings.[63] Further, certain animals won, though others were burned at the stake. When jailed, pigs were kept with human criminals, substantially enjoying the same conditions.[64] This practice, which we now know of with some degree of surprise, happened over two hundred times.[65] The rationalizing current running through law and science at least since the Enlightenment has shelved these stories in ancient books or described them as superstition. But, on a parallel track quite different from animals' trials, the law seems to be shaken once more by the emergence of earthly matters. In particular, ever since the 1970s, academics and practitioners have advocated that non-human beings, such as trees, rivers, and forests, gain legal consideration through the construct of the Rights of Nature.[66]

In climate change matters, animals have been part of this new wave of rights indirectly, and yet importantly. In the landmark decision rendered in 2018, *Demanda Generaciones Futuras*, Colombia's Supreme Court recognized that the Colombian Amazon is a legal subject, and as such is to be protected from deforestation with short- and long-term measures: a view to its own value, its contribution to fighting climate change, and the lives of present and future generations. Importantly, the court ranked animal species' mass extinction among the immediate dangers of climate change[67] and mentioned jaguars and Andean bears among the species to be protected through anti-deforestation measures in the Colombian Amazon.[68] But one of the most consequential, and philosophy-laden, statements by the court rested with an *obiter dictum* on the

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62 See, e.g., Oelschlaeger (n. 13) and Levesque (n. 11).

63 G. Teubner, "Rights of Non-Humans? Electronic Agents and Animals as New Actors in Politics and Law" (2006) 33 Journal of Law and Society 497, p. 498.

64 Ibid.

65 Ibid.

66 R.F. Nash, *The Rights of Nature: A History of Environmental Ethics* (University of Wisconsin Press 1989), p. 127, identifying the willingness to abandon the anthropocentrism of legal theory in the publication of C.D. Stone, "Should Trees Have Standing? - Toward Legal Rights for Natural Objects" (1972) 45 Southern California Law Review 450. The proposal is traced back to C. Morris, "The Rights and Duties of Beasts and Trees: A Law Teacher's Essay for Landscape Architects" (1964) 17 Journal of Legal Education 185. See Nash (n. 66), p. 127.

67 *Demanda Generaciones Futuras v Minambiente* (Supreme Court of Colombia, 5 April 2018) no. 11001-22-03-000-2018-00319-00, p. 15.

68 Ibid, p. 35.

recognition of animals as "the other," or "the neighbor" to be protected through fundamental rights, along with individuals and non-sentient species.[69]

This evolution, which partakes in so-called Earth jurisprudence,[70] should not be taken for granted. In 1980, the Hawaii Court of Appeals expressly ruled out dolphins as "another" for whom harm was necessary to avoid another imminent harm (the so-called choice of evils). Accordingly, the court of appeals established that freeing laboratory dolphins constituted theft in the first degree even when the dolphins had been mistreated.[71] The underlying assumption thus seems to be that animals constitute property.

Another critique against the recognition of non-humans has centered on governmental prerogatives: decisions on whether and how to protect Nature, the critique goes, are of a governmental, rather than judicial, matter.[72] Responding to this critique in its famous dissent opinion in *Sierra Club v Morton*, US Supreme Court Justice Douglas reiterated that "the problem is to make certain that the inanimate objects […] have spokesmen before they are destroyed."[73] If such spokesmen are found to be only in environmental agencies that shall follow the "public interest," this policy choice is perilous: neither is the meaning of public interest immediately clear, nor are environmental agencies always able to steer away from powerful interests and regulatory capture.[74]

An alternative to Earth jurisprudence is the recognition of wider standing for specific groups to tender the case of the "inanimate" object, as Justice Douglas advocated.[75] Accordingly, "all of the forms of life [..] will stand before the court — the pileated woodpecker as well as the coyote and bear, the lemmings as well as the trout in the streams."[76] This will happen through the people "who have so frequented the place as to know its values and wonders": such people "will be able to speak for the entire ecological community."[77] Albeit different from the recognition of legal personality, wide standing will nonetheless allow for the recognition of natural entities' constitutional rights. Such an interpretation seems to align with the recent debunking of the bifurcation according to which an entity

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69 Ibid, p. 18.

70 The concept explicitly emerged in 2001 from Thomas Berry's reflection on the rights of the Earth, see M. Bell, "Thomas Berry and an Earth Jurisprudence: An Exploratory Essay" (2003) The Trumpeter 69, p. 71.

71 *State v LeVasseur* 613 P.2d 1328, 1333 (Intermediate Court of Appeals of Hawai'i 1980): "[p]erson is defined as a natural person and when relevant corporation or an unincorporated association. [..] Thus, the statute makes clear that a dolphin is not "another" [..]. See also ibid, p. 1335.

72 *Sierra Club v Morton*, 92 S.Ct. 1369, 1375 (1972) (J. Douglas dissenting), Appendix to the Opinion of Justice Douglas, Extract from Oral Argument of the Solicitor General, p. 1375.

73 *Sierra Club v Morton*, 92 S.Ct. 1369, 1375 (1972) (Douglas, J., dissenting).

74 Ibid, pp. 1371.

75 Ibid, p. 1374.

76 Ibid, pp. 1374–1375.

77 Ibid, p. 1375.

is either a person or a thing, although the bifurcation still informs Western legal thinking.[78]

The solution lies not necessarily in courts but should first be laid down in legislation, hence before cases and controversies arise. In recent years, legislation worldwide has witnessed an uptick of Earth-centered law to grant rights to Nature.[79] The movement is fast paced as the first country to recognize Nature rights was Ecuador in 2008,[80] setting off a movement for a new form of sustainable development based on living in harmony with Nature, or *Pacha Mama* (Mother Earth in the Andean worldview), paralleled by the Andean indigenous concept of *sumak kawsay*, which usually translates into Spanish as *buen vivir*.[81]

Related to Earth-centered law, Wild law is the new "approach to human governance" that is often championed in the emergence of these new sensibilities toward Nature.[82] Difficult to define, Wild law is not a branch of law or a collection of laws,[83] but can generally be said to be constituted of "laws that regulate humans in a manner that creates the freedom for all the members of the Earth Community to play a role in the continuing co-evolution of the planet."[84]

Both Earth jurisprudence and Earth-centered law seem to partly conform to Deep Ecology, especially in the underpinning that all forms of life have equal worth.[85] But deep ecologists do not seem to overwhelmingly advocate for a new construct of Nature's rights or Wild law, at least not by presenting them as the *sole* or *main* way toward a better relationship with and governance toward Nature.

Similarly, experts have underscored that constitutionalizing rights is no panacea for resolving matters concerning Nature. Animals' rights can already be encompassed in and protected through environmental and cultural rights, as the case of primate Cecilia showed in 2016. In *Chimpanzee Cecilia*, a judge in Mendoza, Argentina, ruled that the captivity and abuse conditions of the Mendoza zoo where Cecilia was being held encroached upon Cecilia's fundamental rights as a "non-human person." As a non-human person, Cecilia belonged to the environmental and cultural heritage of the community, which is

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78 On natural entities' constitutional rights according to Justice Douglas, see W.O. Douglas and J.W. Meeker, "Nature's Constitutional Rights" (1973) 258 The North American Review 11. On the debunking of the bifurcation person–property, see V.A.J. Kurki, "Animals, Slaves, and Corporations: Analyzing Legal Thinghood" (2017) 18 German Law Journal 1069, especially pp. 1089–1090.

79 D. Boyd (Special Rapporteur) (n. 18), p. 2.

80 C.M. Kauffman and P.L. Martin, "Can Rights of Nature Make Development More Sustainable? Why Some Ecuadorian lawsuits Succeed and Others Fail" (2017) 92 World Development 130, p. 130. See ibid, p. 132, on the first local ordinance on the rights of Nature in Pennsylvania.

81 Ibid, p. 130.

82 C. Cullinan, *Wild Law: A Manifesto for Earth Justice* (Green Books 2011, 2nd edn), pp. 30–31.

83 Ibid.

84 Ibid, p. 31.

85 Referring to Deep Ecology in their analysis of Earth jurisprudence, see also Rühs and Jones (n. 42), p. 4.

protected in Argentina's constitution. Even when rights are not constitutionalized, and animals' legal protection is limited to animal welfare laws, the judge noted that animals are protected against mistreatment and abuse as sentient beings, not as things. If animals are not protected as things, animals' rights can be protected either *per se* or as a sub-category within Nature or persons.[86]

Conclusively, the above does not reveal that Deep Ecology advocates for statutes and case law to necessarily enshrine the rights of Nature or Earth-centered law.[87] It can thus be inferred that, even within existing legal frameworks, Deep Ecology deems it possible to change the current paradigm toward non-anthropocentric interests (*infra* 4).

3.2 Critiques

Because critiques to Earth jurisprudence and Earth-centered laws can be wide and varied, I will select those springing from expert research on how the rights of Nature come about and are implemented. In order to prioritize the most valid critiques and because of spatial limitations, critiques that have been easily countered are not reviewed.[88] Some critiques are directed to the lack of maturity of the movement, while others seem more conceptual.

Starting with the cluster of critiques concerning the maturity of the movement, a first shortcoming emerges when secondary legislation fails to be passed or to support a constitutional recognition of the rights of Nature.[89] In this case, proponents of the new paradigm may want to establish a case precedent instead, which risks politicizing the new norms.[90] A second shortcoming lies in some knowledge gaps by lawyers and judges on how to interpret and implement

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86 On the limits of constitutionalizing the rights of Nature, see L.J. Kotzé, "Arguing Global Environmental Constitutionalism" (2012) 1 Transnational Environmental Law 199, pp. 200 and 222–223. In the *habeas corpus* decision on primate Cecilia, the judge recognized primates as non-human persons, endowed with fundamental rights, see Tercer Juzgado de Garantías Mendoza, *Chimpanzee Cecilia* (case no P-72.254/15, 3 Nov 2016) (Argentina), p. 36–37, underscoring that not all animals would attain the same recognition as primates. On the constitutional protection of primates through environmental and cultural provisions in Argentina's Constitution, see ibid, pp. 11–19. See the other few jurisdictions that recognized animal rights, different from rights expressly based on animal welfare laws, in A. Peters, "Toward International Animal Rights" in A. Peters (ed.) *Studies in Global Animal Law* (Springer 2020), pp. 109–111. On animals as a third category, besides things and persons, see T. Pietrzykowski, "The Idea of Non-personal Subjects of Law" in V.A.J. Kurki and T. Pietrzykowski, *Legal Personhood: Animals, Artificial Intelligence and The Unborn* (Springer 2017) and Kurki (n. 78), p. 1089–1090.

87 See, e.g., A. Næss, "Den dypøkologiske bevegelse: aktivisme ut fra helhetssyn" in S. Gjerdåker and others, *Den uoverstigelige grense: tanke om handling i miljøkampen* (Chr. Michelsens Institutt – J.W. Cappelens Forlag 1991), pp. 35–36.

88 E.g., the critique by which Nature is not a moral agent, thus is unable to hold rights is easily countered by the recognition of rights toward entities that are not/not yet, moral agents: for instance, corporations and future generations, Rühs and Jones (n. 42), p. 6.

89 Kauffman and Martin (n. 80), p. 134.

90 Ibid.

the rights of Nature.[91] Foreseeably, the UN initiative "Harmony with Nature" and increasing literature are bridging the gap.[92] Third, it has been noted that the lack of strong international norms regarding the rights of Nature undercuts the role that civil society can play to pressure for more domestic protection, including through secondary legislation, of the rights of Nature.[93]

Concerning conceptual critiques, barriers to adopting the rights of Nature in either case law or legislation exists in the uncertain operationalization of the construct (e.g., does Nature as a whole have rights, or only some part?) and balancing difficulties whenever the rights of Nature challenge legally entrenched anthropocentric rights.[94] Another problem rests with property law, which governs human–human relationships, where Nature is usually commodified.[95] In the future, property law will thus need to be reconceptualized. A final, philosophical, problem seems to transpire from the need to anthropomorphize Nature by endowing it with rights, a modern concept usually invoked along with the idea of a contract that humankind shall sign with Nature. The critique maintains that the risk of infusing Nature with human artifacts is to make such new constructs merely decorative when business continues as usual, while a better approach would be to recognize human beings' *duties* toward Nature, whereby the protection of animals or Nature is *due* in light of their value, rather than a contract.[96]

A critique concerning both the maturity of the movement and its conceptual foundations, even in the countries that have championed the rights of Nature, notably Ecuador and Bolivia, environmental conservation and the rights of Nature have failed to become a main political priority, sparking a more complex understanding of the construct and some distrust in the state's role in upholding these rights.[97] In sum, as previously noted, the above critiques to Earth jurisprudence and Earth-centered law are not decisive for Deep Ecology, as the latter was originally set to transition toward a non-anthropocentric paradigm prior to the introduction of the rights of Nature or Earth-centered law. Such a paradigm would promote the establishment and enforcement of *duties* toward, rather than *rights* of, Nature. Moreover, it would promote the limits of unnecessary killing or animal abuse, as currently advocated by animal rights lawyers.[98]

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91 Ibid.

92 http://www.harmonywithnatureun.org/. Last accessed 5 Sept 2020. On literature, see, e.g., D.R. Boyd, *The Rights of Nature: A Legal Revolution That Could Save the World* (ECW Press 2017).

93 Kauffman and Martin (n. 80), p. 139.

94 D. Humphreys, "Rights of Pachamama: The emergence of an earth jurisprudence in the Americas" (2016) 20 Journal of international relations and development 459, p. 473.

95 Ibid, p. 474.

96 On these arguments, see L. Ferry, *Le Nouvel Ordre écologique : L'arbre, l'animal et l'homme* (Éditions Grasset 1992), pp. 245ff.

97 Humphreys (n. 94), p. 476.

98 On duties toward Nature, see A. Næss, "En fisks iboende verdi" in A. Føllesdal (ed), *Dyreetikk* (Fagbokforlaget 2001), p. 13. See similarly Ferry (n. 96), pp. 237ff, in particular pp. 256–257, albeit he starts from Deep Ecology to then provide his own account of duties

4 Law & the Future: Policy Directions

4.1 Setting the Scene

In light of the previous discussion, even within current legal frameworks, Deep Ecology deems it possible to change the current paradigm toward non-anthropocentric interests. Such possibility lies in enabling frameworks, notably through policy choices, for the establishment and enforcement of humankind's duties toward Nature. The following offers a snapshot of some of the duty implications inferable from Deep Ecology, as so far understood, in one area of intense public and policy debate, at least in Scandinavia and the rest of Europe: the return of the gray wolf (*Canis lupus*), to which several states, including Norway, have responded with lethal wolf management, namely licenses to kill wolves in order to prevent economic damages (so-called culling).

Discussing wolf "management" policies stems from the focus that emerged previously in the paper concerning wild animals and the need to better integrate their existence into the human organization of life on this planet. Further, the issue connects with climate change. Increased policy discussions on wolf "management" stem from the current recovery of the wolf population, which had been decimated in Europe. The recovery of the wolf population in Europe is due to a mix of social, cultural, economic, and ecological circumstances, as well as wildlife conservation legislation at national and international levels.[99] Among the ecological circumstances, one should mention climate change. Variability in the climate is a driving component of predator-prey systems:[100] for instance, the rewilding of herbivore communities (e.g., moose) in Norway's mild lowland regions may have attracted wolves, an obligate carnivore species.[101] Policies on land use and culling, however, influence predators and can obscure the link between climate impacts and wolves' behavior.[102]

As noted, the perspective from which the public debate issue stems is a Norwegian one, along with some relevant considerations from an international and European horizon. According to the latest Norwegian datasets (2015), wolves belong to the red list of species that are critically threatened in Norway.[103]

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toward Nature. On limits to unnecessary animal sacrifice for "trite human interests," see Peters (n. 86), p. 112.

99 A. Trouwborst and F.M. Fleurke, "Killing Wolves Legally: Exploring the Scope for Lethal Wolf Management under European Nature Conservation Law" (2019) 22 Journal of International Wildlife Law & Policy 231, p. 231.

100 Christopher C. Wilmers and others, "How climate impacts the composition of wolf-killed elk in northern Yellowstone National Park" (2020) 89 Journal of Animal Ecology 1511, p. 1511.

101 On the rewilding of herbivore communities in Norway, see J.D.M. Speed and others, "Long-term changes in northern large-herbivore communities reveal differential rewilding rates in space and time" (2019) 14 PLoS One. On wolves' movement patterns as modified by moose density, see A. Ordiz and others, "Wolf habitat selection when sympatric or allopatric with brown bears in Scandinavia" (2020) 10 Scientific reports 1, p. 8.

102 I. Kelman and M. Warg Næss, "Climate Change and Migration for Scandinavian Saami: A Review of Possible Impacts" (2019) 7 Climate 47, p. 5.

103 https://miljostatus.miljodirektoratet.no/tema/arter/truede-arter/. Last accessed 10 Sept 2020.

Under the 1979 Bern Convention on the Conservation of European Wildlife and Natural Habitats, the wolf is a "strictly protected fauna species" (Appendix II). Under the EU Habitats Directive, the wolf is protected in three ways: because it is part of the animal species of community interest, whose conservation requires the designation of special areas of conservation (Annex II of the Directive); as a species in need of strict protection (Annex IV of the Directive); and because its actions in the wild and exploitation are subject to management measures (Annex V of the Directive).

Norway's current main conservation legislative tools, the Wildlife Act and Nature Diversity Act, were passed in 1981 and 2009, respectively.[104] In 1986, Norway also ratified without reservations the Bern Convention. Under the EEA Agreement, Norway has chosen not to participate in the EU Nature protection directives and is not bound to implement the EU Habitats Directive. Norway declared that it would implement the EU Habitats Directive only if the latter constituted part of the EEA Agreement.[105] The EU Habitats Directive is nonetheless relevant because wolves' traverse the Swedish-Norwegian border and the directive is implemented in Sweden.

4.2 Who is Afraid of the Wolves?

4.2.1 Preliminary Remarks

For thousands of years the wolf has participated in what Arne Næss and the biologist Mysterud call "mixed communities" of humans and animals in Nordic countries.[106] Intensive persecutions of wolves in the 19th and 20th centuries on the Scandinavia peninsula (Norway and Sweden), however, almost exterminated these predators.[107] Upon wildlife biologists' outcry, in 1971, Norwegian law granted wolves legal protection.[108] Recovery of wolves in the peninsula started in the 1980s following the migration of two Finnish-Russian wolves.[109] In the period 1998–2011, illegal killing was the dominant mortality cause for wolves

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[104] See H.C. Bugge, *Environmental law in Norway* (Wolters Kluwer 2018, third edn), p. 188.

[105] Agreement on the European Economic Area [1994] O.J. L1/3.

[106] A. Naess and I. Mysterud, "Philosophy of Wolf Policies I: General Principles and Preliminary Exploration of Selected Norms" (1987) 1 Conservation Biology 22, p. 24. On mixed communities, see the definition ibid, p. 23: "humans and *limited groups* of animals that play a more or less well-known role in human affairs are included as members" [italics in the original].

[107] H. Sand and others, "Cross-Continental Differences in Patterns of Predation: Will Naive Moose in Scandinavia Ever Learn?" (2006) 273 Proceedings: Biological Sciences 1421, p. 1421.

[108] A. Trouwborst, F.M. Fleurke and J.D.C. Linnell, "Norway's Wolf Policy and the Bern Convention on European Wildlife: Avoiding the 'Manifestly Absurd'" (2017) 20 Journal of International Wildlife Law & Policy 155, p. 155. H.B. Stokland, *How Many Wolves Does It Take to Protect the Population? Minimum Viable Population Size as a Technology of Government in Endangered Species Management (Norway, 1970s–2000s)*, 22 Env't &Hist. 191, pp. 196 and 201.

[109] https://rovdata.no/Ulv/Bestandsstatus.aspx. Last accessed 12 Sept 2020. H. Sand and others (n. 107), p. 1421.

in Scandinavia, accounting for half of their total mortality. The rate was higher in Norway than in Sweden.[110]

In Norway, controversies have long surrounded the recovery of wolves due to wolves' attacks on livestock and dogs, human fear of wolves, and competition for moose.[111] Wolf packs are concentrated in southcentral Scandinavia, where they live in the forest and avoid human-related features of the landscape, meaning that wolves select areas distant from main roads and buildings.[112] In 2019, the number of sheep slaughtered by wolves remained at record lows.[113]

Full wolf legal protection began loosening up as early as 1983, when a single wolf was considered responsible for killing a number of sheep, setting off a nation-wide debate.[114] Beyond the license to kill that single wolf, the parliament forged for the first time the concept of a viable population of wolves and other predators in Norway in order to keep damages on the livestock at a socially acceptable rate.[115] It is worth mentioning, however, that the Norwegian government has approved an increasing number of farms within or proximate to wolf zones, making the Norwegian region affected by wolves number one for both total number of farms[116] and total number of sheep lost in attacks attributed to wolves.[117]

4.2.2 The Controversy

Under the Bern Convention, Norway shall prohibit all killings of wolves unless three grounds for exception are met (Article 9): i) that culling serves one of the purposes encased in Article 9, which includes preventing serious damage to livestock and public safety, and other overriding public interests; ii) that no other satisfactory solution can achieve the purpose; and iii) that the killing "will not be detrimental to the survival of the population concerned."

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110 O. Liberg and others, *Illegal killing of wolves in Scandinavia 1998 – 2011: variation in space and time* (2011), pp. 21–22.

111 P. Wabakken and others, *Ulv som skadegjører på bufe, tamrein og hund i Norge: skadehistorikk og skadepotensiale i forhold til ulvens spredningsmønster* (Høgskolen i Innlandet, Rovdata - NINA, Grimsö forskningsstasjon - Sveriges lantbruksuniversitet (SLU), Oppdragsrapport n. 2 – 2017), pp. 10 and 15.

112 Ordiz and others (n. 101), p. 5.

113 H.A. Solbakken and S. Havig Berge, *På 20 år har aldri færre sau blitt drept på beite* (NRK, 16 Aug 2019).

114 Stokland (n. 108), p. 202.

115 Ibid, pp. 202–203.

116 Landbruks- og matdepartementet, *400 gårder er godkjent i Inn på tunet-ordningen* (27 Mar 2018). The reader can confront the map locating farms (https://www.andelslandbruk.no/kart/frilund-gard. Last accessed 12 Sept 2020) with the map locating wolves (https://rovdata.no/Nyheter/Nyhetsartikkel/ArticleId/4720/99-102-ulver-i-Norge.aspx. Last accessed 12 Sept 2020, status per 20 March 2019).

117 The reader can confront the map locating farms (https://www.andelslandbruk.no/kart/frilund-gard. Last accessed 12 Sept 2020) with the map locating sheep killing in Wabakken and others (n. 111), p. 28.

From 2004 to 2016, Norway's wolf policy has targeted three reproducing wolf packs within Norway's wolf zones in southeastern Norway per year.[118] Within the zones, local authorities could allow wolf killing to manage conflicts. Outside the zones, local authorities could decide whether or not to kill wolves.[119] Such a limitation regarding the three reproducing wolf packs worked as both a *minimum* and a *maximum* and was not determined by biologists, but rather by politicians: science-based targets were not discussed.[120]

In June 2016, the policy was adjusted to a *minimum* of "four to six" reproducing wolf packs per year within *and* outside Norway's wolf zones. The new policy includes three packs to stay within the Norwegian territory and to count as one pack, while each pack on the border counts as half (0.5) instead of one.[121] Importantly, such rules are meant to ensure the "sustainable management" of wolves and are enshrined in a major regulation, which was originally laid down in 2005, before the Nature Diversity Act was adopted. Because of this, concerns have been raised due to the fact that the regulation may not be updated according to the 2009 Nature Diversity Act requirements.[122]

In one notable respect, however, the regulation is more protective than the Nature Diversity Act. In fact, Regulation § 8 allows for deliberate killing, subject to two conditions: i) the stocks must have exceeded the species' quantitative targets and ii) the purpose of deliberate killing shall lie in preventing damage to livestock and domesticated reindeer. Conversely, the Nature Diversity Act allows for deliberate killing on additional grounds:

> (a) to protect naturally occurring plants, animals and ecosystems,
> (b) to prevent damage to crops, livestock, domesticated reindeer, forest, fish, water or or [sic] other property,
> (c) to safeguard general health and safety interests or other public interests of substantial importance,
> (d) for capture for the purpose of restoring stocks,
> (e) for capture for the purpose of lawful breeding and farming,
> (f) for research, teaching or taxonomic purposes, or [for animals]
> (g) which are alien organisms.[123]

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[118] Innst. S. nr. 174 (2003-2004), p. 18. Y. Epstein, "Population-Based Species Management across Legal Boundaries: The Bern Convention, Habitats Directive, and the Gray Wolf in Scandinavia" (2013) 25 Geo. Intl Envtl L Rev 549, p. 586: "the lack of a Finnish-Swedish or Finnish-Norwegian border populations also results from political decisions to kill wolves in the northern regions of all three countries."

[119] On both points, see ibid, p. 584.

[120] Stokland pp. 216ff. Governmental technology constructed to determine a minimum number of wolves was in practice turned into a way to determine a maximum amount of wolves as well. Ibid.

[121] Innst. 330 S (2015–2016) and Innst. 257 L (2016-2017). Regulation of 18 Feb 2005 No. 242 on the management of predators with amendments, § 3. On the different regulatory models that the government considered, see Meld. St. 21, Ulv i norsk natur, p. 103.

[122] Bugge (n. 104), p. 217.

[123] Act of 19 Jun 2009 No. 100 Relating to the Management of Biological, Geological and Landscape Diversity (Nature Diversity Act, NDA), see the English translation provided by the Norwegian government at https://www.regjeringen.no/en/dokumenter/nature-diversity-act/id570549/. Last accessed 15 Sept 2020.

Moreover, "removal" decisions on these grounds can be made only if this does not jeopardize the survival of the stock and the purpose cannot be achieved in any other satisfactory manner.[124] It can thus be concluded that the regulation and the Nature Diversity Act are not consistent[125] and no clarifications have emerged on how to coherently interpret the two provisions.

In June 2017, two regional predator committees issued separate decisions to kill 24 wolves outside Norway's wolf zones but inside territories where wolves have been roaming and establishing homelands (established wolf territories: Osdalen, Julussa, and Slettås), including the Swedish-Norwegian flock, and 12 wolves outside Norway's wolf zones and outside established wolf territories.[126] In September 2017, the Ministry of Climate and the Environment maintained only the quota of 12 wolves outside Norway's wolf zones and outside established wolf territories. The decision was based on the Nature Diversity Act (§18(1)(b)), by which wildlife can be removed "to prevent damage to crops, livestock, domesticated reindeer, forest, fish, water or other property."[127] According to the ministry, culling could not have been justified based on local communities' fear or discomfort, but the parliament stated that the latter could be used as a basis for wolves' culling under the Nature Diversity Act (§18(1)(c)), by which wildlife can be removed "to safeguard general health and safety interests or other public interests of substantial importance."[128] In Norwegian law, this parliamentary statement constitutes a valid legal source.[129]

In early November 2017, the World Wildlife Fund (WWF) filed a lawsuit against the Ministry of Climate and Environment for a preliminary injunction against its decision to have 12 wolves culled. The District Court of Oslo found that the decision revealed both substantive errors (in the application of the law) and procedural errors and granted the injunction.[130] Notwithstanding, on 1 December 2017, the Ministry of Climate and Environment issued a new decision including the same culling quota of 12 wolves outside Norway's wolf zones and outside established wolf territories, based on the Nature Diversity Act (§18(1)(b)).[131] Compared to the previous decision, the ministry changed the culling timeline and maintained that no other measure could have been taken because of the administrative principle of geographically differentiated

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[124] NDA §18(2).

[125] Bugge (n. 104), p. 217.

[126] Rovviltnemndenes vedtak for region 4 og 5 (Oslo, Akershus og Østfold, og Hedmark) av 26. juni 2017. Predator committees are appointed by the Ministry of Climate and the Environment, Bugge (n. 104), p. 217.

[127] Det kongelige miljø- og klimadepartement, *Avgjørelse av klage over vedtak om lisensfelling av ulv utenfor etablerte ulverevir i 2017-2018* (25 Sept 2017), p. 4.

[128] NDA §18(1)(c). Prop. 63 L (2016-2017), Innst. 257 L (2016-2017), *Endringer i naturmangfoldloven (felling av ulv m.m.)*, https://www.stortinget.no/no/Saker-og-publikasjoner/Vedtak/Vedtak/Sak/?p=68175. Last accessed 15 Sept 2020. On the Ministry's interpretation, see Bugge (n. 104), pp. 217–218.

[129] Bugge (n. 104), p. 218.

[130] 17-172521TVI-OTIR/07.

[131] Det kongelige miljø- og klimadepartement, *Avgjørelse av klage over vedtak om kvote for lisensfelling av ulv utenfor ulvesonen og utenfor revir i 2017-2018* (1 Dec 2017), p. 14.

management, by which outside of wolf zones any grazing activities should not be "adapted" to the presence of wolves, not even through such a measure as fencing.[132] Moreover, wolves outside of established wolf zones have a higher potential of vagabonding and wandering outside of foreseeable patterns.[133]

On the same day, the Ministry of Climate and the Environment approved the culling of 16 additional wolves outside the Norwegian wolf zones, but inside established wolf territories (Osdalen and Julussa).[134] The decision's legal basis was established on the Nature Diversity Act (§18(1)(c)) and the parliamentary statement thereon,[135] which was the first time the ministry deployed such a legal basis.[136] The ministry maintained that no other measure could have been taken as farmers dependent on livestock may find it difficult to continue their activities because of threats to their livestock, and hunters may find it less attractive to pursue game in these territories because of threats to their hunting dogs.[137]

Considering whether fences may reduce perceived threats toward livestock, the ministry maintained that fences are provided by the environmental administration: because they are costly, they will be dedicated to wolf zones, whereas in non-wolf zones, wolves can be instead culled.[138] Importantly, the ministry's decision stated that areas that are not wolf zones are automatically prioritized for grazing purposes.[139]

In December 2017, the WWF challenged the two decisions before the Oslo District Court, asking for a temporary injunction. In January 2018, the Oslo District Court declared it would not concede the temporary injunction and the WWF appealed. In mid-January 2018, the government, to which several other organizations were joined as interveners, declared that the 16 wolves in Osdalen and Julussa concerned by the lawsuit had been culled.[140] Accordingly, the WWF lacked legal interest on this aspect of the proceedings.

In an extraordinary three-page decision on 7 February 2018, the Ministry of Climate and the Environment approved the culling of three additional wolves, which were puppies born in the 2017 spring in Osdalen and Julussa, the same areas where 16 wolves had already been "removed" by the start of 2018.[141] The decision's legal basis was established on the Nature Diversity Act (§18(1)(c)) with reference to the previous decision on the same areas.[142]

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[132] Ibid, p. 21.

[133] Ibid. The decision does not refer to any study on this point.

[134] Det kongelige miljø- og klimadepartement, *Avgjørelse av klage på vedtak om kvote og område for lisensfelling av ulv i revir i region 4 og 5 i 2018* (1 Dec 2017).

[135] Ibid, pp. 1 and 41.

[136] See similarly, 18-128035ASD-BORG/01, p. 3.

[137] Det kongelige miljø- og klimadepartement, *Avgjørelse av klage på vedtak om kvote og område for lisensfelling av ulv i revir i region 4 og 5 i 2018* (1 Dec 2017), p. 39.

[138] Ibid, p. 39.

[139] Ibid, p. 40.

[140] 18-128035ASD-BORG/01, p. 4.

[141] Det kongelige miljø- og klimadepartement, *Beslutning om ekstraordinært uttak av ulv i ulverevirene Osdalen og Julussa* (7 Feb 2018).

[142] Ibid, p. 1.

In February 2018, the WWF filed for a preliminary injunction that included a further challenge against the extraordinary decision, but the Oslo Court of Appeals did not concede the injunction and the Oslo District Court determined that the WWF had to bear the costs incurred by all defendants.

On appeals before the Oslo Court of Appeals, the WWF reiterated its claims that the three decisions were unlawful for substantive reasons: breach of the Constitution, Section 112; and breach of the Nature Diversity Law, Section 18, to be interpreted consistently with the Bern Convention. In January 2020, the Oslo Court of Appeals' majority (two out of three judges) concluded that the ministry's decisions of 1 December 2019 and 7 February 2018 permitting culling in Julussa and Osdalen were unlawful due to the improper application of the Nature Diversity Act (§18(1)(c)),[143] whereas the decision on culling outside Norway's wolf zones and outside established wolf territories was declared lawful. Because of cost-shifting, the ministry and interveners were ordered to reimburse half of the WWF's trial costs.[144]

All parties and interveners to the proceedings appealed the judgment. In May 2020, Norway's Supreme Court agreed to adjudicate the case[145] and a decision is awaited.

4.2.3 Deep Ecology-Based Policy Directions

This section is meant to comment on the mentioned controversy of wolf culling in Norway (above 4.2.2) through the optics of Deep Ecology. Previously, it was shown that, albeit ecocentric, Deep Ecology engages with the current anthropocentric paradigm and promotes policy change through enabling frameworks for the establishment and enforcement of humankind's duties toward Nature (above 3).

In the absence of explicit legal rights, different from animal welfare laws or the consideration of conservation interests, for wolves and Nature, how is it possible to ensure institutional guarantees that other species will be considered in decision-making processes?[146] The following is only a synopsis of how the Deep Ecology Platform, and related concepts, can provide Norwegian policymakers and judges with Deep Ecology-based policy directions. Such directions are not bound to be accepted at present, but it seems that current policies are increasing, rather than decreasing, the level of animosity and polarization on wolf management in Norway.[147] Importantly, the following application of Deep Ecology is an original enterprise, which I undertake for the purposes of this paper. Albeit inspired by the instruments of Deep Ecology, and Næss's work on the "mixed communities" of humans and animals in the Nordic

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[143] According to one of the judges, the culling decision in Osdalen was unlawful also because it threatened the population's survival, 18-128035ASD-BORG/01, pp. 41–44.

[144] 18-128035ASD-BORG/01, p. 79.

[145] https://www.domstol.no/Enkelt-domstol/hoyesterett/saksliste/henviste/hr-2020-1035-u/. Last accessed 15 Sept 2020. Case number is 20-055609SIV-HRET.

[146] On these expressions, see *supra* 2.3.

[147] See also Bugge (n. 104), p. 217.

countries,[148] I do not pretend to represent the views of Deep Ecology on this issue. Still, it is worth reflecting on the movement's applicative potential, be it to find tentative solutions or spark new discussions.

Starting with the Apron Diagram, at an upper level, it is fair to state that the species wolf has a place on Earth and intrinsic value. All species shall be allowed to unfold their potentials under the maxim "live and let live," which is connected to the ecology-based understanding that humans depend on Nature. In this context, the diversity of wolf races and habitats has value in itself and humans have no right to reduce this diversity, except to satisfy vital needs.[149] Vital needs depend on a vast array of factors, such as territory and culture, but shall nonetheless be defined as real, rather than supposed or hypothesized, and not superfluous.[150]

At the intermediary level, policymakers and judges shall support scientific, non-managerial approaches to the natural world. Conversely, managerial approaches have proved to substantially alter the functioning of ecosystems and create loopholes, which are often caused by the very policies set to resolve them.[151] Further, Deep Ecology emphasizes scientific insights into the interrelatedness of the ecosphere.[152]

At the lowest derivational level, the maxim "live and let live" and the intuition of Self-realization (upper level) suggest a guideline limiting killing, and more generally limiting the obstruction of the unfolding of potentialities in others, unless for vital needs. Moreover, vital needs, whenever they may in principle justify killing, ought to be balanced with the loss inherent in killing. Such an approach entails a science-based understanding of alternatives (intermediary level), including no-action scenarios by which wolves are allowed to live under the upper level norms.

In this light, both the Norwegian wolf management policy and its partial critique in the 2020 Oslo Court of Appeals' decision can be evaluated.

At the upper level, unnecessary killing should be prohibited and killing shall be permitted only to satisfy vital needs. Such a conceptualization is not to be taken for granted. In Norwegian law, wild animals are *res nullius*, meaning that they belong to none unless they are captured or killed.[153] Such a deficient foundational norm may be partly determinative of the criticisms that have emerged vis-à-vis Norwegian wolf management policy. In particular, concerning the challenged culling decisions (above 4.2.2), the Norwegian Ministry of Climate and Environment and Oslo Court of Appeals did not appraise the survival possibilities of the *Norwegian* wolf population. When a species is critically threatened, its long-term survival shall be planned and secured. Under the Bern Convention, each State Party is responsible for species' favorable conservation status *within its borders* (Article 9), although management

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148 *Supra* 4.2.1.

149 See similarly Næss and Mysterud (n. 106), pp. 31–32.

150 See also ibid, p. 31. On the upper level of norms, see *supra* 2.1.

151 On the middle level of norms, see *supra* 2.1.

152 Ibid.

153 Bugge (n. 104), p. 213.

cooperation is encouraged at a transboundary level.[154] It thus seems fair to state that Norway's Ministry of Climate and the Environment, as well as the Oslo Court of Appeals, erred in considering the survival of the southern Scandinavian, rather than sole Norwegian, population, and by so doing breached the Bern Convention.[155] At the level of foundational norms, therefore, the better view is for conceptualizing species in terms of favorable conservation status, instead of viable or survival population, as the Norwegian policy establishes.[156]

Moreover, in determining the legal grounds for culling, neither the ministry nor the Oslo Court of Appeals fully considered whether vital needs were at stake, as Deep Ecology would have required. In the broadest normative terms, such needs are detailed by the Bern Convention (Article 9), whereby exceptions from conservation obligations are permitted for specified reasons, including preventing serious damage to crops, livestock, forests, fisheries, water, and other forms of property, and protecting public health and safety, air safety, or other overriding public interests. Beyond these specified reasons, exceptions can be carried out only if there is no other satisfactory solution and the exception will not be detrimental to the survival of the population concerned (Article 9(1) of the Bern Convention).

In this regard, at least two problematic aspects have emerged within the Norwegian wolf management policy. First, pursuant to the Oslo Court of Appeals, damage potential is sufficient: therefore, *serious* damage, as enshrined in the Bern Convention, is not required.[157] As a further confirmation, the court contented itself with the ministry's assertion that wolf-caused damages are registered on a yearly basis.[158] Second, the Oslo Court of Appeals ruled out the need for proportionality between the level of culling and the status of the population, albeit the Bern Convention clearly spells out that exceptions to species' legal protection ought to be necessary.[159]

Second, the Oslo Court of Appeals dedicated only two pages to scrutinize whether the ministry had appropriately considered that there lay no satisfactory solution other than culling. Regrettably, the court failed to consider that the ministry had avoided any concrete consideration of necessity, effectiveness, and cost-benefit of the alternatives to culling.[160]

One aspect of the decision is, however, important and positive from an ecocentric perspective. The Oslo Court of Appeals' majority construed the

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[154] See the interpretation of Art. 9, Convention on the Conservation of European Wildlife and Natural Habitats (Bern Convention), ETS No.104, in Trouwborst, Fleurke, and Linnell (n. 108), p. 163.

[155] The Oslo Court of Appeals maintained that neither the Norwegian Constitution, nor other Norwegian sources including the Bern Convention consider species population within national confines, see 18-128035ASD-BORG/01, p. 29.

[156] Y. Epstein, J.V. López-Bao, and G. Chapron, "A Legal-Ecological Understanding of Favorable Conservation Status for Species in Europe" (2016) 9 Conservation letters 81, *passim.*

[157] 18-128035ASD-BORG/01, pp. 44–45.

[158] Ibid.

[159] Ibid.

[160] Ibid, p. 74.

wording of one of the Bern Convention's grounds for exception, "in the interests of public health and safety, air safety or other overriding public interests," quite strictly, which seems to uphold the need for more concrete scrutiny in culling decisions. In particular, the court construed "overriding interests" as situations where there exist concrete risk of *personal* damage. Importantly, the court helped clarify that the fear of wolves among a local community cannot constitute legal grounds for culling decisions.[161] Moreover, the court remarked that overriding public interests cannot be simply stated with reference to legal or social general constructs (e.g., the administrative principle of maintaining farming areas and wolf areas as separately as possible), but should rather be stated and evidenced concretely.[162]

The court's statement is of consequence. If the Supreme Court upholds such an interpretation, the government will not be able to ground its culling decisions on generalized interests of hunters, the need to maintain spread communities, the perceived distress of local communities vis-à-vis possible incursions from predators,[163] the need for trust toward state and local predator management, interests in grazing priority areas, and other economic interests.[164] As the learned reader will note, many of the above grounds fall afoul of the Bern Convention. While the court's statement orients the government toward potential danger toward people, rather than other interests,[165] the court did not lambast the government on the types of interests chosen, but rather on the lack of concretization that such interests were actually related to the presence of wolves. Further, the court carried out a fact check by underscoring contradictions in the ministry's reasoning: for instance, the ministry maintained the need to cull wolves in areas that allegedly are grazing priority areas, but it was proven that these areas hold no sheep population, dispelling any threat to livestock,[166] nor are they grazing priority areas.[167]

At the intermediary level, science shall illuminate wolf management policies. In this regard, at least two problematic aspects have emerged within the Norwegian wolf management policy. First, the current policy, seeded in 2016 (above 4.2.1), is driven by the *minimum* quota decided by the parliament, which has been construed as both a *minimum* and *maximum* quota of reproducing wolf packs both in Norway and at the Swedish-Norwegian border. In the discussions leading to the 2016 policy, however, one alternative regulatory model proposed was to prohibit culling within wolf zones and avoid a minimum/maximum number of reproducing wolf packs. Accordingly, wolf management would have been the competence of the Ministry of Climate and the Environment, based on science rather than on political steering by the parliament. Norway's government, however, did not agree with the alternative policy proposal because

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[161] On both points, ibid, p. 53.

[162] Ibid, p. 61.

[163] On the mentioned grounds for culling, and the majority's critique, see ibid, p. 57.

[164] Ibid, p. 62.

[165] Ibid.

[166] Ibid, p. 64.

[167] Ibid, p. 73.

it would "create conflicts"[168] and the new 2016 policy was passed without further clarifications on what conflicts may have been created. Such lack of actual consideration of a science-based target is problematic, as emphasized by the first preliminary injunction decision, rendered by the Oslo District Court in November 2017.[169]

As the district court judge perceptively noted on that occasion, absent a scientific understanding of whether the parliament's actually threatened the population's survival (a requirement under the Nature Diversity Act, §18(2)), it is for the Ministry of Climate and the Environment to gauge whether the quota shall be used for culling decisions without threatening the population's survival and without breaching the Nature Diversity Act.[170] Norway's environmental agency admitted that no analysis had been carried out regarding the minimum requirements for the long-term survival of wolves in Norway.[171]

Conversely, the majority on the Oslo Court of Appeals asserted that the Ministry of Climate and Environment had gauged the propriety of the culling, short of simply relying on the parliamentary quota. It is to be noted, however, that only two judges maintained the correctness of the ministry's analysis and they did so by considering the ministry's reference to the minimum population set by the *Swedish* Environmental Protection Agency in 2015.[172] As observed by the minority judgment, however, the ministry had failed to consider both the level of inbreeding of the stocks it had designated for culling and the likelihood of migrating wolves from Finland to increase genetic diversity and the survival chances for the Scandinavian population. Inbreeding threatens wolf population survival and a thorough evaluation of migrating wolves is important to determine whether migrating wolves could reduce the high level of inbreeding in the Scandinavian wolf population and maintain the population's viability notwithstanding the culling and inbreeding problems.[173] Importantly, in its decision, the minority judge found that the ministry had allowed the culling of a wolf pack that could substantially increase the genetic diversity and survival chances of the Scandinavian wolf population.[174] Both considerations had already been put forward by the Oslo District Court judge in the first preliminary injunction decision.[175]

Second, beyond culling, the Norwegian Ministry of Climate and the Environment proved to simply accept illegal hunting, which is the main cause of death for wolves in Scandinavia, without quantifying the expected impact of illegal hunting on the survival of the relevant population. The ministry's assumption lied in the fact that the wolf population would have survived in the

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168 On both points, see ibid, pp. 103–104.

169 17-172521TVI-OTIR/074, pp. 4 and 11.

170 Ibid.

171 Reporting WWF's arguments and evidence, see 18-128035ASD-BORG/01, p. 8.

172 Ibid, p. 42.

173 Ibid., pp. 42–43.

174 Ibid, p. 43.

175 *Stiftelsen WWF Verdens naturfond v Staten v/Klima- og miljødepartementet* (Stevning og begjæring om midlertidig forføyning til Oslo tingrett, 13. desember 2017), pp. 20–21.

long term. The ministry's statements, however, seemed to be contradicted by the Norwegian Environment Agency, which predicted that the level of established culling could reduce or stabilize the wolf population.[176] Understandably, neither population reduction nor stabilization can be contemplated vis-à-vis a critically threatened species, such as the Scandinavian wolf.[177] It thus remains problematic why the ministry maintained that illegal hunting was considered in the culling decisions, but failed to explain how.

Importantly, the concept of a *maximum* threshold, deeply encased in Norwegian wolf management policy, seems at loggerheads with the system of strict protection that the Bern Convention sets forth in Articles 6 and 9.[178] Beyond not being consistent with the principle of prohibiting unnecessary killing (the upper level of the normative system in deep ecological terms), such a maximum threshold is inconsistent with species conservation science (the intermediary level of the normative system in deep ecological terms), especially for a population that is highly inbred.

At the lowest derivational level, concrete guidelines shall be based on foundational ethical norms (the upper level) and non-managerial approaches (the intermediary level). In this regard, at least two problematic aspects have emerged within the Norwegian wolf management policy. First, the Norwegian state provides full compensation for the loss and related costs of livestock or domestic reindeers killed or injured by predators.[179] Full compensation is contingent on two conditions: that the animal owners have taken all reasonable measures to prevent the injury and that they treat the animal in their care/ownership in compliance with the Act on Animal Welfare.[180] It does not appear, however, that fencing is required as a reasonable measure that owners should implement for obtaining full compensation, which is a condition for recouping damages in Sweden. Such a policy choice makes the invasive means of culling an alternative preferred to fencing.

It shall be restated that, in one of the three challenged decisions, the Norwegian Ministry of Climate and the Environment maintained that fences are provided by the administration and are costly. Short of carrying out a cost-benefit analysis of how costly it would have been to fence risk areas, the ministry concluded that fencing resources could only be dedicated to wolf zones, whereas in non-wolf zones, wolves can be instead culled.[181] Imposing and supporting fencing as one of the conditions for obtaining compensation seems a reasonable policy guideline both in Deep Ecology and international law (Bern Convention) terms.[182]

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[176] On both points, see ibid, p. 23.

[177] *Supra* 4.1.

[178] Trouwborst, Fleurke, and Linnell (n. 108), p. 161.

[179] NDA §19 and Regulations of 30 May 2014 No. 677 (lost livestock) and 45 May 2001 No. 468 (lost reindeer).

[180] Act of 19 Jun 2009 No. 97 pursuant to the Wildlife Act and the NDA.

[181] *Supra* 4.2.2.

[182] The WWF maintained that only fences would fulfil the conservation obligations laid down in the Norwegian Constitution and Bern Convention, see *Stiftelsen WWF Verdens naturfond*

Alternatively, the ministry could have decided on the viability of such an alternative as contingency areas, which consist of fenced grazing areas that culling regions in Norway have set forth whenever livestock risk serious losses due to predators.[183]

Second, Norwegian policy shall decouple the approval of livestock farms from wolf zones. As previously remarked (above 4.1), the Norwegian government has lately approved an increasing number of farms within or proximate to wolf zones, making the Norwegian region affected by wolves top the charts for both total number of farms and total number of attacks on sheep attributed to wolves. Such a local development policy is far from securing the differentiated territorial management between wolf zones and farming zones that the government advocates in its culling decisions. Even more importantly, this policy choice exacerbates conflicts, fear, and insecurity within local communities.

Third, at the institutional level, the policy issue analyzed here points to the need to rethink the predator committees. In the motivation of their culling decisions in 2017 (above 4.2.2), predator committees maintained that they had consulted the relevant Swedish authority to communicate to them the culling decision about a Norwegian-Swedish pack (Slettås). Unfortunately, such communication channel had never been established, thus compromising both the credibility and reliability of Norwegian institutions with Swedish authorities, leading to the fourth point.[184]

Fourth, at a transboundary cooperation level, even the Norwegian Environmental Agency maintained that Norwegian policy was consuming Sweden's ability to maintain a viable population.[185] It is not the first time Norway has been accused of monopolizing "the whole potential margin available" for wolf management in Sweden.[186] Transboundary cooperation is currently non-existent in the Nordic countries albeit enshrined in recommendations and guidance within both the Habitats Directive and Bern Convention.[187] Despite such need, differing political wills for species conservation, as well as disparate obligations under the Habitats Directive and Bern Convention, have proved an obstacle to joint management.[188]

Importantly, Norway does not seem to be in the position to ignore how both Sweden and Finland are bound to increasingly more protective case law rendered

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v Staten v/Klima- og miljødepartementet (Stevning og begjæring om midlertidig forføyning til Oslo tingrett, 13. desember 2017), p. 26.

183 On this alternative, see ibid, p. 26.

184 See the controversy on communications with Swedish authorities in Det kongelige miljø- og klimadepartement, *Avgjørelse av klage på vedtak om kvote og område for lisensfelling av ulv i revir i region 4 og 5 i 2018* (1 Dec 2017), p. 41.

185 *Stiftelsen WWF Verdens naturfond v Staten v/Klima- og miljødepartementet* (Stevning og begjæring om midlertidig forføyning til Oslo tingrett, 13. desember 2017), p. 23.

186 The statement was made by the Swedish delegation, see Report of the 21st Meeting of the Standing Committee, Bern Convention Doc. T-PVS(2001)89E (December 7, 2001), at 5.4.

187 Epstein (n 118), p. 585.

188 Ibid, p. 571. On population level management for wolves, as recommended by biologists, see ibid, pp. 586–587.

by the Court of Justice of the European Union (CJEU). In a 2019 landmark case concerning Finland's justification on wolf hunting (to prevent poaching), the CJEU has clarified several matters of principle. Relevant for the above discussion, the CJEU mandated the use of best available science to justify any exception from the principle of strict species protection. Moreover, the CJEU prohibited deliberate killing whenever best available science leaves policymakers with uncertainty as to whether the exception action may negatively affect the species conservation status.[189] Both considerations seem in line with the intermediary level of Deep Ecology norms, and are possibly required by the Bern Convention itself.[190]

In a recent 2020 case concerning the unauthorized capture of a wolf by an animal protection association in Romania,[191] the CJEU maintained that Member States ought to strictly protect protected animal species in their entire "natural range," be it in their natural habitat, protected areas, or proximate to human settlements. Beyond the interpretive bindingness of the judgment for Sweden and Finland, it is worth noting that the CJEU grounded its interpretation of the Habitats Directive in the Convention on the Conservation of Migratory Species of Wild Animals, pursuant to which the species "range" means any and all areas that that species crosses.[192] Importantly, Norway signed and ratified the Convention on the Conservation of Migratory Species of Wild Animals.[193]

Conclusively, this section has shown that wolf management policies interact with several layers of normative guidelines, which can be analyzed through the optics of Deep Ecology, as well as through international law instruments, in particular the Convention on the 1979 Conservation of European Wildlife and Natural Habitats (Bern Convention). Strikingly, several Deep Ecology considerations were seamlessly applicable to the controversy at hand. Further, the Bern Convention largely comported with the deep ecological tenets derivable for justification norms that can guide a future Norwegian wolf management policy.

Albeit in the absence of rights recognized for the Norwegian wolf (rights of Nature), the present analysis has revealed that a series of duties can be uncovered in both ethical deep ecological assumptions and the international commitments to which Norway is bound.

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[189] On both points, see Case C-674/17, *Luonnonsuojeluyhdistys Tapiola*, ECLI:EU:C:2019:851 (10 Oct 2019), para 66 and Y. Epstein and others, "EU Court: Science must justify future hunting" (2019) 366 Science 961.

[190] On best available evidence, see, e.g., Convention on the Conservation of European Wildlife and Natural Habitats Standing Committee, Recommendation No. 135 (2008) of the Standing Committee, adopted on 27 November 2008, on addressing the impacts of climate change on biodiversity, II.5. On precautionary due diligence, see 18-128035ASD-BORG/01, p. 34.

[191] Case C-88/19, *Asociația "Alianța pentru combaterea abuzurilor" v TM and Others*, ECLI:EU:C:2020:458 (11 June 2020).

[192] 1979 Convention on the Conservation of Migratory Species of Wild Animals, 19 ILM 15 (1980).

[193] https://treaties.un.org/pages/showDetails.aspx?objid=08000002800bc2fb. Last Accessed 13 Sept 2020.

5 Conclusions

The purpose of this paper was to show whether and how Deep Ecology could unlock its potential as a key policy-enabler within an ethical, ecocentric, and transcultural platform. The previous sections have centered on the ethical components of Deep Ecology (above 2), its relatedness to Earth jurisprudence and Earth-centered law, and its focus on *duties* toward Nature in the absence of the recognition of the *rights* of Nature (above 3). Within this context, a controversial policy issue was raised and analyzed through the optics of Deep Ecology—wolf management policy in Norway—along with some relevant considerations from an international and European horizon.

The conclusions are dismaying: the Norwegian wolf management policy seems bundled in contradictory regulation and a glaring lack of understanding of Norway's international commitments under the Bern Convention. Importantly and notwithstanding protests from the Swedish delegation, Norwegian policies have long reduced the policy leeway for Swedish wolf management and neglected transboundary cooperation with Sweden. The latter, however, is all the more needed for the favorable conservation status of the wolf population straddling the Swedish-Norwegian border.

Through the optics of the Deep Ecology Platform, a 2020 judgment of the Oslo Court of Appeals, soon to be evaluated by Norway's Supreme Court, was commented and elaborated upon (above 4). On the one hand, the judgment underscored the limitations of the Norwegian Ministry of Climate and Environment's assessment of the actual need for wolf culling. On the other hand, several judicial statements in the judgment itself proved in breach of the Bern Convention and possibly contentious also from a Norwegian constitutional and Nature diversity perspective.[194] In this light, the paper elucidated the controversy at the three levels of analysis of the Deep Ecological Platform and Apron Diagram to enable policy guidance: an upper level (ethical principles and foundational norms); an intermediary level (related to science-based, non-managerial approaches to conservation); and a lower level, meant to dampen some of the conflicts that the Norwegian wolf management policy has either increased or created.

The analysis of Norway's wolf management policy appears momentous because culling decisions are being passed, and legal actions have followed suit. One of the most recent controversies concerned a Swedish-Norwegian wolf pack that the Ministry of Climate and the Environment gave license to cull in a wolf zone.[195] The level of polarization mounted, especially when a preliminary injunction to stop culling was not granted and packs were culled before a full legal revision of the culling decision.[196] Nonetheless, the analyzed 2020 appellate decision, albeit criticized, has sparked new debate on the joint interpretation of Norway's national and international commitments, and is

[194] Regrettably, space limitations made it impossible to analyze the decision from a Norwegian perspective.

[195] *Grønt lys for jakt på hele Slettås-flokken* (Aftenposten, 7 Jan 2019). It is remarkable that the article was not signed.

[196] In this case, even the preliminary injunction decision was preceded by culling, see ibid.

currently being deployed by Norwegian animal protection organizations to require that in-depth, science-based assessments precede culling decisions.[197]

All in all, wolf management-generated conflict is poised to rise due to the projected increase of the Scandinavian wolf population, which is now critically threatened. In fact, high prey abundance and available habitat would enable wolves' potential to recolonize most of the Scandinavian Peninsula.[198] Policy can help dampen or increase such conflict and allow or endanger the conservation status of the wolf population.

As in many other subject areas, policy is deeply influenced by public perceptions toward wolves. In Scandinavia, such perceptions are often determined by the level of urbanized population (higher in Sweden), usually more favorable to wolf conservation; modes of livestock farming, with unattended sheep grazing (higher in Norway); and agricultural interests (more powerful in Norway), which have been able to turn the "carnivore" problem into a farming problem.[199] In Norway, it was recently found that "the probability of disliking wolves increases among the elderly, relatively low-educated, men who live in rural areas, have a low ecocentric view of Nature, are positive to hunting, have low confidence in environmental institutions and high confidence in ordinary people who use common sense."[200] Experts found that featuring the mentioned traits makes it unimportant whether the interviewees live within or outside a wolf zone.

In addition to public perceptions, researchers are called on to consider that lethal wolf management can be a low-hanging fruit for winning local and political elections.[201] It is noteworthy that the current Norwegian Prime Minister, Erna Solberg, under pressure to allow for more culling in order to secure a local election, ruled out additional culling on the premise that "this government shoots wolves down. No other government has shot so many wolves down than this government."[202]

Pointing to the political instrumentality of wolf management is not meant to further galvanize polarization: rather, it conforms to Arne Næss's invitation to researchers toward remaining "independent from government in their public views and, in general, from those who finance their activity."[203] In fact, the scientist "cannot avoid speaking as a responsible person,"[204] capable of highlighting contradictions and incoherence, especially when politically motivated.

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197 https://www.dyrsrettigheter.no/rovdyr/noah-krever-at-departementet-stanser-jakt-i-letjennareviret/. Last accessed 15 Sept 2020.

198 O. Krange and others, "Approval of Wolves in Scandinavia: A Comparison Between Norway and Sweden" (2017) 30 Society & Natural Resources 1127, p. 1128.

199 Ibid, p.1129.

200 O. Krange and K. Skogen, *Nordmenns holdninger til ulv – 2018* (NINA Rapport 1570, 2018), p. 4 (author's translation).

201 *Grønt lys for jakt på hele Slettås-flokken* (n. 195).

202 Ibid (author's translation).

203 Næss and Mysterud (n. 106), p. 28.

204 Ibid.

The above has tentatively shown that Deep Ecology is demanding, and yet constructive. It does not aim at deconstructing neoliberal governance short of tangible alternatives. Importantly, if societies are to become truly interested in preserving Nature, they do *not* need to be culturally homogenous. Quite the opposite. As Næss envisioned, thinking, acting, and having different cultural priorities may be normal among future societies seeking peace, social justice, and ecological sustainability.[205] It is widely recognized that living with the fear of wolves detrimentally affects the quality of life among a local community. But when such fear is exacerbated by polarizing policies, it seems reasonable for scientists to put forward tangible proposals on how to avoid unnecessary conflicts.

Referring to the challenges that Deep Ecology poses to our society, Luc Ferry underscored that the two dominant forms of anthropocentrism, utilitarianism and Cartesianism, no longer represent the feeling, or moral holdings, toward Nature that is brewing among many today.[206] But still, in this hiatus between moral holdings and the current modes of production and consumption, any deep ecological society shall assure itself not to become antihuman, for instance unresponsive to local communities' perceived fear. In the final analysis, it is human beings that recognize the inherent value of Nature, making this recognition importantly *human*.[207]

In Næss's view, the frontier of policy change (the ecopolitical frontier) is immensely long and will probably never end.[208] But first and foremost, policy shifts for a more livable planet depend on changing beliefs, especially for people elected to hold public office, who must not only believe in change but want change.[209] Legal standards themselves depend on moral stances toward animals and Nature, which are currently in evolution, short of easy ways out:

> [w]hen those insights change radically enough, the law changes. But there are often jolts and discrepancies here because the pace of change is different. New moral perceptions require the crystals to be broken up and reformed, and this process takes time. Changes of this kind have repeatedly altered the rules surrounding the central crux which concerns us here: the stark division of the world into persons and property.[210]

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[205] On both points, Næss, "Deepness of Questions and the Deep Ecology Movement" (n. 22). On worldwide developments and lessons learned to protect the voiceless, including wildlife, see R.S. Abate, *Climate Change and the Voiceless: Protecting Future Generations, Wildlife, and Natural Resources* (CUP 2020), pp. 210ff.

[206] Ferry (n. 96), p. 239.

[207] See similarly, ibid, p. 244.

[208] See similarly Levesque (n. 11), p. 528.

[209] Reagan (n. 53), p. 292.

[210] M. Midgley, "Persons and non-persons" in P. Singer (ed), *In Defense of Animals* (Basil Blackwell 1985, 1st edn), p. 59.