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'Humane intervention': the international protection of animal rights

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ABSTRACT

This paper explores the international implications of liberal theories which extend justice to sentient animals. In particular, it asks whether they imply that coercive military intervention in a state by external agents to prevent, halt or minimise violations of basic animal rights ('humane intervention') can be justified. In so doing, it employs Simon Caney's theory of humanitarian intervention and applies it to non-human animals. It argues that while humane intervention can be justified in principle using Caney's assumptions, justifying any particular intervention on behalf of animals is much more difficult – and in present circumstances impossible. If these claims are correct, a number of important conclusions follow. First, all states lack legitimacy because of the horrors that they inflict upon animals. As a result of this, all states are *prima facie* liable to intervention by external agents. To remedy this situation, all states have the responsibility to massively transform their relationship with non-human animals, and to build international institutions to oversee the proper protection of their most basic rights.

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1. Introduction

Liberal theories of justice have traditionally been resolutely anthropocentric. They espouse the intrinsic moral worth and basic rights of all and only *human persons*; and they prescribe political structures and institutions which are designed to respect and protect human worth and human rights. However, increasing numbers of liberal political theorists regard this kind of species-exclusivity as untenable. They have argued that privileging humans in this way must either rely on some dubious metaphysical claim, such that our species is endowed with a Godly spark, or be grounded in some characteristic, such as the capacity for moral agency, that not all humans possess. As such, these liberal theories have eschewed human personhood as the bedrock of justice, and have instead turned to *sentience*: the capacity to experience the world and have interests in one's own fate. For example, in *Frontiers of Justice* (2006), Nussbaum challenges the species-exclusivity of traditional liberal contractarian theories, such as that offered by John Rawls, and argues that all sentient creatures possess the basic right to a dignified existence. Similarly, in *Zoopolis* (2011), Donaldson and Kymlicka outline a theory which grants a set of universal basic

entitlements to all sentient creatures, and then further differentiated rights to animals according to their relational position.¹ These theories, and others (Garner 2013), while differing in their content and prescriptions, all share this idea that sentient individuals possess intrinsic moral worth and a set of basic rights; and that our political structures and institutions ought to be transformed so as to respect them.

However, thus far these theories have paid scant attention to the *international* implications of extending justice to all sentient creatures. In particular, there has been little focus on what ought to be done when states – as most existing states currently do – fail to acknowledge the worth of sentient animals, and instead of respecting their rights, violate them routinely. This is a particularly pressing issue given that liberal theories of global justice often endorse the idea that there can be legitimate scope for *humanitarian intervention* by outside agents when a state fails to uphold and protect the basic rights of its people. The question that needs to be asked, then, is whether there is a similar legitimate scope for intervention when a state fails to uphold and protect the basic rights of its sentient animals. In other words, does extending justice to animals mean that ‘humane intervention’ can be justified? While Cécile Fabre (2012, 7, note 9) has hinted at the possibility of intervention on behalf of animals, and Eckersley (2007) has provided a theory of intervention to prevent grave environmental damage, which includes species of wild animals, a systematic exploration of the case for intervention in defence of individual animals has yet to be explored in detail. This paper aims to fill that gap.

Before proceeding, it is necessary to determine more precisely just what we mean by ‘humane intervention’. In general terms, intervention simply means interference in the domestic or international affairs of a state by external agents. This paper will consider interventions of a coercive nature – and thus against the will of the state subject to intervention. While such coercive intervention includes censure, economic sanctions and the like, this paper focuses on the use of military force, since it is the most controversial type of intervention and thus imposes a high justificatory burden. By focusing on military intervention, the analysis clearly relates to the just war tradition and questions surrounding *jus ad bellum* (the right to go to war).

By ‘humane’ intervention we simply mean to connect the idea to ‘humane principles’: principles of beneficent consideration that reach across the species barrier. As such, when an intervention is ‘humanitarian’, it is carried out to prevent, halt, or minimise violations of basic human rights; and when an intervention is ‘humane’ it is carried out to prevent, halt, or minimise violations of basic animal rights. In both cases, the understanding of ‘basic rights’ is borrowed from Shue’s (1996) analysis: they are those fundamental rights that must be protected before any other rights can be enjoyed.

This paper explores the possibility of justifying humane intervention by drawing on the ‘liberal-cosmopolitan’ account of humanitarian intervention outlined by Caney (2005). Caney’s theory is particularly useful to this paper for two reasons. First of all, it presents its case for intervention via a clear and explicit series of claims that can be applied systematically to the context of animal rights violations. Secondly, and more fundamentally, those claims, while controversial, are shared by many other leading liberal-cosmopolitan accounts of intervention (Buchanan 1999; Wheeler 2000; Teson 2006) and also by liberal theories which have sought to extend justice to all sentient creatures (Nussbaum 2006; Donaldson and Kymlicka 2011). Those assumptions include: taking the *individual* as the primary locus for ethical consideration; grounding such concern on the basis of the

possession of certain basic *rights* derived from fundamental interests; and regarding that moral standing as *universal* and hence not contingent upon any special relationship, association, or membership. So while the paper does not and cannot offer a full defence of Caney's theory, by borrowing its basic structure it draws on key assumptions and chains of reasoning which are endorsed by both liberal-cosmopolitan theories of humanitarian intervention and by liberal theories of justice which incorporate sentient animals.

Caney's theory comes in two parts. First of all, he argues that any compelling theory of humanitarian intervention must contain four crucial premises: that external intervention can sometimes be successful; that all individuals have morally relevant interests and rights; that external agents have positive obligations to protect those interests and rights; and that states have no right to rule without respect for these rights (2005, 228–233). These claims together justify the idea of humanitarian intervention in principle, and are not the necessary and sufficient conditions that must be satisfied to render any intervention valid. For that latter account, which forms the second part of his theory, Caney proposes the familiar conditions of *jus ad bellum*: just cause; reasonable chance of success; last resort; proportionality; and legitimate authority (248).

The aim of this paper is to explore if and how Caney's theory might be used to justify interventions on behalf of the basic rights of animals. The first section of the paper argues that humane intervention can be justified in principle using Caney's four premises: interventions on behalf of animals can sometimes be effective; animals also have rights; animal rights generate positive duties on the part of external agents; and states have no right to rule without regard for the rights of animals. The paper goes on to claim that justifying any particular intervention on behalf of animals is much more difficult – and in present circumstances impossible – using Caney's theory. Specifically, it argues that it is hard to satisfy two *ad bellum* criteria when contemplating military intervention for the sake of animals: 'proportionality' and 'legitimate authority'. Proportionality is hard to satisfy given the fact that military intervention will usually entail putting human lives at risk. Because most human beings have the complex cognitive capacities which make up 'personhood', they have a stronger right to life than the vast majority of non-human animals who lack such capacities. This is because persons possess stronger 'psychological continuity' with their future selves and have a greater stake in their future lives. More tellingly, the condition of legitimate authority is impossible to satisfy in present circumstances for two reasons: first, there currently exists no international institution with the authority to protect the basic rights of animals; and second, all individual states currently commit violations of basic animal rights on such a massive scale that it is impossible for any of them to have the necessary moral authority to authorise intervention in their name.

2. Four premises of a theory of intervention

2.1. Acts of intervention can work

One important feature of any plausible theory of humanitarian intervention, according to Caney, is that acts of humanitarian intervention can work: that is, that they can meet their humanitarian objectives through means which are ethically acceptable (2005, 233). This assumption is obviously vital if any theory of humanitarian intervention is even to get

off the ground. And given the notable failures of a number of recent purported humanitarian interventions – both in terms of meeting their objectives and in terms of the means employed – it is an assumption that understandably not all theorists or commentators are prepared accept. However, it is important to note that the relevant claim here is not that humanitarian interventions always work, nor even that any past interventions have worked, but simply the far more modest and plausible claim that in some circumstances, they *could* work.

This claim must surely also apply in respect of interventions on behalf of animal rights. After all, while there are hugely important difficulties faced by all interventions – including knowledge of the causes of rights violations, knowledge about how best to resolve the crisis, the threat of resistance from the state subject to intervention, and so on – Caney must be correct that these all provide reasons for extreme *caution*, as opposed to a ‘blanket repudiation’ of the idea that intervention can *ever* work (244). For example, the Sea Shepherd Conservation Society has managed to achieve successes in preventing whaling activities through coercive direct action. Sea Shepherd’s tactics include activities such as sabotage to whaling ships at harbour, boarding of vessels, and obstruction at sea. Given the level and urgency of the threat to whales, many believe that the use of these sorts of tactics meets standard types of conditions for other defence such as proportionality, immanent threat, prevention of wrongful harm, etc. If non-state actors like Sea Shepherd can intervene successfully, then it is hard to see why states or the international community could never achieve similar results.

2.2. All individuals have morally relevant interests and rights

Another crucial element of any plausible theory of humanitarian intervention, according to Caney, is the assumption that all individuals have morally relevant interests and rights which are worthy of respect (228). This is clearly vital to any theory of humanitarian intervention, explaining as it does why the violation of basic human rights is of serious moral and political concern.

Of course, Caney assumes that only human persons have morally relevant interests and rights. But as we demonstrated in the introduction, this assumption has not only been challenged by animal ethicists, but also by a number of liberal political theorists. They have provided convincing arguments for the claim that all sentient animals have morally relevant interests and rights which are worthy of respect. In this section, then, rather than attempting to defend or develop a fully-fledged meta-ethical argument for the source of value of non-human animals, we simply note the normative force of these interest-based attributions of worth and rights to animals, and their shared assumptions with liberal theories of intervention.

It is a familiar position in moral and political philosophy that the necessary and sufficient condition for the possession of interests is sentience: the ability to experience oneself and one’s place in the world (Feinberg 1974). Sentience signifies that an individual has some stake in their own life and interests in their own fate. Moreover, this is commonly held to make an important difference to how we value individuals. If an individual is sentient, then their interests are of moral importance in their own right, and the individual thus has a moral worth that cannot be reduced simply to their usefulness to others. While there may be some scientific debate about precisely which non-human animals

are sentient, there is wide consensus that many do have this capacity for experiential consciousness. For example, Sneddon et al. (2014) have outlined two means by which to assess the potential for sentience in animals: first, by whether they respond to noxious and potentially painful stimuli in terms of their neurobiology, physiology and behaviour in a manner different to their response to innocuous stimuli; and second, by whether they show a change in motivation after the delivery of a painful event, such as through self-administering analgesia or the avoidance of the same noxious stimuli. Based on these criteria, the authors' review of the evidence reveals that a wide number of vertebrate and invertebrate non-human animals possess sentience. So, under these assumptions, it is only right to conclude that many animals are sentient and do have morally relevant interests.

Turning to rights, it is another common position in moral and political philosophy that the possession of interests is the necessary and sufficient condition for holding rights (Lyons 1969; MacCormick 1982). Under the interest-based conception of rights, to have a right is to have an interest that is sufficiently strong enough to ground duties in others (Raz 1988, 166). Given that all sentient animals have interests, it therefore makes sense to say that at the very least they are *putative* rights bearers. But to show that any animals actually do possess rights, we also need to consider whether any of their interests are important enough to ground duties on the part of others. There is not the space here to provide a full-blown theory of the rights of animals. Nonetheless, it needs to be shown that animals have *some* interests which are strong enough to be translated into rights. We believe that at least two such interests of animals can be identified: an interest in not being made to suffer; and an interest in continued life.

In the first place, it is reasonable to propose that animals possess the right not to be made to suffer. Given that animals are capable of experiencing suffering, and given that suffering ordinarily makes life go worse for sentient creatures, it makes sense to say that all sentient animals have a compelling interest in not being made to suffer (Singer 1986). Furthermore, it also makes sense to say that sometimes that interest is sufficient to ground duties on the part of others. Indeed, the anti-cruelty legislation of most states imposes the duty not to impose suffering on animals precisely because of their interests in this regard. As such, the idea that sentient creatures have a *prima facie* right not to be made to suffer is convincing.

Second, it is reasonable to claim that sentient animals have a right to continued life. This is based on three assumptions. The first is that many sentient animals are capable of anticipating future pleasant experiences. After all, while many animals may not be able to conceive of themselves far into the future, it is also clear that sentient animals are not 'stuck in the present' and can anticipate certain future experiences, such as an imminent meal for example. The second assumption is that experiencing those future pleasant experiences will be of benefit to them: that is, that more good experiences will make their lives better overall (Sapontzis 1987, 169; Rollin 1992, 86; DeGrazia 2002, 59–64). The final assumption is that this interest can be sufficient to impose duties on the part of others. This assumption seems reasonable as it provides one plausible explanation for why we think it wrong to needlessly kill animals, say for sport or for our own amusement. Given these assumptions, the claim that sentient creatures possess a *prima facie* right to continued life is also convincing.

There are three further points to be made about the parsimonious account of animal rights offered above. First of all, these rights do not exhaust all of the rights that animals may have, but are instead 'basic', to use Shue's (1996) term. That is to say, these rights provide the basis of other more numerous 'derivative' animal rights; and the enjoyment of derivative rights depends on the fulfilment of basic rights.

Second, while the rights not to be made to suffer and to continued life may be enjoyed by all sentient creatures, that does not mean that those rights are of equal *strength* for all sentient creatures. For example, there is good reason to believe that humans will usually have a stronger right to life than most non-human animals. This is because most human beings are 'persons' and thus have more complex cognitive capacities than 'merely sentient' beings. These more complex cognitive capacities are directly relevant to the strength of persons' interests in continued life in two ways. First of all, persons have greater 'psychological continuity' with their past and future selves in comparison to non-persons, making the prospect of future valuable experiences of more concern to them (McMahan 2002, 233). Secondly, as autonomous beings, persons have prospective projects and goals in their lives that non-persons do not, giving them a greater stake in their future lives. It is important to note that the claim here is not that humans have a greater moral worth than other sentient creatures on the basis of such capacities, a claim which is a familiar feature of traditional liberal theories (Griffin 2008). Rather, the claim is merely that these capacities are relevant to the nature and strength of entitlements. It is perfectly plausible to believe that individuals have equal worth and are thus due equal consideration, but also to recognise that in light of their interests, they may be owed quite different things (Singer 1986). Furthermore, such complex cognitive capacities are not a persuasive basis by which to confer moral worth, quite simply because not all humans possess them: young infants and the seriously mentally disabled being the most obvious examples.

Third, and relatedly, it is important to point out that the rights not to be made to suffer and to continued life are *prima facie* or *pro tanto* rather than absolute. In other words, these rights are defeasible and may sometimes be trumped by rights of greater strength, or by other values of greater weight. This is not to undermine the important moral force of these basic entitlements, but simply to point out that they can sometimes be overridden. However, the idea that rights have different strengths and can sometimes be defeated might appear to undermine the idea that rights are 'trumps' or have 'peremptory force' (Dworkin 1984; Raz 1988, 192). For we sometimes hear that rights are different to other moral concepts which can be weighed in terms of strength and sometimes defeated; instead, rights are meant to delineate what finally ought to be done. But this is where it is important to distinguish between '*prima facie* rights' and 'concrete rights' (Vlastos 1962; Dworkin 1977). *Prima facie* rights lack peremptory force, for they are the abstract formulations of rights which exist outside of a specific context. Concrete rights, on the other hand, tell us when an instantiation of that *prima facie* is grounded in a specific situation, and in so doing tell us what finally ought to be done. So, the simple claim that I have a *prima facie* right to some good does not tell us what finally ought to be done in each and every circumstance. To illustrate, let us borrow Joel Feinberg's famous example and suppose that I own a cabin in the mountains. In most circumstances, that *prima facie* property right would entail that I have the concrete right to exclude others from entering the cabin. However, if a backpacker is caught in a blizzard and needs to break in to the cabin without my permission in order to gain shelter and stay alive, then it is reasonable to

suppose that in that specific circumstance I lack the concrete right to exclude (Feinberg 1978). In that situation, the backpacker's *prima facie* right is stronger than my right; he has a concrete right to life, and I lack a concrete right to exclude; and so his right has peremptory force. To reiterate, then, the animal rights outlined above, are *prima facie* and may be overridden in certain circumstances.

2.3. Those rights generate positive obligations on external agents

A third feature of any plausible theory of humanitarian intervention according to Caney is the claim that the basic rights of humans place positive obligations upon external agents. He argues that basic rights involve more than simply letting others be (negative duties), they also impose duties of positive assistance. These positive duties are not special duties, contingent upon promises, contracts, special relationships or historical circumstances; they are cosmopolitan duties owed to all (Caney 2005, 233). We claim that the basic rights of sentient animals can also be shown to entail such positive duties of assistance.

To explain, if the rights of sentient creatures are about protecting fundamental interests, as argued above, it is reasonable to assume that positive assistance as well as refraining from harm can serve that goal (Buchanan 1999, 81). Moreover, while the distinction between negative and positive duties makes sense conceptually, it loses coherence in practice (Shue 1996, 37–38). For example, the right not to be tortured clearly imposes a negative duty on others to refrain from torture. But to protect that right in practice also requires a number of positive steps in terms of spending, training and oversight. Furthermore, even theories couched solely in terms of negative rights will be inadequate if they do not, at some stage, address what ought to be done in cases of non-compliance. Once non-compliance with negative duties is considered, positive duties to protect and enforce negative rights inevitably enter the frame.

In the first instance, duties of assistance will fall upon fellow citizens and the state because of the nature of the relationship between political authorities and those within their territories. Furthermore, the right of self-determination speaks against intervention and provides the means by which a state is legitimated. However, as we will see in the next section, where a political community is responsible for, or unable or unwilling to prevent, serious rights violations, then the duty to protect and enforce falls to those outside of it (Bagnoli 2006; Caney 2005; Fabre 2012, 182–187; Glanville 2014). Because the rights of non-human animals have the same features and foundations as basic human rights, the same arguments apply: the violation of animal rights can also generate duties of intervention (Hadley 2006). If human interests generate universal duties of assistance, then there seems no non-arbitrary reason why animal interests cannot do the same. On this line of reasoning, then, the third feature of any plausible theory of humanitarian intervention also applies to sentient animals.

2.4. The state has no right to rule without respect for these rights

A final feature which Caney argues is essential to any plausible account of humanitarian intervention is the claim that political regimes do not have the right to rule without respect for human rights (2005, 232). This assumption is clearly crucial to any theory of

humanitarian intervention insofar as it explains why the sovereign rights of states can sometimes be overridden: those sovereign rights are themselves contingent upon the state upholding the basic rights of its residents. This section argues that the sovereign rights of states are also undermined when they violate the basic rights of sentient animals.

Caney identifies two different ways that the idea that states have no right to rule without respect for human rights is usually explicated. 'Instrumental approaches' argue that political institutions only have value insofar as they respect human rights. If institutions violate those rights, external intervention can be legitimate to rectify that situation (Viehoff 2013). This understanding of the premise can be applied to sentient animals straightforwardly. After all, cosmopolitans regard ultimate moral value as residing in individuals and their basic rights. By recognising that sentient animals *also* share this value and *also* share these basic rights, we are essentially extending the shared moral community to include all sentient creatures. In other words, it is sentient individuals who have ultimate value – not the collective institutions and associations that have been built around them. On such a view, political institutions only have value insofar as they protect the basic rights of *all* individual sentient creatures.

'Intrinsic approaches', on the other hand, see the legitimacy of political institutions as resting on the actual or hypothetical consent of their members, like in a 'contract' model. Institutions which do not have the consent of their members, through breaking the contract, are thus liable to intervention in order to restore such consent (Luban 1980). If the right to rule of states is understood in this way, it is certainly much harder to apply to animals.

To explain, animals are not usually thought to be creatures who can consent to be ruled. As such, the sovereign rights of states cannot be dependent upon any kind of contract between the state and the animals within it. The problem with this view, however, is the implausibility of any kind of account of political legitimacy that depends on explicit consent. For example, Buchanan (2004, 149, 151) points out that not even those states currently regarded as the most legitimate have gained the explicit consent of their citizens, nor are they ever likely to: gaining the consent of a large and changing political community, and agreeing the boundaries of that consent is unachievable. Nor is tacit consent a viable alternative since there can be no legitimate mechanisms in place for tacitly consenting to political authority without those rules themselves having first been consented to (152–153).

It is for these sorts of reasons that consent theorists tend to use hypothetical consent as a more plausible means of determining legitimacy. Using hypothetical consent, a state is considered legitimate if it governs in a manner that 'ideal' citizens would consent to in 'ideal' circumstances. A standard account is that such hypothetical contractors would seek to be bound by an authority that protects, or takes sufficient steps to try and protect, their human rights (Stilz 2011). On this view, then, we can say that a state is legitimate to the extent that it does, or takes sufficient steps to, properly protect individual rights. Indeed, Luban's (1980) classic account of humanitarian intervention explicitly judges whether consent is in place by a state's respect for human rights. But given that in this model the contract is merely hypothetical and can be measured as secure or broken according to respect for rights, it would appear that it can be applied to animals quite easily. In other words, violations of basic animal rights would also signal that the hypothetical contract – which includes animals – has been broken.

However, perhaps this is too quick. For despite the fact that the parties in a hypothetical contract are ideal, it does seem crucial that they possess the capacities to be able to deliberate upon and make a contract. Even ideal animals in a hypothetical contracting situation could not choose to be bound to an authority that protects their rights; for animals cannot understand notions such as authority or rights, let alone offer their consent to a contract. Nevertheless, while it is true that contractors themselves must be ‘moral persons’ – that is, cognitively complex autonomous rational agents – that does not mean that the contract itself cannot *apply* to individuals who are not. Those covered by the contract do not have to be the very same people who make the contract. For example, Rawls thought that his contract covered certain non-contractors such as young infants and those with serious mental disabilities. Rawls believed that such individuals are covered by the contract because their lack of moral personhood is an ‘arbitrary contingency’. He states: ‘Therefore it is reasonable to say that those who could take part in the initial agreement were it not for fortuitous circumstances, are assured equal justice’ (Rawls 1999, 446). A number of animal rights theorists have argued that this line of thinking should also be applied to sentient animals, on the basis that they also lack moral personhood simply because of an ‘arbitrary contingency’ and ‘fortuitous circumstance’: being a non-human animal is just as much a matter of chance as being an infant or an individual with serious disabilities (Rowlands 1997). Using such lines of reasoning, then, perhaps we can say that a proper hypothetical contract regarding state legitimacy must also include sentient animals. This is quite simply because all beings with sentience – including young infants, the severely disabled and non-human animals – will necessarily feel the effects of living under state power.² If correct, then it is perfectly possible to argue that states lose their legitimacy and sovereign rights when they violate the basic rights of the sentient animals who live there.

To summarise: if states have no right to rule without respect for the basic rights of the human individuals who reside there, it is plausible to argue that they have no right to rule without respect for the basic rights of the animals who reside there. While such an argument is easy to make if one adopts an ‘instrumental’ understanding of the relationship between legitimacy and rights, it also applies even if one adopts a consent-based ‘intrinsic’ understanding.

What this first section of the paper hopes to have made clear, then, is that each of Caney’s premises of a successful justification of intervention also applies to animals. If Caney’s premises are sound, then there is good reason to believe that intervention on behalf of the basic rights of animals can be justified *in principle*. However, that is quite different from saying that any particular intervention can be justified *in practice*. In order to make that judgement, Caney argues that we must revert to the familiar *ad bellum* criteria of just war theory. The next half of the paper argues that satisfying each and every one of these criteria is not only extremely difficult, but presently impossible given current circumstances.

3. Justifying particular interventions: *ad bellum* considerations

3.1. *Just cause*

In order for a particular intervention to be morally justified, Caney argues that each of five criteria must be satisfied. The first and most obvious criterion is ‘just cause’: the

intervention must be for some goal important enough to warrant the transgression of sovereignty. In this paper, we have explored the idea that preventing, halting or minimising the massive violation of basic animal rights can be such a just cause. Animals have morally relevant interests and rights; these interests and rights generate positive duties, including on the part of external agents; and political institutions only have value insofar as they protect the basic rights of *all* individual sentient creatures. On these assumptions, there is just cause for external parties to intervene in another sovereign state in the defence of basic animal rights.

In reality, this criterion is incredibly easy to satisfy in a range of cases. All states in the world are massively violating the basic rights of animals every day. By way of example, just consider the rights violations necessitated by the consumption of meat in any particular community. Statistics from the US Department of Agriculture show that over *nine billion* land animals are killed for consumption each year (The Humane Society 2014). And obviously, Americans are not alone in enjoying animal flesh in their diet, with global levels of meat consumption rising rapidly. When one starts to think about the suffering that these animals endure in their short lives, as well as the harms inflicted by humans in the dairy industry, in research laboratories, in zoos and circuses, in the wild, and elsewhere, the scale of the animal rights violations inflicted by each and every state is quite phenomenal. Given this simple fact, we can say with some confidence that there is a just cause to intervene in every state on the planet! Obviously, this is not to say we *ought* to intervene in them all: each and every one of the *ad bellum* criteria needs to be satisfied in order to render an intervention permissible.

3.2. Reasonable chance of success, last resort and proportionality

A second *ad bellum* criterion is that the intervention must have a 'reasonable chance of success', in order to avoid futile transgressions of sovereignty. While it is always difficult to know precisely whether an intervention can be successful, making caution vital, it was argued above that it would be far too limiting to think that intervention on behalf of animals could *never* have humane results. As such, this *ad bellum* condition is certainly possible to satisfy in certain situations where widespread violations of basic animal rights are taking place.

The third criterion of just war theory which Caney espouses is that military intervention must be a 'last resort'. Caney justifiably adapts this term to argue that there must be a 'consideration of less awful measures'. This modification is designed to ensure that external agents are not compelled to waste their time pursuing non-interventionary measures that are known to have no chance of success. Instead, it is required that those agents review seriously all of the options available to them in fulfilling their goals. This condition can be applied and satisfied in the case of humane intervention straightforwardly: intervention should be undertaken with extreme caution, and less awful measures such as diplomacy, the use of sanctions and so on, must be considered seriously first.

Of course, the basic normative idea behind the 'reasonable chance of success' and 'last resort' criteria is to limit the inevitable harms that interventions cause. And the fourth *ad bellum* criterion is the principle of 'proportionality', which explicitly mandates that an intervention must not cause more harm than it aims to prevent. Caney quite plausibly requires its satisfaction before any particular intervention can be justified. While this condition is

difficult enough to meet in relation to military interventions for the sake of human rights, some might object that it is *impossible* to satisfy for the sake of animal rights. After all, military interventions involve putting human (as well as non-human) lives at risk, and some will argue that doing so for the sake of animal rights is necessarily disproportionate and unjustifiable as such. For thinkers of this view (Steinbock 1978), the moral value of humans is so much greater than that of non-human animals that no intervention that threatens the former for the sake of the latter can be justifiable.

But as we have seen, the claim that humans possess this greater value rests on extremely shaky foundations. Many liberal theorists have recently provided convincing arguments to suggest that human beings are not the only individuals with moral value; since sentient animals also possess morally important, they too possess moral worth. Given that it is the possession of interests which grounds the worth of all sentient creatures, and since one either possesses interests or does not, it is difficult to see what basis there could be to the idea that the value of all humans is greater than that of all non-humans.

However, while there may be no reason to believe that humans have a greater *worth* than other sentient animals, we have seen that it does make sense to acknowledge that some of their *interests* are stronger.³ Recall that since most humans have the capacities of personhood, and thus have greater psychological continuity with their future selves and a greater stake in their future lives, most also have a stronger interest in continued life compared to the vast majority of non-humans who lack such capacities. And because of this fact, it is hard to justify threatening the lives of humans for the sake of the lives of non-human animals. Put simply, fewer interventions on behalf of the lives of animals will be proportionate compared to interventions on behalf of the lives of humans.

And yet, this does not mean that an intervention on behalf of animals could *never* be proportionate. It is possible to imagine two types of cases in which coercive military intervention for the sake of animals could conceivably meet the proportionality criterion. Firstly, an intervention might pose only a small threat to the lives of human beings, and act on behalf of animals who have or who are likely to have a very strong interest in continued life. To explain, there is a growing body of scientific evidence which claims that the cognitive capacities of some species of animal, such as cetaceans and the great apes, are of such complexity that they satisfy the conditions for personhood (Singer and Cavalieri 1993; White 2007). If this is correct, the strength of the right to life of these animals could well be equivalent to that of human persons, and will be even greater than that of humans without the complex capacities of personhood. This means that interventions on behalf of individuals from these species should be judged in a similar way to those on behalf of human beings. For example, if we have the ability to prevent a massacre of large numbers of these creatures – such as that which occurs annually in the Taiji dolphin drive hunt – then it may be proportionate to do so, even if that intervention threatens human lives.

Secondly, there will also be certain situations when the benefits of intervening on behalf of animal non-persons outweigh the costs of threatening the lives of human persons. For while the right to life of humans is strong and pressing, it is not absolute – it too can be overridden in exceptional circumstances. Given this assumption, there will be a threshold at which the right can be overridden for the sake of the interests and rights of animals. For instance, we have already outlined how the rights violations inflicted

upon animals by industrialised farming are simply breath-taking in terms of their numbers and scale. If an intervention to shut down such large-scale mechanised killing threatened the lives of just a small number of persons, then it too ought to be considered proportionate. It is true that discrimination will be difficult when these patterns of agriculture are so entrenched in societies. Nonetheless, that does not undermine the point that if centralised units involved in this industrialised killing could be identified, it is certainly *possible* that the proportionality criterion could be met even in interventions which threatened the lives of human beings.

3.3. Legitimate authority

The fifth and final criterion of *jus ad bellum* is 'legitimate authority'. Caney argues that while satisfaction of the above criteria might provide a case for preventing human rights violations by force, it does not provide reason for saying that agents X or Y have the authority to employ that force (Caney 2005, 250; Pattison 2010). As such, for a specific act of intervention by an external agent to be justified, it needs to be shown that such action has been authorised by a legitimate authority. Because military intervention is such a serious action, and because it is vulnerable to abuse by states with nefarious intentions, legitimate authorisation seems an important requirement for interventions on behalf of animals, just as it is on behalf of humans. However, this condition is impossible to satisfy under present conditions.

The first problem is the simple fact that there is no existing international institution that comes close to being recognised as the 'legitimate authority' charged with protecting the rights of animals. In this respect, the rights of animals are quite different to those of humans. For the United Nations is explicitly charged with the promotion of human rights via its Charter. Moreover, the Security Council can sanction the use of force to protect international peace and security, which some claim includes the protection of civilians from serious human rights violations, as demonstrated by resolution 1973 in respect of Libya (Bellamy 2011). Clearly no such institution exists for the protection of animal rights. That international law which does exist in respect of animals is instead concerned with endangered species (such as the Convention on International Trade in Endangered Species of Wild Fauna and Flora – CITES) or human health (such as the Terrestrial Animal Health Code of the World Organisation for Animal Health – OIE). Given that states have not set up any body for the protection of animal rights, it is hard to see what agency would have the legitimacy to authorise intervention in their name.

Perhaps the answer lies not with international institutions, but with individual states themselves. After all, Moellendorf (2002, 121) has argued that unilateral humanitarian interventions can be justified on the basis that agreement via the United Nations is slow and hard to achieve. Preventing massive human rights violations is usually an urgent necessity, and ponderous attempts to reach international agreements result in the loss of more human lives. Others have responded that multilateral support is always preferable, to act as a brake on lone states using humanitarian rhetoric as a smokescreen for more nefarious ambitions. For this reason, Buchanan and Keohane (2004) have proposed authorisation by a coalition of democratic states in relation to the preventive use of force. And there is no reason why something similar could not be adapted for interventions on behalf of animals.

The problem, however, is that it is impossible to conceive of any state or coalition of states who could realistically be regarded as having the moral legitimacy to authorise humane interventions. For the simple fact remains that *all* states are themselves involved in their own massive violations of basic animal rights. As a result, none can legitimately interfere to protect animals in another state: their interventions would necessarily be hypocritical and make a mockery of their 'humane' motivation. Of course, similar arguments are often made in opposition to humanitarian interventions: for it is clear that no state has a perfect human rights record. But while it is obviously true that no state possesses an unblemished human rights history, there are thankfully many who refrain from violating basic human rights on a massive scale. Unfortunately, the same cannot be said in the case of animal rights. As a result, while it is possible to conceive of an institution, state or coalition with the moral legitimacy to authorise intervention in the name of human rights, it is presently impossible to imagine in the case of animal rights.

And yet, if we require all states to put an end to their own violations before acting elsewhere, then surely this prevents piecemeal and incremental reform for the sake of animals (cf. Casal 2003). Such an objection might continue by arguing that it is better to stop some animal rights violations, than to stop none; as such, why not let 'hypocritical' states engage in interventions for the sake of better overall consequences? The obvious response to this point, however, is to concede that stopping some violations is better than stopping none, but to also insist that stopping them domestically should in the vast majority of cases be prioritised over stopping them overseas. This is for two reasons. First of all, states are much more likely to achieve success domestically: they will ordinarily be much better at identifying the causes of their own violations and what is needed to bring them to an end. Secondly, domestic violations should also be prioritised because cross-state interventions impose significant costs. Those costs of course include the results of the resistance put up by the state subject to intervention, but they also include the effects on international stability and order, which will surely be significant in the context of 'hypocritical intervention'.

Given that all of the criteria of *jus ad bellum* must be met before an intervention can be justified under conventional liberal-cosmopolitan understandings, and because the condition of legitimate authority is currently impossible to satisfy, humane intervention cannot presently be justified. However, this does not mean that humane intervention will *never* be justifiable. There may come a time when the legitimate authority condition can be met. While this is by no means imminent or foreseeable, there are signs that some states are starting to take the status and rights of animals far more seriously than they have ever done before. This is evidenced by the fact that animals have achieved constitutional recognition in Germany, Switzerland, India and Brazil. And there are even small signs that the interests of animals are beginning to matter internationally. For example, Article 13 of the EU's Lisbon Treaty requires that the Union and Member States pay full regard to the welfare requirements of sentient animals when '... formulating and implementing the Union's agriculture, fisheries, transport, internal market, research and technological development and space policies' (Treaty of Lisbon 2009). It is also important to remember that many thinkers, including Caney himself (2005, 252), believe that the legitimate authority condition cannot currently be met for *humanitarian* interventions. After all, the Security Council lacks moral legitimacy, and most are agreed that new and more representative institutions are urgently required for the protection of human rights. Given the

arguments of this paper, institutions concerned with the protection of animal rights are another urgent necessity.

4. Conclusion

Using Caney's liberal-cosmopolitan theory of humanitarian intervention, we have explored the possibility of justifying intervention for the sake of basic animal rights. Our arguments have shown that using this theory to justify humane intervention *in principle* is relatively straightforward. Caney argues that there are four premises of any plausible theory of intervention, and we have argued that each applies to animals. We then examined whether any particular intervention on behalf of animals can be justified using Caney's theory, and have concluded that doing so is much more difficult, and in fact impossible under current circumstances.

In sum, then, the recent extension of justice to sentient creatures within liberal theories does not imply that any specific act of intervention on behalf of animal rights can currently be justified. Nevertheless, these theories still have radical international implications. For if the assumptions and arguments employed in this paper are correct, a number of important conclusions follow. First, all states lack legitimacy because of the horrors that they inflict upon animals. As a result of this, all states are *prima facie* liable to intervention by external agents. To remedy this situation, all states have the responsibility to massively transform their relationship with non-human animals, and to build international institutions to oversee the proper protection of their most basic rights.

Notes

1. Sometimes in this paper we will use the convenient shorthand 'animal' instead of the more accurate, but cumbersome term, 'sentient non-human animal'.
2. Note that contractors would not find it rational to protect those without basic rights: that is, non-sentient entities who lack interests and do not experience the effects of state power.
3. Just of course as some non-human animals will have certain stronger interests than some humans.

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