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Recommended Citation

Irus Braverman, *Hyperlegality and Heightened Surveillance: The Case of Threatened Species Lists*, 13 *Surveillance & Soc'y* 310 (2015).

Available at: https://digitalcommons.law.buffalo.edu/journal_articles/340



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Debate

Hyperlegality and Heightened Surveillance: The Case of Threatened Species Lists

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Introduction

My contribution focuses on the project of governing nonhuman species through care, briefly pointing to how law and surveillance are interwoven in this context and to how conservation's biopolitical regimes are increasingly becoming more abstract, standardized, calculable, and algorithmic in scope. I will argue that conservation's focus on governing through care lends itself to heightened modes of surveillance and to hyperlegality—namely, to the intensified inspection and regulation of both governed and governing actors. I'll start with some preliminary explanations about my atypical use of the terms surveillance, law, and biopolitics.

Surveillance and Biopolitics—of Nonhumans

My work has employed a definition of surveillance that encompasses “all forms of monitoring and control of human and nonhuman subjects, from individual people and things to groups, ecosystems, and planetary processes” (Donaldson and Wood 2004: 375). Drawing on this definition, my article “Zooveillance” (in this journal) argued that “it is instructive to explore the project of captive animal management as an instance of surveillance” (2012: 120). The article identified three interconnected layers of zoo animal surveillance: elementary surveillance, dataveillance, and reproductive surveillance. I argued that combined, these three layers form a heightened system of management that controls captive animal populations. This interpretation, which draws heavily on Foucault's work on pastoral power as a power of care (Foucault 1977, 2009), broadens the scope of surveillance to include the monitoring and management of populations (here, of nonhuman species) in the name of their protection (here, conservation). The inclusion of nonhuman animals within the scope of surveillance, I argued, contributes to the understanding of surveillance as an expression of care (Gad and Lauritsen 2009: 55). What I offered, in other words, is to take Foucault's metaphor about sheep governance literally, a move that shifts our understanding of pastoral power itself.

Soon after publishing “Zooveillance,” however, I realized that the project of surveilling nonhuman populations is not limited to zoo (and to domestic) animals, but is increasingly bleeding into the ‘wild.’ Accordingly, in “Governing the Wild” (2014; also in this journal) I documented the increasing drift of surveillance from intensely controlled sites into ‘natural’ environments. My monograph, *Wild Life: The Institution of Nature* (2015a), has taken this inquiry further by documenting the flow of expertise, data, management strategies, population models, technology, animals, and genes between captive and wild sites, and the nodes in between.

It is onto this understanding of nonhuman surveillance through care that I would like to now add the legal aspect. I use the term ‘law’ in this context to refer to a biopolitical form of governance that moves beyond the individual to regulate entire populations. Despite Foucault’s exclusively anthropocentric use of the biopolitical framework, it is arguably also applicable and in fact highly relevant to the nonhuman context (Braverman 2015a: 12-13, 226-232). Here, I would like to contemplate the interrelations between care and hyperlegality, positing that the combination of pastoral power and biopolitics in conservation lends itself to heightened modes of surveillance and legality. In conservation’s project of saving life, care translates into extensive databases used to calculate threats and to generate listing statuses, in turn promoting certain legal protections that then dictate actions. The process of listing and assessing life has been taking on an increasingly quantitative nature, marked by algorithmic calculations of threat that abstract the particularities of bodies and their concrete interrelations into mathematical theorems. Whereas traditionally, a major manifestation of pastoral care was the intimate knowledge of individual animals by the pastor, the current conservation regime emphasizes the governing of populations and species—and not so much of individuals—through care. Ironically, then, governing nonhuman species through care is an alienating process—namely, more care translates into more population management that in turn translates into more abstraction and alienation. The species conservation regime is, in other words, a hybrid of biopolitics and pastoral power, a combination that enables the regulation of life on unparalleled levels.

The Red List: A Barometer of Life

The preoccupation of modern conservationists with threatened species lists provides an apt case study for the convergence of heightened surveillance and intensified regulation. The IUCN Red List of Threatened Species—the preeminent conservation list—provides the global standard for assessing how threatened a species is, demonstrating conservation’s obsession with both species and threat. The threatened species list is the biopolitical technology par excellence (Braverman 2015a, 2015b, 2015c). It is biopolitical in several ways: it governs species rather than individuals; it provides standardized, quantifiable, repeatable, and comparable assessment measures; its designations imply a value system that renders certain forms of life grievable or savable, and others killable or negligible; in addition to the binary of included/excluded, the list’s internal ranking creates a gradation of species value; and, finally, the list regulates human (and indirectly, also nonhuman) actions.

The Red List is also a hybrid between a list and a database—a ‘datalist,’ if you will. It operates by translating analog flows in risk levels and flexible forms of life into fixed digital categories. Easily distinguishable from one another, these categories then serve as the basis for myriad regulatory actions. Despite having no formal enforcement mechanisms or sanctioning devices in and of themselves, the Red List’s scientific authority extends into numerous national and international legislative systems. Specifically, more than 250 national legislative acts developed in over 100 countries are based on the IUCN Red List model (Stuart et al. 2010: 177). As one IUCN official writes: “From its origins as a general interest in rare and declining wildlife, the science of threatened species assessment has blossomed into a massive conservation theme with far-reaching influence on conservation on the ground” (Miller 2013: 200).

In 1994, the IUCN radically changed its assessment process: rather than species experts generating the assessments at their discretion, as had been done since the Red List’s inception in 1963, the assessment turned into a standard-driven and number-intensive calculation. The new assessment method, with a revised set of categories and criteria, was finalized in 2001. Currently, the IUCN Red List classifies species into nine categories, three of which are defined as threatened. The species categories are determined based on five criteria, listed A through E. The first three criteria are: A) a reduction in population size; B) a small, reduced, fragmented, or fluctuating geographic range; and C) a decline in size of an already small population. To be listed as Critically Endangered, for example, a species must decline by 90 per cent or more, cover less than 100km², or contain fewer than fifty mature individuals (IUCN

2014). Each category and criterion consists of a dizzying array of standards that draw from and feed into an online database, with one exception: the category of Not Evaluated includes no data and no standards (IUCN 2014), nonetheless demonstrating how the list-less, too, are incorporated into the list's all-encompassing regulatory scheme.

Human administrators use the threatened species list as a barometer. The list provides a global index of biodiversity and identifies species most in need of conservation attention. For the list to perform this role, list-makers aspire to document, measure, and assess all forms of life on earth. Simon Stuart, a senior official in IUCN's Red List administration, reports on the state of this ambitious listing project: "We anticipate that a representative barometer will need to monitor the status of 160,000 species, roughly three times the almost 48,000 species currently on the Red List" (2010: 117). The goal is for the barometer to parse, monitor, and in turn regulate the entirety of life and its diverse manifestations in minute detail.

If the Red List categories and criteria are the *nomos* of the species conservation regime, the scientists who interpret them are its 'lowly legal actors,' producing "low-status knowledges that are used . . . by countless state and private-sector employees in the pursuit of a variety of regulatory and administrative tasks" (Valverde 2003: 3). While the knowledges in this case are admittedly scientific and expert-based, they are also regulatory in the biopolitical sense: they govern and attempt to optimize endangered life. Despite their regulatory role, however, conservation scientists typically do not perceive themselves as legal actors, lowly or otherwise (Braverman 2015a).

The Threat Calculator

Lists, risks, and threats are increasingly prevalent technologies of governance. As with the traditional surveillance of humans, in the case of surveilling nonhumans, too, elevated threats have been used to justify the intensified monitoring and management of threatened (and threatening) populations. But whereas 'kill lists' have been quite popular for governing humans, conservation's threatened species list is about 'making live.' And whereas human kill lists represent Law with a capital L—the ideal type of sovereign power according to Foucault—threatened species lists are about laws in their regulatory, plural, soft, and bioaffirmative sense. Conservation's intensified focus on threat management and the elaborate calculations performed in this context are thus both typical of surveillance regimes and also unique in their focus on life and care.

Certain conservation scientists have recently devised a 'threat calculator' to better quantify and predict future threats to assessed species. The threat calculator is an Excel spreadsheet with a dropdown menu onto which the assessor inscribes the relevant figures according to three threat categories: scope, severity, and timing. Based on this data, a computer program calculates an 'overall threat impact,' which is expressed through a four-point score: very high (red), high (orange), medium (yellow), or low (green) (Master et al. 2009: 27). Although a moss is not comparable to a whale, one conservation official told me, "the *future* for this moss is looking low, medium, or high—and from our point of view, that's all we need to know" (Fraser 2014). This depiction calls to mind Amoore's 'data derivatives,' which she defines as visualized risk flags or scores "drawn from an amalgam of disaggregated fragments of data, inferred from across the gaps between data and projected onto an array of uncertain futures" (2011: 24).

Concluding Thoughts

In the last few decades, species conservation has evolved into a biopolitical regime, generating a growing array of rules and standards to better control and care for certain forms of life in order to prevent them from going extinct. The practice of care through conservation depends on an expanding administration of regulatory actors as well as on a growing implementation of algorithmic calculations of risk and threat.

If these terms sound familiar from the more typical explorations of human surveillance, this familiarity is, I claim, far from incidental. The model of catastrophe governance—here, with the aim of preventing extinction and the “death of nature” more broadly (McKibben 1989)—inevitably generates technologies such as lists, risks, and threats, whether what is being regulated and managed is human or nonhuman, biotic or abiotic. As I have briefly shown, the project of governing life in particular is strongly rooted in both pastoral and biopolitical power. And in the conservation context: to care for ‘wild’ species on the brink of extinction, these species are rigorously managed, which ironically compromises their survival as ‘wild.’ As many conservationists have come to acknowledge, such intensity of management for the sake of species survival is not likely to change anytime soon, although they still hold that the ultimate goal of this extensive management is a return to an ideal vision of no human management at all (Braverman 2015a).

The extant management of threatened species’ lives not only lends itself to heightened forms of surveillance, but is also highly regulated through lists, databases, and standards, as well as through national acts of legislation such as the Endangered Species Act in the United States and the Species at Risk Act in Canada. A convergence of heightened surveillance and hyperlegality thus emerges in the context of ‘making live’ and caring for species. Law and surveillance are not merely interlaced in this context; their co-production and co-enactments in fact enable the regulation of life on an unprecedented scale. In the case of threatened species lists at least, an attempt to distinguish law and surveillance would thus be ineffective, if not impossible.

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