

BOOK REVIEW

Global Animal Law from the Margins: International Trade in Animals and Their Bodies, by Iyan Offer

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Iyan Offer's book *Global Animal Law from the Margins: International Trade in Animals and Their Bodies* will be of interest to anyone working on environmental issues, animal protection or human rights. Offer's work provides an in-depth analysis of global animal law, introducing a comprehensive framework of 'second wave animal ethics', which is applied to the law on international trade in animals as a case study. Both the framework and its case study application provide tools for normative analysis in the field of social justice.

International trade law is a deliberate choice for the case study; as Offer notes, the neoliberal approach in trade law is insufficiently challenged by global animal lawyers (p. 1). Rather, the recent optimism from animal law scholars regarding animal welfare in the international trade regime only 'further entrench[es] law's role in commodifying animals' (p. 168). Offer argues that this position can be explained by the first wave (as opposed to the second wave) animal ethics perspective taken by these animal law scholars. International trade law also provides intersectional insights related to human rights, as neoliberal trade ideologies are often detrimental to the environment and violate human rights, as well as disregarding animal welfare.

The book's most significant contribution to both animal law and social justice scholarship is its critical approach, as expressed through its theoretical framework, which Offer refers to as 'Marginal theory and the Otherhood', and which forms the basis of second wave animal ethics (Chapters 1 and 2).

Offer's distinction between first and second wave animal ethics is inspired by similar waves in feminism (p. 25, footnote 4). He highlights four characteristics of first wave animal ethics – similarity arguments, an expansion of the circle of moral concern, the liberal tradition, and a universal system of rules (pp. 30–49) – which second wave animal ethics addresses.

Firstly, as opposed to similarity arguments, second wave animal ethics follows indistinction theory, meaning deconstructing the 'human' and the 'animal' and shifting the focus from sentience to flourishing. Secondly, the 'boundless ethic' of second wave ethics broadens the circle of moral concern and prioritizes marginal

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Others. In addition, a boundless ethic makes animal ethics more compatible with environmental ethics on account of its potential to incorporate non-animal and non-living entities and reject a one-size-fits-all approach. Thirdly, vis-à-vis the liberal tradition, second wave animal ethics deconstructs liberal individuality in favour of feminist and posthumanist approaches, which focus on interconnectedness. This is accompanied by a focus on responsibilities, as opposed to rights. Finally, ‘situatedness’ takes a contextual approach, thus refraining from the imposition of Western ideas and practices, and the idea of a universal system of rules. This structured distinction between these two waves of animal ethics is a very helpful guide through which to structure animal ethics literature.

Offor’s work is part of the second wave animal ethics scholarship, not only because of its critical approach, but also because Offor distances himself from the rational, unpersonal literature that defines much of first wave ethics by consciously situating himself as an ‘Other’: ‘The research in this book is also situated in the sense that it stems from my own individual perspective, history, and experience of marginalisation’ (p. 4). In doing so, Offor rejects the ‘false objectivity of research’ and argues that one’s own experiences can only strengthen one’s research (p. 4), with which I wholeheartedly agree.

As mentioned, the relevance of second wave animal ethics extends beyond animal law. Human rights scholarship has similarly been criticized for its liberal and universalized approach, which has become especially obvious in efforts to align human rights and ecological values. As Anna Grear argues, human rights and their liberal, anthropocentric tendencies have neglected both animals and the environment.¹ Grear traces her critique of human rights back to the Cartesian binary between ‘mind’ and ‘matter’ – where human bodies came to be seen as separate from their rational thinking.² With that binary came an implied hierarchy, where the human body was nothing more than a vessel for the mind. Women, animals, and nature were perceived to be passive objects on the matter-side of the binary, with men, capable of reason, being the subjects to inhabit the mind-side. It is, therefore, unsurprising that human rights did not extend to women and are still not available to most animals and nature.

Grear continues to argue that the disembodied, rational mind of the ‘person’, in this line of thinking, comes close to the corporation, the ‘personification of capital itself’.³ Others, such as Upendra Baxi, have argued that international human rights are currently being supplanted by ‘trade-related, market-friendly human rights’.⁴ The colonial and exploitative origins of human rights have led certain scholars, such as Kathleen Birrell and Daniel Matthews, to ‘refuse’ the language of rights in favour of a focus on duties and obligations.⁵

¹ A. Grear, ‘The Vulnerable Living Order: Human Rights and the Environment in a Critical and Philosophical Perspective’ (2011) 2(1) *Journal of Human Rights and the Environment*, pp. 23–44, at 27.

² *Ibid.*, p. 27.

³ *Ibid.*, p. 33.

⁴ U. Baxi, *The Future of Human Rights* (Oxford University Press, 2008), p. 234.

⁵ K. Birrell & D. Matthews, ‘Re-Storying Laws for the Anthropocene: Rights, Obligations and an Ethics of Encounter’ (2020) 31(3) *Law and Critique*, pp. 275–92, at 283.

Offer uses the same binary as the basis of his theoretical framework with ‘Others’ being all those that were left behind during the Enlightenment. He discusses critiques of the concept of rights but considers them necessary ‘in the short term’ (pp. 44, 68). His critiques do not engage deeply with the relationship between liberal rights and capitalism, which is a missed opportunity, especially considering the fact that Offer himself points out that there is a ‘wealth of untapped potential’ in anti-capitalist critiques in animal ethics (p. 42). His own account, with its case study on globalized trade, would have been an excellent opportunity to contribute to such critiques. Nonetheless, second wave animal ethics provides a theoretical framework for those interested in critiquing the universalized, liberal tendencies of human rights. The broader applicability of Offer’s framework leads one to wonder whether referring to second wave *animal* ethics is too limiting – naturally, humans are animals too, but not regarded as such in law, and the framework has the potential to reach even further in its promotion of a boundless ethic, such as attention to flourishing for plants and fungi.

The framework is put to the test and used to critique global animal law in Chapters 3 and 4. Animal law is problematic, Offer argues, as it aligns with first wave animal ethics. He comments that animal law in its current state has become ‘stagnant’ in the welfarist model, which has led to multiple limitations in the development of animal law, many of which could be resolved by embracing second wave thinking (pp. 66–7). Others, however, have argued that animal law is evolving, and animal rights are increasingly being recognized, including in law courts.⁶ Either way, considering other ethical approaches and ways of thinking should always be welcomed.

Regarding the critique on the ‘global’ part of global animal law, the second wave animal ethics framework is more apt with its focus on situatedness, as opposed to first wave universality. This difference shapes the critique as Offer discusses how much of global animal law is currently Western-focused animal law that is masquerading as ‘global’ animal law (pp. 94–8). Offer offers extensive empirical data on ‘global’ animal law scholarship in support of this statement, which highlights the over-representation of white scholars of Western nationality at leading institutions and as contributors to journals regarding global animal law, such as the *Global Journal of Animal Law*. Offer’s criticism has resulted in ongoing changes at the *Global Journal of Animal Law* to be more transparent and aim to better reflect global scholarship.⁷

Chapters 5 to 7 focus on the animal trade case study. Chapter 5 looks at international trade law in a conceptual manner, with the aim of making explicit its normative, ideological underpinnings. This analysis focuses on the General Agreement on Tariffs and Trade (GATT)⁸ as the ‘legal heart of international trade law’ and the

⁶ A. Shanker & E. Bernet Kempers, ‘The Emergence of a Transjudicial Animal Rights Discourse and Its Potential for International Animal Rights Protection’ (2022) 10(2) *Global Journal of Animal Law*, pp. 1–53, at 1.

⁷ These changes include a newly appointed Advisory Board with animal law scholars from around the globe, as well as a statement on the aspirations of the journal on the website, available at: <https://ojs.abo.fi/ojs/index.php/gjal/about>. The aim of the journal – to foster a global platform in animal law – is considered in the editorial assessment of new submissions.

⁸ Marrakesh (Morocco), 15 Apr. 1994, in force 1 Jan. 1995, available at: http://www.wto.org/english/docs_e/legal_e/06-gatt_e.htm.

World Trade Organization (WTO) as the institutional framework that surrounds it (p. 120). Offer persuasively argues that the trade regime is not value-neutral but value-laden, similar to the environmental protection, animal welfare or human rights regimes (p. 123). Positioning the trade regime as value-neutral can be dangerous, he continues, as it stifles normative changes. Instead, trying to identify the ideological underpinnings of the trade regime serves two goals: the exercise critiques the claim that economic growth is value-neutral, and aids in envisaging changes in the regime's normative underpinnings, although Offer remains pessimistic about the possibility of neoliberal trade to recognize animal flourishing (p. 125).

In Chapter 6 the foundations of second wave animal ethics are applied to the international trade regime. The analysis makes clear how the trade regime blatantly ignores animal welfare, despite live animals being traded in massive numbers. Although not explicitly mentioned in this chapter, the trade regime does not meet most of the demands of first wave animal ethics either – animals are treated as property, with little to no regard for their sentience or moral rights. However, the difference between first wave scholarship and second wave approaches becomes clear in the WTO *EC Seals* case, elaborated in Chapter 7. The case concerns European Union (EU) legislation that prohibits the import and placing on the market of seal products, except for products derived from hunts by Indigenous communities.⁹ The case was first decided by a panel that was established by the WTO Dispute Settlement Body, and that decision was taken on appeal to the WTO Appellate Body. Both the Panel and the Appellate Body found the prohibition to be a legitimate protection of public morals, but found that an exception for Indigenous communities could not be justified.¹⁰

Many animal law scholars have hailed this decision as a great step forward. However, Offer finds that the decision does not satisfy second wave animal ethics priorities and should be regarded more critically. Offer challenges the perception of the WTO as a 'facilitator' in animal welfare protection since the *EC Seals* case (p. 169). He describes how the *EC Seals* case further entrenches 'moral hypocrisy, xenophobia, and coloniality' by disregarding the needs of Indigenous communities in favour of unilateralism, characteristic of first wave animal ethics (p. 176).

Chapters 8 and 9 consider potential solutions to the identified issues: deficiencies in global animal law, the effects of trade on animal welfare, and the ineffectiveness of policy and scholarly responses to the trade and animal welfare nexus (p. 187). Offer focuses specifically on the problem of the unilateralism and the optimism regarding the WTO's role in improving animal welfare. A solution he offers in this regard is a turn to multilateralism. However, Offer does not use this term to refer to a global treaty on animal welfare,¹¹ which he critiques as often taking the shape of

⁹ *European Communities – Measures Prohibiting the Importation and Marketing of Seal Products*, WTO Appellate Body Report, WTO Docs WT/DS400/AB/R and WT/DS401/AB/R, 22 May 2014 (*EC Seals* case).

¹⁰ *Ibid.*, paras 5.289, 5.338.

¹¹ D. Favre, 'An International Treaty for Animal Welfare', in D. Cao & S. White (eds), *Animal Law and Welfare: International Perspectives* (Springer, 2016), pp. 87–106.

Western standards being imposed on the global south. Rather, Offer believes in an approach that ‘focuses on multi-speed, multi-level multilateralism based on global law interconnectivity’, including smaller agreements and soft law, meaning ‘multiple overlapping agreements and declarations between smaller groups of states with mutual recognition of standards’ (pp. 189–201). Another proposed solution is the institutionalization of animal welfare as a factor in decision making at the WTO. Offer notes how the international trade regime’s denial of animal sentience and its intrinsic value is ‘out of step’ with how most governments view animals, and that negotiations are required to change this. A concrete example would be the creation of a subsidiary body in the international trade regime, such as a working group on animal welfare (pp. 215–8). In other words, the solutions discussed are examples of how the more explicit underpinning of second wave perspectives can foster ‘the potential of global animal law scholarship to identify radical and effective solutions to problems’ (p. 194).

Offer considers the limitations he has found in the leading trade and animal welfare scholarship to be the most valuable contribution of his research (pp. 234–5). Although I believe these findings to be significant, I disagree with his assessment. Rather, the extensive and clear ethics-based framework of his research is, to me, the most valuable. Not only is this a departure from the relatively short and under-argued ethical underpinning of much animal law scholarship, but the distinction between first and second wave animal ethics and their foundations provides a clear theoretical and conceptual lens for Offer’s research, and for future research in animal law scholarship. His application of the theoretical lens, resulting in the socio-legal research on the international trade regime, provides an example of how second wave animal ethics can be applied to analyze critically not just animal law but potentially other areas of law as well. Therefore, this work provides useful tools for further research in social justice scholarship and serves as an inspiration for animal law scholars.

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