

THE SEAL HUNT: CULTURES, ECONOMIES AND LEGAL REGIMES by Nikolas Sellheim

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The seal hunt has captured an inordinate amount of public attention over the last few decades compared with other prevalent means of animal exploitation. Thus, it is a wonder that a book like this new essential legal anthropological work by Sellheim has not come before. Sellheim sets out to present the 'human dimension of the seal hunt' (at ix). He succeeds in doing so. The first part of the book sets out the sociocultural value of seals and the legal regimes that govern them. It is here, at the book's heart, that Sellheim's anthropocentric narrative works best. The latter part of the book explores the European Union's (EU) seal regime, critiquing it from multiple angles. This is fascinating, particularly where he provides insight into the EU's *travaux préparatoires*. However, Sellheim's persuasiveness here is harmed by his neglect of popular counterarguments and his light-handed approach to the rich animal welfare literature available on this topic.

Sellheim is self-aware of the uphill battle his book faces. He presents the human side of a debate which has seen animal advocates, conservationists and sympathetic policymakers come out strongly in favour of protecting seals. However, Chapters 2 and 3 do well to present reasons one might want to defend the seal hunt. He shares the sociocultural significance of the hunt and the – in places – extensive regulation to which the hunts are subject. This works to add gravitas to Sellheim's later arguments about the EU's seal regime. The regime, which bans the placing on the market of seal products in the EU (with exceptions for marine management hunts, indigenous hunts and travellers' personal possessions), is more easily portrayed as flawed if it is introduced in the context of a socioculturally important hunt that is responsibly regulated.

In Chapter 2, Sellheim provides a reflection on mythology (including stories of Selkies and indigenous myths and legends), traditional practice and evolving commercialization of the seal hunt. He also describes the way the hunt adapts through periods of geological change, war and market fluctuation as well as how it has shaped political, cultural and cosmological identities of peoples. His examination is broad, spanning hunts across the Northern and Southern hemispheres. This is valuable context to this complex and contentious sociolegal issue. Sellheim also usefully nuances the dichotomization between commercial hunts (typified as brutal clubbing of baby seals) and Inuit subsistence hunts (typified as respectful and

culturally significant use of a totemic species). For example, he notes that the controversial commercial Canadian hunt is not carried out by large firms or companies anymore but, instead, is conducted by individual fishermen with small vessels. He notes that the seal is culturally significant beyond indigenous communities and that small operators like this equally depend on 'marine resources' for their livelihood.

In Chapter 3, Sellheim provides a historic insight into domestic, regional and international legal regimes that have governed or now govern the seal hunt in order to 'manage dwindling stocks and to ensure the continuance of a thriving industry' (at 111). A particularly useful section explores the applicability of international treaties to seals (dating back to the Jan Mayen Seal Fishery Treaty of 1875 between Germany, Great Britain, the Netherlands, Norway, Russia and Sweden) and the patchwork of international regulatory regimes that has developed since and impacts upon the seal hunt. Sellheim's analysis of the international legal regimes that govern the seal hunt reveals a strong interest in sustainable sealing and conservation with very little interest in welfare at the international level. In parts of this chapter, Sellheim would have benefited from depth over breadth. For example, he discusses the listing of different seal species in annexes to the Convention on International Trade in Endangered Species (CITES). However, he does not elaborate on enforcement under that regime or the impact of listing on the conservation status of seals. The welfare provisions in CITES suffer from particularly poor enforcement which means that listing in a CITES appendix does not guarantee impact in practice.¹ This potential for an enforcement gap is also of concern regarding the treaty's primary conservation objectives. Sellheim also provides a comprehensive overview of domestic legislation regulating seal hunts in the seal hunting nations. This covers regulations regarding conservation (permits, closed seasons, etc.) and welfare (stunning, checking and bleeding procedures, for example) as well as countries lacking regulation, such as Russia. He notes that only a minority of States continue to permit the 'commercial exploitation of seals' (at 213). However, he expresses surprise that most of the legislation does not deal with welfare or condition hunts on welfare requirements. He expected that because the public debate on sealing has centred on welfare, the legislation would tackle this issue. However, much of the legislation Sellheim covers predates the popular ethical debate about sealing. Thus, it seems to me that this absence is precisely why there has been debate in the first place.

¹Cf. M Bowman, 'Conflict or Compatibility: The Trade, Conservation and Animal Welfare Dimensions of CITES' (1998) 1 *Journal of International Wildlife Law and Policy* 9, 18.

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Some cognitive dissonance rears its head at this point regarding the shallow treatment of animals in legislation and the weighty cultural significance attributed to seals in Chapter 2, particularly by Inuit communities. Sellheim does not seek to deal with this dissonance because of his positioning set out at the beginning of the book. He admits that the book 'hinges on the narrative of the seal as an exploitable resource' (at 1). Sellheim does not justify this choice and the chosen narrative quickly begins to feel insufficient. This may go unnoticed by many. Indeed, it is common to regard animals as resources and the legislation does so. We continue to be influenced by Aristotle's Great Chain of Being in that way. But there exist rich expanses of literature on the question of the seal (and animals more generally), its moral considerability and what might be owed to it. The choice not to address this literature in selecting a narrative means the book carries a pregnant silence that builds throughout. Indeed, this seems like a missed opportunity to have engaged with animal liberationists or others with knowledge of animal ethics. The term 'animal liberationist' could be said to stem from Peter Singer, though the movement has spread widely and encompasses a multitude of ethical approaches to the question of the animal.² There are important insights that animal liberationists might learn from Sellheim's book, but I fear they will too quickly dismiss it for the casual way it selects its narrative. Sellheim's desire to tell a story that appears marginalized is an honourable one. But it remains true that seals are a unique case: the sustained attention toward sealing and condemnation of the practice are rare deviances from the norm of public acquiescence or ignorance toward animal use and animal suffering. To say that the human story has been neglected here reads like arguments about discrimination against white men or the need for straight pride festivals. It misses the bigger picture.

Besides the problem of audience capture, I fear that the latter part of the book, which is more argumentative, is not as convincing as it could be due to the absence of engagement with key pieces of literature. I will refer to four of Sellheim's key arguments in this regard after providing an overview of the book's final two substantive chapters.

In Chapters 4 and 5, Sellheim explores the history and development of the EU's seal regime, including its path to enactment and the key legal challenges brought against the regime at the Court of Justice of the EU (CJEU) and the World Trade Organization (WTO) dispute settlement body. Sellheim points out the neglect of sealers' livelihoods in the debates surrounding the ban. These debates paid no regard to moral positions that legitimize seal hunting or the justifications relied on by those taking part in the hunt. For these reasons, he warns against moral imperialism. This point is well made. Calls from affected communities for more effective consultation and consideration should be taken seriously, particularly given the uneven nature of the EU's legislation on animal welfare (focusing on some species more than others). It may be that emerging discourse

on global animal law can contemplate how such meaningful dialogue can take place.

Sellheim also provides an enlightening insight into the interaction between international trade law and moral concern, harkening back to the 1815 Declaration Relative to the Universal Abolition of the Slave Trade. However, he seems to misrepresent the relationship between international trade law and animal welfare in a few key ways. He argues that animal welfare is no justification for trade barriers due to the operation of likeness tests under WTO law and the treatment of processes and production methods (PPMs) therein. But it is quite clear from the relevant case law and literature, especially the *EC-Asbestos* case, that likeness is an individual determination in each case that can encompass consumers' tastes and habits (which could most certainly include animal welfare).

This comment leads back to the four key arguments made by Sellheim that could have been strengthened by engagement with literature that reaches different conclusions. First, he criticizes the EU seal regime because sealers would 'accuse opponents [of the hunt] of inconsistency for opposing sealing but eating other animals' (at 267). On this point, many animal liberationists would actually agree with Sellheim. Indeed, Francione highlights the problem of our 'moral schizophrenia' towards animals whereby we care for some animals, hate others and eat billions.³ Sellheim does not forward an argument as to why this inconsistency makes opposition to the seal hunt illegitimate. Elsewhere, he argues that the EU favours a utilitarian approach to animals so that their protection is weighed against human interests. If these points had been drawn together, they could have supported one another. Also, there is fascinating discussion on moral consistency in legislation by Howse, Langille and Sykes.⁴ The authors make a convincing argument that counters Sellheim's point, stating that such inconsistency is acceptable and even to be expected.

Second, Sellheim argues that the EU seal regime's exception for indigenous hunts is ineffective and ill-conceived. He notes that the EU failed to heed the inputs of Inuit communities in their public consultation contributions on the seal regime. This is undoubtedly a failure. He argues that the seal regime is ill-conceived because the Inuit exception harms the animal welfare intentions of the ban and the exception is ineffective anyway because of the 'interrelationships between the market and subsistence economies' (at 259). However, Sellheim does not deal with the EU response to the outcome of the WTO *EC-Seal Products* case. Sellheim's argument echoes the argument made against the EU in the case, which caused the EU to respond by limiting the exception for Inuit communities. This is an interesting demonstration of the EU's priorities that would have benefited from discussion here.

³G Francione, *Animals as Persons* (Columbia University Press 2008) 150.

⁴R Howse, J Langille and K Sykes, 'Pluralism in Practice: Moral Legislation and the Law of the WTO After Seal Products' (2015) 48 *George Washington International Law Review* 81, 114–115.

²See, e.g., P Singer, *Animal Liberation: A New Ethics for Our Treatment of Animals* (HarperCollins 1975).

Another point is that Sellheim argues that the different approach to Inuit hunts by the EU 'cannot be justified with anything other than an emotional and nonfactual approach towards seal hunting' (at 260). This dichotomizes emotion and rationality in a rather outdated way. It has been convincingly argued in many places that empathy is a 'complex intellectual as well as emotional exercise' and an 'imaginative exercise that requires judgement and evaluation'.⁵ This also overlooks the seriousness of intersecting oppressions which may go some of the way to explaining the combination of these two objectives in the seal regime.⁶ It is increasingly recognized that oppressive, paternal forces work to marginalize a number of communities in intersecting ways. Viewed through this lens, the EU's approach to Inuit hunts could be argued to be more than merely 'emotional and nonfactual'.

Third, Sellheim argues that while the seal regime holds animal welfare as a principle concern, the *travaux préparatoires* suggest the EU was going to adopt a ban irrespective of animal welfare concerns. Indeed, he expertly demonstrates the shifting focus in the lead up to the enactment of the final seal regime. This shifts from a focus on conservation surrounding the Seal Pups Directive of 1983; to studies that recommended labelling so as to avoid the potential impact of a ban on Inuit communities; to an eventual decision to enact a ban and a shift toward non-utilization which Sellheim distinguishes from welfare (more on this below). He concludes that the drafting process reveals a lack of a 'coherent, problem-solving oriented approach' (at 251). However, it seems to me that the shift in focus is not uncommon in the deliberative process toward enacting legislation. Sellheim also critiques the fact that the EU shifts its focus when defending the EU seal regime against challenges raised at the CJEU and WTO dispute settlement body. The shifting focus goes from improving the functioning of the internal market to protecting public morality related to animal welfare. However, this is also common as a defensive tactic, especially where different forums and different legal questions are at issue. It would have been useful if Sellheim had spent more time unpicking what was problematic about the shifts in focus in a legal sense.

Finally, Sellheim argues that bans are ineffective at protecting welfare and only regulation can do that. He argues that while the EU seal regime 'has undoubtedly contributed to a reduction in the number of seals that are killed, it does little to impact the welfare of the individual seal which is still killed' (at 256). Sellheim is right to say that regulation more directly impacts welfare than a ban. But he seems to neglect the fact that it is not the EU's place to regulate the industry in Canada or elsewhere. It cannot legislate extraterritorially in this way. Perhaps it could have defended such conditionality within a trade restriction before the WTO. It would have been interesting

to hear Sellheim's thoughts on how such a measure could have been drafted and defended.

Sellheim's argument that a ban fails to protect public moral concern for seals contains some indeterminacy stemming from the definitions of welfare, conservation and protection. He distinguishes well between welfare and conservation throughout his book but never pauses to define these three terms. This causes some difficulties. For example, Sellheim argues that 'animal welfare is a relative concept that primarily refers to animals held in captivity and which does not equate with an absence of killing' (at 256). Animal welfare does not primarily refer to animals held in captivity, as wide-scoping work on wild animal welfare will attest.⁷ It is true that welfare does not equate with an absence of killing. Nevertheless, whether an absence of killing is desirable depends on the underlying ethic behind welfare-protective measures. Many animal rights views do pursue non-utilization, and welfarist law can be backed by rights-based rather than utilitarian ethics. I think it would have been useful to dwell on what these terms mean and to engage with Sykes' argument that 'protection' refers to something broader in scope. She defines animal protection as encompassing 'elements of conservation-focused concerns, welfare concerns, and something that does not quite fit into either category: the value of the life of a charismatic individual animal'.⁸ Sykes is writing about the *EC-Seal Products* dispute and I believe that her exploration of protection is essential to understanding and critiquing the EU's policy goals regarding the seal regime.

To conclude, Sellheim's book provides incredibly valuable insight into the socio-economic realities of the seal hunt. This is also the first place in which lawyers can find a comprehensive overview of the relevant legal regimes applicable to seal hunts across the globe. For these reasons, this book is bound to become essential reading and Sellheim ought to be commended for the rigorous work that has gone into this. I understand why Sellheim made the narrative choice to treat seals as exploitable resources. However, I think that this narrative choice ought to have been better justified by reference to the literature. I also think that, even having made this choice, there were insights provided by animal liberationists and others working on the sealing issue that would have added nuance and precision to the final chapters of the book. The academic work stemming from the animal liberation movement frequently displays intellectual rigor and it deserves attention in this debate. It is much more than a mere attempt to reach a 'moral high ground' (at 284). In any event, this book is a great accomplishment and is bound to inspire further fascinating debate and research on the seal hunt.

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⁵See, e.g., J Donovan, 'Attention to Suffering: Sympathy as a Basis for Ethical Treatment of Animals' in J Donovan and CJ Adams (eds), *The Feminist Care Tradition in Animal Ethics* (Columbia University Press 2007) 174, 176 and 223.

⁶See, e.g., M Deckha, 'Toward a Postcolonial, Posthumanist Feminist Theory: Centralizing Race and Culture in Feminist Work on Nonhuman Animals' (2012) 27 *Hypatia* 527.

⁷See, e.g., W Scholtz, *Animal Welfare and International Environmental Law: From Conservation to Compassion* (Edward Elgar 2019).

⁸K Sykes, 'Globalization and the Animal Turn: How International Trade Law Contributes to Global Norms of Animal Protection' (2016) 5 *Transnational Environmental Law* 55, 67.