

INTERNATIONAL MARINE MAMMAL LAW by Nikolas Sellheim

Published by Springer, 2020, 225 pp, €70.84, hardback.

Tensions reign amongst communities with vested interests in the regulation of marine mammal hunts. Foremost amongst these tensions are those between advocates of sustainable use and conservationists, between hunting communities (indigenous and commercial) and animal liberationists, and crucially, between the animals themselves and the human legal systems and actors that profess to govern their lives. Each of these tensions are borne out in interesting ways in Nikolas Sellheim's new book which forwards an anthropocentric narrative on international marine mammal law, by focusing on and elevating the interests of humans over those of marine mammals.

International marine mammal law is not a discrete legal domain; it 'does not exist as such' (at 6). Thus, Sellheim makes a novel effort to bring together law from various regimes governing the conservation and utilization of marine mammals, injecting personal insights into the tensions that exist. Sellheim primarily focuses on species-specific legal instruments, three of which are included in full as annexes to the book. He also covers some broader issues stemming from regimes like the Convention on International Trade in Endangered Species and the Convention on Biological Diversity (CBD). Sellheim provides an accessible, detailed insight into the international law that applies to some marine mammal species – namely whales, seals and polar bears – for a non-academic audience. He does so successfully by drawing from his years of experience and his clear passion for the subject. Sellheim sets out to achieve two goals with this book: (1) fact-checking and (2) illuminating the controversy surrounding the conservation and sustainable use of marine mammals by presenting the 'multiple perspectives and dimensions' that bear upon this issue (at vii). Sellheim regards this as necessary insight to help us understand the role of marine mammals 'in human societies a bit better' (at 2). Sellheim succeeds in this regard, providing an in-depth account of the law relating to human interaction with marine mammals.

But in setting these goals, Sellheim left me wondering about the role of humans in marine mammal societies. Sellheim does not explore this, nor does he present the animal perspective in this book. Sellheim's opposition to animal protection objectives in law lies barely concealed beneath the surface of this book. As an animal law scholar and ethical vegan, I have an opposing standpoint and I argue that all laws about animals ought to take their interests seriously. However, I will not critique Sellheim's standpoint in this review; it is

critiqued elsewhere in literature on animal ethics, animal studies and animal law.¹ Instead, my analysis will investigate the impact of Sellheim's standpoint and the framing of his book on its narrative. Sellheim frames his work as a textbook (at ix and 2). Presenting work as educational material evokes an air of neutrality and objectivity. However, Sellheim's subjective, anthropocentric standpoint is evident throughout the book, deeply colouring its analysis. Presenting a subjective, distinct viewpoint as a textbook analysis risks providing students with an unrepresentative picture. I will set out the substance of each chapter before introducing a brief analysis.

In chapter 1, Sellheim introduces the basics of public international law and international environmental law. This includes discussion of the growing recognition of nature's intrinsic value in environmental law,² the domination of western states amongst early environmental law treaty negotiations, and the gradual development of environmental law principles. In chapter 2, Sellheim introduces the marine mammal subjects of the book. Sellheim describes their classifications, biology, geographical spread, conservation status, and how they are hunted. In chapter 3, Sellheim introduces the human hunting of marine mammals across the globe. He describes marine mammal hunts as facilitating human survival and those animals as featuring in indigenous myths of creation, cosmology, songs and poems (at 45).

In chapter 4, Sellheim introduces the global framework of laws governing marine mammals and their environments. This provides useful historical insight into the evolving functioning of relevant treaty regimes and their growing basis in conservation objectives. Chapters 5, 6 and 7 form the book's core. Here, Sellheim provides nuanced insights into the negotiation, implementation and enforcement of the international legal frameworks that apply to whales, seals and polar bears. Sellheim describes the International Whaling Commission's (IWC) moratorium on whaling as a '(temporary) zero-catch-quota' (at 93) that is frustrated by disagreement, internal fracture, limitations in scope of regulations, objections and departures from the IWC. Sellheim argues that while the IWC is now grounded in sustainable use objectives, bans on sealing are often motivated by public moral concern for seal welfare. Additionally, the exploration of law relating to polar bears is particularly interesting given that they have received comparatively less attention from international law scholars compared to other marine mammals. Sellheim notes that negotiations toward a polar bear protection regime

¹ I explore this in I Ofor, 'Second wave animal ethics and (global) animal law: a view from the margins' (2020) 11(2) *Journal of Human Rights and the Environment* 268.

² Intrinsic value exists independently of external actors, manifesting itself inherently. On this, see JE Schaffner, 'Value, Wild Animals and Law' in W Scholtz (ed), *Animal Welfare and International Environmental Law: From Conservation to Compassion* (Edward Elgar 2019).

in the 1970s were ahead of their time for embracing indigenous rights and for taking an ecosystem approach (at 160). The ecosystem approach conceptualizes the environment (and environmental governance) as relying upon integrated and intertwining nature components which, together, form complex mutually responsive systems.³ This contrasts with an anthropocentric approach that elevates human interests and needs above those of other actors or components within ecosystems.

Sellheim then moves on to synthesize overarching characteristics of international marine mammal law in chapter 8. Sellheim describes this law as ‘wide and scattered’, motivated in the beginning by exploitative motivations (at 175). Common themes identified include geographical limitations, indigenous exemptions, and the influence of NGOs on regime development. In the final chapter, Sellheim concludes that international marine mammal law is at a crossroads. He helpfully presents five potential scenarios for its evolution which include pursuing a proposal by Cameron Jefferies for a new International Marine Mammal Commission,⁴ or dispersion of existing marine mammal legislation to other existing regimes, like the CBD and the UN Convention on the Law of the Sea discussions regarding biodiversity beyond national jurisdiction.

Sellheim’s book contains a wealth of useful information for those interested in marine mammals and international law. However, the overarching narrative creates shortcomings and gaps which limit the potential of this work as a textbook. Sellheim only introduces the reader to his preference for sustainable use in the book’s final chapter, describing this as the ‘highest good’ for international marine mammal law which should facilitate hunting and trade (at 197). Sellheim describes sustainable use and conservation as conflicting concerns throughout the book (eg at 92). Given that Sellheim’s positioning will be unattractive to a large portion of Sellheim’s potential audience, this framing should have been introduced upfront. Sellheim’s anthropocentric framing guides his overarching goal to provide clarifications. For example, he promotes scepticism of images of skinny polar bears because their emaciation may be due to disease rather than climate change-induced struggles for food (at 157 and 171). Sellheim’s anthropocentric narrative, within a textbook that opts for a light-touch approach to referencing, undermines the intended objectivity and wide-appeal of the book.

Sellheim’s narrative has also led to some substantive gaps. For example, Sellheim neglects the importance of the global commons in international environmental law. Sellheim

³ See FM Platjouw, *Environmental Law and the Ecosystem Approach: Maintaining Ecological Integrity Through Consistency in Law* (Routledge 2016).

⁴ CSG Jefferies, *Marine Mammal Conservation and the Law of the Sea* (Oxford University Press 2016).

regards states that do not engage in the hunting of a particular species, including whaling, as having no interest in the conservation of that species (at 60 and 84) even though most commercial whaling takes place on the high seas (at 186). States with active hunts cannot claim a more legitimate interest because it is precisely the nature of the global commons that all nations and peoples have a vested interest.

Another gap appears in Sellheim's treatment of indigenous peoples. In his book, Sellheim laudably defends indigenous peoples' interests. However, he also essentializes indigenous peoples and falsely pits their interests against animals'.⁵ Sellheim falsely aligns care for animals with western society, describing animal protection as a western concern throughout the book. For example, Sellheim writes about interviews he conducted with dolphin trainers at a Japanese aquarium, noting that the trainers do not have problems with captivity in the way western animal welfarists do (at 54). Critical animal studies literature has long since revealed the alignment of animal care with western society to be manifestly false.⁶ This literature rejects colonial animal advocacy whilst also rejecting arguments like Sellheim's which pit animals' interests against those of marginalized human groups, because this neglects overarching structural, systemic oppression.⁷ Sellheim's discussion is incomplete without an exploration of this literature.

Sellheim's strong opposition to animal protection as a policy-setting objective leads to shortcomings in his argument's rigor. Most shockingly, Sellheim claims that whales 'might be sentient' (at 94). Animal welfare science has definitively proven the sentience of whales and it is surprising to see doubt cast upon this fact in a book about marine mammals.⁸ Sellheim regards the need to 'significantly reduce animal suffering' as 'wishful thinking' which cannot align with our need for easy food (at 36). Yet, animal law literature (and now the International Panel on Climate Change) widely demonstrates positive alignment between animal protection and efforts to alleviate hunger.⁹ Animal law is making considerable strides to reduce animal suffering across the globe: a general principle of law is argued to exist for animal welfare and

⁵ Critiquing such essentialist views, see G Gaard, 'Tools for a Cross-Cultural Feminist Ethics: Exploring Ethical Contexts and contents in the Makah Whale Hunt' (2001) 16(1) *Hypatia* 1.

⁶ See, e.g., K Sykes, 'Sealing Animal Welfare into the GATT Exceptions: The International Dimension of Animal Welfare in WTO Disputes' (2014) 13 *World Trade Review* 471.

⁷ See, e.g., A Ko and S Ko (eds), *Aphro-ism: Essays on Pop Culture, Feminism, and Black Veganism from Two Sisters* (Lantern Books 2017).

⁸ DM Broom, 'The science of animal welfare and its relevance to whales' (2013) 22 *Animal Welfare* 123

⁹ Intergovernmental Panel on Climate Change, 'IPCC Special Report on Climate Change, Desertification, Land Degradation, Sustainable Land Management, Food Security, and Greenhouse Gas Fluxes in Terrestrial Ecosystems' (2019) <<https://www.ipcc.ch/site/assets/uploads/2019/08/Fullreport-1.pdf>> accessed 26 February 2021.

animals are even being afforded rights in various jurisdictions.¹⁰ Yet, Sellheim's only writing on animal protection relates to the work of NGOs, which he denigrates as relying on an 'emotional response' to animal welfare issues (at 46, 58, 60, 75 and 125). He presents emotion as the antithesis to decision-making and progress, dismissing the value of emotion as a form of knowledge.¹¹ For these reasons, Sellheim's book presents an incomplete picture. One cannot comprehensively study the legal environment of international marine mammal law without understanding the stellar scholarship within animal studies, animal ethics and (global) animal law. Presenting this incomplete picture as a textbook risks harming the significant evolution that environmental law has undergone, moving away from anthropocentric objectives and toward other approaches that have more potential to resolve problems of anthropogenic climate change, mass extinctions and animal harm.

Finally, Sellheim denies the agency and subjectivity of marine mammals. This undermines the authority of this book in the light of evolving animal welfare science and animal ethics. Sellheim argues that international marine mammal law should develop to cater for 'all different interests' (at 197). He makes a targeted effort throughout the book to present marine mammal hunting as having minimal impact, considerable benefits and its cessation as causing serious consequences (eg at 46 and 52). Nowhere does Sellheim recognize the perspective of the animals being hunted who have interests too. For Sellheim, they are 'absent referents' in the extreme.¹² Sellheim reinforces marine mammals' lack of agency through euphemism, describing seal hunting as humans and seals having 'interacted' to the 'disadvantage of the seal' (at 125). Sellheim also adopts the habit of referring to whale 'stock'. This sits uncomfortably with Sellheim's description of marine mammals as 'stunning creatures' (at 3), 'iconic' and inspiring 'awe and wonder' (at 81). For Sellheim, these animals' value manifests only through the human gaze and it is not intrinsic. This contrasts with the increasing recognition of the intrinsic value of nature in environmental law instruments.

Because Sellheim neglects to recognize the animal welfare science that proves marine mammals are sentient, he excludes arguments that these animals have interests and intrinsic value worth protecting. Whether one agrees with this position or not, it is a significant omission to exclude literature exploring the perspective of the sentient animals that are the subject of this

¹⁰ M Bowman, P Davies and C Redgwell (eds), *Lyster's International Wildlife Law* (2nd edn, Cambridge University Press 2010) and 'Non-human Rights Blog' (*Nonhuman Rights Project*) <www.nonhumanrights.org/blog> accessed 26 February 2021.

¹¹ See, 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.

¹² CJ Adams, *The Sexual Politics of Meat: A Feminist-Vegetarian Critical Theory* (Continuum 2010).

book. There is a swell of rigorous argumentation revealing the historical view of animals as objects to be fiction. Sellheim asserts this historical view without providing supporting argumentation. And so, whilst this is a meticulously researched and passionately written book, it is uncomfortable and incomplete for the reader that recognizes intrinsic value in non-human animals and nature more broadly. This, for me, paints a rather bleak and barren picture of international marine mammal law. Also bleak and barren is Sellheim's description of Antarctica as 'uninhabited' (at 73). For Sellheim, marine mammals do not inhabit their homelands, they are merely waiting as a 'goldmine' for exploitation (at 73) and I cannot help but feel that this book exploits them just so.

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