Global Animal Law and the Problem of "Globabble": Toward Decoloniality and Diversity *in Global Animal Law Studies*

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Global animal law has emerged as a new legal subdiscipline and area of study following the widespread proliferation of animal law and animal law studies across the globe. However, there remains confusion as to what exactly global animal law is. Early global animal law studies are also entrenching norms that facilitate coloniality and neglect intersecting oppressions. In response, this article proposes a conception of global animal law based in global law metatheory and second wave animal ethics. This article critically analyses instances of "globabble" within global animal law, where global-speak has masked ethnocentric, western influence and bias. This article recommends diversifying and decolonizing global animal law, relabelling some such work as western/European perspectives on animals and international law. It also recommends focusing on deep, critical and radical animal justice in lieu of welfarism or rights-based theory. The article argues this could inspire a more interconnected, post-Westphalian, multilateral global animal lawscape.

The proliferation of animal law has inspired a recent movement to recognize and realize global animal law as a new legal subdiscipline and area of study. However, there remains confusion as to what exactly global animal law is. Additionally, global animal law scholarship and legal developments have fostered coloniality and ethnocentricity, falling short of ensuring equality, diversity and inclusion. There remains untapped potential to explore diverse, interconnected and post-Westphalian multilateralism to create a better vision of a future global animal lawscape.

This article will argue that these shortcomings within global animal law are due to an insufficient reflection upon global animal law's theoretical and normative underpinnings. Thus, this article's objectives are: to retrofit global animal law with some proposed theoretical and normative insights; and then to apply these insights by critically appraising the scholarship, practice and legal proposals that have emerged within global animal law's early years. This introduction will expand upon these objectives by outlining: global animal law's emergence; the theoretical and normative insights I wish to retrofit into global animal law; and the problems I have observed within global animal law scholarship, practice and legal proposals which could be improved through this retrofitting.

A. Introducing Global Animal Law

While global animal law remains in its infancy as an academic subdiscipline, broader animal law is now described as a rather "sophisticated discipline"[1] and as having "arrived" as a "field" of study in at least some jurisdictions.[2] The United States (U.S.) in particular has over 150 law school courses on animal law.[3] Globally, there are now various animal law clinics, conferences, journals, and publications. These developments are a response to the fact that law governing animals' lives has historically served to establish human dominion over animals: a stream in the "river of injustice".[4] Animals typically fall on the wrong side of the "most fundamental classification in law": the person/property divide.[5] Animals' legal status as property is a dismissive and destructive falsity which permits dominium[6] (/dominion) and which lies at the heart of the law governing animals' lives.[7] This property status was spread by colonizers from the west to the rest of the world through seventeenth century animal theft crimes which were used to assert colonial power, and through the inundation of European animals onto ex-colonies as a "pretext for conquest".[8]

In this context, the emergence of animal law (studies) presents an opportunity to move toward meaningful legal protection of animals' interests. I conceptualize animal law as "law for animals" in contrast to a commonly used wider conceptualization of animal law which regards animal law as law *about* animals, and animal welfare law or animal protection law as a mere subset which exists *for* animals.[9] I believe this wider conceptualization is anthropocentric because it allows for the realm of animal law to include law that normalizes

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[1] TAUBER Steven C., *Navigating the Jungle: Law, Politics, and the Animal Advocacy Movement* (Routledge, 2016) at 20.

[2] WALDAU Paul, "Second Wave Animal Law and the Arrival of Animal Studies" in Deborah Cao and Steven White, eds., *Animal law and welfare: international perspectives* (London: Springer, 2016) at 14.

[3] Tauber, *supra* note 1 at 20. On animal law education in the UK, see BROOMAN Simon, "Creatures, the Academic Lawyer and a Socio-Legal Approach: Introducing Animal Law into the Legal Education Curriculum" (2017) 38 Liverpool Law Review 243.

[4] WISE Steven M., *Rattling the Cage: Towards Legal Rights for Animals* (Profile, 2000) at 40.

[5] ADAMS Wendy A., "Human Subjects and Animal Objects: Animals as 'Other' in Law" (2009) 3(1) Journal of Animal Law & Ethics 29 at 32. Examples of animals' propertization in law: Theft Act 1968 (UK) Art 4(4); Criminal Damage Act 1971 (UK) Art 10(1); . In France, animals are recognized as "living beings" rather than "movable property", see Code Civil (France) Art 515-14.

[6] BURDON Peter, "The Great Jurisprudence" in Peter Burdon, ed., *Exploring Wild Law: The Philosophy of Earth Jurisprudence* (Adelaide: Wakefield Press, 2011) at 62.

[7] BROOMAN Simon and LEGGE Debbie, *Law Relating to Animals* (London: Cavendish Publishing Limited, 1997) at 50. On dominion, see Blackstone at 2 Bl Comm 321 et seq.

[8] COHEN Mathilde, "Animal Colonialism: The Case of Milk" (2017) 111 AJIL Unbound 267 at 268.

[9] For example, COOPER Margaret E., *An Introduction to Animal Law* (London: Academic Press, 1987) 68; SCHAFFNER Joan, *An Introduction to Animals and the Law* (Basingstoke, England: Palgrave Macmillan, 2011) 4–5; and SOCHIRCA Neli and KIVINEN Tero, "Special Section on the Definition of Animal Law" (2019) 7 Global Journal of Animal Law, online: GJAL <https://ojs.abo.fi/ojs/index.php/gjal/issue/view/170>.

the ownership of animals and the prioritization of the owners' interests over that of the animals.

Following decades of animal law practice and scholarship, the term "global animal law" emerged in the 2010s. The publication of an Oxford Handbook in Global Animal Law, scheduled for 2022, could be taken as a milestone signifying its full materialisation as a legal subdiscipline. However, animal law scholarship has had a global dimension for decades. It has included comparative studies, campaigns for international law instruments, regional initiatives, non-governmental international standards, and a flourishing global transfer of legal knowledge and norms.[10]

Despite the maturation of global animal law scholarship, its leading scholars and experts describe it in a way that neglects the distinct conceptual meaning of "global law" explored in section II. I believe this conceptual formulation to stem in part from a reliance upon what I term "first wave animal ethics". I will explain both statements here, explaining that this article's core contribution to knowledge is its proposal to improve global animal law through the incorporation of global law metatheory and "second wave animal ethics". Once this proposal is made, this article will go on to apply these theoretical and normative insights by critically analysing the normative themes emerging in the early years of global animal law practice and scholarship. This practice and scholarship includes: the practices of global animal law organizations and research centres; the publication of key global animal law collections and arrangement of conferences; and proposals for development of international law instruments on animal law. I will assess the normative themes emerging in this lawscape[11] in order to argue that the theoretical and normative insights outlined in section II of this article are mostly neglected. I will argue that this has and will limit the claims to justness and effectiveness of global animal law scholarship and practice.

B. Introducing Global Law Metatheory

Global law metatheory consists of academic jurisprudential thought which presents theory to underpin the practice of global law. Global law is law that tracks with globalization and it exists because of the "interconnectedness" of everything, including "global humanity and

[10] See exploration in section III.

[11] For an exploration of the relationship between law and space, as gestured toward by the phrase 'lawscape', see Andreas Philippopoulos-Mihalopoulos, *Spatial Justice: body, lawscape, atmosphere* (Routledge 2015).

intervention".[12] The description of global law outlined in this article focuses on three core components: it is connective (giving legal quality to the transfer of legal norms), future-oriented (giving legal quality to pre-positive legal developments), and post-Westphalian (focusing on more than just the international law state-centric legal order).[13]

In contrast to this, some animal law experts conflate global animal law with international law, and others treat it as equivalent to a universally applied international law.[14] Most operate within global animal law spaces without appearing to reflect upon what this means at all. Troublingly, when global animal law work is not "global" in the sense I described, it can amount to no more than "globabble".[15] Globabble, a term coined by William Twining, refers to instances where global-speak actually masks ethnocentric, western influence and bias.

Global law should allow space for contextual and specific law which builds from the ground up. This article will demonstrate that, while many developments in more top-down kinds of international law contribute towards a global type of animal law (they are "precursor and platform"),[16] they do not constitute all of global animal law. Nor are they synonymous with it. Global law can be found in a wide range of spaces. International instruments, national law, industry standards, and even academic legal proposals can all be regarded as a global kind of law. Recognising this allows much more space for marginal actors, particularly including Global South actors, to have significant impact on global animal law's development. So, by overfocusing on universally applicable international law, global animal lawyers neglect the decolonising potential of global animal law. This article will explore how global animal law practice and scholarship has left space for coloniality and ethnocentricity, arguing that this could be resolved through the application of global law metatheory and

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[12] MUSA Shavana and DE VOLDER Eefje, "Interview with Professor Neil Walker – Global Law: Another Case of the Emperor's Clothes?" (2012) 17 Tilburg Law Review 135 at 141.

[13] See section II.

[14] See examples of conflation in BLATTNER Charlotte, "Global Animal Law: Hope beyond Illusion: The Potential and Potential Limits of International Law in Regulating Animal Matters" (2015) 3 Mid-Atlantic Journal on Law & Public Policy 10 at 279–280; BRELS Sabine, "The Evolution of International Animal Law: From Wildlife Conservation to Animal Welfare" in ABATE Randall S., ed, *What can Animal Law learn from Environmental Law?* (Washington DC: Environmental Law Institute, 2015) 365; OTTER Caley, O'SULLIVAN Siobhan and ROSS Sand, "Laying the Foundations for an International Animal Protection Regime" (2012) 2(1) Journal of Animal Ethics 52 at 53; PETERS Anne, "Liberte, Egalite, Animalite: Human-Animal Comparisons in Law" (2016) 5 Transnational Environmental Law 25 at 51; and ROBERTSON Ian A., *Animals, Welfare and the Law: Fundamental Principles for Critical Assessment* (Oxford: Routledge, 2015) at 185 et seq.

[15] TWINING William, "Publication Review – Intimations of Global Law, Neil Walker" (2016) Public Law 540 at 543.

[16] WALKER Neil, *Intimations of Global Law* (Cambridge: Cambridge University Press, 2015) at 51.

second wave animal ethics. Before turning to the question of animal ethics, I will set out briefly why I refer to coloniality over alternative terms like neocolonialism.

Neocolonialism focuses on the period of time following colonization and instances where ex-colonies are made to be dependent upon ex-colonial powers, and subject to their indirect rule.[17] In contrast, coloniality is conceptualized by Latin American scholars as a "matrix of power in the modern world" reflecting the way the world order has been shaped by colonialism.[18] Coloniality entails perpetuation of the "relationship between the European – also called 'Western' – culture, and the others" as one of "colonial domination" in which Western culture is coded "paradigmatic" and others destroyed.[19] This accurately depicts patterns that have occurred within internationally scaled animal activism, whereby non-western practices of animal consumption are coded barbaric whilst harmful western practices like factory farming are not similarly coded within the same activist activities.[20] Globalized, legislative patterns are being used to entrench this power matrix and the destruction of non-western culture. Coloniality is also associated with its antithesis, decoloniality, which aspires beyond "surviv[al]" to the "creat[ion] of *an-other* world".[21] This is much more ambitious than simply tackling neocolonialism where it can be seen to arise. Decoloniality is essential to effective and ethical (global) animal law, from the perspective of second wave animal ethics. This article will support deep integration of decoloniality within emerging global animal law through incorporation of Third World Approaches to International Law (TWAIL) and relevant insights from second wave animal ethics.[22]

C. Introducing Second Wave Animal Ethics

Turning then to animal ethics, the content of animal law and related legal scholarship, insofar as they rely upon and grow out of ethical insights, tend to reference or utilize what I term "first wave animal ethics". First wave animal ethics encompasses heavyweights of the animal

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[17] MALDONADO-TORRES Nelson, "Colonialism, Neocolonial, Internal Colonialism, the Postcolonial, Coloniality, and Decoloniality" in MARTÍNEZ-SAN MIGUEL Yolanda, SIFUENTES-JÁUREGUI Ben and BELAUSTEGUIGOITIA Marisa, eds., *Critical Terms in Caribbean and Latin American Thought* (London: Palgrave Macmillan, 2016) at 73–74.

[18] ibid at 76.

[19] QUIJANO Aníbal, "Coloniality and Modernity/Rationality" (2007) 21 Cultural Studies 168 at 169–170.

[20] OFFOR Iyan, "Second Wave Animal Ethics and (Global) Animal Law: A View from the Margins" (2020) 11(2) Journal of Human Rights and the Environment 268 at 290–292.

[21] Maldonado-Torres, *supra* note 17, 76.

[22] See below at section II.B.

liberation movement including Peter Singer, Tom Regan and Gary Francione.[23] The first wave focuses primarily on concepts of animal welfare and animal rights. The ethical systems within the first wave can be characterized by their use of arguments based on rationality and liberal individualism to justify including animals within the circle of moral concern. The circle of moral concern marks the boundary line between those we consider ethically considerable and those we do not consider in this way. First wave theories tend to make this in/out determination based on similarities that animals have with humans which are attributed moral significance, such as cognitive ability, self-consciousness or sentience.[24] They also tend to regard individual contexts as irrelevant to these determinations, preferring a universally applicable system of ethics.

A first wave-inspired welfarist model of animal protection has become entrenched in animal law in the west and increasingly in Africa, Asia and South America.[25] The hallmarks of welfarist animal law are incremental reform[26] and a utilitarian balancing of animal and human interests focused on the principle of "unnecessary suffering".[27] This entrenches human superiority in law, treating the use or instrumentalization of animals as unproblematic[28] and leaving the question of animal suffering to the whims of the courts.[29] This is regarded by many as a step in the right direction because it at least resists violence against animals and welfarism vocabularies can help to describe new animal issues that arise.[30] However, entrenching the welfarist model into legal systems across the globe has introduced a number

[23] Singer PETER, *Animal Liberation*, 4th ed. (Sydney: Harper Perennial ed., 2009); REGAN Tom, *The Case for Animal Rights* (California: University of California Press, 2004); FRANCIONE, Gary L., *Animals, Property, and the Law* (Philadelphia: Temple University Press, 1995); FRANCIONE, Gary L., *Rain without Thunder: The Ideology of the Animal Rights Movement* (Philadelphia: Temple University Press, 1996); FRANCIONE, Gary L., *Animals as Persons* (New York: Columbia University Press, 2008).

[24] For elaboration, see Offor, *supra* note 20.

[25] BLATTNER Charlotte E., *Protecting Animals Within and Across Borders: Extraterritorial Jurisdiction and the Challenges of Globalization* (Oxford: Oxford University Press, 2019) at 74–75.

[26] PETERS Anne, "Introduction: Animal Law - A Paradigm Change" in PETERS Anne, STUCKI Saskia and BOSCARDIN Livia, eds., *Animal Law: Reform or Revolution?* (Zurich: Schulthess, 2015) at 21.

[27] GARNER Robert, *Animals, Politics and Morality*, 2nd ed. (Manchester: Manchester University Press, 2004) at 85–86.

[28] ibid at 109.

[29] RADFORD Mike, *Animal Welfare Law in Britain: Regulation and Responsibility* (Oxford: Oxford University Press, 2001) at 247.

[30] OTOMO, Yorkio, "Law and the Question of the (Nonhuman) Animal" (2011) 19 Society & Animals 383 at 384.

of limitations to animal law. These include a neglect of wild animal welfare,[31] a neglect of city-dwelling wild animals,[32] and the freedom to kill healthy animals for no reason.[33]

The welfarist model is being challenged by new animal rights litigation[34] and literature.[35] Animal rights law may lead to more significant improvements in the treatment of animals compared to the welfarist model. Second wave animal ethics is another alternative approach which tends to align more with insights from critical animal ethics. Second wave animal ethics is a porous category, encompassing critical approaches and alternatives to the welfarist and rights-based approaches which have dominated the legal theory utilised by most animal law experts. Contributors to second wave animal ethics could be regarded as stemming from posthumanism (Rosi Braidotti), critical environmental ethics (Val Plumwood), feminist animal ethics (Josephine Donovan), critical race theory (Aph and Syl Ko), and more.[36]

Second wave thinking tends to entail: a commitment to indistinction between the socially constructed categories of human and animal; an ambition to promote and safeguard flourishing as well as protecting against suffering; favouring Other-facing ethics rather than a constrained circle of moral concern which is unconcerned with Others which fall outside the circle; a commitment to care (entailing deep listening and embracing connection) in place of liberal individualism; and a situated (or contextualized) and intersectional approach to solving ethical dilemmas as opposed to a reliance upon universal imperatives. Elements of these second wave trends will be elaborated and made clearer as they become relevant throughout this article, though it is not necessary to elaborate upon all of this here.[37]

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[31] HARROP Stuart, "The Dynamics of Wild Animal Welfare Law" (1997) 9 Journal of Environmental Law 287 at 287.

[32] OTOMO Yoriko, "The End of the City and the Last Man: Urban Animals and the Law" (2016) 42 Lo Squaderno 47 at 49. Otomo does not infer causation between welfarist law and this neglect, but I regard the two as intertwined.

[33] WILLS Joe, "A Nation of Animal Lovers? The Case for a General Animal Killing Offence in UK Law" (2018) 29(3) Kings Law Journal 407.

[34] WISE Steven M., "Legal Personhood and the Nonhuman Rights Project" (2010) 17 Animal Law Review 1. For recent developments, see Nonhuman Rights Project, "Nonhuman Rights Blog", online: NHRP https://www.nonhumanrights.org/blog/.

[35] Otter, O'Sullivan and Ross, *supra* note 14 at 62-65; and Peters, *supra* note 14 at 42.

[36] Some examples include Rosi Braidotti, *The Posthuman* (Polity Press 2013); Aph Ko and Syl Ko (eds), *Aphro-Ism: Essays on Pop Culture, Feminism, and Black Veganism from Two Sisters* (Lantern Books 2017); Val Plumwood, 'Surviving a Crocodile Attack' (*Utne Reader,* 2000) <https://www.utne.com/arts/being-prey> accessed 18 December 2020.

[37] For elaboration, see Offor , *supra* note 20.

Second wave animal ethics has been afforded less attention in the legal literature.[38] Yet, as this article will demonstrate, second wave animal ethics contains particularly significant ideas for the contexts of international and global law. For example, critical approaches within second wave animal ethics favour reflexivity, transparency and responding to the intersectionality of various oppressions. I will argue that it is essential that global animal law scholarship and policy adopt these priorities to achieve legitimacy amongst diverse local communities across the globe.

In this regard, the concept of intersectionality, which is utilised by various second wave theorists, has particular significance for this article and global animal law. Intersectionality is a term coined by Kimberlé Crenshaw to define the particular oppression experienced by black women in relation to discrimination law.[39] It is now used as a "method and a disposition, a heuristic and analytical tool"[40] to counter the invisibility of those experiencing multiple oppressions at once,[41] to locate power,[42] and to identify the mutual operation and exacerbation of various inequalities.[43] Intersectionality methodologies critique the "rigidly top-town social and political order"[44] and "white male dominance" that facilitate oppressive realities.[45] Intersectionality is applied to the animal question in second wave animal ethics, and in this article, to highlight how animal oppression stems from politics of power, how animal oppression mirrors or resembles other oppressions, and how hegemonic means of pursuing animal protection are counterintuitive and detract from the goal of long-term improvement of animals' lives.[46] This is a particularly important concept to employ to ensure that global animal law scholarship does not utilise colonial tactics, and that it does not neglect the views, priorities and work of actors within the Global South.

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[38] A prominent exception is OTOMO Yoriko and MUSSAWIR Ed, eds., *Law and the Question of the Animal: A Critical Jurisprudence* (Oxford: Routledge, 2013).

[39] CRENSHAW Kimberlé, "Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics" (1989) 1 University of Chicago Legal Forum 139.

[40] CARBADO Devon W. et al, "Intersectionality: Mapping the Movements of a Theory" (2013) 10(2) Du Bois Review 303 at 312.

[41] Crenshaw, *supra* note 39 at 140–141.

[42] Columbia Law School, 'Kimberlé Crenshaw on Intersectionality, More than Two Decades Later' (June 2017), online: <https://www.law.columbia.edu/news/archive/kimberle-crenshaw-intersectionality-more-two-decades-later>.

[43] STEINMETZ Katy, "She Coined the Term 'Intersectionality' Over 30 Years Ago. Here's What It Means to Her Today" (2018), online: Time Magazine <https://time.com/5786710/kimberle-crenshaw-intersectionality/>.

[44] MACKINNON Catherine A., "Intersectionality as Method: A Note" (2013) 38(4) Signs 1019 at 1020.

[45] ibid at 1023 citing Crenshaw, *supra* note 39 at 152.

[46] For more detail, see Offor, *supra* note 20.

I refer to intersectionality with the knowledge that it has been critiqued by scholars such as Aph Ko. Ko writes that we "don't need movements to intersect; we need new imaginations of how oppressions manifest themselves at the root", how they "constitute one another" rather than intersect with one another.[47] Ko's alternative of afro-zoological resistance is a superior alternative that deals with these issues.[48] It also deals with critique of instances of shallow intersectionality that are performative and which ignore "settler colonial power".[49] However, it is possible that deeper practices of intersectionality reflect at least some of these ideals and, indeed, it is a vision similar to Ko's that I had in mind when investigating the concept of intersectionality. So, I refer to intersectionality in this article because I see potential in a deep version. Also, given that intersectionality is increasingly well recognized amongst animal law scholars, I choose to use that concept here for the sake of accessibility, but ask that its deeper potential or alternatives be borne in mind.

D. Outline

In order to achieve its objectives, this article will proceed in three parts. First, in order to illuminate the content, meaning, and direction of global animal law, this article will expand upon the globality of the animal question. The motivators for international governance of animals will be elaborated here because they contribute significantly to the substance of global animal law. Then, specific considerations that give globality to the animal question will be introduced to distinguish global law from international law, transnational law, and law that applies universally.

Second, this article will propose a conception of the global that is inspired by metatheories of global law and second wave animal ethics. This is proposed as a new normative underpinning for global animal law scholarship; an underpinning that, I argue, is capable of injecting decoloniality and intersectionality into global animal law spaces.

Third, these theoretical insights will be used to critically analyse the normative, theoretical and ethical merits of current responses to animal problems within global animal law (scholarship). This article will critically analyse the practice and research of global

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[47] KO Aph, *Racism as Zoological Witchcraft: A Guide to Getting Out* (New York: Lantern Books, 2019) at 77 and 83.

[48] ibid at 99.

[49] KAY Justin, "Vegan-Washing Genocide: Animal Advocacy on Stolen Land and Re-Imagining Animal Liberation as Anti-Colonial Praxis" in SPRINGER S. et al, eds., *Anarchist Political Ecology - Volume 1: Undoing Human Supremacy* (Oakland: PM Press, 2020).

animal law and scholarly visions of global animal law futures, revealing the gaps that the new normative framework proposed in section II would fill.

In the conclusion, this article will summarize the emerging normative practice and scholarship of global animal law and it will suggest changes that could nuance and improve the use of global terminology by animal law practitioners and scholars in order to work toward more effective and ethical global animal law.

I. THE GLOBALITY OF THE ANIMAL QUESTION

The animal question has become a subject of international law for three reasons: international problems, international animals, and normative trends. In addition to this, animals have also become a subject of distinct but intertwined global animal law (scholarship). The globality of the animal question derives from distinct considerations. This section will explore the conditions that have inspired international law on animals, and which have also formed the substance of many global animal law debates. Then, this section will introduce the unique globality of the animal question.

A number of internationally scaled problems give rise to a need for international animal law. For example, it is recognized that "animal experimentation is heading east and animal agriculture is moving south".[50] However, the issue frequently identified as the defining international animal issue is the trade of animals and their bodies across borders.[51] Free trade is argued to create economic incentives to cause animal harm.[52] This, it has been argued, creates a need for harmonization and unity in welfare standards so as to avoid low animal welfare havens and associated problems.[53] Trade is also intricately tied up with food production and, thus, the spread and shape of livestock farming. Feeding a growing population is also a problem of global scale that impacts upon animal welfare. For example, China has become the largest pork producer in the world but also neglects animal welfare in

[50] KELCH Thomas G., 'CITES, Globalization, and the Future of Animal Law' in Abate, *supra* note 14 at 284–285.

[51] BOWMAN Michael, 'Animals, Humans and the International Legal Order: Towards an Integrated Bioethical Perspective' in SCHOLTZ Werner, ed, *Animal Welfare and International Environmental Law: From Conservation to Compassion* (Cheltenham: Edward Elgar, 2019) 57; FAVRE David, "An International Treaty for Animal Welfare" in Cao and White, *supra* note 2 at 92–96; WAGMAN Bruce A and LIEBMAN Matthew, *A Worldview of Animal Law* (Durham, North Carolina: Carolina Academic Press, 2011) at 24.

[52] Bowman, *supra* note 51 at 57; Favre, *supra* note 51 at 94–96; Garner, *supra* note 27 at 86–87; Peters, *supra* note 14 at 51–52.

[53] Garner, *supra* note 27 at 86–87; Peters, *supra* note 14 at 51–52; Robertson, *supra* note 14 at 13.

policy setting.[54] The pressure to make profit in globalized free markets has incentivized harmful intensification of livestock farming practices.[55] But by 2050 we will be feeding enough food for four billion people to livestock animals.[56] Plant protein is vastly more efficient to produce.[57] And yet we persist in pitting people against livestock in a competition for food, causing particular detriment to the poorest countries.[58]

Another problem that attracts international regulation and which demonstrates the globality of the animal question is that of animal health and zoonotic diseases.[59] Due to trade, transport and the natural movement of animals, such diseases carry across borders. For example, African swine fever has led to animal welfare atrocities, particularly as production shifts in the wake of export restrictions due to outbreaks.[60] This is also true of the COVID-19 pandemic which has proven with devastating consequence just how interconnected the lives, health and welfare of humans and animals are. Some of the worst consequences of the pandemic for animals have seen thousands of healthy pigs in the U.S. slaughtered in poor conditions due to the breakdown of global supply chains in a factory farming industry that cannot accommodate a slowdown in processes.[61] A decision was also made to cull all Danish mink, up to 17 million animals, due to outbreaks of COVID-19 on Danish mink farms.[62] A further problem attracting international regulation is environmental protection.[63] The interlinkages of animal protection and environmental protection could justify more elaborate

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[54] KEYSERLINGK Marina A.G. and JOSÉ HÖTZEL Maria, "The Ticking Clock: Addressing Farm Animal Welfare in Emerging Countries" (2015) 28 Journal of Agriculture and Environmental Ethics 179 at 191.

[55] Kelch, *supra* note 50 at 180. Globalized markets are argued to be bad for agriculture at large in TUDGE Colin, *Feeding People Is Easy* (Pari, Italy: Pari Publishing, 2007) at 117 et seq.

[56] Tudge, *supra* note 55 at 107.

[57] ibid at 66.

[58] ibid at 107.

[59] Favre, *supra* note 51 at 92–96.

[60] LYMBERRY Phillip, "Has African Swine Fever Led to Animal Welfare Atrocities?" (2019) Grocer 31, online: Gale <https://link.gale.com/apps/doc/A604749262/ITOF?u=ustrath&sid=ITOF&xid=32af83f1>; KASSAM Ashifa, "Shocking Footage of 'Severely Injured' Pigs on Spanish Farms Released" (November 2020), online: The Guardian <https://www.theguardian.com/environment/2020/nov/16/shocking-footage-of-severely-injured-pigs-on-spanish-farms-released#:~:text=Shocking%20footage%20of%20'severely%20injured'%20pigs%20on%20Spanish%20farms%20released,-This%20article%20is&text=Footage%20that%20appears%20to%20show,animal%20welfare%20campaigners%20in%20Spain.>.

[61] GRANDIN Temple, "Methods to Prevent Future Severe Animal Welfare Problems Caused by COVID-19 in the Pork Industry" (2021) 11(3) Animals 830.

[62] MURRAY Adrienne, "Coronavirus: Denmark Shaken by Cull of Millions of Mink" (November 2020), online: BBC <https://www.bbc.com/news/world-europe-54890229>.

[63] PETERS Anne, "Global Animal Law: What It Is and Why We Need It" (2016) 5(1) Transnational Environmental Law 9 at 19.

incorporation of animal welfare into international environmental law.[64] Global animal law practice and scholarship could learn various lessons from global environmental law[65] and the emerging incorporation of global law metatheory therein.[66]

Moving on from international problems to international animals, one sees this justification for international law governing animals' lives most frequently in the case of migratory species. Indeed, this is something of a catch all category, encompassing all those animals that move across borders of their own accord. Animals that move across borders not of their own accord would also be relevant here, including animals that are transported or traded for industries that use animals for food, research or entertainment as well as animals that are transported for conservation or other purposes.

Finally, regarding normative justifications, international law is useful where animal protection standards diverge between states and there is desire to share best practices.[67] Second wave animal ethics does not support coloniality in approaches to such cooperation. For example, a second wave view regards literature that critiques non-western states as lagging behind in animal welfare legislation to be misleading.[68] This is because such states usually cause less harm to animals than western states with industrialized farming. Animal welfare standards often arise in response to industries causing animal harm. So, standards alone cannot be utilised as a reliable measure of animals' quality of life.

These motivators of international law are relevant for global animal law but do not distinguish it from international law. Three core concepts are adopted and will be explained here to distinguish global (animal) law from other kinds of law: connectivity, future-orientation, and decentring the state in post-Westphalian governance models. These three concepts are borne of globalization and are defining features of the (global) law that seeks to order a globalized world. The following section explores these three concepts by introducing global law metatheory. I recommend centring global animal law on these concepts and ideas contained within second wave animal ethics.

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[64] Offor, *supra* note 20 at 279–282.

[65] Abate, *supra* note 14.

[66] See, for example KULOVESI Kati, MEHLING Michael and MORGERA Elisa, "Global Environmental Law: Context and Theory, Challenge and Promise" (2019) 8(3) Transnational Environmental Law 405.

[67] Bowman, *supra* note 51 at 57; Favre, *supra* note 51 at 92–96; Peters, *supra* note 63 at 19; Von Keyserlingk and José Hötzel, *supra* note 54 at 186.

[68] For example, Von Keyserlingk and José Hötzel, *supra* note 54 at 186.

II. A PROPOSAL FOR AN INTERSECTIONAL CONCEPTION OF THE GLOBAL

Metatheories of global law are beginning to be adopted by global environmental lawyers.[69] These metatheories are essentially theory about theory, because global law is itself a theoretical concept. In this article, I combine global law metatheory with second wave animal ethics to redirect global animal law away from its sometimes narrow focus on universally applied international law instruments which, as an approach to global animal law, can facilitate coloniality and neglect the intersectionality of oppression.

A. Metatheorizing Global Law

Yoriko Otomo provides a feminist, imagined account of the signing of the Treaty of Westphalia which portrays it as a "constitutive moment" and perhaps a "founding myth" of international law which catalysed states' "jurisdictional independence from the Roman Catholic Church".[70] Today, globalization "has outgrown traditional Westphalian patterns of international governance" which are centred on the state's exclusive sovereignty over its territory and which maintain that the state is the primary, central actor of international law.[71] It no longer makes sense to talk of "the global political arena, social movements, markets and multinational corporations" solely within the constraints of international law.[72] Global law seeks to bring some "coherence" to this "post-national", globalized normative landscape.[73] So, "doing" global law requires unearthing and developing global kinds of law without restricting ourselves to the boundaries of the Westphalian international law, UN-centric model.[74]

This post-Westphalian globalized situation provides the context for global law's connectivity. Ideas assume mobility in a globalized world. In the realm of law, this results in

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[69] Kulovesi, Mehling and Morgera, *supra* note 66 at 412.

[70] OTOMO Yoriko, *Unconditional Life: The Postwar International Law Settlement* (Oxford University Press 2016) at 137–144.

[71] CARDESA-SALZMANN Antonio and COCCIOLO Endrius, "Global Governance, Sustainability and the Earth System: Critical Reflections on the Role of Global Law" (2019) 8(3) Transnational Environmental Law 437 at 6–7 citing MARIA BATTAGLIA Eugenio, MEI Jie and DUMAS Guillaume, "Systems of Global Governance in the Era of Human-Machine Convergence" (February 2018), online: Cornell University <https://arxiv.org/abs/1802.04255>. Also see Kulovesi, Mehling and Morgera, *supra* note 66 at 408.

[72] Cardesa-Salzmann and Cocciolo, *supra* note 71 at 9.

[73] Kulovesi, Mehling and Morgera, *supra* note 66 at 411.

[74] SOMSEN Hans, "In Pursuit of the Global within: A Structure for the Global Law Project" (2012) 17 Tilburg Law Review 250 at 252.

an increase in cross-fertilization of legal concepts, or "connectivity".[75] Connectivity is the most important feature of global law and, indeed, has been described as the most crucial "question of our time" in the context of the "implosion of the Eurocentric world" and consequent "decentring of the world".[76] To understand how to organise ourselves on a global scale, we must understand how we "connect" socially, normatively and legally. Global law recognizes the way that "legal concepts travel globally between jurisdictions and other normative systems".[77] Global lawyers practice in interconnected[78] liminal spaces, crafting conversations between otherwise distinct, separate realms of law.[79]

Global law has been described as a "decentred, universally applicable legal phenomenon of the 'in-between', or 'inter-legality'", thus transcending "the classical conceptual trichotomy between the legal realms of the international, the transnational and the domestic".[80] So, it is all about the spaces and connections between law, as well as relating to laws at various levels and stemming from different legal fora. By transnational law is meant "'all law which regulates actions or events that transcend national frontiers', including public and private international laws, as well as other rules which do not wholly fit into these categories".[81] So, crucially, global law is different and distinct from this. Global law helps us to "rethink and reorganize the legal worldview to reflect and capture" upheavals due to globalization.[82] Poul Kjaer conceptualizes the connectivity of global law as a "transfer" which, relying upon Rudolf Stichweh's definition, entails: (1) an object of meaning, such as a legal judgement or product, capital or knowledge; (2) which has "informational value" that causes impact upon arrival; (3) which crosses boundaries; (4) which bridges distances in space or time; (5) and which has a "certain permanence" through, for example, repeated transfers.[83]

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[75] KJAER Poul, "Constitutionalizing Connectivity: The Constitutional Grid of World Society" (2018) 45(1) Journal of Law and Society 114.

[76] ibid at 123.

[77] Kulovesi, Mehling and Morgera, *supra* note 66 at 415.

[78] ibid at 407.

[79] ibid at 415.

[80] Cardesa-Salzmann and Cocciolo, *supra* note 71 at 4 citing Kjaer, *supra* note 75.

[81] MORGERA Elisa, "Global Environmental Law and Comparative Legal Methods" (2015) 24(3) Review of European, Comparative & International Environmental Law 254 at 256 citing JESSUP Philip, *Transnational Law* (London: Yale University Press, 1956), 136.

[82] Kulovesi, Mehling and Morgera, *supra* note 66 at 407.

[83] Kjaer, *supra* note 75 at 124–125.

Animal lawyers regularly find inspiration from animal law within other jurisdictions. Global animal law practice sees domestic law put into conversation with regional law, international law put into conversation with industry standards, and so on. This results in a webbed interaction that centres upon an exchange of ideas, norms, legal concepts, and practices. Global law metatheory regards these interactions themselves as having the quality of law. Global animal law, as a subdiscipline, has not engaged with these theoretical reflections on connectivity and has, instead, focused heavily upon universally scaled international law instruments.[84] However, misaligning "global" with "universal" is a misunderstanding regarding global law.[85]

Hans Somsen's remarks on external and internal understandings of global law are helpful in overcoming this. He describes external notions of the global as "referring to some all-encompassing legal system or principle spanning the globe" (a universal legal system) while internal notions denote "the basic building blocks of which all legal systems are made up" (a feature of existing laws).[86] I find this latter conception to be quite useful because it regards the global law project as one seeking to "unearth the global within" rather than a universalising project.[87] This conception leads to an understanding of global law as "an adjectival, not a nominal category".[88] In plain terms, this means global law studies should investigate the globality within various different kinds of law, rather than seeking to delineate some kind of universal, global legal system. This entails a legal enquiry and practice that pursues more than just the adoption of a universally-applicable treaty, for example. This is important to draw out the potential global animal law has to amplify the voices of marginalized communities and their animal protection practices. Focusing solely on a universalizing mission risks marginalizing already oppressed peoples and their perspectives if they are squeezed out or spoken over by a western-centric majority. All this is explored in more detail below.

Neil Walker's metatheory of global law may help global animal law scholars to adopt such an adjectival understanding of globality in law. He regards global law as a "category of law which operates at the external "global" edge of the transnational domain".[89] Again

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[84] See below at section IV.

[85] Kulovesi, Mehling and Morgera, *supra* note 66 at 414.

[86] Somsen, *supra* note 74 at 252.

[87] ibid at 253.

[88] Walker, *supra* note 16 at 19.

[89] ibid at 18.

highlighting how transnational and global law are distinct. A necessary, uniting feature of global law is its "practical endorsement of or commitment to the universal or otherwise global-in-general warrant of some laws or some dimensions of law".[90] This tells us that global law is "wider than mere neighbourly or regional" but "narrower than literally world-wide".[91] So, it is an oversimplification to think of global law as universally applicable international law. To describe it concisely, we might refer to global law as "a sort of meta law" that "lies above international and transnational law and draws together the many ways in which law and globalization overlap".[92]

So, if global law is an adjectival category, what sort of law does it describe? Walker defines global law as including both law that will "overcome difference" and which will "accommodate difference".[93] He does not favour or rule out either approach.[94] So, while he accepts some universalization or homogenization within global law, it also encompasses diversity and dispersion. Second wave animal ethics would desire an addition here; that we oppose global law that stands against difference through colonial power structures. The following sections will show that global animal law has fallen short of this imperative because it has adopted an external, universalizing view of global law, facilitating coloniality. Thus, the first lesson of global law metatheory for global animal lawyers is that it ought to encompass and encourage ground-up, diversified law and policy recommendations with global colour in addition to top-down universally scaled initiatives.

A second lesson involves the future-oriented leaning of global law: it is normative, aspirational and has directionality.[95] For Neil Walker, global law is located "in the active domain of constructive discovery or creative projection".[96] This means the task of analysing the law adds heightened significance to "trend-spotting" and "challenging or rethinking our very ideas of legal order" on top of its roots in "settled doctrinal analysis".[97] So, the role of global lawyers is different to international or transnational lawyers due to this future-orientation. Even though global law is future-oriented, it can still have "current applicability"

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[90] ibid.

[91] Twining, *supra* note 15 at 542.

[92] KENNY David, "Book Review – Neil Walker: Intimations of Global Law" (2015) 63 American Journal of Comparative Law 1053 at 1053.

[93] ibid at 1054. For full elucidation of these ideas, see Walker, *supra* note 16 at 55–56.

[94] Walker, *supra* note 16 at 178.

[95] Kulovesi, Mehling and Morgera, *supra* note 66 at 418.

[96] Walker, *supra* note 16 at 22.

[97] ibid at 205.

and a "rule-like quality".[98] It is just that these things are "tentative" and "fragile", as one would expect of merely intimated or pre-positive law.[99] Global animal law has indeed, thus far, presented as widely future-oriented, aspirational and normative.[100] So, the focus within global animal law studies upon proposals for international law instruments is broadly in line with global law metatheory.

A third lesson of global law metatheory is that the future-orientation of global law lends heightened significance to the role of academics as "jurisgenerative", as having law-making potential.[101] Global law is more dispersed than international and transnational law (which are state-centric): it recognizes the increasingly important norm-creating roles of "non-governmental organizations (N.G.O.s), law firms, financial markets, and multinational corporations".[102] This stems from a view of legal development's "center of gravity" as "in society itself", recognising that pluralist globalized society will permit peripheral legal normative developments to grow.[103] By ascribing roles in "rulemaking and implementation" to non-state actors, global law entails growing normative challenges to the Westphalian legal order.[104] Legal pluralism, whereby multiple legal systems are able to coexist, is attractive for marginalized communities that have been ill-served by the Westphalian model of international law. So, global animal law experts are, thus far, missing an opportunity by restricting themselves to debating mostly international law solutions to global animal problems, as demonstrated below.

Walker argues that "practitioners and academics are crucial sources of global law".[105] They are "jurisgenerative",[106] contributing to the "fashioning and shaping of global law"[107]

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[98] ibid at 171.

[99] ibid.

[100] See below at section III.

[101] Morgera, *supra* note 81 at 236 citing WALKER Neil, "The Jurist in a Global Age" in VAN GESETL R. et al, eds., *Rethinking Legal Scholarship: A Transatlantic Dialogue* (Cambridge: Cambridge University Press, 2017) at 84-111.

[102] Kulovesi, Mehling and Morgera, *supra* note 66 at 408.

[103] TEUBNER Gunther, "Global Bukowina: Legal Pluralism in the World Society" in TEUBNER Gunther, ed., *Global Law Without a State* (Dartsmouth: Brookfield, 1997) 6.

[104] Kulovesi, Mehling and Morgera, *supra* note 66 at 417.

[105] MORAR Mihai, "Intimations of Global Law, by Neil Walker" (2016) 48(3) New York University Journal of International Law & Politics 1063 at 1064.

[106] Morgera, *supra* note 81 at 236 citing Neil Walker, "The Jurist in a Global Age" in VAN GESTEL R. et al, eds., *Rethinking Legal Scholarship: A Transatlantic Dialogue* (Cambridge: Cambridge University Press, 2017) at 84-111.

[107] Walker, *supra* note 16 at 31.

by "moulding it, nudging, infiltrating and reshaping actual laws".[108] Global law treats established sources of law as "a mere starting point" of legal normativity.[109] Observations have also been made regarding the jurisgenerative nature of indigenous peoples and the transformation of human rights law owing to their influence.[110] This speaks to the potential benefits of recognising jurisgenerative potential outside of traditional sources of international law because it permits the incorporation of often neglected marginal interests. This view lends legitimacy to legal proposals and pre-positive developments that dominate discussion of international law and animals. This also presents animal lawyers with a warning to act responsibly in publishing, theorising and advocating on global animal law issues because they may be "inadvertent or strategic norm entrepreneurs".[111]

The three concepts outlined in this section (connectivity, future-orientation, and decentring the state in post-Westphalian governance models) provide important lessons for animal law scholars. I propose adopting global law metatheory to redirect global animal lawyers to a more theoretically sound understanding of global law.[112] Because of its adjectival nature, I do not utilize global law theory as a means to map animal law.[113] Instead, I use global law metatheory to provide global animal law scholars with the ability to identify what global animal law is not, so as to benefit from the unique potential global law studies present to the animal lawyer. Global law is not an alias for international law (and thus ought not to be judged against the "standards of national legal systems").[114] Neither is it transnational law in a new guise. Nor does it equate to universally applied laws. Global law's distinctiveness ought to be safeguarded.

B. Operationalising Intersectional Ethics to Critique Claims of Globality

[108] Twining, *supra* note 15 at 541.

[109] Kulovesi, Mehling and Morgera, *supra* note 66 at 419.

[110] CARPENTER Kristen A. and RILEY Angela R., "Indigenous Peoples and the Jurisgenerative Moment in Human Rights" (2014) 102 California Law Review 173.

[111] A similar warning is given to global environmental lawyers in Kulovesi, Mehling and Morgera, *supra* note 66 at 432.

[112] Given its "sliperiness", this article does not utilize global law metatheory to resolve normative problems. See COLLINS Richard, "The Slipperiness of 'Global Law'" (2017) 37(3) Oxford Journal of Legal Studies 714 at 717–718.

[113] The categories are so all-encompassing that such an effort has been described as somewhat meaningless. See Kenny, *supra* note 92 at 1058.

[114] Teubner, *supra* note 103 at 4.

There is tension between second wave animal ethics and the way global law has been operationalised by some global animal law scholars. This section identifies those tensions, establishing clear recommendations for global animal law's further development. This section highlights synergies between global law metatheory and the second wave imperatives of intersectionality and situatedness.

The domestic and international law that fills global animal law with its substance is deficient from a second wave perspective. It is welfarist in tone, reliant upon similarity theory and closed circles of moral concern, and liberalistic. Global law metatheory does not speak to these points and so these deficiencies are elaborated briefly below.[115] Conversely, second wave animal ethics and global law metatheory both problematize the use of false globality and the facilitation of coloniality. In this sense, William Twining is critical of the use and overuse of "g-words" or "globabble".[116] He regards these as leading to generalizations that are "exaggerated, misleading, meaningless, superficial, ethnocentric, or a combination of all these".[117] His critique aligns closely with my critique of universalistic global animal law rhetoric; of talking about global law when actually speaking about something that is western-centric.

Global law metatheory envisages a departure from western "academic legal culture" which tends to be "state-oriented, secular, positivist, 'top-down', Northo-centric, unempirical, and universalist in respect of morals".[118] However, in practice, global law narratives have been operationalized to further coloniality in legal traditions. Indeed, global animal law scholarship is focusing on and evolving out of international law expertise and scholarship, without introducing reflexivity or a rebellious moment to begin tackling the coloniality that has featured throughout international law's history (as unearthed by literature including TWAIL).

Improving work within global animal law requires reacting to insights from TWAIL and similarly critical approaches to (international) law. TWAIL literature aims to "unpack and deconstruct the colonial legacies of international law" to "decolonise the lived realities of the peoples of the Global South" and to "give voice to viewpoints systemically

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[115] See below at section IV.

[116] Twining, *supra* note 15 at 543.

[117] TWINING William, *General Jurisprudence: Understanding Law from a Global Perspective* (Cambridge: Cambridge University Press, 2009) 14.

[118] ibid at 6.

underrepresented or silenced".[119] From a Global South perspective, international law has been described as a "predatory system that legitimizes, reproduces and sustains the plunder and subordination of the Third World by the West".[120] If it is to be ethical and effective, global animal law cannot accept this structurally oppressive function of law facilitated by false claims of justice and equality. TWAIL literature has identified how Europe has a "self-assumed civilizational responsibility to lift the peoples of [Latin America, Asia and Africa] to Europe's level" when, in actuality, this was an "altruistic cloak to plunder the wealth of the people of Africa and Asia" because they did not lack "civilizational standards when compared to the genocidal plunder that the Europeans embarked on".[121]

This cloaking may strike animal law scholars as familiar. Is it not suspicious that efforts to globalize animal welfare protection stem from the west[122] where systems of oppressing animals' lives are the most barbaric and cruel? Factory farming was born in the west and is spreading from there. Yet, western nations and animal welfare organizations continue to label the practices of non-western nations and peoples as "barbaric". For global animal law to fail to meet these challenges would be to misuse global language to forward western objectives, contributing to "material distribution and imbalances of power".[123]

Global animal law scholarship has presented as global when it is, in fact, dominated by western scholars and western ideas, thus contributing to coloniality.[124] The western legal tradition has dominated broader efforts at legal theory.[125] This approach is incapable of contributing significantly to solving "pressing problems of the age".[126] This is particularly pressing for animal law because "colonists used animals to conquer ecosystems and their inhabitants".[127] Mathilde Cohen argues there has been a hidden globality to animal law for

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[119] NATARAJAN Usha et al, "Introduction: TWAIL – On Praxis and the Intellectual" (2016) 37(11) Third World Quarterly 1946 at 1946.

[120] MUTUA Makau W., "What Is TWAIL?" (2000) 94 American Society of International Law Proceedings of the Annual Meeting 31 at 31.

[121] SORNARAJAH Muthucumaraswamy, "On Fighting for Global Justice: The Role of a Third World International Lawyer" (2016) Third World Quarterly 1972 at 1973.

[122] See below at section III.

[123] ESLAVA Luis and PAHUJA Sundhya, "Between Resistance and Reform: TWAIL and the Universality of International Law" (2011) 3(1) Trade, Law and Development 103 at 105.

[124] See below at section III.

[125] Twining, *supra* note 117 at 12.

[126] ibid.

[127] Cohen, *supra* note 8 at 268.

centuries because the "migration of ideas" associated with colonization solidified global property status for animals where this was previously rare outside the west.[128]

Thus, animal lawyers must treat so-called "g-words" cautiously. There must be a clear case for attributing globality to something over describing it as transnational or international law. Failing to do so risks perpetuating the promulgation of western concepts and standards in a universal or global guise which, in fact, poorly fits non-western systems.[129] This view aligns with the objectives of TWAIL literature. For these reasons, it is a problem that "g-words" are increasing in popularity amongst animal lawyers without an attendant reflection upon the potential consequences of this.

Animal law scholarship sometimes proclaims to be value-neutral while forwarding subjective viewpoints which stem from unidentified, situated positionalities.[130] This attracts many animal law scholars to the idea of universalising animal law norms because a "horse is a horse regardless of what country it lives in".[131] Many animal lawyers regard this view as having spread across the globe due to globalization.[132] This perception has led to two problems. First, the idea of norm spread is sometimes communicated in a troubling way by presupposing a localized (European) source point rather than reflecting the reality that animal care norms have always existed across the globe. While many continue to argue that animal welfare is a western value,[133] this is not the case.[134] Second, whilst it has become clear that animal welfare is an issue of global moral significance,[135] this is often problematically used to defend a lack of attention to local conditions. This lack of attention results in a one-size-fits-all approach that assumes it is possible to universalise (European) particulars through, for example, treaty law or a universalized standard.

To expand on this last point, the increasingly globalized conversation about animal protection does not have homogenization or unification as its natural or only consequence.

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[128] ibid at 267.

[129] Kulovesi, Mehling and Morgera, *supra* note 66 at 427.

[130] For example, Robertson, *supra* note 14 at 31.

[131] FAVRE David, "An International Treaty for Animal Welfare" (2012) 18 Animal Law Review 237; Peters, *supra* note 14; Wagman and Liebman, *supra* note 51 at 11.

[132] Robertson, *supra* note at 10.

[133] Examples from trade law literature include LING Chen, "Sealing Animal Welfare into Free Trade: Comment on EC-Seal Products" (2015) 15 Asper Review of International Business and Trade Law 171; and SIMA Yangzi and O'SULLIVAN Siobhan, "Chinese Animal Protection Laws and the Globalisation of Welfare Norms" (2016) 12(1) International Journal of Law in Context 1.

[134] Offor, *supra* note 20.

[135] Bowman, *supra* note 51 at 57.

Global law's connectivity results in "contextual diversity", explained by postcolonial "legal pluralism".[136] Global law entails a shift from "territorial to functional differentiation on the world level", not a shift to territorial and functional homogenization (which is what a centralized universal legal regime would entail).[137] This means global animal law ought to facilitate the use of different tactics and legal modalities by different communities, rather than requiring a top-down unification in our cooperations on animal protection. While globalization may create certain identifiable shared moral principles across the globe, global law can accommodate diversity in responses to such moral principles. This speaks to second wave animal ethics values of diversity and contextuality. Of course, this can lead to difficulties associated with fragmentation in international and transnational law. This necessitates consideration of democracy and global governance to tackle "tunnel vision" within discrete international law regimes that results in a neglect of animal welfare.[138] The problem with tunnel vision being that different international law regimes will focus solely on their issue, without adequate consideration to their impacts. For example, the way the trade law regime has traditionally been regarded as poor at dealing with the impact of trade on other social values like environmental protection or animal welfare.[139]

The trends outlined here have meant that many animal law scholars consider a "global animal protection regime" as a "logical progression" given the scale of domestic advancements.[140] But, second wave animal ethics warns that such a regime would be unethical and ineffective if it favoured homogenization over genuinely broad and deep participation, attentiveness to local conditions through diversified norms, and the pursuit of meaningful consensus and collaboration where harmonization is appropriate. Global convergence around certain animal protection priorities should not be used to justify coloniality in modes of animal welfare governance. Ostensibly neutral, objective, rational and universalizable animal law principles that are transplanted from western legal systems without meaningful engagement with other traditions should be treated with suspicion. Indeed, international law itself is known to have an "oppressive and hegemonic function" and

[136] Kjaer, *supra* note 75 at 115; Teubner, *supra* note 103 at 4.

[137] Teubner, *supra* note 103 at 5.

[138] ibid at 15 and 22–25.

[139] See OFFOR Iyan, "Animals and the Impact of Trade Law and Policy: A Global Animal Law Question" (2020) 9(2) Transnational Environmental Law 239.

[140] Otter, O'Sullivan and Ross, *supra* note at 59.

global animal law ought not to follow in these footsteps.[141] Failure to seriously contemplate the risk of cultural imperialism would unfortunately lend credence to arguments that globally-scaled animal protection is necessarily hegemonic.[142] There is even hegemony at play in domestic animal protection laws that target minority groups and practices, like the debate around halal and kosher slaughter.[143] So, global animal lawyers must be particularly vigilant when interacting with institutions and legal histories that maintain the oppressive power of western nations.

This recommended imperative to avoid cultural imperialism is in tension with a perception expressed by animal law scholars of cultural sensitivity as a barrier to effective animal protection. Those who adopt this perception argue that harming animals is common in "almost all cultures of the world" and so nothing is gained by offering cultural exceptions to animal protection efforts.[144] This misses the point and does not address the dangers for animals and humans posed by facilitating oppressive, colonial forces. Public opinion may sway toward animal protection at a particular historical moment. However, using hegemonic force to achieve this, rather than attentive listening and care, leaves ample space for oppression of animals to return. To do so would be to impose animal liberation in a colonial fashion, despite the fact it is not an inherently colonial value.

The field of environmental law has lessons for animal law regarding the benefits and challenges of recognising intersecting oppressions and avoiding coloniality by including indigenous peoples, the Global South and other minorities in decision-making processes. Global animal law scholarship has yet to provide sufficient reflection on this so I will introduce useful lessons for reflection from the participation of indigenous peoples in environmental law-making. Scholarship on environmental governance has recognised the value of including indigenous peoples in climate change law-making processes due to their contribution of "valuable context-specific knowledge and resources",[145] their involvement in rulemaking leading to enhanced opportunities for implementation and compliance,[146] and

[141] Peters, *supra* note 14 at 34.

[142] ibid at 37.

[143] WILLS Joe, "The Legal Regulation of Non-Stun Slaughter: Balancing Religious Freedom, Non-Discrimination and Animal Welfare" (2020) 41 Liverpool Law Review 145 at fn 1.

[144] Peters, *supra* note 14 at 38.

[145] BRUGNACH Marcela, CRAPS Marc and DEWULF Art, "Including Indigenous Peoples in Climate Change Mitigation: Addressing Issues of Scale, Knowledge and Power" (2017) 140(1) Climate Change 19 at 20.

[146] ibid.

ethical considerations of "cultural integrity".[147] Despite its progress, environmental law still struggles with "procedural, conceptual and structural challenges" to including indigenous people.[148] Gaining access alone has proven a fundamental challenge. Despite trying to gain access since the 1920s, it took indigenous peoples until the 21st century to achieve participation in forums like the UN.[149] Additionally, ensuring the possibility of inclusion does not ensure adequate participation in practice[150] due to the "extreme power imbalance" resulting from a "centuries-long history of colonization, violence and discrimination".[151] Participation processes at the UN Framework Convention on Climate Change (U.N.F.C.C.C.) and the Convention on Biological Diversity (C.B.D.) demonstrate this.

In practice, the "possibilities for having real impact" at the International Indigenous Peoples' Forum on Climate Change at the U.N.F.C.C.C. process is "nearly inexistent".[152] Problems that have arisen there include "confusion, problems of accreditation and deliberate exclusion" with access badges that forbid access to many important rooms.[153] Therefore, indigenous groups have long called for a U.N.F.C.C.C. working group to deal with these problems.[154] Such a working group was only recently established in 2019.[155] The C.B.D. is considered the most accessible environmental law forum for indigenous peoples and yet serious problems persist.[156] Article 8(j) of the C.B.D. mandates that the contracting parties respect, preserve and maintain indigenous and local knowledge, innovations and practices, whilst also sharing the benefits of utilising these with them. A working group was created to

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[147] ibid.

[148] ibid.

[149] LINDROTH Marjo, "Indigenous-State Relations in the UN: Establishing the Indigenous Forum" (2006) 42(3) Polar Record 239 at 241.

[150] FORD James D. et al, "Including Indigenous Knowledge and Experience in IPCC Assessment Reports" (2016) 6(4) Nature Climate Change 349.

[151] Brugnach, Craps and Dewulf, *supra* note 145 at 21.

[152] ibid at 23.

[153] MIHLAR Farah, "Voices That Must Be Heard: Minorities and Indigenous People Combating Climate Change" (November 2008), online: Minority Rights Group International <https://www.refworld.org/docid/492d18da2.html> at 3.

[154] ibid at 8.

[155] UNFCCC, *Report of the Conference of the Parties on its twenty-third session* (8 February 2018) FCCC/CP/2017/11/Add.1 decision 2/CP.23 at para 6.

[156] PARKS Louisa and SCHRÖDER Mika, "What We Talk about When We Talk about 'local' Participation in International Biodiversity Law: The Changing Scope of Indigenous Peoples and Local Communities' Participation under the Convention on Biological Diversity" (2018) 11(3) Open Journal of Sociopolitical Studies 743 at 749.

implement these requirements.[157] However, "traditional community structures" and "communal land tenure" lack (legal) recognition due to serious discriminatory challenges and insufficient mandated participation.[158] Further, indigenous peoples are often geographically isolated from public processes and excluded from public spaces and education.[159] Thus, engagement in C.B.D. processes is practically challenging. Additionally, indigenous ways of knowing differ from western prioritization of science and technical fact-finding. Western political systems tend to neglect such different ways of knowing, thus fundamentally excluding indigenous knowledge.[160]

These challenges demonstrate that serious consideration and work is required to ensure broad, diverse and fair participation in legal proposals on global animal law. Global animal law scholarship has much to do in this regard. This will be demonstrated in the next section which identifies misuse of global terminology by the global animal law community, contrary to the warnings of global law metatheory and situatedness imperatives of second wave animal ethics.

III. ASSESSING THE INTERSECTIONAL CREDENTIALS OF GLOBAL ANIMAL LAW PRACTICE

A. Conceptions of Globality in Practice

I will use two representative examples to introduce common understandings of global animal law amongst practitioners and researchers. These will be assessed against the insights of global law metatheory and second wave animal ethics introduced above. The two examples are: from academia, the Max Planck Institute for Comparative Public Law and International Law section on global animal law (the M.P.I. section);[161] and from the third sector, the Global Animal law Association (G.A.L. Association).[162]

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[157] CBD Secretariat, *COP 4 Decision IV/9* (1998).

[158] Brugnach, Craps and Dewulf, *supra* note 145 at 24.

[159] ibid.

[160] ibid at 24–25.

[161] Max Planck Institute for Comparative Public Law and International Law, "Global Animal Law", online: MPI <https://www.mpil.de/en/pub/research/areas/public-international-law/global-animal-law.cfm>.

[162] Global Animal Law Association, "Global Animal Law", online: GAL Association <https://www.globalanimallaw.org/>.

The M.P.I. section's overarching objective is to "shed light" on global animal law, which it refers to as a discrete branch of international law.[163] This is inconsistent with metatheories of global law. More detailed descriptions of global animal law by the M.P.I. section partially rectify this inconsistency. The M.P.I. section's website describes global law as transboundary and multi-level, arguing animal law must include global animal law to be effective.[164] Their research orients toward stimulating law reform and norm development, thus adopting a future-oriented direction.[165]

Anne Peters, head of the M.P.I. section, describes global animal law as a "regulatory mix combining a host of different types of norm" from "national, international, and regional or sub-state law" plus "norms made by states and by private actors, thus including standards emerging from industry, often in collaboration with governmental agencies" and including "hard and soft law".[166] This is very useful but contrasts with the official M.P.I. definition of global animal law as a discrete branch of international law. The "discrete branch" definition is repeated by Charlotte Blattner, an animal law academic and former PhD student of Anne Peters.[167] Putting this contradiction to one side for now, Peters' definition is largely compliant with a second wave-inspired conception of global animal law. Peters argues the corpus of global animal law is thin but has "reached a critical mass" justifying its existence as its own legal field.[168] Thus, gap-filling is a critical task of the section.[169] Peters says this work must be mindful of "Eurocentrism and legal imperialism".[170] Second wave animal ethics would opt for a stronger imperative than mindfulness which could leave room for inaction.

The M.P.I. section's conception of global animal law contrasts with that of the G.A.L. Association. The G.A.L. Association's goal is to "help and create a new framework for the global discussion on animals in law".[171] It is unclear whether it is the *issues* or *dialogue* that are deemed to be global here. Sabine Brels, former manager of the G.A.L. Association, notes

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[163] 'Global Animal Law', *supra* note 161.

[164] ibid.

[165] ibid. See also Peters, *supra* note 63 at 20.

[166] Peters, *supra* note 63 at 20.

[167] Blattner, *supra* note 14 at 10. Blattner also lists the ICJ Statute sources of international law as indicating the sources of global animal law in BLATTNER Charlotte, "An Assessment of Recent Trade Law Developments from an Animal Law Perspective: Trade Law as the Sheep in Wolf's Clothing" (2016) 22 Animal Law Review 277 at 279–280.

[168] Peters, *supra* note 63 at 20.

[169] ibid.

[170] ibid at 22.

[171] 'Global Animal Law', *supra* note 162.

how animal welfare law is "present at every level of governance, from the national to the global level".[172] Evoking a global-national spectrum suggests global is conflated with universal here.[173] Brels states the G.A.L. Association's legislation database reflects multi-level animal law. The database excludes non-governmental standards and soft law, which leaves room to explore the post-Westphalianism of global law. Contradicting these statements, Brels sometimes refers to global law as an alias for international law which leads to a lack of clarity.[174] Leaving this contradiction aside for now, it seems the G.A.L. Association generally adopts two different uses of global. First, it facilitates a global (meaning universal) discussion on animal issues. Second, it discusses law at the global level, regarded as law with universal application.

The G.A.L. Association's objectives and projects indicate a normative view of globality, promoting a vision, ethics and proposed legal solutions to animal problems capable of application across the globe. For example, the G.A.L. Association seeks to become the "leading authority in ensuring global animal health and welfare through the law" by proposing legal solutions.[175] The G.A.L. Association is also embarking upon globally scaled projects. For example, it intends to develop a database to rank domestic laws regarding animal welfare and it has developed a model treaty for animal health and welfare.[176] This understanding of globality seems akin to the global care Favre refers to when he says "a horse is a horse regardless of what country it lives in". This can risk neglecting considerations of coloniality which do not feature centrally in the G.A.L. Association's publications and communications.

The M.P.I. section and G.A.L. Association have contrasting understandings of global animal law. Both, to varying degrees, could focus more on second wave imperatives of intersectionality and avoiding coloniality. Both adopt a future-orientation but could perhaps do more to emphasize the connectivity and post-Westphalian nature of global law. This situation may stem from the prominence of western perspectives within the global animal law movement.

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[172] Brels, *supra* note 14 at 376.

[173] ibid at 366.

[174] ibid at 365.

[175] Global Animal Law Association, "Annual Report" (2018), online: GAL Association <https://www.globalanimallaw.org/gal/projects/annual-report-2018.html> at 16 and 35.

[176] ibid at 20; Global Animal Law Association, "UN Convention on Animal Health and Protection (UNCAHP)" (2018), online: GAL Association <https://www.globalanimallaw.org/downloads/Folder-UNCAHP.pdf>.

B. *Eurocentric Perspectives on Global Animal Law Masquerade as "Global Animal Law"*

Western animal law experts are vastly overrepresented in the global animal law debate. From the perspective of second wave animal ethics, this lack of diversity in participation is a problem. This is a systemic problem which does not speak to the individual intentions of global animal law actors. As a member of the animal law community, I offer this internal critique with the deepest of respect for the animal law scholars that have crafted our discipline. In this section, I provide demographical insights developed from online biographies and personal connections. This is cursory and excludes information regarding, for example, queer and disabled representation. It would be beneficial if animal law organizations publicly shared diversity statements to promote transparency and to facilitate this kind of research. I will first look to the G.A.L. Association and the M.P.I. section introduced above, then I will move on to discuss the field more broadly with reference to other organizations, research centres and projects.

The G.A.L. Association team hails from Switzerland, France, Germany and Australia. Its patronage committees are made up of seventeen men and five women who are American, Australian and European. The team and committees are entirely white and have a majority male representation. One of the key offerings of the project is a matrix of ideas for improving animal law, contributed to by a community of experts. 42 of these experts are from Europe, 25 from North America, 11 from Australasia, seven from Asia, seven from Africa (four in South Africa), five from South America, and one from the Middle East.[177] Female presenting experts make up the majority of the group but there are only around 12 people of colour. Similarly lacking in diversity, the M.P.I. section on global animal law is staffed exclusively by white Europeans, though with a good gender balance.

Another institutional example is the Center for Animal Law Studies at Lewis & Clark Law School in Portland, Oregon. The center considers itself a global institution working on a global phenomenon.[178] They acknowledge that animals "don't necessarily recognize borders or cultures" and they imply that animal lawyers don't either.[179] While this may raise initial concern regarding extraterritoriality, the center clarifies that they engage with a "global

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[177] As of 8 September 2020.

[178] DOLEZAL Natasha, FRASCH Pamela and HESSLER Kathy, "Animal Law – A Global Phenomenon" (2014) 1 Global Journal of Animal Law 1, online: GJAL <https://ojs.abo.fi/ojs/index.php/gjal/issue/view/127>.

[179] ibid at 3–4.

network of animal lawyers", doing particularly good work like introducing the Kenya Legal Project on animal law which aims to "develop relationships with and offer assistance to Kenyan lawyers, judges, and other wildlife professionals".[180] I spent a semester at the center as a visiting fellow and can confirm their dedication to educating the next generation of animal lawyers from across the globe. However, I did find marginal perspectives were lacking in course syllabi.

I see two indicators of potential directions of travel right now, with one indicating business as usual and one creating space for better diversity and inclusion and active effort toward decolonization. The World Federation for Animals (W.F.A.) is a new organization that was created in 2021 and which acts as an example of the former. Their goal is to amplify and coordinate the influence of the animal protection movement on the "global stage" by providing a "big tent uniting the movement", promoting a "holistic approach" and a "unified global representation".[181] W.F.A. communicates its goals as oriented toward homogenization, to the exclusion of local considerations and the potential for coloniality. The board of W.F.A. has a good gender balance but has significant deficiencies in geographic diversity. There are 12 members from Europe, 4 from the US, 1 from Asia, 1 from Africa and 1 from Australasia. In contrast, the Global Research Network (GRN) Thinktank on Animals and Biodiversity presents some signs of hope for the future. While the thinktank's fellows are all based in Europe, the homepage for the network's thinktanks states that their goal is to fill a gap in the global policy space "by engaging voices from around the world (in particular scholars for whom English is not a first language and minority, female, LGBTQ, disabled, refugee academics)".[182] It is also particularly striking, given the landscape of a lack of diversity, to see that the G.R.N.'s fellows represent a genuine geographical spread that does not overrepresent Europe or North America.

It is consequential that two leading centres on global animal law (the G.A.L. association and the M.P.I. section) are, in fact, largely Eurocentric. More could be done by these centres to reflect on or at least declare their Eurocentricity and to improve diversity and inclusion in order to pay mind to global law metatheory and second wave animal ethics. If there is a desire to improve diversity but this is not immediately possible, options open to these centres include prioritising collaborations and knowledge exchange, improving animal

[180] ibid at 4.

[181] World Federation for Animals, "About Us", online: WFA <https://wfa.org/about-us/>.

[182] Global Research Network, "Global Research Network Think Tank", online: GRN <http://thinktank.grn.global/>.

law education across the globe, and enhancing transparency regarding diversity. The alternative is to avoid using global terminology if this does not accurately reflect the work being done by these centres because to falsely claim globality facilitates coloniality.

A similar pattern of western-centricity emerges in scholarly conferences and publications. The third iteration of the global animal law conference achieved a decent geographical spread of participants, though Americans and Europeans still outnumber all other participants.[183] However, the decent spread of participants likely owes to the fact that the conference took place in Hong Kong.

Regarding publications, a seminal Oxford Handbook on Global Animal Law is due to be published in 2022. The geographical spread of authors heavily emphasizes Europe and North America. There are 49 authors based at European institutions, 20 at North American institutions, 4 at Asian institutions, 2 at African institutions (both in South Africa), 2 at Australian institutions, 1 at a South American institution and 1 at a Middle eastern institution. The handbook does also include country reports and religion reports (those authors are not included in the totals above) which adds to the publication's global credentials. However, the heavily western focus of the general contributions leaves much to be desired. There are also two published symposiums on global animal law in leading journals. The contributors stem from Europe (ten), North America (four), Australasia (one) and Asia (one).[184] Additionally, a Global Journal of Animal Law was founded in 2013. Between issues 1 (2013) and 8 (2020), the journal has presented works by authors with the following nationalities (excluding editors' forewords): 34 European, 13 North American, two Australiasian, two Asian, two Middle Eastern, and one Central American. Additionally, this journal published a special section in 2019 with 13 contributors. This stemmed from a conference. The special section intended to present an international spread of ideas about what animal law is and ought to be. These thirteen scholars are all white, coming from Europe or North America.

This rather bleak picture of participatory diversity is replicated in wider animal studies and in the animal liberation movement.[185] I have two profound concerns. First, this problematic lack of diversity is evident in a scholarly endeavour that professes to be global in scope but, upon investigation, is revealed as deeply western-centric. Revealing this only

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[183] Global Animal Law Conference, "Confirmed Speaker List", online: III Global Animal Law Conference Hong Kong 2018 <https://animallawconference.law.hku.hk/speaker-list/>.

[184] "Global Animal Law Symposium" (2017) 111 American Journal of International Law; "Global Animal Law Symposium" (2016) 5(1) Transnational Environmental Law.

[185] WRENN Corey Lee, "An Analysis of Diversity in Nonhuman Animal Rights Media" (2016) 143 Journal of Agricultural and Environmental Ethics 143.

required looking to the participants in leading organizations and publications. Achieving diversity in this regard is only a first step and a deeper investigation, once this is improved, would have to ensure that participation is genuine, broad and accessible, and that diversity extends not just to bodies but also to ideas. There should also be critical reflection on gatekeeping and who gets to make the decisions about what policy goals are pursued regarding animal protection.

My second profound concern is that, to my knowledge, no-one has recognized this lack of diversity within global animal law spaces, let alone identified this as problematic. Returning to the Global Journal of Animal Law's special session, a journal professing to be global, pronouncing scholarship on such a fundamental question to our field as "what is animal law", ought to do better at presenting diverse opinions or at least recognize the lack of diversity, which they did not. It is unsurprising that the editors found broad convergence amongst the definitions of animal law provided because every contributor shares many very similar life experiences due to their western, white and scholarly or activist backgrounds.[186] Of particular concern, one contribution entitled "Global Definition of Animal Law" includes no reference to globality, no sense of why this definition ought to be regarded as global, and is openly prefaced by the author stating the piece is "in my opinion".[187] This suggests little thought is given to the consequences of using the word "global". It is harmful to the integrity of global animal law for personal opinion to be published in a peer-reviewed journal, presented as a "global definition".

One might critique my conclusions here due to small sample sizes, perhaps suggesting cherry picking. These examples are not unrepresentative for two reasons. First, I focus upon the leading scholarly spaces within global animal law scholarship; those publications, organizations, scholars and research groups that position themselves or could be regarded as leaders on global animal law. Such leadership spaces and individuals are small in number; I have mentioned them all here. Second, my analysis would not be cherry-picked even if we were to look beyond leadership. The demographic of the entirety of the Global Journal of Animal Law's publications is evidence of this.

Another potential counterargument might state this scholarship does not profess global representation but rather takes "global" animal law as its subject. My counterargument, based in global law metatheory and second wave animal ethics, identifies

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[186] Sochirca and Kivinen, *supra* note 9.

[187] NEUMANN Jean-Marc, "Global Definition of Animal Law" (2019) 7 Global Journal of Animal Law 2, online: GJAL <https://ojs.abo.fi/ojs/index.php/gjal/issue/view/170>.

this view as harmful. First, the literature largely misconstrues what global law is, preferring a paternalistic version of Westphalian international law instruments stemming from the west and entailing coloniality. So, the literature is not actually talking about global animal law. It is mostly talking about an ethnocentric kind of international law. Second, global law metatheory reveals that global lawyers, including academics, are jurisgenerative. Thus, the demographics and practices of global animal law scholars cannot be neatly separated from their subject of study. Because of global law's future-orientation and post-Westphalian nature, the "global" moniker attaches to norm-building scholarship as well as law.

In conclusion, a lack of diversity amongst leaders and wider participants of global animal law scholarship does not make for very global law. Animal law scholars believe animal liberation is not a western value. If true, globally spread, diverse representation should be possible for global animal law scholarship. Diversifying scholarly representation will contribute to a diversification of ideas, which will help tackle ethnocentric conceptions of globality in global animal law.

In the next section, I argue that the future-visions of some global animal law scholarship displays a lack of diversity in ideas, relying on some first wave animal ethics ideas and neglecting meaningful consideration of intersectionality and coloniality. I believe diversifying participation so as to diversify ideas should be central to global animal law. If this is not immediately possible or practicable, I urge global animal law scholars toward transparency by labelling their work as "Eurocentric/western perspectives on international animal law".

IV. ASSESSING THE INTERSECTIONAL CREDENTIALS OF GLOBAL ANIMAL LAW SCHOLARSHIP

Failing to denounce coloniality or promote diversity and intersectionality are problematic features of early global animal law scholarship. I believe this lack of diversity in participation has led to some shortcomings in the ideas propounded by global animal law scholarship. In particular, it heavily features the dominant western approaches to animal law, including welfarism and animal rights. Alternative second wave ideas have not been given as much attention. These ideas include: indistinction and flourishing, boundlessness and prioritization of marginalized Others, and feminist care theory over liberalism.

To support this claim, this section will analyse scholarly proposals for future global animal law. These proposals have stemmed largely from western scholars and have featured a

preoccupation with international law instruments, neglecting global law connectivity and post-Westphalian legal normativity. I have chosen a representative selection of scholarly proposals to analyse here. I do not aim for a comprehensive oversight and so, for example, while international trade law is having a significant impact on the early development of global animal law, I chose not to explore that here.[188] The literature selected does not necessarily self-identify as global animal law literature. However, it is clear from the outside that it could be said to fall within this area based on the subject matter. The proposals I analyse here recommend: expanding existing legal frameworks (the World Organization for Animal Health (O.I.E.) and compassionate conservation) and creating new legal frameworks (treaty-making and a U.N. declaration on animal welfare).

A. Expanding Existing Frameworks

Owing to its existing work on animal welfare, the O.I.E. is a likely site of further development of international governance of animals.[189] The O.I.E. incorporated animal welfare into the scope of its work in 2002, after a unanimous vote.[190] It adopted a mandate on animal welfare and established an Animal Welfare Working Group.[191] This has resulted in the inclusion of a new chapter in the terrestrial and aquatic health codes on animal welfare.[192] These standards are not binding on the O.I.E. membership, thus avoiding a regulatory approach to animal welfare.[193] The O.I.E. hosts workshops and conferences to build capacity of national regulators to adopt the relevant standards.[194] It also has a series of cooperation agreements with regional bodies aimed at developing regional animal welfare strategies.[195]

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[188] On the issue of trade see, for example, Offor, *supra* note 139.

[189] Otter, O'Sullivan and Ross, *supra* note 14 at 53.

[190] Von Keyserlingk and José Hötzel, *supra* note 54 at 185.

[191] O.I.E., *Resolution No XIV Adopted on 29 May 2002 on Animal Welfare Mandate of the OIE* (2002), online: <https://Www.Oie.Int/about-Us/Key-Texts/Basic-Texts/New-Mandates/>.

[192] O.I.E., "Terrestrial Animal Health Code", 28th ed. (2019), online: <https://www.oie.int/standard-setting/terrestrial-code/> at s.7; O.I.E., "Aquatic Animal Health Code", 22nd ed. (2019), online: <https://www.oie.int/en/standard-setting/aquatic-code/access-online/> at s.7.

[193] Peters, *supra* note 63 at 14.

[194] O.I.E., "The OIE's Objectives and Achievements in Animal Welfare", online: <https://www.oie.int/international-standard-setting/specialists-commissions-groups/working-groups-reports/list-of-working-groups/working-group-on-animal-welfare/>.

[195] O.I.E., "Cooperation Agreements between the OIE and Intergovernmental Organisations and Other International Nongovernmental Organisations", online: <https://www.oie.int/about-us/key-texts/cooperation-agreements/>.

Benefits to pursuing further protection of animal interests through the OIE are that it is politically powerful, and it has near universal membership.[196] However, the O.I.E. is a suboptimal choice. The O.I.E.'s codified standards merely list considerations, falling short of prohibiting harmful practices.[197] Relying on the O.I.E. for international governance of animals may encourage domestic legislators to go no further than the O.I.E.'s welfarist, utilitarian norms that are incapable of opposing animal use for human ends and inconsistent with second wave animal ethics.[198] O.I.E. animal welfare protection would be slow to develop or would stagnate because of the O.I.E.'s close relationship with industries and governments that benefit from permitting animal harm.[199] Additionally, the O.I.E.'s director general states it could not achieve significant animal welfare advancement acting alone.[200]

The O.I.E.'s scope is restricted to domesticated species, excluding wild animals and entrenching a harmful wild/domestic dichotomy which is inconsistent with second wave animal ethics.[201] Further, the O.I.E. is conceptually restricted from tackling welfare issues that do not relate to health. Animal health is a subset of animal welfare: poor welfare may not impact health, but poor health always entails poor welfare. If an O.I.E.-centric approach is pursued, governance gaps should be filled with improved legal responses to welfare issues facing animals living in the wild. Though, this pairing still leaves governance gaps through which vulnerable animals would fall because dichotomising wild and domestic animals and associated legal regimes is oversimplified.[202] This is why second wave animal ethics rejects such dichotomies.

As it stands, environmental law instruments contribute to the governance of wild animals' lives.[203] However, deeply anthropocentric and British colonial[204] roots within

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[196] Otter, O'Sullivan and Ross, *supra* note 14 at 65.

[197] Favre, *supra* note 131 at 252; WHITE Steven, "Shifting Norms in Wild Animal Protection and Effective Regulatory Design" in Scholtz, *supra* note 51 at 200.

[198] Otter, O'Sullivan and Ross, *supra* note 14 at 67.

[199] White, *supra* note 197 at 200.

[200] VALLAT Bernard, "Putting the OIE Standards to Work" (2008), online: OIE <http://www.oie.int/fileadmin/Home/eng/Media_Center/docs/pdf/AW_Conference_BV_speech_final.pdf> at 3.

[201] Offor, *supra* note 20 at 288.

[202] OUTHWAITE Opi, "Neither Fish, nor Fowl: Honeybees and the Parameters of Current Legal Frameworks for Animals, Wildlife and Biodiveristy" (2017) 29 Journal of Environmental Law 317.

[203] Peters, *supra* note 63 at 13.

[204] PROST Mario and OTOMO Yoriko, "British Influences on International Environmental Law: The Case of Wildlife Conservation" in MCCORQUODALE Robert and GAUCI Jean-Pierre, eds., *British Influences on International Law, 1915-2015* (Leiden: Brill Nijhoff, 2016).

environmental law have facilitated its general disregard of animal welfare.[205] Scholars increasingly link environmental protection and animal welfare in legal studies and environmental law has gradually shifted toward ecocentrism.[206] However, environmental law still largely neglects sentient animals' interests.[207] Animal lawyers conceptualize conservation law as anthropocentric (as do critical environmentalists), utilitarian and lacking in compassion.[208] Environment law currently conceptualizes conservation as the "preservation, maintenance, sustainable utilization, restoration, and enhancement of a natural resource or the environment".[209] This orients species preservation only as a tool to safeguard the health and enjoyment of future generations of humans.[210] Animal welfare is merely "peripheral" to this.[211] Thus, choosing conservation as a tool to regulate animals currently entails conceptualising animals as resources.[212] This is irreconcilable with animals' intrinsic value[213] and with second wave animal ethics. Conservation ought to promote respect for individuals that are integral to a species' survival.[214] Conservation that neglects individuals is self-defeating because it facilitates dispositions towards treating animals instrumentally.[215]

For these reasons, there is growing scholarly support for a compassionate turn in conservation to enable individual organisms to flourish[216] and as a moral imperative due to animal sentience.[217] This would recognize the significance of ecosystems as well as "the

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[205] LONG Andrew, "The Expanding Circle of Dignity: Unifying Animal Rights and Ecosystem Protection in the Law" in Abate, *supra* note 14 at 443.

[206] Compare with anthropocentrically framed conventions. For example, *Convention on the Conservation of Migratory Species of Wild Animals* (adopted 23 June 1979, entered into force 1 November 1983) 1651 UNTS 333 (CMS), preamble.

[207] SCHOLTZ Werner, "Injecting Compassion into International Wildlife Law: From Conservation to Protection?" (2017) 6(3) Transnational Environmental Law 463 at 464–466; WALLACH Arian D. et al, "Summoning Compassion to Address the Challenges of Conservation" (2018) 32(1) Conservation Biology 1255 at 1256; White, *supra* note 197 at 182.

[208] BILCHITZ David, "Why Conservation and Sustainability Require Protection for the Interests of Animals" in Scholtz, *supra* note 51 at 212; SCHAFFNER Joan E, 'Value, Wild Animals and Law' in Scholtz, *supra* note 51 at 28.

[209] Scholtz, *supra* note 207 at 468.

[210] Schaffner, *supra* note 208 at 12.

[211] SCHOLTZ Werner, 'Introduction' in Scholtz, *supra* note 51.

[212] Schaffner, *supra* note 208 at 8.

[213] Defined as the value "an entity possesses of itself, for itself, regardless of the interests or utility of others" in BOWMAN Michael, DAVIES Peter and REDGWELL Catherine (eds), *Lyster's International Wildlife Law*, 2nd ed. (Cambridge: Cambridge University Press, 2010) at 63.

[214] Bilchitz, *supra* note 208 at 211, 230.

[215] ibid at 221–222, 227.

[216] Bowman, Davies and Redgwell, *supra* note 213 at 672.

[217] Wallach et al, *supra* note 207 at 1255.

value of the individual", mandating that individuals not be harmed for the sake of the collective.[218] It would require that "no harm" be done, that "individuals matter", and that we strive for "peaceful coexistence".[219] Compassionate conservation has a deliberative function, aiming to resolve tensions between individual and species interests "in the best way possible".[220] While compassionate conservation complies with many second wave imperatives, its potential to take animal interests seriously, in practice, remains to be seen.

Compassionate conservation is critiqued for imposing normativity on marginalized groups.[221] However, such arguments rely on incorrect assumptions that are elsewhere negated: compassion for animals is not antagonistic to human rights; animal ethics and law need not be universal and non-contextual; and current conceptualizations of conservation are not immune to reconstruction. Such critiques typically stem from traditional conservationists who fail to acknowledge that such a colonising impact has already been imposed through conservation law. This critique is too weak to condemn compassionate conservation.

Compassionate conservation is a favourable response to welfare issues facing animals living in the wild for three reasons. First, it recognizes the artificiality of the wild/domestic dichotomy. This dichotomy's prevalence owes, in part, to a gendering of animals. Wildlife is regarded with male "ruggedness and autonomy", domestic animals with female "dependency and interconnectedness".[222] This conceptualization results in the assumption that wild animals simply need to be left alone in order to flourish. However, wild and domestic animals are not dichotomous: house mice and wild animals kept as pets are liminal. Further, human impacts on wild animals' lives grow through climate change, wild encroachment and inappropriate domestication. It is insufficient to leave wild animals alone. No animal is untouched by human impacts on the environment. Thus, they all require consideration in environmental policy setting.

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[218] Scholtz, *supra* note 207 at 473–474 and Wallach et al, *supra* note 207 at 1262.

[219] Wallach et al, *supra* note 207 at 1260.

[220] Bilchitz, *supra* note 208 at 231.

[221] ANNA OOMEN Meera et al, "The Fatal Flaws of Compassionate Conservation" (2019) 33(4) Conservation Biology 784 at 785.

[222] Wagman and Liebman, *supra* note 51 at 14 citing DAVIS Karen, "Thinking Like a Chicken: Farm Animals and the Feminine Connection", in ADAMS Carol J. and DONOVAN Josephine, eds., *Animals & Women: Feminist Theoretical Explorations* (Durham, Noth Carolina: Duke University Press, 1995) at 192 and KHEEL Marti, *Nature Ethics: An Ecofeminist Perspective* (Lanham, Maryland: Rowman & Littlefield, 2008) at 1-35.

Second, human concerns regarding animal welfare and conservation naturally converge and normatively align more than is typically recognized.[223] In particular, conservation norms have evolved from assigning instrumental value to wildlife, to recognising and protecting wildlife's intrinsic value.[224] Both protect a non-human Other.[225] Both reconceptualize property to contest exploitative, entrenched social and legal norms.[226] Practically, most individuals who care about the environment also care about the welfare of animals; many animal advocates are also environmentalists, and vice versa.[227] The goals of each movement frequently align around overarching desires to "allow species to live free in a natural state".[228] It is practically beneficial to blend resources, political efforts, and legal reform on these two issues.[229] Consequently, arguments to prioritize "protection" over "conservation" are growing.[230] In law, "protection" has wider scope than conservation.[231] It can be used to refer to "meaningful conceptual connections between animal welfare and animal conservation".[232] It is suggested by Katie Sykes that this conception would constitute "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".[233]

Third, the neglect of wild animal welfare is increasingly inappropriate. The wild is shrinking, species' ranges are decreasing, and human-induced climate change is posing ever-

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[223] SYKES Katie, "Globalization and the Animal Turn: How International Trade Law Contributes to Global Norms of Animal Protection" (2016) 5(1) Transnational Environmental Law 55 at 67.

[224] ibid at 59–62.

[225] TISCHLER Joyce and MYERS Bruce, "Animal Protection and Environmentalism: The Time Has Come to Be More Than Just Friends" in Abate, *supra* note 14 at 388.

[226] Long, *supra* note 205 at 426; Tischler and Myers, *supra* note 225 at 399 et seq.

[227] Tischler and Myers, *supra* note 225 at 388, 416.

[228] HARROP Stuart, "From Cartel to Conservation and on to Compassion: Animal Welfare and the International Whaling Commission" (2003) 6 Journal of International Wildlife Law & Policy 79 at 81.

[229] Tischler and Myers, *supra* note 225 at 388.

[230] Sykes, *supra* note 223 at 56; Schaffner, *supra* note 208 at 28–29, 35. See also, Scholtz, *supra* note 207 at 20.

[231] BOWMAN Michael, "Conflict or Compatibility - The Trade, Conservation and Animal Welfare Dimensions of CITES" (1998) 1(1) Journal of International Wildlife Law & Policy 9 at 11; "protection and preservation" in *United Nations Convention on the Law of the Sea* (adopted 10 December 1982, entered into force 16 November 1994) 1833 UNTS 3 (UNCLOS), art 56(1)(b)(iii). Contrasting interpretations include BROOM Donald M., "International Animal Welfare Perspectives, Including Whaling and Inhumane Seal Killing as a WTO Public Morality Issue" Cao and White, *supra* note 2 at 47; and Robertson, *supra* note 14 at x.

[232] Sykes, *supra* note 223 at 56.

[233] ibid at 66–67.

increasing threats to wild animal welfare.[234] Blending welfare and environmental protection would be mutually beneficial.[235]

In conclusion, animal protection through the O.I.E. and compassionate conservation would align with some imperatives within second wave animal ethics. The O.I.E.'s broad membership facilitates diverse conversations on animal welfare and recognising wild animal welfare erodes a harmful dichotomy. However, relying upon existing legal mechanisms with anthropocentric roots is suboptimal from a second wave perspective. These frameworks present significant limitations. Offering welfare protection on the basis of domesticated or wild status, rather than flourishing, is harmful. Inter-institutional collaborations could somewhat rectify this, but the literature fails to propose this, due to dichotomous thinking. Additionally, proposals for compassionate conservation stem from white western scholars and the impact of such proposals on minority groups of humans remains unknown. Wider, more diverse scholarly discussion would be required in order to move this idea forward.

B. Creating New Frameworks

A second proposed approach to fill gaps in animal protection in international law is to develop new frameworks. One prominent approach is to propose a treaty, international organization or body responsible for animal welfare.[236] This would avoid the problem of gaps and dichotomization between domesticated and wild species.[237] However, it presents problems of colonial false-globality because treaty proposals have stemmed exclusively from developed, western contexts with inadequate engagement with non-western stakeholders.

David Favre, a U.S.-based animal law professor, is the driving force behind a draft International Convention on Animal Welfare: a framework treaty which would be supplemented with subsequent protocols.[238] This was very recently revived and relaunched as the Convention on Animal Protection with a new campaign effort set to begin in reaction to the events of COVID-19.[239] Favre desires a more "universal view about how to treat

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[234] HARROP Stuart, "Climate Change, Conservation and the Place for Wild Animal Welfare in International Law" (2011) 23(3) Journal of Environmental Law 441; Scholtz, *supra* note 207; Scholtz, *supra* note 211.

[235] Sykes, *supra* note 223 at 68.

[236] On the latter, see Bilchitz, *supra* note 208 at 250.

[237] In fact, one proposed treaty was inspired by the unwillingness of C.I.T.E.S. to tackle welfare issues. See Favre, *supra* note 51 at 99.

[238] ibid at 97.

[239] "Convention on Animal Protection", online: <https://www.conventiononanimalprotection.org/>.

animals".[240] This eschews second wave intersectionality and situatedness and frustrates efforts to consider local conditions. The draft treaty recognizes the intrinsic value of life, opposes unnecessary killing and suffering of animals, and adopts a pragmatic, welfarist orientation.[241] Welfarism is deficient under second wave animal ethics. Further, with no country to sponsor it, the draft treaty has not garnered sufficient attention at the U.N. for implementation.[242] Thus, while other animal lawyers and activists have drafted new proposals, such as the G.A.L. Association's draft Convention on Animal Health and Protection, the problem is not the lack of treaty language.[243] The problem is the lack of sufficient buy-in from policymakers or powerful lobbying campaigns to spark lawmakers' interests. Current proposals are concerningly western-oriented. For example, Favre's proposal universalizes the western welfarist model.[244] A draft treaty developed through cross-cultural, global discussion may find wider support. Second wave situatedness and intersectionality imperatives demand broader discussion in these drafting exercises.

Another proposal for a new framework rectifies some of the issues with treaty proposals. This proposal is the movement proposing the adoption of a U.N. declaration on animal welfare (U.D.A.W.) containing non-binding principles on animal welfare.[245] The U.D.A.W. was proposed by animal welfare organizations worldwide, led by World Animal Protection.[246] It applies to domestic and wild species, avoiding dichotomization. The U.D.A.W. avoids flaws of the proposed treaties by garnering support from across the globe, including the E.U.'s ministers of agriculture, the American Veterinary Medical Association, the Islamic Conference on Animal Welfare, the O.I.E., governments of countries including

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[240] Ibid at 91.

[241] ibid at 100; WHITE Steven, "Into the Void: International Law and the Protection of Animal Welfare" (2013) 4(4) Global Policy 391 at 396.

[242] Favre, *supra* note 51 at 97.

[243] "Declaration of Rights for Cetaceans: Whales and Dolphins" (2011) 14 Journal of International Wildlife Law & Policy 75; "The Universal Charter of the Rights of Other Species" (2000), online: All Creatures <https://www.all-creatures.org/articles/ar-universal-charter-rights-species.html>; "UN Convention on Animal Health and Protection (UNCAHP)" , *supra* note 176.

[244] White, *supra* note 241 at 396.

[245] Otter, O'Sullivan and Ross, *supra* note 14 at 66.

[246] "Universal Declaration of Animal Rights" (1978), online: National Council for the Protection of Animals <https://constitutii.files.wordpress.com/2016/06/file-id-607.pdf>; GIBSON Miah, "The Universal Declaration of Animal Welfare" (2011) 16(2) Deakin Law Review 539 at 539, 541, 548 et seq.

Cambodia, Fiji, New Zealand, Palau, the Seychelles, Switzerland and the E.U. member states, as well as over two million individuals who have signed a petition.[247]

The U.D.A.W. has been critiqued as vague and unable to impact change in countries with established animal welfare regimes.[248] However, the instrument's power is primarily normative. This is significant for global animal law's growth. Despite wide support and a light-handed, non-binding approach, the U.D.A.W. remains unadopted and campaigning efforts have dwindled. This highlights the importance of wide, diverse support for such instruments. One drawback of U.D.A.W. is that it continues the trend of focusing on international law mechanisms to the exclusion of others. Initiatives like this could be improved by considering further multi-scale, relational legal instruments in addition to or in lieu of a universal instrument.

In conclusion, there are normative shortcomings in recommendations to create new frameworks as well as recommendations to expand existing frameworks. The proposals for new frameworks could resolve the wild/domestic dichotomization of a reformist approach and they could avoid the anthropocentrism of existing institutions such as the O.I.E.. However, the proposals for new frameworks presume the most effective and valuable kind of global animal law would be uniform, aspiring to universal application. These proposals do not include reflections on the problem of coloniality and the potential value of contextual approaches. It is likely that this oversight stems from the lack of diversity amongst those writing on global animal law, as set out in the previous section. Having now made these issues clear, it ought to be possible for global animal law scholars to seek to rectify this situation by injecting new normativity into global animal law studies, inspired by global law metatheory and second wave animal ethics.

V. CONCLUSION

Global animal law, as it is emerging, presents with deficiencies from the perspectives of global law metatheory and second wave animal ethics. In response, this article provides a precise conception of global law and a critique of the use of global terminology to refer to universally applied international law. Additionally, this article focuses on the neglect of decoloniality and intersectionality imperatives of second wave animal ethics. These analyses

[247] Gibson, *supra* note 246 at 542; Otter, O'Sullivan and Ross, *supra* note 14 at 67; White, *supra* note 241 at 395.

[248] Gibson, *supra* note 246 at 546–547, 551.

led to the conclusion that global animal law is, at present, not very global; it is western-driven and can facilitate coloniality. Thus, animal law scholars ought to refrain from global language when talking merely about international law for animals, or else they will be falling foul of William Twining's warning against "globabble". This will harm the legitimacy and, in turn the effectiveness of global animal law. In addition to avoiding "globabble", this article has recommended that global animal law scholars explore the opportunities presented by the connectivity and post-Westphalianism of global law.

I believe that effective global animal law ought to entail global multi-speed multilateralism that interconnects hard and soft law, universal, regional and local standards.[249] This ought to result from negotiation and collaboration, not unilateral imposition. Given the prohibitive difficulty of agreeing a universal animal welfare treaty, soft law and non-universal multilateralism are essential components of global solutions to problems of animal harm. An alternative to this multi-speed multilateralism is proposed by Charlotte Blattner. Blattner advocates for developing animal law through unilateral, extraterritorial measures that would create a "dense, global jurisdictional net of overlapping and concurring laws".[250] While Blattner's proposal concerns unilateral measures, she notes that this may activate new collaborative governance which would be required for global governance.[251] This interconnected picture has interesting potential insofar as global law connectivity is concerned. However, Blattner's proposal is inspired by a view of multilateralism as "uniform and consistent".[252] I argue, with support from global law metatheory, that multilateralism is capable of and strongest when encompassing diversity and facilitating situated normativity. Blattner's analysis of the potential for extraterrorialism in animal law is excellent. However, I wonder whether a more widely accepted view of global animal law as diverse, interconnected and post-Westphalian might encourage scholars like Blattner to explore alternate modes of multilateralism.

Now, given that global animal law scholarship is still in its early days, it is up to the scholars writing within this new area to decide upon the way forward. By presenting these scholars with insights from global law metatheory and second wave animal ethics, I hope to have inspired a more critical reflection on the use of global terminology and an interest in

[249] This proposal is borne out in OFFOR Iyan, "Introducing an Intersectional Ethical Framework in order to Reconceptualise Legal Research on International Trade and Animal Law" (PhD Thesis: University of Strathclyde, 2021).

[250] Blattner, *supra* note 25 at 56–57.

[251] ibid at 314.

[252] ibid at 403.

exploring issues of diversity and decoloniality from the very outset of global animal law projects. Diversifying participation in global animal law is only the first step and much more work is needed. We will need to work toward deep, broad and meaningful participation that leads to results, ways of working that facilitate the coexistence of different frames, epistemologies and knowledges. We will need to question the gatekeeping functions currently adopted by academics and N.G.O.s, questioning whether and how this truly serves animals and the people that care about them. And we will have to work toward a decolonization of the ideas that we work with, embracing "the end of the cognitive empire".[253] In addition, we will have to reflect on our own positionality and question the appropriate limits of our participation and what spaces are rightly closed to us. These are difficult questions to tackle but I believe that doing so is not only the right thing to do, but also the only way to ensure effectiveness of global animal law endeavours. I have had the great pleasure of meeting and working with many global animal law scholars and I have no doubt they can meet this challenge.

[253] DE SOUSA SANTOS Boaventura, *The End of the Cognitive Empire: The Coming of Age of Epistemologies of the South* (Durham, North Carolina: Duke University Press, 2018).