



# Animal Liberation Journal

Volume 1, Issue 1  
April 2024

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## ABOUT ANIMAL LIBERATION JOURNAL

*Animal Liberation Journal (ALJ)*, a scholarly peer-reviewed open-access journal, founded in 2023, was designed to take the articles that are submitted to the Journal for Critical Animal Studies that are not focused on the critical animal studies principles, such as, total liberation, intersectionality, theory-to-practice, collaboration, transformation, ending all oppression and domination, and anarchism, but are rather single-issued on animal liberation, animal advocacy, animal rights, and the end of speciesism.

### Values and Uniqueness

- The *Animal Liberation Journal* publishes rigorously peer-reviewed academic work of the highest quality.
- The *Animal Liberation Journal* is a free open-access electronic journal.
- The *Animal Liberation Journal* does not charge publication fees.
- The *Animal Liberation Journal* supports and encourages submissions that are excluded from mainstream journals, including the use of photographic, video, and new media work.
- The *Animal Liberation Journal*, while an academic journal, provides space and place for contributions from activists.

## SUBMITTING

### Publication Dates

ALJ uses a **rolling submission process**, allowing authors to submit at any time during the year without time restraints or quota of articles in an issue. Rolling submission, the most current scholarly method of accepting publications, allows for more timely publications and current scholarship to enter the public sphere quicker, rather than to conform to traditional academic print journal guidelines.

We are pleased to accept your **submissions at any time**.

Please note that we are a 100% volunteer enterprise and, as such, it may take time to peer review your essay and return. **Wait times can range anywhere between six months to a year**. Please keep this in mind when you submit.

### Submitting Your Manuscript

ALJ submissions are expected to follow the formatting and research documentation [criteria prescribed by the American Psychological Association](#) (APA). If you are not familiar with APA formatting, [you can review it here](#).

Please do not use footnotes or endnotes.

For submission guidelines, see [ALJ Formatting Guide](#). Please follow these guidelines when preparing your submission. **Failure to comply with these guidelines will delay the processing of your submission!**

For general questions and to submit your article, please email your documents to [journalforcas@gmail.com](mailto:journalforcas@gmail.com)

### Review Policies

1. **Submissions must be grounded in the field of animal liberation.** In short, animal liberation is the end of the oppression, domination and exploitation of nonhuman animals.
2. **Submissions must not be under review for any other publication.** Here's a [very thoughtful article](#) about why you should not submit your article to more than one journal at a time.
3. **Submissions must be original and not previously published.** If you are submitting a version of a previously posted or published piece, please tell the editors.
4. **Upon acceptance for review, the editors will send manuscripts, under a double anonymous peer-reviewed process, to no less than two, and usually three, reviewers.** Reviewers provide their recommendations to the issue editor(s), who makes the final decision to accept the manuscript.

### Type of Submissions

1. **Research articles/essays** – 5,000 to 10,000 words
2. **Film, book, art, and media reviews** – no more than 3,000 words
3. **Interviews and dialogues** – between 1,000 to 10,000 words
4. **Course/class summaries** – no more than 2,000 words
5. **Tactic and strategy analysis** – no more than 10,000 words
6. **Lecture summaries** – no more than 2,000 words
7. **Conference summaries** – no more than 2,000 words
8. **Protest summaries** – no more than 2,000 words
9. **Poems** – no more than 10,000 words

### **Suggested Topics**

ALJ is dedicated to focusing on animal liberation and the animal liberation movement. This is a single issued journal for animal advocacy, animal rights, anti-speciesism, and animal justice. We especially encourage contributions that engage animal liberation in disciplines and debates that have received little previous attention. If you are looking to write on total liberation or intersectionality please submit to the Journal for Critical Animal Studies.

### **Review Process**

1. Everyone who submits text to be reviewed for publication in ALJ will work with the Editor, and this will be the only person with whom the submitter should have a contact at ALJ.
2. If a dispute/conflict arises that cannot be resolved with the Editor, the author(s)/reviewer(s) may contact the General Editors of ALJ, but not anyone affiliated with the Institute for Critical Animal Studies (ICAS), which is a separate entity.

Submissions will be assigned to one of the four following categories:

1. Accept without revisions
2. Accept with editorial revisions
3. Revise and resubmit for peer review
4. Reject
  - Every effort will be made to inform the authors of the Issue Editor's decision within 6 months to a year of manuscript receipt.
  - Authors whose manuscripts are accepted for publication will be asked to submit a 50 to 80-word biography that includes their institutional or organizational affiliations, if applicable, professional title, country, and one to six research fields of interests.
5. Once accepted for publication, ALJ author(s)/reviewer(s) will work within a structured timeline to edit the text for publication. A final draft of the text will be sent from the Issue Editor to the author(s)/reviewer(s) of the text to approve. At that time, author(s)/reviewer(s) can only make minor changes in grammar, spelling, and formatting and must send the article back within five days in a Word Doc (or a simply approve via email if no changes

are made). Author(s)/reviewer(s) will they receive a confirmation email from the Issue Editor with the General Editors cc'd.

6. After the issue is formatted by the Issue and General Editors, it is uploaded via Word Doc, PDF, and Issuu.com. Once published/uploaded, *no re-editing is allowed*; the only situation in which publication would be retracted is if legal questions arose about the material an author(s)/review(s) submission.
7. Finally, once published, the Issue Editor, General Editor, and ICAS will promote the publication via e-mail listservs, social media, websites, blogs, flyers, media, newsletters, etc.

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2. Republication of a contributor's works will be assessed on a case-by-case basis, and a reasonable fee may be required for the administration and facilitation of other presses. Such fee shall be determined at the discretion of ALJ.
3. Contributors agree and acknowledge that no royalty, payment, or other compensation will be provided by ALJ in exchange for or result from the publication of the submitted work.

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ALJ is a free online publication with each issue published in three formats: Word Doc, PDF, and Issuu.com. The articles are both published collectively and individually. Once an issue is uploaded, it is promoted via listservs, Facebook, Twitter, the ICAS website, and via e-mails to reviewers, authors, editors, ICAS board members, and members of ICAS.

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**Rape, sexual violence and forced pregnancy:  
The expressions and consequences of reproductive violence  
committed during the war against nonhuman animals**

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**Abstract**

Based on an original interpretation of non-international armed conflict this article argues that we are currently engaged in a war against nonhuman animals. During this war, War Crimes and Crimes against Humanity are committed against nonhuman animals: rape, sexual violence and forced pregnancy. These acts, their aims, and their outcomes are framed as the expressions and consequences of reproductive violence. Female farmed nonhuman animals capable of



reproduction – dairy cows and sows – are the targets of this violence. Drawing on the International Criminal Court statute, *Other Serious Violations of the Laws and Customs Applicable in Armed Conflicts not of an International Character*, this article offers a unique interpretation of the three cumulative elements of the crime of forced pregnancy: (1) unlawful confinement and sexual slavery (2) forcible impregnation and the absence of consent and (3) grave violations of International Law, specifically rape and sexualized violence. It demonstrates how dairy cows and sows meet all three criteria contained within the International Criminal Court definition of forced pregnancy. By granting nonhuman animals legal personhood – and treating them as protected persons rather than the property of protected persons - we can use International Humanitarian Law to protect them from the violence(s) of this species war.

### Keywords

Forced pregnancy; crimes against humanity; international humanitarian law; legal personhood; reproductive violence; war crimes.

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Stacy Banwell

### Introduction

In an article published in *Critical Animal Studies* in 2013, Cusack described in detail the sexual violence dairy cows are subject to on dairy farms. Her article provides a critique of feminists' consumption of dairy as well as a critical review of the terms rape, husbandry, and bestiality. The official definition of animal husbandry describes it as the science of breeding farm animals, a branch of agriculture involved in the production of farm animals, and the management and care of domesticated animals. For Cusack (2013) however, animal husbandry – which stems from the normative consumption of dairy - is a euphemism for "...rape and sexual slavery/trafficking" (p. 25). It involves repeated non-consensual penetration, either with hands or objects, of the nonhuman animal, and non-consensual insemination for the purposes of reproduction (Cusack, 2013).

In this article I build upon and extend the work of Cusack in several ways. First, I argue that we are currently engaged in a war against nonhuman animals. Second, I describe the violence(s) that take place on factory farms as War Crimes and Crimes against Humanity. The specific War Crimes and Crimes against Humanity that I focus on include rape, forced pregnancy, and sexual violence. These are listed in International Humanitarian Law (IHL) and International Criminal Law (ICL). I frame these acts, their aims, and their outcomes as the expressions and consequences of reproductive violence. It is the latter – the consequences of reproductive violence, in the form of

forced pregnancy – that forms the basis of this piece. Here, drawing on Kelty-Huber (2015), reproductive violence refers to “the systematic exploitation; physical and mental violence, and trauma experienced by female farmed animals” whose reproductive systems are controlled within the animal-industrial complex (p. 4). Third, extending beyond the dairy industry, I include the experiences of sows who are also subject to these War Crimes and Crimes against Humanity. In terms of female farmed nonhuman animals, the reproductive bodies of egg-laying hens are also exploited and manipulated within the animal-industrial complex. However, given our focus on forced pregnancy, their experiences will not be reviewed here.<sup>1</sup>

## **Outline of the article**

The article proceeds as follows. First, it outlines the relevant key arguments presented in my recent monograph, *The War Against Nonhuman Animals: A Nonspeciesist Understanding of Gendered Reproductive Violence*. One, we are currently engaged in a war against nonhuman animals; two, during this war, War Crimes and Crimes against Humanity - in the form of rape, sexual violence and forced pregnancy - are committed against human and nonhuman animals and three, as sentient beings, nonhuman animals should be granted passive legal personhood status. Following this the article addresses the three cumulative elements contained with the crime of forced pregnancy: the unlawful confinement of the victim, the forcible impregnation of the victim and the intention of the perpetrator. It demonstrates how cows and sows meet all three criteria contained within the International Criminal Court (ICC) definition of forced pregnancy.

The first element of forced pregnancy is discussed in relation to deprivation of liberty and the inability of nonhuman animals to challenge the legal status of their confinement. Additionally, the crime of sexual slavery, which also occurs during their unlawful confinement, is reviewed. The second element focuses on consent. It draws on the literature pertaining to ethics, human and veterinary medicine as well as experimental research on nonhuman animals. When deliberating the issue of consent readers are reminded of the coercive environment and the forced nature of the impregnation, as well as the visible distress exhibited by nonhuman animals subject to this crime. The article closes by highlighting that forced pregnancy is not exclusively genocidal in nature, it can involve ‘*other grave violations of international law.*’ For cows and sows this involves rape and sexualized violence. The latter is discussed in relation to the forced separation of mother and child. In sum, the article reviews forced pregnancy in relation to the following ICC Statute: *Other Serious Violations of the Laws and Customs Applicable in Armed Conflicts not of an International Character* (Dörmann, Doswald-Beck & Kolb, 2009). It argues that dairy cows and sows are victims of the War Crimes and Crimes against Humanity contained within this statute.

## **The war against nonhuman animals**

In *The War Against Nonhuman Animals*, I argue that we need to view the reproductive violence and slaughter of nonhuman animals within the framework of non-international armed conflict (Banwell, 2023). Below I will provide a summary of the contents of the book before proceeding with the focus of this piece.

Drawing inspiration from Dinesh Wadiwel’s *The War Against Animals* (2015), I offer practical and operational guidelines on how we might protect nonhuman animals from the violence(s) of

war. I do so by offering an original analysis of non-international armed conflict as outlined in IHL. For Wadiwel (2015) the war against nonhuman animals is biopolitical in nature. It is a war that centers around life and death, as industrialized killing requires industrialized reproduction. While both elements are addressed in this article, our focus is mainly on the latter, specifically the expressions and consequences of reproductive violence for female farmed nonhuman animals (in the book I also include the experiences of bulls and male calves, thereby offering a gendered analysis of these crimes).

Explaining the war against nonhuman animals Wadiwel (2015) states:

The scale by which we kill and harm animals would seem to confirm that our mainstay relationship with animals is combative or at least focused upon producing harm and death. Factory farming and industrialized slaughter technologies ... enable a monstrous deployment of violence and extermination. (pp. 5-6)

War, according to Wadiwel's thesis is a "phenomenon of mass or corporate organized violence that aims at total domination" (Wadiwel, 2015, p. 16). We can trace this interpretation of war to the military theorist Carl von Clausewitz who, in his book, *On War*, described war as "an act of violence to compel our opponent to fulfil our will" (von Clausewitz, 1968, p. 1). Within this analysis the focus is on the *objective* of the violence (compelling the enemy to fulfil our will) rather than the *means* used to wage war. If we accept this interpretation of war, then, as Wadiwel (2015) suggests, we can conclude that we are engaged in a war against nonhuman animals. I accept both perspectives outlined above: the war against nonhuman animals is biopolitical in nature and it involves complete domination of nonhuman animals. However, I move beyond rhetorical reasoning and consider how we might use key international instruments within IHL to protect nonhuman animals from War Crimes and Crimes against Humanity (Banwell, 2023). The violence(s) that I review in the book - rape, forced pregnancy and sexual violence - are examples of War Crimes and Crimes against Humanity. As noted, they are listed in IHL and ICL. IHL protects those who are not (or no longer) taking part in the conflict. It aims to alleviate the impact of armed conflict by restricting the means and methods of warfare (International Committee of the Red Cross [ICRC], 2004). It is also referred to as the law of war or the law of armed conflict (ICRC, 2004). The four Geneva Conventions (1949), the Additional Protocols (1977) and the ICC (formed in 1998) fall within the jurisdiction of IHL (Dallman, 2009). Finally, ICL prohibits serious international crimes and holds individuals criminally responsible for their involvement in, among other acts, the commission of War Crimes and Crimes against Humanity (ICRC, 2012). We will start by unpacking the latter.

Crimes against Humanity refer to a range of acts that are committed "as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack." This includes, but is not limited to "rape, forced pregnancy... or any other form of sexual violence of comparable gravity" (Rome Statute of the International Criminal Court, 1998, p. 4). War Crimes include rape, forced pregnancy and "any other form of sexual violence also constituting a grave breach of the Geneva Conventions" (Rome Statute of the International Criminal Court, 1998, p. 8). War Crimes "must always take place in the context of an armed conflict, either international or non-international" (UN Office on Genocide Prevention and the Responsibility to Protect – War Crimes n.d., para 1 under Elements of Crime). The Geneva Conventions (1949) and their

Additional Protocols (1977) apply to both cases of armed conflict (ICRC, 2008). They “focus on the protection of persons not or no longer taking part in hostilities” (UN Office on Genocide Prevention and the Responsibility to Protect - War Crimes n.d., para 1). The central thesis of my monograph is that nonhuman animals should be considered persons in need of protection from War Crimes and Crimes against Humanity. I arrive at this conclusion by revising the current definition of non-international armed conflict. Unlike international armed conflicts, which comprise two or more opposing states, non-international armed conflict includes governmental forces and nongovernmental armed groups (ICRC, 2008). Elaborating on the criteria that needs to be met for a non-international armed conflict, Kathleen Lawland notes: “...fulfilment of these criteria is determined *on a case-by-case basis, by weighing up a number of factual indicators*” [emphasis added] (ICRC, 2012). Elements that are taken into consideration include the intensity, duration, and gravity of the violence, the type of government forces, the weapons used, and the number of casualties incurred (ICRC, 2012).

On average it will take just over 33 mins to read this article. During that time, approximately 403, 920 nonhuman animals will have been killed for food in the UK and approximately 3, 480, 840 in the US.<sup>ii</sup> The Animal Kill Clock also includes real-time data for the number of nonhuman animals killed every year in these countries, as well as Canada and Australia. Based on this information and the criteria that needs to be met for non-international armed conflict, I believe we should revise the existing definition of non-international armed conflict. To accommodate the situation of nonhuman animals I propose the following reformulation of non-international armed conflict: *the war against nonhuman animals involves violence committed by government and non-governmental groups against non-armed, non-combatants (nonhuman animals) within a state*. The focus is on the goal of the violence (compelling the enemy to fulfil our will) rather than the *means* used to wage war (Banwell, 2023).

Too often nonhuman animals who die during wars waged by humans are treated as collateral damage. However, as Nocella (2015) argues, they are also “the casualties of an unspoken and unseen war that humans wage, and are winning, against nonhuman animals” (p. 129). Existing research on the relationship between nonhuman animals and war has focused on the following issues: the use of nonhuman animals as vehicles to transport weapons and humans; the use of nonhuman animals as test subjects to test weapons and train humans to be violent; the exploitation and use of nonhuman animals as weapons; the killing of nonhuman animals during war, and, finally, the aftermath and impact of war on nonhuman animals (Nocella, Salter & Bentley, 2015). In my own work I claim that *war itself* is being waged against nonhuman animals. In other words, nonhuman animals are not the incidental victims of war, rather, they are the targets of the war.

Currently, IHL protects nonhuman animals during armed conflicts when they are classified as property. Article 53 of the Geneva Convention - *The Protection of Civilian Persons in Time of War* - prohibits destruction to personal property of ‘protected persons.’ This includes nonhuman animals (Roscini, 2017, p. 8). In other words, the destruction of nonhuman animals, who are considered the private property of protected persons, is classified as a War Crime and a breach of the Geneva Conventions (Roscini, 2017). Further protections are put in place for the civilian population. For example, Article 48 of the 1977 Additional Protocols states that: “In order to ensure respect for and protection of the civilian population and civilian objects, the Parties to the conflict shall at all times distinguish between the civilian population and combatants” (United

Nations Protocol Additional to the Geneva Conventions 1977, p. 264). It is my belief that nonhuman animals should be treated as civilians/noncombatants during war, and that existing protections within IHL should be applied to them as ‘protected persons’ not the *property* of ‘protected persons.’ To accept that we are currently engaged in a war against nonhuman animals, and that nonhuman animals should be protected from the violence(s) of this war, nonhuman animals must be recognized as sentient beings. Extending this argument further I posit that nonhuman animals should be afforded legal personhood status (Banwell, 2023).

### **Animal sentience and legal personhood**

In the second chapter of the book, I review the varied and often opposing literature on animal sentience, speciesism, and legal personhood before making the case that nonhuman animals should be granted passive legal personhood status. I will assume that many readers of this journal will be familiar with this literature, therefore an overview of the main points will suffice.

In her chapter, *The Rights of Sentient Beings: Moving Beyond Old and New Speciesism*, Dunayer (2013) provides a blueprint for a non-speciesist law. Among other things, this law would “accord all sentient beings a legal right to liberty – physical freedom and bodily integrity” (Dunayer, 2013, p. 37). As a result, nonhuman animals would be released from captivity. To put it bluntly: it would be illegal to hold nonhuman animals captive. After reviewing the *Animal Protection Index* and the scientific philosophical literature on animal sentience and the status of nonhuman animals (Francione, 1997; Low et al., 2021; Regan, 1986; Singer, 1975; Wise, 2000), I proceed on the following basis: all vertebrate and invertebrate nonhuman animals with brains and nervous systems should be regarded as sentient beings. Based on this, they should all be granted legal personhood. Legal personhood in the context of our discussion here means treating nonhuman animals as civilians (Banwell, 2023). This means that protections afforded noncombatants targeted during war should apply to nonhuman animals. Let us pause here to unpack this in more detail.

Treating nonhuman animals as legal persons rather than legal ‘things’ would mean that we “...stop using animals for food, entertainment, or clothing, or any other uses that assume that animals are merely resources, and that we ultimately prohibit the ownership of animals” (Francione, 2004, p. 42). There are disagreements on the issue of granting nonhuman animals legal personhood. These are often centered around the following concerns: ‘equal consideration’, ‘consciousness,’ ‘autonomy and self-determination,’ and the ‘sameness argument.’ Briefly, debates emerge as to whether the interests of humans and nonhuman animals should be given equal consideration, as both experience pain (Black, 2019; Francione, 2004); whether the presence of core consciousness and practical autonomy among nonhuman animals is enough to grant them legal personhood (Benvenuti, 2016; Favre, 2010; Wise, 2013); and, finally, whether those nonhuman animals, that are most similar to humans, should be granted the same legal protections as humans. It is my contention that this work raises more questions than it answers. Sharing the views of Kurki (2019; 2021) and Fernandez (2019), I contend that the current project for granting nonhuman animals legal personhood is overly ambitious. Drawing on Kurki (2019; 2021), I believe it is possible (indeed, necessary) to ascribe nonhuman animals certain incidents of passive legal personhood, specifically the right not to be harmed, the right to personal freedom, liberty, and bodily integrity

(Banwell, 2023). In sum, if we grant nonhuman animals legal personhood, then we can apply IHL to nonhuman animals who are subject to rape, forced pregnancy and other acts of sexual violence during non-international armed conflict.

As I argue in the book, debates about granting nonhuman animals legal personhood need to be placed within a broader discussion about humanity and what it means to be human. And part of this means acknowledging the precarious and exclusionary nature of humanity. Throughout history who and what counts as human, and, by extension, who is considered a legal person, with access to rights and protections, has been contested. Indeed, the category human is discursively constructed along racial, gendered and speciesist lines. Phrased differently: discussions about what it means to be human are inseparable from discussions about racism, sexism, and speciesism. In sum, humanity is constructed as white, heterosexual, and male. One final point raised in the book that is worth repeating here: granting legal personhood to nonhuman animals requires reconfiguring what it means to be human. In this context the legal category ‘person’ is not to be conflated with the biological category ‘human.’ However, we cannot have one without the other. We cannot seek legal personhood for nonhuman animals without challenging human exceptionalism and the inherent racism, sexism, and speciesism that it is built upon (Banwell, 2023). Allied to this, and in the context of what we are discussing here, a case can be made for reframing crimes against humanity as crimes against sentient beings. This would mean acknowledging that any being who has the ability to suffer and feel pain can become the target and victim of certain Crimes against Humanity. Hereafter, in order to capture how nonhuman animals meet the criteria contained within the *existing* (albeit exclusionary) ICC definition, alongside a call for a more biocentric future, I will use the term Crimes against Humanity/Sentient Beings. In the next section we will unpack forced pregnancy in relation to the ICC Statute *Other Serious Violations of the Laws and Customs Applicable in Armed Conflicts not of an International Character*.

### **Forced pregnancy during the war against nonhuman animals**

“Forced pregnancy is pregnancy-orientated rape, combined with the use of unlawful detention to achieve the birth of a child” (Jessie, 2006, p. 330). This is the definition used to describe an act of intrahuman reproductive violence. Below I will review each element of forced pregnancy – the rape, the forced impregnation, and the birth of the child – in relation to nonhuman animals. I will demonstrate that, during the war against nonhuman animals, dairy cows and sows – as passive legal persons - are victims of these crimes.

The ICC defines forced pregnancy as: “the unlawful confinement of a woman forcibly made pregnant, with the intent of affecting the ethnic composition of any population or carrying out other grave violations of international law” (Rome Statute of the International Criminal Court, 1998, p. 5). To reiterate: forced pregnancy is a War Crime and a Crime against Humanity/Sentient beings in non-international armed conflict. Furthermore, the ICC Statute shifts the legal framework of these crimes from focusing on the violation of the victims’ honor, to addressing harms related to bodily integrity and the negation of the victims’ sexual and reproductive agency. As Boon (2001) notes: the statute provides “a new paradigm for the international criminalization of sexual crimes - one based on broader principles of human dignity, autonomy, and consent” (pp. 630-31). While it is possible to see how nonhuman animals benefit from the shift in focus from honor to

bodily integrity – as noted above, under non-speciesist law, nonhuman animals would be entitled to “liberty, physical freedom and bodily integrity” (Dunayer, 2013, p. 37) – the issue of consent, however, is harder to apply to the situation of nonhuman animals.

I will dissect the issue of consent in due course. First, I want to address the three cumulative elements contained within this War Crime and Crime against Humanity/Sentient beings. First, “...the victim must be unlawfully confined by the perpetrator...” Second, “...the victim must have been forcibly made pregnant.’ And third, “the perpetrator acted with one of two specific intents: to affect the ethnic composition of a population, *or* to carry out other grave violations of international law” [Emphasis added] (Amnesty International, 2020, pp. 8-9; Boon, 2001). We will review each of these in more detail below.

## **1. Unlawful confinement**

Forced pregnancy, as outlined above, requires that a woman be both forcibly made *and* kept pregnant, often through confinement. Under IHL (specifically, Rule 99, Deprivation of Liberty), “arbitrary detention and unlawful deprivation of liberty of protected persons during ... non-international armed conflicts ... amount[s] to unlawful confinement for the purposes of prosecuting the crime of forced pregnancy” (Amnesty International, 2020, p. 13). Additionally, from a procedural perspective, the ICRC outlines the following: “All persons deprived of their liberty for reasons related to a non-international armed conflict must be given the opportunity to challenge the legality of the detention” (as cited in Henckaerts, J. M & Doswald-Beck, 2009, p. 352). In addition, under ICL, unlawful confinement in the context of forced pregnancy can also be established if the detained person is a victim of other crimes that involve unlawful confinement, for example, sexual slavery. To reiterate: under non-speciesist law (Dunayer, 2013), the confinement of nonhuman animals is illegal. Based on this, I make the case that nonhuman animals meet the first criteria of the ICC definition of forced pregnancy. This is based on my reformulation of non-international armed conflict (Banwell, 2023). It is worth pausing here to unpack the three main procedural elements of the ICRC in more detail:

### **i. Nonhuman animals are not able to challenge the legal status of their confinement**

Given that nonhuman animals are unable to communicate with humans (in a way that is required/deemed sufficient in these circumstances) they cannot challenge their unlawful confinement under IHL. We know that factory farm animals are held captive in overcrowded facilities where they are deprived of their liberty. In the UK it is estimated that over 2,000 farms use zero grazing. This means that cows, for example, are permanently kept inside or held in yards that have restricted grazing systems (Chiorando, 2021). According to the Humane League (2021), 70% of cows are kept on factory farms. They state:

Most factory-farmed cows never get to step foot outside during their production years, confined instead to indoor sheds that are often filthy and crowded. They're denied the ability to graze, lie comfortably, nurse their young, or live in socially complex herds with their offspring. (para 7)

In a similar vein, sows are confined indoors in gestation crates during their pregnancy. The crates are so small they are unable to turn around. Before they give birth, the sows are then placed in a farrowing crate. As Animal Aid (n.d.) reports: “Farrowing crates are barren, metal and concrete cages, just a few inches longer and wider than the sow herself” (para 3). The sow “cannot step forwards or backwards or even turn around for the duration of her restraint” (para 3). As a result of selective breeding practices – which, for the purposes of meat consumption, results in faster-growing pigs - sows are now larger which exacerbates their confinement (Humane Society of the United States, 2009).

## **ii. They are noncombatants during this war**

While it is important to take issue with the framing of nonhuman animals as the property of protected person during war, existing law does recognize nonhuman animals as civilian objects that should not be targeted during armed conflict.

## **iii. The detained person is a victim of other crimes that involve unlawful confinement**

Nonhuman animals are victims of sexual slavery during their unlawful confinement. Sexual slavery is defined in the ICC Elements of Crime (2013) as:

The perpetrator exercised any or all of the powers attaching to the right of ownership over one or more persons, such as by purchasing, selling, lending or bartering such a person or persons, or by imposing on them a similar deprivation of liberty. The perpetrator caused such person or persons to engage in one or more acts of a sexual nature. The conduct took place in the context of and was associated with an armed conflict not of an international character. (p. 6)

Based on her first-hand experience of dairy farms and auction yards in the US, Kathryn Gillespie – author of *The Cow with Ear Tag #1389* (2018) and *Sexualized Violence and the Gendered Commodification of the Animal Body in Pacific Northwest US Dairy Production* (2014) – provides a detailed account of the commodification of bovine bodies within the dairy industry. Details of her research are recounted here. Female calves are forcibly impregnated through artificial insemination at 15 months old and they give birth at 24 months. If the calf is female, she is raised on the dairy farm where she was born, sold to another dairy farm or raised elsewhere by a heifer-growing contractor (Gillespie, 2014). As Gillespie explains (2014): the calf is fed discarded or substitute milk “...and [is] weaned at 6–8 weeks of age after which she would be group housed until she reached a reproductive age. Just before weaning, she would be dehorned, vaccinated, and have any extra teats removed” (p. 1326). The cycle of reproductive violence begins around 60-90 days after the cow gives birth. At this point she is artificially inseminated and is milked throughout her pregnancy. Milking ceases 60 days prior to her giving birth. This process is repeated for years until there is a decline in her fertility, her milk production or until she suffers from lameness and/or mastitis (Brown, 2016). These physical ailments are attributed to the cycle of reproductive violence outlined above (Gillespie, 2014). “At this point,” Gillespie (2014) continues, “the farmer would make a careful calculation of her profitability as a milk producer weighed against the cost of maintaining her” (p. 27). Once the cow is considered ‘spent,’ she is sold for slaughter then used within the meat industry.<sup>iii</sup>



At this stage it is worth noting that global milk production increased by 59% between 1988 and 2018. According to projections reported by the Organization for Economic Co-operation Development (OECD) and the Food and Agricultural Organization of the United Nations, in their *Agricultural Outlook 2021-2030* report (2021), global milk production will grow by 1.7% per year between 2021-2030 (OECD and the Food and Agricultural Organization of the United Nations, 2021). It is the fastest growing commodity within agribusiness. Cow's milk accounts for over 80% of the milk that is produced (Shahbandeh, 2023). This production of milk is the result of the repeated rape and forcible impregnation of dairy cows (Brown, 2016; Cusack, (2013); Gillespie, 2014, 2018; Mackenzie, 2019). The acts of reproductive violence outlined above are of a sexual nature and take place in the context of the war against nonhuman animals. As such, I argue that these acts fall within the definition of sexual slavery. We will now consider the second element of forced pregnancy: the forcible impregnation of a woman.

## 2. The forcible impregnation of a woman

In this section we will review the terms 'forcibly impregnation' and the term 'woman' addressing the latter first. A recent analysis of the ICC Statute determines that the term 'woman' should be replaced with the term 'pregnant persons' in order to include all individuals capable of becoming pregnant. As pointed out by Amnesty International (2020), while the Statute uses the term 'woman,' there is no evidence to suggest that this was intended "to exclude other pregnant persons from the scope of the crime, including girls of any age or transgender or intersex persons who are biologically capable of becoming pregnant" (pp. 14-15). They go on to state: "If the essence of the crime is the denial of autonomy over a pregnancy by means of unlawful confinement... then the crime must be applied to all pregnant persons subjected to such treatment. To do otherwise would be discriminatory" (pp. 14-15). They further argue that the definition must be used in line with "internationally recognized *human* rights" that should not discriminate on the basis of "age, gender or other status" [Emphasis added] (Amnesty International, 2020, p. 14-15.). To avoid discriminating against nonhuman animals I count speciesism as the 'other status' that should be taken into consideration here. Based on my contention that nonhuman animals should be granted legal personhood, I would argue that they too, by virtue of being biologically capable of becoming pregnant, are 'pregnant persons.' As such, they are victims of this crime (this also applies to reproductive coercion). To exclude them is discriminatory. Based on this understanding, nonhuman animals meet the second criteria of the definition of forced pregnancy. To be clear: I am not equating the situation/experiences of nonhuman animals with transgender or intersex individuals, I am simply arguing that they can be counted as pregnant persons (Banwell, 2023).

Regarding the term forcible impregnation, in a footnote in the *Introduction to Crimes against Humanity, the ICC Elements of Crime* (2013), notes the following:

The term 'forcibly' is not restricted to physical force, but may include threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or persons or another person, or by taking advantage of a coercive environment. (p. 3)

Furthermore, the definition does not require that a person be forcibly impregnated through rape, the issue is that the victim has been impregnated against their will, through (for example) artificial insemination (Amnesty International, 2020). I make the case that dairy cows and sows are forcibly impregnated through artificial insemination, which counts as an act of rape. We will return to this shortly.

What is evident from the War crimes and Crimes against Humanity/Sentient beings outlined above is the non-consensual nature of these acts. In the ICC's *Rules of Procedure and Evidence*, Rule 70 - *Principles of Evidence in Cases of Sexual Violence* - acknowledges that certain situations preclude the victim's ability to give genuine and voluntary consent. This includes cases where the victim has been subject to force, threat of force, or coercion. Furthermore, and of relevance to our discussion here, silence or lack of resistance cannot be read as evidence of consent.

## Consent

To aid our discussion on consent I will draw on the literature pertaining to human and veterinary medicine as well as ethics and experimental research on nonhuman animals. What follows is an overview of the various debates that have arisen on the issue of whether or not nonhuman animals are capable of providing consent. Beauchamp and Childress (2013) outline four principles within the field of medical ethics: autonomy, beneficence (doing good), non-maleficence (preventing harm) and justice (fairness) (Beauchamp & Childress, 2013, p. 104, as cited in Ashall et al., 2018, p. 249). Research is considered ethical if it involves informed consent. Individuals capable of autonomous decision-making are believed to possess the ability to provide consent. Beauchamp and Childress (2013) suggest that to act autonomously one must be able to act intentionally, with understanding, and without controlling influences that determine their action (Beauchamp & Childress, 2013, p. 104 as cited in Ashall et al., 2018, p. 249). Put simply, informed consent respects an individual's right to make autonomous decisions regarding their own body (Ashall et al., 2018). In the context of human medicine, consent is defined as: "...a voluntary, uncoerced decision, made by a sufficiently competent or autonomous person...In this sense, consent requires action by an autonomous agent based on adequate information" (Mancini & Nannoni, 2022, p. 3).

While some similarities can be drawn between human and veterinary medicine – both require informed consent – in the case of the latter, consent is provided by a third-party on behalf of the nonhuman animal patient. As Ashall et al. (2018) explain: consent within veterinary settings upholds the idea that the nonhuman animal is the property of the owner and therefore consent protects the rights of the owner and not "any legal or moral rights enjoyed by the animal 'patient' themselves" (p. 250). In this instance, if the veterinarian acts without consent it would be treated as an act of damaging property. The difference between this and cases where doctors act without the consent of their human patients is that in the case of nonhuman animals, they are unable to consent for themselves. Consent is provided by their owner, who seeks to act in their best interests (Ashall et al., 2018). Interestingly, as Ashall et al., (2018) point out, while "non autonomous humans still possess rights over their own body which cannot be overruled by third party consent, the same situation is not true for animals" (p. 252). With nonhuman animals, consent is provided by mediators, for example, their owners, in the case of pets, or ethical review bodies, in the case of other nonhuman animals (Mancini & Nannoni, 2022, p. 3). Indeed, as Kantin and Wendler

(2015) note, in the context of human research subjects, regardless of their ability to consent, their preferences are taken into account.

In such instances welfare-based preferences or agency-based preferences often inform the motivation surrounding the involvement of human participants (Kantin & Wendler, 2015). The first addresses the impact the research will have on a person's quality of life, while the latter is based on an individual's ability to engage in intentional action based on their assessment of the situation. It is generally accepted that welfare-based interests of nonhuman animals involved in research should be taken into consideration. Conversely, apart from a few cases (for example, those with advanced cognitive capabilities, such as Chimpanzees), determining the presence of agency-based preferences among nonhuman animals is difficult. This is because, on the whole, nonhuman animals will not possess the required level of understanding of the situation to make an informed decision. Furthermore, research carried out on nonhuman animals raises the following contradiction: the recognition that nonhuman animals can feel pain but are incapable of consenting (or otherwise) to the procedures that cause them pain (Mancini & Nannoni, 2022). Russell and Burch's (1959) principles of replacement (replacing or refraining from the use of nonhuman animals); reduction (using the minimum number of nonhuman animals) and refinement (the prioritizing of animal welfare) – the 3Rs - go some way to addressing this tension (as cited in Mancini & Nannoni, 2022, p. 2). However, as Mancini and Nannoni (2022) highlight, the 3Rs ethical framework is premised on two main assumptions: first, nonhuman animals are the objects of research rather than the subjects. And second, nonhuman animals are unable to consent to the procedures they are subject to. Departing from this position Mancini and Nannoni (2022) believe we should treat "animals as active participants in research, capable of consenting or dissenting to experimental procedures, and as stakeholders in the research process, based on the relevance of the research to their own interests" (p. 2). They put forward guidelines for animal-centered research that merges the 3Rs with Beauchamp and Childress' four principles. This facilitates a shift from viewing nonhuman animals as the instruments of research to regarding them as subjects who participate on a voluntary and autonomous basis (as we will see in due course, not everyone agrees with this position; with some taking issue with the ability of nonhuman animals to willingly participate in research settings). In an earlier publication, Mancini (2017) outlined four core principles that should underpin animal-centered research: relevance to part-takers, impartial treatment of part-takers, part-takers' welfare prioritization and part-takers' consent. The first three are relatively straightforward. The first stipulates that nonhuman animals should only take part in research that is beneficial to them. The second requires that all those involved in the research should be afforded equal protection, while the third prioritizes the welfare of participants at all times (see Mancini, 2017). The fourth principle, consent, requires further deliberation.

When undertaking animal-centered research, Mancini (2017) believes that researchers have a duty to obtain the consent of nonhuman animals in two ways: through mediated and contingent consent. The former would be provided by a third-party who are able to discern and have a vested interest in protecting the welfare needs of the nonhuman animal. The latter, which is based on the consent of the nonhuman animal, requires that researchers ensure that participants can freely choose whether or not to engage in the research (Mancini, 2017). Mancini (2017) goes on to explain: "If a participant is enabled to choose the pace and modality of their engagement with, or withdrawal from, the research process at any time...their response can provide a measure of their consent to engaging with a specific research set-up" (p. 227).

I am not entirely convinced by Mancini's (2017) notion of mediated and contingent consent. Here I believe it is useful to draw on the work of Kantin and Wendler (2015) as well as Healy and Pepper (2021) to arrive at a more applicable interpretation of consent vis-à-vis nonhuman animals. To reiterate: it is widely accepted that nonhuman animals are sentient beings, what is more contentious is the claim that they are agentic beings (Healey & Pepper, 2021). For Healy and Pepper (2021) self-determination is bestowed to individuals who have the authority and ability to decide on a course of action. Their choice requires obligations of non-interference from others (Healey & Pepper, 2021). The authors (2021) concede that nonhuman animals have claims to self-determination, but they do not believe that animals can provide consent. In their article they attempt to work through this dilemma. Of relevance to our discussion here is the discussion they offer in response to the following question: "If animals sometimes have rights to self-determination, but cannot give or withhold consent, then when, if ever, is it permissible for us to touch other animals, hold them, bathe them, confine them, or engage them in work or in sport?" (p. 1223).

Curiously, Healey and Pepper's analysis (2021) is informed by a rather complex and, to my mind, rather anthropocentric understanding of consent, which also differs from the definition outlined above in relation to medical treatment. The authors regard consent as a type of normative power. Here it is worth quoting them at length:

The power of consent enables agents to waive claim-rights of theirs, thereby releasing others from duties they owe to them. Thus, valid consent will generally make an impermissible course of action permissible...An important feature of the power of consent (like other normative powers) is that the power is exercised intentionally...Specifically, to exercise the power of consent an agent must intend to waive a right and thereby give another permission. If consent requires the intentional giving of permission, it is very unlikely that we can obtain consent from animals. (p. 1231)

In lieu of animals being able to provide consent, as per their interpretation of consent, Healey and Pepper (2021) believe that animals can still communicate their preferences to us. This is through assent or dissent. Taking the notion of assent further, Kantin and Wendler (2015) argue that assent can only be obtained if researchers can communicate with nonhuman animals and that the nonhuman animal, based on a sufficient level of understanding of the situation, is able to make an informed decision as to whether they want to take part or not. They rightly observe that in most cases these criteria will not be met. Simply put, dissent is the opposite of assent. It is active resistance to a course of action that can involve either verbal or behavioral objection. For Kantin and Wendler (2015), dissent does not require a person to fully understand what is taking place: their lack of understanding may in fact be the cause of their dissent. For this reason, they believe that dissent among nonhuman animals is more achievable than assent as the latter requires a certain level of understanding. Interestingly, Arnason (2020) departs from this position and posits that the opposite of dissent is acquiescence. The latter, they state, involves respecting the agency of nonhuman animals who either acquiesce or dissent. A lesser requirement is that of voluntary participation which, unlike assent, Arnason (2020) argues, does not require an understanding on the part of the nonhuman animal of what is at stake during the research process.

So where does this leave us with regards to the War Crimes and Crimes against Humanity/ Sentient Beings discussed in this article, specifically in relation to the unlawful confinement and forcible impregnation of sows and dairy cows? If, as I have argued, nonhuman animals should be granted legal personhood, does this mean they are entitled to similar ethical considerations as humans? To put it another way: can and should we obtain the assent or dissent (or indeed, the acquiescence) of nonhuman animals and when is it necessary to do so? (Healy & Pepper, 2021; Kantin & Wendler, 2015).

For Healey and Pepper (2021, p. 1236), assent, like consent, must be obtained in all situations where nonhuman animals have a right to self-determination. While they concede that the full range of situations where this applies is “indefinitely varied,” and “beyond the scope of their paper,” they do note, however, that the “weightier the interests at stake, the more demanding the validity conditions are likely to be.” In sum, they believe that humans must be sure that the nonhuman animal they are engaging with understands the implications of what is required of them and that they freely consent to taking part in the interaction. And for Kantin and Wendler (2015), the fact that nonhuman animals are unable to attain the requisite level of understanding of the research setting should not preclude researchers from soliciting their preferences. As noted above, the precedence with human research subjects is to consider the preferences of all participants regardless of their cognitive capabilities. Indeed, even in cases where human subjects are unable to provide consent, researchers are still required to obtain consent. Therefore, “the inability [of nonhuman animals] to provide informed consent does not provide a justification for failing to take into account their preferences regarding whether they participate in research” (Kantin & Wendler, 2015, p. 460).

My response to these questions is informed by the literature reviewed above, the broader philosophical literature on the ethical treatment of nonhuman animals, as well as the terminology included in the following ICC documents: *Elements of Crime* (2013) (specifically footnote 5, which addresses the term forcibly) and *Principles of Evidence in Cases of Sexual Violence* (ICC, 2019, Rules of Procedure and Evidence).

On the subject of consent, I identify the following as noteworthy: nonhuman animals are treated as property in medical settings; the welfare of nonhuman animals is, to a certain degree, considered within research settings; and, finally, there is an agreement that anthropocentric notions of consent must be adapted to fit the situation of nonhuman animals, with notions of assent and dissent offering the most applicable alternatives. Following Kantin and Wendler (2015) I believe that, on the whole (but not always), it is (*theoretically*) easier to determine whether a nonhuman animal dissents rather than assents to a certain course of action. However, in practice this may prove difficult as, in order to truly dissent from a course of action, one must have full knowledge/understanding of what it is they are dissenting from.

To enrich our discussion around consent I believe it is useful to think about the vulnerability of nonhuman animals. To do this I will draw on the work of Johnson and Barnard (2014). As the authors note, humans and nonhuman animals are inherently vulnerable, as we are all susceptible to illness and disease. However, when placed within research settings, individuals are at risk of harm and exploitation, which exacerbates their vulnerability. This is referred to as situational

vulnerability. Nonhuman animals are particularly “...vulnerable to increased risk of harm and exploitation because they are reliant on humans to meet their basic survival needs, in addition to their cognitive, emotional, psychological, and social needs” (Johnson & Barnard, 2014, p. 135). The authors do not believe nonhuman animals can provide consent and - echoing Mancini’s (2017) notion of mediated consent – they advocate using a form of surrogate decision maker who can provide consent on behalf of the nonhuman animal. While I have reservations with regards to the latter, the issue of vulnerability is an important factor to consider. Indeed, situational vulnerability is clearly present in the examples we are dealing with here: War Crimes and Crimes against Humanity/Sentient Beings capable of becoming pregnant. Here we turn to the philosophical literature on the ethical treatment of nonhuman animals, specifically Regan’s (1986) belief in the dignity and inherent value of nonhuman animals, and his concomitant claim that nonhuman animals are subjects-of-a-life. In his words: “[nonhuman animals] have beliefs and desires; perception, memory, and a sense of the future, including their own future; an emotional life together with feelings of pleasure and pain; preference - and welfare interests” (Regan, 1986, p. 243). Based on his contention that nonhuman animals are subjects-of-a-life, Regan (1986) believed that we have a duty to treat them with respect rather than as resources to be exploited. This departs from the animal-centered research proposal put forward by Mancini (2017) which we can align more readily with utilitarianism. Utilitarianism contains two moral principles: equality and utility (Regan, 1986). The former presupposes that everyone’s interests count, while the latter involves acting in ways that bring about the best outcome for everyone involved. Utilitarianism informs current approaches to research on nonhuman animals, where the goal is to (1) minimize suffering and (2) measure any potential suffering against the benefits of the research (Arnason, 2020).

I would argue that things become less contentious when we consider the language of the aforementioned ICC documents. As a reminder: in terms of forcible impregnation, the phrase forcibly, is not solely based on physical force. It can, among other things, include a person taking advantage of a coercive environment. I would suggest that the notion of forcibly impregnating persons capable of becoming pregnant (and by extension, holding them captive) overrides debates about whether a nonhuman animal is capable of assenting or dissenting. Furthermore, the fact that cows, for example, are restrained while they are artificially inseminated to my mind belies the notion of consent. That said, if a cow does not dissent from forced pregnancy, as will become evident in the following section, she clearly dissents from having her child removed from her. Therefore, to return to and elaborate on the point made above, assent or dissent for any kind of (violent) act, can never be fully given because the full extent of the crime can never be grasped by the nonhuman animal.

Finally, the *Principles of Evidence in Cases of Sexual Violence* notes that silence cannot be read as evidence of consent (ICC Rules of Procedure and Evidence, 2019). Although here I suggest contemplating the following by Catharine MacKinnon: “Who asked the animals?” And: “Do animals dissent from human hegemony [and dominance]?” In response MacKinnon states: “I think they often do. They vote with their feet by running away. They bite back, scream in pain, withhold affection, approach warily, fly and swim away” (MacKinnon, 2004, p. 270 as cited in Painter, 2016, p. 332). We now turn to the third and final element of the ICC definition of forced pregnancy: the intention of the perpetrator.

### **3. The intention of the perpetrator**

According to Jessie (2006, p. 336) “[t]he ultimate goal of forced pregnancy campaigns is to destroy, in whole or in part, a national, ethnical, racial or religious group.” This statement by Jessie requires qualification. Forced pregnancy, like rape, *can* constitute the crime of genocide, however, as per the ICC definition of forced pregnancy, the intention can also be based on “carrying out other grave violations of international law” (Rome Statute of the ICC, 1998, p.5). It is the latter (*other grave violations of international law*) that I want to focus on. The ‘core’ crimes listed under International Law include the crime of Genocide, War Crimes, Crimes against Humanity/Sentient Beings, and the Crime of Aggression. As we have established, rape, sexual slavery, and other forms of sexual violence are listed as War Crimes and Crimes against Humanity/Sentient Beings. Under article 7 of the Rome Statute of the ICC, Crimes against Humanity/Sentient Beings also refer to: “Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health” (Rome Statute of the International Criminal Court, 1998, p. 5). Based on this, I propose the following revised definition of forced pregnancy:

The unlawful confinement of a person forcibly made pregnant, with the intent of carrying out inhumane acts that cause great suffering, or serious injury to body or to mental or physical health. Rape, sexual slavery, and other forms of sexual violence are used in the commission of this act. All of which are grave violations of International Law. (Banwell, 2023, p. 97)

Emphasis needs to be placed on the word *can*. To put it another way, forced pregnancy is not exclusively genocidal in nature, it can involve other crimes that violate International Law. As we have dealt with the issue of sexual slavery, I will limit the discussion below to rape and sexualized violence. Both are listed under ‘*other grave violations of international law*.’

### **The ICC Elements of Rape**

In her article, Cusack (2013) draws on the revised FBI Uniform Crime Reporting definition of rape when describing what takes place on factory farms. In my own work, based on my belief that we are currently engaged in a war against nonhuman animals, I propose we draw on the definition of wartime rape outlined in the ICC. In the ICC’s *Elements of Crimes* (2013), the following definition of rape is provided:

The perpetrator invaded the body of a person by conduct resulting in penetration, however slight, of any part of the body of the victim...with a sexual organ, or...with any object or any other part of the body. The invasion was committed by force, or by threat of force or coercion...or abuse of power, against such person or another person, or by taking advantage of a coercive environment, or the invasion was committed against a person incapable of giving genuine consent. (p. 5)

Invasive non-consensual methods of penetration (both vaginal and rectal) are used to impregnate dairy cows (Cusack, 2013; Mackenzie, 2019). This includes the use of the ‘rape rack.’ This device forcibly restrains the cow with chains while she is forcibly impregnated artificially or by a bull (Cusack, 2013; Shuchat, 2016). This procedure is referred to as recto-vaginal rape (Vandermark, Salisbury & Boley, 1951, as cited in Cusack, 2013, p. 27). The process involves the worker

inserting one arm into the rectum of the cow to locate the cervix, while using the other arm to insert the artificial insemination gun into the cow's vagina. During this time the cow is restrained by the rape rack. The rod-like gun contains bull semen. It is forced into the cow until it reaches her cervix where the semen is injected into her uterus (Shuchat, 2016; see also Gillespie, 2014). Sows are exploited in a similar way to dairy cows during routine animal husbandry practices. At around 6 months-old they are repeatedly impregnated through artificial insemination with an insemination rod.

### **Sexualized violence – the separation of mother and calf**

Halbmayer (2010, p. 30) posits that “violent acts can be understood as sexualized if they are directed at the most intimate part of a person and, as such, against that person's physical, emotional, and spiritual integrity.” In the book I argue that the experiences of dairy cows can be placed within this framework of sexualized violence, specifically the impact on the physical, emotional, and spiritual integrity of these nonhuman animals (Banwell, 2023).

Within the first 12 hours of being born, 97% of calves are taken from their mothers (Brown, 2016). This forced separation causes the cow great distress, and they will cry and bellow for days, sometimes weeks, after their calves have been removed from them (Cusack, 2013; Gillespie, 2014; Joy, 2020; Shuchat, 2016). Industrialized capitalism informs this forced removal of the calves from their mothers: once the calves are removed from their mothers, the milk can be retained for human consumption. Indeed, the milk produced for human consumption far outweighs the milk cows would produce for their calves (Humane League, 2021). For example, “[i]n the US, the average dairy cow produces more than 7.5 gallons of milk per day. If she was producing just enough to feed her calf, a dairy cow would only produce about one gallon of milk per day” (Compassion in World Dairy Farming, n.d. para 3). In other words, despite the decrease in the number of cows on dairy farms in the US, between 1950 and 2017 (an estimated 12 million fewer cows), milk production has increased from “116 billion pounds of milk per year in 1950 to 215 billion pounds in 2017” (PETA - *Cow's Milk: A Cruel and Unhealthy Product*, para 5).

I interpret this forced separation as an assault on motherhood. For Aoláin (2000), the separation of children from their mothers is a gender-based violation and an assault on the mother's bodily integrity. It is my contention that dairy cows experience this destruction of motherhood. Furthermore, I would frame this assault as a form of reproductive coercion, where the involuntary separation of mother and calf deprives the mother of her personhood and her inter-subjective relationship with her calf (Banwell, 2023). In a similar vein, sows are also separated from their piglets after giving birth. Typically, the weaning process takes around 3 months; however, piglets are often removed after as little as three weeks. Once removed, the sow is forcibly impregnated again (Animal Aid, n.d.). As with cows, this separation of mother and baby causes great distress to both the sow and the piglet.

To meet the increased demand in milk, I argue that grave violations of International Law are carried out during the war against nonhuman animals. The intensification of dairy farming means that cows are subject to genetic manipulation, as well as antibiotic and hormonal treatment. Their natural diets of grass are substituted with diets that are unnaturally high in protein to fulfil the demand for dairy (PETA - *Cow's Milk: A Cruel and Unhealthy Product*). A similar trend takes place within the meat industry. Regarding gestation and farrowing crates (discussed earlier), these



are, as the Humane League (2022) points out, “standard in the multi [billion-dollar] pork industry, which views mother and baby pigs as mere products – a way to make the most profits at the pigs’ expense” (para 13). In sum, these measures, that are put in place to facilitate the industrialized reproduction of nonhuman animals within the animal-industrial complex, reflect the intention of the perpetrator.

## Conclusion

The war against nonhuman animals is based on my reformulation of non-international armed conflict. It involves *violence committed by government and non-governmental groups against non-armed, non-combatants (nonhuman animals) within a state*. In this article I focused on the following acts of violence: rape, forced pregnancy, and sexual violence. The article argues that these War Crimes and Crimes against Humanity/Sentient Beings (that is, the expressions and consequences of reproductive violence) are committed against persons capable of becoming pregnant: dairy cows and sows. As presented in this piece, to protect nonhuman animals from this species war we must recognize them as sentient beings and as a group who should be afforded legal personhood status. Allied to this, we should replace the term Crimes against Humanity with Crimes against Sentient Beings.

In this piece I have demonstrated that, as non-combatants/civilians during this war, female nonhuman animals – who are exploited due to their reproductive capabilities – meet the three criteria outlined in the ICC definition of force pregnancy. The unlawful confinement, the forcible impregnation and the intention of the perpetrator were discussed in relation to the following ICC statute: *Other Serious Violations of the Laws and Customs Applicable in Armed Conflicts not of an International Character*. Emphasis was placed on both the nature (deprivation of liberty) and implications (sexual slavery) of the unlawful confinement; the forcible and non-consensual nature of the violence(s) inflicted; and, lastly, the aim of these acts was considered in relation to ‘*other grave violations of international law:*’ rape and sexualized violence. The latter was discussed in relation to the forced separation from mother and child.

Currently nonhuman animals are classified as the *property* of ‘protected persons’ during war. We must replace this classification and treat nonhuman animals as ‘protected persons’ in their own right. Once we have done this, we can apply IHL to the situation of nonhuman animals to restrict the means and methods used during this war. My hope is that the arguments presented here and elsewhere (see Banwell, 2023) brings us a step closer towards developing a non-speciesist understanding of reproductive violence which, in turn, moves us closer to ending the war against nonhuman animals.

## References

Amnesty International. (2020, June 30). *Forced pregnancy: A commentary on the crime in international criminal law*.

<https://www.amnesty.org/en/documents/ior53/2711/2020/en/>

Animal Aid (n.d.). *The suffering of farmed pigs*. <https://www.animalaid.org.uk/the-issues/our-campaigns/animal-farming/suffering-farmed-pigs/>

Animal kill clock. (n.d). <https://animalclock.org/uk/>

- Aoláin, F. (2000). Sex-based violence and the holocaust: A re-evaluation of harms and rights in international law. *Yale Journal of Law and Feminism*, 12(1), 43-84.
- Arnason, G. (2020). The emergence and development of animal research ethics: A review with a focus on nonhuman primates. *Science and Engineering Ethics*, 26, 2277–2293.
- Ashall, V., Millar, K.M., & Hobson-West, P. (2018). Informed consent in veterinary medicine: Ethical implications for the profession and the animal ‘patient.’ *Food Ethics*, 1, 247-258.
- Banwell, S. (2023). *The war against nonhuman animals: A non-speciesist understanding of gendered reproductive violence*. London: Palgrave Macmillan.
- Benvenuti, A. (2016). Evolutionary continuity and personhood: Legal and therapeutic implications of animal consciousness and human unconsciousness. *International Journal of Law and Psychiatry*, 48, 43-49.
- Black, V. (2019). Beastly dead. *Canadian Journal of Comparative and Contemporary Law*, 5(1), 1-30.
- Boon, K. (2001). Rape and forced pregnancy under the ICC Statute: Human dignity, autonomy, and consent. *Columbia Human Rights Law Review*, 32, 658-659.
- Brown, K. (2016). A Feminist analysis of human and animal oppression: Intersectionality among species. *Scholars Week*. 2.  
<https://cedar.wvu.edu/cgi/viewcontent.cgi?article=1234&context=scholwk>
- Chiorando, M. (2021, September 21). *Intensive farming: The plight of factory farmed dairy cows and their calves*. <https://www.veganfoodandliving.com/features/intensive-farming-factory-farmed-dairy-cows/>
- Clay, N., Garnett, T., & Lorimer, J. (2020). Dairy intensification: Drivers, impacts and alternatives. *Ambio* 49, 35-48.
- Compassion in World Dairy Farming (n.d.). *About dairy cows*. <https://www.ciwf.com/farmed-animals/cows/dairy-cows/>
- Compassion in World Farming (n.d.). *The life of laying hens*.  
<https://www.ciwf.org.uk/media/5235024/The-life-of-laying-hens.pdf>
- Cusack, C.M. (2013). Feminism and husbandry: Drawing the fine line between mine and bovine. *Journal for Critical Animal Studies*, 11(1), 24-45.
- Dallman, A. (2009). Prosecuting conflict-related sexual violence at the international criminal court. *SIPRI Insights on Peace and Security*, 1, 1–16.
- Dörmann, K. with Doswald-Beck, L., & Kolb, R. (2009). *Article 8(2)(e) ICC statute – other serious violations of the laws and customs applicable in armed conflicts not of an international character*.  
[https://www.cambridge.org/core/services/aop-cambridge-core/content/view/15D5FA23C2F3343B515A80440B601F4B/9780511495144c8\\_p439-486\\_CBO.pdf/article-82e-icc-statute-other-serious-violations-of-the-laws-and-customs-applicable-in-armed-conflicts-not-of-an-international-character.pdf](https://www.cambridge.org/core/services/aop-cambridge-core/content/view/15D5FA23C2F3343B515A80440B601F4B/9780511495144c8_p439-486_CBO.pdf/article-82e-icc-statute-other-serious-violations-of-the-laws-and-customs-applicable-in-armed-conflicts-not-of-an-international-character.pdf)
- Dunayer, J. (2013). The rights of sentient beings: Moving beyond old and new speciesism. In R. Corbey, & A. Lanjouw (Eds.), *The politics of species: Reshaping our relationships with other animals* (pp. 27-39). Cambridge: Cambridge University Press.
- Favre, D. (2010). Living property: A new status for animals within the legal system. *Marquette Law Review*, 93, 1021-1070.
- Fernandez, A. (2019). Not quite property, not quite persons: A quasi approach for nonhuman animals. *Canadian Journal of Comparative and Contemporary Law*, 5, 155-232.

- Francione, G. L. (2004). Animals - property or persons? *Rutgers Law School*. Paper 21. 1-45.  
<https://core.ac.uk/download/pdf/76622908.pdf>
- Francione, G.L. (1997). Animal rights theory and utilitarianism: Relative normative guidance. *Animal Law* 3, 75-101.
- Gillespie, K. (2014). Sexualized violence and the gendered commodification of the animal body in Pacific Northwest US dairy production. *Gender, Place & Culture*, 21(10), 1321-1337.
- Gillespie, K. (2018). *Cow with Ear Tag #1389*. London: University of Chicago Press.
- Halbmayer, B. (2010). Sexualized violence against women during Nazi ‘racial’ persecution. In S. Hedgepeth & R. Saidel (Eds.), *Sexual violence against Jewish women during the Holocaust* (pp. 29-44). Massachusetts: Brandeis University Press.
- Healy, R. & Pepper, A. (2021). Interspecies justice: Agency, self-determination, and assent. *Philosophical Studies*, 178, 1223–1243.
- Henckaerts, J.M & Doswald-Beck (2009). *Customary international humanitarian law*.  
<https://www.icrc.org/en/doc/assets/files/other/customary-international-humanitarian-law-i-icrc-eng.pdf>
- International Criminal Court (2013). *Elements of crime*.  
<https://www.icc-cpi.int/sites/default/files/Publications/Elements-of-Crimes.pdf>
- International Criminal Court (2019). *Rules of procedure and evidence*.  
<https://www.icc-cpi.int/sites/default/files/Publications/Rules-of-Procedure-and-Evidence.pdf>
- International Committee of the Red Cross (2004). What is international humanitarian law?  
[https://www.icrc.org/en/doc/assets/files/other/what\\_is\\_ihl.pdf](https://www.icrc.org/en/doc/assets/files/other/what_is_ihl.pdf)
- International Committee of the Red Cross (2008). *How is the term “armed conflict” defined in international humanitarian law?*  
<https://www.icrc.org/en/doc/assets/files/other/opinion-paper-armed-conflict.pdf>
- International Committee of the Red Cross (2012, December 10). *Internal conflicts or other situations of violence – what is the difference for victims?*  
<https://www.icrc.org/en/doc/resources/documents/interview/2012/12-10-niac-non-international-armed-conflict.htm>
- Jessie, S. (2006). Forced pregnancy: Codification in the Rome Statute and its prospect as implicit genocide. *New Zealand Journal of Public and International Law*, 4(2), 311-338.
- Johnson, J. & Barnard, N. D. (2014). Chimpanzees as vulnerable subjects in research. *Theoretical Medicine and Bioethics*, 35(2), 133–141.
- Kantin, H. & Wendler, D. (2015). Is there a role for assent or dissent in animal research? *Cambridge Quarterly Healthcare Ethics*, 24(4), 459-72.
- Kelty-Huber, C. (2015). Towards a framework for reproductive violence. *All Theses & Dissertations*. 117.  
<https://digitalcommons.usm.maine.edu/cgi/viewcontent.cgi?article=1059&context=etd>
- Kurki, V. (2019). *A theory of legal personhood*. Oxford: Oxford University Press.
- Kurki, V. (2021). Legal personhood and animal rights. *Journal of Animal Ethics*, 11(1), 47-62.
- Low, P. with Panksepp, J., Reiss, D., Edelman, B., Van Swinderen, B., & Koch, C. (2021). *The Cambridge declaration on consciousness*.  
<https://fcmconference.org/img/CambridgeDeclarationOnConsciousness.pdf>
- Mackenzie, A. L. (2019). Readying the rape rack: Feminism and the exploitation of nonhuman reproductive systems. *Dissenting Voices*, 8(1), Article 8.

- Mancini, C. & Nannoni, E. (2022). Relevance, impartiality, welfare and consent: Principles of an animal-centered research ethics. *Frontiers in Animal Science*, 3.  
<https://www.frontiersin.org/articles/10.3389/fanim.2022.800186/full>
- Mancini, C. (2017). Towards an animal-centred ethics for animal-computer interaction. *International Journal of Human-Computer Studies*, (98), 221-233.
- Nocella, A.J., C. Salter, & J.K.C. Bentley. (Eds.). (2015). *Animals and war: Confronting the military-animal-industrial complex*. Lanham: Lexington Books.
- Nocella II, A. J. (2015). A critical animal and peace studies argument to ending all wars. In A. J. Nocella, C. Salter, & J.K.C. Bentley. (Eds.), *Animals and war: Confronting the military-animal-industrial complex* (pp.127-144). Lanham: Lexington Books.
- Organization for Economic Co-operation Development and the Food and Agricultural Organization of the United Nations (2021). *Agricultural Outlook 2021-2030*.  
<https://www.oecd-ilibrary.org/docserver/19428846-en.pdf?expires=1653399427&id=id&accname=guest&checksum=826F5FA29B1B2FC7F5E5E0A96FC72947>
- Painter, C. (2016). Nonhuman animals within contemporary capitalism: A Marxist account of nonhuman animal liberation. *Capital & Class*, 40(2), 325–343.
- PETA (n.d.) *21 things the egg industry doesn't want you to see*.  
<https://www.PETA.org/features/egg-industry-cruelty/>
- PETA UK (n.d.). *Cow's milk: A cruel and unhealthy product*.  
<https://www.PETA.org/issues/animals-used-for-food/animals-used-food-factsheets/cows-milk-cruel-unhealthy-product/>
- Regan, T. (1986). A case for animal rights. In M.W. Fox & L.D. Mickley (Eds.), *Advances in animal welfare science 1986/87* (pp. 179-189). Washington, DC: The Humane Society of the United States.
- Roscini, M. (2017) Animals and the law of armed conflict. *Israel Yearbook on Human Rights*, 47, 35-67.
- Rome Statute of the International Criminal Court (1998).  
[http://legal.un.org/ilc/texts/instruments/english/conventions/7\\_4\\_1998.pdf](http://legal.un.org/ilc/texts/instruments/english/conventions/7_4_1998.pdf)
- Shahbandeh, M. (2022, November 17). *Global dairy industry - statistics & facts*. Statista.  
<https://www.statista.com/topics/4649/dairy-industry/#dossierKeyfigures>
- Shahbandeh, M. (2023, January 4). *Cow milk production worldwide from 2015 to 2022*. Statista.  
<https://www.statista.com/statistics/263952/production-of-milk-worldwide/>
- Shuchat, S. (2016, June 15). *The rape rack*. The social justice movement of our time.  
<https://theirturn.net/2016/06/15/2016061420160613the-rape-rack/>
- Singer, P. (1975). *Animal liberation: A new ethics for our treatment of animals*. New York: New York Review.
- The Humane League. (2021, February 23). *Factory-farmed cows: what happens to cattle on factory farms?* <https://thehumaneleague.org/article/factory-farmed-cows>
- The Humane League. (2022, October 14). *What are gestation crates for pigs and why are they bad?* <https://thehumaneleague.org/article/pig-gestation-crates>
- The Humane Society of the United States (2009, February 23). *The welfare of sows used for breeding in the pig industry: Impacts on farm animals*. 26.  
<https://www.humanesociety.org/sites/default/files/docs/hsus-report-welfare-breeding-sows-pig-industry.pdf>

- UN Office on Genocide Prevention and the Responsibility to Protect. (n.d). *Crimes against humanity*. <https://www.un.org/en/genocideprevention/crimes-against-humanity.shtml>
- UN Office on Genocide Prevention and the Responsibility to Protect. (n.d). *War crimes*. <https://www.un.org/en/genocideprevention/war-crimes.shtml>
- United Nations Protocol Additional to the Geneva Conventions (1977). [https://www.un.org/en/genocideprevention/documents/atrocity-crimes/Doc.34\\_AP-I-EN.pdf](https://www.un.org/en/genocideprevention/documents/atrocity-crimes/Doc.34_AP-I-EN.pdf)
- Von Clausewitz, C. (1968). *On War*. Harmondsworth: Penguin.
- Wadiwel, D. J. (2015). *The war against animals*. Leiden: Brill Rodopi.
- Wise, S.M. (2000). *Rattling the case: Toward legal rights for animals*. Massachusetts: Perseus Books.
- Wise, S. (2013). The capacity of nonhuman animals for legal personhood and legal rights. In R. Corbey & A. Lanjouw (Eds.), *The politics of species: Reshaping our relationships with other animals* (pp. 241-245). Cambridge: Cambridge University Press.

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<sup>i</sup> For a detailed exploration of their experiences see PETA *21 Things the Egg Industry Doesn't Want You to See*; see also Compassion in World Farming n.d., *The Life of Laying Hens*.

<sup>ii</sup> See the Animal Kill Clock. Last accessed 15<sup>th</sup> March 2024.

<sup>iii</sup> For additional accounts of the intensification of dairy farming and its impact on the physical and mental wellbeing of dairy cows see Clay, Garnett & Lorimer, 2020; Compassion in World Farming, n.d.; Humane League, 2021; PETA, n.d.; Shahbandeh, 2022.