

Animals, Law, and Religion: Perspectives from the Study of Religion, Implications for Religious Communities

Overview

To introduce the subfield of animals and religion this paper provides an overview of the kinds of descriptive, theoretical, and normative questions asked by religious studies scholars working in the subfield today; considers four methodological and theoretical issues that have achieved some relative degree of consensus; and further considers one issue that remains productively contentious, the question of whether animals can be considered religious subjects.ⁱ While providing this introduction, the paper will situate my own work on religion and animals as serving to develop the theoretical underpinnings for critically addressing animals in the study of religion,ⁱⁱ providing a survey of a range of representative Jewish laws and principles that have historically governed what we today call the ethical treatment of animals,ⁱⁱⁱ and contributing a case study examining controversies surrounding the AgriProcessors slaughterhouse in Postville, Iowa, especially between 2004 and 2008.^{iv} In closing and with an eye towards our May dialogue, this paper describes the current phase of my scholarship on animals and Jewish traditions as shifting from a focus on the production of knowledge to a focus during my sabbatical year on vehicles for the dissemination of scholarly insights to Jewish communal institutions.

Questioning Animals and Religion: Theory, Description, and Normativity

The subfield of animals and religion poses theoretical questions about how the category animal is used to imagine religion, descriptive questions about how religions make meaning with animals, and normative questions asked inside particular traditions for confessional purposes. Theoretical questions inquire abstractly about how the category “animal” has been associated with or disconnected from the imagination of religion: Can we speak about a religious dimension to human bonds with nonhuman species? How did human-animal relationships contribute to the development of human religion? Can animals be considered religious subjects? How do law and religion work together to establish the boundaries of life, sentience, and personhood? Such questions hover in the

ⁱ The subfield of animals and religion as outlined here reflects especially my observations about the de facto operations of the American Academy of Religion’s Animal and Religion Group, originally founded as a Consultation in 2002; I served as co-chair of this program unit for six years and continue to sit on the steering committee.

ⁱⁱ See Gross 2009, Gross and Valley 2012, Gross 2013b, 2014, Chapters 3-5, 2015.

ⁱⁱⁱ See Gross 2013a, Crane and Gross 2015, Gross *Forthcoming*.

^{iv} See Gross 2014, Chapter 1-2, 6.

background of virtually any inquiry into animals and religion but are increasingly the subject of focus. For example, my monograph *The Question of the Animal and Religion: Theoretical Stakes, Practical Implications* takes up these questions by examining a case study of the discourses generated when an animal rights group released an undercover video that documented the abuse and painful deaths of cattle in a highly-regarded kosher abattoir, AgriProcessors. One part of the argument of this book is that rather than conceptualizing the animals in these videos as merely passive recipients of pity, the events are arguably better explained by understanding them as religious subjects who imposed their own demands. This point of view moves in exactly the opposite direction as that proposed by some Orthodox Jewish legal decisors commenting on the AgriProcessors video who argued that many of the suffering animals it depicted were, halakhically speaking (according to Jewish law), dead and thus of no ethical concern, even if commonsense and veterinary opinion converged in seeing the animals as quite alive. In this extreme case, religious law functioned not only to deny an animal personhood or sentience but even life, and part of the labor of the final chapter of *The Question of the Animal and Religion* is to make sense of this surprising denial.

Second, both scholars and religious practitioners alike ask descriptively how particular religions have made meaning with particular animals or through the use of the human/animal binary: What is the nature of India's sacred cow?^v What is the meaning of new practices of pet burials in contemporary Buddhist Japan?^{vi} What is the nature of the association of so many Christian saints with animals?^{vii} Have particular religions increased or decreased their sensitivity to animal ethics over time?^{viii} My own research has asked descriptive questions both about the historical range of different animal ethics found within Jewish law and homiletics,^{ix} and how controversies about the treatment of animals in kosher slaughter reflect broader conflicts between different Jewish identities, weaving together the human/animal binary with the male/female and us/them binaries. ^x

Finally, practitioners of a particular religion can ask normative-ethical questions working with the resources of their traditions: What can we Daoists learn about the nature of the Dao from

^v For examples, see Biardeau 1993, Jacobson 1999, Korom 2000, Jha 2002, Lodrick 1981.

^{vi} See Ambros 2012.

^{vii} For an extensive analysis of the political and functional uses of stories about saints and animals during the Middle Ages, see Alexander 2008. For a more theoretically rich discussion of this topic, see Salisbury 2011 and Hobgood-Oster 2008, 63-80.

^{viii} For an argument for increased concern for animals from ancient to medieval times in both Abrahamic and Buddhist traditions, see Perlo 2009, 2.

^{ix} See especially Gross 2013a.

^x See Gross 2014.

watching horses, butterflies, fish and other nonhuman animals?^{xi} How does the Qur'an ask us Muslims to treat animals?^{xii} What does a consistent Catholic ethic towards animals require?^{xiii} Or, a question I tried to answer in a nonacademic essay in *Tikkun Magazine*, how does Jewish law and ethics ask us Jews to respond to the abuse of farmed animals at AgriProcessors slaughterhouse?^{xiv} Particularly noteworthy in this connection is an explosion of theological works addressing animal ethics from the perspective of a range of Christianities, a vital development that I can only mention here.^{xv}

Methodological and Theoretical Consensuses

To further characterize the broader subfield, I consider four areas of methodological and theoretical consensus that have emerged in the last fifteen years: the importance of attending to actual animals, the presence of a religious dimension of human-animal relations, the probability that fraught human-animal relationships help generate much of what we deem religious, and the manner in which traditional views on animals tend to be conflicted and marked by internal tensions.

A Methodological Commitment to Real Animals

Most scholars and practitioners active in the animals and religion subfield actively insist on the centrality of exploring the religious meaning of actual animal lives, rather than the fact that animals are used symbolically or practically (say as parchment) in religious contexts. That such an insistence is necessary at all reveals that scholars of religion, like many religions themselves, often invoke animals or animal images in contexts that have nothing to do with the animals themselves. However, as Paul Waldau, an important theorist in the subfield, has emphasized, to study animals and religion properly requires engagement with the “nearby biological individuals outside human communities.”^{xvi} Of course, these biological individuals are always in the process of also being transformed into symbols and ritual objects that stand for more than the animals themselves, and these are phenomena well worth exploring under the heading of animals and religion. Today

^{xi} For background, see Komjathy 2014, 45, 53, 102, 143, 164, Anderson and Raphals 2006.

^{xii} For background, see Tlili 2012.

^{xiii} See Camosy 2013, Jones 2009.

^{xiv} See Gross 2005.

^{xv} Particularly noteworthy here is work by Richard Bauckman, Charles Camosy, Stephen Clark, David Clough, Celia Deane-Drummond, David Grumett, Laura Hobgood-Oster, Andrew Linzey, Jay McDaniels, Rachel Muers, Christopher Southgate, and Stephen Webb.

^{xvi} See Waldau 2006, 40.

scholars, including myself,^{xvii} simply insist that we be certain not to render actual animals absent^{xviii} when we address how they have become “good to eat and also good to think with, as Plutarch observed some centuries before Levi-Strauss.”^{xix}

The Human-Animal Relationship as Holy

It is these actual animals, along with the webs of meanings they proliferate, that scholars studying animals and religion have in mind when we argue that animals need to be better attended to as constitutive parts of a wide range of religious phenomena. Scholars working in the subfield of animals and religion today generally start from the assumption that, just as there is what Christian theologian Paul Tillich calls a “dimension of depth”^{xx} to many of our relationships with human beings, so there is a religious depth often present in our relationships with animals. As comparative religionist Kimberley Patton intones, the human-animal bond contains “something charged, something holy, something that social construction can only partially interpret, but to which the religious imagination, with its unflinching reach into the depths of the human heart, must instead respond.”^{xxi}

More Than Just Another Part of Nature

The new attention theologians and religious studies scholars are today giving to animals has been shepherded into academic discourse by the larger and more developed subfield of “religion and ecology,” itself a development that followed the mainstreaming of environmentalism. However, scholars in the subfield of animals and religion argue that we can rarely adequately understand the religious charge of animals by reflection on them only as a part of nature at large. Animals, the argument goes, press upon conscience and stir our emotions in a way that plants, rivers, and so forth do far less frequently.^{xxii}

^{xvii} For discussion, see Gross 2014, 10-12.

^{xviii} On the concept of the absent referent, see Adams 2010.

^{xix} Clark 2013, 15.

^{xx} See Tillich 1959, 7.

^{xxi} Patton 2006, 36-37.

^{xxii} Although there are exceptions, for example some complexes of tree worship (see Haberman 2013), animals generally touch humans in more holistic and robust ways than other elements of our environment.

Porous Boundaries

This is not to suggest that we can actually draw an unambiguous line between, on the one hand, our relationships with animals, and, on the other hand, our relationship with elements of what we perceive as the nonsentient parts of the environment. For one, not all religions draw borders between living plants, sentient animals, and rational humans *at all*, while most that do draw these borders do so in regionally distinct ways. The religions of traditional peoples in particular, especially those practiced by hunter-gatherer communities, are likely to draw the boundaries of the sentient world differently than the manner familiar to Westerners.

As I discuss in the fourth chapter of my book, arguably the most important difference in such boundary-drawing is that for many traditional peoples, personhood is not restricted to human beings.^{xxiii} While the dominant Western tradition has operated with the notion that only humans can be persons, many indigenous cultures do not, or at least have not historically, so radically separated humans from nonhuman beings and regularly attribute agency and inner life to nonhuman, nondivine and even nonanimal constituents of their environment.^{xxiv}

Animals as Generators of Religion

Going beyond this more minimal conclusion about animals' importance in human religiosity, a long line of religion scholarship preceding the development of the current subfield of animals and religion has speculated that tensions found within important human-animal relationships, especially in practices like hunting and in killing domesticated animals, are an important *generator* of human religious activity. Animals, in this line of thinking, not only appear *in* religions, but human interactions with nonhuman animals form and are formed by religions in much the same way that human interactions with other humans form and are formed by religions.^{xxv}

Without trying to find a single "origin" of religion, a task the study of religion has largely, and wisely, abandoned, we can productively think about what the influential German scholar of

^{xxiii} Gross 2014, Chapter 4.

^{xxiv} For example, anthropologist Tim Ingold, explains that, for hunter-gatherers like the Cree, to the extent we can make any generalizations, "the difference between (say) a goose and a man is not between an organism and person, but between one kind of organism-person and another. . . . personhood is not the manifest form of humanity; rather the human is one of many outward forms of personhood" (Ingold 2012, 50). For discussion see Gross 2014, Chapter 4.

^{xxv} Scholars attending to animals have thus enlarged an important insight into the nature of religion associated especially with the work of Emile Durkheim, namely the insight that the relationship between the human being and society, including society's religious and legal dimensions, is dialectical. The character of the human shapes and is shaped by the character of human religions and legal systems. Scholars attending to animals have simply enlarged the actors involved in this dialectical process. For discussion, see Gross 2014, 63-69.

classical religions, Walter Burkert, calls “formative antecedents.” Burkert and other theorists, including the Romanian historian of religions Mircea Eliade,^{xxvi} arguably the single most influential theorist of religion in the US context, have speculated that one such antecedent lies in a tension created by, on the one hand, the human capacity for empathy with animal lives and sufferings—a capacity that can be *sharpened* in the process of learning to hunt animals or tend to their needs in husbandry—and, on the other hand, the social necessity or practical advantages of harming or killing animals. In broad outline, the hypothesis is that this tension between compassion and killing was an important factor shaping rituals surrounding hunting and, later, the killing of domesticated animals (animal sacrifice), practices that in turn shaped later religious institutions, rippling forward into contemporary religious life and sustained by ongoing experiences of this tension by later generations.

Both Burkert’s and Eliade’s theorization of the importance of human-animal relations explicitly draw on the influential German scholar, Karl Meuli, whose 1944 essay on ancient Greek sacrifice continues to be a touchstone for scholarly studies of sacrifice.^{xxvii} Meuli highlighted the way in which animal sacrifice in Greece was marked by what he called a “Comedy of Innocence”—that is, the human participants would go through considerably length to demonstrate the “assent” of the sacrificial animal and, in some cases, also ritually deny that they were the actual agents of the animal’s death.

Similar indicators of discomfort with killing are found in other sacrificial complexes all over the world, including the ancient Israelite sacrifices depicted in the Bible.^{xxviii} And as novelist Jonathan Safran Foer has pointed out, “the myth of animal consent” is alive and well in contemporary discourse.^{xxix} James Serpell has helpfully described such phenomenon as examples of a virtually culturally universal “zoo-ocentric sympathy.”^{xxx} That said, following the highly regarded contemporary historian of religion, J. Z. Smith, I would want to emphasize that we have no reason to believe that the widespread evidence for what Meuli called the “Comedy of Innocence” or related practices are a *simple* reflection of actual religious life—the delta between the ideal and the real has likely always been large.^{xxxi}

^{xxvi} For a discussion of Eliade, see Gross 2014, 74-81.

^{xxvii} Meuli 1946.

^{xxviii} See Milgrom 1991, 712, Burkert et al. 1987, Kindle Location 2301.

^{xxix} Foer 2009, 99-101, 243.

^{xxx} Serpell 1996. For similar ideas, see Burkert 1983, 12-22, 1996, 150, Frazer and Gaster 1959, 471-479.

^{xxxi} Smith, like Burkert, Eliade, and Meuli, finds a widespread (though not universal) anxiety regarding the killing of animals (Smith 1988, 59). However, Smith, unlike these others, points towards the conflicted and idealized nature of

Internal Diversity of Animals in Religion

While traditions certainly have horizons—that is, limits on, for example, the range of practices that are viewed as credible—when speaking about how entire religious traditions engage animals, the most straightforward path of description will usually be to present contrasting tendencies within that tradition rather than constructing positively an unambivalent and unparadoxical “standard” view. As the eminent Chinese geographer Yi-Fu Tuan has shown in his landmark study on the making of pets, opposing attitudes towards a given human or animal, exemplarily dominance and affection, are often bound together: “affection is not the opposite of dominance rather it is dominance’s anodyne—it is dominance with a human face. Dominance may be cruel and exploitative, with no hint of affection in it. What it produces is the victim. On the other hand, dominance may be combined with affection, and what it produces is the pet.”^{xxxii} Almost everywhere we look and in diverse ways, animals are both pets and victims, beloved and consumed.^{xxxiii} For example, while dominant streams of Abrahamic traditions certainly elevate the human in a radical way, other prominent elements of these traditions—such as certain streams of interpretation of the Psalms of the Hebrew Bible, medieval tales of talking animals,^{xxxiv} or stories of St. Francis’s animal ministries—undo this elevation or lean against it. My own scholarship has followed this consensus by conceptualizing Jewish animal law and ethics as a dialectic that includes, on the one hand, a dominionist ethos that emphasizes human uniqueness and the human prerogative to rule creation, and, on the other hand, an ethic of kindness that emphasizes common creaturliness and compassionate service.^{xxxv}

A New Frontier: Animals as Religious Actors

these seeming expressions of solidarity or compassion. Smith explains, for example, that “The Nivkhi *say* that ‘in order not to excite the bear’s posthumous revenge, do not surprise him but rather have a fair stand-up fight,’ but the same report goes on to describe how they *actually* kill bears: a spear, the head of which is covered with spikes, is laid on the ground, a cord is attached to it and, as the bear approaches [the ambush] the hunter [by pulling up on the cord] raises the weapon and the animal becomes impaled on it” (Smith 1988, 61). Smith’s corrective is to imagine that there are no religious institutions that, “don’t wink at all” (Smith as quoted in Burkert et al. 1987, Kindle Location 2413). That is, there are no human institutions that aren’t also a sight of conflict. “Pluralism is as old as humankind,” Smith asserts (Smith as quoted in Burkert et al. 1987, Kindle Location 2427). This seems an especially crucial point in relation to how animals and religion go together. Religions don’t so much settle on ways to imagine animals as much as settle into arguments about different ways to imagine and treat animals.

^{xxxii} Tuan 1984, 2.

^{xxxiii} For an interesting recent discussion, see Herzog 2010.

^{xxxiv} On the subversive nature of animal tales, see Bland 2009, 2010.

^{xxxv} Gross 2013a, 2014, Chapter 6.

Going still farther, some recent scholarship has followed numerous religious traditions by opening to the possibility, disavowed in dominant Western discourses until recently,^{xxxvi} of animals participating actively in their own religious lives distinct from the world of human religiosity. Virtually all early scholarly definitions of religion have sought to define religion in a manner that excludes animal behavior as religious,^{xxxvii} conceding at most that we can identify “proto religious” elements of animal behavior that evolved into what became the uniquely human domain of religion.^{xxxviii} Currents in contemporary scholarship, however, are imagining animals as religious subjects by, on the one hand, taking seriously ethological studies that imply that some animals, especially nonhuman great apes, already exhibit behaviors that fit within current understandings of religion^{xxxix} and, on the other hand, by reconsidering our deep intuitions about the nature of religion and proposing new, more adequate understandings of religion that, for example, emphasize the affective and embodied dimension of religion in a manner that leaves room for animals to have their own “animal religion.”^{xl}

Animal Subjectivity as an Old Idea

The idea that animals too may be responsive to religious realities strikes most people today as a rather new idea, appearing only after the pioneering studies of primatologists like Goodall, but the notion is in fact found in far older streams of thought. For example, in his study of the Koyukon,

^{xxxvi} On Derrida’s understanding of disavowal, employed here, see Gross 2014, 122-137.

^{xxxvii} Gross 2014, Chapter 3.

^{xxxviii} On animals exhibiting proto-religious behavior see, for example, Bellah 2011, Goodall 2005, 1304.

^{xxxix} For example, primatological research, especially the studies of Jane Goodall, have provided scientific descriptions of primate behavior difficult to explain without recourse to religious vocabulary. Arguably, the most famous description is of the chimpanzee waterfall dance, “Deep in the forest are some spectacular waterfalls. Sometimes a chimpanzee — most often an adult male — approaches one of these falls his hair bristles slightly, a sign of heightened arousal. As he gets closer, and the roar of falling water gets louder, his pace quickens, his hair becomes fully erect, and upon reaching the stream he may perform a magnificent display close to the foot of the falls. Standing upright, he sways rhythmically from foot to foot, stamping in the shallow, rushing water, picking up and hurling great rocks. Sometimes he climbs up the slender vines that hang down from the trees high above and swings out into the spray of the falling water. This ‘waterfall dance’ may last for ten or fifteen minutes” (Goodall 2005, 1304). Commenting on these dances in an interview with Goodall, Patton reflects, “so often theorists and scientists, particularly sociobiologists, will try to reduce human religious ritual, saying, ‘Well, it’s like animal ritual; animals have ritual too.’ But what you suggest to me is that *maybe we’re thinking about it backwards*. It’s rather that ritual action is a natural response to living in a world of mystery and beauty and divinity. It is a response that is shared by animals with human beings. So it’s not clear that we can reduce human ritual behavior to instinct ‘because animals do it too,’ but rather that animals need to be brought conceptually into the sphere of human religious experience; animal ritual action might be ‘elevated’ to the world of human ritual action” (Goodall 2006). Goodall’s own pithy response to Patton is quite remarkable: “What I saw was an expression of what I think is a spiritual reality” (Goodall 2006).

^{xl} For a range of essays on this topic see Deane-Drummond, Clough, and Artinian-Kaiser 2013. For a monograph working in religious studies see, for example, Schaefer 2015. For a systematic reconsideration of core Christian theological concepts in light of animal subjectivity see, for example, Clough 2012.

Richard Nelson, records that “most interesting of all is animal behavior interpreted [by Koyukon people] to be religious. ‘Even animals have their taboos,’ a woman once told me.”^{xli} Where scholars once denigrated such thinking as “animism,” arguing that it represented a primitive stage of human development, now both scholars and practitioners are reclaiming the idea of animism, proposing it as a helpful corrective to an impoverished contemporary understandings of the living world.^{xlii}

Perhaps more surprisingly, the notion of animal religion is arguably present in most or all of the so-called world religions. Even traditions generally conceived as strongly anthropocentric nonetheless harbor within their corpuses stories of animal religion. In her masterful study of the Qur’an and animals, the Tunisian scholar of Islam, Sarra Tili observes, “The Qur’an mentions a few forms of active and passive worship in which the so-called nonrational creatures partake.”^{xliii} Examples could be multiplied.

Conclusion

To review, I have attempted to provide an overview of the current state of the animals and religion subfield by describing key questions asked by the subfield, identifying key areas of consensus, and identifying the question of animal subjectivity as a current point of controversy. In so doing, I have situated my own work on religion and animals as functioning to develop the theoretical foundations for addressing animals in the study of religion, describing the range of historic articulations of Jewish animal law and ethics, and contributing a case study examining controversies in the AgriProcessors kosher abattoir.

In closing, I wish to mention the most recent development of my scholarship on animals and Jewish traditions: a focus on bringing scholarly contributions to bear in the Jewish community as a public intellectual. As I finalize this paper, I am weeks away from beginning my sabbatical project, which will focus on the launch of a nonacademic initiative to address farmed animal ethics in the Jewish communal context. In addition to my appointment at University of San Diego, I serve as CEO of the nonprofit food and farming advocacy group, Farm Forward. In the last twelve months, Farm Forward has received more than \$700,000 in grants targeted for work in the Jewish community. These funds have been used to launch a new program of Farm Forward called the Jewish Initiative for Animals (JIFA), which will be a focus of my sabbatical energies. JIFA has a

^{xli} Nelson 1983, 21.

^{xlii} See especially the work of Graham Harvey, for example, Harvey 2006.

^{xliii} Tili 2012, 166.

dedicated fulltime staff of three and is executing a wide spectrum of programs ranging from curriculum development to expanding the supply-chain of higher welfare kosher meat; all of these various programs converge in having as their telos the creation by Jewish institutions of ethical food policies that address farmed animal welfare (the exact ethical positions adopted are left open). Embarking on this new direction, which explicitly combines my longstanding animal advocacy work with my scholarship for the first time, of course raises a host of questions about how scholarship can and should interface with nonacademic political and policy concerns. These are questions to which I have only the most preliminary answers and which I am especially keen to discuss at our gathering.

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