

**A Non-Violent Politics?
Vegetarianism, Religion, and the State in Eighteenth-Century Western India**

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Scholarly discussions of the place of non-human animals in Hindu and Jain ethics, ritual, and everyday life generally place the principle of *ahimsā* or non-injury at the very center. An adherence to non-injury is an ethical injunction imposed by these two major South Asian religions (in addition to Buddhism) upon their practitioners. In principle, the Jain, Buddhist, and Vaishnav insistence upon non-injury is a universal one, that is, their ethical codes do not make a distinction between human and non-human animals as objects of compassion and non-injury. At the same time, Hindu and Jain attitudes towards animals are complex, even inconsistent. While in certain respects, neither Hindu nor Jain thought draws a distinction between the *jīva* (soul) of a human and a non-human, both religions do in other contexts differentiate among and hierarchize different types of beings. Taking differences in the potential to attain liberation from the cycle of birth-death-rebirth as the metric, both Jainism and Hinduism place humans at the pinnacle of a hierarchical conception of life forms. Despite this complexity in their approach to the distinction between humans and animals, the law codes of Jainism and several strands of Hinduism nonetheless enjoin upon their followers an adherence to non-injury towards all life forms. This however was not always the case.

The Vedas, among the earliest texts composed in South Asia (c. 1500-800 CE), the acceptance of whose authority is essential to any claim to being within the brahmanical¹ tradition, contain numerous references to the consumption of meat and to animal slaughter for ritual sacrifice. The horse, the sheep, the goat, and even the cow were among the sacrificial

offerings to the gods that the Vedas prescribed and the consumption of whose meat they condoned. In the middle of the first millennium BCE, due to profound changes in social, economic, and political life, the practice of asceticism emerged as an influential new mode of religious practice. Scholars have suggested that the origins of the growing emphasis on the ethic of non-violence can be traced to the rise of asceticism in the centuries preceding the Common Era.² The growing popularity of asceticism crystallized especially in Jain and Buddhist practice by the sixth century BCE, which challenged brahmanism on a number of counts, prominent among which was the violence, in the form of animal sacrifice, that was so central to its ritual practice. That said, however, an embrace of non-violence did not translate in early Jain and Buddhist practice into a rejection of meat eating.

A.S. Alsdorf, D. Seyfort Ruegg, and Paul Dundas have underlined that an adherence to non-violence need not and did not necessarily translate into the observance of a vegetarian diet. For instance, in Jainism, the scope of the potential for violence is considered so vast, given Jain concern even for the lives of microbes and insects, that selectively avoiding the consumption of meat while continuing to cause injury or death to other beings would not go far enough in achieving a full adherence to non-violence. Historically, it was only a few centuries after their emergence and their insistence upon non-violence that Jain and Buddhist texts began to prescribe a vegetarian diet. Early texts refer to both Mahavira, a foundational figure in Jainism, and Gautama Buddha eating meat.³ While for Jains an explanation is yet to be offered, for Buddhists, Ruegg attributes the move towards vegetarianism to the rise of a new philosophical approach around the 2nd century BCE that held all sentient beings as holders of the potential to attain enlightenment. To kill or harm a being with such spiritual potential would then be a sin.⁴

In brahmanical ethical codes as well, perhaps to meet the challenge of the growing popularity of Buddhism and Jainism, there emerged in the last centuries before the Common Era a growing tendency towards compassion and empathy for non-human animals. Two principles within brahmanical thought undergirded the brahmanical call for the preservation of all life. The first was the idea that all beings, human or non-human, have qualitatively identical spiritual selves (*atman*) and the second was a belief in the transmigration of souls or rebirth, entailing the possibility that an animal could contain the spirit of a deceased human, including one's own kin.⁵

The *Dharmashastras*, prescriptive texts on ethics, duty, and normative behavior and a significant source of law and jurisprudence in pre-modern South Asia, are among the texts that were composed in this historical milieu. The *Dharmashastras* reflect the ambivalence in brahmanical thought towards committing injury to non-human others. For instance, the *Manusmriti* (or the *Dharmashastra* of Manu) of c. 100 BCE condemns meat eating and animal sacrifice in some verses but condones them in others.⁶ The epic *Mahabharata* too displays similar tensions. These same centuries saw a reconfiguration of Vishnu, a Vedic deity whose worship picked up a new momentum at this time, fuelling new bodies of literature around his legend. AS Alsdorf suggests a connection between non-violence, vegetarianism, and the growth of Vishnu worship at the dawn of the Common Era.⁷ Despite these developments over two millennia ago, the condemnation of animal sacrifice and meat eating has continued to stand in a relationship of tension within the brahmanical corpus, since a complete rejection of these practices would also then be a rejection of the Vedas which prescribe them. A rejection of the Vedas, in turn, would place any text or thinker who did so outside the pale of brahmanism. For this reason, as Edwin Bryant shows, in the course of the first millennium, *brahman* scholars found ways to reconcile their increasingly uncompromising textual insistence upon

vegetarianism and non-violence with Vedic prescriptions of ritual animal slaughter and meat eating.⁸

By the end of the first millennium CE, as the worship of Vishnu ('Vaishnavism') continued to expand within brahmanism, Vaishnav texts such as the *Bhagavata Purana* unequivocally demanded an adherence to non-violence and vegetarianism.⁹ Studies of Vaishnavism, including those of early modern communities of Krishna devotees, recognize the centrality of non-violence and of vegetarianism in them as an inviolable tenet, adherence to which was essential for all members.¹⁰ The Vallabh and Gaudiya devotional communities (*sampradayas*), centered on Krishna (an avatar of Vishnu), that gained immense popularity across India from the late fifteenth century onwards fostered among their members an attitude of care for the preservation of all non-human life. These ethical codes enjoined through sectarian practice and discipline upon all Krishna devotees were in line with elements Shastric laws and in other normative brahmanical discussions on ethics such as such as the *Bhagavat Gita* (a section within the epic *Mahabharata*) and the *Bhagavat Purana*.

Taken as a whole, these studies of shifting textual positions on non-violence and vegetarianism, illustrative as they may be about the intellectual, philosophical, and religious history of the place of animal life in these traditions, do not leave us with much of a picture of the extent of the social and political lives of these ethical positions. Significantly, we are left with no sense of what interaction, if any, these ethical codes and religious injunctions had with the laws and law courts of the polities within which they were composed and practiced. That is, what was the interaction of this domain of religious law and practice pertaining to animal life and well being in the pre-modern past with society and politics at large and with the law more generally?

Historians of South Asia have noted stray instances of Buddhist and Jain kings in the ancient and medieval past seeking to encourage among their subjects the adoption of non-violence towards non-humans in their domain. The 3rd century BCE emperor Ashoka, a Buddhist, exhorted his subjects to give up meat eating but never imposed this as a law upon them. In the early modern period, kings, including Mughal emperors Akbar and Jahangir, embraced vegetarianism to a certain degree in their own personal lives. Emperor Akbar, at different points, gave up meat for a day of the week or for a few months at a stretch, aiming for total vegetarianism. He never gave up the hunt though and did not eventually succeed in becoming fully vegetarian.¹¹ Akbar encouraged his nobles, members of the cult of discipleship (*Din-i-Ilahi*) that he constructed centered on his own persona as a saintly king, to strive towards a vegetarian diet and, according to court historian Abul Fazl, he convinced some of them. Akbar's son and successor Jahangir too sought to emulate his father's example and strove, albeit with less success, to avoid meat.¹²

While Mughal court chronicles attribute Akbar's interest in vegetarianism to a mystical vision that he claimed to have had while hunting in 1578, the influence upon him of the cultural practices and ethical beliefs of his nobles and Rajput wives, many of whom are documented as active patrons and members of Krishna-centric devotional communities, may well have been a powerful one.¹³ Still, Akbar did not go so far as to impose vegetarianism or a concern for protecting animal life more broadly on anyone, let alone impose it as a law upon all of his subjects. It was a medieval ruler in Gujarat, the Caulukya king Kumarapala who upon embracing Jainism is believed to have outlawed the ritual sacrifice of animals in his domain, much to the chagrin of other religious communities.¹⁴ Beyond noting the concern for animal life, adopted in varying degrees by these kings, historians have tended to avoid further examination of the social

or political causes or effects of their ethical choices. Further, the current state of our knowledge indicates that in most of this handful of cases, a ruler's emphasis on the protection of animal life did not extend beyond advice and encouragement to enter the domain of law.

My research on eighteenth-century Marwar, the region that is western Rajasthan today and which was ruled by the Rathor dynasty through the medieval and early modern periods, shows that the Vaishnav and Jain emphasis on non-violence towards and concern for non-human animals could extend beyond sectarian practice into the domain of law. From the 1770s, the Rathor court issued decrees that unequivocally banned the killing of all non-human animals (*jiv hamsya*).¹⁵ Maharaja Vijay Singh (r. 1756-1793), who ruled Marwar through most of the latter half of the eighteenth century, joined the Krishna-centered Vallabh sect in the 1760s.¹⁶ It was not just Vijay Singh's own embrace of Vaishnav ethical codes that resulted in the outlawing of animal slaughter in Marwar. Rather, I suggest, a wider societal shift underway in the region fuelled the elevation of sectarian ethics to universal law.

This was the rise to social, economic, and political dominance of the merchants of Marwar. In the course of the late seventeenth and especially the eighteenth centuries, Marwari merchants had fanned out across the subcontinent, making use of the territorial consolidation and stability that the Mughal Empire had enabled. By the late eighteenth century, Marwari merchants had come to dominate subcontinental flows of money and acted as financiers to a range of political and economic actors. Within Marwar, from at least the fourteenth century, clans within the Jain and later the Vaishnav mercantile communities also played a crucial role in manning key administrative posts at court and in the provinces. Merchants were not only accountants and scribes but also held influential posts such as Prime Minister and Provincial Governor. The growing influence of merchants on the state and their tremendous prosperity as the eighteenth

century progressed was accompanied by a weakening of kingly authority, mired as successive kings became in trying to stave off internal and external challenges to their sovereignty. The adoption of a Vaishnav-Jain ethical code into universal law in late eighteenth century Marwar was then the result of the rise at this time of merchants to a position of dominance over state machinery at this time, a position that was strengthened by their economic might.

The merchant-led Rathor state strove to implement its anti-animal slaughter law through a combination of fines, arrests and surveillance, an effort that lasted until the roughly 1800. In these decades, the Rathor state's legal decrees not only outlawed hunting and the killing of animals for meat but also instituted special measures to protect the lives of insects, parasites, venomous creatures, and invisible water-borne beings.¹⁷ It outlawed the castration of bulls and even the felling of trees and allocated funds for the distribution of food to the dogs and pigeons that roamed some of its major towns. The Rathor state's zealous implementation of its new body of laws against animal slaughter fostered an atmosphere of mistrust and suspicion in the kingdom, with neighbors and acquaintances turning on each other.¹⁸ The anti-animal slaughter law had even more deleterious consequences for some among the Rathors' subjects.

Thoris and *bavris*, communities of vagrant hunters that were landless and listed in Rathor documents explicitly in these same decades as part of the category 'Untouchable' (in these records, '*achhep*' -- literally, 'untouchable'¹⁹), were among those that became victims of the law that criminalized animal slaughter. In these decades, the Rathor state specially targeted the *thoris* and *bavris* by at first preventing them from owning animals and eventually by initiating efforts to banish them *en masse* from the kingdom.²⁰ It justified these commands, by declaring that *thoris* and *bavris* were incorrigible slayers of animals who could not be disciplined through

surveillance, arrest, or fines.²¹ From the Rathor court's perspective, the only way to rid the kingdom of their animal-killing ways was to drive them out.

The harsh treatment of *thoris* and *bavris* was in marked contrast to the Rathor state's treatment of others accused of violating its law against animal slaughter. Members of artisanal and service communities, of middling ranks in localized caste hierarchies, frequently got away with fines.²² Landed elites from the Rajput community, if accused, were threatened with a resumption of their estates but were usually let off after a warning. Animal slaughter continued within the Rathor kingdom, albeit secretly.²³ The cultivation and idealization of non-violence and compassion towards animals then served to conceal and legitimize, within the framework of a Vaishnav and Jain ethic that the kingdom's new elites subscribed to, what was a coercive, state-supported effort to marginalize, dislocate, and criminalize those sections of the population that were troublesome to the kingdom's elite.

The Rathor state also singled out Muslims as another community that could not be trusted with the care of animals. They too were forbidden from owning livestock and if accused of animal slaughter, were punished harshly with banishment from the kingdom.²⁴ Finally, butchers (*kasais*) were another, perhaps obvious, target of the anti-animal slaughter law. In the most populous of its towns, Merta and Nagaur, the Rathors took such measures as rounding up and placing under arrest all the butchers, then banning them from owning any livestock, and appointing *brahman* watchmen to patrol the butchers' quarters at all times to ensure that they were not secretly continuing their trade.²⁵ The butchers of Marwar, many of them Muslim, could no longer practice the trade they were skilled in, while Muslims as a whole lost the option of practicing animal husbandry as an occupation or even supplementing their household's food

supplies by keeping a cow or other milk-producing animal.²⁶ Muslims, *thoris*, and *bavris* were all classed as 'Untouchable' by the eighteenth-century Rathor state.

The eighteenth-century Jodhpur state's implementation of its laws protecting animals then helped to mark the bodies of 'low' caste and Muslim subjects as inherently different from elite, 'Hindu' bodies. In these same decades, that is, from the 1760s through the early nineteenth century, Marwari mercantile communities initiated successful localized campaigns to push artisanal and service castes to the margins of Vaishnav sectarian life as well as to separate water resources, introduce residential segregation, and initiate policies of economic discrimination. To justify these efforts, they posited a self-proclaimed 'Hindu' identity whose purity they strove to protect against an 'untouchable' ("*achhep*") domain that also included Muslims ("*musalmān*" or "*turak*").²⁷ These localized campaigns were waged through the instrument of the law, through petitions brought by individuals or collectives from the merchant and brahman communities. Merchants played a leading role in constructing, through the instrument of the law, a self-consciously Hindu community in early modern Marwar. They did so in opposition to the 'Untouchable' rather than to the 'Muslim' alone. Hindu-ness in early modern times was an expression of social status and, for this reason, could encompass Jain merchants too within its arc.²⁸

In this polarized setting, the law, and particularly, the place of animals within it, was instrumental in the re-shaping of caste identity and social rank. The legal regulation of dietary practice – that is through the imposition of non-violence and vegetarianism upon all -- played a crucial role in cementing the relationship between high status, Hindu identity, and vegetarianism, a relationship that is taken as natural in parts of South Asia today and around which struggles continue to be waged. In reflecting upon the place of animals in the Rathor state's legal decrees,

it is worthwhile to revisit Wendy Doniger's observation that the emphasis upon non-violence applied in South Asian thought to the relationship between humans and non-human animals and not to that between humans.²⁹ This concern for and even kinship with non-humans did not only coexist with contempt for the lives of human others but came to be deeply interconnected in eighteenth-century Marwar. In the case of Marwar then we do not see the 'interlocking oppressions' that have been noted in the field of Animal Studies.³⁰ Rather, eighteenth-century Marwar offers the case of an inverse relationship between compassion to animals and the oppression of humans. While the Rathor state took truly remarkable and unique measures to protect non-human lives within its domain and to enforce empathy and care towards its non-human subjects, this adoption of non-violence as a universal law worked to strengthen, support and naturalize a wider effort to construct and stigmatize an Untouchable Other, marked off not only different but also criminal precisely because of its adherence to a different ethical, now 'unethical,' code. I build then on existing discussions of the place of non-violence and vegetarianism in Jain and Vaishnav ethical codes to offer an analysis of the politics and social transformations that undergirded the adoption of these principles from sectarian ethic into state law.

¹ I use the term ‘brahmanism,’ following the practice current in historical research on ancient South Asia, to refer to the body of ideas, texts, and practices that grew out of the Vedas. To call these ‘Hinduism’ would be ahistorical in the light of decades of scholarly work suggesting that the consolidation of a singular ‘Hinduism’ is a relatively recent phenomenon.

² Bodewitz 1999.

³ For an example of the Jain *tīrthānkara* Mahavir eating meat, see Dundas 1992, 153.

⁴ Ruegg 1980, 236.

⁵ Nelson 2006.

⁶ Alsdorf 2011; Bryant 2006, 196-198.

⁷ Alsdorf 2011, 41-42.

⁸ Bryant 2006.

⁹ Bryant 2006, 201; Alsdorf 2011.

¹⁰ Barz 1992[1979]; Saha 2004. These studies do not however seek to explain why Vaishnavism in general and Krishna devotion in particular placed such an uncompromising emphasis upon non-violence and vegetarianism.

¹¹ Wink 2009, 56-57.

¹² Wink 2009, 56.

¹³ For the suggestion of Jain influence upon Akbar's vegetarianism, see Dundas 1992, 125-126; Babb 1996, 124. For the close relationship between the Mughal court and the rise to pre-eminence in early modern South Asia of sectarian Krishna devotion, see Hawley 2015.

¹⁴ Sheikh 2010, 131, 175 n8.

¹⁵ Jodhpur Sanad Parwana Bahi (henceforth, JSPB) 23, VS 1836/1779 CE, f 325b-326a; JSPB 23, VS 1836/1779 CE, f 355b-356a; JSPB 28, VS 1839, 383a-384a; JSPB 30, VS 1841/1784 CE, f 135b; JSPB 30, VS 1841/1784 CE, f 224b; JSPB 37, VS 1844/1787 CE, f 325b-326a; JSPB 41, VS 1846/1789 CE, f 208a; JSPB 43, VS 1848/1791 CE, f 388b-389a and JSPB 49, VS 1854/1797 CE, f 246a. For more about these sources, see the note that follows these endnotes.

¹⁶ Reu 1999[1940], 1: 381.

¹⁷ For the Jodhpur state's laws to save the lives of tiny, even invisible, aquatic creatures: JSPB 23, VS 1836/1779 CE, f 325b-326a; JSPB 43, VS 1848/1791 CE, f 388b-389a; JSPB 49, VS 1854/1797 CE, f 246a. For its legal injunctions to protect the lives of insects: JSPB 23, VS 1836/1779 CE, f 355b-356a; JSPB 23, VS 1836/1779 CE, f 348a-349a; JSPB 23, VS 1836/1779 CE, f 355b-356a; JSPB 28, VS 1839, 383a-384a and JSPB 37, VS 1844/1787 CE, f 325b-326a; JSPB 37, VS 1844/1787 CE, f 325b-326a; JSPB 49, VS 1854/1797 CE, f 246a. For the laws commanding the protection of parasites and venomous creatures: JSPB 23, VS 1836/1779 CE, f 356b-357; JSPB 49, VS 1854/1797 CE, f 246a.

¹⁸ Some instances of this can be observed in JSPB 15, VS 1832/1775 CE, f 305a; JSPB 18, VS 1834/1777 CE, f 4a; JSPB 30, VS 1841/1784 CE, f 64b; JSPB 36, VS 1844/1787 CE, f 115a; JSPB 36, VS 1844/1787 CE, f 281a; and JSPB 40, VS 1848/1791 CE, f 302b.

¹⁹ JSPB 17, VS 1833/1776 CE, and JSPB 32, VS 1842/1785 CE, f203b are some examples of the use of the term ‘Untouchable/*acchep*’ in the legal decrees of the Rathor state.

²⁰ JSPB 23, VS 1836/1779 CE, f 348a-349b and f 355b-356a; JSPB 28, VS 1839/1782 CE, f 383a-384a; JSPB 30, VS 1841/1784 CE, f 379a-b; JSPB 45, VS 1850/1793 CE, f 96b.

²¹ JSPB 8, VS 1825/1768 CE, f 283b; JSPB 15, VS 1832/1775 CE, f 141a; JSPB 23, VS 1836/1779 CE, f 348a-349b and f 355b-356a; JSPB 28, VS 1839/1782 CE, f 383a-384a; JSPB 30, VS 1841/1784 CE, f 379a-b; and JSPB 45, VS 1850/1793 CE, f 96b.

²² JSPB 32, VS 1843/1786 CE, f 142b-143a

²³ JSPB 23, VS 1836/1779 CE, f 175b; JSPB 28, VS 1839/1782 CE, f 267a; JSPB 32, VS 1842/1785 CE, f 128b; JSPB 30, VS 1841/1784 CE, f 138a.

²⁴ JSPB 1, VS 1821/1764 CE, f 67b-68a; JSPB 32, VS 1842/1785 CE, f 152a; JSPB 32, VS 1842/1785 CE, f 93a; and JSPB 35, VS 1843/1786 CE, f 140b-141a.

²⁵ JSPB 1, VS 1821/1764 CE, f 127a and JSPB 30, VS 1841/1784 CE, 55b-56a.

²⁶ As late as 1819, the Rathor state dismissed a petition collectively submitted by the community of professional butchers from the populous town of Nagaur asking for aid since they had lost their main source of livelihood. The state rejected their appeal, saying they could take up unskilled work such as carrying loads in the bazaars in order to get by if they were in such distress (JSPB 71, VS 1876/1819 CE, f 31a).

²⁷ I develop this argument more fully in my forthcoming book which is based on my doctoral dissertation (Cherian 2015).

²⁸ The social boundary between Jain and devotional communities centered on Krishna was in any case a fluid one (Dundas 1992, 170; Babb 1996, 3-4). A large number of merchants in western India by this point were either Krishna devotees or Jain, and they formed powerful and numerically significant sections of Krishnaite and Jain sectarian communities (Bayly 1993[1983], 141; Dundas 1992, 169).

²⁹ Doniger 2009, 9.

³⁰ Waldau 2013, 261-265.

Note on Sources

Jodhpur Sanad Parwana Bahi record series, numbers 1-71, spanning the years VS 1821 to 1876, or CE 1764 to 1819. Rajasthan State Archives, Bikaner.

The *Sanad Parwana Bahis* of the state of Jodhpur are annual compilations of the orders and decrees issued by the crown and dispatched to its provincial headquarters. These rulings were often in response to the petitions of subjects or to the information gathered by the crown's own news reporters ('*uvākā naves*' or '*itlāk naves*' in these sources). These compilations also contain orders for the disbursal of funds, the movement of money, and the management of fiscal resources. The first of these compilations dates to 1764 CE and the series continues unbroken until the late nineteenth century CE. The contents of the records, however, start to undergo a transformation by the turn of the century, with an increasing focus on fiscal and military matters and diminishing documentation of the judicial appeals of subjects. Since my research is focused on the pre-colonial period in Marwari history, I have chosen the date of Marwar's acceptance of English East India Company suzerainty, 1818, as the terminal point of my examination of these records.

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“Animal Accusers and the Rhetoric of Suffering: Troubling the Human/Animal Divide”
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My research is located at the intersection of Islamic studies and religious studies, focusing on how critical theory of religion can be put into a productive dialogue with Islamic traditions. The medieval Middle East is my primary site, but earlier and modern periods are often also at play in my work. Academic discourses around the study of religion are always somewhere behind my historical research. The best work in religious studies over the last few decades has used discussion around the formation of the category of religion to illuminate and explore central human concerns. Formations of the self and other, gender critique, phenomenology of embodiment, critique of power and empire, poetics and aesthetics, are some of the major humanistic debates to which critical and comparative religion can contribute. Leveraging perspectives, insights, and worldviews, from the medieval Islamic world has allowed my work to make unique contributions to these debates.

Within Islamic studies, the topic of animals in the premodern period has begun to receive attention recently. The work of Alan Mikhail on Ottoman Egypt has used animals a lens for considering economic and environmental changes. Devin DeWeese has explored animal themes and characters in Sufi hagiographical literature of central Asia, and Mohammed Benkheira with Sublet and Mayeur-Jaouen have contributed a wide survey of the animal in Arabic literature of the central Islamic lands. By far the most important contribution for the formative period of Islam are the textual studies by Sarra Tlili. I look forward to conversations with her at this meeting. For the medieval period,

the Sufi philosopher Ibn Arabi has been the subject of several descriptive studies that reconstruct the animal figure within his mystical world view. For example, one study by William Chittick identifies the relation of animals to humans in two ways: the first emphasizes the existential matrix within which all creation circulates. In their narrow anthropocentric perspective, humans are blind to the bonds that connect and animate animals as well as the environment to God. According to Ibn Arabi this neoplatonic universe is filled with the singing praises all things rehearse to their creator. In a second register, Ibn Arabi sets out to trouble the common anthropocentric claim to superiority over animals. He recalls the myriad ways in which humans are engaged with, and dependent upon, animals, noting that in their labors to feed, shelter, clean and protect many animals, humans are performing their innate and divinely determined need for animals.

One question I hope the field will address more fully is that of the animal figure as the discursive or conceptual opening for Islamic religious thought. That is, how in the apparently anthropocentric world view that is Islam do animals become an opening for new perspectives on ethics, the self, and the universal? At present my own work is moving in this direction though an exploration of philosophical, Sufi, and ethical literature. Part of this exploration takes me through an Iraqi fable written in the early medieval period, which engages deeply with the animal figure and ultimately – I shall argue – constitutes an Islamic critique of exclusion and violence.

At the crossroads of Asia and the Middle East, in southern Iraq, Basra, an anonymous group of scholars gathered to record the summation of sciences – both human and natural – of their day. This was at the end of the tenth century, a period in which

Islamic theology and law were still forming, and philosophy was as strong as it would ever be. The authors, collectively known as the Brethren of Purity (*al-Ikhwan al-Safa*) produced a fifty-two-volume encyclopedia, which became known simply as their *Epistles*. The range of the work was truly comprehensive. It was divided into four parts: the mathematical sciences, the sciences of nature, the psychological and rational sciences, and theology.

Abbas Hamdani has recently described the “eclectic sweep” of the encyclopedia, drawing upon “Pythagorean and Nichomachian arithmetic, numerology and music, Hermetic and Indo-Persian magic and astrology, Aristotelian logic and physics, Gnostic esotericism, neo-Platonic cosmology, theory of emanations and metaphysics, Biblical and Qur’anic prophetology, Platonic concepts of law and leadership, and Buddhist, Zoroastrian and Manichean wisdom and allegory.” The authors tell us that their aim is not only to be exhaustive, but also to present the material in an accessible form, with the intention to facilitate the widest possible dissemination of knowledge. The tone of the work is remarkably cosmopolitan.

The central argument of *The Case of the Animals versus Man Before the King of the Jinn* is not that animals are superior to humans – we will return to the nature of this relationship below – but rather that there is a moral lesson to be drawn from the relations between animals and humanity. The Brethren make clear their intention to, “consider the merits and distinctions of the animals, their admirable traits, pleasing natures, and wholesome qualities, and to touch on man’s overreaching, oppression, and injustice against the creatures that serve him – the beasts and cattle – and his heedless, impious thanklessness for the blessings for which he should be grateful.” The affective impact of

the fable is an important dimension of the communication, and thus the authors explain, “We’ve put these themes into the mouths of animals, to make the case clearer and more compelling – more striking in the telling, wittier, livelier, more useful to the listener, and more poignant and thought-provoking in its moral.”

The story takes place on the island of the king of the jinn, where a group of humans, of a racial and religious mixture representing the range of humanity, have shipwrecked. Upon seeing the peaceful and flourishing animals on the island, the humans begin to trap, harness, and force them into service. Endowed with speech, the animals complain to the king of the jinn, who summons the humans and representatives of all the animals to his court to resolve matter. These kingdoms include: the predators, who are represented by the jackal; the birds, who send the nightingale; the swarming creatures, represented by the bee; the birds of prey, who send the parrot; the aquatic animals, who send the frog; and the crawling animals, who are represented by the cricket. The kingdoms and species of the animals are many, and the *Epistle* offers an all-encompassing typology. In parallel to this system are the divisions among humans. Here geography and environment are important identifiers, as is religion.

This tension between humans and animals however is not simply one of difference. The humans present several arguments for their superiority in the fable, drawing on concepts such as stewardship, divine election, culture and civilization, and industry. The delegate of the carnivores however begins to trouble the human-animal binary at work behind these claims:

‘Had you humans considered the lives of predators and studied their behavior, you would realize and admit that we’re purer and better than you.’
‘Is that so?’ said the human. ‘Can you prove it?’

‘Of course! Aren’t the best of you your ascetics and holy men – monks, rabbis, mendicants?’

‘Yes.’

‘And when one of you reaches the peak of probity and piety doesn’t he remove himself from your midst and flee your society? Doesn’t he shelter in the hills and mountains, or the bosoms of the valleys, by the seashore, or in the forest – the haunts of the wild beasts? He mingles with us the beasts of prey in our own realms and shelters at our side, unharmed by any of us?’

‘Yes, just as you say.’

‘Well, if beasts of prey are not your betters, why do the best of you lodge with us, and the most saintly of you live with us? The best consort with the best, not the worst, so they flee from you; and you shun them in turn.’

Here the jackal is claiming that at its most developed and perfected, humanity can bridge the divide, and resonate deeply with animal sensibilities.

The last chapter of the epistle presents a dramatic denouement in the courtroom. It begins with an Arab Hijazi pointing to the fact that prophets, imams, sages, poets, ascetics and saints, are only to be found among humans, as evidence of humanity’s superiority. Upon hearing this, the animals drop their case, and declare that this indeed is something special. Along with the jinn, the animals then ask for more information on these saintly persons. The last person to speak is a composite of the best qualities of all humans: He is, “Persian by breeding, Arabian by faith, Iraqi in culture, Hebrew in lore, Christian in manner, Damascene in devotion, Greek in science, Indian in discernment, Sufi in intimations...” Perhaps surprisingly, his final clinching argument is quite brief. He tells the court that although many have sought to recount the attributes and noble deeds of the saints, none has managed to do more than scratch the surface. With this abrupt ending we are left wondering about this elusive attribute that apparently represents what is uniquely human about humanity. From the context of the fable, this attribute is

clearly “sanctity” (*walaya*), an Islamic concept we might describe as a widened capacity for inspiration, esoteric knowledge, and wisdom. This concept of enlarged sanctity was not coined by the Brethren – it was key in Shi’ism and Sufism earlier – but its use here in an encyclopedic treatment of human attributes, psychology, and ethics, is likely unprecedented.

The resolution of the court case seems to confirm the humans in their superiority to the animals. Due to its capacity to produce inspired saintly figures – if only on rare occasions – humanity can lay claim to a unique spiritual potential. The animals recognize that this is not possible for them. Yet it does not follow that animals are to suffer forever as slaves of the humans; and certainly there is no license here for cruelty or abuse. In short, the fable’s conclusion is that humanity has a superior capacity, which it should struggle to realize. The court’s judgment is not that the animals are mistaken, that their claims are erroneous, or that their beliefs and practices are false. On the contrary, the conclusion points to the overlap and shared sensibilities of animals and humans. The clinching evidence in the case, the final exhibit, was after all a saintly figure whose description defies words: “Many have cited their virtues, and preachers in public assemblies have devoted their lives down through the ages to sermons dilating on their merits and their godly ways, without ever reaching the pith of the matter.” The significance of this discursive limit should not be overlooked. Humans cannot even describe the deeds, knowledge, and character of their saints. Neither can the animals. Indeed they would like to know more: “...tell us, O humans, of the qualities and lives of these persons, inform us of their insights and ways, their virtues and godly doings, if you

know aught of these... The whole court fell silent, pondering the question. But no one had an answer.”¹

In the *Case of the Animals versus Man*, however, where language has failed both animals and humans, a paradigm has shifted. We have moved from an exclusionary contest to one of different yet mutually intelligible capacities. Humans know these great saints, but fall short of their rank and achievement. Animals recognize these same holy persons, live with them in the wilds of nature, and yet remain categorically removed from them. The moral of the fable is that humanity’s superiority is not what we think it is. Our precedence is only in potential, and when it does manifest, it immediately becomes distant and mysterious. Like the animals, who, thanks to their formidable capacities, can peer across the abyss that divides them from the saintly realm, humans too recognize a likeness of themselves in those distant saints.

My current research seeks to build on this dynamic of interspecies communication, with particular reference to silence and the limits of the descriptive speech in the *Epistle*. As we just noted, at the concluding section of the court case the boundary of language is evoked in order to indicate a super-capacity within humanity. This same binding of language however also occurs in key passages of the fable in what I will argue constitutes an Islamic critique of exclusion and violence. In these passages scenes of violence toward animals are described in detail, all the while framed by the silence of those animals. By ‘silence’ here I do not mean an inability to cry out in response to pain, but rather a powerlessness to advocate, petition, or protest. While the communicative power of these passages is predicated on these silences, the visual emotive that is generated exceeds the discursive boundaries of the narrative.

¹ *Epistles of the Brethren of Purity* p.313.

Chapter five of the *Epistle* opens at the court, with the humans arguing for their mastery over the animals by pointing to the paternalistic care they extend to them: feeding, sheltering, raising, training, and treating their illnesses. This kindness would only be extended by a master to his servant, or an owner to his property – the humans claim. What Ibn Arabi would take some three centuries later as evidence of humanity's need for animals, the humans here see as paternalistic ownership. The spokesperson for the beasts counters that nothing about precedence or priority can be deduced from slavery, since all races of humans try to enslave each other. Greeks, Persians, Nubians, Abyssinians, Arabs, Turks – they all claim to be masters of each other when they can take the other as a slave.

The story then turns to a series of animal spokespersons, each of whom condemns the violent reality of slavery, even when that bondage takes itself to be a practice of compassion, and guided by mercy. The first to indict is the ass (*himâr*) saying to the king of the jinn, “Your Majesty, had you seen us as prisoners of the sons of Adam, our backs laden with rocks, bricks, earth, wood, iron, and other heavy loads, struggling and straining to go forward, while they stood over us, stick in hand to beat us brutally about the face and back in anger, you would have pitied us and shed tears of sorrow for us, merciful King. Where then are their mercy and compassion?”

The ox (*thawr*) then said, “Had you seen us, your Majesty, as prisoners in the hands of the Adamites, yoked or bound to a water wheel or mill, with muzzles to our face and blinders on our eyes, as they beat us with sticks and clubs around the face and flanks, you would have pitied us and shed tears.”

The ram (*kabsh*) added, “You would have pitied us, your Majesty, had you seen us as their prisoners, when they seized our smallest kids and lambs and tore them from their dams to seal our milk. They took our young and bound them hand and foot to be slaughtered and skinned, hungry and thirsty, bleating for mercy but unpitied, screaming for help with none to help them. We saw them slaughtered, flayed, dismembered, disemboweled, their heads, brains and livers on butchers’ blocks, to be cut up with great knives and boiled in cauldrons or roasted in an oven, while **we kept silent, not weeping or complaining**. For even if we had wept they would not have pitied us. Where then is their mercy?”

The camel (*jamal*) added, “Also, had you seen us, your Majesty, as prisoners of the Adamites’ hand, our **muzzles bound with rope**, our halters gripped by drivers who forced us to carry heavy loads in the dead of night, while all others slept, making our way through dark defiles and arid plains over a rocky track, bumping into boulders and stumbling with our tender pads over rocks and rough, broken ground, hungry and thirsty, our sides and backs bruised and sore from the rubbing of our saddles, you would have pitied us and wept for us. Where then is their mercy?”

The elephant (*fil*) said, “Had you seen us... with chains on our feet and cables about our necks while they held iron goads in their hands to beat us about the head and drive us left or right, powerless to defend ourselves, despite our great bulk, our mighty frames, long tusks, and immense strength, you would have pitied us and wept for us.”

Then the horse (*faras*) spoke, “Your Majesty, had you seen us as their prisoners on the field of battle, bits in our mouths, saddles on our backs, plunging unprotected

through clouds of dust, hungry and thirsty, awash in blood, you would have had pity on us, O King.”

The last to speak was the mule (*baghl*): “Had you seen us your Majesty, as their captives, with hobbles on our feet, bridles at our throats, bits in our mouths, and locks at our crotches to curb us from satisfying our natural desires, loaded down with pack saddles, while those base, foul-mouthed men who rode atop them, our keepers and drivers berated us with the vilest words at their command, whipping us about the face and hindquarters in such a fury that that often they were carried away and reviled themselves...”

Much of the critique of violence developed throughout the *Epistles* hinges on the ethical underpinnings of divine election. In other words, the dominion over creation that God has entrusted to humans – at least according to the humans! – already carries within it limits and controls on violence. But I would like to follow what I think is a more compelling critique, one that transcends simultaneously the bounds of discursive language and the human/animal divide. These passages from chapter five are a visual rhetoric that indicts the perpetrators of violence in ways more powerful than any denunciation or reasoned argument could. The authors of the *Epistle* were clearly deploying such detailed violent imagery in order to communicate beyond the controlled language of the court and its disputants. As we saw earlier, the move beyond language was also at play in the resolution of the case; the mystery of the saints, as reflected in the limits of language, was compelling in a way that no reasoning or debate could ever be. Likewise the rhetoric of chapter five moved beyond language into visceral imagery, resolving itself as a silent critique of violence.

Kecia Ali

Animal Souls: Thinking about Appetites

Workshop on Animals, Law, and Religion, Harvard Law School, May 20-21, 2016

DRAFT: NOT FOR QUOTATION, CITATION, OR CIRCULATION IN ANY FORM

I am interested in using this workshop to think about some complicated, interesting juxtapositions I find in the sorts of texts I read, mostly formative-period Sunni *fiqh* texts. I am far from having a hypothesis, much less an argument or a conclusion to offer. Instead, I present here a series of questions and provocations about the connections and disjunctions between certain acts involving appetite (eating, having sex), certain acts involving violence (killing animals, enslaving people, striking or beating human beings or animals for discipline or correction), and certain acts involving caretaking (feeding, sheltering, supporting). I am also interested in the ways in which certain categories of beings are invoked, complicated, and reified in the process of negotiating these acts (women, slaves, animals, believers, wives, “men”).

Theology, suffering, and obligation: Animals, Slaves, Wives

Sarra Tlili has made the compelling case that killing animals has posed, for various Muslim thinkers at various times, a theological problem. How can this thing – killing animals – that seems to the conscience to be obviously unjustified (killing animals who have done no wrong; suffering for no fault of their own) be acceptable? If animals, innocent creatures, do not deserve to suffer, there is the question of what kind of just God imposes suffering without cause. (Ormsby 2010: 74) Here, a theological response is the only possible one: God’s order demands it. This involves us necessarily in questions of theodicy as well as of ethical voluntarism. Yet

there is also the question of how human beings should act in such circumstances. Does a human duty to minimize (animal) suffering exist, and if so, does it have bearing on meat consumption? Theology notwithstanding, people must act. Given a certain social order, what sorts of acts must people undertake? Are people responsible for amelioration? Revolution? Good treatment within established parameters is a minimum imperative.¹

Likewise, the problem of enslavement. How can one justify the suffering of human beings, placing them in a subordinate position, removing the original human condition of freedom (*al-asl huwa al-huriyya*)? Theology raises its head. So, too, ethics. Again, one necessary response has to do with the *good treatment* of slaves (like animals) but also the distinction between properly social matters (in which some kinds of human claims, privilege, rights are inalienable and others are can be suspended in cases of enslavement) and others having to do with worship (in which equality mostly rules) and ontology (in which equal status is simply accepted).² Here, then, we must look at what makes human beings different than other parts of God's creation – both animal and vegetative.

We arrive at *women*, with the caveat that the category “women” is not always, or alone, salient; gender is not always the most significant element of someone's personhood – and cannot be understood in isolation from other characteristics. The reported prophetic tradition about the revelation of 4:34, in which Muhammad's determination that a woman whose husband slapped her was entitle to retaliate was derailed by God's decision that husbands are entitled to discipline

¹ SarraTlil, “Animals Would Follow Shāfi‘ism: Legitimate and Illegitimate violence to Animals in Medieval Islamic Thought.” Marion Katz and Beth Berkowitz discuss the treatment of animals as it appears in various Muslim and Jewish texts in Anver Emon, ed., *Islamic and Jewish Legal Reasoning* (Oxford: Oneworld Publications 2016). I briefly discuss the issue of good treatment as it appears in a modern pamphlet on “Kindness to Animals” in my *Muslims and Meat-Eating*.

² There is an extensive literature grappling with this problem. I discuss a recent Islamic State pamphlet which even raise the question of the justice of slavery (only to provide good treatment as the obvious answer); a more substantive treatment of a cluster of related issues appears in Sherman Jackson's *Islam and the Problem of Black Suffering*.

their wives – whether it really happened or not – is a third and complicated example. Along with the extensive exegetical literature on the verse, and legal discussions about domestic disciplinary power, it raises a slew of issues that contemporary thinkers must address.³ Here again we have questions of ontological equality and social (in)equality alongside questions about legal and ethical conduct.

The thread running through these examples, the thread I want to tug, is this: repeatedly, some people’s moral intuitions seem to conflict with God’s established procedures for dealing with the universe and allowing, creating, hierarchies among its creatures where some are entitled to control, use, override the will of, use (necessary) violence against, and possibly even kill—though not abuse or be cruel to—others. What do we make of these processes? Where have these intuitions surfaced and how have they been understood? How have those understandings changed when (if) subordinate parties are allowed to have their say (even imaginatively, as in the *Animals Lawsuit Against Humanity*)? And what if anything can we make of the ways in which the tropes and patterns connect even as they differentiate animals, (male and female) slaves, and (free) women?

Here: a few additional instances or examples or points for further exploration:

On support and need

In his *Kitab al-Nafaqat*, an early jurist juxtaposes rules for the support and feeding of wives with rules for the support and feeding of other relatives as well as slaves and livestock. On the one hand, wives are distinct from all of the others because their having sufficient resources on their own does undo the husband’s obligation. On the other: there is a presumption of a free,

³ Key contributions to this literature include Laury Silvers’ “In the Book We have left out nothing” (CIS 2006) and Ayesha Chaudhry’s *Domestic Violence in the Islamic Tradition*.

male, legally agentive subject responsible for supporting all of the former. Here, one might also connect support and control, as Maududi does (women are like animals on men's farms, for both control and reproduction), and indeed as the famous hadith does about heads of households being like shepherds with their flocks.⁴ In *Marriage and Slavery in Early Islam* and other writings I explored in some depth the parallels between husbands and masters (and wives and slaves) as well as the disjunctions between these categories/roles. I said a bit, but relatively speaking a good deal less, about the parallels between fathers and masters (and children and slaves), but one might do more with this. On the other hand, I said nearly nothing about domesticated animals which (prior to the era of people talking about pets as "fur babies") would not have been considered part of the household in the way slaves would have, and yet were entitled to certain kinds of good treatment. Can thinking about minimum standards of acceptable treatment and remedies for abuse help to illuminate common themes or threads?

On food and sex

In his *Kitab al-Umm*, Shafi'i discusses the question of food and sex and appetites for both in a passage which, on its surface, bears little relevance to my task here. As I have written elsewhere, the point is a refutation of a Hanafi view that refuses divorce for non-support. Shafi'i critiques the view that divorce for impotence is permissible while divorce for non-support is not. He singles out the evidentiary basis for the first, a statement of 'Umar ibn al-Khattab. (Divorce for impotence preventing the consummation of a marriage is an agreed-upon rule across the Sunni schools; Shafi'i is not disputing the doctrine or its basis.) 'Umar also declared, he notes,

⁴ Amanullah De Soudy (2013: 191-92, n. 117) writes of how Indian/Pakistani thinker Abu'l-Ala Mawdudi, in his famous book *Purdah* likens women to animals: "He believed that men were given divine rule over women who were like animals in men's farms." Mawdudi uses biological and agricultural imagery as he interprets Qur'an 2:223 and 42:11. Husbandry covers both marriage and livestock management. Reproduction and dominion are key.

that soldiers who could not support their wives should divorce them. Thus, to take one declaration as the basis for a rule but to ignore the other is to be inconsistent. (There is nothing Shafi'i abhors more than inconsistency.) He goes further: lack of food threatens a woman's very life, while lack of sex (and indeed, as he points out, it is only *one* act of sex, not regular, satisfying sex) has no such effect. To highlight the relative importance of the two he notes that lack of available licit food makes permissible consumption of illicit food (pork, carrion): starvation is a real danger and life is to be preserved even at the cost of eating prohibited foods. No situation, however, permits acting on illicit sexual desire – or rather, acting on sexual desire with an illicit partner. This example of the relative importance of food and sex also raises the question of appetite, and of violence – only implicit (animals are not animals, but merely food, or corpses, in the case of carrion; punishment for *zina* is implied but not described at any length)

On food and sex, again

Qur'an 5:5 and 5:6 raise three issues around food and sex. Permission is granted for eating the food of the people of the book and marrying their women. Next, the obligation is specified for performing ablution if one touches (variously interpreted as touches [Shafi'i], touches with lustful intent or result [Maliki], or has intercourse with [Hanafi]) women. The first (eating food) is interpreted to apply to Muslim men and women alike. No one has suggested that only Muslim men may eat otherwise lawful food of the people of the book and that women may not; rather, it applies to women exactly as it applies to men. The third (ablution) is taken to apply reciprocally to men and women – that is, as famously literalist Ibn Hazm has it, to men if they touch women and to women if they touch men. No one suggests that it applies to Muslim men only (women needn't perform ablution if they "touch" men) or that it applies precisely in the

same way it does to men (that is, that women need to perform ablution if they “touch” women). The second, intermarriage, is taken to apply only to men; women are not granted reciprocal permission to marry *kitabīs*. It is important to note that there is a link between how narrowly or broadly these permissions for sharing food and sharing beds are drawn (Shi‘is, for instance, interpreting both far more narrowly than Sunnis). This should not cause us to overlook the gendered ways in which they have been interpreted. Why have I brought this up in connection with issues of animals? What I want to stress here is the connection between certain sorts of appetites and certain sorts of assumptions about whose bodies are normative. Legal texts treat women’s bodies (and desires) as, most often, secondary in their texts. Women’s embodied subjectivity is generally secondary if it appears at all.

Gendered subjectivity, power, and hierarchy

In a recent comparative ethics article on “Muslims and Meat-Eating” I brought Muslim thought about food ethics into conversation with secular feminist ethics and argued that Muslims who care about gender justice should be vegetarians. I want to extend that thinking in another comparative direction, reaching out to utilitarian ethics with its focus on suffering (and coming back around to issues of gendered hierarchy and power). Although Peter Singer is known for his antagonistic stance toward religion, I think there are productive grounds for a conversation which takes into account the utilitarian focus on suffering and Singer’s insistence on a non-anthropocentric notion of worth (which Tlili has also advocated).

Suffering is a particular concern of utilitarian philosophers. Minimizing suffering, and maximizing the interest of those whose interests count, is their primary concern in discussing ethical issues. Philosopher Peter Singer is the best known advocate of utilitarian or

consequentialist ethics. He writes about human equality and poverty but is also an outspoken advocate for (other than human) animals. (Franklin 2005) His 1975 book *Animal Liberation* helped establish utilitarianism as the dominant approach to animal welfare. Singer rejects the presumption of a clear species barrier between humans, all of whose interests matter equally, and (other) animals, none of whose interests deserve the same consideration as that of any human being. This strain of thought stands in contrast to the historically dominant view of “the Western tradition ... that human beings have exclusive, or at least radically superior, moral status on the premise that only humans are autonomous, rational, self-aware, or capable of understanding justice. Animals are generally seen as existing for human use.”⁵ Singer holds that interests of humans and non-human animals must be taken into consideration. Unlike “strong animal rights” thinkers such as Tom Regan, who believes that no human interests justify certain uses of animals, Singer weighs the relative “utility” of human and animal interests. He argues that the relatively limited benefits to humans from consumption of meat or animal products are overwhelmingly outweighed by animal suffering that such uses causes.

A God-centered universe potentially requires a different way of approaching the issues. Engaging with Singer’s views that animal interests matter requires Muslim thinkers to articulate more explicitly and defend more solidly their views about human beings, animals, and the best relationship between them. Singer’s analyses also demand further reflection on human moral obligation and the status of revelation as guidance. What does it mean to be an ethical person? How does one know? These are complex questions for religious and secular ethicists. For religious thinkers, further issues include the role of divine commands and how far human rationality suffices as guidance. Singer notes that human reason (and he does see humans as

⁵ DeGrazia 7.

distinctive in this way) “is a peculiar ability ... it can take us to conclusions that we had no desire to reach.” (1995: 226)

This observation that human beings shy away from introspection, or flee from recognition of our moral failings, is one that Muslim thinkers make as well. I want to suggest that Singer’s core arguments can be helpful to Muslim thinkers as they attempt to formulate satisfactory approaches to meat-eating specifically, treatment of animals more broadly, and contemporary ethical questions in general. It might lead Muslim thinkers, for instance, to raise similar criticism to those from certain secular philosophers. For instance, Regan suggests that there are some actions which are never justifiable, regardless of the logic of their consequences. (Palmer 2006: 176-8) Some of these secular philosophical assumptions align neatly with core Muslim principles while others, of course, do not. But the basic question of whose interests deserve attention, and whose experiences may serve as a jumping off point for reflection, requires acknowledgment of the power relationships that exist.

This question of power relations brings us full circle to questions about the role of law, the role of religion, and the role of individual believers’ intuitions, reflections, deliberations, and actions. What is the relationship between human ideas, human actions, and theological justice? What modes of reflection – and comparison – are most helpful in this process? Can juxtapositions between and among categories of subordinated beings (women, slaves, animals) create helpful paths for analysis, generating new lines of inquiry? Can counterintuitive or uncomfortable comparisons serve as a starting point for the conversations necessary to work out meaningful change in both the real-life treatment of animals and in human subjectivities around hierarchy and suffering?

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 Vallely 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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*Bad Cats and Bad Rabbis:
Deconstructing Discourses of Animal Danger in the Babylonian Talmud*
Beth Berkowitz

The Study of Animals in Classical Rabbinic Literature

An introduction to the academic study of animals in classical rabbinic literature is, unfortunately, all too easy, since such study has been minimal. The only scholars I can think of who are currently engaged in such inquiry are participating in this workshop (Aaron Gross and Jordan Rosenblum). I will leave it to them to present their own work and will instead outline a few of the challenges that face the study of animals in classical rabbinic literature before describing my own work in this area.¹

Jacob Neusner's work is a startling illustration of the first challenge facing such inquiry: "Animals form an ideal control [for examining how rabbinic law and narrative relate], because in the Rabbinic setting of late antiquity, the formative documents show that there is little at stake in how they are presented. There is no agenda concerning animals...no narrative... Animals represent little more than themselves throughout. Hence we find at hand an ideal opportunity to examine ... a single systemically neutral category-formation: animals."² Neusner portrays animals as an extremely low-stakes subject, a neutral tool for exploring the larger dynamics of rabbinic literature. The more that animal studies takes hold in the academy, the less I think we

¹ By "classical rabbinic literature" I mean the multiple literary corpora produced by the Jewish movement known as the rabbis that emerged in the aftermath of the Second Temple's destruction in 70 CE. The earliest of these corpora are legal in character, composed in an elegant Hebrew, come from second- and third-century Palestine, and include the Mishnah, Tosefta, and several collections of what are known as legal midrash or midrash halakhah. In the successive phase of the rabbinic movement, it splits into two, part of it staying in Palestine, part of it moving to Sassanid-ruled Babylonia. The works produced in this period, which runs from the third century to the fifth, sixth, and possibly into the seventh, are largely Aramaic and adopt new literary genres such as homilies, elaborate stories, and extensive legal dialectic. They include two Talmuds, one from Palestine and one from Babylonia, both structured as commentaries on the Mishnah, as well as numerous collections of exegetical and homiletical midrash. A good reference collection on classical rabbinic literature is Steven T. Katz, ed., *The Cambridge History of Judaism: Volume 4, The Late Roman-Rabbinic Period* (Cambridge, New York: Cambridge University Press, 2006).

² Jacob Neusner, *Praxis and Parable: The Divergent Discourses of Rabbinic Judaism: How Halakhic and Aggadic Documents Treat the Bestiary Common to Them Both* (Lanham, Md: University Press of America, c2006), xii.

will see statements like Neusner's, but the first challenge is simply raising the stakes so that animals are not seen as incidental.

But even when the scholarship recognizes animals as significant, it tends to deal with animals as objects rather than subjects, such in the laws of sacrifice and kashrut, where animals are species to be categorized and bodies to be slaughtered. The work that does deal with animals as subjects draws upon a very limited pool of passages (i.e., the talmudic discussion of animal suffering; the talmudic story of Rabbi Judah the Patriarch encountering a calf on his way to be slaughtered). My own work is an attempt to address these problems by expanding the pool of texts, and doing so with an eye for texts in which animals are agents and actors. I have found torts law to be fertile grounds for inquiry, since in torts law animals walk around breaking things, eating plants, injuring people, injuring each other, injuring themselves, and generally acting like the fully animate creatures that they are. In a book I have recently completed, I discuss passages in the Babylonian Talmud that reckon with animal subjectivities in a variety of such ways. The themes I cover are animal intelligence, morality, suffering, danger, and the tensions that arise from categorizing animals as things and property. The material I present below is from the chapter on animal danger.

Animal Danger

It used to be bloodhounds that people feared. Harriet Beecher Stowe's best-selling *Uncle Tom's Cabin* did not feature any, but when producers staged the novel, they added a pack of snarling bloodhounds to chase Eliza across the frozen Ohio River, and audiences loved it. Newfoundlands and Saint Bernards replaced the bloodhound, Great Danes and German Shepherds replaced Newfoundlands and Saint Bernards, and Dobermans and Rottweilers replaced them. The pit bull is the most recent dog to be demonized. After some dramatic attacks,

pit-bull bans emerged in the 1980s and 90s throughout cities in the United States and United Kingdom. The drift in perceptions of animal danger suggests that they are something more than a strictly rational response to the (sometimes very real) danger that animals pose. David Grimm speculates that the scare around pit bulls helps to preserve the myth of dog as furry child; the pit bull is the doppelgänger for the “good dog” who can be embraced as a family member.³ Karen Delise sees the pit bull as the “placebo” for the public’s anxiety about dog aggression.⁴ Claire Molloy draws upon moral panic theory as she considers the United Kingdom’s media discourse about dog danger in light of various social and economic crises and public anxieties about them.⁵ In Freud’s approach to animal phobias, a boy’s fear of an animal attack is a displacement for his fear of the father’s castrating anger. In Julia Kristeva’s revision of Freud, the fear of the animal expresses the young child’s ambivalence towards the maternal body.⁶

This paper turns attention to a passage in the Babylonian Talmud featuring anti-cat legislations and understands it to be offering yet another interpretive model for animal danger. The talmudic passage explores how religious authorities create and capitalize on perceptions of animal danger in moments of crisis. The Talmud tells a story in which rabbis are acting rather badly. Several prominent rabbis are attending the celebration of a baby boy and cannot decide who deserves the honor of entering the room first. While they jostle with each other, a cat attacks

³ David Grimm, *Citizen Canine: Our Evolving Relationship with Cats and Dogs* (New York: PublicAffairs, 2014), 195.

⁴ Karen Delise, *The Pit Bull Placebo: The Media, Myths and Politics of Canine Aggression* (Sofia, Bulgaria: Anubis Publishing, 2007).

⁵ Claire Molloy, “Dangerous Dogs and the Construction of Risk,” in *Theorizing Animals: Re-Thinking Humanimal Relations*, ed. Nik Taylor and Tania Signal (Leiden; Boston: Brill, 2011), 107–28.

⁶ Kelly Oliver, “Little Hans’s Little Sister,” *Philosophia* 1, no. 1 (2011): 9–28; Alison Suen, “From Animal Father to Animal Mother: A Freudian Account of Animal Maternal Ethics,” *Philosophia* 3, no. 2 (2013): 121–37.

the baby and mutilates his hand. In reaction to the attack, one of the rabbis issues a set of severe legislations on cats that evoke the pit bull bans of our day. In this paper, I will take readers through the talmudic text, and I will suggest that in juxtaposing the legislation with the story of how it came into being, the Talmud aims to provide a critical perspective on discourses of animal danger.

Bad Cats and Bad Rabbis

The story in Bava Qamma 80a-b presents animals as a threat to the intimate spaces and vulnerable members of the household:

Rav, Shmuel, and Rav Asi happened to come to the house of a “week of the son” (i.e., a circumcision), or some say [it was] the house of a “salvation of the son” (i.e., a *pidyon ha-ben*, redemption of a first-born son). Rav would not enter before Shmuel, and Shmuel would not enter before Rav Asi, and Rav Asi would not enter before Rav. They said, “Who will go behind?” Shmuel should go behind, and Rav and Rav Asi should go [ahead]. But Rav or Rav Asi should have gone behind! Rav was only making a gesture on Shmuel’s behalf. Because of that incident where he cursed him, Rav gave him precedence over himself. In the meanwhile, a cat came and bit off the hand of the child. Rav went out and expounded: “It is permitted to kill a cat and forbidden to raise him. Theft does not apply to him, nor does the obligation to return a lost item to its owners.”

The story nearly gets derailed at the start. Three rabbis are going to a celebration for a baby boy, and the story pauses to consider what kind of celebration it is, a circumcision, or a celebration that happens somewhat later after the boy’s birth, here called the “salvation of the son.”⁷ From an audience perspective, the appropriate response would seem to be – who cares?

The pause’s purpose, we might speculate, is to focus our attention on the baby and to contrast the

⁷ The Talmud commentator Rashi explains that “week of the son” refers to a circumcision since it occurs after the first seven days of the baby boy’s life have passed. There is some disagreement among commentators over the second celebration mentioned within the passage, the “salvation of the son.” My translation follows Rashi, who understands it to be referring to the redemption of the first-born son. According to the Tosafot, (s.v. *le-ve yeshu’a ha-ben*), it refers to a party to celebrate a healthy baby being born.

attention we, and the story, shower upon the baby with the relative lack of attention given to him by the rabbis who are the protagonists of the story. There is also an irony in the types of celebration mentioned. The son will be anything but saved at the “salvation of the son,” and the possibility that the celebration was a circumcision foreshadows the cat’s attack upon the baby’s body part.

The main characters, the three rabbis, are concerned not with the baby who is the figure being celebrated but with the rituals of honor that govern their relationships. According to the rules of the rabbinate, no rabbi should enter a room before a rabbi of greater honor. In this case, the rules bring them to a comic standstill. Rav refuses to enter before Shmuel, Shmuel refuses to enter before Rav Asi, and Rav Asi refuses to enter before Rav, his teacher. No one, in short, can move! Realizing the predicament in which they find themselves, the three rabbis ask each other: “Who will hang back?” In posing the question this way, the rabbis portray themselves not as bent on giving the other appropriate honor but each as being unwilling to give up on his own.

The rabbis determine that Shmuel should defer to the others. A challenge to that decision is interjected by the editorial voice (“But Rav or Rav Asi should have gone behind!”). The narrator goes on to explain that Rav had been compensating for a prior incident in which Rav had cast a curse upon Shmuel. That incident is narrated in full elsewhere in the Talmud.⁸ In that story, Rav gets a terrible stomachache, and Shmuel “cures” Rav by feeding him great amounts of food and then, somewhat sadistically, preventing him from using the bathroom. Rav’s response at the time, unsurprisingly, was to curse Shmuel. We find out now from this editorial interruption that Rav’s initial impulse to enter behind Shmuel was a product of his regret over having cursed him (“Because of the incident where he cursed him, Rav gave him precedence over himself”).

⁸ Shabbat 108a.

Technically, however, Rav's greater honor dictated that Rav should have entered first ("Rav was only making a gesture on Shmuel's behalf"), which is why the three rabbis ultimately decided that Rav should enter first.⁹ Once again, we might ask about the rhetorical function of the editorial interruption, which mentions an incident that it does not bother to fully rehearse and which seems not entirely necessary to justify the plot developments here. As before, the interruption seems designed to alert us to an important theme we are soon to encounter in the story. In this case, that theme is Rav's fierce anger and his lack of restraint in expressing it. The interruption also alerts us to the dark side of rabbinic honor, which is the rabbis' hostility towards each other.¹⁰ The honorific gestures, we learn, turn quickly into curses.

While these negotiations are occurring – *adehakhi ve-hakhi* ("in the meantime") – a cat sneaks up on the baby and attacks him, biting off his hand. The rabbinic personages are too preoccupied with their honor, as are, we can imagine, the gathered family and guests, to notice when a cat attacks the baby who is the very object of celebration. Rav emerges from the encounter with legislations that permit a person to kill or steal a cat and that prohibit giving provisions to a cat. The severity of the legislations is brought home by the editorial treatment, which questions why Rav needed to state quite as many legislations as he did:

And since you say "it is permitted to kill him," why is there further "it is forbidden to raise him"?

What is it that you would have supposed from "it is permitted to kill him"?

There is no prohibition! He teaches us [otherwise].

They say [another challenge], that since you say "theft does not apply to him," why is there further "nor does the obligation to return a lost item to its owners"?

⁹ The commentator Meiri explains that the presence of a third party suspended the promise that Rav had made to compensate for cursing Shmuel.

¹⁰ On shame and violence within Babylonian rabbinic circles, see Jeffrey L. Rubenstein, *The Culture of the Babylonian Talmud* (Baltimore: Johns Hopkins University Press, 2005), 54–79.

Ravina said, “For his (the cat’s) skin” (which one need not return to the owner).

The talmudic commentary portrays Rav’s legislations as redundant. The question the editorial voice twice asks, “why is there further...,” highlights Rav’s overenthusiasm. Rav’s zeal results in cats not *even* achieving the legal status of property, much less the status of a living thing.

The introduction to Rav’s legislations, “Rav went out and expounded,” is a signal that Rav’s legislations should be understood in light of his role in the preceding events.¹¹ The narrative serves, as is often the case in the Talmud, to provide a counterpoint to the law and to offer a critical stance with respect to it.¹² Rav steps in as an authoritative legislator precisely when he and his rabbinic colleagues seem most impotent. They are literally paralyzed by their preoccupation with the micro-power struggles within their hermetic world. Rav’s legislation seems designed to shift attention away from the rabbis’ impotence by generating a moral panic around the figure of the cat. As Molloy observes in her study of pit bull laws, it is usually a key event that turns the tone to one of crisis, and it is almost always an event that involves the victimization of a child.¹³ Far from being presented as a rational response to animal danger, Rav’s legislations appear, through their juxtaposition to the narrative, to be disproportionate, with their purpose being the displacement of Rav’s guilt.¹⁴ Rav would rather blame the entire species cat than consider his own accountability or alternative legislative possibilities.

¹¹ Despite the Tosafot’s explanation that these legislations had in fact been issued beforehand; s.v. *nefaq*. The rationale of the Tosafot is that the Talmud would not challenge the legislation from an early rabbinic teaching if they were clearly issued as a context-specific decree.

¹² See Barry S. Wimpfheimer, *Narrating the Law: A Poetics of Talmudic Legal Stories* (Philadelphia: University of Pennsylvania Press, c2011).

¹³ Molloy, “Dangerous Dogs,” 123.

¹⁴ On disproportionality as a key feature of moral panic, see *Ibid.*, 127.

Conclusions

This talmudic passage asks us not to take discourses of animal danger at face value. Discourses of animal danger construct a knowledge about animals, and they cast certain figures as the appropriate managers of risk. The talmudic materials I have discussed interrogate the role of the rabbi as manager of risk, ironically exposing the risk that the rabbi himself poses. The crisis in the rabbinic story is shown to be rooted less in the aggressiveness of animals than in the cruelty and competitiveness of rabbinic culture. Rabbinic authority turns out to be the *problem*, not the solution. Standing before his cat naked, Derrida never really wondered what his cat was thinking, as he describes the moment later in his famous lecture on “the animal.”¹⁵ Neither does this talmudic passage. It does illuminate, however, what rabbis might be thinking when they make their laws about cats.

¹⁵ Jacques Derrida, “The Animal That Therefore I Am (More to Follow),” trans. David Wills, *Critical Inquiry* 28, no. 2 (January 1, 2002). For a critique of Derrida along these lines, see Donna Jeanne Haraway, *When Species Meet* (Minneapolis: University of Minnesota Press, 2008), 19–27: “But with his cat, Derrida failed a simple obligation of companion species; he did not become curious about what the cat might actually be doing, feeling, thinking, or perhaps making available to him in looking back at him that morning” (p. 20).

Buddhism and Other Animals¹

Paul Waldau, Preliminary Draft 2016Apr22

The diverse intersection of human lives with nonhuman lives has long been an ethically fraught meeting place. In many discussions around the world, however, the moral issues raised by the inevitable meeting of humans and nonhuman animals are subordinated to other concerns, for such concerns are deemed far less important than the issues generated by human-to-human encounters. Yet for Buddhists, some other religious traditions, a substantial number of small-scale societies around the world, and many individual citizens and animal protection organizations in industrialized societies, humans' inescapable interactions with nonhumans comprise a crucial subset of the moral issues raised when one living individual harms or extinguishes the life of another living being.

Buddhist ethical reflection, then, offers a profoundly moving example of humans' capacious abilities to care beyond the species line. At the same time, Buddhist reflections on humans' relationship to other animals represent well the complex, multifaceted challenges that arise regularly when a human desires not only to protect, but also to notice and take seriously, the living beings outside our own species.

Diversities and Unavoidable Challenges. Three noteworthy diversities impact significantly how anyone might talk about Buddhism and the diverse contemporary concerns collected under the term "animal rights." The first is the extraordinary range of differences evident when one surveys the living beings in the grouping that modern sciences label "nonhuman animals" but which many vernacular languages name "animals" as distinguished

¹ I first wrote an article under the title "Buddhism and Animal Rights" as a chapter in *Contemporary Buddhist Ethics*, ed. by Damien Keown, The Curzon Critical Studies in Buddhism Series, Richmond, Surrey, England: Curzon Press, 2000, pages 81-112.

from humans. A second, altogether different kind of diversity is found within the Buddhist tradition and its sub-traditions on the place and significance of nonhuman animals in humans' lives. The final diversity is that encountered when one examines the multiple meanings developed over more than a century as humans have deployed phrases like "animal rights" and "animal protection" to explore the ethically charged intersection of humans with nonhuman lives.

These diversities pose a wide range of challenges that are unavoidable in several senses—nonhuman living beings are ubiquitous, not only surrounding each human but also living on and in each other living being. Many of the consequences and harms that humans sometimes cause to the most visible nonhumans (think of these as "macro animals" easily discerned to be individuals) are obvious because we share environments with these possible subjects of any human's moral concern.

Humans' ethical abilities with respect to such harms, though capacious, are unquestionably finite in a number of ways. As is well known, harms to others may in some circumstances be a practical necessity, as in matters of self-defense or survival. In addition, there are a number of fundamental limitations on humans' abilities regarding other living beings. An unnoticed aspect of humans' finite ethical capacities is that the trials and tribulations which our daily choices visit upon countless living beings invisible to humans are discernible only with aids, such as microscopes, developed since the late 17th century (think of these as harms to "micro animals" that our unaided senses cannot detect or relate to as discreet individuals). Such micro animals, it turns out, dramatically outnumber macro animals. For example, the population of micro animals on and in any one human individual (or any other macro animal) is unfathomably large—"In adults, the

combined microbial populations exceed 100 trillion cells, about 10 times the total number of cells composing the human body.”²

About the many “macro” nonhumans that are easily visible to us, however, much has been learned in the last few centuries, making it far easier to assess the direct and immediate consequences of holding them captive, disrupting or destroying their habitat, or hunting them for food and materials. The upshot is that every ethical tradition today faces new challenges to respond in caring, nuanced ways that take account of what today is demonstrably true of the more complex of our nonhuman neighbors.

The result of such increased human awareness about nonhuman animals around the world since the latter half of the twentieth century has been an expanding series of ongoing discussions that focus on how both long-standing and new ethical visions might respond to human impacts on other-than-human living beings. One option is to bring certain nonhuman animals into the center of ethical discussion, thereby moving away from an exclusive focus on humans. Another option has been to study the fact that some ancient cultures, such as the Buddhist tradition, have long insisted that the human-nonhuman intersection *necessarily* raises ethical concerns of the highest order. One result of such discussions has been a renaissance in many of the ethical circles within the Euro-American sphere that have been for centuries radically human-centered. This has been possible in part because of a richer engagement with Buddhists’ long-standing ethical attitudes about nonhuman animals. Such comparative work has prospects of helping everyone see the different ways that extending ethics across the species line can produce valuable insights about the ethical challenges that humans face on a daily basis.

² Kurokawa, K. et al. Comparative metagenomics revealed commonly enriched gene sets in human gut microbiomes. *DNA Research* 14(4), 169–181 (2007), 169-170.

Balances to Strike. When engaging Buddhist views of nonhuman animals, there are several balancing acts that one must consider. First, it is obvious that one can laud Buddhists' obvious concern for living beings outside the human species even as one assesses whether Buddhist attitudes toward nonhuman had some effects that, by certain modern approaches, were ethically questionable.

Second, balance is needed as one encounters a justifiable excitement evident in scholars impressed by the deep commitment Buddhists asserted from the beginning of the tradition about the importance of refraining in daily life from killing other animals. While this particular commitment marks the Buddhist tradition as astonishing in its concern for other animals, balance is needed because heavy focus on this particular achievement can, if too exclusive, obscure other features of the tradition. For example, even a cursory review of Buddhist scriptures makes it clear that Buddhists at times failed to notice serious harms to nonhuman animals there were given center stage in the societies in which the Buddhist tradition was born. This issue is addressed below by asking about the consequences to certain nonhuman animals who suffered nonlethal harms that Buddhists not only tolerated, but at times may have indirectly promoted. A critical evaluation of Buddhist attitudes toward nonhuman animals prompts one, then, to ask if Buddhist attitudes to certain nonlethal harms were consistent with the spirit and driving insights of Buddhist ethics that led this tradition to give a preeminent place to injunctions that humans should work on a daily basis to avoid killing other living beings (see, for example, the section below discussing the issue of many scholars' failure to ask such questions).

A third balance to strike relates to a crucial feature of Buddhism that is different in spirit from a foundational value evident in contemporary animal protection discussions. Buddhists were not, as are today's animal protectionists, concerned to inventory the world. One risk to consider, then, is whether it is unfair to an

ancient religious tradition to ask how that tradition dealt with concerns framed in terms drawn from discussions developed millennia *later*—such unmindful attributions are known as anachronisms, that is, projecting ways of thinking backward (from the Greek, *ana*) in time (*khronismos*).

The Question of Lethal Harms. One of humans' surpassing achievements in ethics appears in the Buddhist tradition's commitment to what is often described as "the First Precept," which is stated in a variety of ways but most of which focus on, at the very least, avoidance of killing any living being.³ One of the most respected of Buddhist scholars suggests, "in the First Precept, and hence also for a Buddhist lay person, society is not to be taken in the narrow sense of human society, but in a broader sense of a community comprising all living or sentient beings."⁴ Such a commitment ensures that Buddhist ethical views will have many affinities with early twenty-first century animal protection advocacy which challenges, among many other harms, the systematic killing of animals known as "factory farming" in modern industrialized societies (the yearly number of deaths around the world in 2015 from this practice, which is spreading, totaled in the range of 60-80 billion). This particular modern practice, which emerged as a commercial reality in the mid-1950s (its origins were in England in the late 18th century), is questionable for reasons beyond death, as it were. Factory farming is driven by a concern for economic efficiencies, not the interests of the animals confined indoors from birth to death in a system touted as technologically advanced but which in fact involves highly unnatural conditions of confinement and treatment that lead to much suffering before death.⁵

³ For variations, see Waldau 2001, pp. 146-149.

⁴ Schmithausen 1991a, 40. See, also, Schmithausen, Lambert, *The Problem of the Sentience of Plants in Earliest Buddhism* (Tokyo: The International Institute for Buddhist Studies, 1991).

⁵ A summary of these and references to other sources appear in Singer 1990.

The historical Buddha is quoted repeatedly in Buddhist scriptures as observing that an awful fate awaits those who kill other animals, such as deer hunters, pig butchers, sheep butchers, and fowlers.⁶ One could also argue that the historical Buddha condemned those who confined animals in the manner of factory farming, for Gotama is reported to have observed that those who hold animals captive for entertainment purposes suffer the same fate.⁷

The First Precept very likely pre-dates the Buddhist tradition. As one scholar suggested, a commitment to refrain from killing is “the heritage of an earlier cultural stratum—a stratum in which killing animals (and even plants, earth and water) was, in a sense at least, as serious as killing people (not of course one's own ethnic group), because animals, too, were believed to take, if possible, revenge on the killer in the yonder world.”⁸ But other reasons are given as well for this key prohibition. Particularly common, for example, is a claim related to the Buddhist adherence to the characteristic Indian subcontinent belief in rebirth—every other being now living was in a prior life one's parent (either father or mother).⁹ Echoes of this sort of familial thinking can be found in the Metta Sutta: “Just as a mother would protect with her life her own son, her only son, so one should cultivate an unbounded mind towards all beings, and loving kindness towards all the world.”¹⁰

One scholar noted that although there is no definitive statement as to which forms of life are valued and why, Buddhists value forms of life that are “karmic” or “telic” (having a telos, or goal), with

⁶ See, for example, *Saīyutta-Nikāya* (referred to below as S.) II, 171. The translation used is that by Rhys Davids, Mrs. (assisted on the first volume by Sāriyagoōa Sumangala Thera, and on the second volume by Woodward), and F. L. Woodward (last three volumes), *The Book of the Kindred Sayings (Saīyutta-Nikāya) or Grouped Suttas*; five volumes in PTS translation series, Nos. 7, 10, 13, 14, and 16 (London: Oxford University Press, the first volume has no date, but the preface is dated 1917; the date on the last volume is 1930).

⁷ Cited by Mrs. Rhys Davids at S. II, 172, Footnote 1.

⁸ Schmithausen 1991a, 38-9, Paragraph 42. See, also, McDermott 1989, 274, as to the self-interested as well as moral reasons for not eating the flesh of other animals. Snakes, for example, were thought to take offence that snake flesh was eaten, retaliating against the perpetrator. Other animals were thought to sense the odor of flesh eaten, this odor encouraging an attack by that kind of animal.

⁹ This appears in a wide range of Buddhist sources, such as S. II, 128; the *Laiḱāvatāra Sātra*; the *Fan-wang-ching (Brahmajāla Sātra)*; and the *Nihon ry'iki of the Monk Ky'kai*. The last three are cited by Chapple 1993, 27, 29, 40.

¹⁰ *Suttanipāta* 149-150. The translation used is *The Group of Discourses (Sutta-Nipāta)*, Volume I, translated by K. R. Norman, with alternative translations by I. B. Horner and Walpola Rahula (London and Boston: Pali Text Society/Routledge and Kegan Paul, 1984), Pali Text Society Translation Series No. 44. This text is referred to as Sn.

the basis for doing so possibly the assumption that other living beings, by virtue of being living beings, have an “intrinsic” value, that is, each being is “affirmatively valued for its own sake rather than as a means to something else (i.e. its value is not instrumental).”¹¹ Another scholar addressing why the First Precept is so central to the Buddhist tradition has argued that “no doubt a mixture of motives operated.”

... Such championship may have seen in non-harming a way to increase the moral welfare of the monks; it may have been part of a disinterested social reform movement; it may have been, as in the case of sacrifice, polemical in nature, anti-brahminical; and it may have been due to the presumption that animals have as much right to their lives, and to compassion, as have human beings.¹²

This analysis also suggests that the life of Buddhist monks, who are the paradigmatic model of the Buddhist adherent, cannot be properly understood without reference to how the foundational ethical undertaking of the First Precept shapes the Buddhist outlook.

Whatever the particular reason given for a Buddhist undertaking the daily vow not to kill any living being, this commitment works to broaden the range of beings about whom one should care, that is, those who are deemed morally important enough to protect their lives. Such an affirmation honors (and is also anchored in, of course) the Buddhist affirmation that our lives are lived within an overarching moral order that has as a corollary the sanctity of individual lives. The upshot is an engendering of animal protection and the positioning of de facto compassion at the heart of the tradition. It is hard to miss that this key feature of the Buddhist

¹¹ Keown 1995, 36 ff.

¹² Horner 1967, 27.

tradition promotes a way of living that is consonant with modern animal protection sentiments.

This achievement has, it is true, been matched in a number of other religious traditions and cultures, of which the Jains are perhaps the best known. One can also find similar commitments in various Chinese traditions, some small-scale societies, and a number of sub-traditions within the large and diverse Hindu, Chinese and Abrahamic traditions. The occurrence of such commitments in multiple places and different historical eras can be used to suggest that humans have recognized that they can, if they choose, live an encompassing ethical vision regarding the larger community of living beings. With confidence, however, one can say that few human communities, if any, have done so more impressively than Buddhists even though they operated with limited awareness of the nonhuman neighbors who shared ecological and geographical space with the human community.

Modern Protection Movements. Although the spirit of the First Precept's prohibition on unnecessary killing has impressive consequences and thus much in common with contemporary protectionist ideas and the social movement known variously as "animal rights," "animal protection," and "animal liberation," the First Precept by no means exhausts either the insights of this worldwide movement or many other contemporary commitments to notice other animals and then take them seriously. Simply said, both the practical steps taken in modern animal protection and the narrative that ties the animal protection movement together include much that has no analog in Buddhist views of nonhuman animals. It is these additional features of today's admittedly diverse efforts at "animal protection" that create risk for those who compare Buddhist views with animal rights sentiments. Most seriously, the comparison risks an unfair, anachronistic imposition of alien ideas on Buddhist insights. Such a comparison is, however, a natural and perhaps even inevitable enterprise, for both movements, in

impressive ways, underscore the ethical dimensions of humans' intersection with other animals. Here additional features of the early twenty-first century's contemporary ideas about nonhuman animals and modern animal protection efforts are briefly described so that one can compare and contrast, on the one hand, Buddhist views about nonhuman animals and, on the other hand, contemporary views of other animals. In the end, if the risk of anachronism is kept in mind such that a critically thought out comparison is constantly one's goal, then comparison can be very productive because the risks of anachronism are minimized, although never banished entirely. In this spirit, questions about "Buddhism and animal protection" or even the more modern "Buddhism and animal rights" can illuminate not only key features of the ethical claims found in the Buddhist tradition about nonhuman animals, but also, importantly, the features of contemporary animal protection efforts that are dominated by dysfunctional forms of human-centeredness that in important ways are much less impressive than key Buddhist insights about, for example, the morally charged nature of killing other living beings.

Contemporary animal protection efforts, which are often collected under the term "the animal rights movement," are, like the Buddhist tradition, surprisingly mixed on the issue of the fundamental protections for nonhuman animals. It is true that modern animal protection includes approaches that propose *fundamental* limits on killing nonhuman animals, as does the Buddhist tradition through its emphasis on the First Precept. Both movements, then, foreground protections that shield certain interests of individual nonhuman individuals in ways that imply such interests are more important than humans' interests in using the protected nonhumans as mere resources. For example, "The worldwide animal protection movement today features a great variety of efforts aimed at abolition or amelioration of the harms done

intentionally to the macroanimals used for research, food, companionship, entertainment, and so on, as well as wildlife.”¹³

But “animal rights,” to use one framing of animal protection that is hotly debated, is not a uniform set of ideas any more than Buddhism is. Indeed, upon closer examination, “animal rights” functions as an umbrella term under which, so to speak, sit several distinguishable notions, of which four are listed here. “Animal rights” includes, for example, both the notion of “moral rights” for certain nonhuman animals and also the altogether distinct idea of “*legal* rights” for individual nonhumans of a small number of species.¹⁴

A third concept called “animal welfare” must also be distinguished because, while it signals forms of animal protection that many people associate with the term “animal rights,” this term carries two dramatically different senses. Separating these two helps immensely with the task of illuminating the sentiments expressed in the First Precept.

The more substantial idea of welfare involves the animals’ freedom from harms like captivity and pain, as well as the freedom to move around. When any of these important freedoms is violated, as it so often is when the minor sense of “animal welfare” prevails, there is very little true “welfare” that is being proposed ... [as is the case when what prevails is] a more robust [animal welfare] concept along the lines of true moral protections for other animals because the latter matter in and of themselves.¹⁵

In contrast to this robust sense of “animal welfare” is a far weaker sense which is dissimilar from the kinds of animal protection

¹³ Waldau 2013, 121.

¹⁴ These two concepts are contrasted and explained at length in Waldau 2011.

¹⁵ Waldau 2011, pp. 95 and 99.

associated with the First Precept or legal rights that shield a living being from serious harms.

[M]any people today use the idea of “animal welfare” to preserve human domination over certain animals. Some advocates of human superiority have rationalized humans’ domination over other living beings by focusing on attempts to ameliorate in minor ways the terrible conditions that such domination creates for animals. Such rationalizations lead some to think that when we concede minor welfare improvements to farm animals or research animals, our domination of these animals is “gentler” or “less harsh”, and thus ethically adequate. This version of “animal welfare” leads with the suggestion “let’s improve their welfare” *but at the same time* maintains the right of humans to total domination as we do experiments on them or use them for food or resources. ... When “animal welfare” comes to mean primarily that tough conditions for the animal are made better in some minor respect, ... the meaning of the word ‘welfare’ has been stretched so dramatically that it misleads ... thus harming listeners’ ability to make informed moral choices.¹⁶

Comparing Animal Rights with Buddhist Views of Animal Protection. The modern animal rights movement has limits that can be used to reveal how powerful the insights are that undergird the First Precept. The modern movement does not, as a practical matter, offer all nonhuman animals protection. Characteristically, the nonhumans protected in early twenty-first century animal protection efforts are either familiar animals (such as dogs, cats, horses and other familiar companion animals) or charismatic wildlife that is far away and not used in food or other economics-driven industries. In other words, the living beings focused on by major animal protection groups in the secular world comprise only

¹⁶ Waldau 2011, 95-96.

a few hundred species of the millions of nonhuman animal species. The First Precept is not nearly so limited.

The narrowness of modern animal protection is in part explained by the youth of the modern, secular animal protection movement, which became a popular movement during the second half of the nineteenth century in certain western European countries. The early twenty-first century version of this movement is considerably expanded, although its heavy concentration on the nonhumans known widely now as “companion animals” (those animals formerly referred to as “pets” and including dogs, cats, horses and many other mammals and a few birds) reveals that the animal protection often remains an eminently human movement in the sense of protecting primarily the animals that humans have domesticated and still dominate. In an altogether different sense as well, the modern animal protection movement reflects “human” features because it uses techniques of change developed in modern civil rights movements (such as efforts to secure law-based protections as a way to promote changes in social morals).

As the secular animal protection movement faces many contemporary difficulties of the kind that arrive when the early stage of a revolution has to move into the challenges of sustaining early successes, it can be meaningfully contrasted with the maturity of Buddhist commitments evident in the First Precept, which are anchored in ancient spiritual commitments.

Further, since many different nations today feature *only* versions of the modern animal protection movement that foreground altogether *limited* approaches, such as the weaker, human-centered form of “animal welfare” described above, that do not protect nonhuman animals substantially from death or the great harms occasioned by confinement or loss of habitat, they are different in tenor from the commitment driving the First Precept. There are, without question, animal protectionists who seek to go as far as the Buddhists’ First

Precept, and many who live squarely within the ethical spirit of that commitment. Yet, to date, there are virtually no legal or national policy victories around the world that put into place protections matching either the absoluteness or scope of the First Precept commitment.

Less Flattering Similarities and Comparisons. The comparisons above illuminate well the achievement that is the First Precept. There are other similarities described below that are informative about features of the Buddhist attitudes toward other animals that are not so impressive as the First Precept.

Throughout the early Buddhist scriptures, there is a pronounced move to distinguish *and elevate* humans above nonhumans. This gambit gives Buddhist approaches to the human/nonhuman intersection features that are not unlike those that drive the weak sense of animal welfare noted above—in effect, there is a human-centeredness evident in the Buddhist description of nonhuman animals that fosters both separation and a sense of superiority and privilege that militate against compassion and recognition of the obvious shared features between humans and other animals.

It is surely true that Buddhists' background assumptions about all living beings clearly entail awareness of continuity (all animals, human and nonhuman alike, are subject to birth, death, karma, and constant rebirth). Continuity also appears in the views that dominate the modern animal rights movement because the movement relies heavily on scientific views anchored in evolutionary insights. For this reason, the animal protection movement highlights the fact that many nonhuman animals feature traits, such as emotions, intelligence, sentience and suffering, that are typical of humans. Yet, even though both Buddhists and the modern animal protection movement recognize that humans and nonhumans are rightfully understood to belong in one category, each at crucial strategic points distinguishes humans from other

animals in ways that produce human advantage and nonhuman disadvantage, such as human-generated harms.

Although a human/nonhuman dualism prevails in certain segments of both the Buddhist tradition and animal protection circles, the origins and psychological anchors of such dualisms are no doubt quite different. In the modern movement, the weaker “welfarist” forms of “protection” are blatantly in the service of human privilege, while the dualism in the Buddhist tradition prevails for deep-seated, complex reasons, just as do certain gender-based explanations.

Whatever one’s conclusion about why such dualisms appear, the result is a sometimes implicit, sometimes explicit human-centeredness that carries actual or potential exclusions, both of which undergird the peculiar phenomenon of human exceptionalism, which can be defined as

the claim that humans are, merely by virtue of their species membership, so qualitatively different from any and all other forms of life that humans rightfully enjoy privileges over all of the earth’s other life forms. Such exceptionalist claims are well described by Rachels as “the basic idea” that “human life is regarded as sacred, or at least as having a special importance” such that “non-human life” not only does not deserve “the same degree of moral protection” as humans, but has “no moral standing at all” whenever human privilege is at stake.¹⁷

I think it plausible to argue that the Buddhist tradition has long been, in *practical* terms, far less exceptionalist than are many modern approaches, such as contemporary law.

Two other noteworthy similarities are these—both movements feature (1) great diversity (subtraditions in Buddhism, and

¹⁷ Waldau 2013, 8.

variation at the grass roots level in the animal protection movement) and (2) weaknesses when institutionalized. As to the latter problem in Buddhism, consider advice that senior Buddhist monks gave to the Sri Lankan king Duttagāmani when he expressed remorse about the great loss of human life during war.

That deed presents no obstacle on your path to heaven. You caused the deaths of just one and a half people, O king. One had taken the Refuges, the other the Five Precepts as well. The rest were wicked men of wrong views who died like (or: are considered as) beasts.¹⁸

Buddhism is not, by any measure, a religious tradition heavily burdened by institutional ossification, as has happened in some other traditions. But it is nonetheless interesting that at the level of advising a government, key adherents (the monk advisors) provided a crass rationalization that clearly violates the letter and spirit of the First Precept. Counting the individual who had taken only the three refuges (that is, refuge in the Buddha, in the *dhamma* and in the *sa.mgha*) but not the five precepts as *only* “a half people” reveals, ironically, that while the five precepts were considered by the monks a defining aspect of adherence to the tradition, these monks ignored the substance of the very first of these foundational precepts by dismissing the deaths of many humans (other features of this passage dealing with the nonhuman animal side of the dualism are discussed below).

The modern institutionalized side of animal protection is, matching what has happened in other social movements, a venue where many of the deepest values of the social movement get watered down. The reasons are diverse, of course, but one surely is that the very compromises that bring political advantage also bring dilution of both the message and commitment that are far more apparent at

¹⁸ Gombrich 1988, 141. The cite is from the *Mahāva.msa* XXV, 108–111.

the grass roots level. The modern movement is increasingly diverse, though, and continues to sustain the most basic values that parallel the vision evident in the First Precept. The movement's present state might thus be seen to augur a better future for nonhuman animals, although various advances involving public policy and the private policies of mainline institutions such as government, education and business continue to promote very mild versions of animal protection that curtail on a few of industrialized societies' most entrenched practices favoring human advantage.

Seminal Dissimilarity and Challenge for Buddhism—Other Animals' Realities. The question “what *are* other animals' *realities*?” is a question that has, in a wide range of contexts, more power than its answer. Evidence-based and critically thought out answers are hard to develop for many reasons. These include many other animals' penchant for avoiding humans, as well as a set of ethical problems (such as harms) that are occasioned by merely attempting to remain in certain other animals' presence. Perhaps most challengingly, though, are the inherent difficulties of discerning elusive phenomena like intelligence, feelings and other kinds of awareness in any living being.

What makes attempts to discern other animals' realities so relevant are at least three factors. The first is the common sense proposition that the harms one causes by one's own intentional and unintentional actions are relevant to any evaluation of the ethical features of one's actions. The relevant factor is another common sense proposition, namely, that other animals have their own realities that are distinguishable from humans' (mis)construction of these realities. The third factor is a historical trend evident in only some human societies—a salient consequence of humans' failure to inquire about other animals' realities has all too often been a facile dismissal of such realities. Absence of evidence about other animals has been, tragically (for other animals, but also for the

human community), taken to be *evidence of the absence of important traits in other animals* that are like, perhaps even compete with, some of the special abilities characteristic of humans.

Evaluation of Buddhist attitudes toward and claims about other animals suffers from a particular disadvantage. As happened regularly with ancient traditions, writings given an honored place had purposes entirely unrelated to inventory-like listings of other animals or reality-based descriptions of their lives. Such inventories are, to be sure, the stock and trade of sciences, not religious traditions—but as shown in *The Specter of Speciesism: Buddhist and Christian Views of Animals*, Buddhists did in fact know some very important features about other animals' lives.¹⁹ But as one of the most respected scholars of Buddhism observed, “the statements of Buddhist writers are not meant to be descriptive propositions about features of reality, but advice on how to act, statements about modes of behaviour, and the experiences connected with them.”²⁰ This same scholar adds, “If one ... isolates the Buddha's statements from the task they intend to perform, *then* they become quite meaningless, and lose all their force.”²¹ Such points have been made by many other scholars of Buddhism as well, as with the following metaphor about the non-inventory nature of such writings: “The Word of the Buddha has only one flavour (*rasa*): that of deliverance....”²²

When assessing Buddhist writings that mention other animals, it is important to note such features, for while references to other animals might be deemed quite revealing “between the lines,” their use is limited precisely because “Buddhism as such is not about this world. Such spheres of human activity as the arts and sciences

¹⁹ See, for example, the information known about elephants described in Waldau 2001, Chapters 6 and 7.

²⁰ Conze 1975, 16.

²¹ Conze 1975, 17, emphasis added.

²² Lamotte 1991, 46.

are not part of its concerns.”²³ Buddhist comments about other animals, then, often have at best an *indirect* relationship to the particulars of nonhuman lives that an interested human observer can, if she wishes, discover by empirical investigation. Far more often, such comments reflect *not* a principal purpose of description of the animals mentioned, but, instead, existing conventions of discourse about the “deliverance” or soteriological preoccupations of the tradition’s founder.

In the next section it is asked, “Given that Buddhist comments mentioning other animals are not primarily concerned with evaluation of this world and the particulars of the beings mentioned, how might one assess what appears to be Buddhist acquiescence to harmful practices that fall short of death?” In the end, an evaluation of this important issue cannot focus *solely* on Buddhists’ preoccupation with the existential issue of deliverance. Ethics-fraught claims involving potential harms to other animals may, for example, be so ill-informed that harms are glossed over even as an outsider who has more familiarity with the subject animals finds the ignored harms evident and easily discernible for those who would inquire. In such cases, frankness and scholarly integrity require one to be fair to *both* Buddhists and nonhuman animals.

Clearly relevant, too, are *intentions*, which were the focus of the historical Buddha’s revolutionary understanding that the goodness or badness of an act was not primarily a byproduct of the sequence of actions done in the proper order and form (as was emphasized by the then contemporary brahminical religion), but, instead, a matter of intention. As Gombrich frames this key point, Gotama ethicized the notion of karma, focusing on intention over a slavish compliance in pursuit of ritual correctness.²⁴ Arguably, the same or

²³ Gombrich 1991a, 10.

²⁴ Gombrich 1988, 46.

a kindred insight about intention appears in a modern form in contemporary animal rights claims that it is morally problematic to override intentionally a nonhuman animal's major interests in order to advance minor human interests (such as luxury, non-vital food, or any other non-essential "need"). Below, to make the point that anyone assessing the ethics of an act impacting other animals must factor *all* levels of intention into the analysis, an example that challenges broad generalizations about Buddhist always being "good to animals" is given regarding the failure of Buddhists to challenge certain long-standing practices that clearly required serious harms to elephants.

It is argued here that not only does such a test matter ethically, but that it is important enough to permit one to run the clear risk of anachronism when discussing Buddhist views of nonhuman animals, for doing so allows one to assess background features of Buddhist ethics and related attitudes toward nonhuman animals. The question asked here about whether or not the practice in question produced discernible, intentionally inflicted harms is as fully diagnostic as any test can be of the depth and breadth of an ethical claim. This kind of analysis bringing a number of modern concerns to bear in assessing Buddhist attitudes towards animals must stay in full contact with Buddhists' clarion call to practice the First Precept, for the latter is equally a key diagnostic tool needed when assessing the nature and scope of Buddhist ethics in the matter of nonhuman animals. It must also be added that the First Precept can, as fully as any other ethical position, alert people of any culture to the moral dimensions inherent in humans' interfaces with the Earth's countless nonhuman living beings.

The Diagnostic Question of Non-lethal Harms. Consider how and whether one might challenge those humans who fail to notice other animals. Dismissal of other animals can happen in any number of ways, but one particularly prevalent form of such

dismissals in the modern world is a facile dismissal of nonhuman animals' realities based on inherited caricatures of them as "dumb animals" (in English, meant to demean nonhuman animals but originally, from use of the Latin *mutus*, meaning that nonhuman animals do not speak human languages, which meaning still prevails in English uses of "dumb" in the description of a non-hearing, non-speaking human as "deaf and *dumb*"). Dismissals can also happen implicitly, as when someone is dominated by a complete refusal to inquire, or when someone is so focused on another task that no time and no energy is given to either noticing other animals or in any way taking them and their lives seriously.

Consider the following line of argument about what might be cast as Buddhist acquiescence to clearly harmful practices that fall short of death. This question is asked more in the spirit of helping twenty-first century readers concerned to do justice to both Buddhists and nonhuman animals discern what is arguably a gap—"imbalance" and "blind spot" also capture some nuances of this issue—in Buddhist claims about humans in relationship to other animals. The nonlethal harms examined are profound, such that they move one in the direction of harms that Buddhists clearly noticed as they worked out the First Precept. Gotama speaks in the following scriptural passage of certain traits in an elephant that are not to be desired, while other traits are.²⁵

Monks, possessed of five things a rajah's elephant is not worthy of a rajah.... Take the case, monks, of a rajah's elephant going forth to fight, when he sees a force of elephants, horses, chariots or foot soldiers, he loses heart, falters, stiffens not and cannot go down to battle.... And ... when he smells the smell of the dung and urine of those finely bred rajah's elephants, whose home is the battle ground, and loses heart.... [Or] ...

²⁵ See, for example, A. II, 120–1 (this section is titled "The Elephant") and A. III, 117–119.

when, pierced by the piercing of arrows, he loses heart....²⁶

Gotama here is making a point about traits that make monks worthy of offerings. The background metaphor is the prevailing instrumental use of elephants in war. Notice how, in an indirect way,²⁷ instrumental uses of elephants are accepted without comment and thus in a sense normalized, rather than condemned outright. The normalization continues in the characterization of what is worthy in an elephant, which follows:

[H]e is a hearer, destroyer, a warder, an endurer and a goer.... And how is he a destroyer?... the rajah's elephant gone forth to fight, destroys an elephant, destroys the rider ... chariot ... horse ... foot soldier.... And how is he an endurer?... He endures the blow of the spear ... sword ... arrow ... axe....²⁸

While there are many passages in the Buddhist scriptures that make it clear that elephants were deemed important by Buddhists, honored with individualized names and titles of distinction and understood to be presences or at least images to which a Buddha could be compared, there are *at least as many passages*, and very likely more, *that normalize humans' instrumental uses of elephants*, including ones like the above passage in which elephants were held to possess qualities that make them fit possessions of a human king. Such images, while clearly conveying respect, also prompt the question of whether elephants were valued *not* for their individual selves, but primarily as tools and property. The challenge here is that the “valuing” of elephants as tools and property is not openly challenged as raising ethical problems.

²⁶ A. III, 120.

²⁷ Argued more fully in Waldau 2001, Chapter 6, p.132ff.

²⁸ A. III, 121–2.

Beyond this first issue is another, which can be summarized as the cultural belief that enjoyment of the benefits of instrumental use of elephants is a *reward* for acting in accord with the moral norm which the Buddhist tradition held to be the key to reality and an ethical life. This belief is evident in a passage where Gotama is in a teaching mode and commenting upon fishermen who have caught fish and are selling them. Addressing monks, he asks if “as a result of such deeds, of that way of living [that is, killing the fish]” the fishermen have then been seen “going about on an elephant or on horseback ... or living in the abundance of great wealth.”²⁹ Gotama *clearly* is condemning the killing of living things, and he does so by pointing out that there are negative karmic consequences to such acts. In the background, though, is again an implicit sanctioning of utilitarian uses of elephants—the fisherman do not get the *reward* of “going about on an elephant.” The lesson about the problems of fisherman killing fish reveals that there were not negative consequences to riding around on a captive elephant, which is clearly a reward for *good* acts: “Indeed, monks, he who gloats evilly on creatures being slaughtered ... shall not go about on elephants...”³⁰ The subtext, as it were, is an acceptance of the propriety of instrumental use of elephants.

What is possible to discern *if one chooses to notice elephants and take them seriously* is that domestication of elephants is ethically *very* problematic. The basis for this conclusion appears between the lines, as it were, of a description of contemporary Thais breaking a young wild elephant:

After tying it to a tree, men would poke and prod and beat it with sticks for days on end ... until the youngster quit lashing out at its tormentors and stood dazed and exhausted and wholly subdued. Once the animal

²⁹ A. III, 216–7.

³⁰ A. III, 217.

stopped reacting, the men would start touching it with their hands rather than sticks, and, rather quickly, the animal accepted their dominion and became receptive to their demands. If it did not, it might have wounds inflicted in its neck and salt rubbed into them, then a rattan collar with embedded thorns placed around the neck to make the animal more responsive.³¹

This modern example involves an ancient technique, for as can be seen in Gotama's comment, domestication of elephants, which has always required this kind of domination, was already an old, established tradition in India when the Buddhist scriptures were composed. A specific example conveys that the intentional infliction of pain and torment does not stop once dominion has been established. Significant injuries and harms continue, and although they fall for obvious reasons short of death, they would certainly have been noticed in both early and later Buddhist communities.

Some of the traditional methods of handling elephants in India are extremely harsh. To restrain a newly captured, willful, or musth animal, its leg may be clamped in an iron hoop with inward-pointing spikes. The harder the animal strains against the device, the deeper the points bite. A long pole, called a *valia kole*, is used to prod the giant in the sensitive ankle and wrist joint while the handler keeps out of reach of the trunk and tusks. Some of these goads have blunt ends and are thrust so as to bruise the small bones that protrude near the surface of the lower foot. Others are actual spears but have a hilt on the blade to limit penetration.

³¹ D. Chadwick 1994, 378.

Mahouts usually carry a *cherya kole*, a short rod with a blunt metal end, also used for walloping joints or, when mounted, the top of the skull. Close to the Nepal border, I rode on several occasions behind mahouts who whacked the top of the elephant's head with the dull edge of the large, curved *kukri* daggers men carry in that country. Crueler yet is the technique I saw of incising a wound atop the elephant's head and worrying it with a knife blade to get the animal to respond. One Nepali mahout carried a hammer for pounding on his elephant's head. Whether the weapon was a hammer, knife, or *cherya kole*, the giants would stagger with a loud groan when struck.³²

Beyond recognizing the intentional choices made to inflict pain and other suffering so as to dominate the captive elephant, it is important to convey how easy it is for any observer to recognize that the interests of a large, trainable, intelligent mammal's interests are abridged by captivity. This is, however, particularly evident when humans eliminate the multiple dimensions of an elephant's fuller life, namely, the dimensions available to elephants growing up in the intensely social reality that is elephant society.³³

The serious harms caused by such deprivation, as well as a context in which an entire Buddhist society supported the willingness to go along with such harms, are evident in the following modern example.

And he rocked, constantly, tugging on chains that bound his legs to the slightly raised platform on which he stood.... [T]his bull was never let out of the pavilion.... So for decades now, he had been here on his raised dais, rocking, straining, surging back and forth

³² D. Chadwick 1994, 297.

³³ The details of these animals' lives are widely available—see, for example, Waldau 2001, 75-80.

with unfathomable power.... Surging, swaying, pulling this way and that, forever and a day—the heaven-sent king of elephants, born of clouds and rain, colored like the sacred lotus, a captured god but now an obsolete one, something out of a distant time and kingdom, his purpose all but forgotten.... [A]lone in his dark, golden-spired pavilion. Forever alone. Colossal. And very likely insane. That was the message in those eyes: madness.³⁴

This elephant's name was Pra Barom Nakkot. An irony, of course, is that this individual was an honored elephant, chained on the dais Chadwick describes because he was considered a white elephant, that is, he had, from the human vantage point, a distinctive appearance.³⁵ An accident of geography meant that Pra Barom Nakkot's was born "[a]mong the predominantly Buddhist kingdoms of Southeast Asia, [where] white elephants are seen as descendants of the original winged elephants that roamed the cloudscapes above Earth and as avatars of the Buddha."³⁶

Said another way (in terms that might be drawn directly from early twenty-first century animal protection discourse), Pra Barom Nakkot was, as a *direct* consequence of his status with the Buddhist humans who captured him, deprived of any chance at a normal life. He was not allowed in any way whatsoever to grow into his potential for developed interests of the kind that wild-living elephants natively possess. He could not interact in the complex social network which characterizes all young elephants' lives. He did not have the chance to develop alongside his mother who possessed a large brain, was a member of complex social

³⁴ D. Chadwick 1994, 352–3.

³⁵ He is not to the ordinary observer white in appearance, but is rather merely lighter in color than most elephants. The key features are seven traditional marks that range from the lighter colored skin to gait, carriage and overall shape (D. Chadwick 1994, 348).

³⁶ D. Chadwick 1994, 346. Young 1900/1982, 388–399, describes the significance of “white elephants” in the Siamese kingdom. Veneration of white elephants is not an exclusively Buddhist phenomenon, for the legend of flying white elephants, usually supposed to have an affinity for clouds and rain, is found across Asia with local variations, and M. W. Thomas (1908, 514) and Crooke (1896) describe African peoples which venerate white elephants.

systems, had the ability to teach Pra Barom Nakkot to communicate in rich ways, and lived amid a long-standing social group full of experienced individuals (her own matriarchs).

The upshot of his captivity was that Pra Barom Nakkot had limited training by humans as a youngster, but none thereafter.³⁷ True, he was given many human-bestowed names and titles such as “he who will progress much among the elephants,” and it was even claimed that he “outranked” most humans, for he was said to be “like the highest of princes.”³⁸ Such names do not mention, of course, that Pra Barom Nakkot was reduced to merely a symbol, for he was a prisoner of a traditional belief that his presence augmented the power and prospects of the Thai royal family.

From ancient times, it has been suggested that human ownership of an elephant makes it unsocial and a psychological misfit.³⁹ Human intervention distorts an elephant’s reality, as can be seen in the impoverished life given Pra Barom Nakkot that stands in contrast to the full social envelope that he would have had if he been allowed to live his own life. In summary, this individual elephant was not noticed as individual, and clearly was not taken seriously *for who he was in reality*. He was dominated, instead, so that he could be made into a contemporary example of a longstanding reality in Buddhist-influenced cultures, namely, acceptance of the morality of those practices that had the direct effect of overriding the interests of creatures like Pra Barom Nakkot in favor of human interests.⁴⁰

The challenge that an animal rights advocate might make to such practices must, in one sense, be only partial, for in the background

³⁷ D. Chadwick 1994, 352.

³⁸ D. Chadwick 1994, 352. Young, 1900/1982, 392–3, lists prayers and entreaties by brahmins which reflect such beliefs.

³⁹ D. Chadwick 1994, 311.

⁴⁰ Other examples appear in D. Chadwick 1994, 382, re a Suay blessing ritual at which Buddhist monks chant, and at 383, where elephants are noted at Buddhist ordination ceremonies. See, also, Bock 1883/1986, Chapter Three, for a nineteenth century description of Southeast Asian and Buddhist example strikingly similar to the circumstances of Pra Barom Nakkot.

but clearly nearby are the life-affirming values driving the First Precept, which clearly favor the challenges that animal rights advocates make to so many different modern practices. But equally present, and in the passages quoted above actually foregrounded, are what amount to equivocations about non-lethal harms. Recall, too, the passage quoted above when the Sri Lankan king Duttagāmani is told about his remorse over slaughter during a battle—his Buddhist monk advisers rationalized that his killing of human opponents in a war was “no obstacle on your path to heaven” because the slaughtered humans were “wicked men of wrong views *who died like (or: are considered as) beasts.*” The subtext, of course, is that the death of “beasts” is a minor issue rather than, as the First Precept so consistently indicates, a high priority ethical issue. Not only does this ethical undertaking (along with three of the other four undertakings that comprise the five precepts) occur repeatedly in one of the oldest parts of the Buddhist scriptures (the opening group of thirteen discourses in the *Dīgha* known as the *Sīlakkhandhavagga*, or *Collection on Moral Practices*⁴¹), but they are also one of the principal reasons the well-known Buddhist ruler Aśoka is such a prominent figure in the tradition, for he famously attempted to integrate the First Precept into his rule. The text of the edicts that he had posted around his large realm testify again and again to a respect for the lives of other animals.⁴²

It is not much of a conceptual leap to suggest that Buddhists’ proscription on killing of other living beings carries a spirit that also suggests the treatment of Pra Barom Nakkot was immoral. Given the First Precept is so central to the Buddhist tradition, and that it is one of the few common features across the vast Buddhist tradition and its many sects, strands and branches, it is also not much of a stretch to imagine animal activists would view the

⁴¹ Norman 1983, 32–33, and Keown 1992, 26. Keown also notes that although there are many preceptual formulae, the prohibitions of the first four precepts are always found as core parts of those formulae.

⁴² See, Rastogi 1990, and in particular, Rock Edicts I–IV, VI, IX, XI, and XIII, and Pillar Edicts II, V, and VII.

Buddhist view of animals as containing radically inconsistent attitudes towards other animals.

In a similar vein, consider the next section's discussion of problems involved when scholars provide an account of Buddhism as friendly to nonhuman animals—in *some* ways, to be sure, this is true, but as a broad generalization, as the problem of nonlethal harms reveals, the story of Buddhist attitudes toward nonhuman animals needs to be far more nuanced—hence this paper's theme that a number of different balances need to be struck because both Buddhist issues and nonhuman animal issues are decidedly complex. In assessing claims about Buddhist views of animal, an important element to factor into the discussion (that is, an important balance to strike) is considering the welfare (the robust sense, not the modern human-centered sense described above) of the nonhuman animals themselves, which in turn requires some assessment of the realities of the nonhuman animals whose welfare and harms are at issue. While it is undoubtedly true that this kind of analysis opens the door to the possibility of anachronistic imposition of modern notions on the impressive and elegant Buddhist ethical vision, it is equally true that failing to raise such questions risks failing to state fairly what the on-the-ground realities were, and in a sense romanticizes the early Buddhists rather than speaks to their realities. Further, since Buddhism is a living tradition, not merely one that long ago was set in stone by its early history, there is a sense that the *present* state of the tradition is crucial. Buddhists today so clearly value many forms of life beyond the species line that it can be said that the First Precept's spirit continues to guide contemporary Buddhism. For these reasons alone, asking if specific practices that in the past entailed harms to elephants and other creatures are consistent with, or in tension with, the spirit of the insights that inform the First Precept honors the tradition as a *living* tradition relevant to contemporary problems of the kind that the animal protection movement attempts to rectify.

Reprise: Challenges of Diversity in a More-Than-Human

World. Balance is a particularly important ingredient as one reads contemporary scholarship engaging the Buddhist tradition. Such scholarship is, like scholarship about all long-standing religious traditions, internally diverse. On the one hand, one encounters a justifiable excitement evident in scholars impressed by the deep commitment Buddhists assert from the very beginning of their religious tradition about the importance of refraining in daily life from killing other animals.⁴³ Against the background of the harms done to nonhuman animals in so many places around the world over the last centuries, such a commitment marks the Buddhist tradition as astonishing in its concern for other animals.

Excitement about this impressive feature of the Buddhist tradition, however, has led some scholars to make very positive claims along the lines of “*in Buddhist texts animals are always treated with great sympathy and understanding.*”⁴⁴ Such an evaluation can obscure, however, important features of the tradition that, if examined critically, reveal that, like all human cultures, Buddhists in ways eminently relevant to ethical inquiry failed to notice much about other animals. This is not a criticism of Buddhist achievements as much as it is an observation that takes into account the better collective understanding of how humans can, through humility and much cross-cultural sharing, better inquire into the invitation that other animals’ lives pose to humans’ moral abilities—indeed, this invitation is what led early Buddhists to constantly foreground the First Precept.

The possibilities humans have of creating a *modus vivendi* that does not require harms to other animal individuals and their communities have become more evident for many reasons in the early twenty-first century. One reason, of course, is the emergence

⁴³ Lambert Schmithausen, *Buddhism and Nature* (Tokyo: The International Institute for Buddhist Studies, 1991)

⁴⁴ Story 1964, 6–7. The quote that prefaces Chapter One is part of this longer passage.

of science-based findings produced by those who have taken other animals seriously—such science, as noted throughout this article, makes it clear that in the early twenty-first century it is possible to know much about various nonhuman animals that Buddhists could not on their own have known. Thus, one must balance positive generalizations against evident harms to nonhuman animals that were the consequence of Buddhist claims about humans in relationship to other animals.

Another reason humans in the early twenty-first century know more about possible lifestyles in which humans live alongside other animals is increased awareness of other cultures, some of the most impressive of which have been inspired by the Buddhist vision behind the First Precept.

The Question of an Overall View. Given the attention to nonhuman animals that one easily finds in Buddhist materials of all kinds, it is a natural to ask about the place of individual living beings outside our own species in this deep and moving tradition. We can ask, in fact, a very personal version of that question—“how should someone convinced of the wisdom of the Buddhist tradition treat individuals from other species that exist in the world at this present moment?” What might a Buddhist who seeks to be true to her own tradition say about the place of either the most complex *or* the simplest living individuals, or the surviving elephants and nonhuman great apes in Africa and Asia? What might other Buddhists say about the morality of placing certain nonhuman animals in zoos and experimental labs? What might yet others suggest about the ethical significance of helping or harming the cetaceans off any coast away from terrestrial humans?

Clearly, because the Buddhist tradition from its inception has expressed significant ethical concerns regarding treatment of nonhuman animals as fellow voyagers in *sa.msāra*, it must be said that the Buddhist tradition gives nonhuman animals a special place.

There is, however, significant evidence to support the view that the tradition takes a *negative* view of nonhuman animals' existence, their moral standing relative to that of humans, and their abilities relative to those of members of the human species.

One basis for objecting to loose generalizations, whether positive or negative, about Buddhist views of nonhuman animals is that, like all long-standing religious traditions, Buddhism does not feature a single, definitive view on many subjects. One thus encounters in scholarship about Buddhism comments along the line of "About *all* Buddhists few valid generalizations are possible."⁴⁵ On the diverse and morally fraught issue of "other animals," then, considerable care must be taken when claiming any kind of unanimity. With careful qualifications of this, however, it can be argued there is agreement of a kind on the significance which real, live individuals of other species have in the minds of Buddhists. The existence of the First Precept testifies strongly that it is a central Buddhist notion that the lives of nonhumans matter to anyone who hold herself to be a moral agent. Alongside this primary face, however, there is another face, as it were, namely, that of deprecating other animals. I argued (Waldau 2001) that Buddhist scriptures feature "a constant disparagement or belittling of any biological being outside the humans species, and that this deprecation is closely allied with the coarse grouping of all other animals in a single category." I suggested further that the living beings outside our own species were conceived less than positively for a variety of reasons. First, Buddhists held "a negative view of the very fact of birth as any kind of animal other than a human animal." Second, "The product of bad conduct is existence as an(other) animal." It turns out that Buddhist scriptures also feature what appears, under modern standards, to be a disparagement of "those humans who are non-'standard,' that is, impoverished, ugly, or handicapped in some way." Third, the Buddhist scriptures

⁴⁵ Gombrich 1988, 2, emphasis in the original.

feature the view that there is “a kind of culpability in (other) animality.” Fourth, any and all nonhuman animals were seen as “simple and easily understood by humans” and thereby lumped together in ways that “potentially limits adherents’ ability to notice the realities of the more complex nonhuman animals.” Fifth, “other animals are pests or not rightfully in competition with elevated humans” and even “anti-human,” “inhuman,” and “low by human standards.”

In combination, these features of early Buddhism produced descriptions and understanding of nonhuman animals that was, on the whole, decidedly negative.

This brings us back to the Buddhist view that, in a most fundamental way, (other) animals’ existence must be unhappy, for the “bourn” or realm comprised of all nonhuman animals is one of the places of woe to the Buddhist mind. Humans are the paradigm, or, better said, membership in the human species is one paradigm, and once a being has attained membership in the human species, there is an additional paradigm set out by Gotama’s teachings. The status of members of other species is set out by Gotama’s evaluation—“so many are the anguishes of animal birth”—which was considered by the early Buddhists, and indeed the whole tradition, to be a definitive description of other animals’ realities.

The net effect of such negative views was that “the tradition separates humans from all other animals as a result of claims about the paradigmatic nature of human existence relative to that of other animals.” Sustaining such views are the Buddhist tradition’s acceptance of a hierarchical understanding of life which prevailed throughout the Indian subcontinent. In addition,

...the tradition has never emphasized seeing other animals in terms of *their* realities. Rather, the dominant claims about other

animals tend to the ideological, in that there is a prejudgment about possibilities and an under-determination of views by factual realities. Further, the negative view of other animals *as other animals* results in systematic depreciation, and at times dismissal, of the diverse realities of the many different kinds of other animals. These views were adopted as a whole, and applied to all nonhuman animals. They have been maintained *regardless of the course of events* and without regard for careful investigations of the day-to-day lives of the more complicated of [nonhuman] animals.... In an important sense, then, the Buddhist tradition has not enhanced its adherents' abilities to understand animals beyond the species line.

Conclusion

The many different Buddhist traditions have exhibit a profound commitment to the primacy of ethical reflection in human life. It is without question that they, individually and as a collective, offer a profoundly moving example of humans' remarkably alive and capacious abilities to care beyond the species line. At the same time, Buddhist reflections on humans' relationship to other animals represent the daunting complexities human face as they try to live the ethical life. Human abilities are limited, as every human knows; further, we have inherited imperfect evaluations of other living beings, whose lives, even when we are at our best, are hard to discern. In facing the complex, multifaceted challenges that arise regularly when a human desires not only to protect, but also to notice and take seriously, the living beings outside our own species, the Buddhists did not solve those problems, but they did clearly achieve much that demands respect and admiration. Whatever the shortcomings of this impressive tradition, modern humans have unique opportunities to evaluate humans' relationship to other living beings, that is, to notice and take other animals seriously in ways that go beyond what was possible for the Buddhist tradition on its own to discern. That said, the

achievements of the Buddhist tradition remain simply remarkable and, in their positive features, eminently worthy of respect and wonder.

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THE CHURCH OF ANIMAL LIBERATION: ANIMAL RIGHTS AS “RELIGION” UNDER THE FREE EXERCISE CLAUSE

By Bruce Friedrich

Abstract:

In this paper, I contend that a belief in animal liberation qualifies as religion under the Free Exercise Clause jurisprudence of the United States Constitution. Thus, every time a prison warden, public school teacher or administrator, or government employer refuses to accommodate the ethical belief of an animal liberationist, they are infringing on that person’s religious freedom, and they should have to satisfy the same constitutional or statutory requirements that would adhere were the asserted interest based on more traditional religious exercise.

As this paper develops, I will suggest that one possible solution to the widespread violations of the First Amendment rights of animal liberationists would be the incorporation of a “Church of Animal Liberation” under the Internal Revenue Code (as a proper church or as a religious organization). This would help to protect the free exercise rights of those who believe in animal rights, because it would give them a religious organization to reference—with articles of incorporation that align with the jurisprudential definition of religion—in making their requests for religious accommodation.

I. INTRODUCTION

The [person] who eats meat or the hunter agrees with the cruelties of Nature, upholds with every bite of meat or fish that might is right. Vegetarianism is my religion, my protest.

--Isaac Bashevis Singer¹

Right now, a prisoner somewhere in America is being told by a prison warden that the prison will not grant his request for a vegetarian meal, even though the prisoner has a deeply held moral opposition to killing animals.² A parent is being told that her child’s school will not allow her family to decline the milk that is required on all lunch trays, regardless of the parent’s explanation that their family is morally opposed to the dairy industry because of the harm done

¹ ISAAC BASHEVIS SINGER & RICHARD BURGIN, CONVERSATIONS WITH ISAAC BASHEVIS SINGER 178 (1985); *see also* ISAAC BASHEVIS SINGER, *Preface to* STEVEN ROSEN, FOOD FOR THE SPIRIT: VEGETARIANISM AND THE WORLD RELIGIONS, at i (1987) (“Sometimes they say [God] wants sacrifice and the killing of animals. . . . But I think God is wiser and more merciful than that. And there are interpretations of religious scriptures which support this, saying that vegetarianism is a very high ideal.”).

² According to Kathy Hessler, Director of the Lewis & Clark Animal Legal Clinic—which advocates on behalf of prisoners who are trying to obtain vegan or vegetarian diets on animal rights grounds—prisoners nationwide frequently face jail administrators who refuse to accommodate requests for vegan diets. E-mail from Kathy Hessler, Dir., Lewis & Clark Animal Legal Clinic, to author (May 4, 2014, 8:59 p.m.) (on file with *Animal Law*).

to dairy cows and their babies.³ A student is being told that he will either dissect an animal for biology class or fail that assignment, despite his stated opposition to the dissection industry's breeding and killing methods.⁴ A public school teacher is being told that she is required to pass out fliers for the circus, despite her opposition to the brutal methods employed by the circus

³ Federal laws only require schools to offer a milk substitute to students for medical reasons. See 42 U.S.C § 1758(a)(2)(A) (2012) (“[Schools] shall provide a substitute for fluid milk for students whose disability restricts their diet, on receipt of a written statement from a licensed physician that identifies the disability that restricts the student's diet and that specifies the substitute for fluid milk.”); see also 7 C.F.R. § 210.2 (2013) (“Meals offered to preschoolers must consist of: Meats/meat alternates, grains, vegetables/fruits, and fluid milk.”); 7 C.F.R. § 210.10(m)(2) (2014) (“Schools may make substitutions for students without disabilities who cannot consume the regular lunch or afterschool snack . . . [W]ith respect to substitutions for fluid milk, such a statement must be signed by a recognized medical authority.”); Alisa Fleming, *Does the School Lunch Program Have the Right to Require Kids to Take Milk?*, GO DAIRY FREE, <http://www.godairyfree.org/ask-alisa/ask-alisa-does-the-school-lunch-program-have-the-right-to-require-kids-to-take-milk> (Aug. 16, 2010) (accessed Nov. 14, 2014) (“Not all school districts and schools enforce this issue, but many do require a doctor’s note for a child to turn down the milk provided in the school lunch.”); *Offer Nondairy Milk in Schools*, PHYSICIANS COMMITTEE FOR RESPONSIBLE MED., <http://www.pcrm.org/health/healthy-school-lunches/nsfp/offer-nondairy-milk-in-schools> (accessed) (“Because of the widespread but incorrect belief that milk is essential for good health, food service staff will often require that elementary school children take milk.”).

⁴ See Jan Oakley, *“I Didn’t Feel Right about Animal Dissection”*: *Dissection Objectors Share Their Science Class Experiences*, 21 SOC’Y & ANIMALS 360, 368 tbl. 2 (2013) (finding that more than 10 percent of polled students who objected to dissection were given a failing grade by their teacher). Although sixteen states have dissection choice policies (giving public school students the right to substitute a non-dissection alternative without penalty), whether teachers throughout those school systems are aware of legal requirements is certainly an open question. CAL. EDUC. CODE § 32255.1(b) (West 2002); CONN. GEN. STAT. ANN. § 10-18d (West 2014); FLA. STAT. ANN. § 1003.47(1)(a) (West 2012); 105 ILL. COMP. STAT. ANN. 112/5(d) (West 2006); Letter from Eve M. Bither, Educ. Comm’r, Dep’t of Educ. & Cultural Serv., to Superintendents of Schools (Jan. 30, 1990) (available at <http://www.navs.org/file/staff-documents-and-publications-body/Maine-1990-Dissection-Advisory-letter-to-Superintendents.pdf> (accessed)) (Maine Education Commissioner advised every Superintendent of Maine to provide an alternative to dissection in their schools); Memorandum from David P. Driscoll, Comm’r of Educ., Dep’t of Elementary & Secondary Educ., to Superintendents, Charter School Leaders, Principals & Curriculum Coordinators (Nov. 14, 2005) (available at <http://www.doe.mass.edu/news/news.aspx?id=5621> (accessed)) (stating that Massachusetts Commissioner of Education advised schools to provide an alternative to dissection); MICH. ST. BD. OF EDUC. POLICY, STUDENT OPTIONS FOR ANIMAL DISSECTION COURSEWORK (May 13, 2014) (available at http://www.michigan.gov/documents/mde/FINAL_Policy_Dissection_Choice_456675_7.pdf (accessed)); N.H. DEP’T OF EDUC., NEW HAMPSHIRE STUDENT CHOICE POLICY (2014) (available at <http://www.education.nh.gov/instruction/curriculum/science/documents/student-choice.pdf> (accessed)); N.J. STAT. ANN. § 18A:35–4.24 (West 2013); N.M. ADMIN. CODE § 6.29.1.11 (2010); N.Y. EDUC. LAW § 809(4) (McKinney 2009); OR. REV. STAT. § 337.300 (2013); 24 PA. CONS. STAT. ANN. § 15-1523 (West 2006); R.I. GEN. LAWS §16-22-20 (2013); VT. STAT. ANN. tit. 16, § 912 (2013); VA. CODE ANN. § 22.1-200.01 (2011); see E-mail from Samantha Suiter, Sci. Educ. Specialist, PETA, to author (Apr. 28, 2014, 4:23 p.m.) (on file with *Animal Law*) (stating that PETA “encounter[s] cases all the time where students are seeking help dealing with teachers who are forcing them to dissect or risk receiving a failing grade”); see generally *Dissection Campaign Packet*, HUMANE SOC’Y OF THE U.S., http://www.humanesociety.org/parents_educators/dissection_campaign_packet.html, (accessed) (nothing that “[a]lthough most students believe they should have a choice or alternative when it comes to animal dissection, only 11 states have laws requiring student choice”).

industry in the training of the animals in their care.⁵ In myriad ways, the moral convictions of animal rightists⁶ are violated by prison wardens, schools, and employers every single day.

Consider a few slightly different scenarios: What if a prison warden refused to honor a Jewish inmate's request for a kosher meal? What if a Hindu parent was told by the school administrator that her child would be forced to take a hamburger each day, in violation of her belief in the sacredness of cattle? What if the school forced a student to pray to Jesus, in violation of his Islamic faith? What if a public school teacher, an atheist, was forced to lead the prayer?

In this Article, I argue that there is no constitutional difference between the two sets of scenarios, because a belief in animal liberation constitutes a religious belief under constitutional jurisprudence interpreting the Free Exercise Clause of the United States (U.S.) Constitution.⁷ Thus, every time a prison warden, teacher or school administrator, or government employer refuses to accommodate the ethical belief of an animal liberationist, they infringe on that person's religious freedom. Therefore, they should have to satisfy the same constitutional or statutory requirements that would adhere were the asserted interest based on more traditional religious exercise.

II. DEFINING RELIGION

The Establishment Clause of the First Amendment declares, "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof."⁸ As a

⁵ Ringling works with schools all over the country to promote the circus. *See e.g.* Patrick O'Donnell, *Circus to Give Free Tickets to Cleveland Students with Perfect School Attendance*, CLEVELAND.COM, http://www.cleveland.com/metro/index.ssf/2013/09/circus_to_give_free_tickets_to.html (Sept. 7, 2013) (accessed) (describing Ringling Brothers' offer to give a free ticket to up to 20,000 K-6 students in the Cleveland School District). The author of this Article called in sick in order to avoid having to participate in the Ringling Brother promotion when he was a teacher in Baltimore, Maryland.

⁶ I use animal rights and animal liberation interchangeably.

⁷ U.S. CONST. amend. I.

⁸ U.S. CONST. amend. I.

preliminary matter of constitutional interpretation, understanding the jurisprudential definition of religion will be important since we, as U.S. citizens, need to understand what it is that we are all free to exercise and what the government cannot establish. However, one will search in vain for a clear definition of religion in Supreme Court or circuit court jurisprudence.⁹ The Supreme Court has chosen instead to issue pronouncements in dicta that give a more general sense of what religion looks like, and a few circuit courts have offered ad hoc tests that attempt to compare an asserted religion to beliefs that are indisputably religious. The issue is further convoluted by the fact that although the term “religion” is only used once in the Constitution,¹⁰ there is wide disagreement over whether the concept of religion should be understood differently depending on whether the issue under discussion is the government’s obligation not to promote religion or, alternatively, not to inhibit a citizen’s free exercise of it.¹¹

The landscape of modern religion case law can be confusing, encouraging, or amusing—depending on your perspective. A brief canvassing of circuit court jurisprudence finds that constitutionally, atheists are religious.¹² So are agnostics.¹³ The sole member of the “Church of Marijuana” is not religious.¹⁴ Neither is a commitment to eating only raw foods.¹⁵ But white

⁹ Note that the IRS, charged with interpreting the term for religious exemption under the Internal Revenue Code, simply refuses to do so. *See infra* Part VI.C (discussing the IRS’s lack of guidance as to what constitutes a “religious organization” under the Internal Revenue Code); *see also* I.R.S. Gen. Couns. Mem. *supra* note 10 (declining to define religion).

¹⁰ U.S. CONST. amend. I.

¹¹ *See e.g.* LAURENCE H. TRIBE, *AMERICAN CONSTITUTIONAL LAW* 828 (1978) (arguing that the Free Exercise Clause should be interpreted broadly to protect anything “arguably religious” but that the Establishment Clause should be interpreted narrowly so that the government is not prohibited from doing something as long as it is “arguably non-religious”).

¹² *See Kaufman v. McCaughtry*, 419 F.3d 678, 682 (7th Cir. 2005) (“The Supreme Court has recognized atheism as equivalent to a ‘religion’ on numerous occasions . . . Atheism is . . . a school of thought that takes a position on religion, the existence and importance of a supreme being, and a code of ethics. As such, we are satisfied that it qualifies as Kaufman’s religion for the purposes of the First Amendment claims he is attempting to raise.”).

¹³ *See Theriault v. Silber*, 547 F.2d 1279, 1281 (5th Cir. 1977) (*per curiam*) (recognizing agnosticism as a religion for purposes of the Free Exercise Clause).

¹⁴ *U.S. v. Meyers (Meyers II)*, 95 F.3d 1475, 1484 (10th Cir. 1996).

¹⁵ *See Africa v. Pennsylvania*, 662 F.2d 1025, 1032 (3d Cir. 1981) (holding that the plaintiff’s political organization, which required a special raw food diet, was not a religion under the terms of the First Amendment).

supremacists associated with the Aryan Nation almost certainly are.¹⁶ Obviously Krishnas¹⁷ and Wiccans¹⁸ are religious. So too are believers in the Science of Creative Intelligence.¹⁹ A belief that social security numbers are a “mark of the beast” is “plainly religious within the meaning of the First Amendment.”²⁰ The dope-smoker who founded the “Church of Marijuana” could have proved that his faith in marijuana was religious by claiming it was an interpretation of his Catholic faith. Similarly, a religious requirement can apply to only one person on the entire planet, as long as it is sincerely held.²¹ And that is all simply at the circuit court level. Clearly, a constitutional definition of “religion” will require analysis beyond a denotative understanding of the term.²²

A. *The Supreme Court’s Evolving Understanding of “Religion”*

The general counsel to the Internal Revenue Service explained his view that

[a]n analysis of the First Amendment to the Constitution of the United States indicates that it is logically impossible to define ‘religion’. . . . An attempt to define religion, even for purposes of statutory construction, violates the ‘establishment’ clause since it necessarily delineates and, therefore, limits what can and cannot be a religion. The judicial system has struggled with this philosophic problem throughout the years in a variety of contexts.²³

Similarly, in the chapter titled “Defining Religion,” a respected case book on religion and the law explains: “Despite more than half a century of intensive Supreme Court interpretation of the

¹⁶ See *Wiggins v. Sargent*, 753 F.2d 663, 667 (8th Cir. 1985) (“We believe that in this case the fact that the notion of white supremacy may be, and perhaps usually is, secular, in the sense that that it is a racist idea, does not necessarily preclude it from also being religious in nature. . . .”).

¹⁷ *Int’l Soc’y for Krishna Consciousness, Inc. v. Barber*, 650 F.2d 430, 440 (2d Cir.1981).

¹⁸ *Dettmer v. Landon*, 799 F.2d 929, 932 (4th Cir. 1986).

¹⁹ *Malnak v. Yogi*, 592 F.2d 197, 199 (3d Cir. 1979).

²⁰ *Callahan v. Woods*, 658 F.2d 679, 686 (9th Cir. 1981).

²¹ See *Jolly v. Coughlin*, 76 F.3d 468 (2d Cir. 1996) (“Our scrutiny extends only to whether a claimant sincerely holds a particular belief and whether the belief is religious in nature.”); *Vinning-El v. Evans*, 657 F.3d 591, 593 (7th Cir. 2011) (“A personal religious faith is entitled to as much protection as one espoused by an organized group.”).

²² WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY 1918 (3d ed. 1993) (defining religion as “the personal commitment to and serving of God or a god with worshipful devotion, conduct in accord with divine commands esp[ecially] as found in accepted sacred writings or declared by authoritative teachers, a way of life recognized as incumbent on true believers, and typically the relating of oneself to an organized body of believers”).

²³ I.R.S. Gen. Couns. Mem. 36,993 (Feb. 3, 1977).

language of the First Amendment, the Court has not offered a constitutional definition of religion.”²⁴ The lack of clear Supreme Court guidance leaves us with discussions in dicta in which the definition of religion is not at issue, as well as two critical cases where a statutory definition is established, with significant constitutional ramifications.

In *U.S. v. Seeger*²⁵ and *Welsh v. U.S.*,²⁶ the Court considered the definition of “religion” in the Universal Military Training and Service Act (UMTSA), which exempted from military service those who “by reason of religious training and belief, [are] conscientiously opposed to participation in war in any form.”²⁷ The statute defined religion as “an individual’s belief in a relation to a Supreme Being involving duties superior to those arising from any human relation, but does not include essentially political, sociological, or philosophical views or a merely personal moral code.”²⁸ Although both cases ostensibly involved statutory interpretation,²⁹ they were actually—both practically and as interpreted by the Supreme Court and circuit courts subsequently—constitutional holdings.

In *Seeger*, the Court considered the cases of three conscientious objectors whose applications for objector status were denied. Plaintiff Seeger was denied because his objection to war was not centered on a Supreme Being, as required by the Act.³⁰ Mr. Seeger explained that his was a “belief in and devotion to goodness and virtue for their own sakes, and a religious faith in a purely ethical creed.” He cited such personages as Plato, Aristotle and

²⁴ MICHAEL S. ARIENS & ROBERT A. DESTRO, RELIGIOUS LIBERTY IN A PLURALISTIC SOCIETY 985 (2d ed. 2002).

²⁵ *U.S. v. Seeger*, 380 U.S. 163 (1965).

²⁶ *Welsh v. U.S.*, 398 U.S. 333 (1970).

²⁷ Selective Service Act of 1948, ch. 625, § 6(j), 62 Stat. 604, 612 (1948) (current version at 50 U.S.C.A. app. § 456(j) (2012)). Note that since enactment the Act has seen a number of name changes: Universal Military Training and Service Act, Pub. L. No. 82-51, 65 Stat. 75 (1951); Military Selective Service Act of 1967, Pub. L. No. 90-40, 81 Stat. 100 (1967); Selective Service Amendment Act of 1969, Pub. L. No. 91-124, 83 Stat. 220 (1969); Military Selective Service Act, Pub. L. No. 92-129, 85 Stat. 348 (1971).

²⁸ *Id.* at 613.

²⁹ See *Seeger*, 380 U.S. at 173–76 (exhibiting the Court’s statutory analysis of the phrase “religious training and belief”); see also *Welsh*, 398 U.S. at 344–45 (Harlan, J., concurring) (criticizing the Court’s manner of statutory interpretation in *Seeger* and *Welsh*).

³⁰ *Seeger*, 380 U.S. at 167. This requirement was eliminated when the Act was amended in 1967. Military Selective Service Act of 1967, Pub. L. 90-40, § 7, 81 Stat. 101, 104 (1967).

Spinoza for support of his ethical belief in intellectual and moral integrity “without belief in God, except in the remotest sense.”³¹

Plaintiff Jakobson wrote an essay on his opposition to serving in the war, in which he defined God as, essentially, “Godness.”³² The reason for his denial—whether lack of belief in a Supreme Being or lack of sincerity—was unclear to the court of appeals.³³ Plaintiff Peter’s declaration was similarly lacking in anything commonly understood as “religion” or belief in a “Supreme Being.”³⁴

The *Seeger* Court ruled unanimously in favor of all three plaintiffs. In doing so, the Court wrote a treatise on “the ever-broadening understanding of the modern religious community”³⁵ that included a substantial discussion of writings on religion from “the eminent Protestant theologian Dr. Paul Tillich,”³⁶ “[a]nother eminent cleric, the Bishop of Woolrich, John A. T. Robinson,”³⁷ Vatican II’s Ecumenical Council,³⁸ and “Dr. David Saville Muzzey, a leader in the Ethical Culture Movement.”³⁹ The Court completed its canvassing of the religious literature by

³¹ *Id.* at 166.

³² *Id.* at 168 (“He submitted a long memorandum of ‘notes on religion’ in which he defined religion as the ‘sum and essence of one’s basic attitudes to the fundamental problems of human existence,’ he said that he believed in ‘Godness’ which was ‘the Ultimate Cause for the fact of the Being of the Universe’; that to deny its existence would but deny the existence of the universe because ‘anything that Is, has an Ultimate Cause for its Being.’ There was a relationship to Godness, he stated, in two directions, i.e., ‘vertically, towards Godness directly,’ and ‘horizontally, towards Godness through Mankind and the World.’ He accepted the latter one”) (citation omitted).

³³ *Id.* at 167.

³⁴ *See id.* at 169 (“As to whether his conviction was religious, he quoted with approval Reverend John Haynes Holmes’ definition of religion as ‘the consciousness of some power manifest in nature which helps man in the ordering of his life in harmony with its demands; it is the supreme expression of human nature; it is man thinking his highest, feeling his deepest, and living his best.’ The source of his conviction he attributed to reading and meditation ‘in our democratic American culture, with its values derived from the western religious and philosophical tradition.’ As to his belief in a Supreme Being, Peter stated that he supposed ‘you could call that a belief in the Supreme Being or God. These just do not happen to be the words I use.’”) (citations omitted).

³⁵ *Id.* at 180.

³⁶ *Seeger*, 380 U.S. at 180 (speaking of a “‘God above God,’ the power of being, which works through those who have no name for it, not even the name God”).

³⁷ *Id.* at 181 (“[W]e are reaching the point at which the whole conception of a God ‘out there,’ which has served us so well since the collapse of the three-decker universe, is itself becoming more of a hindrance than a help.”).

³⁸ *Id.* at 182 (“The Church regards with sincere reverence those ways of action and of life, precepts and teachings which, although they differ from the ones she sets forth, reflect nonetheless a ray of that Truth which enlightens all men.”).

³⁹ *Id.* at 183 (“Instead of positing a personal God, whose existence man can neither prove nor disprove, the ethical concept is founded on human experience. . . . Religion, for all the various definitions that have been given of it, must

noting that its findings on the matter represent just “a few of the views that comprise the broad spectrum of religious beliefs found among us.”⁴⁰

In order to test whether an applicant’s belief is religious under this expansive definition, the Court set up a test, which it called “simple of application” and “essentially . . . objective”:⁴¹

[D]oes the claimed belief occupy the same place in the life of the objector as an orthodox belief in God holds in the life of one clearly qualified for exemption? Moreover, it must be remembered that in resolving these exemption problems *one deals with the beliefs of different individuals who will articulate them in a multitude of ways*. . . . Local boards and courts in this sense are not free to reject beliefs because they consider them “incomprehensible.” Their task is to decide whether the beliefs professed by a registrant are sincerely held and whether they are, *in his own scheme of things, religious*. . . . [W]hile the “truth” of a belief is not open to question, there remains the significant question whether it is “truly held.” This is the threshold question of sincerity which must be resolved in every case.⁴²

The Court noted that although “the statutory definition excepts those registrants whose beliefs are based on a ‘merely personal moral code[,]’ [t]he records in these cases . . . show that at no time did any one of the applicants suggest that his objection was based on a ‘merely personal moral code.’”⁴³ So, the Court was willing to err on the side of caution, finding religion absent a specific affirmation by the plaintiff that his belief was purely personal. With regard to Mr. Seeger, who all but denounced religion as a normative concept, the Court wrote: “We are reminded once more of Dr. Tillich’s thoughts:

“And if that word [God] has not much meaning for you, translate it, and speak of the depths of your life, of the source of your being, or your ultimate concern, *of what you take seriously without any reservation*. Perhaps, in order to do so, you must forget everything traditional that you have learned about God.”⁴⁴

surely mean the devotion of man to the highest ideal that he can conceive. . . . What ultimate reality is we do not know; but we have the faith that it expresses itself in the human world as the power which inspires in men moral purpose.”).

⁴⁰ *Id.* at 183.

⁴¹ *Id.* at 184.

⁴² *Seeger*, 380 U.S. at 184–85 (emphasis added).

⁴³ *Id.* at 185–86.

⁴⁴ *Id.* at 187. (emphasis in original).

In *Welsh*, the 4–3 Court⁴⁵ went a step further, extending the *Seeger* holding to cover an objector who “struck the word ‘religious’ entirely [from his application] and later characterized his beliefs as having been formed ‘by reading in the fields of history and sociology.’”⁴⁶ Mr. Welsh’s opposition to war, the Court noted, “was undeniably based in part on his perception of world politics.”⁴⁷ However, that was not the end of the matter, because in his application, Welsh also wrote: “‘I believe that human life is valuable in and of itself; in its living; therefore I will not injure or kill another human being. . . . I cannot, therefore, conscientiously comply with the Government’s insistence that I assume duties which I feel are immoral and totally repugnant.’”⁴⁸ In extending its statutory definition of “religion” under the UMTSA to Mr. Welsh, the majority stressed its belief that the plaintiffs in *Seeger* and *Welsh* were not meaningfully different in their “religious” opposition to war. For example, both *Seeger* and *Welsh* “strongly believed that killing in war was wrong, unethical, and immoral, and their consciences forbade them to take part in such an evil practice.”⁴⁹

Discussing the *Seeger* Court’s focus on the three conscientious objectors’ “own scheme of things” as it pertains to religion, the *Welsh* Court noted that “[t]he reference to the registrant’s ‘own scheme of things’ was intended to indicate that the central consideration in determining whether the registrant’s beliefs are religious is whether these beliefs play the role of a religion

⁴⁵ Justice Blackmun did not participate in the decision. Justice Harlan concurred in the result but felt that the Court should strike down the statute as violating the religion clauses of the First Amendment. *Welsh*, 398 U.S. at 344, 359.

⁴⁶ *Id.* at 341.

⁴⁷ *Id.* at 343 (Welsh explained his objection to war by stating “I can only act according to what I am and what I see. And I see that the military complex wastes both human and material resources, that it fosters disregard for (what I consider a paramount concern) human needs and ends; I see that the means we employ to ‘defend’ our ‘way of life’ profoundly change that way of life. I see that in our failure to recognize the political, social, and economic realities of the world, we, as a nation, fail our responsibility as a nation.”).

⁴⁸ *Id.*

⁴⁹ *Id.* at 337.

and function as a religion in the registrant’s life.”⁵⁰ Thus, even if beliefs are “purely ethical or moral in source and content,” they will be found to be “religious” if they

impose upon him a duty of conscience . . . “parallel to that filled by . . . God” in traditionally religious persons. Because his beliefs function as a religion in his life, such an individual is as much entitled to a “religious” conscientious objector exemption under § 6(j) as is someone who derives his conscientious opposition to war from traditional religious convictions.⁵¹

Most readers who are new to the topic are, I suspect, surprised by the Supreme Court’s capacious understanding of religion as encompassing, basically, any belief system at all as long as it involves a “duty of conscience.” And in fact, the holdings are even more remarkable, since they do not just equate religion with something as vague as a “duty of conscience”; they also pretend that Congress did not include any reference to a “Supreme Being” in the statute. While granting that the reference to a “Supreme Being” was added by Congress to an earlier version of the statute,⁵² the Court nevertheless concludes that Congress chose the concept of a “Supreme Being” rather than “God” in order “to embrace all religions and to exclude essentially political, sociological, or philosophical views.”⁵³ Thus

the test of belief “in a relation to a Supreme Being” is whether a given belief that is sincere and meaningful occupies a place in the life of its possessor parallel to that filled by the orthodox belief in God of one who clearly qualifies for the exemption. Where such beliefs have parallel positions in the lives of their respective holders we cannot say that one is “in a relation to a Supreme Being” and the other is not.⁵⁴

The test of religious belief, then, essentially ignores the “Supreme Being” concept altogether. In response to the Court’s holdings in *Seeger* and *Welsh*, Congress later removed the phrase.⁵⁵

⁵⁰ *Id.* at 339.

⁵¹ *Welsh*, 398 U.S. at 340 (internal ellipses and quotation marks omitted).

⁵² *Seeger*, 380 U.S. at 176 (“Under the 1940 Act it was necessary only to have a conviction based upon religious training and belief; we believe that is all that is required here”).

⁵³ *Id.* at 165.

⁵⁴ *Id.* at 165–66.

⁵⁵ Military Selective Service Act of 1967, Pub. L. No. 90-40, § 7, 81 Stat. 100, 104 (1967) (current version at 50 U.S.C.A. app. §456(j) (2012)); see *Malnak*, 592 F.2d at 204 n.17 (Adams, J., concurring) (describing congressional response in removing the phrase).

... [cut discussion of strained analysis for space]

III. FOR FREE EXERCISE PURPOSES, ANIMAL LIBERATION IS A RELIGION

*The animals of the world exist for their own reasons. They were not made for humans any more than black people were made for whites or women for men.*⁵⁶

The best-known argument for animal liberation goes like this: Other animals are made of flesh, blood, and bone, just like human beings are. They have the same five physiological senses as humans and feel pain in the same way and to the same degree. They are cognitively, behaviorally, and emotionally complex. As Darwin explained, differences between humans and other animals are differences of degree, not kind.⁵⁷ For the same reason most human beings would not eat, wear, or experiment on other humans—because they are individuals with moral worth in their own right—so too with animals.⁵⁸

In overtly constitutional terms, animal rights activists agree with Professor Lawrence Tribe, who weighed in strongly in support of a Thirteenth Amendment claim⁵⁹ by People for the Ethical Treatment of Animals (PETA) on behalf of orcas held in indentured servitude at SeaWorld:

The [Thirteenth] [A]mendment’s purpose, concerned with human slavery as a matter of original intent, is not bounded by the expectations of its authors, any more than the anti-discrimination provisions of the Fourteenth Amendment turned out to be bounded by its authors’ expectations. . . . [I]t seems to me no abuse of the Constitution to invoke it on behalf of non-human animals cruelly confined for purposes of involuntary servitude. To the contrary, I can readily imagine a future in which ordinary citizens . . . look back with horror on the ways in which we now treat some of these noble creatures. . . . [T]hat day may come more quickly than some might expect. . . . Even if [PETA’s] lawsuit fails and the orcas on whose behalf it is brought are not ultimately freed, we all benefit from the

⁵⁶ Alice Walker, *Foreword* to MARJORIE SPIEGEL, *THE DREADED COMPARISON: HUMAN AND ANIMAL SLAVERY* 13, 14 (1996) (describing Spiegel’s argument as “cogent, humane . . . astute . . . [and] sound.”).

⁵⁷ CHARLES DARWIN, *THE DESCENT OF MAN: SELECTION IN RELATION TO SEX* 179 (1871).

⁵⁸ This is Peter Singer’s *Animal Liberation* at its most basic and without the comparisons to other forms of injustice, as well as the evaluation of specific abuses of animals in society that are unjustifiable. *See generally* SINGER, *supra* note 157.

⁵⁹ Complaint for Declaratory and Injunctive Relief at 1–2, *Tilikum ex rel People for the Ethical Treatment of Animals, Inc. v. SeaWorld Parks & Entm’t Inc.*, 842 F. Supp. 2d 1259 (S.D. Cal. 2012) (No. 11cv2476 JM WMC).

national reflection and deliberation that the filing of this suit could initiate.⁶⁰

To the question of PETA's decision to file on behalf of orcas, Professor Tribe opined that the group was probably trying

to make a point about how the mere absence of superficial resemblance to human beings shouldn't be permitted to obscure the more important issue of whether we are guilty of abusing and exploiting creatures with remarkably sophisticated social, cognitive, and communicative capabilities as well as the capacity to suffer—and whether that abuse and exploitation are inconsistent with the deepest values that our Constitution was instituted to protect.⁶¹

If one were to write an animal liberation pledge, it would probably sound like this: “I believe that animal life is valuable in and of itself. Therefore, I will not injure or kill any animal. I cannot, therefore, conscientiously comply with any insistence that I participate in activities that I feel are immoral and totally repugnant.”⁶² With “human” changed to “animal,” this pledge is what the *Welsh* Court found to be a statement of religious belief.⁶³ The Court stressed that Welsh's strength of belief and the dictates of his conscience vis-à-vis killing in war mirrored Seeger's beliefs and warranted similar religious protection, despite his explicit disavowal of conventionally religious motivation.⁶⁴ Animal liberationists have a similar “duty of conscience” that guides them in their lives and that is “parallel to that filled by God in traditionally religious persons.”⁶⁵ As Mohandas Gandhi explained, “if anybody said that I should die if I did not take

⁶⁰ E-mail from Lawrence Tribe, Professor, Harvard Law Sch., to David Crary, Reporter, Associated Press (Oct. 25, 2011, 6:25 am) (on file with *Animal Law*); see also Bruce Friedrich, *Is Sea World a Slave Plantation? Lawsuit for Animals Garners High-Power Support*, Geo. L. Wkly., <http://www.gulawweekly.org/opinion/2011/11/1/is-sea-world-a-slave-plantation-lawsuit-for-animals-garners.html> (Nov. 1, 2011) (accessed).

⁶¹ E-mail from Lawrence Tribe to David Crary, *supra* note 163.

⁶² See *supra* Part II (discussing the definition of religion under the Constitution and precedent at the levels ranging from Supreme Court to circuit court).

⁶³ *Welsh*, 398 U.S. at 343.

⁶⁴ *Id.* at 337.

⁶⁵ See *id.* at 340 (“If an individual deeply and sincerely holds beliefs . . . [that] impose upon him a duty of conscience to refrain from participating in any [activity] those beliefs certainly occupy . . . a place parallel to that filled by God in traditionally religious persons.”) (internal quotation marks omitted).

beef tea or mutton, even under medical advice, I would prefer death. That is the basis of my vegetarianism.”⁶⁶

Similarly, the *Seeger* Court unanimously found religious belief in plaintiffs who: (1) believed in “goodness and virtue for their own sakes”; and (2) defined God as, basically, “goodness.”⁶⁷ This subjective test did not ask whether the plaintiffs defined their belief as religious, but rather focused on whether each objector’s beliefs were, “in his own scheme of things,”⁶⁸ held in a way that transcends a “merely personal moral code.”⁶⁹ Animal liberationists view their moral obligation to non-killing of nonhuman animals as an ethical obligation on par with the moral obligation of plaintiffs Welsh and Seeger not to kill other human beings.⁷⁰ Indeed, Peter Singer’s *Animal Liberation* is a book-length condemnation of animal use for experimentation and food. The first chapter is titled, “All Animals Are Equal . . . or why supporters of liberation for Blacks and Women should support Animal Liberation too.”⁷¹ Clearly, if Welsh, Seeger, and their compatriots had religion, so too do animal liberationists.

⁶⁶ Gandhi, *supra* note 156, at 20–21.

⁶⁷ *Seeger*, 380 U.S. at 166.

⁶⁸ *Id.* at 185.

⁶⁹ *Id.* at 165.

⁷⁰ *See id.* at 187 (“We are reminded once more of Dr. Tillich’s thoughts: And if that word (God) has not much meaning for you, translate it, and speak of the depths of your life, of the source of your being, of your ultimate concern, of what you take seriously without any reservation. Perhaps, in order to do so, you must forget everything traditional that you have learned about God.”) (internal citation and quotation marks omitted).

⁷¹ SINGER, *supra* note 157, at 1.

Consuming Creatures: The Christian Ethics of Farmed Animal Welfare

Animals, Law, and Religion Workshop

Harvard Law School, May 2016

David Clough, University of Chester

Animal ethics in Christianity

There is a widely accepted narrative that states that the Christian tradition has been inattentive to the welfare of animals. We can find representative statements of this position in Feuerbach's statement that nature has no interest for Christians, and more recently in Lynn White's often-repeated judgement that Christianity is the most anthropocentric of all religious traditions, and Peter Singer's identification of Christianity as the foremost advocate of an ideology justifying the exploitation of non-human animals.¹ I believe that this narrative is badly wrong and in need of strong refutation, so that, first, Christians stop believing that their faith has nothing to do with other animals and as a result start behaving better towards them and, second, so that people stop turning away from Christianity on the basis of its failure to recognize animal welfare as significant concern for its members.

I can't provide a full refutation here, but as a gesture in that direction let's note that Christianity inherited from Judaism — or we might say from earlier forms of Judaism — the profound recognition of creation created good by a good God, and of other animal creatures as fellow recipients of God's grace. Jesus taught his disciples to look at birds of the air and lilies of the field as models for their discipleship, and the first New Testament Christologies in Ephesians and Colossians picture Christ as a figure effecting the redemption not only of human beings but of all things in heaven and earth, nothing short of cosmic in its scale. Vegetarianism was an issue

¹ Ludwig Feuerbach, *The Essence of Christianity*, trans. George Eliot (New York: Prometheus Books, 1989), 287–8; Lynn Jr. White, 'The Historical Roots of Our Ecologic Crisis', *Science* 155:3767 (1967); Peter Singer, *Animal Liberation* (London: Pimlico, 2nd ed. 1995), 191–2.

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debated by Christians in the New Testament period, with early traditions identifying the apostle James and even Jesus as vegetarian. Early Christian theologians defended the goodness of creation against gnostic opponents. Christian monastic communities mostly avoided the consumption of meat, and hagiographical traditions identified profound concern for animals and harmony with them as characteristic of saintly holiness, as recalled recently in Pope Francis's encyclical *Laudato Si*.² It should therefore be no surprise that both Roman Catholic and evangelical Christians in Britain and Ireland in the eighteenth and nineteenth centuries, alongside at least one prominent Jew, recognized new cruelties towards animals in the early industrial age as a faith concern, and that they were instrumental in the first anti-cruelty legislation in the early nineteenth century, nor that Christians were the leading voices in the anti-vivisection movement in Britain in the late nineteenth century, notably opposing Darwinian scientists and doctors who thought non-human animals should be sacrificed without restraint to the idol of the pursuit of scientific knowledge. We should not forget that it was atheistic philosophies that discounted the interests of other animals in this period, and Christians who recognized faith-based reasons to champion concern for them.

Lynn White and Peter Singer are not without excuse, however, because since the late nineteenth century animals have largely disappeared as an object of Christian concern, so that when the environment generally and non-human animals in particular became objects of secular concern in the 1960s and 1970s, it became plausible to claim that Christianity was a hindrance rather than an ally in addressing the challenges. So the late 20th century became a reversal of the late 19th century situation, with atheistic philosophers taking up the cause of animals and Christian theologians either failing to do so, or finding Christian reasons to reject the claims made for animal rights. Singer is right to note that the Christian tradition can be mined for positions that support ideologies that are antipathetic: early Christian theologians drew on Stoic

² Pope Francis, *Laudato Si: On Care for Our Common Home* (Vatican City State: Vatican Press, 2015).

and neo-Platonic philosophical positions that identified rationality as a unique human possession closely related to divinity, and therefore a prime candidate to provide content for the biblically underdetermined concept of humanity as the image of God, and consequently pictured humans as uniquely bridging the material and spiritual realms within a Great Chain of Being. Augustine ruled out non-human animals from protection under the commandment 'Thou shalt not kill' on the basis that they have no society with humans in reason, and Aquinas judged that neither justice nor charity were applicable to non-human animals. In my work I advance what I judge to be decisive arguments for setting aside these conclusions for good theological reasons, and are unrepresentative of wider traditions of thought and practice such as those I have noted above, but it seems that Christians have instead largely been prepared to accept the Singer version of Christianity and animals and concur in his claim that Christian faith and concern for other animals are incompatible. (I should clarify that I'm speaking of Peter Singer pre-circa 2012: I'm cautiously optimistic that conversation with Charlie Camosy and me since then has helped to persuade him at least that there are good utilitarian reasons to stop telling Christians that they need to give up their faith before they can entertain animal welfare as an ethical concern, but time will tell.)

There were two important Christian contributions to reflection on animal ethics that were contemporaneous with Singer's *Animal Liberation* in the late 1970s: Stephen R. L. Clarke's Christian philosophical approach to the topic, starting in *The Moral Status of Animals*, and Andrew Linzey's work, which began with *Animal Theology*.³ Both authors continued to make significant contributions to the field in the decades that followed, but neither was successful in convincing Christian theologians or ethicists that non-human animals was a significant topic of concern. When I began researching the topic ten years ago, I wasn't aware of any other academics working in the area. That was part of what motivated me to work on the issue: the

³ Singer, *Animal Liberation*; Stephen R. L. Clark, *The Moral Status of Animals* (Oxford: Clarendon Press, 1977); Andrew Linzey, *Animal Theology* (London: SCM Press, 1994).

link between Christian theology and concern for other animals seemed an obvious one to me, but was apparently not obvious to most fellow theologians or fellow Christians, the reasons for which seemed worth exploring.

The Christian ethics of consuming other animals

All ethics starts from some shared presuppositions, which is why you should never try to have a moral argument with a nihilist. My work is in theological ethics: working with the shared presuppositions of Christian traditions of thought. My monograph *On Animals* examines the place of animals in Christian doctrine and ethics.⁴ Volume I considered the place of animals — human and other-than-human — in Christian doctrine, reflecting on their place in relation to God's great acts of creation, reconciliation and redemption. Volume II, which I'm currently completing, explores the implications for this account of the place of non-human animals in Christian doctrine for ethics. The second chapter treats the Christian ethics of using other animals for food. So my project here is to summarize my Christian ethical analysis of the ethics of using non-human animals for food.

To understand my theological framework for animal this, however, it is important to summarize the way *On Animals* vol. I placed animals — human and other-than-human — in Christian doctrine, reflecting on their place in relation to God's great acts of creation, reconciliation and redemption. Part I argued that creation is best understood as God's gracious bestowal of being on all creatures, both for their own sake and so that they may glorify God in their participation in the triune life of God. All creatures are declared good by their creator in their own right; all creatures exist in utter dependence on God and mutual dependence on one another; no creature can be comprehended merely as the means to the flourishing of another. God's animal creatures have particular attributes in common: they are fleshy creatures with the

⁴ David Clough, *On Animals: I. Systematic Theology* (London: T & T Clark/Continuum, 2012).

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breath of life, especially dependent on other organisms for their survival, often the common subjects of God's blessing and judgement, capable of response to God in a distinctive mode. Part II treated the doctrine of reconciliation, arguing that God's other animal creatures cannot be neglected in accounts of the incarnation or atonement. Instead, Christians celebrate the New Testament confession of a God who took on creaturely flesh in order to reconcile all things in heaven and on earth, and we should understand not only human beings, but all creation, to be made elect by God's grace in Jesus Christ. Part III argued that what God has created and reconciled, God has reason to redeem, exploring the majestic Pauline vision of the whole of creation liberated from its bondage, and the new patterns of peaceable creaturely living this new creation might require.

Turning to the ethics of the human use of other animals for food, my global survey of our current practice concludes that the vast majority of terrestrial and aquatic farmed animals raised for food are raised in intensive ways that subject them to monotonous modes of life, provide very little opportunity for their preferred behaviours, cause significant suffering to them, and usually make their lives very short. Even wild-caught fish suffer significantly in the capture process, which also causes substantial damage to other non-target species. The alternative of raising fish in aquaculture contexts both requires large quantities of wild-caught fish for food, and imposes crowded and uniform environments on the fish, with significant stress as they are handled and killed. Extensively reared sheep, goats, and cattle enjoy significant freedom, but undergo painful procedures such as castration, branding, dehorning, and tail-docking, are often transported long distances, are often confined in feedlots for fattening, and, in the case of sheep and goats are often slaughtered at a very young age. Dairy cattle have been reshaped by selective breeding to produce unprecedented volumes of milk, but suffer from lameness, mastitis, and infertility as a consequence, resulting in suffering and short lives before being culled for beef. Pigs, rabbits, and poultry are the most intensively raised, usually confined in vast sheds, with no access to the outdoors, or often even sunlight, the end products of selective breeding

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programmes that have made them ever more efficient in gaining weight rapidly, or as laying hens producing eggs at rapid rates with the accompanying necessity of culling all male chicks. Using other animals for production at the current unprecedented levels requires a third of global cereal output and a significant proportion of global water resources, is a major cause of greenhouse gas emissions and pollution, and presents significant risks to human health.

In my view it would be a moral falsity to follow this account our current practice in using other animals for food, including its abundance evidence of the systematic abuse of non-human animals in the service of human ends, with a calm and measured ethical analysis. Instead, I begin the task of a theological assessment of how we are using other animals for food by considering what kind of theological scheme might legitimate our current practice. The radical instrumentalization of non-human animals evident in intensive patterns of farming demands a conveniently anthropocentric god, who brought the non-human creation into being merely to provide for human needs. Such a god would give Christians permission to exploit other animals without restraint for any reason whatever. This is the theological account that would be required to legitimize the broiler sheds, the culling of day-old chicks, the caging of laying hens, the mass slow and stressful deaths inflicted on fish pulled out of the sea in hundred mile long nets, the reshaping of the dairy cow being integrated ever more fully with the computerized mechanism that extracts her milk, the confining of pigs in monotonous environments, and the castrating, dehorning, tail-docking and branding of animals without anaesthetic — though even in such a theological scheme, the unnecessary cruelty and suffering visited upon other animals in these ways might give one pause. This, I submit, is the anti-theological account that is operative in and readable from our current practices towards other animals in our use of them for food. We should note that there are versions of atheistic humanism that privilege human interests to the total exclusion of non-human in similar ways.

Viewing other animals as fellow beneficiaries of God's grace in creation, reconciliation, and redemption, the position for which Volume I argued, is incompatible with the wholesale failure

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to see them as morally considerable that is evident in the patterns of using them for food surveyed in the first part of this chapter. The disregard of the lives of animals caught up in these processes is shocking. Instead of imaging such a creator's tender care for her creatures such an ethic models the despotic rule of a tyrant, interested in others only as they serve our greedy ends, making Christians co-worshippers in a ritual denial that there is a good creator who made and sustains these fellow animal creatures. In sum, current practices of using other animals for food treats them as if they were not the good creatures of the God Christians worship.

The Christian obligation to reject the practices of intensive farming as incompatible with a theological understanding of other animals, for which I have just argued, could be stated positively as follows. For a Christian to consider the use of other animals to produce human food in a context where such use is not necessary for human survival, it must be the case, at a minimum, that the lives of the animals so used can be recognized as good lives in which they can flourish. This is because a theological understanding of their lives recognizes that they are with us fellow animal creatures of God, with a vocation to glorify God in their flourishing. Under pressure of necessity, many humans in the past and some humans today could not feed themselves without using other animals for food, and could not always ensure that other animals used in these ways were well treated. The vast majority of modern humans, however, are not subject to this necessity, and could secure adequate nutrition without recourse to other animals, and with additional accompanying benefits, as noted above. Given that we have the choice whether or not to make use of animal creatures to feed ourselves, a choice to use them must, at least, not contradict our theological understanding of the life they are called upon to live, not prevent them from flourishing in the way their creator and redeemer intends. It seems clear, then, that this is a necessary condition for a Christian judgement that it is appropriate to make use of other animals for food where alternative sources of nutrition exist. The dietary option of consuming products derived from other animals only when one is confident that the animals concerned have been given a good life has been termed 'conscientious omnivorism'. My

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argument here is that, at a minimum, Christians have an obligation to be conscientious omnivores.

But the question then arises of whether a Christian view of animals imposes stronger demands. Is it legitimate for humans to kill other animals at all? Much of the theological discussion takes place in the tension between Genesis 1, which envisages a plant diet for all animal creatures, including humans, and Genesis 9, where after the Flood explicit permission is given to humans to kill other animals for food. Many theologians identify such killing as a necessity that falls short of the the peaceable relations between creatures God originally intended. But most modern humans have no such necessity: indeed, it would be better for them, for other humans, for other animals, and for the planet, if they did not. Beyond the argument of the previous section, that Christians have a clear obligation to avoid the products of the intensive farming of other animals, we therefore need to reckon seriously with the possibility that Christians should avoid participating in the practice of killing other animals for food at all, even when we have done our best to assure them of a good life before slaughter. Given the interconnection between dairy and beef production, and the culling of male chicks in all modern commercial raising of laying hens, avoiding systems that require the slaughter of animals leads to a Christian ethic of veganism.

It does not seem possible to me for Christians properly to have conscientious disagreement about whether the intensive farming of other animals is compatible with their faith: the yawning crevasse between a theological understanding of animal life and the conditions inflicted on farmed animals in these systems is too great. It does seem to me, however, that Christians could conscientiously disagree about whether it was appropriate to give farmed animals a good life and also use them to provide eggs or milk, or kill them for food. At the end of the previous chapter, I noted the analogy of disagreements between Christians who believe that their faith requires pacifism, and those who believe that under appropriate constraints warfare can be justified. The disagreement between Christians who see a vegan diet as a faith requirement, and those who are

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conscientious omnivores, believing it legitimate to use for food non-human animals who have been given a good life, seems to me to be of similar status, and with many overlapping arguments: both Christian pacifists and Christian vegans are inspired by a vision of the peaceable kingdom inaugurated in Jesus Christ; both Christians advocating for the just war tradition and Christian conscientious omnivores are likely to point to particular reasons why the world in which we live cannot be immediately conformed to this in-breaking peaceable reign of God. The positions are also parallel in often requiring identical behaviour: just as pacifists and those belonging to the just war tradition should be strongly in favour of peace-building and peace-making initiatives, so Christian vegan and Christian conscientious omnivores are both likely to consume fewer products derived from other animals and will frequently find themselves eating the same thing because the supply of animal products that are derived from animals who are given a good life is currently so limited.

I hope what I have written is sufficient to provide a brief indication of the current understanding of animal ethics in Christian thought and my own proposal for rethinking the Christian ethics of using other animals for food. I look forward to hearing how it differs and overlaps with the approaches of other contributors to the Workshop, and to the ensuing conversation.

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April 24, 2016

DRAFT Not for circulation or citation

Dear Participants: This paper reflects some very preliminary thinking about the issue of the live export of animals from Australia to the Muslim world for slaughter. These rough ideas contain many questions and few answers. Your comments will be very helpful to me as I develop this project, and I look forward to the conversation at the workshop.

Do Muslim Animals Need Saving?

Kristen Stilt

There are few requirements for meat to be considered halal, and slaughterhouses around the world have been certified as halal by many different Muslim organizations. As one of the world's largest producers of farmed animals, Australia is home to many halal slaughterhouses, and the country ships frozen halal meat globally, including to destinations across the Muslim world. Yet millions of cattle, sheep, and goats also are shipped, live, from Australia to destinations across the Muslim world each year to be slaughtered locally. The reasons for preferring locally slaughtered meat are numerous and complex, and include differing views on halal standards (and a rejection of the use of pre-slaughter stunning in particular, which is used in halal slaughterhouses in Australia); support for the local feedlot and meat processing industry (and associated higher tariffs on imported frozen meat); the lack of refrigerated facilities in some parts of the world; and the desire by some Muslims to slaughter or oversee the slaughter of an animal on certain occasions and on eid al-adha in particular.

But animals are not merely export products; they are living, sentient beings. Cattle, sheep, and goats raised in Australian pastures, grazing freely, do not transition well to a massive transport

ship in which tens of thousands of animals are condensed into a small space with feed troughs rather than pastures for a journey of up to one month. Mortality rates of two percent for sheep and one percent for cattle are considered normal. Only higher death rates will cause an investigation. On a ship carrying 70,000 sheep, 1,400 must die before a cause of death will be sought; such higher numbers are quite common. When a problem in transport arises, the results can be catastrophic. In September 2012, for example, 20,000 Australian sheep were sent to Bahrain, but the Bahraini authorities refused to allow the ship to unload because they suspected disease. Eventually, Pakistan accepted the shipment but was not told about the Bahraini rejection. After Pakistani authorities found out, they killed the sheep by beating, stabbing and burying them alive.¹ Australian animal advocates, and Animals Australia in particular, have worked to bring these brutal images to the public's attention, and have launched a campaign with the goal of ending Australian live exports.

The suffering of the animals is not confined to the long distance travel. Upon arrival, the animals are subject to the importing country's policies and norms, which may include slaughter practices that violate basic standards of animal welfare and even violate Islamic rules on the treatment of animals, yet still receive a local designation of halal. Slaughter in the recipient country may or may not include pre-slaughter stunning. The issue of stunning is a key area of contention, creating two camps: those who believe that pre-slaughter stunning reduces an animal's pain and suffering, and because it does not cause the animal's death does not jeopardize the halal status, and those who argue that stunning was never a part of traditional Islamic slaughter and is actually more harmful to the animal. Those in the latter group also sometimes express concern that stunning could kill the animal, even though it is not the intent, thus running the risk of rendering the meat not

¹ The means of killing the sheep resembles the way that Egypt killed its pig population in 2009 as a preventive measure against "swine flu."

halal. But the reasons behind the long distance transport of millions of animals from Australia to the Muslim world for slaughter each year involve much more than stunning or a rejection of it.

I am at the beginning stages of a project that will study Australia's exports to the Muslim world. The project will involve perspectives from law, religious studies, history, and economics, and will address a wide range of questions, including the fundamental but complex question of what motivates both the exporters and the importing countries. For example, do Muslim religious practices demand the local slaughter of live animals, and if so, why? What are the doctrinal arguments, and how have they changed in the past and how might they change in the future? Who are the advocates of change?

Within the field of law, broadly defined, there is a substantial amount of scholarship in the area of comparative animal law, which includes studies of the animal law regimes in jurisdictions worldwide, but very little on Muslim-majority countries. There is also a substantial amount of scholarship in the area of international animal law, which typically addresses animal issues in treaties and conventions such as the Convention on the Trade in Endangered Species (CITES), the International Convention for the Regulation of Whaling, and international trade treaties and dispute resolution mechanisms.² But these treaties and conventions mainly cover animals as members of a species (and endangered species in particular) rather than animals as individuals, and in general there is only minor attention to the welfare of individual animals in international law and thus in the scholarship on international animal law. Non-human animals do not have an equivalent of international human rights law, although there have been calls for its creation.³

² See, for example, Katie Sykes, "Globalization and the Animal Turn: How International Trade Law Contributes to Norms of Animal Protection," 5 *Transnational Environmental Law* 55-79 (2016).

³ The Universal Declaration of Animal Welfare, for example, has had only a marginal impact. See Anne Peters, "Global Animal Law: What It Is and Why We Need It," 5 *Transnational Environmental Law* 9-23 (2016).

Even without an international human rights law for animals, I am thinking about how the field of international human rights might be helpful to this project. Human rights advocacy typically operates on the basis of “naming and shaming,” with the hope that bringing international attention to a human rights violation will cause the violator to reform the abusive practices. The international human rights regime has been criticized for constructing a framework that necessarily involves a “savage,” a “victim,” and a “savior.”⁴ As applied to the issue of live exports, who plays each role? Is the animal the victim? Who is the savage—the Australian exporters, or those who carry out the slaughter of the animals? And who is the savior? The international human rights community is still not sure how to address practices that appear to have some basis in religious belief and in Islamic beliefs in particular.⁵ Do religious beliefs and practices pose the same challenges to advocates, or even greater ones, when animals are involved rather than humans?

Thinking about the issue of Australian live exports to the Muslim world from a human rights perspective raises many questions that I hope we can discuss: Are Australian animals entitled to the protection of their government, wherever the animals might be? Should Australian animals who are exported receive Australian treatment in the recipient country in a form of non-human capitulations? Do the animals sent from Australia to the Muslim world for slaughter become Muslim, and thus rightly expected to submit to the beliefs and practices of their new community? Do the animals sent from Australia to the Muslim world for slaughter become Egyptian, or Indonesian, and thus rightly expected to submit to the jurisdiction of the importing country? How do we evaluate whether those practices cause the animals suffering, or “unnecessary” suffering? Are

⁴ See Makau Mutua, “Savages, Victims, and Saviors: The Metaphor of Human Rights,” 42(1) *Harvard International Law Journal* 201-245 (2001).

⁵ See Naz Modirzadeh, “Taking Islamic Law Seriously: INGOs and the Battle for Muslim Hearts and Minds,” 19 *Harvard Human Rights Journal* 191-233 (2006).

animals entitled to the most animal-friendly view of Islamic law?⁶ And if the animals exported become Muslim, rightly expected to submit to the beliefs and practices of their new community, do those Muslim animals need saving?⁷

Nearly all of Australia's live exports of sheep go to the Middle East. Indonesia is Australia's largest purchaser of cattle.⁸ Australia is not the only exporter of live animals for consumption (it faces competition from countries such as Brazil and Uruguay, for example) but it is a dominant market actor in terms of value and, importantly, the issue of live exports is highly contentious within Australia due to animal welfare concerns, making Australia engaged in the issue beyond economics in a way not seen among other exporters.

Australian efforts to address the welfare of its exported animals initially purported to cover an animal only until arrival at the importing port. However, after numerous investigations into the treatment of animals within the receiving countries, a new scheme was implemented in 2011 that requires exporters to prove an adequate Exporter Supply Chain Assurance System (ESCAS) before receiving an export permit. The ESCAS is supposed to provide details of the animals' care and handling all the way to the point of slaughter and ensure that the handling at all stages complies with Section Seven of the OIE (also known as the World Organization for Animal Health) Terrestrial

⁶ See, for example, Sarra Tlili, "Animals Would Follow Shafi'ism," in *Violence in Islamic Thought from the Qur'an to the Mongols* (Robert Gleave and Istvan Kristo-Nagy, eds.) (2015). In the area of international human rights law, for example, the organization Musawah has called upon the parties to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) to adopt the views of Islamic law that are most consistent with the requirements of CEDAW. Musawah, "CEDAW and Muslim Family Laws: In Search of Common Ground" (2012).

⁷ Lila Abu-Lughod asked this provocative question about women in her 2013 book *Do Muslim Women Need Saving?* Her book is "an indictment of a mindset that has justified all manner of interference, including military invasion, in the name of rescuing women from Islam" Book cover.

⁸ In 2014, Australia exported 2,298,455 live sheep, valued at Australian \$234 million [US \$175,709,430 at current rates] FOB. The Middle East accounts for 98% of Australia's sheep exports, with Kuwait the largest customer. <http://www.mla.com.au/Prices-markets/Trends-analysis/Sheep-projections>. In 2014, Australia exported 1,294,036 cattle for feeder, slaughter, and breeding purposes combined valued at Australian \$1.294 billion FOB. Indonesia purchased 56% of this total. <http://www.livecorp.com.au/industry-information/industry-statistics/cattle-statistics>.

Animal Health Code.⁹ This new system is intended to extend protection over the animal all the way to the point of slaughter. But this is not Australian law that travels with the animals, but rather the OIE Code's standards, which provide animals far fewer protections¹⁰. For example, Australian law requires pre-slaughter stunning (as discussed below) while the OIE Code does not. Further, there is a limited amount of control any exporter can exert, even under the best of circumstances, because so much of what happens to the animals upon arrival depends on the individuals who receive them.

Australian advocacy organizations have worked to highlight the cruelty of live exports, to gain public support for their cause, and to pressure the Australian government (unsuccessfully so far) to end the trade. They also have sought to cooperate with NGOs in the receiving countries. In one of the first acts of such cooperation, in 2006, Animals Australia and several Egyptian animal advocacy groups worked together to acquire undercover footage of the treatment of Australian animals in the largest slaughterhouse in Cairo. When the results of the investigation were released in Australia, the public was outraged. The Australian government briefly suspended the trade but it soon resumed under pressure from Australian exporters. The Egyptian government did not seek to improve conditions in its slaughterhouses; its concern was merely ensuring the continuing supply of animals from Australia.

The Egyptian NGOs took another approach later in 2006 by seeking a fatwa from Shaikh of Azhar (one of the two highest religious positions in the country) Muhammad Sayyid Tantawi on the issue of the treatment of animals in slaughterhouses and during live exports. The factual scenario depicted in the question was based on Animals Australia's undercover investigation in the main Cairo slaughterhouse in 2006 and the conditions on the ships as related by Animals Australia. In the

⁹ Section Seven of the Code is available at http://www.oie.int/en/international-standard-setting/terrestrial-code/access-online/?htmfile=titre_1.7.htm

¹⁰ The OIE has 180 members, including the major importers of Australian animals.

question, Ahmed Shirbiny, an attorney and Chairperson of one of the Egyptian organizations, attempted to make the issue about more than animals:

At a time when Islam is subjected to unjust attacks that accuse it of aggressiveness, wanton disregard for human life, and destruction of the environment, highlighting Islam's concern with kindness to animals is regarded an effective subject area through which to defend against many of these wrongful accusations.

In order to achieve this lofty goal, we submit to Your Excellence two questions that call for correct answers according to Islamic law, so that the West is able to be informed of the civilized face of Islam on the matter of kindness to animals.

Because these two questions are related to violent and incorrect Islamic practices in the treatment of animals, from which one could understand that they are part of Islam, Islam could be insulted as a result.

The first question focused on slaughter practices in Egypt:

Some of the people who slaughter animals and prepare the meat for consumers in the slaughterhouses commit cruel and violent acts with the aim of debilitating the animal so that they are able to control the animal. These acts include gouging the eye of the animal, cutting the tail, cutting a tendon of the legs, and piercing its body with a knife so that it bleeds and loses strength, all of which are done to control the animal with the least amount of human effort. What is the view of Islamic law on this?

The second question deals with the transport of live animals from Australia to Egypt:

During long-distance transport between the countries of animals' rearing and the countries of their slaughter, the animals are exposed to all types of cruelty, such as hunger, thirst, and severe crowding. These types of cruelty lead to the death of some of them or their affliction with deadly diseases that affect the animal's surroundings and their meat. These results could be transmitted to human health. What is the rule of Islamic law on this? And what are the correct Islamic legal ways of transporting animals, from the perspective of the length of time and the care that must be provided to them?

Two years later, in 2008, Shirbiny received a response. The issue of slaughter proved to be a far more straightforward question, since there is a substantial body of rules on slaughter:

Islamic law requires that the animal at the time of its slaughter must be treated with kindness and with procedures that guarantee to it mercy. All of this is covered by the beneficence that the Prophet (God's peace and blessings upon Him) ordered in his authenticated saying: "God has ordered beneficence in everything, so if you kill, be as kind as possible in the killing, and if you slaughter, be as kind as possible in the slaughtering. One of you should sharpen your knife and another should make the animal to be slaughtered comfortable." (Related by Muslim). This saying of the Prophet proves that slaughter must be done with kindness and mercy to the animal, and is part of the meaning conveyed by the required beneficence pronounced in the saying.

Kindness and mercy to the animal is also understood from the requirement of sharpness of the knife that will be used in the slaughter, so that the animal is not pained by slaughter with a dull instrument. This is also what He (God's peace and

blessings upon Him) clearly shows in His saying “one should make the animal comfortable.” Fulfilling this order requires doing everything that makes the animal comfortable at the time of slaughter.

Many authenticated sayings of the Prophet show the prohibition on undertaking to sharpen or hone the instrument of slaughter in front of the animal to be slaughtered. The Prophet (God’s peace and blessings upon Him) saw a man sharpening his knife in front of the animal that was going to be slaughtered, and the Prophet forbade that, and said to the man: “Do you want to slaughter the animal twice—once by sharpening the knife in front of the animal, and the second time by cutting its throat?”

Imam Ali (May God be pleased with him) also forbade slaughtering a sheep in front of the other sheep or any other animal, so that the animal’s perceptions are not harmed at the last moment of its life.

All of this clearly shows that any action incompatible with kindness to animals or treating them any way other than with mercy at the time of slaughter—such as in the manners mentioned in detail in the question—is a forbidden and sinful act, and is inconsistent with the kindness to animals that Islam requires. This is the answer to the first question.

As for the issue of live export:

With regard to the second question, we advise that Islam’s call for kindness to animals and for treating them with mercy applies to all of the situations in which this mercy is necessary. This includes transporting animals. The transport must be done in a way that is comfortable and that ensures the animal’s safety. The means of

transport must protect against the causing of pain to the animal, threat to the life of the animal, or affliction of the animal with diseases contagious to humans or others. This rule is inferred from the saying of the Prophet (God's peace and blessings upon Him), that "Humans have the chance to perform a charitable act in their treatment of every living being." And also in His saying, Peace be upon Him: "A woman went to hell because of a cat that she had confined without leaving it any food, or allowing the cat access to bugs or fruits of the earth to eat." These two sayings of the Prophet, and others like them, show that the treatment of animals must be based upon the principle of mercy in every situation, including in the transport of them from one place to another.

Causing pain to the animal during transport as described in the letter is considered an action prohibited and forbidden in Islamic law, assuming, of course, that the situation is as described in the question.

The advocates were hoping for a clearer statement against live exports, or even some guidelines about the permissible length of transport as they asked in the question. If they had received exactly what they wanted, they would have tried to use the fatwa to convince Egyptian lawmakers and consumers to stop the import trade and the consumption of animals that arrived as a result of the trade, and neither was likely.

Animals Australia's position is that the trade is inherently cruel and should be abolished as a matter of Australian law. No improvements can ensure that a lengthy journey by ship, with all of the room for error, will provide a minimum level of animal welfare.¹¹ Ultimately, the aim of Animals Australia is to replace the live export market with the export of frozen meat bearing an Australian

¹¹ New Zealand has ceased live exports although has not yet categorically banned them.

halal designation. And Australia already exports frozen halal meat to consumers worldwide, but the Australian exporters of live animals claim that the markets that currently purchase live animals will not accept a substitution of frozen meat, for many reasons, and will look for other sources of live animals if Australia ceases to supply them.

As long as live exports are legal, Animals Australia has focused on improvements to the level of care provided to the animals upon arrival in particular. The investigations they have done from the sites of slaughter in the receiving countries have been particularly effective. In 2011, the group's investigations in Indonesia led to the nation's leading television news program, Four Corners (which is similar to 60 Minutes in the U.S.), airing an hour-long expose about the Indonesian slaughterhouses that receive Australian animals and cattle.¹²

The Four Corners program was the most significant mainstream media coverage that the live export issue had received, and it shocked the Australian public. Dr. Bidda Jones of the RSPCA Australia reviewed the broadcast footage gained by Four Corners in the Gondrong slaughterhouse on the outskirts of Jakarta and said, "It's terrible. I mean the average over the 49 animals that I've looked at is 10 cuts, 10 cuts, and some of them up to 33 cuts." Farmed animal expert Temple Grandin also watched the footage and commented, "the conditions are absolutely terrible. I mean you've got a [restraint] box designed to make a cattle fall down. That violates every humane standard there is all around the world. What I want to know is why is Meat and Livestock Australia's name [the trade group of the Australian exporters] on the side of this chute? ... This is just an absolutely horrible set-up. Now the guy's on top of the animal kicking it because he can't get

¹² The Four Corners program on Australian exports to Indonesia aired on May 30, 2011 and can be seen at http://www.abc.net.au/4corners/special_edcs/20110530/cattle/.

it to move. I'm really shocked that Meat and Livestock Australia would be involved in building facilities this terrible.”

One of the main issues that Animals Australia focuses on is the lack of stunning and the related need for competent effective stunning before slaughter. In Australia, pre-slaughter stunning is required by law and is standard and accepted practice even in kosher and halal slaughterhouses. Animals Australia's website asks “what's wrong with live export?” and answers “Most animals who are exported live for slaughter have their throats cut while fully conscious. Millions have died at sea. 37 investigations have revealed that in destination countries, many animals endure routine abuse and brutal slaughter in places where laws do not protect them from cruelty.”¹³

The Australian exporters may or may not believe in the necessity of stunning, but they know that images from slaughterhouses such as in Indonesia of a butcher with a small crude knife trying to kill a fully conscious cow with a “rough sawing action,” as the Four Corners investigation showed, are very bad for business. As a result, the exporters, through their trade group, the Meat and Livestock Association (MLA), have taken a great interest in promoting and even requiring stunning by the importing countries. They have held many training sessions and installed stunning equipment in several recipient countries, but often investigations by Animals Australia show that they are not used, for reasons that include a belief that stunning is not permissible in Islamic law.

The MLA has now taken another approach. Since Islamic scholars in Australia have approved stunning, the MLA is now working to promote this view in the recipient countries. One manifestation of this effort was a conference held in Cairo in 2014 with a diverse range of participants, including representatives from the Egyptian Ministry of Agriculture, the Egyptian animal advocacy organizations, the Australian Meat and Livestock Association, and faculty members

¹³ The Animals Australia website dedicated to the issue of live export is <http://www.banliveexport.com/>

from al-Azhar. Materials provided at the event include a booklet of fatawa, with English translations, from Kenya, Egypt, and other locations, that advise on the permissibility of stunning before slaughter. Equipped with this evidence, the expectation is that the Meat and Livestock Association now will attempt to use it to persuade recipient countries to adopt stunning—thereby removing one of the best arguments against live export that Animals Australia and other animal advocates in Australia have. If the animals upon arrival receive essentially “Australian” treatment, will the advocates lose their ability to point to a savage, or a victim, without indicting the entire practice of slaughtering animals for food, wherever it takes place?

Is Animal Studies Good for Animals?

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1. Prologomenon

What is called animal studies is a broad area of investigation, diverse and fragmented, with islands of synergistic activity. It is a field constituted to a great extent by self-identification, and participation in collective practices and rituals (e.g., participating in various conferences, engaging in various dietary and other practices).

Despite the diversity and fragmentation, there is often a lack of sensitivity to context. For example, many of the papers presented at various high-profile animal studies conferences seem to me to be addressed to people in North America and Europe, even when the conference is in India (for example). This is not all bad, unjustified, or inexcusable, but it is worth noticing; and when it goes too far, it inhibits the kind of synergistic discussions that characterize the field at its best.

Having noted this, I am now going to discuss the academic literature of animal studies as I understand it, most of which is located in the placeless place to which I have referred. No doubt my own contribution is to a great extent located there as well. My only defense is epistemological humility. I will do my best to sketch the animal turn, readily acknowledging in advance that I am describing the world as it appears to me from my own little corner of the academic universe. I don't claim that what I say here is exhaustive or complete or true to anyone's experience but my own (though I hope it is). Nor am I trying to lay down the law or to be normative. This is my attempt to map the terrain of animals studies as I have experienced it, and wonder aloud about its relevance to eating, breathing, shitting animals.

2. The Animal Turn

Academic fields have experienced many “turns” in the last few decades (“linguistic,” “environmental,” and more besides). It is clear that an “animal turn” is now underway in the humanities and social sciences. In recent year scholars such as Ritvo and Weil have published papers in which this expression appears prominently. The Pufendorf Institute at Lund University in Sweden has an “Exploring the Animal Turn” research group, the University of Basel Law School in Switzerland sponsored a conference in 2014 on the “Animal Turn in the Law,” and the Michigan State University Press in the United States has a book series devoted to “The Animal Turn.” The list could go on.

In this paper I am interested in a series of questions that are in some ways in tension with each other: What provoked the animal turn? Why has its influence been felt at different times and in different degrees in different disciplines? What relevance does it have for improving the lives of animals?

3. What provoked the animal turn?

Relations between humans and animals are an ancient topic of discussion. Aristotle’s characterization of humans as “rational animals” was in sharp contrast to some views in the ancient world and to dominant tendencies in early modern philosophy (e.g., Descartes). There is interesting scholarship in these areas (e.g., Sorabji) but the discussion takes an important turn with the work of Darwin and especially the publication of the *The Expression of Emotion in Humans and Animals* and *The Descent of Man*.

While there were philosophical naturalists in the ancient world, in the early modern period (e.g., Hobbes), and in the Enlightenment tradition (e.g., Voltaire), naturalism takes a different form in the post-Darwinian world. While early naturalists tended towards machine or mechanical views of living things, with Darwin comes the idea of biological continuity. While Darwin’s immediate followers (e.g., Romanes) worked on revealing the mental life of non-human animals, the major impact of the Darwinian revolution was slow to make itself felt. Some would say that it has not yet been entirely assimilated in the natural sciences, even in biology (e.g., Dupre). What is clear is that the humanities and social sciences have taken even longer to assimilate its influence. Part of the reason for this is the

repugnance that many humanists and social scientists felt for early twentieth century eugenicist and environmental determinist views that claimed to be inspired by Darwin. These debates and their offspring have a way of wearily reoccurring in humanistic discourse (e.g., over evolutionary psychology, the “new materialism” in feminist studies, and so on).

While the development of genetics is important to the unfolding of this story (because it provides a mechanism for expressing the commonalities between humans and other animals and because it freaks out some humanists and social scientists who associate it (not completely unjustly) with the old eugenicism and determinism), it was the rise of ethology, first in the work of Konrad Lorenz and Niko Tinbergen, and then with “the Leaky girls” (Jane Goodall, Birute Galdaikas, and Diane Fossey) that was a proximate influence on the animal turn in the humanities and social sciences. Not only did they make remarkable discoveries about the mental and social lives of non-human animals, but Goodall in particular personified the objects of her study by giving them names. They produced a significant body of science and its findings were disseminated in popular books and films of the sort that even science-phobic humanists and social scientists could appreciate.

A parallel development was the rise of cognitive science, founded on the work of Turing, Von Neumann and others in the 1930s and 1940s, that began to be influential in the humanities and social sciences in the early 1960s. While this work initially focused on human and artificial intelligence, by separating cognition from its implementation, it invited questions about animal cognition. By the late 1970s cognitive science was beginning to interact with developments in animal behavior and philosophy. Donald Griffin’s *The Question of Animal Awareness* was a landmark work in the development of cognitive ethology, though he himself thought that the mental processes studied by cognitive science were quite different from the consciousness that is characteristic of humans and other animals (a view that continues to persist among many animal behaviorists (e.g., Braithwaite). By the late 1980s mainstream cognitive science and Griffin-inspired investigations began to come together in the development of

cognitive ethology (Bekoff & Allen, *Species of Mind* and *The Cognitive Animal* were foundational texts).

Since the 1975 publication of Peter Singer's *Animal Liberation*, concerns about the ethical treatment of animals have been central to the academic interest in animals. In addition to being a work of moral philosophy, *Animal Liberation* provides a reading of the history of human attitudes towards animals and draws on scientific work related to animal sentience. Subsequently, concerns about animal minds and ethics have grown together into a productive field that has given rise to many further important questions including questions about animal agency. More than forty years after its publication there is much more to say about its influence.

Environmental philosophy began to develop as an academic field in the Anglophone world in the 1970s, building on texts that had been published decades earlier (e.g., by Muir, Leopold, and others). Over the years environmental philosophy has become increasingly sensitive to issues about animals, despite a brief attempt in 1980 to ban the publication of papers relating to the moral status of individual animals in the flagship journal of the field, *Environmental Ethics*.

Early contributions by historians and historians of ideas such as Thomas, Ritvo, and Passmore were also important, and later contributions in the post-humanist tradition have also had significant influence.

4. Why has the influence of animal studies been felt at different times and in different degrees in different disciplines?

The animal turn came later to literary studies than to philosophy and related fields. This is surprising since, as Susan Crane and others have shown, animals are deeply embedded in our earliest literary traditions. Perhaps what was missing was "theory," and when Derrida underwent his own animal turn the Kool-Aid became safe to drink.

There is much to say about Derrida and what influenced him to make the animal turn. Beatrice Longuenesse has mentioned Condillac, Rousseau, Diderot, Merleau-Ponty and Lacan as predecessors in the French

philosophical tradition who had things to say about animals and were influential on Derrida. Nicolas Delon has emphasized to me how well the animal turn comports with Derrida's general skepticism about reason and language (at least as conventionally understood). I myself have wondered about the influence of Sartre and Levinas on Derrida's animal turn.

One interesting consequence of the Francophone influence on literary studies is this. Compared with Anglophone philosophy, French philosophy does not have a well-developed tradition of moral theory (it is not surprising that Peter Singer is from Melbourne rather than Montpellier). What one would expect then is that the interest in animals would be less morally driven in Anglophone literary studies than philosophy, and indeed I believe this is the case. The literary interest in animals is often in animals as symbols rather than as actual living creatures.

Sociocultural anthropology seemed impervious to the animal turn until the rise of the "ontologies" movement (associated with such figures as Descola, de Castro, and Kohn), and the related but somewhat distinct turn towards "multi-species ethnography." Now phrases such as "thinking like a mountain," reminiscent of environmental philosophers such as Aldo Leopold, are gaining currency in anthropology. Indeed, there is reason to worry about excessive anthropomorphism and the promiscuous attribution of agency in some of this work. For some of these writers (e.g., de Castro) the ontologies movement seems to be a way of bringing back the exotic to anthropology. For others (e.g., Descola) it seems to be a way of reigniting various theoretical debates (e.g., structuralism vs. post-structuralism). BUT SEE https://www.animalsandsociety.org/assets/library/477_s1049.pdf AND *Where the Wild Things are Now*)

Here are two reasons that might help to explain why the animal turn arrived relatively late in anthropology. First, in recent years socio-cultural anthropology has been dominated to a great extent by extreme constructivist views which sometimes seem to hold that there is nothing to experience beyond the anthropologist's account of an informant's words. On such a view, animals have only a secondary, ablated existence. Second, socio-cultural anthropology has in recent years been characterized by disciplinary anxiety. This has often led to a kind of self-referential thinking

and writing which reinforces what is supposed to be at the core of the discipline—humans, their cultures, and those who write about them. This has led to fraying relationships between socio-cultural and biological anthropology. Indeed, it seems to me that animal studies relates better to both of these areas than they do to each other.

It is well-known that religious traditions vary radically in their friendliness to animals (e.g., compare Jainism with Middle Eastern religious tradition). It is also clear that within each religious tradition there are the seeds of animal-friendly views that are or have been worked out by scholars and practitioners (e.g., Andrew Linzey in Christianity). Religious studies as an area of scholarly inquiry is better defined by its focus than by its disciplinary trappings (e.g., shared methodology, scholarly canon etc.). The American Academy of Religion, the world's largest association of religious studies scholars has an "Animals and Religion Group" in which several participants in this conference are active, and from whom I hope to learn more about this field.

There is much more to say about the animal turn in various other disciplines and fields including sociology, political science, feminist theory and so on. But I now want to turn to the general question of what makes a discourse "academic."

5. What is the difference between two people conversing and an academic lecturing to an audience?

There are probably many differences but the one I am interested in is this: academic discourse is mediated in a way that ordinary conversation is not. Well brought up academics do not tell you what they think, at least when they're on duty. They tell you what's in the text or the data, the results of their experiments, what their model predicts, what their informants say, or sometimes floridly, "what nature is saying." The speaker in an academic lecture purports to be voicing the deliverances of the instrument of mediation. He is a kind of ventriloquist (Charley McCarthy to Edward Bergen). The academic lecturer's attitudes and opinions are supposed to be irrelevant. What matters are the "findings," even if they are viewed as "readings" or interpretations.

Mediation in academic discourse takes different forms. Most physical and biological scientists use physical devices to actively intervene in the world. They run experiments, make observations, and report the results. Some physicists, such as string theorists, do not have experimental results to report. Instead they expound theories. These theories, like the mathematics in which they are expressed, are regarded as discovered, not created. Even ethologists and animal behaviorists, whose job is to watch animals, are in the business of reporting data. Animal behaviorists, who are sometimes distinguished from ethologists on this and other grounds, have statistical models and sometimes do experiments. Quantitative sociologists and some psychologists resemble them in these respects. For qualitative sociologists and cultural anthropologists, ethnographies are the mediator. Physical anthropologists have bones, archeologists have shards, and philosophers have arguments. Literature professors have texts or even “theories” or “analytics.” For mathematicians it is proofs.

Mediating devices are important for many reasons. First, as already noted, they help to demarcate academic discourse from mere (?) conversation. Second, they protect an academic from the charge of moralizing, pontificating, or otherwise engaging in forbidden normative practices. (A cynic might say they protect the professor from the charge of professing.) Mediating devices also help to close the gap between is’s and oughts. An ethnographer does not tell her audience that a culture is being destroyed by modernity; her informant says, implies, or suggests it, and she reports it (often with an insinuation). Philosophers do not tell audiences what to believe; they present and evaluate arguments, and some arguments are demonstrably better than others. These ethnographers and philosophers conform to the highest standards of academic discourse while still perturbing the normative outlook of their audiences. They have the best of both worlds. It is important to see the mediation that is central to academic discourse, because it is this that sets up the tension between developing an academic field such as animal studies and making the world better.

6. What Relevance Does Animal Studies Have For Making the World Better?

Academics are very good at finding new playgrounds for themselves. There is nothing wrong with this: playgrounds are fun, they keep people out of

trouble, and can sometimes give the impression that something serious is going on. But in a world in which billions of animals are treated in horrific ways it is worth asking whether this emerging academic playground—animal studies--can hope to contribute to making things better.

I have conflicting thoughts about this. As a child of the Enlightenment, I believe that knowledge is power: Mobilizing academic resources can be central to addressing important moral problems. Indeed, that's part of why I do what I do whether this is teaching, writing, or sitting through department meetings. On the other hand I've just published a book on climate change and in this case it is clear that the growth of knowledge has not led to addressing the problem. I also note that apartheid was outlawed in America before the creation of African-American Studies programs in universities, and racism does not seem to have appreciably declined since their creation. Of course areas of academic inquiry are not to be evaluated solely on the basis of their immediate consequences for making the world better. But should this be a consideration at all, and if so, how much? I sense that there are very different views about this among people who work in animal studies, and it is a discussion worth having.

I close with some confession that may resonate with some of you. It seems to me that there is a kind of glorious self-indulgence that is undeniably part of having a secure academic life. Not all self-indulgence is bad (think chocolate or wine or what have you), but it often sets up difficult psychological dynamics directed towards evading, escaping, repressing or otherwise managing the associations that self-indulgence sets off. For some it leads to an impulse to close the gap between one's everyday life and the world. It leads to a thirst to reconcile theory and practice, life and politics, and to live seamlessly in accord with our values. While this can be an admirable impulse, it is important to appreciate how difficult it is to fully satisfy and the risks that it may present. Some of the difficulties are intrinsic to the reconciliation project however and where it manifests; others have to do with the fact that an academic succeeds and functions through the adroit use of the mediating devices that this impulse seeks to push away. The risks are all too obvious to anyone who is outside of what we might call "movement academia." There is often a tendency to mistake academic politics for real politics, writing about animals for helping animals,

and generally mistaking the playground for the real world. Smugness and self-righteousness often follows from these failures.

Is animal studies good for animals? I believe that at least some of it is, though it is too early to provide a definitive answer to this question. What I do know is this. Animal studies is more likely to be good for animals if we struggle to appreciate the larger academic and worldly context in which we act, our own motivations and psychological dynamics, and the opportunities and temptations afforded by work in this area--then couple this with humility about what we think we may be accomplishing, and gratitude for the privilege and opportunity to try to accomplish something through academic labor.

A Pro-Animal Ethic:

Situating Islamic animal ethics in Modern Animal Ethics Discourse

Animal ethics in Islam are typically categorized as belonging to the welfare type, based on the fact that this tradition extends important protections to nonhuman animals on one hand while presumably not objecting to the sacrifice of their interests for humans' sake on the other. In this paper, I will argue that contrary to this prevalent view, a close reading of the dominant animal ethic in Islam –what I will call the “pro-animal Islamic ethic”– reveals more affinity with the rights position.¹ The pro-animal ethic does differ from the dominant rights position in that it is not liberationist; nonetheless, it shares with it the same egalitarian underpinnings and the same rejection of exploitation. With one exception, this ethic does not allow humans' interests to trump the interests of other animals and insists that humans may benefit from other species only to the extent that such benefits do not infringe on the latter's interests. The one exception to this rule still represents a thorny problem, as it consists of the authorization to kill animals for food. However, because of this ethic's otherwise scrupulous insistence on respecting animals' interests, the suggestion that this authorization is a mere sign of exploitation is questionable. In this presentation, I will first delineate the “pro-animal Islamic ethic” and explore its theoretical foundation. Then I will study its position on two questions. Finally, I will briefly cite recent arguments in animal studies that may provide a more plausible explanation to its authorization to kill for food.

Pro-animal Islamic ethic

Obviously, Islamic tradition allows several uses of nonhuman animals that are problematic by the still dominant animal rights standards. In contradiction to the abolitionist movement, scriptural sources not only sanction many uses of nonhuman animals, but also present these sanctions as a grace from God toward humankind.

¹ The “pro-animal Islamic ethic” is not a consciously framed animal doctrine and does not belong to any particular movement or school of thought in Islam; rather it is a set of tenets dispersed across the tradition. The fact that this ethic is eclectic does not mean that it is marginal. In fact, I would venture to argue that up to the late nineteenth/early twentieth century it continued to be the moral orthodoxy in Islam, shaping both theoretical discussions and actual attitudes toward nonhuman animals.

Moreover, Islamic sources are hardly apologetic about these sanctions. For instance, by presenting milk as the most blessed and most wholesome food item, the Ḥadīth seems not only to permit, but even to encourage its consumption. Combined with the permission to kill animals for food, these themes seem to imply that in Islam nonhuman animals do not possess a right to life and a right to freedom, the two hallmarks of the rights position at least as it is framed by some of its leading representatives. This much difference between the traditional Islamic position and the animal rights movement is clear.

The pro-animal Islamic ethic, however, imposes one important restriction on these uses: With the exception of the authorization to kill for food, humans may benefit from other species *only to the extent that such benefits do not infringe on the latter's interests*. Before surveying the actual implications of this constraint, however, it is important to examine its theoretical underpinnings.

The principle of *ḥurma* (inviolability)

Muslims are not free to treat other animals as they may see fit because the tradition holds that the latter have *ḥurma*, a notion conveying ideas of sanctity, inviolability, prohibition, and respect. Domestic animals form a different category, as they have two types of *ḥurma*, one relating to their status as human property, the other pertaining to them personally. The first *ḥurma* stems from animals' value as assets, the harm of which would be a harm to their owners, whereas the second consists of unfringeable claims that animals have against their owners and the entire Muslim community. To illustrate this point, the Shāfi'ī jurist Abū l-Ḥasan al-Māwardī (d. 450/1058) gives the example of war, whereby the enemy's farm animals remain entitled to considerate treatment even though their property-related *ḥurma* becomes void due to the state of conflict. Because of animals' personal *ḥurma*, al-Māwardī explains, Muslim armies may not harm the enemy's livestock even when it is feared that sparing the animals will give the enemy an edge.²

² Abū l-Ḥasan al-Māwardī, *al-Ḥāwī al-kabīr* (Beirut: Dār al-Kutub al-ʿIlmiyya, 1994), 14:190.

Besides being called “*ḥurmat al-nafs*” (personal sanctity),³ the second type of *ḥurma* is referred to as “*ḥurmat Allāh*” (God-given sanctity)⁴ and “*ḥurmat al-rūḥ*” (the sanctity of the soul).⁵ These labels provide an insight into the perceived source and nature of nonhuman animals’ *ḥurma*. Animals, as al-Jāḥiẓ explains, belong primarily to God, the owner of their essence (*mālik al-‘ayn*), and only secondarily to humans. Because of this dual-property paradigm, al-Jāḥiẓ explains that humans are allowed to benefit from other animals only in the ways and to the extent authorized by God. Thus, humans may not inflict pain on an animal or remove or inhibit the function of any of its organs unless they have an explicit divine authorization to this effect or if the intervention is intended to benefit the animal, as in medical treatment.⁶

The label “*ḥurmat al-rūḥ*”, on the other hand, shows how the sanctity of animals differs from the sanctity of other beings. The notion of *ḥurma* is in fact believed by some to be common to all creatures; its materialization, however, varies according to the nature of its bearer. Mawil Izzi Dien explains that the *ḥurma* of animals entails that they should not be mutilated, whereas the *ḥurma* of the wind implies that it should not be cursed.⁷ The label “*ḥurmat al-rūḥ*” thus indicates that animals have more concrete claims to considerate treatment than other creatures.

The fact that Islamic tradition recognizes that animals have a set of unfringeable claims against humans, whatever these claims may be, points to an important similarity between it and the animal rights position. Both positions recognize that animals matter not merely because of their instrumental value, but rather for their own sake. Both positions also assign enough weight to animals’ interests to allow them to trump humans’ interests, even ones deemed vital, as is the case with the enemy’s livestock during states of conflict. This marks a clear departure from the welfare position and closer affinity with the rights position.

³ Abū l-Ma‘ālī al-Juwaynī, *Nihāyat al-maṭlab fī dirāyat al-madhhab* (Dār al-Minhāj, 2007), 15:240.

⁴ Māwardī, *al-Ḥāwī*, 14:191.

⁵ al-Juwaynī, *Nihāyat al-maṭlab*, 7: 298.

⁶ Abū ‘Uthmān al-Jāḥiẓ, *Kitāb al-ḥayawān* (Beirut: Dār al-Kutub al-‘Ilmiyya, 2003), 1:107.

⁷ Mawil Izzi Dien *The Environmental Dimensions of Islam* (Cambridge, UK: Lutterworth Press, 2000), 142.

The fact that Islamic tradition assigns both intrinsic and instrumental values (or rather personal and property-related *hurmas*, respectively) is still opposed by liberationists such as Gary Francione.⁸ Francione, however, frames his argument in response to a property paradigm that is not necessarily universal. For example, he highlights the facts that, historically, western laws tended to treat animate and inanimate properties alike and cites philosophers such as Immanuel Kant and John Locke who considered that humans have no direct obligations to other animals.⁹ This property model clearly differs from the dual-property paradigm described earlier, whereby humans' property rights are subordinated to divine property rights. The dual-property paradigm indicates that humans' ownership privileges are far from open-ended. In fact, according to al-Jāhiz's opinion, they are limited to the services and products that God allowed humans to derive from other species. This is not to suggest that the tradition did not find ways to undermine the *hurma* principle or the dual-property paradigm, for it did. Nonetheless, the mere existence and centrality of this principle helped curb this tendency.

It should also be pointed out that the liberationist position has been challenged by several animal rights thinkers. Sue Donaldson and Will Kymlicka describe it as a “strategic disaster” for the animal rights movement and highlight the ways the liberationist approach has been as dismissive of animals' interests as the approaches it claims to oppose.¹⁰ Alasdair Cochrane argues that “if a properly nuanced understanding of what it means to possess rights is accepted, and if a properly nuanced understanding of the interests of animals is adopted, then a theory of animal rights without liberation logically follows.”¹¹ This shows that in theory, at least, the arrangement implicit in the dual-property paradigm can be consistent with some animal rights perspectives.

Concrete dimension

⁸Gary Francione and Robert Garner, *The Animal Rights Debate: Abolition or Regulation* (New York: Columbia University Press, 2010), x, 4.

⁹ Gary Francione, *Introduction to Animal Rights: Your Child or the Dog?* (Philadelphia: Temple University Press, 2000), chaps 1 & 3.

¹⁰ Sue Donaldson and Will Kymlicka, *Zoopolis: A Political Theory of Animal Rights* (Oxford: Oxford University Press, 2011), 79.

¹¹ Alasdair Cochrane, *Animal Rights Without Liberation: Applied Ethics and Human Obligations* (New York: Columbia University Press), 7.

Donaldson and Kymlicka advocate a stronger version of animal rights, what they call “animals’ inviolable rights.” Unlike some interpretations of the more common phrase “animal rights,” the principle of “animals’ inviolable rights,” the authors explain, implies that “an individual’s most basic interest *cannot be sacrificed* for the greater good of others.”¹² The authors also draw a distinction between “legitimate use” and “illegitimate exploitation” of animals¹³ and consider “a mutually beneficial symbiosis” between humans and domestic animals not only a morally valid possibility, but even a moral requirement.¹⁴ This is precisely how the pro-animal ethic in Islam perceives humans’ relations with domestic animals if the permissibility of killing for food is not counted.

Donaldson and Kymlicka identify five areas where the law should regulate humans’ relation with domestic animals. These are: duties of protection, use of animal products, use of animal labor, medical care/intervention, and sex and reproduction. Islamic sources cover these and other areas, but due to space limitations I will discuss only two points, namely, duties of care and protection and animal products.

Duties of care and protection

All Sunni schools of law require owners to provide adequate care and protection for their domestic animals, but whereas Shāfi‘īs, Ḥanbalīs, and Mālikīs treat this requirement as a legal obligation, Ḥanafīs view it merely as a religious responsibility entailing repercussions only in the afterlife. This indicates that, similar to the rights position, the three former schools view owners’ duties of care and protection as “a set of entitlements and correlative duties that can usually be demanded and coercively enforced by the state”, to use Cochrane’s words.¹⁵ This points to an important similarity between the pro-animal Islamic ethic and rights theory. It should however be added that this legal dimension is further reinforced by the religious one, since all schools agree that failure to respect other animals’ *ḥurma* exposes one to afterlife accountability.

¹² Donaldson and Kymlicka, *Zoopolis*, 19 (emphasis added).

¹³ *Ibid.*, 134

¹⁴ *Ibid.*, 89.

¹⁵ Cochrane, “Life, Liberty, and the Pursuit of Happiness? Specifying the Rights of Animals” in *Ethics of Killing Animals*, edited by Tatjana Visak and Robert Garner (Oxford: Oxford University Press, 2015), 201.

Adequate care includes provision of sufficient and adequate food and water and protection from danger. This ruling has many concrete implications. For example, if available pastures do not provide enough feed for grazing animals, owners should supplement their diet with fodder.¹⁶ Animals that are accustomed to one method of feeding (either grazing or fodder) should not be switched to the other if they resist it.¹⁷ Shepherds are required to select appropriate pastures for their flocks, keep them away from harmful plants, take them to water sources, and protect them from predators and from one another.¹⁸

Schools that categorize these obligations as legal treat most failures to meet them as offenses requiring state intervention. The Mālikī scholar Aḥmad al-Ṣāwī (d. 1241/1825) states for example that someone who is unwilling or unable to provide for her animals is to be forced to sell or give them away. If no one is interested in acquiring the animals (due to old age or blindness, for example), the government should provide for them using public funds. Some authors stress that the animals should not be released as this may expose them to predators.¹⁹ When failure to provide for animals is due to negligence, the person should first be admonished to take better care of them, but if she persists the animals should be forcibly taken away from her.²⁰ Jurists state also that in case of dire need it is permissible to extort feed for one's animals to save their lives.²¹ These obligations extend even to a weak animal that accidentally reaches one's house. In this situation the person is required to provide for the animal because she cannot fetch her own sustenance.²²

Animal Products

If we leave aside the question of flesh consumption, a comparison between the pro-animal Islamic and the non-liberationist animal rights ethics reveals important

¹⁶ Al-Juwaynī, *Nihāyat al-maṭlab*, 15:576.

¹⁷ Al-Māwardī, *al-Ḥāwī*, 11:531.

¹⁸ Bahūtī, *Kashshāf al-qinā' 'an matn al-iqnā'* (Beirut: Dār al-Kutub al-ʿIlmiyya, 1997), 4:43.

¹⁹ Abū Zakariyā al-Nuwawī, *Rawḍat al-Ṭālibīn wa-ʿumdat al-muftīn* (Beirut: Al-Maktab al-Islāmī, 1991), 9:120.

²⁰ Aḥmad al-Ṣāwī, *Bulghat al-sālik li-aqrab al-masālik* (Beirut: Dār al-Kutub al-ʿIlmiyya, 1995), 2:490.

²¹ Al-Juwaynī, *Nihāyat al-maṭlab*, 15:576.

²² Muḥammad al-Dasūqī, *Ḥāshiyat al-Dasūqī 'alā al-sharḥ al-kabīr* (ʿĪsā al-Bābī al-Ḥalabī, n.p., n.d.), 2:522.

similarities. Ethicists from both camps agree for example that shearing wool is important not only because it benefits humans, but primarily because sheep's health and comfort depend on it.²³ But since sheering can harm sheep if performed carelessly, both parties stress that it be done with care. Non-liberationist ethicists stress the importance of keeping the animals calm and to make sure that they are not nicked by the shear.²⁴ Muslim jurists proscribe the shearer from plucking or shaving the wool or cutting it too close to the skin to avoid inflicting pain on the animal.²⁵

Similarly, since cattle and sheep typically produce more milk than is needed for the nourishment of their offspring, ethicists from both camps see no harm in humans' use of this product provided that they limit their consumption to the surplus. Muslim jurists point out that because the milk belongs to the calf/lamb, to exceed this limitation would be a violation of the small animal's *hurma*.²⁶ It is also impermissible to force a calf/lamb to switch to the milk of another lactating animal (other than its mother) if the small animal resists the swap. Jurists also stipulate that if the mother's milk is insufficient for her offspring owners must purchase more of it to supplement the small animal's diet. Before milking an animal, milkers are instructed to make sure that their fingernails are clipped and to avoid excessive milking or leaving too much milk in the udders as all these states are deemed hurtful to the animal. Therefore, the permissibility of milk consumption is contingent on the requirement that neither the small animal nor her mother suffer the tiniest consequences in the process. The arrangement is also beneficial for domestic animals as it entitles them to claims that are not available to other nonhumans, such as the supplementation of the small animal's diet in the case of need.

While differing on the issue of killing, the pro-animal and non-liberationist ethics still agree that using animal products posthumously is ethically consistent. Cochrane, for example sees no problem with raising animals for their corpses "provided that we do not

²³ Donaldson and Kymlicka, *Zoopolis*, 136; Ibn Abī l-'lzz, *Al-Tanbīh 'an mushkilāt al-hidāya* (Riyadh: Maktabat al-Rushd Nāshirūn, 2003),

²⁴ Donaldson and Kymlicka, *Zoopolis*, 136.

²⁵ Al-Shirbīnī, *Mughnī l-muhtāj ilā ma'rifat ma'ānī alfāz al-minhāj* (Dār al-Kutub al-'Ilmiyya, 1994), 5:208; Sulaymān ibn Muḥammad al-Bujayrimī, *Hāshiyat al-Khaṭīb* (Beirut: Dār al-Kutub al-'Ilmiyya, 1996), 4:448: (*wa-yahrumu jazz al-ṣūf, ay natfuhu, bi-khilāf jazzihi bi-l-miqāṣṣ*).

²⁶ Al-Shirbīnī, *Mughnī al-muhtāj*, 5:208.

kill them or cause them to suffer.”²⁷ The pro-animal ethic in Islam allows killing only for food, but once an animal is killed one is allowed to make use of all its body parts, including its hide. Animals whose flesh is not permissible for food may not be killed for any other part. Thus, the pro-animal Islamic ethic disallows the use of and trade in ivory and predators’ furs and hides, among other items.

Right to life

The forgoing discussion gives at least an idea about the pro-animal Islamic ethic’s insistence on safeguarding the interests of animals, in view of which the sanction to hunt and kill for food would seem rather paradoxical. It should however be pointed out that even in this area the pro-animal ethic imposes further restrictions, as it stresses that the killing be done only with the purpose of consuming the flesh, not, for example, of avoiding a financial loss or acquiring another benefit. Therefore, if a sheep swallows a precious stone the value of which exceeds the animal’s market value, the owner may not kill it to recover the stone although it is known that the animal’s flesh will most likely end up being consumed. According to this ethic the principle of *hurma* precludes that the animal’s life be sacrificed for anything other than food, thus demanding that the *primary intention* for killing be the consumption of the animal’s flesh.

It should also be pointed out that even though Muslims generally believe that humans are superior to other animals, many theologians see no correlation between the permissibility of killing for food and status considerations. These theologians would in fact readily agree with Francione that the differences between the minds of humans and the minds of nonhumans cannot plausibly justify trumping the interests of the former for the sake of the latter, as many welfarists claim.²⁸ Many theologians also grant that the sanction to kill for food is inconsistent with intuitive expectations for justice. The sanction to kill for food is derived from scriptural/divine authorization, not any human entitlement. Discussions that seek to rationalize this seeming paradox often convey a surprisingly egalitarian outlook. The Mu‘tazilī Al-Qāḍī ‘Abd al-Jabbār (d. 415/1024), for example,

²⁷ Cochrane, *Animal Rights Without Liberation*, 87.

²⁸ Francione, *Animal Rights Debate*, 15.

argues that killing is a test that God has imposed on animals in the same way He has imposed tests on humans. Consequently, animals who are killed for food will be recompensed, just like Muslims who endure God's tests patiently.²⁹

These restrictions and insights would hardly be meaningful from the standpoint of most animal rights advocates, for whom moral vegetarianism remains the hallmark of animal rights advocacy. However, some animal advocates who claim to have practiced vegetarianism for decades contend that their desire to take seriously *all life*, instead of the lives of only those animals that look more like us, led them to renounce vegetarianism not only as morally inconsistent, but even as an *impossibility*. Lierre Keith argues that profound vegetarianism should account not only for “what’s dead on your plate”, but for “everything that died in the process, everything that was killed to get that food onto your plate.”³⁰ Looking at this bigger picture, one discovers that killing is inevitable: “for someone to live,” she contends, “someone else has to die.”³¹

Many authors also find problematic the dominant tendency in animal rights discourse to include only certain animal categories, those large enough to grab our attention or those sharing enough features with us to deserve that we include them in our moral circle. Considering that sentience is the feature that is invoked the most to justify the extension of rights to nonhuman animals, the propensity among many animal rights scholars to include only some animals in our moral circle indeed appears perplexing. As James Rachel points out, “the tendency of research is to extend the number of animals that might be able to suffer, not decrease it.”³² Andrew Smith points out how attempts to expand the circle so as to include more creatures into our moral sphere is fraught with anthropocentric vestiges. It not only presumes that we are at the center of the circle, but also that “It is our job, our duty, to confer moral standing.”³³ Smith highlights also that in

²⁹ Margaretha Heemskerk, *Suffering in the Mu‘tazilite Theology: ‘Abd al-Jabbār’s Teaching on Pain and Divine Justice* (Leiden: Brill, 2000), 167.

³⁰ Lierre Keith, *The Myth of Vegetarianism: Food, Justice, and Sustainability* (Crescent City, CA: Flashpoint Press, 2009), 3.

³¹ Keith, 5.

³² James Rachels, “The Basic Argument for Vegetarianism,” in *Food for Thought: The Debate over Eating Meat*, edited by Steve F. Sapontzis (Amherst, NY: Prometheus Books, 2004), 78.

³³ Andrew Smith, *A Critique of the Moral Defense of Vegetarianism* (London: Palgrave Macmillan, 2016), 39-40.

many settings vegetarian and vegan diets are dependent on the very ecocidal economy that the animal rights movement seeks to dismantle.

By citing these views, however, my aim is not to build a case against vegetarianism, as this remains beyond the scope of this paper. My aim is simply to show that well-reasoned objections to vegetarianism have been raised from *within* the animal rights movement. If in addition to this one considers how tuned the pro-animal ethic is to animals' interests, and how several theologians grappled with the sanction to kill for food, I would argue that rather than being a sign of "ideological dominance," as Kecia Ali contends, the sanction to kill for food in this ethic seems more like a sign of submission.³⁴

³⁴ Kecia Ali, 280.

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The Rabbinic Rejection of Mercy as Justification for Animal Slaughter

Those who study the texts and contexts of rabbinic food laws regularly encounter a theologically, culturally, politically, and economically fraught tension: namely, the yawning gulf between perception and reality. According to popular perception, special cows are lovingly raised in special verdant fields on a special diet; they are treated uniquely and compassionately; each night, a rabbi softly reads them passages from Leviticus; and then, one day, with the utmost compassion, devotion, and divine grace, they are slaughtered in the quickest, least painful way possible. Unfortunately, when we enter the modern kosher slaughterhouse, this perception is shattered against the cold, hard wall of reality.¹ The image confronted in the modern kosher slaughterhouse is one that, save for a few variables (some of which might even result in *more* painful slaughter), looks remarkably similar to a non-kosher slaughterhouse. Despite an industry desire to market itself as a more hygienic and compassionate product, the production of kosher meat fails to live up to its public perception.²

Turning from the modern slaughterhouse to the ancient study house, we encounter an explanation for this disconnect: despite modern efforts to claim that the origin of biblical

¹ For an example of a recent controversy in Postville, Iowa in which this disconnect was brought to light, see the discussion in Aaron S. Gross, *The Question of the Animal and Religion: Theoretical Stakes, Practical Implications* (New York: Columbia University Press, 2015), esp. 26-59.

² For a popular discussion of the multi-billion dollar modern kosher food industry, see Sue Fishkoff, *Kosher Nation: Why More and More of America's Food Answers to a Higher Authority* (New York: Schocken Books, 2010). For a deeply flawed unabashed apologetic for the industry, see Timothy D. Lytton, *Kosher: Private Regulation in the Age of Industrial Food* (Cambridge: Harvard University Press, 2013).

and rabbinic slaughter rules are based on compassion,³ there is no unambiguous data to support these assertions. Further, there is strong evidence that suggests that mercy was explicitly rejected as a rationale. And it is these ancient texts that help to shape the reality of the modern kosher industry.

Before turning to a few representative ancient texts, I need to define two terms. First, the rabbinic corpus to which I will confine myself is largely composed between the first and seventh centuries CE in Palestine and Babylonia.⁴ The authors of these documents, referred to as rabbis, understood themselves to be divinely authorized interpreters of law. They believed that, during Revelation at Mount Sinai, God gave Moses (whom they called “Moses our Rabbi”) two Torahs: the Written Torah (i.e., the Hebrew Bible) and the Oral Torah (i.e., all subsequent rabbinic interpretation). Every interpretive act by an authorized rabbi is therefore an act of ongoing Revelation. Second, I use the term *kashrut* (כשרות) to refer to the rabbinic system of food regulations. While the Hebrew Bible has a few basic rules, rabbinic interpreters expand this to include a whole variety of novel concepts, from requirements to salt meat after slaughter to commensality restrictions. Though the word “kosher” (כשר; meaning “fit/appropriate”; *kashrut* is its abstract form in Hebrew) appears in the Hebrew Bible, it never refers to food; thus, when I use this term I am indicated that the system is based on rabbinic conceptions of proper food practices.⁵

³ In modernity, compassion and hygiene are two common rationales offered for the kosher laws. On the historical, political, and cultural background for offering such explanations, see e.g., Robin Judd, *Contested Rituals: Circumcision, Kosher Butchering, and Jewish Political Life in Germany, 1843-1933* (Ithaca: Cornell University Press, 2007); and Mitchell B. Hart, *The Healthy Jew: The Symbiosis of Judaism and Modern Medicine* (New York: Cambridge University Press, 2007).

⁴ For an accessible introduction, see Charlotte Elisheva Fonrobert and Martin S. Jaffee, eds., *The Cambridge Companion to the Talmud and Rabbinic Literature* (New York: Cambridge University Press, 2007).

⁵ On the development of this system, see Jordan D. Rosenblum, *Food and Identity in Early Rabbinic Judaism* (New York: Cambridge University Press, 2010); and on ancient rationalizations for biblical food laws, see Jordan D. Rosenblum, *The Jewish Dietary Laws in the Ancient World* (New York: Cambridge University Press, forthcoming). Much of my argument in this essay draws on the latter volume.

With this brief background, we are ready to turn to a few key texts. As I have already noted, despite popular perception, neither the biblical nor rabbinic evidence supports mercy as a justification for kosher animal slaughter. Rejecting mercy as a rationale (often implicitly but on a few occasions quite explicitly) is part of a larger rabbinic trend recently detected by Christine Hayes: namely, rejecting a rational basis for divine law and, instead, asserting that the Law must be followed simply because it is divine decree.⁶ Biblical laws in general, and biblical food laws in particular, must be followed not because they make logical or empirical sense, but rather because they are divine commandments.

I will start my discussion of rabbinic rejection of mercy as a justification for animal slaughter with a tradition that has received much attention. According to a rabbinic tradition that appears in multiple sources,⁷ Rabbi Judah the Patriarch (the editor of the Mishnah, popularly known simply as “Rabbi”) tells a terrified calf on its way to the slaughter, who is crying out for Rabbi to save him, that there is nothing that he can do, since this is the very reason that the calf was created. For his apparent lack of compassion, Rabbi is afflicted with painful maladies, which are only healed once he shows compassion for other animals by saving their lives.⁸ While some scholars recently have tried to read this as a key exemplar of animal ethics and to construct a larger theology based upon this tradition,⁹ I wish instead to

⁶ See Christine Hayes, *What’s Divine About Divine Law?: Early Perspectives* (Princeton: Princeton University Press, 2015).

⁷ See *y. Ketubbot* 12:3, 35a; *Genesis Rabbah* 33:3; *b. Bava Metz’i’a* 85a. In this paper, I will not address more technical text-critical and linguistic issues. I treat some of them in my forthcoming book, *The Jewish Dietary Laws in the Ancient World*. For further discussion, also see Gross, *Question of the Animal*, 5, 164-171; and Shamma Friedman, “Literary Development and Historicity in the Aggadic Narrative of the Babylonian Talmud: A Study Based Upon B.M. 83b-86a,” in *Community and Culture: Essays in Jewish Studies in Honor of the Ninetieth Anniversary of the Founding of Gratz College, 1895-1985* (Ardmore, PA: Seth Press, 1987), 67-80.

⁸ Both the maladies and the acts of compassion that heal him vary depending on the variant text. Also see *b. Berakbot* 17a, which (explicitly modeling the mood of the book of Job) states that the fate of a human is death, and the fate of an animal is slaughter. For a medieval text that asserts that animals chose this fate, see the discussion in Joel Hecker, *Mystical Bodies, Mystical Meals: Eating and Embodiment in Medieval Kabbalah* (Detroit: Wayne State University Press, 2005), 95-97.

⁹ See especially Gross, *Question of the Animal*, 5, 164-171. Gross cites an unpublished paper by Julia Watts Belser, which she kindly shared with me as I prepared this essay.

highlight what this tradition lacks: namely, it does not state that kosher animal slaughter is itself an action justified on the grounds of mercy.

If kosher animal slaughter is not based on mercy, then why does Rabbi suffer? Rabbi suffers because his words, while consistent with rabbinic thought, were deemed unnecessary to utter to an animal literally being led to the slaughter. Just because the actual act of slaughter is not an act of mercy, does not mean that one should act thusly. In this way, Rabbi did not act mercifully.¹⁰ But Rabbi's act was not part of the rabbinic slaughtering procedure, which is why it *could* be judged on ethical grounds. Slaughter, on the other hand, is not based on reason; hence, according to the rabbis, it *cannot* be subjected to such ethical criteria.

If not based on compassion, then why do such rules exist? One rationale for the entire rabbinic system of animal slaughter is its effect on humanity. According to *Genesis Rabbah* 44:1, an exegetical commentary on the book of Genesis:

- [A] Rav said: The commandments were only given in order to refine humanity by them.
 [B] For what does the Holy One, Blessed be He, care whether one slaughters [an animal by cutting] at the throat or whether one slaughters [an animal by cutting] at the back of the neck?
 [C] [Rather,] it is intended to refine humanity.¹¹

This argument occurs in the midst of an exegesis on a biblical verse in which God's word is described as refined (צְרוּפָה).¹² Thus, as the refining process purifies metals, God's commandments serve to refine (לְצַרֹּף) humanity. Moving from the more general to the particular, the text here then singles out a specific set of commandments: the proper manner in which to slaughter an animal. Intriguingly, this text asserts that God really does not care

¹⁰ As is explicit in the wording of the version on *b. Bava Metz'ia* 85a. Unless otherwise mentioned, all translations are my own.

¹¹ Text based on the critical edition of Theodor and Albeck, pp. 424-425. (The section headings are not in the text but are provided in my translation for ease of reference and to aid in reading the text by breaking into smaller units.) I discuss relevant textual issues in *Jewish Dietary Laws*. On how this text is deployed in later discussions of Jewish ethics, see Gross, *Question of the Animal*, 215 n. 2.

¹² The verse is 2 Sam 22:31.

about the proper method, but that the required actions function as a means of refinement for the human agents who perform these practices.¹³ Here, it is worth quoting Christine Hayes' argument in regard to this text:

The commandment [of animal slaughter] is chosen precisely because of its arbitrary nature.... If the commandment itself is devoid of meaningful content, then it cannot be the *substance* of the commandment that refines the human. Rather, it is the very act of performing the commandment in obedience to God's will that refines the human actor. In other words, while the law is said to have a general rationale (refinement of Israel), that rationale is not intrinsic. It does not flow from the specific substance and content of the law; it is a purely extrinsic utility.... Indeed, it is precisely *because* these prescriptive divine commands *lack* intrinsic reason and intrinsic utility that they generate an obedience that refines humans and conduces to virtue.¹⁴

Kosher animal slaughter does have an ethical impact, but not in regard to the animal.

Rabbinic animal slaughter therefore is not concerned with the one *slaughtered*, but rather with the one *slaughtering*.¹⁵

Thus far, I have argued that rabbinic animal slaughter regulations are not justified on the grounds of mercy. I now turn to traditions that make this assertion quite explicit. For example, according to Deuteronomy 22:6-7:

If you encounter a bird's nest before you on the road, in any tree or on the ground, with chicks or eggs and the mother sitting on the chicks or on the eggs, do not take the mother along with her young. Send the mother away, and take only the young, in order that it may go well for you and you may prolong your days.

Though some commentators have argued that this biblical legislation is based in mercy, Deuteronomy makes no such claim.¹⁶ The rabbis take up this argument and, connecting it

¹³ The question of God's/gods' desire for ritual action also appears in ancient discussions of the basis for sacrifice. In general, see Daniel C. Ullucci, *The Christian Rejection of Animal Sacrifice* (New York: Oxford University Press, 2012).

¹⁴ Hayes, *What's Divine About Divine Law?*, 258, original emphasis.

¹⁵ This concern with the slaughterer is also reflected in rabbinic discussions about limiting meat consumption. See e.g., *b. Hullin* 84a.

¹⁶ Further, there are logical issues with such an argument; for discussion, see Jacob Milgrom, *Leviticus 17-22: A New Translation with Introduction and Commentary*, AB 3A (New Haven: Yale University Press, 2008 [1964]), 1884;

with another biblical slaughter regulation, assert strongly that mercy should not be considered the basis for this divine decree.

[A] It is taught: “The one who says [when leading communal prayer]: ‘May your mercies extend to a bird’s nest’...they silence him....”¹⁷...

[B] R. Yose b. R. Bun said: It is not good [to suggest] that the commandments are based on the merciful nature of the Holy One, Blessed be He.

[C] [Thus,] those who translate [the Hebrew verse in Leviticus 22:28, which reads, “However, no animal from the herd or from the flock shall be slaughtered on the same day as its young” into Aramaic as follows:]

[D] “My people, children of Israel, just as I am merciful in heaven, so too should you be merciful on earth.

[E] [For this reason,] a cow or an ewe shall not be slaughtered on the same day as its young” [the translators] are not doing good,¹⁸ because [in doing so, they suggest] that the commandments are based on the merciful nature of the Holy One, Blessed be He.¹⁹

The concern in this text is that one leading communal prayer would insert wording/ (mis)translate biblical texts and, as a result, lead an unsuspecting member of the (human) flock to incorrectly assume that these biblical rules are based on God’s compassion and not solely on God’s command. While a common rabbinic name for God is “The Merciful One” (רחמנא), these animal slaughter regulations are not to be understood as deriving from God’s merciful nature. Again, it is worth citing Christine Hayes, who observes that:

What is striking about this teaching is that it too denies a rationale to a biblical law that might otherwise be understood—quite easily and naturally—as arising from moral considerations. To ascribe a moral rationale or purpose to this law is portrayed not merely as misguided or unnecessary but wrong—divine law must be understood and affirmed first and foremost as pure fiat that attests to the sovereignty of its author.²⁰

and Jeffrey H. Tigay, *The JPS Torah Commentary: Deuteronomy* (Philadelphia: Jewish Publication Society, 1996), 201.

¹⁷ Quoting *m. Berakhot* 5:3 (cp. *m. Megillah* 4:9).

¹⁸ I use this more literal rendering to convey the fact that it is not just an improper practice, but also a contradiction of the ethical sense of “good” when a translator renders the verse as such.

¹⁹ *y. Berakhot* 5:3, 9c (ed. Schäfer and Becker 1/1-2:152-153; cp. *y. Megillah* 4:10, 75c; *b. Berakhot* 33b; *b. Megillah* 25a). I discuss various text-critical issues in *Jewish Dietary Laws*.

²⁰ Hayes, *What’s Divine About Divine Law*, 260.

Biblical and rabbinic animal slaughter regulations are justified on neither ethical nor rational bases; rather, they are justified on the basis of Revelation: God commanded them and, as divine decrees, they must be followed.

When examining rabbinic texts on kosher animal slaughter, therefore, a pattern emerges: proper procedure is not justified on ethical grounds of mercy for animals. Such a conclusion only seems surprising because of later rhetoric that presumes compassion is the motivating rationale for the *kashrut* system. Despite this popular public perception, Orthodox-controlled modern kosher-certification agencies and their supporters clearly articulate that such ethical justifications are not the basis for *kashrut*.²¹ Rather, according to one ultra-Orthodox guide to the kosher laws:

Throughout the ages Torah observant Jews followed the dictates of Torah as a matter of basic faith. That is as it should be. Our adherence to the Torah and its laws cannot be dependent upon our finding them satisfactory.... One who puts the commandments of Hashem [literally “The Name,” referring to God] under scrutiny before unreservedly assuming their fulfillment is essentially not accepting the dictates of Hashem but rather those of his own intellect.... Acceptance of the Torah entails subordination to its laws regardless of whether or not we can intellectually comprehend their logic or emotionally identify with them.²²

The laws must be accepted. Further, many Orthodox modern authorities argue that, if *kashrut* is about ethics, then it can be discarded when ethics change. On the one hand, this is a polemic especially against secular and especially Reform Jewish interpretations over the last

²¹ For references and discussion, see Gross, *Question of the Animal*, 16-25. A recent online petition by the Orthodox Jewish social justice group Uri L'Tzedek calling for the introduction of certain ethical standards by kosher certification agencies explicitly acknowledges this disconnect (while at the same seeking to close this gap): “Laws relating to ethical matters, such as the just treatment of workers, the compassionate treatment of animals, and dealing in business with integrity, while distinct from the laws of kashrut, are mandated by halakha [rabbinic law] and consequential to all God-fearing Jews” (<http://www.thepetitionsite.com/801/404/187/kosher-certifiers-include-transparent-ethics-in-your-kosher-certification-standards/#sign> ; last accessed on April 7, 2016).

²² Binyomin Frost, *The Laws of Kashrus: A Comprehensive Exposition of Their Underlying Conceptions and Applications* (Brooklyn: Mesorah Publications, 2010 [1993]), 21.

150 years.²³ On the other hand, this is a polemic that misrecognizes the extent to which the kosher system has changed over centuries (and, indeed, millennia!).²⁴

I introduce this modern evidence to show the impact over the *long durée* of the ancient rabbinic data. Rabbinic rejection of reason as a rationale for divine revelation led them to reject mercy as a justification for *kashrut*. Thus, kosher animal slaughter is not an act of mercy, but an act of obedience. While some scholars and theologians have tried to introduce ethical notions into this discourse, such practices face a structural issue: they must perform acts of eisegesis and not exegesis; they must read *into* the texts and not *out of* them. While I will confess to being sympathetic to this agenda on a personal level, as a scholar of rabbinic literature I cannot ignore this disconnect between ancient text and modern context.

So where do we go from here? In a conference such as this, which explicitly seeks to foster comparative conversation about the complicated intersections of animals, ethics, and law, I hope that my evidence throws into relief the tension between data and desire: on the one hand, many of us are personally committed to promoting, creating, and enacting ethical practices in regard to animals; on the other hand, we are also scholars whose disciplinary training forces us to approach material that challenges and fails to conform to our personal ethics. We cannot sweep this inconvenient evidence under the proverbial rug.

That being said, I am not suggesting that the ancient rabbis were a group of heartless, animal abusers.²⁵ Rather, I am arguing that, for the ancient rabbis, animal slaughter was a

²³ Reform Jews have disregarded *kashrut*, but also embraced it in new and interesting ways. For discussion, see e.g., Lance J. Sussman, "The Myth of the Trefa Banquet: American Culinary Culture and the Radicalization of Food Policy in American Reform Judaism," *American Jewish Archives Journal* 57/1-2 (2005): 29-52; Mary L. Zamore, ed., *The Sacred Table: Creating a Jewish Food Ethic*, CCAR Challenge and Change Series (New York: CCAR Press, 2011).

²⁴ In general, see David C. Kraemer, *Jewish Eating and Identity Through the Ages* (New York: Routledge, 2009 [2007]),

²⁵ The same comment applies to modern rabbis. I am not seeking to offer a polemic against modern rabbinic opinions. Rather, I wish to highlight how the ancient rabbinic desire to exclude mercy as a justification for

means of engaging in practices that demonstrated their fidelity to divine fiat. Their actions were based on a larger ethic of submission to divine will. That is not to suggest that modern interpreters cannot layer on additional meaning. In doing so, however, modern interpreters cannot erase or obscure the fact that the laws themselves explicitly reject some of the very claims that modern interpreters wish to make.

By way of conclusion, I will offer one final ancient example. On three separate occasions in the Hebrew Bible, the ancient Israelites are commanded: “Do not cook a kid in its mother’s milk.”²⁶ For Philo, a Jewish author steeped in Greek philosophical traditions, this unjustified biblical law is justified on the basis of logic:

...it was grossly improper that the substance which fed the living animal should be used to season and flavour the same after its death, and that while nature provided for its conservation by creating the stream of milk and ordaining that it should pass through the mother’s breasts as through conduits, the license of man should rise to such a height as to misuse what had sustained its life to destroy also the body which remains in existence. If indeed anyone thinks good to boil flesh in milk, let him do so without cruelty and keeping clear of impiety. Everywhere there are herds of cattle innumerable, which are milked everyday by cowherds, goat-herds and shepherds, whose chief source of income as cattle rearers is milk, sometimes liquid and sometimes condensed and coagulated into cheese; and since milk is so abundant, the person who boils the flesh of lambs or kids or any other young animal in their mother’s milk, shows himself cruelly brutal in character and gelded of compassion, that most vital of emotions and most nearly akin to the rational soul.²⁷

According to Philo, cooking a baby animal in milk from its own mother’s breasts is cruel, impious, brutal, and uncompassionate. God’s command is therefore a lesson ethics. Further,

animal slaughter has modern consequences and, as scholars interested in animal studies, we must first understand this phenomenon before we can analyze its historical reverberations.

²⁶ Exodus 23:19; 34:26; and Deuteronomy 14:21. My argument in this final section draws on Kraemer, *Jewish Eating and Identity*, esp. 35-54; and Jordan D. Rosenblum, “Thou Shalt Not Cook a Bird in its Mother’s Milk?: Theorizing the Evolution of a Rabbinic Regulation,” in *Religious Studies and Rabbis*, ed. Elizabeth Shanks Alexander and Beth A. Berkowitz (forthcoming).

²⁷ *Virtues* 142-144. Translation from: F.H. Colson, *Philo: In Ten Volumes (and Two Supplementary Volumes)*; 12 vols.; Loeb Classical Library (Cambridge: Harvard University Press, 1984), 8:249-251.

Philo's interpretation is that the thrice-repeated injunction is easily followed: so long as the milk and the meat come from non-related beasts, then one is acting mercifully.

Redacted about 150 years after Philo's death, the Mishnah offers a radically different reading of this biblical law: "All meat is forbidden to be cooked with milk, except for the meat of fish and locusts."²⁸ According to the rabbis, this commandment is general, not particular, meaning that it applies to *all* meat and *all* milk, and not just to meat cooked in *its own mother's* milk. While the rabbis will go on to discuss various nuances of the law, including whether it applies to fowl (which produce no milk; eventually the answer to this question is that, indeed, it does), they do not offer a rationale based on mercy. Their approach here fits with the general trend that I argue throughout: namely, that this law is a non-rational divine fiat, not – as Philo, influenced by Greek philosophical values, argues – that this is a rational law justified on the grounds of mercy.

Such an approach also explains a seeming anomaly that people often wonder: why is it kosher to eat fowl with egg, but not fowl with milk? Should not the egg also be prohibited? However, this question misses the point: for the rabbis, these laws are not based on mercy, they are based on divine command, which requires *prima facie* obedience. And since they have concluded that the law applies to fowl and milk, that mixture is banned. No such prohibition exists for mixing fowl and eggs, so it is allowed. It is the faulty premise of this question – that the biblical commandment is premised on being merciful – that leads one to inquire about a fowl/egg mixture; however, were one to begin from the rabbinic premise, that this law is not a logical law premised on mercy, then the very question would never come to mind.

²⁸ *m. Hullin* 8:1 (ed. Albeck 5:137).

VULNERABILITY & TRANSCENDENCE: THE HUMAN-ANIMAL DIVIDE WITHIN JAINISM

Anne Vallely

Preamble:

In August of 2015 the High Court of Rajasthan upheld a litigation, filed in 2006, to have the Jain practice of voluntary death (sallêkhâna) declared a form suicide. Jains throughout India and abroad quickly and massively mobilized to condemn the ruling, insisting that it was based on ignorance of the Jain tradition. They argued that whereas suicide marks a submission to the body and its passions (and is thereby a "foolish death"), the Jain ritual of sallêkhâna is its inverse: it marks the dispassionate triumph of the soul over the body, is the ultimate expression of nonviolence, and is the most humane, and human, of all acts. Within the same month (August 31) the Supreme Court of India ruled in the Jains' favour, and restored the practice of sallêkhâna to legality. The self-willed, fully conscious death is an ideal in the Jain tradition and treated as the ultimate expression of human spiritual achievement. Its centrality in the Jain understanding of the ideal human life makes it a fertile lens through which to explore "the animal" in Jain thought.

VIGNETTE

Prince Nemi Kumar was on his way to be married. The gilded carriage in which he sat weaved slowly toward the palace where he would soon meet his future bride. A royal retinue followed, extending back as far as the eye could see. It seemed as if the entire kingdom had come out to get a glimpse of the future king, and to share in the joy of the festivities. The path on which the chariot travelled had been cleared of debris and its many potholes had been repaired. Every inch of its route was decorated with magnificent magnolias, beautifying and making fragrant the Prince's journey. The royal band that accompanied the chariot, played joyful tunes, causing the villagers to dance

with joy. Amidst the euphoria, the prince heard a sound that pierced through the mirthful cacophony of flutes and drums; it was a melancholic sound he had never before heard. His companions claimed to hear nothing beyond the happy clamour of the wedding party. But the sorrowful sounds grew louder and they seemed to be speaking directly to the Prince's innermost self, causing him great anxiety. He called to his charioteer to halt, and he stepped out from under the chariot's decorated canopy. The villagers rushed forward to gaze at the handsome prince, but he did not see them. Instead, what he saw shocked him: the path that led to the gates of the palace was lined with cages crammed full of animals - some pacing, some cowering in fear, others crying out in distress. The prince was speechless. When his eyes met those of the frightened animals, he could feel their pain as his own. Seeing the prince's anguish, his companion said, "Oh Prince, do not be troubled. These are just beasts for your wedding feast". The words struck him like a thunderbolt: in a flash, the suffering condition of existence, and the pointlessness of all worldly desires became clear to him. He demanded the animals be released and the carriage turned back. He would not marry. After returning home, he renounced worldly life and initiated himself as a mendicant. He began his life as an itinerant wanderer, dedicating himself to the path of nonviolence and eventually gaining enlightenment. From this time on, he became known as Bhagwan (Lord) Neminath, the 22nd Jina (prophet) of the Jain tradition.

PROBLEMATIC:

The story of Prince Nemi Kumar's renunciation of worldly life, and eventual enlightenment, is an ancient and beloved tale within the Jain community. It affirms the Jain teaching on the centrality of nonviolence for spiritual progress, commonly encapsulated in the aphorism "*ahimsa paramo dharma*" which glosses as "nonviolence is the supreme path/duty". But more than that, it provides us a glimpse into Jainism's distinctive ontology, and the tradition's understanding of human and animal subjectivities as participating in shared existential ground. Prince Nemi Kumar's spiritual awakening¹ did not emerge from study, meditation, or ethical reasoning; it did not arise from analytical argument or from any deployment of rational, conceptual

¹ which eventually leads him to liberation, referred to as "moksha" within Jainism.

thought which Western philosophy so celebrates —and where it typically locates human worth —instead, it came from a confrontation with suffering. Further still, it arose not from that of *human* suffering, such as that which initiated the Buddha’s awakening², but from the suffering of animals - in particular, from the anguished cries of caged animals destined for his wedding feast. Prince Nemi Kumar’s moral response and his subsequent enlightenment³ — a cosmic event of inestimable importance for Jains — was generated by the vulnerability that he *shared with animals*⁴. Compassion, not reason, was the decisive catalyst for Nemi Kumar’s liberation, and it arose not from a detached mind, but from a primordial vulnerability with beings who, like him, suffer and die.

Clearly, the category of the “animal” in Jain thought does not serve as the root antitype of the “human” *in the way it does* for philosophical, religious and common sense thought in the western tradition. Jainism is renowned for its intricate ethical code that extends far beyond the human, and its complex catalogue of beings, some so small as to be invisible to the human eye but who are nonetheless important players in the drama of life and liberation. The animal - or more accurately, the nonhuman - plays a role of immeasurable importance in Jainism, the degree to which is astonishing in comparison with most other traditions. Jainism's philosophy, ethics, social origin myths, rituals, every-day practices, creative cultural imaginings, and ascetic ideal are all inescapably grounded in an engagement with a world animated by sentient, conscious nonhuman others.

And yet despite all this, the Jain tradition does not deny the uniqueness of human subjectivity, nor does it do away with a human/animal binary — judged by Post humanism and (much of) Critical Animal Studies to be the

² Namely from three of Four Sights: illness, old age, and death

³ after which he is referred to as Lord Neminath

⁴ Unlike in the history of Western philosophy, where the body is conceived as “animal” and, as such, is treated as philosophically and theologically unimportant, in Jainism the sentient body is what makes *samyak darsan* (insight) possible. As such, the subjectivity of animal bodies is never denied in Jain thought.

scourge of the Western tradition⁵, and the source of the systematic and monstrous violence it inflicts on real animals — and on all who can be animalized⁶ (for instance, animalization is seen as a strategy at work underpinning of the social evils of racism, antisemitism, sexism, even ageism).

Despite Jainism's ethical inclusivism, it holds steadfast to the idea that human beings occupy a place of ontological privilege; a place that makes ethical reflection possible, and from which ultimate spiritual release is attained. The human capacity for self-transcendence is, for Jains, unique among all beings in the cosmos. Though nonhuman animals are held to be conscious interlocutors in the drama of life, they are not (except under rare circumstances⁷) conscious *of being conscious*. We alone are beings for whom *being* itself is a 'problem'; for whom our embodied existence can become an 'object' of reflection. What Heidegger calls "ex-sisting" (from ex-sistere, standing outside oneself) is, for Jains, that crucial capacity without which we cannot come to treat the body as 'other'. It is this capacity for self-transcendence that lies at the heart of Jainism's renowned ethic of nonviolence and its rigorous ascetic practices. It reaches its acme in the final act of voluntary death (*sallêkhâna*) where the body becomes a 'thing' to dispense with.

The voluntary, fully conscious ritual of *sallêkhâna* is celebrated in Jainism as the wisest of all deaths⁸. It marks an apotheosis of renunciation and nonviolence, as well as representing the *most* human of all human acts — since humans alone have the ability to voluntarily renounce their bodies and embrace death.

⁵ From Plato and Aristotle to Descartes, "humanity" is located in soul/reason/language and in opposition to the body/ "animality" .

⁶ And who cannot be animalized? Animalization is among the most common strategies of disparagement and social exclusion. This is a key idea behind Giorgio Agamben's concept of "anthropogenesis", which he argues is a violent mechanism which produces "the human" through a disavowal of "the animal".

⁷ And only in the presence of a Jina (prophet)

⁸ 47 less ideal types are catalogued.

That the Jain tradition evinces a robust anthropocentrism alongside an equally robust ethic of reverence for life seems paradoxical. But from the Jain perspective, in sharp contradistinction to much Post humanist and Critical Animal Studies, anthropocentrism and reverence-for-life go hand in hand. This essay endeavours to take this perspective seriously and explore its logic through an analysis of the Jain practice of *sallêkhâna*.

BACKGROUND TO THE JAIN TRADITION

Jains take their name, and inspiration, from the Jinas, those dispassionate bringers of Truth who escaped the cycle rebirth, attained spiritual perfection, and taught the path of freedom to others. "Jina" technically means "conqueror" and is an epithet used to describe those who prevailed over the passions and egotism or "I" that bind us to this world. The most recent of the Jinas was Mahavira, or "Great Hero", who lived about 2600 years ago in North East India. He was the last in a series of 24 such teachers, and his departure marked the end of the period of prophecy in our time cycle. Jinas will come again, but not for at least another 80 000 years⁹. The historical record confirms the existence of the ascetic teacher Mahavira, but he is no more real to Jains for this than are any of the other Jinas for whom historical evidence is slim or non-existent.¹⁰

Although many Jains focus their devotion on a particular Jina, collectively they serve as beacons of hope. Though venerated as "gods¹¹", they were born human, and knew the experience of suffering. But through nonviolence and compassion, they found a way to spiritual perfection, and now stand as symbols of triumph and possibility.

⁹ Jinas only appear during particular epochs (the 3rd and 4th of the declining cycle, and 9th and 10th of the inclining cycle).

¹⁰ Some evidence exists for the existence of Parshvanath, the 23rd Jina, said to have lived in the 9th bce.

¹¹ Incarnation as a divine being (god or goddess) is a temporary state resulting from auspicious karma acquired in a previous birth.

The early mendicant community, comprising of both nuns and monks, revolved around the charismatic leadership of the Jina Mahavira. The *nigganthis* ("unattached", "without knots") as they were then called, led austere lives centred on purifying their souls of the "knots" of karma through such ascetic practices as celibacy, vegetarianism and extensive fasting. These practices which aimed at spiritual purification, were also motivated by compassion born of a recognition of universal existential suffering. The teachings of the Jina, preserved today in the earliest scripture, the *Âcârânga Sûtra*, reveal a profound degree of sensitivity to the sufferings of embodied existence, and express a striking solidarity with all life. The *Âcârânga Sûtra* states:

. . . as sorrow or pain is not desirable to you, so it is to all which breath, exist, live or have any essence of life. To you and all, it is undesirable, and painful, and repugnant.

That which you consider worth destroying is (like) yourself. That which you consider worth disciplining is (like) yourself. That which you consider worth subjugating is (like) yourself. That which you consider worth killing is (like) yourself.

The result of actions by you has to be borne by you, so do not destroy anything. (in Bothra 1988: iv)

The extraordinary priority placed by Mahavira on nonviolence as the key to salvation distinguished his teachings from the other world renouncing traditions of ancient India. Avoiding harm to the panoply of living beings informed the austere ascetic practices by which Jain mendicants became renowned.

The path of detachment and compassion that the Jina prescribed purified the *jiva* (eternal, immaterial essence; soul) of all its deleterious karma, and paved the way for its eventual release. But it did more than guarantee eternal bliss at some future time; it also had the power to draw in an abundance of good karma, here and now, as a propitious byproduct of nonviolent detachment. This was an advantage missed by few. The ascetics, because of their practices, became spiritually powerful and, over and above the good karma that spontaneously flowed to them, the gods in the heavenly abodes showered them with boons as a way of honouring their

path. The householders who supported the mendicants benefited too: good karma mechanically flowed to them for their generosity. In time, a permanent householder path became established. Modelled on mendicancy, it adapted the mendicant vows to lay life. For example, whereas contemporary ascetics observe vows of total non-violence and celibacy, lay Jains prohibit all unnecessary violence and practice sexual restraint. The mendicant-led community grew and attracted the patronage of local emperors. Soon, the community expanded and flourished well beyond its place of origin in North East India.

About a thousand years after the death of Mahavira, Jainism eventually lost its royal patronage to such rival traditions as Buddhism and Shaivism, and its once powerful presence felt throughout India began to wane. Ultimately, it retreated to the north-west and south-west of India, a geographical settlement pattern that remains largely intact today. The early association of world renunciation with worldly boons has been retained. In India the Jains are as well known for their financial successes as they are for their naked mendicants, their magnificent temples and their dietary restrictions. What appears as paradoxical to many outsiders makes perfect sense to Jains themselves: the path of nonviolence is one of limitless bounty.

Reflections on the non-human have also always remained a central preoccupation for the Jain tradition. Despite a rhetoric of detachment and aloneness, and a focus on nonviolence and rigorous asceticism, Jains understand themselves to be utterly enmeshed in a tangle of conscious life. It is precisely because the cosmos is so congested with disorderly life that Jainism valorizes self-discipline, and glorifies those who embody it.

HUMAN BIRTH: THE ENVY OF THE COSMOS

Although the tradition of Jainism espouses a deep reverence for life, and focuses on the shared substrate of existence that underpins all living beings, ordinary Jains — householders and renouncers alike — routinely declare, “In

the absence of restraint, human beings are no better than animals”¹² — a maxim that would not sound out of place in the strongly anthropocentric Western philosophical and religious tradition, but begs clarification when found within a tradition that boasts ontological egalitarianism.

That Jainism combines a kind of ‘conditional anthropocentrism’ with an ultimate ontological egalitarianism is not unusual: indeed, it is quite commonplace for religious traditions to justify temporal inequalities while decrying them in a final state of perfection. But within the Jain tradition, the two delicately hinge upon each other: human birth is celebrated because it can transcend embodied ‘animal’ life, but human privilege is only established through a fraternal solidarity with it. Vulnerability and finitude of flesh unite all sentient life and give rise to compassion, but humans alone are capable of treating embodied life as an object of ethical reflection and detachment. An aphorism that is often used to encapsulate Jainism, states “*parasaparopagraho jivanam*¹³” or “souls render service to one another”¹⁴, reflecting an ideal of receptivity that goes beyond empathy or fellow feeling (which Jains claim is found widely among *samsaric* beings) to become, among humans, a call for ethical responsibility.

Importantly, the call of ethical responsibility can only emerge from within a self-aware being. Consciousness (*cetana*) is a property of the soul, and since all living beings possess soul, all possess consciousness - though in most life forms this capacity lies dormant. In other words, even though the inherent capacities of the soul are equally shared by sentient life, their manifestation (*upayoga*) varies. So, whereas nearly all living beings possess some degree of awareness, defined as the ability to perceive sense data and formulate basic subjective ideas, most neither understand nor reflect on their experiences. Only beings with *manah* (mind), sometimes called “self-

¹² आहारनिद्राभयमैथुनं च सामान्यमेतत् पशुभिर्निराणाम
धर्मो हि तेषामधिको विशेषः धर्मेण हीना पशुभिर्समाना

¹³ परस्पोपग्रहो जीवानाम्

¹⁴ Tattvārtha Sūtra [5.21]. It is translated as "Souls render service to one another".[1] It is also translated as, "All life is bound together by mutual support and interdependence." [2]

reflection” or a “6th sense”¹⁵ have the potential to fully awaken the inherent capacities of the soul. This god-like capacity of self-reflection allows those who possess it to gain enough purchase to preside over, and in some small measure, direct life. Like that of the Hindu god Brahma, who emerges from the navel of the sleeping Vishnu and awakens him before proceeding to create the world, the mind emerges from the unmindful body to awaken it to a new reality. But importantly, Jainism treats the mind as *derivative* of the body, never independent of it —an important distinction from the Cartesian legacy which has, in many of its iterations, produced a pathological mind/body state of dissociation. Like Brahma severing the umbilical cord to Vishnu, a mind removed from its source of nourishment can only atrophy. Indeed it is such an atrophied dissociative binary that underpins modernity’s relentless instrumentalization of life.

The capacity for self-objectification or self-transcendence is celebrated because it provides us with the vantage point of an observer. Self-transcendence is the source of our creativity and discernment and, crucially, our knowledge of what constitutes an ethical life. Without this capacity for self-reflection, there would be no space for ethics nor any possibility of escape from *samsara*. In its absence we would effectively be under the dominance of attachments and aversions (the fate of animals, according to Jains).

In sum, it is the human capacity to objectify the body that is the source of both ethical reflection and worldly release. For this reason, human birth is a cherished possession; for no matter how karmically encumbered a living being may be (e.g., even rocks possess a life-force), the *jiva* yearns for release. It is said that even the gods look down longingly upon humans from their celestial abodes. Only humans have this capacity to treat life as an occasion for spiritual growth, and for this, they are the envy of the cosmos.

¹⁵ Or sometimes called an “anindriya” which means no-sense. It refers to the idea that, unlike other senses, the mind is not dependent on the senses.

Of the 8,400,000 different species that Jainism claims inhabit the universe¹⁶, all fall within one of four *gatis* (or birth categories): humans (*manusya*), celestial beings (*deva*), hell beings (*naraki*), and the composite category of animals, plants, insects and microorganisms (called *tiryañca*). The human stands alone and distinct before the “*tiryañca*” - a category that subsumes and homogenizes such a motley that it makes the Western human/animal divide appear nuanced.

The human *gati* is singled out as unique in the whole of the cosmos because it alone has the capacity for self-objectification; it alone can observe the embodied self and force it to act in accordance with principles that are quite alien to the body and *its* way of being in the world. For most living beings, humans included, the life-force is powerfully dominated by the karma-generated body and its desires (most especially for food and sex) and, if it were not for the rare and precious capacity for self-objectification, it would be condemned to an endless cycle of birth and death.

The capacity for rational self-legislation is what makes humans unique, and human exceptionalism resides in its demonstration, through ethical practices as well as those of bodily detachment (most quintessentially that of voluntary death). But, crucially, self-legislation is *not* the source of moral worth — the latter is an intrinsically held quality of the *jiva* within the Jain tradition. This is an important factor in the dualist ontology of Jainism, without which the gulf separating the human from the nonhuman would be categorical, and closer to that of the Western Kantian tradition. Human dignity for Kant refers to the inviolable moral worth of human beings in virtue of their capacity for rational autonomy, which arises from an “inner moral law” that humans alone possess,¹⁷. In the contemporary metaphysically-eliminationist moment, where the dualism of mind/body has become difficult to sustain, and the Kantian postulates of practical reason in support of God and soul are less persuasive, dignity has become more closely associated with bodily integrity; human autonomy is now attributed to the marvels of the human brain. We can see this very clearly in the pro-euthanasia / “Death with Dignity” movement which equates dignity with bodily control and

¹⁶ According to Umasvati’s Tattavâra Sûtra

¹⁷ even if it can never be proved through reason

well-being. Today, those who reject the equation of dignity with bodily integrity have, nevertheless, difficulty in identifying the source of moral worth within a secular discourse, and typically do so by demarcating the human from the non-human. Medical ethicist's Sylvia Stolberg's comment is representative:

“The history of the concept of human dignity suggests a common commitment to the view that human beings are different from animals and tractors, and that recognizing their dignity requires doing something more than merely preserving their well-being and oiling their engines” (2014: 259)

Like Kant (and the Western tradition more broadly), Jainism puts a premium on self-legislation and bodily mastery, which it too considers to be derived from an inner moral law that is a uniquely human endowment. Jains would agree with Kant when he declares that the moral law within “infinitely elevates my worth as an intelligence by my personality, in which the moral law reveals to me a life independent of animality and even of the whole sensible world”¹⁸

There is no getting around Jain anthropocentrism and the ontological dualism upon which it rests. But in sharp contradistinction to the Kantian / Western tradition, moral worth for Jains is distinguishable from self-mastery; it is said to reside in a life-force that all living beings possess. In Jainism, the body may, at times, be an affront to self-control and discipline, but not to moral worth—the latter being an inviolable condition of life.

Nevertheless, bodily discipline is of paramount importance within the renunciatory tradition of Jainism because it demonstrates, and effectuates, mastery of the *jiva* over the body. For this reason, the undisciplined body (i.e., a body given free rein to express its inexhaustible desires) is shameful and, indeed, derided as “animal like”. But because the body is ultimately distinct from the *jiva/soul*, and follows its own laws, there are limits to its ability to be controlled. When the body declines and falters of its own accord, the *jiva* is not at fault, nor is it shamed. The aging, dying body is an index of nothing beyond *samsaric* embodied existence, and therefore does nothing to rob the self of dignity. Moreover, for human beings, the declining body offers

¹⁸ Kant. *The Critique of Practical Reason*. Trans. Abbott, London 1889; p 260

one final opportunity for spiritual growth. Consciously and dispassionately abandoning one's own body is to effectively demonstrate one's independence of it. And no living being, other than the human, possesses such a degree of self-mastery.

DEATH AS CRADLE OF HUMANITY

Mrs Kumar¹⁹ was at the end of a piously-lived life. Mother to three and grandmother to seven, her long life had been blessed. Throughout her married life, she and her husband regularly attended the same local mandir, and her frequent and arduous fasting was legendary in her community. But now, at 77 years old, and ill with a degenerative disease, she was on the last fast. She always wanted to end her life the way she had lived it; with equanimity and nonviolence so when she requested her family, and then the *acharya*, for permission to take the vow of *sallêkhâna* (a ritual fast to death), she was granted it. When I met her in her Mumbai apartment, she would have less than a week to live. She was not speaking anymore, and spent most of her time in light sleep. She lay directly on the floor, on a mat near the front of her apartment. A large number of people were present, and seemed to be taking turns chanting the *namokar mantra* so that she was never outside of its protective grace. The notice of her fast had appeared in the local community newspaper, so many had come to receive her *darshan*. The family expressed pride in her courageous decision to undertake such a prestigious death. When I enquired after her wellbeing - whether she was in any pain - I was immediately informed of the help that she was receiving from the gods, many of whom also came for her *darshan*. The magnificent fragrance that periodically enveloped the room was a signifier of the presence of the gods that all could affirm. And a young man (Mrs Kumar's grandson) invited me to observe that Mrs Kumar, though she had abandoned her body, appeared fresh and groomed. He explained that the gods were keeping her comfortable with "celestial baths".

To say that Jainism treats the confrontation with death as the crucible out of which the human is created does not go far enough. A legion of others from Plato, Augustine, Pascal, Kierkegaard, Tolstoy, Nietzsche, Schopenhauer, James, Heidegger, Unamuno, Marcel, Becker — to mention just a few

¹⁹ Name has been changed. Based on ethnographic work in 2014.

luminaries of the Western tradition alone, treat the awareness of finitude as the defining feature of being human. For Jains, the human is not just a being for whom life is a project with a definite end (as a "being toward death" in Heidegger's formulation) but a being for whom the event of death is an opportunity for spiritual growth.

There is no better way to demonstrate the absolute autonomy of the soul than by voluntarily, and permanently, severing its connection with the body. Humans alone have the ability to do this by treating the body as "other". All animals (and many humans) cling to embodied existence, mistaking the body for life itself. And for this reason, they die passively, usually reluctantly. Death *happens* to them. The capacity to assume a position of detachment vis à vis one's embodied existence is a necessary condition for spiritual growth, and it is one that humans alone possess. For this, the human is honoured by all, gods included.

For Jains, all sentient life possesses consciousness and evinces a utilitarian calculus that seeks pleasure and avoids pain. But consciousness of one's own mortality requires a capacity for self-objectification that is far more radical; it requires a capacity for the objectification of *being* itself. The vast majority of living beings lack this, and therefore make the fatal flaw of equating embodied existence with life itself, dooming themselves to a ceaseless existence in the cycle of birth and death.

The human ability to dispassionately embrace death is the apogee of self-transcendence and the single most powerful act demarcating the human from the nonhuman. For Jains, it - more than anything else - justifies the human / nonhuman divide and the isolation of manushya in its own separate gati.

TOWARDS A CONCLUSION

The Jain tradition makes abundant use of the human/nonhuman divide, and can be regarded as highly (if not strongly) anthropocentric. And yet the

tradition is also universally recognized for its ethic of reverence for life that extends to all living beings. This should give us pause. Exploring the Jain tradition on its own terms means taking seriously the idea that the human/nonhuman dualism, in and of itself, is neither intrinsically problematic nor completely avoidable. Of course, Jain dualism bears little resemblance to the dissociative human/animal binary that underpins the modern western materialist ontology with its relentless instrumentalization of life.

Jainism recognizes the impetus to avoid suffering and preserve life as basic to all living beings. The tradition's renowned compassion toward nonhuman animals is derived from the vulnerability and finitude we share with them. Nevertheless, Jainism treats the ontological condition of being human as unique because self preservation —for humans alone— can come at the expense of bodily integrity. In other words, the human capacity for voluntary death reveals, more than any other single act, a conception of the Self as distinct from the body. It is for this reason, the tradition boasts a "celebration of death", because the capacity for radical bodily detachment is what makes us fully human. In Jainism, death, or finitude, both unites the human with, and distinguishes it from, the nonhuman.

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