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## Cultural Solipsism, Cultural Lenses, Universal Principles, and Animal Advocacy

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## LEAD ARTICLE

# Cultural Solipsism, Cultural Lenses, Universal Principles, and Animal Advocacy

THOMAS G. KELCH

### I. INTRODUCTION

Human cultures are diverse and cultural distinctions can be subtle or jarring. Even between seemingly very similar Western countries, cultural incongruities can be considerable. For instance, the French do not seem to have the same sense of urgency in responding to business and other inquiries as your typical split second American. Nor do the French eat pizza with their hands. When we analyze a culture we typically observe language, religion, cuisine, music, and art. One aspect of culture that may not receive as much attention as it should is cultural similarities and differences relating to the relationship between humans and animals.<sup>1</sup> Similarities abound; virtually all cultures dine on animals, and utilize them for scientific purposes, for work and for entertainment. Thus, animal use and exploitation are

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1. I will, for the sake of simplicity and style, use the linguistic convention of distinguishing between “humans” and “animals” even though humans are animals and even though I recognize that this non-existent distinction can be seen as inappropriately promoting the idea of non-human animals as the “other,” fundamentally distinct from humans. Another way to view my use of this linguistic convention is to say that I am defining “animal” here to mean “non-human animal.”

culturally ubiquitous. Indeed, the “universality of human violence against animals” is remarkable.<sup>2</sup>

Despite the obvious similarities, cultural differences with respect to attitudes toward and treatment of animals can be profound. Cultures have differing views about the nature of animals, about the value of specific types of animals, and about our moral and ethical duties to animals and how they should be treated. In Western culture, for example, the keeping of pets is endemic; in Chinese and Islamic cultures, this has traditionally not been the case.<sup>3</sup> In India women have sometimes been forced to marry animals.<sup>4</sup> One explanation for this practice is that it is thought by some in India that girls born with a baby tooth showing through the gums or who are ugly or have a disfigured face are possessed by ghosts.<sup>5</sup> The catholicon for this possession, it is thought, is for the girl to marry an animal, often a dog or goat.<sup>6</sup> Having been so delivered from the incantations of the ghosts, the girl is then able to marry a man.<sup>7</sup> It is not only in India where such marriages have occurred; similar marriages to animals have occurred in Sudan, Germany, and Israel.<sup>8</sup> Another practice that may be thought curious is the annual “Monkey Buffet Festival” in Lopburi province in Thailand, where a sumptuous spread of vegetables and fruit is presented for local

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2. Krithika Srinivasan, *The Social Science Imagination in India: Deconstructing Boundaries and Redefining Limits*, 59 SOC. BULL. 22, 25 (2010) (quoting G. Elder, J. Wolch & J. Emel, *Le Practique Sauvage: Race, Place and the Human-Animal Divide*, in ANIMAL GEOGRAPHIES: PLACE, POLITICS, AND IDENTITY IN THE NATURE-CULTURE BORDERLANDS (J. Wolch & J. Emel eds., 1998)).

3. See *Perceptions of Animals Across Cultures: Man’s Best Friend or Dirty Beast?*, COMMUNICAID (June 10, 2010) [hereinafter COMMUNICAID], <http://www.communicaid.com/cross-cultural-training/blog/perceptions-of-animals-across-cultures-mans-best-friend-or-dirty-beast/#.UzrzCf0iXcg>.

4. Asher Kade, *6 Bizarre Wedding Traditions Around the World*, SCRIBOL, <http://www.environmentalgraffiti.com/cultures/news-7-most-bizarre-wedding-traditions-world> (last visited Apr. 9, 2014); *Girl Weds Dog to Break ‘Evil Spell’*, BBC (June 19, 2003), [http://news.bbc.co.uk/2/hi/south\\_asia/3004930.stm](http://news.bbc.co.uk/2/hi/south_asia/3004930.stm).

5. Kade, *supra* note 4.

6. *Id.*

7. *Id.*

8. Kathy Landin, *15 of the World’s Weirdest Marriages, I Now Pronounce You... What?!*, THE FW, <http://thefw.com/weirdest-marriages-of-the-world-photos-videos/> (last visited Apr. 9, 2014).

monkeys.<sup>9</sup> In Spain there is the macabre “Day of the Geese,” where a greased goose is hung over water and men leap from boats with the goal of ripping the head off the goose.<sup>10</sup> In a concession to animal rights advocates, this practice is now only done with dead geese.<sup>11</sup>

Though a cliché, we do live in a globalized world despite all of our cultural differences. And globalization can have a profound impact on the efficacy of advocacy for the benefit of animals. Attempts in one nation to provide protection for animals can have unintended consequences in our globalized world. For example, prohibitions on certain uses of animals in agriculture, experimentation, or entertainment in one country may simply drive these practices into another jurisdiction. The European Union (the EU) has expressed concern over this issue in connection with recent more stringent EU rules on the use of animals in agriculture.<sup>12</sup> European concern is well-founded. Outsourcing of animal experiments has already become a corporate strategy for some firms.<sup>13</sup>

In this globalized world, economies and cultures blend, brew, fuse, and occasionally battle in an amalgam of frequently intersecting, sometimes parallel, and occasionally wildly divergent practices. Given the consequences of globalization, in the push for animal rights and protection<sup>14</sup> cultural differences

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9. Stuart Inamura, *Top 10: Unusual Traditions Around the World*, TOTALLY TOP 10 (July 27, 2010), <http://www.totallytop10.com/lifestyle/culture/top-10-strange-traditions>.

10. *Id.*

11. Inamura, *supra* note 9.

12. *Communication from the Commission to the Council and the European Parliament on Animal Welfare Legislation on Farmed Animals in Third Countries and the Implications for the EU*, COMM'N OF THE EUROPEAN COMMUNITIES, at 2, 15 (2002).

13. Jehangir S. Pocha, *Outsourcing Animal Testing*, BOSTON GLOBE (Nov. 25, 2006), available at [http://www.boston.com/business/healthcare/articles/2006/11/25/outsourcing\\_animal\\_testing/](http://www.boston.com/business/healthcare/articles/2006/11/25/outsourcing_animal_testing/). See generally Claudette Vaughan, *Flying Solo — The Maneka Gandhi Interview*, ANIMAL LIBERATION FRONT, <http://www.animalliberationfront.com/ALFront/Interviews/FLYING%20SOLO%20-%20THE%20MANEKA%20GANDHI%20INTERVIEW.htm> (last visited Apr. 9, 2014).

14. While I am a proponent of rights for animals and the abolition of present uses of animals in agriculture, experimentation, and entertainment, the analysis and conclusions of this article can be utilized by those whose ambitions are less profound. I will for this reason frequently use the phrase “animal rights

and similarities are now of paramount import in determining a global strategy for animal advocacy. Outsourcing of animal exploitation makes a “one state strategy” in advocacy for animal rights and protection implausible. The problem that then presents itself is, given the potpourri of human cultures and the need to take a global view of animal rights advocacy, how can animal rights advocates most efficiently and successfully advocate for animals? This article will address this issue.

First, I will describe and analyze views of the human/animal relationship from five example cultural traditions: Western culture, represented generally by Europe and North America, Indian culture, Chinese culture, South African culture, and Islamic culture, exemplified primarily here by Turkey. It is not asserted here that any of these cultures or countries are homogenous; they are not. Although Western culture is primarily constructed on Judeo-Christian traditions, there are many facets, tangents, and strands of these and other traditions in the West. India is, of course, an admixture of peoples and religious traditions, as is China. South Africa is a country with a mixture of different cultures and traditions, which have collided in recent history. And Islamic culture includes two major religious traditions as well as numerous offshoots from these major traditions and includes many ethnic groups. Moreover, it is also the case that there will always be individuals and groups within a culture whose views diverge from the cultural norm. The project here is not to attempt to represent each of these cultures as clearly defined and structured monoliths, but rather to attempt to ascertain a few fundamental principles and ideas that make significant contributions to thought about the human/animal relationship in these cultures and countries.

I will demarcate the contours and boundaries of these fundamental cultural ideas about animals through analysis of historical as well as current events and issues in these cultures, but for the most part will focus on the dominant religious thought of these cultures. This emphasis on religious thought is prompted

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or animal protection” or similar phrases. For my views on the appropriate legal status of animals, see Thomas G. Kelch, *The Role of the Rational and the Emotive in a Theory of Animal Rights*, 27 B.C. ENVTL. AFF. L. REV. 1 (1999); Thomas G. Kelch, *Toward a Non-Property Status for Animals*, 6 N.Y.U. ENVTL. L.J. 531 (1998).

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by the fact that religious thought or conceptual constructs derived from religious thought are often the foundational ingredient in a culture's view of the human/animal relationship, although it will be discovered that this may not always be the case.

Second, laws relating to animals from the chosen countries and cultures will be described and the cultural influences on these laws will be evaluated. Third, the implications of cultural differences and similarities for global animal rights advocacy will be scrutinized. In performing this analysis, this article will construct a model for global animal rights advocacy that incorporates consideration of cultural idiosyncrasies and, at the same time, has a foundation built on certain universally accepted principles. This model posits a "Compound Cultural Lens" of cultural influences that must be assayed in animal advocacy in a globalized world composed of a "Culturally Solipsistic Lens" representing the peculiarities of the particular culture and a "Universal Cultural Lens" that represents certain principles argued to be omnipresent in all cultures. It is posited that animal advocacy can benefit from crafting its messages utilizing these two aspects of the Compound Cultural Lens.

## II. THE IMPACT OF CULTURE ON ANIMAL LAW

### A. Western Culture and Law

Western culture relating to animals has several fundamental and not necessarily consistent elements. Perhaps the most basic building block of Western culture relating to animals is Aristotle's *Great Chain of Being*.<sup>15</sup> This hierarchical model classifies the world in a linear sequence from inanimate objects, to plants, to animals, to man, and ultimately to the Prime Mover, God. This hierarchy has a normative aspect — the higher the rung in the hierarchy, the more value we attribute to the entity. Given this hierarchy and its normative trappings, Western culture has no qualms about using animals for whatever utility can be squeezed from them. And this is done with considerable alacrity and efficiency in the Western agriculture and animal experimentation

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15. See ARTHUR O. LOVEJOY, *THE GREAT CHAIN OF BEING* 56-57 (illus. ed., Harv. U. Press 1964); Richard McKeon, *Introduction*, in *INTRODUCTION TO ARISTOTLE* 184-89 (Richard McKeon ed., J.A. Smith trans., 1992).

industries. On the other hand, some animals are singled out for special treatment. Pet animals are in this category and are often doted. In addition, although humans are lords over animals, humans are thought to have certain duties with respect to the treatment of animals.

This combination of hierarchy, utilitarian exploitation, and duties embedded within this exploitation can be observed in teachings of the Judeo-Christian tradition. There are five teachings of Judeo-Christian traditions that are quite unfavorable to the interests of animals. First, animals were placed on earth for the benefit of humans.<sup>16</sup> Second, some animals are inherently unclean.<sup>17</sup> Third, some animals are meant to be sacrificed for us.<sup>18</sup> Fourth, animals are slaves to human needs.<sup>19</sup> Fifth, animals do not have rational souls or sentience.<sup>20</sup>

These negative themes are, nonetheless, counterbalanced by some more positive ones. Animals are, for instance, to be given rest on the Sabbath.<sup>21</sup> Animals are also thought to have divine purposes beyond the needs of humans.<sup>22</sup> In addition, animals are beneficiaries of the messianic age with some believing that animals enjoy life after death.<sup>23</sup> As a general proposition, modern Christianity has moved away from more ancient doctrine asserting that animals can be exploited at the whim of humans and are entitled to little or no moral consideration.<sup>24</sup> Christians now generally feel that humans are stewards, not heedless omnipotent masters, over nature and animals, with a strong statement of this view recently reflected in Matthew Scully's

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16. Jay McDaniel, *Practicing in the Presence of God*, in *A COMMUNION OF SUBJECTS: ANIMALS IN RELIGION, SCIENCE, AND ETHICS* 137 (Paul Waldau & Kimberly Patton eds., 2006).

17. *Id.*

18. *Id.*

19. *Id.*

20. *Id.*

21. *Id.* at 137-38.

22. McDaniel, *supra* note 16, at 138.

23. *Id.*

24. *Animal Rights*, BBC, [http://www.bbc.co.uk/religion/religions/christianity/christianethics/animals\\_1.shtml](http://www.bbc.co.uk/religion/religions/christianity/christianethics/animals_1.shtml) (last updated Aug. 3, 2009) [hereinafter BBC ONLINE]; *Animal Welfare in Context: Religion*, WORLD ANIMAL NET, [http://web.archive.org/web/20101202204524/http://worldanimal.net/documents/4\\_Religion.pdf](http://web.archive.org/web/20101202204524/http://worldanimal.net/documents/4_Religion.pdf) (last visited Apr. 9, 2014).

book, *DOMINION*.<sup>25</sup> This stewardship concept can be illustrated with examples from the doctrines of the Catholic Church. For instance, Catholic teachings hold that human sovereignty over animals is not to be exercised arbitrarily.<sup>26</sup> Biblical textual support for this position can be found in the Seventh Commandment that enjoins respect for the integrity of creation.<sup>27</sup> Along with this respect comes a duty in Catholic doctrine to be kind to animals: “Animals are God’s creatures. He surrounds them with his providential care. By their mere existence they bless him and give him glory. [citation omitted] Thus men owe them kindness.”<sup>28</sup> Consistent with these reflections, blessing of animals is performed in some Catholic churches.<sup>29</sup> One is not, however, to be too kind to animals: “one should not direct to them the affection due only to persons.”<sup>30</sup> Thus, kindness to animals has limits.

In Catholic canons it is permitted to use animals for food, clothing, and work and leisure pursuits.<sup>31</sup> Experiments on animals are also permitted “within reasonable limits” where they contribute to caring for or saving lives of humans.<sup>32</sup> Several Popes have, however, made statements critical of factory farming.<sup>33</sup> When Pope Benedict, while still a Cardinal, was asked about animal issues, he attacked the practice of factory farming asserting that it contradicted “the relationship of mutuality that comes across in the Bible.”<sup>34</sup> And in apparent conflict with traditional Christian thought, Pope John Paul II

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25. MATTHEW SCULLY, *DOMINION* 15, 131, 303, 313, 339 (2002); BBC ONLINE, *supra* note 24; *Animal Welfare in Context: Religion*, *supra* note 24.

26. BBC ONLINE, *supra* note 24.

27. *Catechism of the Catholic Church*, pt. 3, § 3, ch. 2, art. 7, para. 2415, [http://www.vatican.va/archive/ccc\\_css/archive/catechism/p3s2c2a7.htm](http://www.vatican.va/archive/ccc_css/archive/catechism/p3s2c2a7.htm) (last visited Apr. 9, 2014) [hereinafter *Catechism*]; BBC ONLINE, *supra* note 24.

28. *Catechism*, *supra* note 27, para. 2416.

29. Judy Harrison, *Spirit Animals; Priests Bestow Blessings*, BANGOR DAILY NEWS (Oct. 8, 2007), <http://archive.bangordailynews.com/2007/10/08/spirit-animals-priests-bestow-blessings/>.

30. *Catechism*, *supra* note 27, para. 2418.

31. *Id.* para. 2417; BBC ONLINE, *supra* note 24.

32. *Catechism*, *supra* note 27, para. 2417; BBC ONLINE, *supra* note 24.

33. Lewis E. Bollard, *A Papal Mercy: How the Vatican Views Animals, and Why Christians Should Care*, THE HARV. CRIMSON, Apr. 17, 2008, <http://www.thecrimson.com/article/2008/4/17/a-papal-mercy-as-41000-devout/>.

34. *Id.* (quoting Pope Benedict).



said that animals had souls and were as close to God as humans.<sup>35</sup> In another Papal revelation, Pope John Paul II recounted a dream he had about a homeless mother cat and her kittens that were denied help, warmth, and food by those who had much, as well as those at Catholic and Anglican churches.<sup>36</sup> Ultimately, the cats were given shelter by a poor old woman.<sup>37</sup> He also stated that “solicitous care” should be given to animals and nature in general, and that animals are a manifestation of God’s love.<sup>38</sup> While there are these favorable Papal statements and revelations, American Catholic churches do not seem to reflect these sentiments.<sup>39</sup>

So what we ultimately see in these examples is that there are two primary strands of thought about animals in the Western cultural tradition. First, use of animals for human purposes is generally permitted. Second, these uses should be performed in the “kindest” way possible. And these two lines of thought are reflected in anti-cruelty laws and other laws regulating uses of animals in agriculture, science, and entertainment in Western countries. For instance, in the EU uses of animals for agricultural, scientific, and entertainment purposes are permitted, but under the eye of numerous laws regulating these uses of animals to avoid “unnecessary pain and suffering” or the like.<sup>40</sup> These laws are also “kind” in the sense that they provide

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35. *Id.*; Mimmo Pacifici, *The Pope Has Said: “Animals Too Have Souls, Just Like Men,”* ROCKY ROCOCO’S ANIMAL RTS. NEWS & ACTION (Jan. 1990), <http://www.dreamshore.net/rococo/pope.html>.

36. J.R. Hyland, *The Pope and the Homeless Cats: John Paul II Had a Dream*, FR. MIKE BERGERON, [http://www.fathermike.info/Popes\\_on\\_Pets.html](http://www.fathermike.info/Popes_on_Pets.html) (last visited Apr. 9, 2014).

37. *Id.*

38. *Id.*

39. Bollard, *supra* note 33. On the other hand, one can argue that Catholics in the United States have indeed been active in advocating for animals — for example, the International Society for Animal Rights, a significant animal advocacy organization, began as the National Catholic Society for Animal Welfare. Joyce Tischler, *The History of Animal Law, Part I (1972-1987)*, 1 STAN. J. ANIMAL L. & POL’Y 1 (2008).

40. *See, e.g.*, Council Directive 2010/63, art. 6, 2010 (L 276) (EU) (regarding animal experimentation); Council Directive 2008/120, 2008 O.J. (L 47) (EC) (regarding the treatment of pigs in agriculture); Council Directive 2007/43, art. 4, 2007 O.J. (L 182) (EC) (regarding chickens kept for meat production); Council Directive 98/58, art. 3, 1998 O.J. (L 221) (EC) (regarding animals kept for farming purposes).

engineering standards that regulate things like the amount of space that animals are provided and how animals need to be fed, watered, and monitored.<sup>41</sup> In the United States there is no federal regulation of the use of animals in agriculture other than for purposes of slaughter and transport, but the federal Animal Welfare Act does regulate animal experimentation.<sup>42</sup> Individual states in the United States have animal cruelty laws that legislate, for the most part, the treatment of pet animals, typically do not apply to animal experimentation or the accepted uses of animals in agriculture, and usually use “unnecessary pain and suffering” or similar language as their main substantive standard for treatment of animals.<sup>43</sup> Some states do have specific laws regulating the use of animals in agriculture and these laws often specify engineering standards for the treatment of animals, like cage size and stocking densities.<sup>44</sup> So what we see in the law in Western cultures is consistent with Western cultural views of animals. It is permissible to use animals for human purposes, but it must be done within certain parameters of “humane” treatment. Notwithstanding this asserted principle of humane treatment of animals, exploitation of animals on a massive scale occurs on factory farms, in animal experiments, and in entertainment venues in Western countries.

## B. Indian Culture and Law

### 1. Hinduism and the Reality of Animals in India

I have chosen Hinduism as representative of the general contours of Indian culture as it relates to animals. This is, I believe, justified since 80.5% of Indians identify as Hindu.<sup>45</sup> The

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41. See, e.g., Council Directive 2010/63, art. 33, *supra* note 40; Council Directive 2008/120, arts. 3 and 4, *supra* note 40; Council Directive 2007/43, art. 3, *supra* note 40; Council Directive 98/58, art. 4, *supra* note 40.

42. Humane Slaughter Act, 7 U.S.C. §§ 1901-07 (2012); Twenty-Eight Hour Law, 49 U.S.C. § 80,502 (2012); Animal Welfare Act, 7 U.S.C. §§ 2131-59 (2012).

43. See, e.g., MD. CODE ANN. CRIM. LAW § 10-604(a)(3) (West 2011); FLA. STAT. ANN. § 828.12(2) (West 2013); OHIO REV. CODE ANN. § 1717.01(B) (West 2013); 2014 South Dakota Laws SB 46 (West’s No. 175).

44. CAL. PENAL CODE §§ 597, 599b (West 2013); FLA. STAT. §§ 828.125, 828.14, 828.22 (2013); N.J. STAT. ANN. § 22:16.1 (West 2013).

45. OFFICE OF THE REGISTRAR GEN. & CENSUS COMM’R, GOV’T OF INDIA, DISTRIBUTION OF POPULATION BY RELIGIONS (2011), *available at*

most obvious and recognizable cultural peculiarity of Hinduism relating to animals is that cows are sacred.<sup>46</sup> Not surprisingly then, every part of a cow is considered to be divine<sup>47</sup> and the products of cows — milk, curd, ghee (a kind of butter), urine, and dung are considered purifying.<sup>48</sup> Cows are, in addition, viewed by some Hindus as a symbol for the earth because they give and ask for nothing in return.<sup>49</sup> Similarly, the cow is regarded as a symbol of motherhood.<sup>50</sup> Others in the Hindu community see cows as a microcosm of the universe.<sup>51</sup> Given all of this, it should not be astonishing that the name for cow in Hindi, “*aghnaya*,” means “not to be killed.”<sup>52</sup>

But it is not only cows that hold an exalted position in Hindu tradition; other animals are also venerated, including monkeys and snakes.<sup>53</sup> Lions and rats are said to have religious significance as well.<sup>54</sup> Moreover, some Hindu Gods even take animal forms.<sup>55</sup> With this sometimes blurred line between

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[http://censusindia.gov.in/Ad\\_Campaign/drop\\_in\\_articles/04-Distribution\\_by\\_Religion.pdf](http://censusindia.gov.in/Ad_Campaign/drop_in_articles/04-Distribution_by_Religion.pdf)

46. COMMUNICAID, *supra* note 3; Jayaram V, *Treatment of Animals in Hinduism*, HINDUWEBSITE.COM, <http://www.hinduwebsite.com/hinduism/essays/animals.asp> (last visited Mar. 28, 2013); *Animal Rights A History – Hinduism*, THINK DIFFERENTLY ABOUT SHEEP, [http://www.think-differently-about-sheep.com/Animal\\_Rights\\_A\\_History\\_Hinduism.htm](http://www.think-differently-about-sheep.com/Animal_Rights_A_History_Hinduism.htm) (last visited Apr. 9, 2014) [hereinafter THINK DIFFERENTLY]; *Animal Ethics*, BBC, <http://www.bbc.co.uk/religion/religions/hinduism/hinduethics/animal.shtml> (last updated June 29, 2010) [hereinafter *BBC Animal Ethics*].

47. Jayaram, *supra* note 46.

48. Frank J. Korom, *Holy Cow! The Apotheosis of Zebu, or Why the Cow is Sacred in Hinduism*, 59 ASIAN FOLKLORE STUD. 181, 194 (2000); Paul Turner, *Hinduism and Vegetarianism*, INT’L VEGETARIAN UNION (Mar. 2000), <http://www.ivu.org/news/march2000/hinduism.html>.

49. JEANEANE D. FOWLER, HINDUISM: BELIEFS AND PRACTICES 65 (1997).

50. HUMANE SOC’Y OF U.S., HINDUISM AND THE ETHICAL TREATMENT OF ANIMALS 3 (July 29, 2010) [hereinafter HSUS], *available at* [http://www.humanesociety.org/assets/pdfs/faith/hinduism\\_and\\_the\\_ethical.pdf](http://www.humanesociety.org/assets/pdfs/faith/hinduism_and_the_ethical.pdf).

51. Korom, *supra* note 48, at 193-95.

52. Turner, *supra* note 48.

53. FOWLER, *supra* note 49, at 43; *see also* Lance Nelson, *Cows, Elephant, Dogs, and Other Lesser Embodiments of  $\square$ man*, in A COMMUNION OF SUBJECTS: ANIMALS IN RELIGION, SCIENCE, AND ETHICS 179-180 (Paul Waldau & Kimberly Patton eds., 2006).

54. Nelson, *supra* note 53, at 180.

55. *BBC Animal Ethics*, *supra* note 46; Jayaram, *supra* note 46; *The Role of Animals in Hinduism*, HADDONFIELD PUB. SCH., <http://www.haddonfield.k12.nj.us/hmhs/academics/english/animalshinduism.htm> (last visited Apr. 9,

humans and animals, it is a short step to the Hindu idea that animals have souls identical to humans.<sup>56</sup> Indeed, in a sense it can be said that all things are sacred in Hinduism. This is because “*Brahman*,” the ultimate reality or absolute in Hinduism, is present in all things; so everything partakes in a basic sacredness.”<sup>57</sup>

Since all animals are sacred it is considered wrong to kill animals for food in Hinduism.<sup>58</sup> Furthermore, a fundamental teaching of Hinduism, the concept of “*ahimsa*,” non-violence toward all things, counsels against practices like animal sacrifice and killing of animals generally.<sup>59</sup> “Hinduism teaches respect for all creatures and compassion towards all beings.”<sup>60</sup>

Another tenet of Hinduism with implications in the human/animal relationship is reincarnation. The concept of reincarnation is a vital component of Hindu creed; life is cyclical and each person authors his or her next life through good or bad behavior in this life.<sup>61</sup> One’s position in the next life is an outcome of one’s actions on earth in this one, defined as a person’s “Karma,” and through this mechanism one can ascend or descend the ladder of creation and be reincarnated as an animal or Emperor.<sup>62</sup> There are serious Karmic consequences from taking innocent life, causing unnecessary pain or suffering, or abetting

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2014); Bharti Chhibber, *Man-Elephant Conflict: Animal Rights Are Akin to Human Rights*, MAINSTREAM WEEKLY (July 23, 2011), <http://www.mainstreamweekly.net/article2908.html>.

56. Nelson, *supra* note 53, at 184; *Animal Welfare in Context: Religion*, WORLD ANIMAL NET, [http://web.archive.org/web/20101202204524/http://worldanimal.net/documents/4\\_Religion.pdf](http://web.archive.org/web/20101202204524/http://worldanimal.net/documents/4_Religion.pdf) (last visited Apr. 9, 2014); *HAF Policy Brief: Hinduism and the Ethical Treatment of Animals*, HINDU AM. FOUND., <http://www.hafsite.org/media/pr/ethicaltreatmentanimals> (last visited Apr. 9, 2014).

57. FOWLER, *supra* note 49, at 8, 37-38.

58. *Id.* at 65.

59. Nelson, *supra* note 53, at 182-84; *see also* FOWLER, *supra* note 49, at 136; THINK DIFFERENTLY, *supra* note 46.

60. THINK DIFFERENTLY, *supra* note 46; *see also* Nelson, *supra* note 53, at 181-82 (stating that the “true [Hindu] Spiritual Self...is qualitatively the same in all beings...down to a blade of grass” and can be seen as resulting in a universal compassion to all beings).

61. FOWLER, *supra* note 49, at 10; *HAF Policy Brief*, *supra* note 56; THINK DIFFERENTLY, *supra* note 46.

62. FOWLER, *supra* note 49, at 11; HSUS, *supra* note 50.

causing this kind of pain and suffering.<sup>63</sup> These are actions that can cause the soul to descend. What this ultimately means is that we have all been humans, animals, and plants in prior lives.<sup>64</sup>

With all of these animal friendly principles, one might expect India to be a peaceful wonderland for animals. Unfortunately this is not the case. Cruelty to animals is not unusual in India and exploitation of animals is “comparable to or even worse than seen in the West.”<sup>65</sup> Animal sacrifices to various Gods, including the Goddesses Durga and Kali, continue to occur.<sup>66</sup> These animal sacrifices, often associated with the inferior castes in India,<sup>67</sup> sometimes involve the killing of up to 250,000 animals.<sup>68</sup> Animal fighting and hunting have traditionally been permitted and participated in by Hindus.<sup>69</sup> The bull taming sport, *Jallikattu*, participated in by some Hindus, is quite cruel and involves the beating of hundreds of bulls.<sup>70</sup> Indian politician, environmentalist, and animal activist Maneka Gandhi has described scandalous behavior in animal research in India, including a research facility where billions of dollars were spent on animal research conducted in dreadful conditions with no published results emanating from these experiments in a period spanning twenty years.<sup>71</sup> Also, while vegetarianism is common among Hindus,<sup>72</sup> many Hindus eat meat.<sup>73</sup>

63. HSUS, *supra* note 50.

64. Nelson, *supra* note 53, at 182, 190.

65. Varn Chandola, *Dissecting American Animal Protection Law: Healing the Wounds with Animal Rights and Eastern Enlightenment*, 8 WIS. ENVTL. L.J. 3, 26 (2002).

66. FOWLER, *supra* note 49, at 38, 65; *see also* Nelson, *supra* note 53, at 180 (regarding animal sacrifices in India); Jayaram, *supra* note 46; Chandola, *supra* note 65, at 26.

67. FOWLER, *supra* note 49, at 66.

68. Deepesh Shrestha, *Hindu Goddess of Power Appeased. Animal Rights Activists Not so Much*, THE TELEGRAPH, Nov. 26, 2009, <http://www.telegraph.co.uk/expat/expatnews/6660416/Hindu-goddess-of-power-appeased.-Animal-rights-activists-not-so-much.html>.

69. Jayaram, *supra* note 46.

70. Prakash Sasha, *Jallikattu: An Event of Barbaric Animal Cruelty*, VIGILONLINE.COM (Jan. 2012), *available at* <http://www.vigilonline.com/downloads/Jallikattu-Jan-2012-Report-1.pdf>.

71. Vaughan, *supra* note 13.

72. HSUS, *supra* note 50, at 3.

73. FOWLER, *supra* note 49, at 65.

Given the favorable principles of the Hindu religion relating to animals, how can such use and abuse of animals be countenanced in India? One contributing factor may be that there is no one set of principles that constitute “Hinduism”: “Because Hinduism is a term that includes many different although related religious ideas, there is no clear single Hindu view on the right way to treat animals.”<sup>74</sup> Moreover, notwithstanding Hindu principles, which in many respects appear very favorable to animals, most Hindus nonetheless believe that animals are inferior to human beings.<sup>75</sup> In fact, classical Hindu theology is itself hierarchical, based on the idea that humans are the only creatures that “have the capacity to receive and appropriate revelation . . . in the form of the Veda, and thus only human beings have access to that which comes from the Veda, mainly *Dharma* (correct ritual behavior and morality).”<sup>76</sup> The hierarchical scaffolding of the human/animal relationship is not based on only humans having souls, since Hindus believe that animals do have souls, rather it is based on “cognitive, moral, ritual, and soteriological” factors.<sup>77</sup>

Belief in reincarnation can also create a perspective contributing to a hierarchical view of the world. The cycle of reincarnation is itself arranged in a hierarchy in which one’s goal is to reach the highest level among the following: Gods, who are people of lucidity, humans, who are people of energy, and animals, who are people of darkness.<sup>78</sup> The people of darkness, animals, are described as having negative traits like being ignorant, confused, sensual, greedy, and incontinent, among others.<sup>79</sup> This is not where one wants to arrive in a new incarnation. So the doctrine of reincarnation can potentially be both favorable and unfavorable for animals — while one might

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74. *BBC Animal Ethics*, *supra* note 46; Chandola, *supra* note 65, at 26 (noting “competing beliefs and practices within Hinduism” relating to slaughter of animals).

75. *BBC Animal Ethics*, *supra* note 46.

76. Nelson, *supra* note 53, at 184.

77. *Id.*

78. *Id.* at 184-85.

79. *Id.* at 184.

treat animals well because animals may be a relative or friend,<sup>80</sup> it is also the case that accumulating bad Karma causes one to “devolve” into the darkness of *animalia*<sup>81</sup> as punishment — so poor treatment of those who so devolve can be justified as well.

Another factor that may contribute to actual practices relating to animals in India, as in some other non-Western countries, is the view of some Indians that concern for animals is a form of cultural imperialism imposed by the West. Consider, for example, that Indian sociological journals show a dearth of articles analyzing non-humans as a focus of concern due, in part, to the thought that concern for animals is a Western import and this belief has stifled debate on the human/animal relationship in India.<sup>82</sup> On the other side of this coin, however, is the idea that the influence of foreign culture and philosophy has contributed to the level of exploitation of animals in India. It has been argued that the anthropocentric influences of both Islamic culture and British rule may play a part in attitudes concerning animals in India and in present-day cruelty to and exploitation of animals in India.<sup>83</sup> Lack of concern for animals may also be justified by the fact that as a poor country, India cannot afford to be concerned about such issues.<sup>84</sup> In addition, class conflict may play a part in the reality of treatment of animals in India. Concern for animals and vegetarianism are associated with upper castes and social elites, and this fact is sometimes used to criticize concerns about animals.<sup>85</sup> So we observe in Indian culture a flurry of cross-currents relating to the human/animal relationship, some favorable to animal interests, some not.

## 2. Animal Laws of India

With inconsistent strands of thought emanating from Hinduism and other aspects of Indian culture and practices, how do Indian culture and the reality of animals in India meld into a

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80. Burch H. Schneider, *The Doctrine of Ahimsa and Cattle Breeding in India*, 67 SCIENTIFIC MONTHLY 87, 87 (1948) (noting that one may be killing a former human when one kills an animal).

81. FOWLER, *supra* note 49, at 10-11.

82. Srinivasan, *supra* note 2, at 26-27.

83. Chandola, *supra* note 65, at 26-28.

84. Srinivasan, *supra* note 2, at 29.

85. *Id.*

legal regime? Compared to many countries, India has quite an extensive set of animal laws. At the pinnacle of Indian animal law is Article 51A of the Indian Constitution providing that: "It shall be the duty of every citizen of India – . . . to have compassion for living creatures."<sup>86</sup> In *Balakrishnan et al. v. Union of India*, this provision is the foundation for perhaps the strongest, though somewhat inconsistent, statement in favor of animal rights ever uttered in a court decision:

Though not homosapiens,[] [animals] are also beings entitled to dignified existence and humane treatment sans cruelty and torture. In many respects, they comport better than humans, they kill to eat and eat to live and not live to eat as some of us do, they do not practice deception, fraud, or falsehood and malpractices as humans do . . . All animals except the very lowest exhibit some degree of intelligent behaviour, ranging from learned responses to complex reasoning. Many believe that the lives of humans and animals are equally valuable and that their interests should count equally. Their contribution to the health of humans is invaluable . . . nearly every advance in health care and combating human diseases has been based on animal research. Animals also provide models for the study of human diseases. New drugs are tested on animals to help determine their potentials for causing cancer or other disease . . . Therefore, it is not only our fundamental duty to show compassion to our animal friends, but also to recognize and protect their rights . . . If humans are entitled to fundamental rights, why not animals? In our considered opinion, legal rights shall not be the exclusive preserve of the humans which [sic] has to be extended beyond people thereby dismantling the thick legal wall with humans all on one side and all non-human animals on the other side. While the law currently protects wildlife and endangered species from extinction, animals are denied rights, an anachronism which must necessarily change.<sup>87</sup>

Beneath the crown of Article 51A are both federal and state legislation protecting animals and regulating certain uses of animals.

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86. INDIA CONST. art. 51(A)(g).

87. *Balakrishnan v. Union of India*, (2000) A.I.R. 155 (Kerala H.C.) 17-18 (India), available at <http://www.elaw.org/node/1831>.



It will surprise no one that, given the status of cows in Hinduism, there are many laws in Indian states that specifically protect them<sup>88</sup> and the Indian Constitution has a provision encouraging prohibition of cow slaughter.<sup>89</sup> In addition, at the federal level, India has a general animal cruelty law and sets of rules relating to transport of animals, slaughter, animal experiments, and animals in entertainment.<sup>90</sup> The main animal cruelty law is The Prevention of Cruelty to Animals Act of 1960 (the PCAA).<sup>91</sup> The PCAA uses language that has historically been used in Western animal cruelty laws to describe proscribed conduct. It is a violation of the PCAA whenever a person: “beats, kicks, over-rides, over-drives, over-loads, tortures or otherwise treats any animal subjecting it to unnecessary pain or suffering.”<sup>92</sup> It also addresses animal experiments by providing for a Committee for Control and Supervision of Experiments on Animals (the CCSEA) that can make rules on animal experimentation.<sup>93</sup> The CCSEA has created standard operating procedures and animal experimentation rules not unlike those of some Western nations providing for registration of breeders and establishments that perform experiments, requiring approval by the CCSEA or Institutional Animal Ethics Committees of specific experiments, and delivering some fairly vague requirements for housing and care for animals in experiments.<sup>94</sup> Additional rules regulate performing animals, capture of animals, transport of

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88. More than 20 such laws are contained in MANEKA GANDHI ET AL., *ANIMAL LAWS OF INDIA* 330-34 (New Delhi: University Law Publishing Co. Pvt. Lts., 4th ed. 2011).

89. INDIA CONST. art. 48; Chandola, *supra* note 65, at 28.

90. The Prevention of Cruelty to Animals Act, No.59 of 1960, INDIA CODE ch. 2, §§ 9(a)-9(e) (1960) [hereinafter the PCAA]; GANDHI ET AL., *supra* note 88, at 11; The Performing Animals Rules, 1973, GANDHI, ET AL., *supra* note 88, at 33-38; The Prevention of Cruelty (Capture of Animals) Rules, 1979, GANDHI, ET AL., *supra* note 88, at 82; The Prevention of Cruelty to Animals (Transport of Animals on Foot) Rules, 2001, GANDHI, ET AL., *supra* note 88, at 83-89; The Prevention of Cruelty to Animals (Slaughter House) Rules, 2001, GANDHI, ET AL., *supra* note 88, at 90-95.

91. PCAA, *supra* note 90.

92. *Id.* § 11(a).

93. *Id.* §§ 14-17.

94. *Id.* §§ 14-20; MINISTRY OF ENVIRONMENT & FORESTS, GOV'T OF INDIA, *Standard Operating Procedures (SOP) for Institutional Animal Ethics Committee (IAEC) of the CPCSEA*, AAALAC (2010), available at [http://www.aaalac.org/resources/sop\\_cpcsea\\_inner\\_page.pdf](http://www.aaalac.org/resources/sop_cpcsea_inner_page.pdf).

animals on foot and slaughter of animals.<sup>95</sup> In a major move concerning performing animals, India has, pursuant to PCAA § 22, banned the training and exhibition of bears, monkeys, tigers, lions, and panthers.<sup>96</sup> More recently, in May 2013 the Indian Ministry of Environment and Forests banned the use of captive dolphins in Dolphinariums, and in June 2013 the Bureau of Indian Standards banned animal testing of cosmetics in India.<sup>97</sup> Unfortunately, though the animal protection laws and regulations of India are numerous, enforcement is lax.<sup>98</sup>

These laws can be seen as consistent with Indian culture in numerous respects. A reflection of the Hindu concept of *ahimsa* can be observed in the Indian Constitution's admonition of compassion for all living things. This principle of compassion is reflected in the *Balakrishnan* case,<sup>99</sup> in a case ordering officials in the State of Goa to prohibit the conduct of bull fights,<sup>100</sup> and in recent bans on use of certain wild animals in circuses and on keeping captive dolphins.<sup>101</sup> The author of the circular containing the ban on captive dolphins, B.S. Bonal, pointed to the high intelligence and sensitivity of dolphins, noted the fact that

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95. The Performing Animals Rules, *supra* note 90, at 33-38; The Prevention of Cruelty (Capture of Animals) Rules, 1979, *supra* note 90, at 82; The Prevention of Cruelty to Animals (Transport of Animals on Foot) Rules, *supra* note 90, at 83-89; The Prevention of Cruelty to Animals (Slaughter House) Rules, *supra* note 90, at 90-95.

96. See *Balakrishnan v. Union of India*, (2000) A.I.R. 155 (Kerala H.C.) 17-18 (India), available at <http://www.elaw.org/node/1831>.

97. *Policy on Establishment of Dolphinarium*, GOV'T OF INDIA, MINISTRY OF ENV'T & FORESTS, CENT. ZOO AUTH. (May 17, 2013) [hereinafter *Dolphinarium*], available at <http://envfor.nic.in/sites/default/files/ban%20on%20dolphanariums.pdf>; *Taking the Lead: India Becomes First South Asian Country to Ban Animal Testing for Cosmetics*, INDIA TODAY (June 28, 2013), available at <http://indiatoday.intoday.in/story/taking-the-lead-india-becomes-first-south-asian-country-to-ban-animal-testing-for-cosmetics/1/285891.html>.

98. See, e.g., Rollo Romig, *The Hard Life of Celebrity Elephants*, N.Y. TIMES, Aug. 14, 2013, [http://www.nytimes.com/2013/08/18/magazine/the-life-of-celebrity-elephants-in-india.html?pagewanted=all&\\_r=0](http://www.nytimes.com/2013/08/18/magazine/the-life-of-celebrity-elephants-in-india.html?pagewanted=all&_r=0); see also ANIMAL DEFENDERS INT'L & NAT'L ANTI-VIVISECTION SOC'Y, ANIMAL EXPERIMENTATION IN INDIA (2003), available at [http://www.navs.org.uk/downloads/animal\\_experimentsinindia.pdf](http://www.navs.org.uk/downloads/animal_experimentsinindia.pdf).

99. *Balakrishnan v. Union of India*, (2000) A.I.R. 155 (Kerala H.C.) 17-18 (India), available at <http://www.elaw.org/node/1831>.

100. *People for Animals v. Goa*, (1997) 4 Bom. C.R. 271 (1996) (India), available at <http://www.indiankanoon.org/doc/248589/>.

101. See *supra* notes 96-97 and accompanying text.

dolphins do not thrive in captivity and asserted that dolphins should be considered non-human persons, all of which can be seen as reflecting an expression of compassion for these animals in the law.<sup>102</sup> Reverence for cows is shown in the many state laws that protect cows. The view that animals possess souls and the concept of reincarnation, both ideas revealing the continuity of life, may also influence India's fairly comprehensive set of animal protection laws meant to shield animals from the vicissitudes of human conduct. Nonetheless, the concepts of *ahimsa* and favorable aspects of reincarnation must be juxtaposed with the hierarchical view of the human/animal relation represented in Indian culture, the reality of the uses of animals in agriculture, experiments and entertainment in India, and the often ill-enforced animal welfare laws of India.

### C. Chinese Culture and Law

#### 1. Chinese Religion and Culture

Unlike Western and Indian culture, it is difficult to identify a dominant religious or other foundational set of precepts clearly underpinning Chinese culture in relation to animals. There are a number of important religious and other milieus that contribute to Chinese culture. Confucianism is one of these sets of principles. It allows the taking of lives of other animals, but prohibits taking "unfair advantage" of animals.<sup>103</sup> One is to act "reasonably and sensibly towards other forms of life," showing kindness toward animals, but not to the extent that it interferes with responsibilities to humans.<sup>104</sup> That human life has priority over animals is revealed in the parable of a burned down stable where Confucius asks if humans were hurt but does not concern himself with the fate of the horses.<sup>105</sup>

102. *Dolphinarium*, *supra* note 97.

103. Rodney Taylor, *Of Animals and Humans: The Confucian Perspective*, in A COMMUNION OF SUBJECTS 294 (Paul Waldau & Kimberly Patton eds., 2006).

104. *Id.*

105. *Id.* Regarding the superiority of humans over animals in Confucianism, see also *id.* at 300; Joseph A. Adler, Response to Rodney Taylor, *Of Animals and Man: The Confucian Perspective*, KENYON C. DEP'T OF RELIGIOUS STUD. (May 21, 1999), [available at http://www2.kenyon.edu/Depts/Religion/Fac/Adler/Writings/Animals.htm](http://www2.kenyon.edu/Depts/Religion/Fac/Adler/Writings/Animals.htm); and

Nevertheless, in Confucianism “[h]umans possess a mind that is incapable of bearing the suffering of others” and there is an “injunction not to cause suffering to others.”<sup>106</sup> When human and animal interests come into conflict, it is the “mind that is incapable of bearing the suffering of others” that must adjudicate the conflict and find the proper moral course.<sup>107</sup> But these principles have not compelled modern Confucians to engage in substantial consideration of questions of animal use, although this may be changing.<sup>108</sup> Ultimately, Confucianism appears unopposed to modern uses of animals in experimentation and otherwise.<sup>109</sup>

One line of Chinese religious thought is Taoism (or Daoism). In Taoist doctrine, equal respect is given to all things.<sup>110</sup> Taoism teaches three key principles relating to the nature of animals and their relationship with humans.<sup>111</sup> First, freedom and wildness are the basis for the flourishing of animals.<sup>112</sup> For this reason Taoism is opposed to the domestication of animals.<sup>113</sup> Second, in a similar vein humans are admonished to avoid their tendency to distort their own nature by distorting the natural state (or “Dao”) of animals.<sup>114</sup> Third, animals should be viewed as potential teachers.<sup>115</sup>

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*Humane Treatment of Animals*, THE USELESS TREE (Mar. 14, 2007) [hereinafter *Humane Treatment*], [http://uselesstree.typepad.com/useless\\_tree/2007/03/humane\\_treatmen.html](http://uselesstree.typepad.com/useless_tree/2007/03/humane_treatmen.html).

106. Taylor, *supra* note 103, at 303.

107. Taylor, *supra* note 103, at 306.

108. *Id.* at 305.

109. *Id.* at 303-06.

110. *Humane Treatment*, *supra* note 105. See generally DAOISM HANDBOOK (Livia Kohn ed., Brill 2000) (regarding Taoism).

111. Louis Komjathy, *Animals and Taoism*, ADVOCACY FOR ANIMALS – ENCYCLOPÆDIA BRITANNICA (Sept. 26, 2011), <http://advocacy.britannica.com/blog/advocacy/2011/09/daoism-and-animals/>.

112. *Id.*

113. *Id.*

114. *Id.*; see also E.N. Anderson & Lisa Raphals, *Daoism and Animals*, in A COMMUNION OF SUBJECTS 281 (Paul Waldau & Kimberly Patton eds., 2006) (stating that animals have their own natures, their own Dao, and humans should not interfere with it unless necessary).

115. Komjathy, *supra* note 111.

Regarding the treatment of animals, several Taoist Canons speak of not killing animals.<sup>116</sup> Being vegetarian “is the fundamental of Tao.”<sup>117</sup> With these principles, one would expect Taoism to be strongly protective of animals.<sup>118</sup> Nonetheless, most Taoists eat meat.<sup>119</sup> Not only this, but animal sacrifice is part of Taoist ritual.<sup>120</sup> How can these behaviors be reconciled with precepts against eating animals? One rationale is that since animals eat one another, this permits the eating of meat — meat eating is “a natural process, in harmony with Dao.”<sup>121</sup> Moreover, statements in the *Tao Te Ching* indicate that the world must be accepted as inhumane and one should not intervene in behavior like meat eating.<sup>122</sup> This view has been called the “amoral neutrality of Taoism.”<sup>123</sup> So in Taoism we find incongruent currents, some flowing favorably for the treatment of animals, others ambivalent.

Buddhism, another pillar of Chinese religious thought, is often thought of as a religion that preaches vegetarianism and compassion toward all creatures. This is to an extent true and to a measure not. “Buddhism affirms the unity of all living beings, all equally posses [sic] the Buddha-nature, and all have the

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116. *Ultra Supreme Elder Lord's Scripture of Precepts*, ORTHODOX TAOIST CANON 0809, available at [http://taoistresource.net/art\\_dhoe\\_veg.htm](http://taoistresource.net/art_dhoe_veg.htm) (last visited Apr. 10, 2014); *Ultra Utmost Real Person Spoken Twenty-four Gates Precept Scripture*, ORTHODOX TAOIST CANON 0182, available at [http://www.taoistresource.net/art\\_dhoe\\_veg.htm](http://www.taoistresource.net/art_dhoe_veg.htm) (last visited Apr.10, 2014); *Taoist View on Vegetarianism*, TAOISTRESOURCE.NET, [http://www.taoistresource.net/art\\_dhoe\\_veg.htm](http://www.taoistresource.net/art_dhoe_veg.htm) (last visited Apr. 10, 2014) [hereinafter *Taoist View*].

117. *Ultra Supreme Emptiness Emperor the Heavenly Lord's Scripture of Forty Nine Chapters*, ORTHODOX TAOIST CANON 0018, available at [http://www.taoistresource.net/art\\_dhoe\\_veg.htm](http://www.taoistresource.net/art_dhoe_veg.htm) (last visited Apr. 10, 2014); *Taoist View*, *supra* note 116.

118. *Humane Treatment*, *supra* note 105.

119. Anderson & Raphals, *supra* note 114, at 277, 279; Komjathy, *supra* note 111.

120. Anderson & Raphals, *supra* note 114, at 279.

121. *Id.* at 277, 279.

122. *Humane Treatment*, *supra* note 105 (stating, “The passage could be interpreted as saying don’t attempt to apply a notion of morality or humanity to the world, because the world has its own logic that is not driven by moral standards. Better just to stand back and let Way unfold, because a moral intervention might bring unanticipated negative consequences.”).

123. *Humane Treatment*, *supra* note 105.

potential to become Buddhas.”<sup>124</sup> Non-human life is divine as is human life in Buddhism.<sup>125</sup> It teaches “universal loving kindness towards all living things in the universe.”<sup>126</sup> As a part of this universal love is a fundamental rule of Buddhism — *ahimsa* — the admonition not to harm or kill any other living being; the same principle we observed in Hinduism.<sup>127</sup> Following the precept against taking the lives of other beings leads naturally to a vegetarian diet.<sup>128</sup> Another way this is expressed is that sustaining oneself at the expense of other creatures is wrong.<sup>129</sup>

One overarching principle underlying these rules is the concept of continuity and kinship between humans and animals;<sup>130</sup> the antithesis of hierarchy. Another is the reoccurring idea of reincarnation; other animals have been our father or mother, and in the “yonder world” animals can take revenge on those who harm them.<sup>131</sup> As in Hinduism, all life is viewed as moving toward a higher consciousness.<sup>132</sup>

But as we have seen in other creeds, there is a darker side of Buddhist thought and practice not so favorable to animals. While vegetarianism is admired among Buddhists, it is rarely

124. Ronald Epstein, *A Buddhist Perspective on Animal Rights*, SAN FRANCISCO ST. U. (1990), <http://online.sfsu.edu/rone/Buddhism/BuddhismAnimalsVegetarian/Buddhism%20and%20Animal%20Rights.htm>.

125. Sharon Callahan, *Buddhism and Animals*, ANAFLORA, <http://www.anaflora.com/articles/oth-sharon/animal-bud.html> (last visited Apr. 10, 2014).

126. Bhikkhu Dhammavihari, *Animal Rights – As Buddhists What Do We Think of Them*, URBAN DHARMA, <http://www.urbandharma.org/udharma7/animalrights.html> (last visited Apr. 10, 2014).

127. Epstein, *supra* note 124; Paul Waldau, *Buddhism and Animal Rights*, in CONTEMPORARY BUDDHIST ETHICS 85 (Damian Keown ed., 2000) (expressing the First Precept as: “Ye shall slay no living thing”); Ian Harris, “A Vast Unsupervised Recycling Plant”: *Animals and the Buddhist Cosmos*, in A COMMUNION OF SUBJECTS 209 (Paul Waldau & Kimberly Patton eds., 2006); *see also* Brian Schell, *The Five Precepts: The First Precept*, DAILY BUDDHISM (May 5, 2008), <http://www.dailybuddhism.com/archives/37>.

128. Epstein, *supra* note 124; *see also* *Why Animals Matter: A Religious and Philosophical Perspective – Buddhism*, THINK DIFFERENTLY ABOUT SHEEP, [http://www.think-differently-about-sheep.com/Why\\_Animals\\_Matter\\_A\\_Religious\\_Philosophical\\_Perspective\\_Buddhist\\_Quotations.htm](http://www.think-differently-about-sheep.com/Why_Animals_Matter_A_Religious_Philosophical_Perspective_Buddhist_Quotations.htm) (last visited Apr. 10, 2014) [hereinafter *Why Animals Matter*].

129. Callahan, *supra* note 125.

130. SARRA TLILI, ANIMALS IN THE QUR’AN 26 (2012).

131. Waldau, *supra* note 127, at 87; *see also* *Why Animals Matter*, *supra* note 128.

132. Callahan, *supra* note 125.

practiced.<sup>133</sup> Perhaps surprisingly, even the Buddha accepted meat.<sup>134</sup> Moreover, the world of animals is not portrayed positively. The realm of non-human animals is one of the three states of woe.<sup>135</sup> Animals are stupid, forever killing each other and lack wisdom.<sup>136</sup> This cognitively inert and violent existence is an unhappy one.<sup>137</sup> In the Buddhist ideal world there are no animals other than humans.<sup>138</sup> Consistent with this, rebirth as an animal is perceived negatively.<sup>139</sup>

Humans, on the other hand, are distinct from all other animals and have traits of a cognitive nature that other animals do not.<sup>140</sup> Humans are superior to other animals and “qualitatively more important than all other living things.”<sup>141</sup> This hierarchical thinking exists even in the face of contrary religious teachings of continuity and kinship, and may arise from traditional cultural factors.<sup>142</sup> There is, for instance, a traditional Chinese saying: “Man is the master of the universe.”<sup>143</sup> Chinese children are also routinely taught, as in other cultures, that humans are above animals<sup>144</sup> and some children’s songs even describe animals as evil.<sup>145</sup>

Further, although there are some exceptions to this idea, all animals are lumped together in the Buddhist tradition — distinctions are not made between them based on complexity or other traits.<sup>146</sup> Again, as in Hindu thought, one explanation for a dim view of the state of animals is the idea of reincarnation — if one is reborn as an animal this reflects the evil core of the

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133. Harris, *supra* note 127, at 209.

134. *Id.*

135. Waldau, *supra* note 127, at 89-90; TLILI, *supra* note 130, at 28.

136. Waldau, *supra* note 127, at 90; TLILI, *supra* note 130, at 26-28.

137. Waldau, *supra* note 127, at 90.

138. *Id.*

139. Harris, *supra* note 127, at 208.

140. Waldau, *supra* note 127, at 94.

141. *Id.*

142. See Song Wei, *Traditional Chinese Culture Poses Some Difficulties for New Animal Welfare Laws*, U.N. FOOD & AGRIC. ORG. (Sept. 2, 2010), available at <http://www.fao.org/ag/againfo/themes/animal-welfare/aw-awhome/detail/it/item/11935/icode/en>.

143. *Id.*

144. *Id.*

145. *Id.*

146. *Id.* at 95-96.

transmigrating soul.<sup>147</sup> Thus, notwithstanding currents of continuity and kinship, certain Buddhist thought flows in a contrary channel to a structured hierarchical view of the relationship of humans and animals.<sup>148</sup> In the end, Buddhism permits the instrumental use of animals.<sup>149</sup>

While we can find in the major Chinese historical cultural icons of Confucianism, Taoism and Buddhism teachings of respect for animals;<sup>150</sup> there is, as we have seen elsewhere, a conflicting and contrary conceptual milieu in Chinese thought that deprecates the animal world, projecting humans to the pinnacle of worldly being. And this latter line of thought is heartbreakingly reflected in the reality of today's China.

## 2. Chinese Reality

The reality for animals in China has been described in these terms: “[a]nimal suffering is unprecedented in China in magnitude in both numerical terms . . . and in welfare conditions.”<sup>151</sup> Consumption of meat is increasing.<sup>152</sup> Consistent with this, China is the largest animal farming nation in the world and has the largest number of animals on industrialized farms.<sup>153</sup> Factory farming is increasingly employed<sup>154</sup> as are practices like the use of gestation crates, battery cages, beak trimming and other industrialized farming methods, while at the same time some other nations and entities, like the EU, are phasing out

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147. *Id.* at 96-98.

148. Wei, *supra* note 142, at 94.

149. *Id.* at 101.

150. Jianfei Wang, *Perspective on Globalization, Regulations, Science Delivery, and Public Confidence in Animal Research in Asia (China)*, GlaxoSmithKline R&D China (July 26-27, 2011) available at <http://www.iom.edu/~media/Files/Activity%20Files/Research/NeuroForum/2011-JUL-26/Wang.pdf> (note that this is effectively an experimentation industry-produced document).

151. Interview by Michael Charles Tobias with Peter J. Li, Assistant Professor of East Asian Politics, Univ. of Houston (Nov. 2, 2012), available at <http://www.forbes.com/sites/michaeltobias/2012/11/02/animal-rights-in-china/>.

152. Betsy Tao, *A Stitch in Time: Addressing the Environmental, Health, and Animal Welfare Effects of China's Expanding Meat Industry*, 15 GEO. INT'L ENVTL. L. REV. 321, 326 (2003).

153. Tobias, *supra* note 151.

154. Tao, *supra* note 152, at 328.



these practices.<sup>155</sup> Methods of killing in China are not for the squeamish; monkeys are killed by removing their brains while they are alive, salamanders are skinned alive,<sup>156</sup> dogs used for fur are skinned alive<sup>157</sup> and water is forcibly pumped into pigs before slaughter.<sup>158</sup> There is also considerable long distance transport of animals to slaughter.<sup>159</sup>

A practice that has gotten considerable international as well as domestic Chinese attention is bear bile farming. Bear bile is thought to have medicinal qualities, although there does not appear to be any scientific evidence of this.<sup>160</sup> Moreover, bear bile can effectively be produced artificially without the use of bears.<sup>161</sup> Nonetheless, the practice of bear bile farming continues. In this industry, bears are kept in isolated deprivation with continuous catheterization or open wounds.<sup>162</sup> Bear bile is obtained in two ways. In some operations, bears are subjected to painful catheter procedures twice a day to remove bile.<sup>163</sup> In others, bile is collected through the “free drip method” where a permanent hole is made in the bear’s abdomen and bile simply drips out to be collected.<sup>164</sup> In 1996, the use of catheters was banned in China,

155. Tobias, *supra* note 151.

156. Peter J. Li, *The Evolving Animal Rights and Welfare Debate in China: Political and Social Impact Analysis*, in ANIMALS, ETHICS AND TRADE 116 (Jacky Turner & Joyce D’Silva eds., 2006).

157. Lydia Warren & Oliver Pickup, *Skinned Alive to Make Fake Uggs: Horrific Footage Reveals Slow, Sickening Deaths of Raccoon Dogs*, DAILY MAIL ONLINE (Oct. 12, 2011), <http://www.dailymail.co.uk/news/article-2045016/Raccoon-dogs-skinned-alive-make-cheap-copies-Ugg-boots.html>.

158. Li, *supra* note 156, at 116.

159. Tobias, *supra* note 151.

160. See Andrew Jacobs, *Folk Remedy Extracted from Captive Bears Stirs Furor in China*, N.Y. TIMES, May 21, 2013, [http://www.nytimes.com/2013/05/22/world/asia/chinese-bear-bile-farming-draws-charges-of-cruelty.html?pagewanted=all&\\_r=0](http://www.nytimes.com/2013/05/22/world/asia/chinese-bear-bile-farming-draws-charges-of-cruelty.html?pagewanted=all&_r=0); Zuo Lin et al., *Bear Bile Industry Expands on Unproven Health Benefits*, CAIJING (Feb. 28, 2012) [hereinafter CAIJING], <http://english.caijing.com.cn/2012-02-28/111718521.html>; Sean Johnson, *Bear Gall Bladders Being Poached for Medicinal Beliefs*, HCP LIVE (Nov. 30, 2010), <http://www.hcplive.com/pop-medicine/Bear-Gall-Bladders-Being-Poached-for-Medicinal-Beliefs--#sthash.LM2rgVWg.dpuf>.

161. CAIJING, *supra* note 160.

162. Li, *supra* note 156, at 116.

163. Laura E. Tsai, *Detailed Discussion of Bears Used in Traditional Chinese Medicine*, ANIMAL LEGAL & HIST. CENTER (2008), <http://www.animallaw.info/articles/ddusbearbile.htm>.

164. *Id.*

but due to financial constraints, the method is still widely used.<sup>165</sup> The method theoretically required under this law is the “free drip method” which, unfortunately, is just as cruel as catheters if not more so.<sup>166</sup> About half of the bears die of infections or other complications from these procedures.<sup>167</sup> While China has agreed not to give any more licenses for bear bile farms, it remains legal.<sup>168</sup>

Animal experiments using about fifteen million animals a year are undertaken in China.<sup>169</sup> Abusive practices have been uncovered in some Chinese animal experiments and have come to public attention.<sup>170</sup> Further controversy has been provoked by the fact that China still requires animal tests on certain cosmetics that are not so tested in many other countries,<sup>171</sup> although the requirement for animal testing of “non-specialized cosmetics” like soaps, shampoos, and some skin products is set to end in June of 2014.<sup>172</sup> Moreover, drug companies are outsourcing their animal testing to China, where the issue of animal testing is less contentious than in Western countries, and

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165. *Id.*

166. Tsai, *supra* note 163.

167. *Id.*

168. *Id.*

169. *Web China: Dog Abuse Arouses Concern over Lab Animal Welfare*, SINA ENGLISH (Feb. 20, 2013), <http://english.sina.com/china/2013/0220/563261.html>.

170. *Id.*

171. Kristine Lim, *Activists Push for Animal Testing Ban in China*, CHANNEL NEWS ASIA (July 3, 2013), available at [http://cached.newslookup.com/cached.php?ref\\_id=278&siteid=2219&id=2413034&t=1372841026](http://cached.newslookup.com/cached.php?ref_id=278&siteid=2219&id=2413034&t=1372841026); Martin Hickman, *Beauty Companies Return to Animal Testing to Exploit Chinese Demand*, THE INDEPENDENT (July 31, 2012), <http://www.independent.co.uk/life-style/beauty-companies-return-to-animal-testing-to-exploit-chinese-demand-7988188.html>; Brian Jones, *New China Regulations and the Need for Outreach Programs*, ALTOX.ORG (May 29, 2012), <http://alttox.org/spotlight/064.html>; *Cosmetics Giants Look to China Sales Despite Animal Testing Controversy*, METRO (Aug. 2, 2012), <http://metro.co.uk/2012/08/02/cosmetics-giants-look-to-china-sales-despite-animal-testing-controversy-519130/>.

172. Erik Tormoen, *China to Ease Animal Testing*, OUTSIDE (Nov. 19, 2013), <http://www.outsideonline.com/news-from-the-field/China-No-Longer-Requires-Animal-Testing.html>; Adam Jourdan & Clare Baldwin, *China Considering Easing Rules on Animal Testing for Some Cosmetics*, REUTERS (Nov. 13, 2013), <http://www.reuters.com/article/2013/11/13/china-cosmetics-animaltesting-idUSL2N0IU0BZ20131113>.

where enforcement and oversight of experiments is thought to be lax.<sup>173</sup>

Given that numerous doctrines of dominant Chinese traditions have strands of thought favorable to animals, why do we encounter the perplexing existing reality in China? Somehow the positive aspects of traditional thought about animals have not saturated the overall culture of China. Today many mainland Chinese have been described as “possibly indifferent or insensitive to animal suffering.”<sup>174</sup> And this is not just a modern phenomenon. In pre-modern China as in present China, the idea of animal welfare was almost completely absent.<sup>175</sup> Part of this is undoubtedly due to the fact that positive traditional views of the human/animal relationship are counterbalanced by negative ones in the same traditional thought.

In addition to the tensions between positive and negative views of the human/animal relationship in traditional Chinese thought are more mundane practical forces at work relating to the treatment of animals in China. For instance, although Confucianism does not have entirely favorable views toward animals, the influence of Confucian doctrine may have been impacted by direct attacks on it during the Cultural Revolution.<sup>176</sup> Economics may be at work as well. Many abuses may be the result of the drive for prosperity and food security.<sup>177</sup> In fact, the leadership of China fears an economic slowdown if it deals with animal cruelty issues.<sup>178</sup> A governmental preoccupation with social stability and resistance to unofficial groups and activities also plays a role in resistance to change.<sup>179</sup> There is nationalism involved too; some view concerns about animal treatment a foreign imposition from the West — a new

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173. Jehangir S. Pocha, U.S. Outsourcing Animal Testing to China, *CHINA DAILY* (Nov. 28, 2006), [http://www.chinadaily.com.cn/china/2006-11/28/content\\_744605.htm](http://www.chinadaily.com.cn/china/2006-11/28/content_744605.htm).

174. Tobias, *supra* note 151.

175. Komjathy, *supra* note 111.

176. *Confucianism*, EXPLORING CHINESE HIST., <http://www.ibiblio.org/chinesehistory/contents/02cul/c04s04.html> (last visited Apr. 10, 2014).

177. Tobias, *supra* note 151.

178. *Id.*; Zu Shuxian et al., *Animal Welfare Consciousness of Chinese College Students: Findings and Analysis*, 19 *CHINA INFO.* 67, 82 (2005).

179. Shuxian et al., *supra* note 178.

form of imperialism.<sup>180</sup> So the overall political and economic environment militates against activism for animal protection.<sup>181</sup> And this is revealed in the dearth of law in China protecting animals.

### 3. Chinese Law Relating to Animals

There is very little Chinese law on animals. It is true, the Constitution of the People's Republic of China states that "[t]he state ensures the rational use of natural resources and protects rare animals and plants."<sup>182</sup> This, however, fails to translate into noteworthy legislation on even the protection of wild animals. There is the Wildlife Protection Law of 1988, but it covers only rare and endangered wild animals.<sup>183</sup> Moreover, this law has been argued to accomplish no more than provide a mechanism for exploiting natural resources for human purposes.<sup>184</sup> It encourages, for example, the domestication and breeding of wildlife species for human use.<sup>185</sup> In addition, this law is rarely enforced.<sup>186</sup> Other than this Wildlife Protection Law, regulation of animal welfare or protection in China is sparse.<sup>187</sup> There are regulatory documents relating to zoos and circuses issued by the State Forestry Administration and the Ministry of Housing and Urban-Rural Development, and a set of "Moral Norms" issued by the Chinese Association of Zoological Gardens.<sup>188</sup> There is, however, no general animal cruelty law<sup>189</sup>

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180. *Id.*

181. Tobias, *supra* note 151.

182. Tao, *supra* note 152, at 351.

183. Wei, *supra* note 142.

184. *Id.*

185. *Id.*

186. *Id.*

187. Amanda Whitford, *Evaluating China's Draft Animal Protection Law*, 34 SYDNEY L. REV. 347, 353 (2012).

188. Regulation of Animal Shows (promulgated by the State Forestry Administration, effective July 29, 2010) (China); Compendium of the Development of Nationwide Zoos (promulgated by the Ministry of Housing and Urban-Rural Development, effective June 24, 2013) (China); Opinions as to Improving Management of Zoos (promulgated by the Ministry of Housing and Urban-Rural Development, effective Oct. 26, 2010) (China); Moral Norms and Animal Welfare Pact of China's Zoos (promulgated by the Chinese Association of Zoological Gardens, effective Aug. 23, 2012) (China).

and the Chinese Animal Husbandry Law lacks provisions on animal cruelty.<sup>190</sup>

Although there is no general law on animal cruelty or animal protection in China, there is nonetheless something of a hodgepodge of regulation of laboratory animals and experiments through a number of Chinese government agencies. The first regulation of animal experiments in China was the Chinese Regulations of Animal Experiments issued by the Ministry of Science and Technology (MOST) in 1988 and revised in 2004. These standards are focused in large part on the “quality” of animals and experimental results.<sup>191</sup> This is exposed by the stated purposes of the regulations, which “are . . . strengthening the administration of and guaranteeing the quality of experimental animals so as to meet the needs of scientific research, economic construction and social development.”<sup>192</sup> This is further emphasized by the fact that monitoring of the quality of animals used in experiments is a main focus of the regulations.<sup>193</sup> They also require wholesome food and provision of water to animals meeting specified standards, presumably to maintain the quality of animals and experimental results.<sup>194</sup> The regulations do, however, have one specific provision dealing with the treatment of the animals stating that personnel may not “maltreat” animals.<sup>195</sup> Violations of these animal experimentation regulations are handled through “administrative sanctions.”<sup>196</sup>

In addition, National Standards of Laboratory Animals were issued in 1994 and revised in 2001, 2006, 2008, and 2010 by the State Technology Supervisory Bureau and contain a number of technical standards regarding, among other things, use of

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189. Allison G. Jones, *Australia's Damaging International Trade Practice: The Case against Cruelty to Greyhounds*, 14 PAC. RIM L. & POL'Y J. 677 (2005); Li, *supra* note 156, at 117.

190. Whitford, *supra* note 187, at 354.

191. See Wang, *supra* note 150.

192. Regulations of Animal Experiments, art. 1 (promulgated by State Council, Nov. 14, 1988, revised 2004) (China) [hereinafter CRAE].

193. *Id.* arts. 6-8.

194. *Id.* arts. 12-14; see also Whitford, *supra* note 187, at 353.

195. CRAE, *supra* note 192, art. 29.

196. *Id.* arts. 31-32.

equipment and the environment in which animals are kept.<sup>197</sup> Animal welfare and the 3Rs were “indicated” in the Opinions Regarding Development of Laboratory Animals during the National Ninth Five-Year Plan Period (from 1996 – 2000).<sup>198</sup> In 2006, MOST created the Guideline on Humane Treatment of Laboratory Animals (the Guideline) that requires Institutional Animal Care and Use Committee review of experiments, proper care and environments for laboratory animals, a focus on pain and distress, and adequate veterinary care.<sup>199</sup> The Guideline also adopts the 3Rs in animal research, but does not require compliance with them to obtain a license for animal experiments,<sup>200</sup> requires that measures be taken to avoid unnecessary suffering in animals in labs, including meeting behavioral needs, and provides for non-criminal disciplinary penalties for violations.<sup>201</sup> In addition, certain provinces have enacted laws to protect laboratory animals with Beijing having one of the strongest laws, referred to as Administrative Regulation of Laboratory Animals of Beijing, created in 1996 and revised in 2004.<sup>202</sup> All of this brings one commentator to conclude that animal welfare is now well accepted by Chinese scientists and the government as an issue to be considered in animal experimentation.<sup>203</sup> Nonetheless, animal laboratory science in China has been characterized as “uneven and rudimentary.”<sup>204</sup>

The lack of a general animal protection law is not a result of a lack of effort by Chinese animal advocates. A proposed animal protection law, authored by the Chinese Academy of Social Sciences along with overseas experts in animal welfare and legal

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197. *See id.*; Whitford, *supra* note 187, at 353. Guan Wang reviewed these standards in Mandarin and translated details stated in the body of this article.

198. *See* Wang, *supra* note 150. Guan Wang reviewed these opinions in Mandarin and translated details stated in the body of this article.

199. Wang, *supra* note 150; DIANA E. PANKEVICH ET AL., INTERNATIONAL ANIMAL RESEARCH REGULATIONS: IMPACT ON NEUROSCIENCE RESEARCH: WORKSHOP SUMMARY 15-16 (2012).

200. Whitford, *supra* note 187, at 354; *see also* PANKEVICH ET AL., *supra* note 199, at 15.

201. Whitford, *supra* note 187, at 354.

202. *Id.*

203. Wang, *supra* note 150; PANKEVICH ET AL., *supra* note 199, at 16.

204. PANKEVICH ET AL., *supra* note 199, at 16.

scholars, has existed for a number of years<sup>205</sup> and has been produced in three iterations.<sup>206</sup> Two of these are translated into English.<sup>207</sup> This proposal was originally drafted to prohibit cruelty and negligent mistreatment of animals, but the latter prohibition was removed and the present proposal basically just protects against cruelty; it does not create a positive duty of care toward animals.<sup>208</sup> All versions of the proposal protect wild animals, animals for economic use, animals used in agriculture, pets, laboratory animals and animals used in entertainment from cruelty.<sup>209</sup> The draft law follows the Guiding Opinions described previously relating to animal experimentation, promotes the 3Rs and states that unnecessary harm should not be caused to laboratory animals.<sup>210</sup>

Methods of slaughter would be required to conform to humane standards, including the requirement of stunning before killing, under the proposal.<sup>211</sup> These requirements for slaughter would bring Chinese law into conformance with OIE requirements in this respect.<sup>212</sup> Abandonment of animals would be an offense under the draft law.<sup>213</sup> While eating of dogs has become a contentious issue in China and in an early draft of the proposal use of dogs for food was prohibited, all published versions of the proposal have left this issue to local determination.<sup>214</sup> This law has not made much progress in moving toward passage and its present status is its submission to the Standing Committee of the National People's Congress in March 2010. There is, however, some discussion of a proposal to

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205. Whitford, *supra* note 187, at 349.

206. ANIMAL PROTECTION LAW OF THE PRC AND PREVENTION OF CRUELTY TO ANIMAL LAW OF THE PRC: EXPERTS' PROPOSAL AND THE PUBLIC RESPONSE (2013) (on file with author) [hereinafter EXPERTS' PROPOSAL].

207. *Id.* at 68-132 [hereinafter PROPOSAL 1] and 178-209 [hereinafter PROPOSAL 2].

208. Whitford, *supra* note 187, at 347-48.

209. *Id.* at 351; PROPOSAL 1, *supra* note 207; PROPOSAL 2, *supra* note 207.

210. Whitford, *supra* note 187, at 354; PROPOSAL 1, *supra* note 207, art. 89; PROPOSAL 2, *supra* note 207, art. 30.

211. Whitford, *supra* note 187, at 356; PROPOSAL 1, *supra* note 207, art. 157; PROPOSAL 2, *supra* note 207, art. 58.

212. Whitford, *supra* note 187.

213. *Id.*; PROPOSAL 1, *supra* note 207, art. 7; PROPOSAL 2, *supra* note 207, art. 5.

214. EXPERTS' PROPOSAL, *supra* note 206.

amend Chinese law relating to wild animals that would provide for some additional protections of animals from cruelty.<sup>215</sup>

While there have been efforts toward a general animal protection law and there is some regulation of animal experiments, China is best characterized as not having addressed animal protection concerns in any serious fashion. The lack of substantial regulation of animal treatment is consistent with historically ambivalent Chinese attitudes toward animals; although such ambivalence does not appear consistent with many of the teachings of Buddhist and Taoist thought.

#### 4. Chinese Cultural Evolution

Despite the traditional lack of concern for animals and the poor conditions for animals that prevail in China, attitudes prevalent in Chinese culture appear to be shifting toward amplified concern for animals. This seems, in part, to be generational. The young in China frequently have attitudes distinguishable from their elders on animal issues and have more compassion for the disadvantaged.<sup>216</sup> As an example, eating dogs is becoming increasingly controversial, especially among the young.<sup>217</sup> Animal protectionists are now some of the most active interest groups in China<sup>218</sup> and one of the primary aims of these activists is to promote education on animal protection.<sup>219</sup> Animal issues are, in fact, igniting “a cultural war in China, pitting old against young, urban against rural, and those who respect tradition against those who recognize the need for change.”<sup>220</sup>

This cultural conflict is evidenced by an emerging and lively academic and public debate on animal rights and welfare fueled

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215. E-mail from Jiwen Chang, Professor of the Chinese Acad. of Soc. Sci. & the China Univ. of Geosciences (Wuhan) to Guan Wang, research assistant (Oct. 15, 2013) (translated from Mandarin by Guan Wang) (on file with author).

216. Tobias, *supra* note 151.

217. *Id.*

218. *Id.*

219. Song Wei, *Animal Welfare Legislation in China: Public Understanding and Education*, in ANIMALS, ETHICS AND TRADE 101, 101-110 (Jacky Turner & Joyce D’Silva eds., 2006).

220. David Graham, *Animal Rights Spark New Cultural War in China*, THE STAR (June 30, 2012), <http://www.thestar.com/news/world/article/1218582--animal-rights-sparks-new-cultural-war-in-china>.



by highly publicized incidents of animal cruelty, the prevalence of cruel practices in agriculture in China, economic advances, and the influx of new ideas and activism on the environment.<sup>221</sup> For instance, Professor Qui Renzhong authored an article on animal protection in China that initiated considerable and sometimes rancorous discussion.<sup>222</sup> Renzhong's position, however, is not radical by Western standards and advocates nothing more than a gradualist approach to improving animal treatment.<sup>223</sup> Nonetheless, among the responses to Professor Renzhong was one from Professor Zhoa Nanyuan who accused those advocating for animals of being "anti-humanity" and "foreign trash," and argued that such advocacy was Western neo-imperialism.<sup>224</sup> Professor Nanyuan's position is based on several seemingly counterfactual contentions. First, he asserts that the interests of animals and humans are irreconcilably opposed.<sup>225</sup> Second, he relies on the claim, rather unambiguously contrary to modern science, that animals do not have pain and emotions.<sup>226</sup> But this debate has not ended; other academics have responded to Professor Nanyuan rejecting his arguments.<sup>227</sup>

Social science in China has joined the dialog. Considerable research on Chinese students' views on animal protection issues is collected in an article by Zu Shuxian, Peter J. Li, & Peifeng Su. In the article they review, among others, a 1998 study by the International Fund for Animal Welfare (IFAW) of Chinese college students that revealed many favorable attitudes toward better treatment of animals and found the results to be similar to a study performed in the United States ten to fifteen years earlier.<sup>228</sup> This IFAW study found that 93.6% of the students said that animals experience suffering and pain, and 93.7% thought animals had emotions of sadness and happiness.<sup>229</sup> Later scholarship has confirmed these results. A 2002 study

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221. Li, *supra* note 156, at 111.

222. *Id.* at 112.

223. Li, *supra* note 156, at 112-113.

224. *Id.* at 113.

225. *Id.* at 119.

226. *Id.* at 113.

227. *Id.* at 114.

228. Shuxian et al., *supra* note 178, at 76.

229. *Id.*

found that 97.8% of respondents said animals could feel pain and 96.1% said animals had emotions.<sup>230</sup> A 2003 follow-up study found that 98.2% of respondents said animals had pain and 96.4% said they had emotions.<sup>231</sup> Other results from these 2002 and 2003 studies showed that only 2.7% and 2.5 % thought animals existed for human use, 92.4 and 93% said that the welfare of animals deserved respect and equal consideration, 95% and 93.7% philosophically supported animal protection activities, and 48.2% and 51% said they were willing to participate in animal protection organizations.<sup>232</sup> Similar attitudes among Chinese students have been found in another recent study by Gareth Davey.<sup>233</sup> And this is not just a phenomenon of Chinese students; concern about animal treatment has been found to be widespread in Asia.<sup>234</sup> The news on developing attitudes toward animals in China is, however, not all good. A study of Chinese attitudes on use of wild animal products, found that less than half of the Chinese surveyed held strong conservation views concerning wild animals.<sup>235</sup>

These evolving attitudes on animals in China have translated into the creation of new animal protection organizations.<sup>236</sup> This animal protection activism includes large scale opposition to bear bile farming<sup>237</sup> and these efforts have

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230. *Id.*

231. *Id.*

232. Shuxian et al., *supra* note 178, at 78, 81.

233. Gareth Davey, *Chinese University Students' Attitudes Toward the Ethical Treatment and Welfare of Animals*, 9 J. APPLIED ANIMAL WELFARE SCI. 289 (2006).

234. MORI, *Asian Nations Share British Concern for Animals*, IPSOS (2005), available at <http://www.ipsos-mori.com/researchpublications/researcharchive/491/Asian-Nations-Share-British-Concern-For-Animals.aspx> (explaining results of IFAW survey, showing that Asians, Vietnamese, Chinese, and South Koreans share similar views on the moral duty to minimize animal suffering — about 90% believe that there is a moral duty to minimize animal suffering).

235. Li Zhang, Ning Hue, & Shan Sun, *Wildlife Trade, Consumption and Conservation Awareness in Southwest China*, 17 BIODIVERSITY & CONSERVATION 1493 (2008).

236. *See* Li, *supra* note 156, at 123.

237. *China Backs the Bears*, ANIMALS ASIA (Mar. 2012), <http://www.animalsasia.cc/share2friends.php?UID=GY1NZWLNIT>; *see also* Fauna, *Activists Protest Guizhengtang's Live Extraction of Bear Bile*, CHINA SMACK (Feb. 29, 2012), [http://www.chinasmack.com/2012/pictures/young-activists-protest-guizhengtang-live-extraction-of-bear-bile.html#disqus\\_thread](http://www.chinasmack.com/2012/pictures/young-activists-protest-guizhengtang-live-extraction-of-bear-bile.html#disqus_thread).

been aided by celebrities. Yao Ming has become involved in animal issues, opposing bear bile farming and endorsing a sanctuary for bile bears.<sup>238</sup> Yao Ming is also now joined by other celebrities, including pop singer Yu Kewei, artist Ai Weiwei, actress Sun Li, and Jackie Chan, who have partnered with Chinese animal welfare activists to increase awareness of mistreatment of animals in China.<sup>239</sup>

Further evidence of increased animal protection activism is exhibited by several recent cases of citizen rescues of dogs from the trade in dog meat. Animal advocates have blockaded a number of shipments of dogs to be used for food and have rescued the dogs.<sup>240</sup> One of these shipments involved 580 dogs crammed into a single truck.<sup>241</sup> This event has been described as “a rare successful case of social activism in China, where authorities are waging a brutal crackdown on dissent.” It has also been said that the “blockade may be more remarkable for what it shows about changes in Chinese society over the past decade as fantastic economic growth has bred a middle class with new sensibilities.<sup>242</sup>

What, in addition to economic advances, may be propelling this leap in Chinese attitudes? Many reasons have been cited. “Rational use” policies that may ultimately lead to extinction of some species of wild animals may be stimulating the movement to

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238. Mark McDonald, *Finally, Outrage in China Against Bear Farming*, RENDEZVOUS (Feb. 20, 2012), <http://rendezvous.blogs.nytimes.com/2012/02/20/finally-outrage-in-china-against-bear-farming/>.

239. *Big Names in China Stand Up for Animals*, ADVOCACY FOR ANIMALS – ENCYCLOPÆDIA BRITANNICA (Sept. 10, 2012), <http://advocacy.britannica.com/blog/advocacy/2012/09/big-names-in-china-stand-up-for-animals/>; see also *Animal Rights in China Get Boost from Celebrity Activists and Shifting Attitudes*, HUFFINGTON POST (Feb. 21, 2012) [hereinafter *Celebrity Activists*], available at [http://www.huffingtonpost.com/2012/02/21/animal-rights-china-celebrity-activists\\_n\\_1290273.html](http://www.huffingtonpost.com/2012/02/21/animal-rights-china-celebrity-activists_n_1290273.html).

240. Tobias, *supra* note 151 (noting that there were five rescues of dogs on highways in 2011 where 2000 total dogs were rescued).

241. Gillian Wong, *China Dog Rescue: Hundreds of Animals Rescued from Slaughter by Activist Road Blockade*, HUFFINGTON POST (Apr. 20, 2011), [http://www.huffingtonpost.com/2011/04/20/dog-rescue-china-animal-activists\\_n\\_851454.html](http://www.huffingtonpost.com/2011/04/20/dog-rescue-china-animal-activists_n_851454.html).

242. THE ASSOCIATED PRESS, *Dog Rescue in China Reflects Changing Attitudes*, DENVER POST (Apr. 20, 2011), [http://www.denverpost.com/nationworld/ci\\_17886105](http://www.denverpost.com/nationworld/ci_17886105).

protect wild animals.<sup>243</sup> It is also claimed that public health scares, including outbreak of Severe Acute Respiratory Syndrome and avian flu, may be an influence in the movement to change the treatment of livestock.<sup>244</sup> External economic pressure on China cannot be ignored; concern exists that consumers may demand changes in Chinese practices or not buy Chinese products.<sup>245</sup> The increasing popularity of companion animals may also play a role in changing attitudes toward animals.<sup>246</sup> Recent high profile animal cruelty cases brought to public attention affect public views and fuel debate as well.<sup>247</sup> The developing animal welfare community is a further engine of change,<sup>248</sup> as is celebrity involvement in animal issues. Progress has been great enough that it has been argued that the Chinese animal protection movement has developed to the point where Western animal protection groups can stand aside and Chinese activists can fully take charge of pressing for change.<sup>249</sup> Unfortunately, however, the fact is that the amount of animal abuse and exploitation is increasing in China notwithstanding these burgeoning attitudinal advances.<sup>250</sup> Nonetheless, the base of animal advocates is growing in China, is taking action and can be expected to continue in efforts to press for change in the treatment of animals in China.

## D. South Africa

### 1. Culture

South African culture is diverse, ranging from native African, to white European, to Indian and beyond. Nonetheless, one thing

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243. Paul Littlefair, *Why China is Waking Up to Animal Welfare*, in ANIMALS, ETHICS & TRADE 225, 225-26 (Jacky Turner & Joyce D'Silva eds., 2006).

244. *Id.* at 226-27.

245. *See* Littlefair, *supra* note 243, at 227-28.

246. *Id.* at 228-29; *see also* Sharon Warner Methvin, Cultural Perceptions of Animals and Pet Keeping Among Chinese Elderly (May 23, 2010) (unpublished presentation), *available at* <http://www.slideshare.net/smethvin/chinese-perceptions-of-animals-and-pet-keeping>.

247. Littlefair, *supra* note 243, at 229-30; Li, *supra* note 156, at 111.

248. Littlefair, *supra* note 243, at 231-32.

249. *Celebrity Activists*, *supra* note 239.

250. Graham, *supra* note 220.

that cannot be denied is that the abundance of unusual and endangered wild animals influences South African culture and presents many issues in the human/animal relationship in this country. Because of its vast animal “resources,” South Africa is enamored with “the consumptive use of wild animals.”<sup>251</sup> South Africa is second only to the United States in trophy hunting<sup>252</sup> and, among African nations, it is the biggest wildlife trader.<sup>253</sup>

In addition, in analyzing South African culture, it is quite inconceivable to ignore Apartheid. Michele Pickover, in her book, *Animal Rights in South Africa*, perceives a link between apartheid and South African cultural views of animals. She posits that the same kind of socially conditioned hierarchical beliefs behind oppression of humans in apartheid can be observed in the way animals are abused and oppressed in South Africa.<sup>254</sup> One example from the apartheid era revealing a direct connection between violence against animals and humans is military animal experiments in which animals were used to test weapons to be used on opponents of apartheid.<sup>255</sup> Thus, these experiments were intended ultimately to *cause* harm to both humans and animals, not alleviate it.<sup>256</sup> In addition, there is evidence of the vestiges of apartheid in certain present uses of animals in South Africa. The South African hunting industry caters to wealthy elites from the north.<sup>257</sup> Moreover, the trophy hunting industry is white controlled and has not been changed by the process of democratization.<sup>258</sup> Private game farms are the fastest growing agricultural industry in South Africa and this benefits primarily wealthy landowners.<sup>259</sup> It is not only in economic terms that the use of South Africa’s wildlife reflects pre-apartheid norms; it also

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251. MICHELÈ PICKOVER, ANIMAL RIGHTS IN SOUTH AFRICA 7 (Double Story 2005); D.B. Wilkins et al., *Animal Welfare: The Role of Non-Governmental Organizations*, 24 REVUE SCIENTIFIQUE ET TECHNIQUE (INT’L OFF. OF EPIZOOTICS) 625, 628-629 (2005), available at <http://www.oie.int/doc/ged/D2302.pdf>.

252. PICKOVER, *supra* note 251, at 16.

253. *Id.* at 49.

254. *Id.* at 5-6.

255. *Id.* at 131.

256. *Id.* at 133.

257. *Id.* at 17.

258. PICKOVER, *supra* note 251, at 17.

259. *Id.* at 17, 18; *see also* Wilkins et al., *supra* note 251.

does so symbolically. The wild animal hunt can be seen as ritual; a symbol of the dominance of the white culture.<sup>260</sup>

The violent vestiges of apartheid weigh upon issues of the treatment of animals in other ways as well. There is, for instance, recognition by some that the history of violence against humans and animals alike in South Africa provides fuel to those pushing for reform of South African laws relating to animals.<sup>261</sup> This fuel is a product of the ideas that violence breeds violence and that there is a strong connection between violence against animals and violence against humans; all reasons given for the need to reform South Africa's animal protection laws.<sup>262</sup> Thus, with respect to many issues, including issues relating to animals, one can view South African culture as one both splintered and shaped by its history of apartheid.

Given apartheid, it is not astonishing that the cross currents caused by native, Western and Indian cultural strands in South Africa sometime collide. For instance, ritual slaughter occurs in South African native religious culture.<sup>263</sup> In addition, "informal slaughter" outside of traditional factory and other farms accounts for a significant portion of the killing of animals in South Africa, estimated at about 25% of cattle, 30% of sheep, and 10% of pigs, and occurs without monitoring or inspection.<sup>264</sup> Some non-natives think these practices barbaric, while at the same time they consider factory-farming slaughter humane.<sup>265</sup> On the other hand, there are those in the South African native community who say that disrespect for animals is a Western import, not part of traditional African religious culture.<sup>266</sup> It has been argued, for instance, that South African traditional culture can actually be a force supportive of and consistent with animal rights: "[a]nimal

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260. PICKOVER, *supra* note 251, at 19.

261. Press Release, Animal Rights Africa, South African Animal Organizations Unite and Call for Better Animal Protection Legislation and Enforcement (Aug. 17, 2009), available at <http://www.animalliberationfront.com/ALFront/South%20Africa/SouthAfricaOrgsUnite.htm>.

262. PICKOVER, *supra* note 251, at 15.

263. *Id.* at 159; see also Wilkins et al., *supra* note 251, at 628.

264. PICKOVER, *supra* note 251, at 158; see also Wilkins et al., *supra* note 251, at 628.

265. See PICKOVER, *supra* note 251, at 159-60; see also Wilkins et al., *supra* note 251, at 628.

266. PICKOVER, *supra* note 251, at 159-60.

liberation is consequently a natural progression of our humanity, embodying the powerful concept of *ubuntu*.”<sup>267</sup> Further, the need for improved protection of animals in South Africa has been championed by luminaries such as Desmond Tutu:

‘I have seen at firsthand how injustice gets overlooked when the victims are powerless or vulnerable, when they have no one to speak up for them and no means of representing themselves to a higher authority. Animals are in precisely that position. Unless we are mindful of their interests, and speak out loudly on their behalf, abuse and cruelty goes unchallenged.’<sup>268</sup>

As we will see, present South African laws on animals are a product of the apartheid era and it has been argued that they do not reflect “the more enlightened attitude that post-apartheid South Africans have regarding animals.”<sup>269</sup>

Another aspect of the human/animal relationship in South Africa is the recurrent theme that, as we see in other countries and cultures, even many of those in animal protection groups see themselves as a special species atop a hierarchy.<sup>270</sup> And as in other cultures, one of the arguments made against pressing forward on animal issues is that those pushing for animal rights care more for animals than humans.<sup>271</sup>

Regardless of the cultural rifts relating to agricultural and other uses of animals, like trophy hunting, industrialized factory farming is expanding in South Africa.<sup>272</sup> Ironically, one reason for this expansion is greater regulation of the animal agriculture industry in Europe that is pushing animal production to the south where there is little or no regulation, thereby increasing animal suffering.<sup>273</sup> Along with these changes, the power of agricultural corporations is rising, as Western fast food companies increase the use of agricultural animals in South

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267. *Id.* at 171. While the concept of *ubuntu* is variously defined, it can be said to something like the “essence” of being human.

268. PICKOVER, *supra* note 251, at 15 (quoting Archbishop Desmond Tutu).

269. Press Release, *supra* note 261.

270. PICKOVER, *supra* note 251, at 9.

271. *Id.* at 89.

272. *Id.* at 145.

273. *Id.* at 164-65.

Africa.<sup>274</sup> These Western food production and distribution corporations are seen by some as neo-colonialists in South Africa.<sup>275</sup>

As a general proposition, Pickover argues that the people of South Africa seem, at this time, to be largely unconcerned about the protection of animals from exploitation.<sup>276</sup> Despite this dreary view, modern animal protection and rights organizations are calling for changes to South African law, as is the South African Veterinary Foundation,<sup>277</sup> and there are those who are also pushing for a constitutional provision protecting animals.<sup>278</sup> Some of these South African organizations are challenging, based in part on the modern science of ethology, the hierarchical view of the relation of humans and animals that underpins present uses and treatment of animals.<sup>279</sup>

Moreover, there are those, like Pickover, who argue that issues like factory farming of animals are social justice issues that need to be addressed in South Africa.<sup>280</sup> Mantsadi Molotleg, for example, is one of those struggling against the currents of hierarchy and oppression of animals in South Africa. Tying the history of apartheid to the new fight on behalf of animals, she relates:

[J]ust as my grandparent and parents fought for my freedom, I've come to realize that there is yet another freedom that has to be fought for—the right of animals to be treated with decency. What really hit me for a six was the awakening that the way we treat animals has all the hallmarks of apartheid—prejudice, callous disregard for suffering and a misguided sense of supremacy . . . group areas and segregation helped to keep the

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274. *Id.* at 147, 161-63.

275. *See id.* at 163.

276. PICKOVER, *supra* note 251, at 168.

277. S. AFRICAN VETERINARY FOUND., *Review of Animal Care Legislation in South Africa*, FREDOCLIB, <http://free-doc-lib.com/book/south-african-veterinary-foundation-review-of-animal-care.pdf> (last visited Apr. 10, 2014).

278. *Animal Protection and Constitutions*, WORLD ANIMAL NET, <http://www.worldanimal.net/resources/constitution-project-resources/53-animal-protection-and-constitutions> (last visited Apr. 10, 2014).

279. PICKOVER, *supra* note 251, at 10.

280. *Id.* at 167.



suffering of black people hidden from view. So, too, with the animals.<sup>281</sup>

Pickover adds:

As South Africans, we have experienced pain and suffering, but we are transforming our society and there is still hope for inclusive justice, respect, kinship and compassion. Breaking with our apartheid past has taught us to think about oppression and has equipped us with the tools for change. This gives us strong reasons for questioning the status quo and working towards a society free from subjugation and violence.<sup>282</sup>

What we see in South Africa are rifts and divides in its culture, or perhaps better “cultures,” relating to the human/animal relationship. Not that there are no such rifts and divides in other cultures reviewed earlier; but here there is a recent and painful history that feeds these rifts and divides. And this history plays a role in its present animal law and will likely have an impact on its future.

## 2. South African Law

As elsewhere in the world, animals are property in South Africa.<sup>283</sup> Also like many other countries, there are some statutory protections for animals. The general animal protection law is the South African Animal Protection Act (SAAPA).<sup>284</sup> This statute defines animals to include domestic and wild animals.<sup>285</sup> Substantively, SAAPA contains a long list of actions that are violations of the law and many include the typical animal welfare legislation “unnecessary suffering” or the like language. In particular, violations of the law can occur from intentional acts like overdriving, overloading, or cruelly kicking animals; from confining, tethering, or chaining animals in a way causing unnecessary suffering; from inciting an animal to attack another animal; from acts of omission like starving, underfeeding, or

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281. *Id.* at 141.

282. PICKOVER, *supra* note 251, at 3.

283. *Id.* at 8, 145.

284. *See generally* Animals Protection Act 71 of 1962 (S. Afr.) [hereinafter SAAPA].

285. *Id.* § 1.

denying water to an animal; from keeping animals in a dirty or parasitic condition; and from abandoning animals in circumstances where it will cause unnecessary suffering.<sup>286</sup> Notwithstanding these provisions, Pickover notes that SAAPA does not prevent the beating of animals.<sup>287</sup> Penalties for violations of SAAPA include fines, imprisonment of up to one year and, interestingly, until 1997, whippings of up to six strokes for aggravated violations.<sup>288</sup> Those convicted can also be prohibited from owning animals.<sup>289</sup> Animal fighting, breeding animals for fighting and training animals for fighting are prohibited.<sup>290</sup> Penalties relating to animal fighting are stiffer than for other violations and can include up to two years in prison.<sup>291</sup> Officers of any society for prevention of cruelty to animals may be given enforcement powers, including the power to arrest, by a district magistrate.<sup>292</sup> The Minister of Justice is also given power to make regulations under this law.<sup>293</sup>

South African law also prescribes methods of slaughter in the Animal Slaughter, Meat and Animal Products Hygiene Act.<sup>294</sup> In addition, there are Codes for the care of agricultural animals prescribed by the Livestock Welfare Coordinating Committee, a non-governmental organization (NGO).<sup>295</sup> The code relating to handling and transport of livestock, for example, provides recommendations relating to, among other things, the size of enclosures for animals, feeding and watering of animals, use of equipment to drive animals, and methods of handling animals.<sup>296</sup>

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286. *Id.* § 2.

287. PICKOVER, *supra* note 251, at 79.

288. SAAPA, *supra* note 284, § 2.

289. *Id.* § 3.

290. *Id.* § 2A.

291. *Id.*

292. *Id.* § 8.

293. *Id.* § 10.

294. *See generally* Animal Slaughter, Meat and Animal Products Hygiene Act 87 of 1967 (S. Afr.).

295. PICKOVER, *supra* note 251, at 147; Wilkins et al., *supra* note 251, at 630.

296. Theresa Coetzer & Dean Goldring, *Animal Rights and Animal Welfare*, in *ETHICS IN AGRICULTURE – AN AFRICAN PERSPECTIVE* 95-96 (Alvin van Niekerk ed., 2005).

Another statute of significance relating to animals in South Africa is the Performing Animals Protection Act (PAPA).<sup>297</sup> The law covers exhibition and training of performing animals and guard dogs.<sup>298</sup> To exhibit or train animals one must get a license from a Magistrate after making application for the license.<sup>299</sup> One might think having a judicial officer as a licensing official is odd; so did the Constitutional Court of South Africa in a recent decision finding this aspect of PAPA an unconstitutional violation of separation of powers and giving Parliament eighteen months to remedy the defect in the law.<sup>300</sup> Police officials have the authority to enter and inspect places where exhibition or training of animals is undertaken, and obstruction of police in executing these duties is an offense with a penalty of up to R4000 or twelve months imprisonment, which is the penalty generally provided for violations of this act.<sup>301</sup> Horse, dog, and bird shows are excluded from the provisions of the law.<sup>302</sup>

What about regulation of animal experiments in South Africa? There is no statute in South Africa dealing specifically with animal experiments.<sup>303</sup> Nonetheless there is an industry self-regulatory code that provides for committees to review proposed experiments.<sup>304</sup> This can be seen as a peer review system since none of the members of these committees must come from animal protection organizations.<sup>305</sup> Note, not surprisingly, that this industry code is voluntary. As a result, unscrupulous scientists have attempted to take advantage of the lack of mandatory rules on animal experiments in South Africa by approaching South African scientists about performing experiments not permitted in their home countries.<sup>306</sup> Yet another result of the lack of real regulation of experiments is that

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297. See generally Performing Animals Protection Act 24 of 1935 (S. Afr.) [hereinafter PAPA].

298. *Id.* § 1.

299. *Id.* § 2.

300. *Nat'l Soc'y for the Prevention of Cruelty to Animals v. Minister of Agric., Forestry & Fisheries* 2013 (CC) (S. Afr.).

301. PAPA, *supra* note 297, §§ 5, 8.

302. *Id.* § 9.

303. PICKOVER, *supra* note 251, at 121-22.

304. *Id.* at 121.

305. *Id.*

306. *Id.* at 123.

there is use of wild captured primates in South African experiments.<sup>307</sup>

With just three major statutes of some considerable vintage, it has been argued that the government of South Africa is evading its responsibilities on animal issues by advocating continued status quo exploitation of animals and commercial use of its animal “resources.”<sup>308</sup> Pickover argues that the government is just “a conduit for policies and legislation which allow exploitive industries to continue unhindered.”<sup>309</sup> In the eyes of the government, animals are simply resources from which profits are extracted; ethical issues are not considered.<sup>310</sup>

Several observations can be made. South Africa is anything but a monolithic culture; there are historical, social, and racial tensions embedded in its culture. There is the history of apartheid, with its violence and oppression that burns in the consciousness of South Africans. There are racial divides that include the clash between Western culture, native African culture and Indian culture. These cultural collisions may be viewed as having a role in its law (or lack thereof) relating to animals. Existing laws are products of the apartheid era and have not, in the view of many, been revised as they should be. Indeed, in light of the recent decision of the Constitutional Court of South Africa on PAPA, the Department of Agriculture, Forestry and Fisheries “has embarked upon a robust legislative review process in which a number of Acts, including pieces of legislation pertaining to animal welfare are under review.”<sup>311</sup> Nonetheless, it may be that the many cultural frictions in South Africa are at work in the ongoing stagnation in animal-related law in South Africa. Some in the native African population see worries about animals as stemming from Western cultural imperialism; others see them as hypocritical given, for example, that Western factory agriculture

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307. *Id.* at 123-24.

308. *Id.* at 8.

309. PICKOVER, *supra* note 251, at 9.

310. PICKOVER, *supra* note 251, at 92-93.

311. Press Release, Dep’t of Agric., Forestry & Fisheries of S. Africa, Statement on the Constitutional Court Ruling in a Matter between National Society for the Prevention of Cruelty to Animals versus Minister of Agriculture, Forestry and Fisheries and Others, in the Matter Pertaining to the Performing Animals Protection Act, 1935 (Act No. 24 of 1935) (July 17, 2013), available at <http://allafrica.com/stories/201307180132.html>.

can be viewed as more cruel to animals than traditional practices; others see native culture as a foundation for progress on animal issues. On the other side are Europeans who are sometimes quite critical of native African practices and traditions. This admixture of conflicting perspectives and views may contribute to the fact that at this point there are only three fairly old statutes relating to protection of animals. Nonetheless, there are those striving vigilantly to change the law in South Africa and, perhaps, the fault lines of cultural conflict can be bridged and progress made.

## E. Turkey and Islamic Culture

### 1. Islamic Culture

In Istanbul, one sees many stray animals, mostly cats. Some seem well fed; others not. And as we will see, there is considerable controversy over what should be done with stray animals in Istanbul, particularly dogs. Turkey is overwhelmingly Muslim with 99% of the population identifying as Muslim.<sup>312</sup> But unlike some majority Muslim countries it has a history of strict secularism in its government, although the present ruling party has Islamist roots and there are those who see secularism being squeezed out of Turkish society by the present regime as is reflected in recent unrest and protests.<sup>313</sup> I use Turkey as an example in discussing animal issues and Islamic culture because it is a democracy and because it a country presently publicly debating new legislation relating to the treatment of animals.

Islam is a religion that addresses in some detail the nature of animals and their role in the world. It is said that God created animals and has provided for all, so animals are to be given an

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312. U.S. DEP'T ST., TURKEY INTERNATIONAL RELIGIOUS FREEDOM REPORT 2 (2012), available at <http://www.state.gov/documents/organization/208588.pdf>.

313. REUTERS, *Erdogan: Secular Opposition is Provoking Protests*, JERUSALEM POST (June 2, 2013), <http://www.jpost.com/Middle-East/Erdogan-Secular-Turkish-opposition-is-provoking-protests-315178>; □afak Pavey, *Why the Turkish Protests Matter to the West*, THE GUARDIAN (June 9, 2013), <http://www.theguardian.com/commentisfree/2013/jun/10/turkish-protests-west>; see, e.g., Whit Mason, *Turkey's Secular Awakening*, FOREIGN POL'Y (June 5, 2013), [http://www.foreignpolicy.com/articles/2013/06/05/turkey\\_s\\_secular\\_awakening](http://www.foreignpolicy.com/articles/2013/06/05/turkey_s_secular_awakening).

equitable share of the resources of the earth as a birthright.<sup>314</sup> They, like humans, are also described as being “communities:” “[a]ll the beasts that roam the earth and all the birds that wing their flight are but communities like your own. We have left out nothing in the book. They shall all be gathered before their lord.”<sup>315</sup> Moreover, animals have a consciousness of God and adore and worship him.<sup>316</sup> Given this consciousness of God, it is not surprising that animals are said to have souls in Islam,<sup>317</sup> although there is some controversy over whether animal souls are eternal.<sup>318</sup> Along with souls, animals are said to have emotional lives.<sup>319</sup>

There are even passages of the Qur’an where animals are described as having the faculty of speech and the ability to communicate directly with some humans — there are talking ants in one verse, discussions of the speech of other animals elsewhere, and human learning and understanding of the speech of birds.<sup>320</sup> Shi’ite Hadiths contain instances where Mohammad and Imams are shown able to speak to animals and there are rare instances of this in Sunni Hadiths.<sup>321</sup> Consistent with these ideas is the idea that humans can learn from animals.<sup>322</sup>

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314. RICHARD C. FOLTZ, ANIMALS IN ISLAMIC TRADITION AND MUSLIM CULTURES 15 (2006) [hereinafter FOLTZ 2006a]; Richard Foltz, “*This She-Camel of God is a Sign to You: Dimensions of Animals in Islamic Tradition and Muslim Culture*, in A COMMUNION OF SUBJECTS 150-51 (Paul Waldau & Kimberly Patton eds., 2006) [hereinafter Foltz 2006b]; AL-HAFIZ BASHEER AHMAD MASRI, ANIMAL WELFARE IN ISLAM 21-25 (2007); TLILI, *supra* note 130, at 147; *Animals in Islam I*, THE MODERN RELIGION, <http://www.themodernreligion.com/misc/an/an1.htm> (last visited Apr. 10, 2014) [hereinafter *Animals in Islam*].

315. QUR’AN 6:38 (King Fahd Ibn Abdul Aziz Al-Saud trans., 1992). Many other sources discuss the idea of animals as communities in Islam. MASRI, *supra* note 314, at 7-8; TLILI, *supra* note 130, at 138-46; Robert Tappan, *Islam & Vegetarianism*, JESUSVEG.COM, <http://www.jesusveg.com/6.html> (last visited Apr. 10, 2014); *Animals in Islam*, *supra* note 314.

316. TLILI, *supra* note 130, at 165-76; *Animals in Islam*, *supra* note 314.

317. Foltz 2006b, *supra* note 314, at 151; Zulfikar Khayum, *The Slaughter of Animals and Islam*, 12 UCL JURISPRUDENCE REV. 46, 47 (2005) (stating the animal soul or mind includes the motive and cognitive capacities, while the human soul or mind includes the rational capacity); Harrison, *supra* note 29.

318. Foltz 2006b, *supra* note 314, at 95; Harrison, *supra* note 29.

319. FOLTZ 2006a, *supra* note 314, at 20.

320. *Id.* at 12; TLILI, *supra* note 130, at 176-77.

321. FOLTZ 2006a, *supra* note 314, at 21-22.

322. TLILI, *supra* note 130, at 256; *Animals in Islam*, *supra* note 314.

Certain animals are blessed, like camels, horses, and bees, while others, like cats and dogs, are associated with the “evil eye.”<sup>323</sup> Indeed, dogs are traditionally thought to be unclean,<sup>324</sup> although there are those who believe that this is a misinterpretation of Islamic sources.<sup>325</sup> Pigs are not well regarded and are believed to have poor moral character.<sup>326</sup>

Doctrine on human use of animals coincides with that of Western culture; animals were created for the use of humans for food, clothing, work and adornment.<sup>327</sup> Use of animals is, however, only to occur when necessary,<sup>328</sup> and in using animals, humans are to be kind, compassionate and merciful.<sup>329</sup> But the level of concern to be given animals is not as great as is to be given to humans.<sup>330</sup> Meat eating is explicitly permitted,<sup>331</sup> but is not encouraged or even recommended.<sup>332</sup> Hunting for sustenance is also permitted.<sup>333</sup> Although sport hunting is not permitted,

323. FOLTZ 2006a, *supra* note 314, at 13.

324. COMMUNICAID, *supra* note 3; Ayoub M. Banderker, *Animal Abuse and Welfare in Islam*, ISLAMIC CONCERN, <http://www.islamicconcern.com/dogs.asp> (last visited Apr. 10, 2014); Graham Grant, *Police Forced to Drop Posters in Case Picture of Puppy Should Upset Muslims*, DAILY MAIL UK (July 2, 2008), <http://daily-mail.vlex.co.uk/vid/drop-posters-picture-puppy-upset-muslims-60821668>; Richard Peppiatt, *It's P.C. Madness*, DAILY STAR UK, July 7, 2008.

325. Interview by Claudette Vaughan with Linda Taal, Kütahya Doğa ve Hayvan Sevenler Derneği, a Turkish animal welfare organization (Nov. 7, 2010) (discussing wither the Turkish animal welfare bill is working), *available at* <http://kangal.ca/dogs-in-turkey/turkish-animal-welfare-bill-is-it-working/>; Khaled Abou El Fadi, *An Islamic Scholar's Kindly View of Dogs*, ISLAMIC CONCERN, <http://www.islamicconcern.com/dogs.asp> (last visited Apr. 10, 2014).

326. Rashid Shamsi, *Why Islam Forbids Pork?*, ISLAMICWORLD.NET (Oct. 1999), <http://islamic-world.net/sister/h1.htm>.

327. Mahfouz Azzam, *Islamic Philosophy on Animal Rights*, in ANIMALS, ETHICS AND TRADE 129, 130 (Jacky Turner & Joyce D'Silva eds., 2006); TLILI, *supra* note 130, at 83-89.

328. FOLTZ 2006a, *supra* note 314, at 19.

329. *Id.* at 27 (stating that the overriding ethos of the Qur'an is “compassionate consideration”); Azzam, *supra* note 327, at 129-30; Khayum, *supra* note 317, at 46, 56, 57; Tappan, *supra* note 315; IBRAHIM ABDUL-MATIN, GREENDEEN 173 (2010); Omar A. Bakhashab, *Islamic Law and Environment: Some Basic Principles*, 3 ARAB L. Q. 287 (1988).

330. FOLTZ 2006a, *supra*, note 314, at 27.

331. *Id.* at 25; MASRI, *supra* note 314, at 87-88; ABDUL-MATIN, *supra* note 329, at 172-73; Foltz 2006b, *supra* note 314, at 151; TLILI, *supra* note 130, at 79-83.

332. Khayum, *supra* note 317, at 58; MASRI, *supra* note 314, at 88.

333. Omar A. Bakhashab, *Islamic Law and Environment: Some Basic Principles*, 3 ARAB L. Q. 287, 296 (1988).

animal sacrifice is, but the meat from sacrificial killing is to be provided to the needy.<sup>334</sup> While there is some debate on this issue, animal sacrifice has been said not to be a pillar of Islam and is not required on the Hajj.<sup>335</sup>

Like other Abrahamic religions, Islam places humans atop the hierarchy of God's creation.<sup>336</sup> This hierarchical view, as in Judeo/Christian doctrine, is a reflection of acceptance of Aristotle's *Great Chain of Being*.<sup>337</sup> Human uniqueness in Islam is attributed to several allegedly unique human characteristics: the human ability to make moral decisions<sup>338</sup> and man's spiritual power or volition.<sup>339</sup> In God's hierarchy, man is vice-regent of the earth, but this power is to be exercised through stewardship.<sup>340</sup> As a part of this stewardship humans are granted power over and are entitled to use animals.<sup>341</sup> But, as noted above, there are limits on the appropriate use of animals by humans: "use of animals by man should be out of necessity and 'done with compassion, humility and loving care' as opposed to 'malevolence,

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334. Khayum, *supra* note 317, at 60; FOLTZ 2006a, *supra* note 314, at 14, 20; Foltz 2006b, *supra* note 314, at 150 (identifying occasions when sacrifices are permitted including the Annual *Eid al-Adha*, to fulfill vows, seven days after the birth of a child or "on the tenth day of the month of Dhu'l-hijja in atonement for transgressions committed during the pilgrimage to Mecca."); MASRI, *supra* note 314, at 111-116, 124-25 (stating that sacrifice is allowed on three occasions: toward the end of *Hajj*, at the birth of a child, and for charitable reasons); Shahid Ali Muttaqi, *The Sacrifice of "Eid al-Adha" – An Islamic Perspective Against Animal Sacrifice*, ISLAMIC CONCERN, <http://www.islamicconcern.com/sacrifice01.asp> (last visited Apr. 10, 2014) (stating that sacrifice in Islam is to show thanks to God for sustenance and to share with others); Norm Phelps, *Sacrifice in Islam*, SOC'Y OF ETHICAL & RELIGIOUS VEGETARIANS, <http://www.serv-online.org/phelps2.htm> (last visited Apr. 10, 2014) (stating that sacrifice in Islam has two foundations, submission to God and doing charity, *i.e.*, providing the sacrificed meat to the needy).

335. FOLTZ 2006a, *supra* note 314, at 14, 27; Muttaqi, *supra* note 334.

336. FOLTZ 2006a, *supra* note 314, at 15, 145; Foltz 2006b, *supra* note 314, at 150; TLILI, *supra* note 130, at 3, 54-56, 221-225; Khayum, *supra* note 317, at 46-50.

337. FOLTZ 2006a, *supra* note 314, at 49.

338. Khayum, *supra* note 317, at 48-49.

339. MASRI, *supra* note 314, at 7.

340. Foltz 2006b, *supra* note 314, at 15 (stating that man is to act as steward to animals); MASRI, *supra* note 314, at 4.

341. Khayum, *supra* note 317, at 46.



avidity[,] or greed for creature comforts or self-indulgence.”<sup>342</sup> Thus, although animals cannot be said to have “rights” in Islam, humans nonetheless do have obligations relating to animals<sup>343</sup> and acts of charity toward animals are rewarded by God.<sup>344</sup>

There are many specific requirements for treatment of animals in Islamic doctrine. Animals must be provided proper food and water;<sup>345</sup> animals must have clean resting and watering places;<sup>346</sup> animals must be kept clean and healthy;<sup>347</sup> humans are required to spend time, energy, and money to care for their animals;<sup>348</sup> male and female animals should be placed together in mating season;<sup>349</sup> animals are not to be insulted or cursed;<sup>350</sup> animals are not to be overburdened or overworked;<sup>351</sup> harmful objects may not be placed with animals;<sup>352</sup> humans must not cause avoidable harm to or torture animals;<sup>353</sup> hunting cannot be done with tools that break bones;<sup>354</sup> at slaughter, animals should be given water and taken to slaughter with “care and tenderness;”<sup>355</sup> and young animals should not be killed within the sight of their mother.<sup>356</sup>

Given these and other obligations of the Muslim religion, there is controversy over whether modern intensive farming methods are consistent with Islamic teachings.<sup>357</sup> This is because

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342. *Id.* at 47 (quoting AL-HAFIZ BASHEER AHMAD MASRI, *ANIMALS IN ISLAM* 2 (1989)); see also MASRI, *supra* note 314 at 4, 47-48, 51; Foltz 2006b, *supra* note 314, at 15.

343. Khayum, *supra* note 317, at 50-60.

344. Phelps, *supra* note 334.

345. Azzam, *supra* note 327, at 130.

346. Foltz 2006b, *supra* note 314, at 153.

347. Azzam, *supra* note 327, at 131.

348. FOLTZ 2006a, *supra* note 314, at 34; Foltz 2006b, *supra* note 314, at 152.

349. Foltz 2006b, *supra* note 314, at 153.

350. Azzam, *supra* note 327, at 131.

351. FOLTZ 2006a, *supra* note 314, at 34; Foltz 2006b, *supra* note 314, at 152; Azzam, *supra* note 327, at 131.

352. Foltz 2006b, *supra* note 314, at 152.

353. Azzam, *supra* note 327, at 131; Khayum, *supra* note 317, at 55.

354. Foltz 2006b, *supra* note 314, at 153.

355. Azzam, *supra* note 327, at 132; see also FOLTZ 2006a, *supra* note 314, at 34; Foltz 2006b, *supra* note 314, at 153.

356. Foltz 2006b, *supra* note 314, at 153.

357. Tappan, *supra* note 315; MASRI, *supra* note 314, at 44 (stating that intensive farming methods are contrary to the Qur’an).

shackling and hoisting animals would seem to violate Islamic rules on slaughter, keeping of animals in small cages also may be a violation of Islamic tenets and modern agribusiness mutilates animals in violation of Islamic law.<sup>358</sup>

Vivisection is permitted in Islam with restrictions. One constraint comes from the stricture that intentionally causing pain to or disfigurement of an animal is not permitted in Islam.<sup>359</sup> Given this general rule, even Muslim thinkers at the forefront of animal issues believe that experiments can be done so long as there is no pain or disfigurement.<sup>360</sup> And in performing experiments, the issue in Islam is the intent of the person doing the experiment.<sup>361</sup> The result of these principles is that “any kind of experimentation on animals becomes ethical or legal according to the intention of the person who performs it. If animals are not intentionally caused pain or permanently disfigured, and if other animals or humans would benefit, then animal research is permissible in Islam.”<sup>362</sup> But under Islamic tenets experiments must be “absolutely essential” and must be done by competent and conscientious scientists for the promotion of knowledge, not for commercial gain.<sup>363</sup>

From what we have seen of mainstream Muslim thought, animal rights theory stands a great distance outside the mainstream, as it does in nearly all other cultures.<sup>364</sup> Rather, an ethic of stewardship, as in Western culture, is the dominant view.<sup>365</sup> Nonetheless, there are some modern voices, like those of Basheer Ahmad Masri, Said Nursi, and Hakim Archuletta, who take fairly strong favorable positions toward animal protection<sup>366</sup> and there is a recent book by Sarra Tlili that presents a non-anthropocentric view of the Qur’an.<sup>367</sup> The most compassionate

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358. Tappan, *supra* note 315.

359. Khayum, *supra* note 317, at 57; MASRI, *supra* note 314, at 27-33.

360. MASRI, *supra* note 314, at 27-33; Foltz 2006b, *supra* note 314, at 155 (speaking about Basheer Ahmad Masri’s views).

361. Khayum, *supra* note 317, at 57; *Animals in Islam*, *supra* note 314.

362. Khayum, *supra* note 317, at 57.

363. *Id.*

364. FOLTZ 2006a, *supra* note 314, at 85.

365. *Id.* at 85-86.

366. *Id.* at 89-99; MASRI, *supra* note 314.

367. TLILI, *supra* note 130.

voices in Islam tend to come from the Sufi tradition,<sup>368</sup> which has considerable influence in Turkey,<sup>369</sup> the laws of which are analyzed below. But in general, Muslim attitudes toward animals have not changed in recent times and remain largely in the tradition described above.<sup>370</sup> Those with non-traditional views have often been influenced by Western thought and those making Islamic arguments for vegetarianism remain far outside the norm.<sup>371</sup>

## 2. Reality in Turkey

How is all of this reflected in the beliefs of Turks about animals and in the reality for animals in Turkish culture? Claudette Vaughan argues Turks tend to view animals as below humans and feel free to mistreat those below them.<sup>372</sup> It has also been said that “[t]he first problem is that in Turkey animals are seen as commodities and are viewed purely in terms of financial value. The second is that stray animals and pets are viewed differently” from other animals.<sup>373</sup> Moreover, the ordinary person on the street in Turkey does not understand that animals have pain and emotions like humans.<sup>374</sup> Therefore, common attitudes in the Turkish population are not focused on the plight of animals, regardless of the Sufi influence in the country.

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368. FOLTZ 2006a, *supra* note 314, at 146; THE ANIMALS’ LAWSUIT AGAINST HUMANITY (Rabbi Anson Laytner & Rabbi Dan Bridge trans., 2005) (this fascinating tale of Indian origin describing a lawsuit by animals against humanity was originally put in written form by Sufis); Bismillah ar-Rahman ar-Rahim, *Qur’an Surah 6:38 – Animal Rights in the Qur’an*, THE ROSE SUFI CRESCENT BLOG (July 1, 2006), <http://rose-sufi-crescent.blogspot.com/2006/07/quran-surah-638-animal-rights-in-quran.html>.

369. Hakan Yavuz, *Is There a Turkish Islam? The Emergence of Convergence and Consensus*, 24 J. MUSLIM MINORITY AFFAIRS 213, 218 (2004) (INST. MUSLIM MINORITY AFFAIRS).

370. FOLTZ 2006a, *supra* note 314, at 147.

371. Foltz 2006b, *supra* note 314, at 155.

372. Vaughan, *supra* note 325.

373. Latifa Akay, *Countdown to Criminalization of Animal Cruelty*, TODAY’S ZAMAN (Mar. 25, 2012) (quoting Ahmet Kemal Çenpolat, President of the Animal Rights Federation, commonly referred to as “HAYTAP”), <http://www.todayszaman.com/news-275305-right-activists-count-down-to-criminalization-of-animal-cruelty.html>.

374. Vaughan, *supra* note 325.

Not unpredictably, the results of these views are not auspicious for animals. Stray animals are poisoned or even shot by municipalities; some authorities neuter them and release them in unfamiliar territory or just let them loose in the countryside where they will starve.<sup>375</sup> Endemic corruption has been described as the source of these failures.<sup>376</sup> One very disheartening practice in Muslim countries is the torrent of blood in annual animal sacrifices on the holiday called the Feast of the Sacrifice, the Eid al-Adha, which occurs throughout the Muslim world including Turkey.<sup>377</sup> It has been said of this celebration that “Muslim neighborhoods run red with the blood of sacrificed animals.”<sup>378</sup> This practice has been said to not actually be an Islamic one, but a remnant of Arab pre-Islamic practices.<sup>379</sup> Factory farming continues apace in Turkey,<sup>380</sup> as do documented incidents of cruelty in Turkish slaughterhouses.<sup>381</sup> While there is concern among some scientists about ethics in animal experiments in Turkey, invasive and painful experiments continue,<sup>382</sup> while the procurement of animals for use in animal experiments appears to be on the increase.<sup>383</sup> So the reality for

375. *Id.*; Akay, *supra* note 373.

376. Vaughan, *supra* note 325.

377. Glenn Yocum, *Notes on an Easter Ramadan*, 60 J. AM. ACAD. RELIGION 201, 215 n.24 (1992).

378. FOLTZ 2006a, *supra*, note 314, at 121.

379. *Id.* at 122-23.

380. See, e.g., ANATOLIA NEWS AGENCY, *Turkish Poultry Firm to Raise Capacity*, HURRIYET DAILY NEWS (Aug. 13, 2009), <http://www.hurriyetdailynews.com/turkish-poultry-firm-to-raise-capacity.aspx?pageID=438&n=turkish-poultry-firm-to-raise-capacity-2009-08-13>.

381. Richard Willingham, *Fresh Outcry as More Abattoir Cruelty Exposed*, SYDNEY MORNING HERALD (Aug. 19, 2011), <http://www.smh.com.au/environment/animals/fresh-outcry-as-more-abattoir-cruelty-exposed-20110819-1j1n3.html>; *15.06.2013 Visit of Another Turkish Slaughterhouse*, EYES ON ANIMALS (June 15, 2013), <http://www.eyesonanimals.com/15062013-visit-of-another-turkish-slaughterhouse/>; *Dec 2013: Shame on Aygüler Slaughterhouse in Turkey*, EYES ON ANIMALS (Jan. 10, 2014), <http://www.eyesonanimals.com/dec-2013-shame-on-aygueler-slaughterhouse-in-turkey-2/>.

382. See Yesim Isil Ulman et al., *Preliminary Notes for Ethical Conduct of Animal Experimentation with Special Reference to Studies in Turkey*, 17 KAFKAS ÜNİVERSİTESİ VETERİNER FAKÜLTESİ DERİGİSİ 1051, 1053 (2011) (Turk.).

383. Serkan Ocak, *Entrepreneur Opens Turkey's First Guinea Pig Producing Laboratory*, HURRIYET DAILY NEWS (July 17, 2010), <http://www.hurriyetdailynews.com/entrepreneur-opens-turkeys-first-guinea-pig-producing->

animals in Turkey presents many serious animal treatment issues that, among other things, have raised concern in the EU regarding Turkey becoming a member of the EU.<sup>384</sup>

### 3. Turkish Animal Law

Despite the conditions of animals in Turkey, there is a fairly wide-ranging law on the protection of animals in Turkey, the Turkish Animal Protection Law (TAPL).<sup>385</sup> Article 4 of TAPL states a number of general principles, including: “[a]ll animals are born equal and have a right to life within the framework of the provisions of this law” and domestic animals have “the freedom to live according to the living conditions specific to their species.”<sup>386</sup> These “equality,” “right to life,” and “freedom” concepts are quite limited, however, since the use of animals in agriculture and experimentation is permitted under the “framework” of the law. TAPL further provides that ownerless animals should be “supported” in the same way as those of owners.<sup>387</sup> Under Article 5, owners of animals have a duty to see to their animals’ ethological needs and to care for their health — this is an affirmative duty; it is not just a prohibition of cruelty. Regardless of the acts of some governmental authorities described earlier, killing ownerless or incapacitated animals is prohibited under Article 6 of TAPL. Instead, ownerless animals are to be taken to a shelter and neutered, vaccinated, and released back where they originated.<sup>388</sup> In Article 8, surgical procedures to alter the appearance of animals are prohibited, as are procedures like removing claws or vocal cords.

Animal testing is regulated in Article 9 of TAPL. This Article, which is limited to medical and scientific testing, requires animals in experiments to be cared for and sheltered in a “suitable manner.” Institutions performing experiments must have ethics committees, which are to operate in accord with

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laboratory.aspx?pageID=438&n=entrepreneur-opens-turkey8217s-first-guinea-pig-producing-laboratory-2010-07-14.

384. Akay, *supra* note 373.

385. Turkish Animal Protection Law, No. 5199 (2004) (Turk.).

386. Turkish Animal Protection Law, *supra* note 385, art. 4(a) & (b).

387. *Id.* art. 4.

388. *Id.* art. 6.

regulations authored by government agencies.<sup>389</sup> Regulations have, in fact, been propounded by the Ministry of the Environment and Forestry and these regulations, along with TAPL, effectively require that the 3Rs be followed by experimenters.<sup>390</sup>

A hodgepodge of other issues is dealt with in TAPL. The use of animals in film, advertising, demonstrations, or similar activities is covered by Article 10 and is to be conducted in a way that does not cause pain and suffering. Activities of this kind can only be done with permission of the government, which is to have regulations on this issue.<sup>391</sup> Article 11 prohibits pitting live animals against one another. Slaughter is to be carried out in the “least painful manner possible” under Article 12. Intentional mistreatment of animals is banned in Article 14. Article 15 requires that provincial animal welfare committees be established. These committees are to identify animal treatment problems, and create five- and ten-year plans relating to animal welfare, as well as support and develop animal shelters.<sup>392</sup> Article 18 establishes volunteer Local Animal Welfare Officers who are to take responsibility for ownerless animals in the local area. In a rather unusual provision, time is required to be provided for animal educational programming on television and radio.<sup>393</sup> Zoos are controlled under regulations required by Article 22. Penalties are provided for in the form of fines for violations of the law.<sup>394</sup>

This law can be viewed as largely consistent with many principles of Islamic culture, though perhaps not going as far in protecting animals as one might expect given the Sufi influence in Turkey. Underlying principles concerning animals’ right to life and the right to live according to the nature of each species conforms to Islamic teachings on the nature and role of animals in Islam, to principles of compassion and kindness, to the idea

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389. *Id.* art. 9; GÜLRİZ UYGUR & TÜRKAN YALÇIN SANCAR, NATIONAL REGULATIONS ON ETHICS AND RESEARCH IN TURKEY 18-20 (2005), available at [http://ec.europa.eu/research/science-society/pdf/tr\\_eng\\_lr.pdf](http://ec.europa.eu/research/science-society/pdf/tr_eng_lr.pdf).

390. UYGUR & SANCAR, *supra* note 389, at 18.

391. Turkish Animal Protection Law, *supra* note 385, art. 10.

392. *Id.* art. 15.

393. *Id.* art. 20.

394. *Id.* art. 28.

that God provides for both humans and animals, and to the concept that humans must share the resources of the earth with animals. Principles of kind and compassionate treatment are also echoed in prohibitions of intentional cruelty, mistreatment of animals, and animal fighting. Nonetheless, since Muslim religion and culture explicitly allows the use of animals for food, adornment, and work, Turkish law allows such uses presumably within the parameters of compassion, kindness, and so on as required in Islamic doctrine. The Islamic prohibition on disfiguring animals is expressed in provisions prohibiting practices like surgical declawing and removal of vocal cords. Nonetheless, animal experimentation provisions do not appear to conform to Islamic tenets since experiments, though subject to ethical committee review, are not simply prohibited where painful or disfiguring as one can argue is required by Islam.<sup>395</sup>

Unfortunately, TAPL does not seem to be widely enforced, penalties for violations are minor, and there are many abuses of animals in Turkey. For instance, most cities have not complied with the law requiring capture, neuter, and release of stray animals.<sup>396</sup> Also, as noted above, penalties for violations of the law are light and do not create a criminal record in the offender.<sup>397</sup> Indeed, Animal Rights Federation President Ahmet Kemal Senpolat states that violations of the present law are treated as mere petty offenses, like “smoking in an enclosed area or shouting on the street,” adding “[h]ow can a country like this expect to be accepted as a member of the European Union.”<sup>398</sup>

There is nonetheless considerable activism in Turkey for reforms to the laws relating to animals.<sup>399</sup> In fact, a political party has been formed to bring issues relating to the rights and protection of animals into the political discussion.<sup>400</sup> As a part of the present reform agenda in Turkey, a proposal for amendments

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395. See Turkish Animal Protection Law, *supra* note 385, arts. 3(l) & 9.

396. Vaughan, *supra* note 325.

397. Akay, *supra* note 373.

398. *Id.*

399. See Ebru Erdogan, *Turkish Animal Rights Activist Meet the Prime Minister for Stringent Animal Cruelty Laws*, EUROPEAN VEGETARIAN & ANIMAL NEWS ALLIANCE (Mar. 2, 2011), <http://www.evana.org/index.php?id=63765>.

400. *Political Party for Animal Rights Formed in Turkey*, TODAY'S ZAMAN (Mar. 16, 2012), <http://www.todayszaman.com/news-274491-political-party-for-animal-rights-formed-in-turkey.html>.

to TAPL was submitted to the Turkish Parliament.<sup>401</sup> Some of the changes in this proposal included setting new fines for certain violations of TAPL as well as providing for prison sentences for some violations of the law. For instance, imprisonment of up to two years was provided for causing an animal's death by torture and imprisonment of up to one year for having sexual relations with animals.<sup>402</sup> It is interesting to note that the second strictest penalty under the proposal related to sexual relations with animals while many other acts of cruelty and overworking of animals are only punishable with fines.<sup>403</sup>

Considerable opposition developed relating to this proposed law, led by animal protection and rights groups that objected to, among others, provisions dealing with stray animals that would put strays in a "natural park." It is thought that this would have the effect of causing starvation and disease among these animals.<sup>404</sup> The concern here is a real and historic one. In 1910, to clean up Istanbul, thousands of stray dogs were rounded up and sent to an island off Istanbul to starve.<sup>405</sup> The mournful howls of these animals could be heard in Istanbul.<sup>406</sup> Present-day activists saw this proposed new law as a potential repeat of this cruel policy.<sup>407</sup> Note also that the issue of these stray dogs unearths issues relating to the traditional negative view of dogs in Islamic culture. In any event, as a result of public outrage over this proposal, it has been reported that the proposal was withdrawn in October 2012 and that a new proposal was being discussed among government and animal protection

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401. *Proposal to Amend Animal Protection Law*, No. 1/685 (Sept. 11, 2012) (Turk.) [hereinafter *Turkish Proposal*]; see also *Animal Rights Law Amendment Presented to Parliament*, TODAY'S ZAMAN (Sept. 12, 2012), [http://www.todayszaman.com/newsDetail\\_getNewsById.action?newsId=292152](http://www.todayszaman.com/newsDetail_getNewsById.action?newsId=292152).

402. *Turkish Proposal*, *supra* note 401, art. 9.

403. *Turkish Proposal*, *supra* note 401, art. 9.

404. Alexander Christie-Miller, *Istanbul Residents Rally Around Their Beloved Stray Dogs*, CHRISTIAN SCI. MONITOR (Oct. 31, 2012), <http://www.csmonitor.com/World/Middle-East/2012/1031/Istanbul-residents-rally-around-their-beloved-stray-dogs>; Stephanie Andropolis, *Stop Turkey's Animal "Murder Law" From Going into Effect*, <http://forcechange.com/38041/stop-turkeys-animal-murder-law-from-going-into-effect/> (last visited Apr. 10, 2014).

405. Christie-Miller, *supra* note 404.

406. Andropolis, *supra* note 404.

407. *Id.*



organizations.<sup>408</sup> Nonetheless, according to the official website of the Turkish Parliament, the proposal is still pending.<sup>409</sup> Thus, the future course of animal law in Turkey is presently uncertain and subject to ongoing debate.

### III. THE IMPACT OF CULTURE ON ANIMAL LAW

Aspects of what is observed in the relationship between humans and animals peculiar to a culture are what I will refer to as “cultural solipsism” with respect to this relationship. Let me define what I mean by “cultural solipsism.” Every culture has a lens through which it views the world — a collective viewpoint; a distinctive window through which it gazes at the world. This perspective creates a shared reality for the culture and a framework determining how the culture and individuals in the culture see their relationship with all aspects of the world, including other cultures, humans generally, the environment, and, crucially for present purposes, animals. As a metaphor, one could say that each culture views the world through a peculiar cultural lens. The way the world appears in each culture depends on how that lens is shaped and ground. And since each individual culture perceives the world through its own distinctive lens, I will refer to this reality of viewing the world through this peculiar cultural lens as “cultural solipsism”<sup>410</sup> and to this particular lens as the “Culturally Solipsistic Lens.”

An example of the concept of cultural solipsism can be taken from an unlikely source — an article by Robyn MacCallum on

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408. *Today's Zaman - Activists Expect Positive Revisions To Controversial Animal Protection Bill*, HAYTAP (Aug. 5, 2013), <http://www.haytap.org/index.php/201308054516/english-content/today-s-zaman-activists-expect-positive-revisions-to-controversial-animal-protection-bill>.

409. *Proposal to Amend Animal Protection Law, No. 1/685*, OFFICIAL WEBSITE OF THE TURKISH PARLIAMENT, [http://www.tbmm.gov.tr/develop/owa/tasari\\_teklif\\_sd.onerge\\_bilgileri?kanunlar\\_sira\\_no=110845](http://www.tbmm.gov.tr/develop/owa/tasari_teklif_sd.onerge_bilgileri?kanunlar_sira_no=110845) (last visited Apr. 10, 2014).

410. This term has been used in a derogatory way in arguments relating to bilingualism. See GEORGE F. WILL, *THE MORNING AFTER: AMERICAN SUCCESSES AND EXCESSES* (1986). My use of the concept is my own and is a normatively neutral one. Also, I reiterate that I do not claim that cultures are monolithic; rather that there are certain central ideas that substantially contribute to the perception of the human/animal relationship in different cultures.

Australian children's picture books.<sup>411</sup> In this article, MacCallum discusses one way of describing cultural solipsism through, among other things, an analysis of the picture book, *THE BUNYIP OF BERKELEY'S CREEK*, by Jenny Wagner.<sup>412</sup> In this book a mythical creature, a Bunyip, is searching for his identity.<sup>413</sup> In his quest the Bunyip asks a Wallaby, an Emu, and a man what a Bunyip looks like.<sup>414</sup> The Wallaby and the Emu describe how the Bunyip differs from them as, for example, having "horrible feathers," or "horrible fur," or "horrible tails."<sup>415</sup> The man, on the other hand, has a different answer; he says that Bunyips do not look like anything since they do not exist.<sup>416</sup> The Bunyip's search for identity only ends when the Bunyip meets another bunyip whom he realizes is like him.<sup>417</sup>

This story is an example of cultural solipsism. The Wallaby, the Emu, and the man all view the Bunyip from a perspective of difference — how the Bunyip looks or whether the Bunyip really exists.<sup>418</sup> It is only when the Bunyip meets one of his own that similarities are seen and his identity is confirmed.<sup>419</sup> Each of the creatures in the story views the Bunyip through its own lens. It is this way of looking at and analyzing the world that I refer to as cultural solipsism — the world as seen through a distinct lens in each culture.

One might say that this is simply another way of packaging "cultural relativism." While what I refer to as cultural solipsism has some superficial similarities to cultural relativism, cultural solipsism has a different emphasis. Cultural relativism looks inward at a culture from the perspective of that culture.<sup>420</sup> It is a

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411. Robyn McCallum, *Cultural Solipsism, National Identities and the Discourse of Multiculturalism in Australian Picture Books*, 28 REV. INT'L ENG. LIT. 101 (1997).

412. JENNY WAGNER, *THE BUNYIP OF BERKELEY'S CREEK* (1975).

413. McCallum, *supra* note 411, at 112.

414. *Id.* at 113

415. McCallum, *supra* note 411, at 113.

416. *Id.*

417. *Id.*

418. *Id.*

419. *Id.*

420. HENRY J. STEINER & PHILIP ALSTON, *INTERNATIONAL HUMAN RIGHTS IN CONTEXT* 387 (2d ed. 2000); *see also Definition of Cultural Relativism*, CHEGG, <http://www.chegg.com/homework-help/definitions/cultural-relativism-49> (last visited Apr. 10, 2014).

method of anthropology meant to avoid applying cultural biases in analyzing different cultures by analyzing each culture from the perspective of that culture, leading extreme proponents to conclude that there are no ideas of right or wrong that transcend culture and no culture is justified in applying its beliefs or rules to other cultures.<sup>421</sup> Cultural solipsism as described here is different; it refers to the outward looking aspect of culture — how does a culture view external reality and the world outside the culture? This is the lens of cultural solipsism.

Examples of the impact of these Culturally Solipsistic Lenses on views of the human/animal relationship are legion. Western and Islamic cultures view the human/animal relationship as hierarchical. Eastern cultures, at least in theory, tend to look at the human/animal relationship in terms of a continuum. Hindu culture holds cows sacred. Dogs and cats have developed a special place in Western culture; not so in Islamic culture and certain Asian cultures. Jain culture rejects all violence against animals. And the list could be long extended. The point is that this Culturally Solipsistic Lens affects the way that different cultures view animals and this cultural solipsism often translates into peculiar laws (or the lack thereof) relating to animals in these different cultures.

Let us draw upon the previous analyses of the example cultures and laws, and some further examples of peculiarities of the cultures studied to illustrate the results of cultural solipsism in laws relating to animals. In Western culture pets have a special place; “other” animals are another category. Pets have a place by the hearth and are frequently protected by animal protection laws in ways that other animals are not. Some EU countries, like Austria, for example, prohibit certain surgical procedures and the use of certain equipment on pet animals.<sup>422</sup> Switzerland requires training of dog owners.<sup>423</sup> Even in animal

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421. STEINER & ALSTON, *supra* note 420, at 367.

422. Bundesgesetz über den Schutz der Tiere [TSchG] [Federal Act on the Protection of Animals] Federal Law Gazette I No. 118/2004, § 27(1) (Austria).

423. Verordnung des EDI über Ausbildungen in der Tierhaltung und im Umgang mit Tieren [EDI] CODE OF OBLIGATIONS [Co] Oct. 4, 2002, arts. 33 & 43, al. 1 bis (Switz.); *see also Rule-Loving Swiss Force Pet Owners to Take Animal Understanding Courses*, DAILY MAIL ONLINE (last updated Apr. 25, 2008), <http://www.dailymail.co.uk/news/article-562025/Rule-loving-Swiss-force-pet-owners-animal-understanding-courses.html#ixzz2jKd5qq9E>; *The Expat Pet*

experiments, animals that are typically pets are often given unique treatment in Western laws relating to animal experiments.<sup>424</sup>

Animals that are outside the pet club, “other” animals, are often given little or no protection as is the case under federal law in the United States, where agricultural animals are only covered by the Humane Slaughter Act and the Twenty-Eight Hour Law. In the EU, at least there are more substantial protections of these animals, like housing space requirements, limits on certain procedures and so on. These distinctions can be seen as a cultural divide born of the Atlantic.

The impact of Indian culture on animal law could not be more obvious. There are many laws that provide special protection of cows as sacred animals. The distinctive Indian constitutional provision requiring compassion toward animals can be viewed as connected to the Buddhist/Hindu/Jain concept of *ahimsa*.

In the case of Chinese culture, while certain religious doctrines of dominant religions in China have aspects favorable to animals, the dominant view of animals in Chinese culture has been one of a historic lack of concern. And the results of this lack of concern are reflected in Chinese animal law, which is largely non-existent. But here we can also observe the apparent evolution of Chinese culture toward more concern for animals in the movement to enact laws to protect animals and the proliferation of animal protection organizations and activists.

South African culture seems fractured on many animal issues. Is concern about animals cultural colonialism? Is there an indigenous culture of care for animals? Should South Africa

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*Guide: Your Guide to Switzerland's Pet Importation Requirements*, CABINET VETERINAIRE INT'L, <http://www.cagi.ch/files/pdf/CVITheExpatPetGuide.pdf> (last visited Apr. 10, 2014).

424. Animal (Scientific Procedures) Act, 1986, c. 14, § 5(6), sch. 2B §4 (U.K.) (providing that dogs, cats, primates, and equidae are to be used in experiments only if no other species is suitable or it is not practical to obtain another species that is suitable); Code of Practice for the Housing and Care of Animals Used in Scientific Procedures, 1986, c. 14, §§ 3.64 – 3.68 (U.K.) (providing for the physical conditions in which dogs and cats are to be kept and providing that dogs should be kept in pairs and cats in social groups); Council Directive 2010/63/EU, 2010 O.J. (L 276), prml. 26, 33, arts. 31, 32, annexes III.B.4 and VII § III 3(k); Animal Welfare Act, §§ 2132(e), 2135, 2137, 2138, 2143(2)(B), 2148, & 2158.

follow Western ways of agriculture or are traditional practices preferable? These cultural fault lines may be reflected in a lack of change in animal-related laws in South Africa — consensus for reform may be a hostage of the history of apartheid, discrimination, and divisiveness. Those who advocate for reform in South Africa must navigate through this cultural minefield in their efforts to change the law.

The imprint of Islamic culture on Turkish animal law and issues relating to animals now being discussed in Turkey is quite evident. Turkey has a fairly traditional sort of animal protection law similar to those in many Western countries. This is in line with the hierarchical Abrahamic underpinnings of Islam, which, like Christianity, permits the use of animals for human purposes, but counsels a kind of stewardship, which translates into requirements of “humane” treatment. One issue that seems peculiar to Turkey and is related to Islamic culture is the debate about stray dogs. How Turkey struggles to deal with this problem reveals the tension in Islam between the idea that dogs are unclean and the call for compassion.

So it is clear that cultures do impact the laws relating to animals that we find in different countries and are responsible for certain differences in their laws and in debates relating to animal issues. The peculiar Culturally Solipsistic Lens through which each culture sees its relationship with animals and by which its animal law is affected is not, however, the only way culture perceives and can affect the world of animals. It is my view that our cultural lenses are compound; there is another layer of the cultural lens through which *all cultures* see the world and the relationship between humans and animals — a universal layer in which there are common overarching moral, ethical, empirical, and other principles that apply to humans, animals, and other living things in general. I will refer to this aspect of the cultural lens as the “Universal Cultural Lens.”

This, of course, is quite contrary to a cultural relativist view of morality and values; instead what is posited is a set of moral, ethical, empirical, and other principles generally accepted across cultures. Some examples of principles that I argue should be viewed as accepted across cultures are ideas like: “torture of a sentient being is wrong” and “inflicting pain for its own sake is wrong.” While it is beyond the scope of this article to present a

detailed argument to support the existence of these types of universal principles, the idea that there are certain universal moral and ethical principles across cultures finds corroboration in the work of philosophers, psychologists, sociologists, and legal scholars.

In philosophy there are theories that claim the existence of a universal common morality applicable to everyone.<sup>425</sup> For example, Tom Beauchamp propounds such a theory in which he defines “common morality” as “the set of norms shared by all persons committed to the objectives of morality. The objectives of morality . . . are those of promoting human flourishing by counteracting conditions that cause the quality of people’s lives to worsen.”<sup>426</sup> He further argues that this morality “is applicable to all persons in all places. And all human conduct is rightly judged by its standards.”<sup>427</sup> Sissela Bok has made similar arguments concerning common moral values across cultures.<sup>428</sup> As examples, Bok points to values like respect for and obedience to parents, the Golden Rule of treating others as you would like to be treated, societal norms limiting or prohibiting violence, and fairness and procedural rules like prohibitions on bearing false witness.<sup>429</sup> These rules are argued to be essential to the viability of any society.<sup>430</sup> Another philosopher, Bernard Gert, also propounds a theory of a common morality. His theory of common moral principles is founded on the idea that agreement on certain fundamental moral truths is a result of universal aspects of human nature.<sup>431</sup> Among the common moral principles described by Gert are “[d]o not kill,” “[d]o not cause pain,” “[d]o not deprive of freedom,” and “[d]o not deprive of pleasure.”<sup>432</sup>

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425. That this issue is the subject of considerable currency in philosophy is evidenced by the fact that a special issue of the *Kennedy Institute of Ethics Journal* was committed to this issue. See 13 *KENNEDY INST. OF ETHICS J.* 189-274 (2003).

426. Tom L. Beauchamp, *A Defense of the Common Morality*, 13 *KENNEDY INST. OF ETHICS J.* 259, 260 (2003).

427. *Id.* at 260.

428. SISSELA BOK, *COMMON VALUES* 1-9, 13-28 (1995).

429. *Id.* at 13-19.

430. *Id.* at 13-19, 49-53.

431. BERNARD GERT, *COMMON MORALITY* 8-10, 12-13 (2004).

432. *Id.* at 20-22, 29-53 (quoted material at 20).

In addition, there have been a number of studies in the psychological and sociological literature that reveal shared values across cultures. While these studies do not deny cultural differences in values, they find that people generally rank different sets of values in the same way across cultures. Shalom Schwartz has written a number of articles on this subject. In one such study he and his coauthor, Anat Bardi, analyzed “values,” defined as “desirable, transsituational goals, varying in importance, that serve as guiding principles in people’s lives,” across cultures.<sup>433</sup> The authors divided a large set of these values into different categories, such as benevolence values, self-direction values, and universalism values. Subjects in the study were then asked to rank these different sets of values and it was found that the rankings of these values were consistent across countries around the globe and the relative importance of these values was also generally consistent across the different countries studied, although there was a lower level of agreement on relative importance of value types in certain African countries.<sup>434</sup> The authors’ broad finding is that “[t]here is a common pan-cultural baseline of value priorities” and that there is considerable agreement across societies in the importance of different values.<sup>435</sup>

In explaining these findings, the authors state: “The observed pan-cultural similarity in value hierarchies implies that there are shared underlying principles that give rise to these hierarchies.”<sup>436</sup> Going more deeply into this idea: “pan cultural similarities in value importance are likely to reflect the shared bases of values in human nature and the adaptive functions of each type of value in maintaining societies.”<sup>437</sup> These similarities are explained by Schwartz and Bardi as group survival mechanisms. For group survival it is necessary that there be cooperative and supportive relations between members of

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433. Shalom H. Schwartz & Anat Bardi, *Value Hierarchies Across Cultures: Taking a Similarities Perspective*, 32 J. CROSS CULTURAL PSYCHOL. 268, 269 (2001).

434. Schwartz & Bardi, *supra* note 433, at 272-78.

435. *Id.* at 287.

436. *Id.* at 278.

437. *Id.* at 280.

primary groups.<sup>438</sup> But good relations are not enough, individuals must be motivated to put in effort and time to do productive work and solve problems, and thus self-gratification is also valued across cultures so that individuals do not become frustrated.<sup>439</sup> Thus, it is argued by Schwartz and Bardi, along the same lines asserted by Sisella Bok, that similarities in views about certain values are necessary for all societies and groups to properly function.<sup>440</sup>

Swartz has made similar findings in other studies. For instance, in 1994 Swartz found there to be considerable “consistency of motivational meaning across cultures.”<sup>441</sup> In an earlier 1987 study Swartz and Bilsky found there were both similarities and differences in the way Israelis and Germans viewed and structured values.<sup>442</sup>

“World Society” sociological theory (WS) also provides conceptual support for the existence of cross-cultural norms that diffuse throughout the world and influence the behavior of individuals, organizations and nation states across the globe. Under this theory, global social change, “most notably the diffusion of Western-style state policies,” is a consequence of global institutions and organizations as well as an “increasingly common world culture” that arose after World War II.<sup>443</sup> The focus of WS has been described as follows: “world society scholars emphasize rationalization, universalism, belief in progress, and individualism as foundational cultural assumptions that undergird global discourse and organization. [citation omitted] This culture supports a very wide array of movements, initiatives and innovations but proscribes many others.”<sup>444</sup> Some of the specific areas in which this world society and culture are said to be reflected are universal human rights law, environmental protection, models of citizenship, rationalized justice,

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438. *Id.* at 280; BOK, *supra* note 428.

439. Schwartz & Bardi, *supra* note 433, at 280-81.

440. *Id.* at 281-82; BOK, *supra* note 428.

441. Shalom H. Schwartz, *Are There Universal Aspects in the Structure and Contents of Human Values?*, 50 J. SOC. ISSUES 19, 34 (1994).

442. Shalom H. Schwartz, *Toward a Universal Psychological Structure of Human Values*, 53 J. PERS. & SOC. PSYCHOL. 550, 557-59 (1987).

443. Evan Schofer et al., *Sociological Institutionalism and World Society*, in THE WILEY BLACKWELL COMPANION TO POLITICAL SOCIOLOGY 57, 58 (2012).

444. *Id.* at 59-60.



socioeconomic development, and nation-building itself.<sup>445</sup> The posited global culture has also been described as saturating “social life through law, organizations, religion, national identity, and even anti-globalization movements.”<sup>446</sup> It is also argued that this global culture is “reflected in university curricula worldwide.”<sup>447</sup> NGOs have played a substantial role in propagating this universal culture,<sup>448</sup> as have the sciences and professions.<sup>449</sup> While it could be argued that this posited “world culture” is simply an artifact of global cultural colonization by the West, world society theorists argue that it is not an ideology supported by the force of arms, but has developed autonomously around the globe.<sup>450</sup>

The concept of a Universal Cultural Lens proposed here is an expression of the same kind of idea described in universalist moral theories, studies on commonality in value structures across cultures, and WS theory. The specific thought here is that there are moral, ethical, empirical, and other principles relating to animals that transcend individual cultures and apply across cultures. This is, of course, not uncontroversial and not everyone would agree with this thesis. We have seen, for example, that there are those who argue that protective attitudes toward animals are a kind of cultural colonialism forced upon different cultures by the dominant Western culture.<sup>451</sup>

Notwithstanding this criticism and whatever the source of this world culture, we do see universal norms spreading worldwide in morality, ethics, and the law. For instance, the Universal Declaration of Human Rights is founded on the premise that “human rights” are not dependent on culture and that there are certain propositions everyone can agree on — the

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445. John W. Meyer et al., *World Society and the Nation State*, 103 AM. J. SOC. 144, 148 (1977); see also Schofer et al., *supra* note 443, at 57-59 (discussing the global humans rights movement under World Society theory).

446. Schofer et al., *supra* note 443, at 60.

447. *Id.* at 60.

448. *Id.* at 63; Meyer et al., *supra* note 445, at 162-66.

449. Meyer et al., *supra* note 445, at 162-66.

450. Schofer et al., *supra* note 443, at 60.

451. For a discussion and critique of such arguments, see Maneesha Deckha, *Animal Justice, Cultural Justice: A Posthumanist Response to Cultural Rights in Animals*, 2 J. ANIMAL L. & ETHICS 189, 192-93 (2007); PICKOVER, *supra* note 251, at 159-60; Shuxian et al., *supra* note 178, at 82; Jones, *supra* note 189, at 683.

need to have food and shelter, to speak freely, to practice a chosen religion or lack thereof, to feel that one is not threatened by the state and so on.<sup>452</sup> Acceptance of certain universal principles across cultures is supported not only by the approval of The Universal Declaration of Human Rights by the UN,<sup>453</sup> but also the International Covenant on Civil and Political Rights<sup>454</sup> and the Geneva Convention.<sup>455</sup> And it is not only in the area of human rights that there is cross-cultural acceptance of moral, ethical, and legal principles; there are generally accepted international laws relating to climate change, chemical and other weapons, hazardous waste, hostage taking, organized crime, and many other subjects.<sup>456</sup>

Universal principles are also now being formulated and advanced in the area of animal law. There are now international animal welfare guidelines agreed upon by representatives of cultures around the globe in standards propounded by the World Organization for Animal Health (OIE). The OIE is composed of and funded by 178 member countries and has the stated goal of improving animal health worldwide.<sup>457</sup> Member countries represent every continent and myriad cultural and religious

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452. ROSALYN HIGGINS, PROBLEMS AND PROCESS: INTERNATIONAL LAW AND HOW WE USE IT 398 (1994); *see also* Rhoda Howard, *Dignity, Community, and Human Rights*, in HUMAN RIGHTS IN CROSS-CULTURAL PERSPECTIVE 398-99 (Abdullahi An-Na'im ed., 1991).

453. Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. Doc. A/RES/217(III) (Dec. 10, 1948); *see also* BOK, *supra* note 428, at 29-31 (discussing the United Nations World Conference on Human Rights).

454. International Covenant on Civil and Political Rights, G.A. Res. 2200 (XXI) A, U.N. Doc. A/RES/2200 (XXI) (Dec. 16, 1966).

455. Geneva Convention Relative to the Treatment of Prisoners of War, Aug. 12, 1949, 6 U.S.T. 3316, 75 U.N.T.S. 135.

456. *See generally* UNITED NATIONS, TREATY EVENT 2013: TOWARDS UNIVERSAL PARTICIPATION AND IMPLEMENTATION 7 (2013), *available at* <http://treaties.un.org/doc/source/events/2013/Publication/publication-English.pdf>; *see also* Vienna Convention for the Protection of the Ozone Layer, *opened for signature* Mar. 22, 1985, 1513 U.N.T.S. 293 (entered into force Sept. 22, 1988); Treaty on the Non-Proliferation of Nuclear Weapons, *opened for signature* July 1, 1968, 21 U.S.T. 483, 729 U.N.T.S. 161 (entered into force Mar. 5, 1970); *Environmental Laws & Treaties*, NATURAL RESOURCES DEF. COUNCIL, <http://www.nrdc.org/reference/laws.asp> (last visited Aug. 23, 2012).

457. *About Us*, WORLD ORGANISATION ANIMAL FOR HEALTH, <http://www.oie.int/about-us/> (last visited Apr. 10, 2014).

milieu.<sup>458</sup> This organization has created recommendations and guidelines in the form of a number of codes on animal welfare in agriculture, transportation, and experimentation.<sup>459</sup> In making these recommendations and guidelines, the OIE has explicitly recognized the influence of cultural differences on animal welfare issues by, among other things, explicitly addressing how Islamic Law is compatible with agricultural animal standards recommended by the OIE.<sup>460</sup> While the OIE is far from being an abolitionist organization concerning animal use, the large number of member countries and success in reaching agreement on its existing codes, reveals the cultural breadth of acceptance of at least the principles expressed in those codes. Note as well, as we have seen in the laws of the countries analyzed here, laws relating to animal protection from entities as diverse as the EU, Turkey, India, and South Africa have many similarities. For example, animal protection laws from these entities all prohibit cruelty and the causing of “unnecessary pain and suffering” or the like. While one could argue that this is simply a result of Western cultural imperialism through the export of Western animal sensibilities in the form of laws with this language and these characteristics, it also can cogently be viewed as reflecting universal ethical sentiments across cultures, that is, universal acceptance of the principles reflected in these laws. Given all of these internationally agreed upon principles and the similarities in the laws of various countries, including those on animal issues, one can forcefully claim that there would be no such widely accepted legal norms were there not some universally accepted principles that are a part of a “world culture.”

One might query why there is so much abuse and exploitation of animals, and such rudimentary laws protecting

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458. *The 178 OIE Members*, WORLD ORGANISATION FOR ANIMAL HEALTH, <http://www.oie.int/about-us/our-members/member-countries/> (last visited Apr. 10, 2014).

459. *International Standards*, WORLD ORGANISATION FOR ANIMAL HEALTH, <http://www.oie.int/international-standard-setting/overview/> (last visited Apr. 10, 2014).

460. *Compatibility Between the OIE Standards and the Requirements of Islamic Law with Special Reference to the Prevention of Cruelty to Animals During Transport and Slaughter*, WORLD ORGANISATION FOR ANIMAL HEALTH, [http://www.oie.int/fileadmin/Home/eng/Animal\\_Welfare/docs/pdf/Others/Religious\\_Slaughter/A\\_Religious\\_slaughter.pdf](http://www.oie.int/fileadmin/Home/eng/Animal_Welfare/docs/pdf/Others/Religious_Slaughter/A_Religious_slaughter.pdf) (last visited Apr. 6, 2014).

animals, if there are accepted and weighty universal principles applicable to the human/animal relationship. Indeed, Bok recognizes the problem presented to those arguing for universal values by the fact that we do not see such principles often followed in practice.<sup>461</sup> Take the principle that “torture of a sentient being is wrong.” This is a principle that would seem a clear candidate for universal acceptance. Nevertheless, humans routinely violate this principle in animal experiments and agricultural practices, not to mention in behavior toward other humans. How can this be explained? First, one can see violations of universal principles as a defect in the Compound Cultural Lens, a surface of the lens where the Culturally Solipsistic Lens burns through the Universal Cultural Lens resulting in behavior contrary to universal principles. In the case of animal experiments, for instance, one could say that culturally solipsistic ideas about the inferiority of animals and the utilitarian “need” for these experiments have distorted the compound lens in a way that blocks the Universal Cultural Lens and its principle prohibiting torture from being implemented in practice. In the case of the use of animals in agriculture, one can see the Culturally Solipsistic Lens distorting the Universal Cultural Lens through both cultural ideas of inferiority of animals and cultural traditions relating to eating habits.

Second, one cannot discount plain human frailty, egoism, and hypocrisy. While we all would likely agree that lying for personal gain is wrong, who among us can claim to have never done so? Humans often violate what we would consider universal principles for personal advantage and utility maximization. Thus, I would argue that even widespread violations of generally accepted universal principles are not a defect in the proposed theory or those principles; rather, such violations are a defect in human culture or behavior. What it reveals for present purposes is that animal advocates must develop and disseminate forceful universal principles that humans will hopefully be reluctant to challenge or violate.

So what are the concrete implications for animal advocacy of the Compound Cultural Lens composed of a Culturally Solipsistic Lens and a Universal Cultural Lens through which cultures

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461. BOK, *supra* note 428, at 59-62, 66.

perceive the relationship between humans and animals? A specific example will serve to illustrate some of the implications of the proposed perspective on culture and animal law and animal advocacy.

#### IV. APPLICATION OF THE COMPOUND CULTURAL LENS AND CONCLUDING REMARKS

So how does all of this impact animal advocacy in a globalized world? What does the compound lens of human culture mean strategically for animal advocates? In the most general sense it tells us that we must tailor advocacy to meet the Compound Cultural Lenses of the world. This is a two-step process. First, it is necessary to understand the Culturally Solipsistic Lens of the culture being addressed and its implications for proposed animal advocacy, and tailor advocacy to the contours of this lens. Second, it is necessary to develop and expound universal cross-cultural principles that support the animal advocate's position.

Consider how this might be done in a particular instance — for example, in advocating for prohibition of bear bile farming in China. From the culturally solipsistic perspective, it must be recognized that bear bile is considered valuable in traditional Chinese medicine. And this results in 12,000 bears being kept for bile in China, Vietnam, and South Korea,<sup>462</sup> as well as hunting of wild bears.<sup>463</sup>

From the perspective of advocating for a ban on bear bile farming, what we have learned about Chinese culture relevant to this is that traditionally there has been little concern for animal welfare. Nonetheless, Chinese religious thought does have aspects favorable to animals. Moreover, there are changing attitudes in China, particularly among the young, and Chinese celebrities are becoming vocal on the issue of bear farming. From the perspective of our Culturally Solipsistic Lens, all of this would suggest a number of tactics in advocacy on the bear bile farming issue. First, tie arguments, when possible, to traditional Chinese religious values. This may even help move older constituencies in

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462. Tsai, *supra* note 163; *see also* Li, *supra* note 156, at 111, 116.

463. Tsai, *supra* note 163.

the population. Second, focus advocacy on the young as much as possible due to nascent favorable attitudes. Third, make use of the new Chinese celebrities that have supported the ban and try to involve more such celebrities.

The second step, viewing the problem from the perspective of the Universal Cultural Lens requires development of generally accepted universal principles supporting a ban on bear bile farming. A number of these principles can be identified. The principle prohibiting torture discussed earlier would apply here. Another such general principle allied to the torture principle might be that “intentionally inflicting pain on a sentient creature is wrong.” This can be supported by scientific evidence establishing that excruciating pain is a typical result of bear bile farming. It might further be asserted that “inhibiting the freedom of movement of wild creatures is a wrong.” In the case of bear bile farming this principle can be made quite convincingly given that the bears are basically kept immobile. The wrongness of bear bile farming can also be supported by looking at the issue from a general human benefit perspective since science can also be pointed to asserting that there is no evidence of medical benefit from the use of bear bile. The suffering of humans caused by the negative emotions resulting from knowledge of bear bile farming could also be expressed. Moreover, pointing to the existence of international standards and principles on certain aspects of animal treatment, like those promoted by the OIE and NGOs, could also be a focus of the Universal Cultural Lens here. Indeed, this has effectively been done in connection with the proposed Chinese animal protection law.<sup>464</sup> One can imagine how these principles would be presented to the public — the juxtaposition of a bear in the wild and one in captivity on a farm; describing or otherwise showing how the bear is caused pain, suffering, and disease in bile extraction; and revealing how this practice fails to meet general international standards for the treatment of animals. It is undoubtedly possible to continue listing general principles that would support the end of bear bile farming, but for present purposes the forgoing provides an outline

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464. Note, for example, that the RSPCA of the United Kingdom has played a role in drafting the proposed Animal Protection Law. See EXPERTS’ PROPOSAL, *supra* note 206, at iii-ix, 62-63, 172-74.

of the kind of universal principles and propositions that might be brought to the fore in advocacy on bear bile farming.

From this exercise, it is possible to identify three categories of universal principles or propositions that may be particularly useful in animal advocacy. First are what can be referred to as universal general ethical principles, like “torture of a sentient being is wrong.” Second are “human centered” principles like the idea that “violence against animals begets violence against humans.” Third are empirical or fact-based principles or propositions, those founded on the physical and social sciences, on the law and on principles propounded by organizations promoting the interests of animals. Examples of such propositions are the factual statements “cephalopods experience pain” and “OIE codes require . . .” While one may not be able to generate principles from all of these categories in each particular case of advocacy, this should certainly be the goal. Note also that these three categories are not mutually exclusive. A particular principle may fit into multiple categories. For instance, the principle “violence against animals begets violence against humans” can be seen as “human centered” and “empirical.”

The reality of our globalized world requires that animal advocacy be approached from a global, not a parochial perspective. The Compound Cultural Lens outlined in this article proposes a simple conceptual schema for meeting the realities of modern animal law and animal advocacy in this globalized world. It recognizes the peculiarities of cultures, posits that there are universal principles that apply across cultures, and acknowledges that these two perspectives must be blended in advocating for change in animal law. Hopefully this conceptual tool will serve as an aid in fashioning future strategies in animal advocacy campaigns.