Introduction

Animal Sacrifice, Religion and Law in South Asia

Edited by

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Animal sacrifice in South Asia has long been studied by Indologists, historians, and scholars of comparative religion using textual and inscriptional sources,[1] and by anthropologists employing ethnographic methods.[2] Although we briefly summarise some of the findings of such studies in this introduction, the present volume takes a different approach. It focuses on animal sacrifice as the object of legal controversy, in judicial settings that bring those wanting to perform such sacrifices into conflict with those wishing to ban them.

Courts of law have become battlegrounds for expressing conflicting views on ritual, religion, ethics and moral behaviour. In contrast to non-judicial settings, however, where ritual interactions are often directly entangled in social, political or economic disputes, the arguments presented in court must be framed within forms of juridical reasoning—invoking the law as an 'external' referent—whose distinctive logics and vocabulary are mastered by professionals who use their talent and oral eloquence to win the favour of the judge. While the issue of animal sacrifice has often been researched and analysed from a historical or religious perspective, it has seldom been studied in this specific, formal context. The present volume aims to do this through the presentation and analysis of judicial cases and legal disputes involving South Asian governmental institutions and law courts at various levels, right up to the Supreme Courts of India and Nepal.

To set these cases into context, this introduction focuses on some issues that the debate on animal sacrifice has raised over the centuries in both South Asia and the West. This comparative approach is necessary for two reasons. One is that the current Indian judicial system and tradition have evolved from the British colonial legacy. To understand how animal sacrifice came to be banned by an Indian court, one must grasp this Indo-British legal entanglement. The second, broader reason is that many of the current moral and legal arguments concerning the protection of animals generally, and animal sacrifice in particular, draw upon Indian religious and philosophical traditions as well as Western concepts and values. Controversies surrounding particular animal sacrifice practices often involve broader issues, such as the problems entailed by ritual violence or perceived cruelty, in light of notions of animal suffering. As shown below, the recent judicialisation of these debates and their international dimension has led to the emergence of new questions concerning public policy as regards the legal status of animals.

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In this respect, the history of sacrifice in the ancient Western world is of particular interest as it has been the object of extended scholarly investigation that helps to formulate key interrogations. In the Roman Empire, for instance, Rives (2012) shows how the practice of animal sacrifice was not only constantly subject to public regulation but also helped define the role of the emperor and could become instrumental in exercising political power.[3] Consequently, several key issues were discussed over the centuries, not only by religious officials responsible for state cults, but also by lawyers and magistrates. Should sacrifice be performed using public funds? Should it be performed in the name of the people? Should it be performed for the sake of the people's or the emperor's well-being? In one Indian case studied here (*Ramesh Sharma vs. State of Himachal Pradesh & ors*. 2014; Berti, this volume), where a local raja opposed a ban on sacrifice by invoking tradition and the well-being of his (ritual) kingdom, we see that here too a court's decision on animal sacrifice had not only religious and ritual consequences, but also juridical and political effects.

The way a case is discussed in court by the parties and decided by the judge is generally only part of the story since the involvement of some actors may be triggered for reasons having very little to do with the arguments put before the court. These backstage stories can sometimes be evoked in or transpire from the court file and from documents of an extra-legal nature (affidavits, letters, reports) which, although deemed 'admissible' by the court, may not be considered relevant in deciding the case. In other situations, these parallel stories are totally absent from the court file although they may be familiar to the different actors involved in the litigation. It is thus necessary to conduct a full ethnographical inquiry into the case in order to bring to light motivations and dynamics largely masked by the language of the law and by the frequent oblique strategies that the protagonists use to adapt themselves to this legal framework.

As regards the cases discussed in this volume, therefore, the authors seek to introduce the actors involved, their discourses and the ways in which the case was brought to the court. Where possible they rely on conversations during fieldwork as well as documents such as court records, court decisions, or newspaper articles, and on electronic sources of various kinds, including social media.

In these case studies, the issue of animal sacrifice is addressed as an 'object of law', a controversy brought before the court which involves not only religious or ritual specialists but also state bureaucrats, animal welfare activists, politicians and legal professionals. In this judicial battle, legal specialists are called upon to translate ritual procedures into juridical issues, or to separate what they consider to be 'essential' parts of religious practice (on which the secular court is not supposed to rule) from what is 'not essential' and can therefore be handled by the court. Just as lawyers are sometimes personally sympathetic or committed to the cause of their client, judges too can find themselves torn between their professional duty to address issues in a juridical way and their personal predispositions or world views which may end up influencing their decisions.

Anthropological approaches to sacrifice

Animal sacrifice is very widespread in time and space and is or has been central to many religious forms, so it is not surprising that it has received a great deal of attention from historians, theologians and anthropologists, or that, in attempting to explain its nature and account for its importance, they have often sought to identify those features which seem universal, or at least very widespread. Much of this literature takes as its starting point the work of William Robertson Smith, for whom sacrifice was central not only to his understanding of ritual and religion, but of kinship too. He assumed that all ancient societies contained patrilineal clans, and that sacrifice originated in the ceremonial killing of the clan's totemic animal, representing the form of divinity related most directly to one's own lineage. Eating the totemic animal was then an act of communion, whereby 'the god and his worshippers unite by partaking together of the flesh and blood of a sacred victim' (Robertson Smith 1889:209).

The sociological aspects of Robertson Smith's approach had a strong influence on Émile Durkheim, except that whereas Robertson Smith was a committed Christian (albeit too unorthodox for the Free Church of Scotland, from which he was ultimately expelled) who saw the Eucharist as the highest and most spiritual development of sacrifice, Durkheim's more radical teleology sought to explain religion away, as a means of conceptualising the power of society:

> to its members it [society] is what a god is to his worshippers. […] It requires that, forgetful of our own interests, we make ourselves its servitors, and it submits us to every sort of inconvenience, privation and sacrifice, without which social life would be impossible.
>
> (Durkheim 1915 [1912]:206; gloss added)

In a sacrifice, the sponsors give up a portion of their individual or collective wealth in order to achieve a collectively desired aim; in return, they receive spiritual or material benefits from the propitiated deity. Thus, according to Hubert and Mauss's definition:

> Sacrifice is a religious act which, through the consecration of a victim, modifies the condition of the moral person who accomplishes it or that of certain objects with which he is concerned.
>
> (Hubert & Mauss 1964:13)

The act of sacrifice seems at first sight to involve three roles: the person or group offering the sacrifice; the recipient (perhaps a particular god or spirit); and finally, assuming blood sacrifice to be the paradigmatic form, the sacrificial animal itself. Yet in fact there are commonly four roles, not three. The 'patron' of the sacrifice—the *sacrifiant*, in Hubert and Mauss's terms (1899:37, 48)—who provides the animal and other materials used, or otherwise meets the expenses, is not generally the person who performs the sacrificial act itself (the priest or *sacrificateur*)

(ibid.:52–56).[4] There is usually only one *sacrificateur*, except at very large-scale rituals, but the *sacrifiant* may be a group—a family, a local community, or even an entire socio-political entity—rather than a single individual. This functional separation, whereby a priest is needed to interpose between patron and deity, arises because of the other feature central to Durkheimian conceptions of religion, the distinction between, and separation of, sacred and profane. Hubert and Mauss saw sacrifice as a form of communication between these spheres, mediated by the sacrificial victim. As they saw it, there are two complementary processes:

> the first, sacralization, leads from the profane to the sacred, while the other proceeds in the opposite direction, by desacralization. [S]acrifice is seen as essentially directed at establishing a relationship between the two separate domains.
>
> (Detienne & Vernant 1989 [1979]:14)

Sacrifices are therefore structured in ways common to ritual transitions more generally (Bloch 1992). First, the various participants must undergo rites of separation, transforming them from their normal, everyday condition into whatever special state is deemed necessary for the proper performance of the ritual. Whoever approaches the sacred place of sacrifice or enters the sacred presence of the deity must be distanced from the ordinary, profane world to some extent. This applies above all to the *sacrificateur*; whatever the rules of priestly behaviour to which they are normally subject, these redouble in intensity as a major ritual approaches. *Sacrifiants* are by definition more firmly rooted in the profane material world, but even they, although not entering into direct relationship with sacred things, may need to undergo separation rituals of more limited scope. In the Tamil Nadu village festival studied by Good (this volume), for example, all villagers must observe a ban on sexual intercourse, liquor-drinking and meat-eating for two weeks beforehand.

After the rites of separation comes the sacrifice proper. The animal is killed in the appropriate manner and part of it—sometimes a physical part like the head or foreleg, sometimes a non-material spiritual part—passes to the deity. The remains of the offering are shared among the *sacrifiant(s)*, who usually also receive the lion's share of the benefits that accrue. Typically, in a blood sacrifice, they eat—or control the distribution of—those parts of the offering not consumed by the divine recipient; but this is not true of all sacrifices, and physical consumption is only one means of expressing the deeper, spiritual benefits accruing to the worshipper.[5]

After the sacrifice, there are rites of reincorporation or reintegration, returning the participants to their normal, profane states, such as the water-pouring that 'cools' the ritually 'hot' village in the Tamil festival (Good, this volume). These are generally less elaborate than the earlier stages, since the emphasis in sacrifice is mainly on the initial establishment of contact with divinity, rather than the severance of that contact at the end.

However, while this model may be widely applicable, at least at the descriptive level, it is certainly not valid universally. Even the universality of the sacred/profane

distinction, the very foundation of Durkheimian theory, has been called into question. For example, Goody reported that Lo Dagaa had no concepts equivalent to this dichotomy (1961:151), and Evans-Pritchard saw the two poles as 'intermingled' rather than mutually exclusive among Nilotic peoples, and as defined situationally rather than absolutely (1965:65). There is also a problem linked to the ambiguity of the notion of 'profane' itself. Is it to be understood simply as a residual category, the 'every-day' or 'not sacred', or as an opposed category, the 'irreligious' or the 'anti-sacred' (Coleman & White 2006:72–73)? More generally still, Evans-Pritchard (1965:78) criticised all the sociological approaches discussed so far, on the grounds of their non-falsifiability and reductionism.

So although Robertson Smith's analysis exerted 'a powerful, and in some ways unfortunate' influence on subsequent writers (Evans-Pritchard 1954:23), this whole approach, and indeed the entire enterprise of employing sacrifice as an analytical concept embodying universal features, has faced increasing criticism, on the grounds that it is 'suspiciously redolent of a "Judeo-Christian" worldview' and 'a misplaced attempt to treat as unitary what are in fact a highly heterogeneous set of practices' (Mayblin & Course 2014:308) that have, at most, only 'family resemblances' (Gibson 2010:625).

Sacrifices may indeed be performed for a variety of reasons. Hubert and Mauss themselves distinguished between 'personal sacrifices' where the *sacrifiant*'s moral personhood is directly affected, and 'objective sacrifices' where real or ideal objects (new houses, for example) receive the direct benefits of the sacrificial action, though even here there is likely to be at least an indirect effect on the *sacrifiants* themselves (1899:41). Evans-Pritchard identified two types of sacrifice in Nilotic societies, with different purposes and hence different *sacrifiants*. 'Confirmatory sacrifices' are 'chiefly concerned with social relations' (1954:21) and are sponsored by and performed on behalf of entire groups or communities. They have no specific instrumental aims and are meant to recognise and reaffirm the enduring link between sponsor and divine recipient. The regular worship of family, village or state deities falls into this category. By contrast, 'piacular sacrifices' are 'concerned with the moral and physical welfare' of individuals (ibid.). They may be intended to expiate sins, remove malign spiritual influences or honour the deity for granting favours; the aim is specific to particular persons or circumstances and the benefits are likewise more narrowly defined.[6] More comprehensively, Beattie (1980) distinguished four functional types of sacrifice. Their purpose may be to (1) set up or maintain closer contact with the deity, (2) achieve separation from spirits (exorcism), (3) obtain spiritual power for the *sacrifiant*, or (4) remove dangerous spiritual power from the *sacrifiant*, as in the scapegoat sacrifices analysed by Leach (1976), where the sins of the community are transferred to an animal which is driven out of the community and abandoned in the wilderness, taking those sins with it.

But should this final case be termed a 'sacrifice' at all, since the animal is not killed? For Hubert and Mauss, the destruction of the consecrated offering, be it animal or vegetable, is a defining feature of sacrifice (1899:39; see Allen 2013:151). Conversely, however, not all ritual killings can appropriately be termed 'sacrifices',

at least not without using that label in a looser and more general way. For ritual killings among the eastern Bantu, for example

> it is not the life *of* the animal that is at issue, but rather the life *in* the animal. […] The animal acts … as a vehicle rather than a surrogate, and the ritual itself is concerned with broader, impersonal qualities of life and well-being rather than the personalised deities or spirits that are commonly addressed in sacrifice.
>
> (Ruel 1990:23)

Moreover, the forms of ritual killing that have attracted recent legal attention in European countries, kosher and halal slaughtering as practised by Jewish and Muslim minorities, are not 'sacrifices' either, however the term is defined (Lerner & Rabello 2006). They are nonetheless relevant here, as discussed below, because they generate the same concerns regarding animal cruelty as have characterised debates on sacrifice itself.

As that example illustrates, animal sacrifice can be seen as just one of 'a much more general set of practices relating to the classification, ritual manipulation and consumption of living creatures' (Gibson 2010:626). Lévi-Strauss argued that animals were 'good to think' (1969:89) in two possible ways: there may be 'logical equivalence between a society of natural species and a world of social groups', or 'between the parts making up an individual organism and the functional classes making up the society, [so that] society itself is thought of as an organism' (Lévi-Strauss 1966:104). The former model provides a template for egalitarian societies displaying mechanical solidarity, while the latter corresponds to hierarchical societies displaying organic solidarity, like the Indian caste system. Lévi-Strauss looked only at wild animals however, whereas in the case of sacrifice, the animal mediators are almost always domesticated species.[7] As Gibson argues:

> in pastoral and agricultural societies the consumption of the flesh of domesticated animals is subject to high degrees of ritual regulation and emotional taboo. They occupy a place on the boundary between the human and non-human worlds, and between 'culture' and 'nature', in a way that wild animals do not. [O]ne might almost say that animal sacrifice is to the husbandry of domesticated animals as animal totemism is to the hunting of wild animals'.
>
> (2010:626)

Most of the analyses and discussions cited above derive from the study of oral traditions, mainly in sub-Saharan Africa, where—in the absence of written historical sources—historians and anthropologists were forced to speculate on the origins and interpretations of sacrificial practices. The situation in South Asia is quite different, however, because of the need to take account of the long written history of indigenous theology and scholarship. Above all, there are the Vedas, a corpus of hymns and ritual prescriptions, the oldest of which—perhaps dating

from the second millennium BCE onwards and initially transmitted orally—describe elaborate animal sacrifices aimed at preserving the cosmic order as well as soliciting worldly rewards. There is an extensive Indological literature on Vedic sacrifice in South Asia, as discussed below, and Hubert and Mauss themselves took this as one of their key examples. However, Veena Das draws a broad contrast between the dominant anthropological model outlined above, and the understanding of sacrifice within the Mimamsa school of philosophy (roughly, 500 BCE to 500 CE) which focused on the interpretation of Vedic texts dealing with ritual actions (Bartley 2001):

> anthropological discourse on sacrifice assumes that the sacrificator (*sacrifiant*) is a bearer of pollution, sin or guilt and the sacrificial cult provides the means for cleansing the person or the social body of these moral stains. […] In contrast … the Mimamsa school elaborates a structure in which it is not the sin but the desire of the sacrificator which is taken as fundamental (Das 1982:445; gloss added; note the similarity with Dr Chatterjee's exegesis in Voix, this volume).

This discussion has shown why the notion of sacrifice no longer seems tenable as an analytic construct within comparative anthropology, yet it still has salience as 'a widespread feature of discourse, and indeed, social life more generally' (Mayblin & Course 2014:308–309). It is sacrifice in this sense that is most relevant here. As the following chapters clearly show, 'sacrifice' has political and legal aspects, not merely religious ones, and while legal usages, too, fail to impose any precise or universal definition on the phenomenon, there can be no doubting the power which the practice holds for the protagonists in the various cases discussed in this volume.

Doing or questioning ritual action

In a volume with the evocative title *Quand faire c'est croire* (*When doing is believing*), John Scheid (2005) asked what meanings the practice of animal sacrifice could have had in the eyes of ancient Romans. Beyond a first objective—establishing a linked hierarchy between men and gods—that animal sacrifice implicitly conveyed, the detailed gestures and prayers accompanying the infinite variety of Roman sacrificial practices did not themselves, he argues, express any specific established religious truth. Echoing Humphrey and Laidlaw's (1994) comment that the Jaina devotional practices they observed in contemporary India appeared empty, almost meaningless, he notes how in Roman rituals:

> the problem of meaning does not arise, or rather, the rites allow the various celebrants to engage in a search for meaning and their personal intention and reaction, which can be expressed in different ways: through emotional or physical involvement in the rites, through the simple acceptance of the rite as what is to be done, or even through outright rejection of the rites.
>
> (Scheid 2005:280; our translation)

On the other hand, if the rules and sacrificial gestures (how to sacrifice an animal, how to distribute the meat, how to consume it), transmitted orally and regularly through the generations, are in themselves 'silent' as to their meaning, they can be interpreted differently and reinvented over time: 'The rites remained', Scheid concludes, 'their interpretations changed' (2005:282; our translation).

This conception of religion as orthopraxy came into conflict with the Christian emphasis on orthodoxy. Echoing Scheid's arguments, Rives points out that the Roman authorities treated religion as a set of social practices, whereas Christians were more concerned with statements of belief. He suggests that this broad opposition is a 'useful framework for understanding the mutual incomprehension that marked the clash over animal sacrifice between Roman authorities and devout Christians' (Rives 2012:157). For Romans sacrifice was a mark of civilisation, while many Christian writers considered it 'a practice established by evil demons' (ibid.:156). Referring to this opposition, Salzman (2017:245) highlights the innovations in Roman law spawned by the advent of Christianity, especially the emergence of a new set of laws against 'heresy'. These fundamentally differed from existing laws dealing with so-called *superstitio*, a term initially used by Romans to indicate excessive religious credulity, then 'magic and illicit private divination', and which became used by Christians to denote paganism (ibid.). As Salzman points out, while both sets of law prosecuted wrong religious behaviour, 'laws on heresy criminalized not just behaviors, but the "wrong" religious beliefs that gave rise to such behaviors, an innovation in Roman law introduced only after Constantine had included Christianity in the legal framework of the empire' (ibid.). Anti-superstition laws, though dealing with gods-related issues, were considered man-made and meant to protect public order and the state, whereas laws on heresy 'were part of divine justice—God's law' (ibid.).

Around the issue of animal sacrifice, the conceptual and linguistic dichotomy between *religio* and *superstitio* took on special importance. Animal sacrifices were first defined as *religio*, while the Christian's refusal to perform them was regarded as *superstitio*.[8] Christian rejection of what Romans considered to be *religio*, above all their refusal to perform animal sacrifice, was seen not just as offensive towards or inconvenient for Roman rule, but as a politically subversive act directed not only at the gods but towards Roman citizens and officials. When Roman emperors began to embrace Christianity, the practice of animal sacrifice started in turn to be viewed as *superstitio* and as disrupting public peace and order (Warrior 2006). For instance, Constantine, the first Roman Emperor to adopt Christianity, declared animal sacrifices repugnant, polluting, involving consorting with foul and detestable demons (Bradbury 1994); and as a matter of 'disgusting blood and nauseating and repellant odors' (Rives 2012:158). Not only was he personally unsympathetic to blood sacrifices, as he repeatedly stated in surviving epistles and orations, he also branded them as 'contrary to the character of our times' (Bradbury 1994:132)—an idea which, as we shall see, would often recur in the course of history.

The Christian refusal to practise animal sacrifice should not be understood as present from the outset, as widely believed, but as a post-facto legitimating discourse adopted by later authors; Ullucci (2012) shows that Christians did not have

a unified 'Christian' position on animal sacrifice until the mid-third century, contrary to the image later Christian authors wished to portray. And regarding a later period when anti-sacrifice laws became more rigid because of the pressure powerful bishops put on emperors, historians agree that the idea of an early Christian aversion to animal sacrifice needs to be nuanced. On one hand, the anti-sacrificial discourse of some patristic authors was influenced more by Neo-Platonic views on vegetarianism than by Christian theology (Ashby 1988, for example); on the other, what Christian authors condemned was not so much the sacrificial practice itself (its cruelty or futility) as the idea that sacrifices were offered to 'demons' and usually associated with oracular practices, which were also condemned. Origen, for example, refers to the battle between angels and demons which occurs

> every time someone lends his adoration to the true god, and … the demons will be angry against those who shun them with the smoke of the altars and with the blood of the victims.
>
> (Origen, *Contra Celsum*, VIII.64, quoted in Grottanelli 1989: 179–180; our translation)

For patristic writers like Origen, demons not only exist but are powerful and 'able to cause diseases or to invade the bodies' and then withdraw 'if they receive the sacrificial offering and can graze on blood and smoke' (Grottanelli 1989:180). Moreover, particularly in the case of the eastern Christian world (Armenia, Greece and Syria), animal sacrifices which Christians believed were offered in the past to demons began to be performed for what they considered to be the 'true God' or to Christian saints (Grottanelli 1989:182).[9]

Returning to the question raised by Scheid, it is not only ritual acts that are 'silent' in terms of meaning—that is, their meaning depends on the intention of the actors as well as on the debate they constantly produce. Refusal to perform a ritual act may follow the same logic: its meaning may vary according to the person concerned and be subject to later speculation or interpretation. Historians, for example, cannot be certain why Constantine had such a negative opinion of animal sacrifice because his views are mostly made known through later authors who sometimes express their own personal views rather than Constantine's.

Scheid's opposition between doing and questioning ritual action is also to be found, *mutatis mutandis*, in Indian religious history. The notion of orthopraxy is frequently used in Indian religious studies, on the grounds that in India, unlike Christianity for example, there is no centralised Church or unifying authoritative book. Almost 15 years prior to Humphrey and Laidlaw's work, Fritz Staal (1979) developed the idea, based on analysis of a large-scale horse sacrifice described in Vedic texts, that ritual action differs from other forms of action precisely because it has no meaning per se. Staal argued that not only are the elaborate ritual procedures 'pure activity … in accordance with rules' (1996:131–132), but their meaninglessness explains the variety of meanings associated with them.[10]

However, the attitude of questioning ritual action in terms of its efficacy or, particularly as regards animal sacrifice, its morality is also found throughout India's

religious history. Brahmanical ritual performances involving animal sacrifices (of horses or cows) began to be criticised both by the authors of the Upanishads and, even more consistently, by Buddhists and Jainas who began to condemn violence and promote ideals of renunciation of the worldly attachments on which Vedic rituals were based (Dalal & Taylor 2014).

In addition to being part of a wide-ranging philosophical and religious debate that had the effect of calling into question Brahmanical social and religious domination, the prohibition of animal sacrifice became a crucial political issue in India. In the third-century BCE, the Emperor Ashoka banned 'horse sacrifice', the main Vedic demonstration of imperial power, and chose instead the patronage of Buddhist dharma to be 'the legitimating glory of his empire' (Bose & Jalal 2004:13); he also prohibited the killing of other animals. By upholding the Buddhist dharma, which strongly opposed Vedic sacrifices on the grounds that they were both cruel and ineffective (Stewart 2014:629), Ashoka was not so much imposing a strict religious interdiction as infusing Buddhist values and promoting ethical conduct, as his inscriptions suggest:

> For all beings, the Beloved of the Gods [=Ashoka] desires security, self-control, calm of mind, and gentleness. In the past kings sought to make the people progress in the Dharma, but they did not progress. And I asked myself how I might uplift them through progress in the Dharma. […] I have enforced the law against killing certain animals and many others, but the greatest progress of 'righteousness' (Dharma) among men comes from exhortation in favour of noninjury to life and abstention from killing living beings.
>
> (quoted in Hardy 1994:361; Hardy's gloss)

Although historians are cautious about how to interpret such edicts, they agree that they correspond to a period of deep political transformations. Bose and Jalal (2004) note, for example, how the emergence of social and religious movements such as Buddhism and Jainism also corresponded to a period which saw the decline of the Brahman caste, whose superiority was sanctioned in the Vedas, and the affirmation of the power of the warrior/royal caste, to which both Buddha and Mahavira belonged.

Vedic sacrificial ceremonies were gradually abandoned from the fourth-century BCE onwards, and devotional movements developed, laying emphasis on the personal interaction between worshipper and deity. As Bowen notes, for instance, 'within the collection of practices, teachings, and ideas called "Hinduism" a tension has persisted between a notion of religion as effective action, where an offering produces a result, and religion as obedience or devotion to transcendent deities' (Bowen 2017:106). One of the prominent texts of the Gupta period, the *Bhagavad Gita*, for example, combines the legitimation of violence, aimed at accomplishing one's duty, with an emphasis on a personal relationship with a god based on devotion rather than ritualism.

Although contested at an early stage, animal sacrifice remained widespread in India over the years, though no longer in keeping with Vedic ritualism. Hindu

kings played a major role in performing public sacrifices, especially of buffalo, in large-scale ceremonies aimed at protecting the kingdom and displaying the king's authority. These have survived to the present day in some regions, with some kings now being elected as politicians (Berti 2009; Peabody 1997)—as the case studied by Berti (this volume) illustrates.

The criticism of animal sacrifice by Indian sectarian and devotional movements continued over the centuries, however, and gained new impetus, with a different meaning, through European Christian missionaries present in parts of the country from the late fifteenth century onwards. Ideas of 'idolatry', 'superstition' or 'false gods' that the first Christian writers had used in rejecting animal sacrifices in ancient Rome were now projected by missionaries in India (and elsewhere) onto sacrificial practices observed among the people they wanted to convert. Israel (2011:100) notes how in the nineteenth century T.E. Slater from the London Missionary Society defined animal sacrifice in India as 'a slain offering, with the worship of demons or of the bloodthirsty Kali'. He compared Christ's sacrifice, which he defined as 'the highest and benignest revelation of Divine love' to animal sacrifice (*bali*) which conveyed 'simply enmity, terror, cruelty, pain and death … being nothing but a bribe of blood offered to ward off a dreaded, evil influence … feeding the hungry rakshas and bhutas in order to draw their attention away from their real god and his processions' (ibid.).

Dirks (1997) and others have compared missionary condemnation of animal sacrifice as bloody, barbaric and superstitious with British officials' disapproval of the practice of *sati* (widow burning). Mani (1987, 1998) notes how officials had an ambivalent attitude to handling the 'sati issue', partly due to their difficulty in assessing whether the widow's decision to jump on her husband's funeral pyre was 'religiously motivated'—in the sense of an 'unreflective obedience' to an unquestioned rule (Mani 1987:125)—in which case they were unwilling to interfere, or whether she had been pressurised by the family, by pandits, or under the effect of drugs, which would have warranted their intervention (Mani 1998:26ff.). Missionaries themselves tried to pressurise officials to ban these practices not for religious reasons but based on ideas of decency or public order that they knew would be more in line with British concerns (Dirks 1997). Though British officials eventually decided to intervene and ban the practices of *sati* and hook-swinging, perhaps because they endangered human life, they were more inclined, in the case of animal sacrifice, to follow the principle of non-interference in religious practices so as to avoid public discontent.

British debates on *sati* and animal sacrifice shared a common preoccupation with the use and ascribed ultimate authority of Sanskrit scriptures and the Brahmanic interpretation of them, so as to assess whether or not these practices were in keeping with 'Hindu' religion. In fact, British officials thought that most people in India, even among Brahmans, were ignorant of their 'true' religion as they did not know scriptural texts or did not interpret them correctly (Mani 1998).[11] However, as Tanaka (2000) argues regarding a similar debate in Sri Lanka, since the practice of animal sacrifice is also attested to in the Vedas, the problem was to establish

which scripture should be regarded as authoritative—an issue which also emerges in Berti's case-study (this volume).

The missionaries' insistence on opposing 'religion' and 'superstition', along with the 'civilising discourse' of British officials, had a profound impact on nineteenth-century Hindu reformist leaders who also took a stand against animal sacrifice. They wanted to 'purify' Hinduism of what they called evil practices. Some did this explicitly in the name of a British rational, modern attitude: for example, Rammohan Roy, the Brahman founder of the Brahmo Samaj, who was influenced by Sanskrit, Islamic, Christian, and Orientalist readings and British liberal thinking, rejected *sati* and caste rules, and considered animal sacrifice repugnant (Humes 2005:149; also Doctor 1997:18). Others, like Dayananda Saraswati, founder of the Arya Samaj, had the idea of going back to an ideal of Vedic purity as opposed to the 'superstitions' of contemporary Hinduism. He reacted to Christian missionaries' claims of superiority by provocatively quoting biblical passages and criticising the Christians' God for being brutal, constantly demanding animal sacrifice: 'Are not the parents, who cause one of their children to be killed in order to feed the other, considered most sinful? The same is true in this case since all living creatures are like children to God. The Christian God (in their case) is more like a butcher' (Saraswati 1906: XIII-15).

It was within this eclectic reformist milieu that categories such as 'religion' and 'superstition', inspired by Christian religious discourse and a Victorian vision of progress, oriented the religious debate around the issue of animal sacrifice, opposing not only Hindu reformists to Hindu traditionalists but also Hindus to Christians and Muslims. Bharati (1970) has shown how the notion of 'superstition' may be used in India in opposition to science and rationality or, particularly among non-English speaking people, as a synonym of *andhavishvas*, a vernacular term introduced by Dayananda Saraswati to denote 'blind faith' as opposed, in his view, to a reformist, more spiritually oriented religious approach.

This aspect of the debate has been taken up by Indian judges, some of whom have a personal interest in a spiritual approach to religion and are pushing for Hindu religious reforms. The term 'superstition' is often found in their rulings in the sense of practices that are too ritualistic, or considered to hamper spiritual thinking or engage with doubtful and demoniac entities. For instance, in the court ruling discussed by Berti (this volume), the judge used the term 'superstition' eleven times, as a personal comment or by quoting previous judgments. For example, animal sacrifice is defined as a 'social evil' reflecting 'cruelty, superstition, fear and barbarism' and having 'nothing to do with religion' (*Ramesh Sharma vs. State of Himachal Pradesh & ors.* 2014:§8). Here superstition is opposed to scientific and rational thinking and to the citizen's fundamental duty, mentioned in the 42nd Amendment to the Constitution of India (in 1976), 'to develop the scientific temper, humanism and the spirit of inquiry and reform' (Art. 51A-h). It is also opposed to religion, defined by this particular judge as 'based upon spiritual values which the Vedas, Upanishads and Puranas were said to reveal to mankind, and which would be "love others, serve others, help ever, hurt never"' (*Ramesh Sharma vs. State of Himachal Pradesh & ors.* 2014:§51, quoting a 2004 decision).

Despite the similarities found in some rulings, between the religious speculations a judge may want to introduce in his decision and the writings of Hindu religious reformists—sometimes explicitly quoted in the judge's decision along with religious texts—judges in India are an extremely eclectic grouping. While some have very spiritual or orthodox attitudes, others have very liberal and totally secular views. Therefore, the idea that animal sacrifice is a 'superstition' and is opposed to religion is not shared by all judges in India, and sometimes for very different reasons. For example, some judges in the region where Berti worked (or their families) may even occasionally offer sacrifices themselves to their local deity. Others may be reluctant to ban this practice according to a more relativistic and secular perspective, with the idea, as one judge told Berti, that 'what is superstition for some is religion for others' (Deepak Gupta, pers. com.).

It should also be noted that, as Indian courts are secular institutions, judges are not expected to base their decisions on their personal religious views. Even when they cannot help embellishing their discourse with religious speculations, they are expected to found their decisions on purely legal arguments. One legal framework that judges may call upon to discuss these kinds of issues is the distinction between beliefs and practices—recalling Scheid's analysis of the contrast between acting and believing, mentioned earlier.

> A religion undoubtedly has its basis in a system of belief or doctrines which are regarded by those who profess that religion as conducive to their spiritual well being, but it would not be correct to say that religion is nothing else but a doctrine or belief. A religion may not only lay down a code of ethical rules for its followers to accept, it might prescribe rituals and observances, ceremonies and modes of worship which are regarded as integral parts of religion, and these forms and observances might extend even to matters of food and dress.
>
> (*The Commissioner of Hindu Religious Endowments, Madras vs. Sri Lakshmindra Tirtha Swamiar* 1954)

The idea that religion is based on practice as well as belief is often used as an argument in court to defend religious freedom. However, in determining which practices could be defined as 'religion', the Supreme Court in the so-called Shirur Mutt case just quoted above adopted the 'essential practice doctrine', whereby religious freedom only applies to the 'essential and integral' part of religion. In the words of Justice Gajendragadkar—'the key architect of this doctrine' (Mehta 2010:177) whose influential judgments established decisive precedents—the 'non-essential part of religion' is excluded from constitutional protection. This does not apply only to 'secular matters disguised as religious ones' but also extends to 'superstitious' beliefs and practices which are 'extraneous and unessential accretions to religion itself'—which the court has the authority and duty to identify.[12]

This distinction between the essential and non-essential parts of religion is in fact not new, and before being used in this legal context, it was used for instance by the Catholic Church. In 1906, for example, the Rev. H.G. Hughes' work *Essentials*

and Non-essentials of the Catholic Religion affirms from a soteriological perspective that 'not all that the Church approves does she thereby impose as essentially necessary for salvation' (Hughes 1906:8). Hindu religious reformists, probably influenced by Christian writings, also used the same kind of opposition. Swami Vivekananda, for example, despite criticising Christianity, constantly refers to this contrast in his writings and also seems to echo this idea when he refers to the Vedas: 'The essentials are eternal; the non-essentials have value only for a certain time' (quoted in Gayatriprana 2020:285)—a sentence often quoted by Indian judges in their rulings.

What is new in the use of the essential/non-essential distinction by the court is that instead of being a theological or philosophical (rhetorical) statement aimed at educating the followers of a particular religion about how to reach salvation or spiritual health, it becomes a legal category, a judicial tool by which the court, which has become the authority entitled to decide what is essential and what is not, may concretely enforce social and religious reform. Indeed, the logic of the 'essential practices test' has given the court broad authority to define, interpret and regulate the meaning and extent of religion. It may be used by judges in India—and in other countries like Pakistan, Malaysia and Singapore where this test has been adopted, explicitly or by implication (Neo 2018; Scotti 2016)—to decide in favour of or against the principle of religious freedom, while in the USA, as the discussion by Berti in this volume shows, such a reformist trend would clearly be unconstitutional, though a 'centrality' test could be applied until it was abandoned in 2000. But as De Roover (2019) points out, analysing the Indian Supreme Court's recent use of the doctrine to decide that the exclusion of women of child-bearing age from the Aiyappan temple at Sabarimalai in Kerala was neither an 'essential' nor an 'integral' part of Hinduism (see also Dutta, this volume), framing issues in this way serves to constrain the range of possible answers to questions regarding tradition and religion.

The essential/non-essential principle has not however completely replaced the religion/superstition opposition which, as we saw, dominated the debate around animal sacrifice in earlier periods. At legislative level for example, so-called Anti-Superstition laws have been passed in many Indian states in recent years, attempting to draw (not without heated debate) a boundary between religious practices and 'evil' superstitious ones.

We now turn to another important issue that the debate on animal sacrifice has often addressed, the question of cruelty and animal sensitivity. It also has a long history, both in India and in the West, and has formed another element of the shared debate especially since the colonial period.

On cruelty and morality

In the criticisms made of the practice of animal sacrifice at different times and in different regions of the world, two major arguments seem to prevail. One highlights the effects that the practice can have on humans in their present life or, in relation

to the idea of reincarnation, their future life. The other argument focuses on the animals themselves, on the respect they deserve and the suffering these practices inflict on them.

These two perspectives emerged in ancient times in the West with different implications. For instance, Pythagorean ideas about the condemnation of animal sacrifice considerably influenced the debate in Rome. Thus, Ovid (43 BCE–17/18 CE) in his *Metamorphoses* attributed to Pythagoras a speech in which he described animal sacrifice as 'an impiety that grows out of a carnivorous lifestyle'; an 'evil that is not sanctioned by the gods'; an 'act of betrayal against our bestial colleagues/fellow-workers'; and the 'equivalent of murder, given the theory of metempsychosis and the human-like sensibilities of the animal victims' (Green 2008:44–45). The issue was taken up from a different perspective by Plutarch (ca. 45–125 CE), who addressed it not in relation to the practice of vegetarianism or the idea of reincarnation, as with Pythagorean conceptions centring on humans, but on the basis that animals themselves are intelligent, possess rationality, language and emotions, and thus need moral consideration (Steiner 2010:75).[13] In countering other widespread philosophical orientations of that period which considered animals as cognitively and morally inferior to humans, Plutarch argued (in *Moralia*) that animals differ from human beings only in degree not in kind and thus, as he argued towards the end of his life, deserve mercy and compassion (ibid.). Plutarch's views are often cited by the animal protection movement in the modern period (cf. Newmyer 2006).

Although the idea of all living beings having a common nature was regarded as ridiculous by the authorities in Rome, it continued to attract intellectuals of the Late Roman Republic (Ovid, Lucretius, Virgil) who 'were inviting debate on the morality and validity of animal sacrifice' (Green 2008:42).[14] Rives argues for example, that Constantine's attitudes 'were in the first instance shaped more by the Neoplatonic than the Christian understanding of animal sacrifice' (Rives 2012:160). The Church rather rejected these ideas, assimilating them to paganism and then to heresy (Baratay 2012:132). In fact, what seems to have generally prevailed among patristic and scholastic thinkers was the vision that opposes humans, with their spiritual immortal soul, and animals, with their limited, instinctive and sensitive faculties of a corporeal and mortal soul (ibid.). As Baratay notes, this position was almost unanimous until the sixteenth century, with few exceptions.

From the mid-sixteenth century onwards, however, some puritan groups in Britain, especially the Quakers, began to oppose blood sports against animals by emphasising their cruelty and the animals' suffering (Watson 2014). The same puritan sects were to be at the root of early American movements against cruelty to animals. The developing debate drew attention in broader philosophical circles during the eighteenth century. Two kinds of argument were discussed: cruelty towards animals will increase humans' cruelty towards humans (e.g. Locke); and humans have a moral duty towards animals (e.g. Kant). This moral duty was defended especially in relation to the capacity of animals to feel pain. For example,

Rousseau argued that humans had a moral duty towards animals not because of a common rationality (which he considered to be specific to humans) but because of animals' sensibility:

> It seems, in fact, that if I am obliged to do no harm to my fellow man, it is less because he is a reasonable being than because he is a sensitive being; a quality which, as it is common to beast and man, should at least give the one the right not to be unnecessarily mistreated by the other.
>
> (Rousseau 1755: Préface; our translation).

This was a century after Descartes had considered animals to be 'automata', arguing 'that they did not have minds capable of understanding or articulating pain, so their screams and writhing were just reactions to a stimulus, and it did not matter how they were treated' (Blosh 2012:12). Focusing on behaviour rather than physiology, Rousseau noted on the contrary how feeling pain gave animals a certain moral status:

> Without speaking of the tenderness of mothers for their young, and of the perils which they brave to protect them, we observe every day the reluctance of horses to trample on a living body; an animal does not pass without anxiety near a dead animal of its kind; there are even some who give them a sort of burial; and the sad roaring of cattle entering a slaughterhouse proclaims the impression they receive from the horrible spectacle that confronts them.
>
> (Rousseau 1755: Première partie; our translation)

This discourse on the ability of animals to feel pain was shared by other eighteenth-century authors, writing at a time when the political and intellectual debate on rights was in vogue on both sides of the Channel. From a theological perspective, for instance, the Anglican priest Humphry Primatt published in 1776 a dissertation on pain as the unifying characteristic of humans and animals:

> Pain is pain, whether it is inflicted on man or on beast; and the creature that suffers it, whether man or beast, being sensible of the misery of it whilst it lasts, suffers Evil.
>
> (Primatt 1776:7)

From a religious perspective, Primatt was concerned with animals' 'right to happiness', an idea that would emerge again later in legal battles against animal sacrifice. Along with defending humans' and animals' commonality of sentience, he compared animal cruelty to cruelty against children or women who were also deprived of rights:

> Primatt … allies children and animals as worthy co-claimants to rights as citizens of the world. He advocates for the 'innocent beast, who can neither

> help himself nor avenge himself, and yet has as much right to happiness in this world as a child can have'.
>
> (Morillo 2017:103)

In France too, during the revolutionary period, the issue of animal protection became part of public debate. As Baratay (2012) notes, it was organised in public places and took on a social and political character. Growing public condemnation of brutality was, he argued, also due to the increasing use of animals in agricultural work and harnessed transportation, leading to frequent scenes of abuse in public places. This led not only to a change in public sensitivity but also, Baratay claimed, a change in behaviour among animals themselves who reacted to the way they were treated by expressing their suffering in the public eye.

One figure regularly quoted in this debate is Jeremy Bentham, a British Utilitarian philosopher and jurist.[15] In the second edition (1823) of *An Introduction to the Principles of Morals and of Legislation* he compared, as Primatt had a few years earlier, animal oppression to various forms of human oppression, such as slavery[16]:

> The day may come, when the rest of the animal creation may acquire those rights which never could have been withholden from them but by the hand of tyranny. The French have already discovered that the blackness of the skin is no reason why a human being should be abandoned without redress to the caprice of a tormentor. It may come one day to be recognized, that the number of the legs, the villosity of the skin, or the termination of the *os sacrum*, are reasons equally insufficient for abandoning a sensitive being to the same fate. What else is it that should trace the insuperable line? Is it the faculty of reason, or, perhaps, the faculty of discourse? But a full-grown horse or dog is beyond comparison a more rational, as well as a more conversable animal, than an infant of a day, or a week, or even a month, old. But suppose the case were otherwise, what would it avail? The question is not, Can they *reason*? Nor, Can they *talk*? But, Can they *suffer*?
>
> (Bentham 1823, chap. XVII, para. 1–IV, note 122)

Bentham's ideas had a major impact on the debate about the ethical treatment of animals (Ortiz-Robles 2016a:9), which led to the creation of the first animal welfare organisations, notably the Royal Society for the Prevention of Cruelty to Animals (RSPCA), founded in London on the initiative of clerics, politicians and lawyers (Boddice 2008). They also inspired demands that Parliament pass legislation to outlaw or restrict various practices implying animal maltreatment such as staged animal fights, vivisection and cruel sports.[17]

The issues of cruelty and animal suffering had in fact been raised since the first animal protection bills were proposed in Britain in the early nineteenth century, such as the Bull-Baiting Bill in 1800. While opponents in the House of Commons dismissed the discourse on animal cruelty as unimportant and stemming from a 'petty, meddling spirit', its supporters, many from an evangelical background, tried to convince the House by playing on their emotions (Blosh 2012:26).

The proponents of these legal reforms—activists, jurists, parliamentarians, social reformers and clergy—began to place the issue of animal suffering at the heart of the judicial debate. Sir Richard Hill, for instance, the first Evangelical Christian elected to Parliament, gave vivid descriptions of horrible scenes to illustrate the cruel ways in which animals were treated in a variety of situations.[18] Others stressed religious arguments, saying that 'our responsibility to God, who created animals … requires us to treat them with compassion' (Lord Erskine, in Blosh 2012:30).

The first bill eventually passed was the so-called Martin's Act of 1822 (*An Act to Prevent the Cruel and Improper treatment of Cattle*). Proposed by Richard Martin to prevent the abuse of horses, sheep, oxen and other cattle, the idea of animal suffering was presented as sufficient reason in itself to consider enacting a law. It drew considerable public support:

> One factor was that by this time the public abuse of animals on city streets had resulted in overwhelming popular support for the cause of animal protection. Cruelty to cattle and sheep as they were being driven to slaughter, and to horses overloaded with cargo, was especially obvious. These animals were often starved and beaten until they literally fell down dead. Magistrates, clergymen, businessmen and concerned citizens submitted more than thirty petitions in support of Martin's bill.
>
> (Blosh 2012:33–34)

Soon after the passing of the bill, the Society for the Prevention of Cruelty to Animals was founded (1824), which quickly enjoyed Queen Victoria's support and became the RSPCA in 1840. The Society began to handle the issue of cruelty with regard not only to cattle but also, for example, to dogs and other domestic animals, cock fighting and experiments on animals.

In addition to these committed positions, which often linked the issue of animal cruelty to other social battles, another contribution to the ethical debate on animals was the growing fashion among aristocracy and wealthier classes of keeping pets at home. Pets, especially dogs but also birds and horses, were regularly included in family groups portrayed in paintings, anticipating the widespread nineteenth-century obsession with pets among upper and middle classes (Thomas 1983; also Mangum 2007).

Some within these circles were also involved in the modern vegetarian movement that began to form during this period around the Vegetarian Society, founded in Manchester in 1888. Henry Stephens Salt, for example, an English promoter of social reforms and animal rights, published in 1886 *A Plea for Vegetarianism*, which was to have a major influence on Gandhi, early in his life in England. Gandhi acknowledged in his autobiography that his adoption of vegetarianism, which he later associated with Indian ideas of nonviolence (*ahiṃsā*) in his anti-colonial fight, had been reinforced by reading Salt's book (Salt 1886).[19]

The circulation of ideas between India and Europe intensified at the end of the nineteenth century and even more so in the twentieth century. Some of the battles

fought in the West by the nascent animal welfare movement would also be fought in India by British residents and Indian activists, and some legislation passed in the United Kingdom to prevent animal cruelty would be adapted to British India—though the history of legal transplants between Britain and India was, generally speaking, more complex and often reciprocal (Halpérin 2010).

Before examining how this change in the perception of animal treatment is addressed in court by activists and legal actors, we again turn briefly to pre-colonial and colonial Indian history to look at some of the main issues evoked by the debate around animal cruelty and, correlatively, the issue of animal sacrifice. This debate had been taking place in India since ancient times and had raised specific questions around the idea of violence and non-violence specifically related to sacrificial practices.

Preventing cruelty, and non-violence in India

Animal sacrifice practices have been questioned in India by various philosophical or religious movements at different times and for different reasons, for example, ideals of non-violence, purity or reincarnation. These notions have been addressed by scholars in relation to a wide repertory of ancient texts about which, particularly for the earliest ones, little is known of the historical social context in which they were produced. Understanding and interpreting these texts must take into account the different purposes for which they were written (ritual or legal prescriptions, religious or philosophical speculations), as well as the fact that, having often been written by multiple authors over a period of time, they are far from proposing a uniform point of view. Here we do not enter fully into the animated debates among Indologists and historians of religion concerning these issues but only mention a few aspects of those discussions so as to highlight some specificities that the controversy on animal sacrifice took on during India's ancient history.

One central notion in the religious and philosophical debate around the practice of animal sacrifice in India is *ahiṃsā*, generally translated as 'non-violence' but whose meaning has undergone many changes. According to Heesterman (1984), developing H.-P. Schmidt's arguments, this idea was in fact already present in the Vedas. For instance, the ritual declaration in the Rig Veda, made by the sacrificer to the already dismembered sacrificial animal ('You do not really die here, nor are you hurt'), or the declaration in the *Satapatha Brahmana*, made when leading the victims to their immolation ('that which they lead to the sacrifice they do not lead to death'), are both interpreted as signs that there were already in these texts some tensions surrounding the act of killing animals (Heesterman 1983:6, quoted in Tull 1996:225ff).

Non-violence, according to this analysis, was thus already integrated within a ritualistic framework whose procedures focused on an act of killing. For instance, in Vedic sacrifice, the sacrificial animal has to be suffocated in an effort to obfuscate the violent nature of its death and to assert that the process 'is not really a killing, but a "quieting" of the animal' (Tull 1996:226) Similarly, another text, the *Manavadharmasastra*, strongly prohibits killing and meat eating while continuing

to 'promote the sacrificial rite with its necessary meat-eating and violence' (ibid.); as the text declares, 'in the sacrifice, slaughter is not slaughter' (ibid.; see also Houben 1999).

The same denial about killing during sacrifice was maintained in later texts, for instance the 'Laws of Manu' (*Manusmriti*), probably dating from the third century CE, which

> maintains that since these animals are meant to be killed as part of their very ontological structure, their killing cannot properly be regarded as blameworthy: 'Within the sacrifice killing is not killing' (57:218). In fact, if a person of the right caste status, temperament, and knowledge sacrifices an animal in the correct ritually prescribed way, then that animal is actually better off dead than alive, since '[the ritualist] leads himself and those animals to the highest state' (39:140). On the other hand, a killing not sanctioned in these ways is considered strictly immoral, is utterly prohibited, and can lead to various metaphysical and temporal harms.
>
> (Stewart 2014:627)

Since at least the middle of the first millennium BCE, a discourse promoting non-violence with more ethical implications outside the world of sacrifice and particularly among ascetics began to emerge in religious and philosophical texts produced both within and outside Brahmanical circles, for example in Buddhist and Jain texts. In Brahmanic milieus, for instance, these texts defined common ideals for both Vedic scholars (during the period they study the Vedas) and world renouncers (dissociated from worldly attachments in an effort to escape the chain of rebirth): 'Both are sworn to celibacy, both are mendicants, both recite the Veda, both carry a stick, neither offers sacrifices and both, above all, subscribe to the principle of non-violence' (Oguibénine 2003:78).[20] The criticisms these movements made of the practice of animal sacrifice have often been taken as proof of a more favourable attitude towards animals.

One example of this can be found in Ashoka, presented by Buddhist sources as an ardent Buddhist who, after converting to Buddhism, would have had a 'change of heart' (Stewart 2015:16) and would have started to promote the principle of non-violence and (among other things) to ban (some) animal sacrifices. Stewart notes how various scholars have recently challenged this 'romantic account' by showing for example that Ashoka's edicts seem to have been issued late in his life, well after his supposed conversion to Buddhism, and that they are probably independent of Buddhism and motivated by Ashoka's political calculations (also Alsdorf 2010:53–56). Stewart (2015:4) also shows how this orientalist romanticism that idealised Buddhist views about animals led scholars or activists—such as Colonel Henry Steel Olcott, an American officer and writer and convert to Buddhism who, in 1875, co-founded the Theosophical Society—to view meat-eating among contemporary Sri Lankan Buddhists as a sign of degeneration compared to what he presumed had been an 'original Buddhism'. According to Stewart (2015:117), previous discourses valorising vegetarianism in Sri Lanka had in fact less to do

with animal protection than with anti-British, anti-missionary sentiments and were used as ways to mark differences between Buddhists and British settlers. Olcott, by contrast, developed a kind of protestant-inspired view of Buddhism (Prothero 1995; also Schopen 1991), which would have an impact on the Indian debate about compassion and animal welfare through campaigns launched by the Theosophical Society (Tarabout 2019:389).

From another perspective, Ohnuma (2017) also challenges idealised images of Buddhism, showing how, while in some texts animal sacrifices are condemned because of their consequences for the sacrificer's rebirth (the merit or demerit of an action being linked to the cycle of reincarnation), other texts of the same period emphasise the suffering that sacrifice may cause to the animal itself. For example, she cites the Jataka story of an ascetic who, forced to sacrifice an elephant in order to marry the woman he loved, was deeply moved by the cries of the elephant upon seeing the sword raised over its neck and began to realise the cruelty of his act. Though such stories show a shift from the sacrificer to the sacrificial animal, she argues that it would be wrong to interpret them as proof that Buddhism seeks to establish continuity between human beings and animals. Although other authors have taken this stand, in the texts on which she focuses she consistently finds an effort to keep humans distinct from (and superior to) animals—in terms of intellectual capacity, morality, karmic retributions, and capacity to reach deliverance:

> Merciless, cruel, and lacking any compassion, 'animals think only of harming one another,' they 'never stop practicing evil,' they 'live in the darkness of ignorance,' they 'commit acts that will lead them to hell,' they 'produce thoughts of anger,' and they 'do not take pleasure in virtue' (according to the *Mahāsaṃnipāta Sūtra* preserved in Chinese, T. 397).
>
> (Ohnuma 2017:9)

Scholars have also questioned the orientalist view of Hinduism (and India in general) as fundamentally animal-friendly. One aspect is the connection established in modern India between non-violence (*ahiṃsā*) and vegetarianism. As argued by Schmidt among others, vegetarianism developed only gradually and partially, even among Brahmans. In ancient times, 'neither the Buddha nor the Jina were vegetarians though they propagated *ahiṃsā*' (Schmidt 1968:625). In the early centuries of our era, the *Manusmriti* (5, 31–44) 'teaches [Brahmans] the duty of eating meat in the sacrifice, but prohibits it on all other occasions' (Schmidt 1968:630), and it was only the renouncer, at that time, who had to strictly abstain from violence and from meat consumption.

Similarly for Stewart (2015), the idea that Hindus are vegetarians has been historically overstated in the West. Vegetarianism is very inconsistently practised in different regions of India, even among Brahmans. The emergence of theistic movements, such as Vaishnava schools, prompted the spread of vegetarianism, as well as 'non-violent' sacrificial methods using vegetal substitutes for the animal victim, a possibility already mentioned in Vedic texts and widely practised in India today (see Good and Voix, this volume). However, the gradual incorporation and

adaptation of ideals of vegetarianism and non-violence into Brahmans' world view was not necessarily motivated by a concern for animal suffering but focused more on ideas of purity and separation from other castes. As Fuller notes:

> one vital marker of Brahman culture in south India is and long has been strict vegetarianism … vegetarianism is persistently identified as a Brahmanical caste custom, and non-Brahmans who are vegetarian claim higher status partly because they are following the Brahmans' superior dietary code.
>
> (Fuller 2004:93)

Even the issue of cow protection, often presented today as an emblem of spiritualised non-violent Hinduism, has been shown to be a comparatively late and politicised development. The shift from considering cow sacrifice one of the most meritorious ritual acts—as in the Vedic and post-Vedic period—to regarding it as one of the most deleterious acts, did not happen instantaneously. Even texts often quoted today as references of a reformed Hinduism, such as the *Mahabharata* and *Ramayana*, include descriptions of cow sacrifice and beef consumption (Jha 2009). Only in the seventeenth century did cow protection begin to be politicised in terms of an opposition between Hindus and Muslims:

> Cow protection among the upper castes first gained significant popularity in the 1600s, when the Maratha ruler Shivaji sought to mobilize Hindus against Mughal rule. His campaign brought cow protection to the forefront of the upper caste Hindu identity in western India. Thus, despite its ambivalent place in Hindu texts and histories, the cow was to become the modern symbol of a political community of Hindus, distinct from and in tension with Indian Muslims. But it would still be over 200 years before cow protection would gain widespread currency among upper caste Hindus across the country, during the Indian nationalist movement.
>
> (Sarkar & Sarkar 2016:341)

During British rule the cow protection movement, while assuming anti-colonial overtones, began to echo British orientalist assumptions (resembling Olcott's aforementioned discourse on Buddhism) about a 'true' spiritualised Hinduism, according to which cow sacrifice and beef consumption should be condemned. The cow protection movement's targets, which also included the British as beef-eaters and some low castes as skin traders, particularly focused on the Muslim practice of cow sacrifice during the Bakr-Id festival. This practice became even more controversial with the rise of the Hindu nationalist movement that used the cow as a symbol of Hindu religious and political unification rooted in political anti-Muslim and anti-colonial feelings (Freitag 1980; Gundimeda & Ashwin 2018; Hancock 1995; Sarkar & Sarkar 2016).

Other nineteenth-century religious movements, less focused on cow protection, were also critical of animal sacrifice though from different points of view. The Ramakrishna Mission, for example, founded by Vivekananda, promoted the

idea of an ontological unity of the universe where Hindu or Buddhist ideas of reincarnation, of compassion to living beings, were adapted and reinterpreted in the light of Western theories of human evolution and of social justice principles (Gosling 2001:38ff; Tarabout 2019:388). Vivekananda wrote: 'from the lowest worm that crawls under our feet to the highest beings that ever lived—all have various bodies, but one soul' (quoted in Gosling 2001:39). The concepts of *seva*, intended by Vivekananda to mean a personal and collective service for those in need (Beckerlegge 2007; Gosling 2001), and of *karma yoga* (yoga of selfless action), were at the forefront of philanthropic programmes run by the Ramakrishna Mission, including animal hospitals. Both concepts have been adopted today by animal welfare organisations in India and abroad,[21] but Gosling (2001:39) urges us to be wary of viewing this as a 'primitive form of animal rights'. Organisations such as the Ramakrishna Mission were deeply influenced by Western encounters and mainly driven by a search for personal spiritual progress in this life or the afterlife, whereby the discourse of unity between animals and humans, though now framed around evolutionary principles, is still linked to a discourse of reincarnation.

In fact, the creation of an animal welfare movement in India, at least in the modern sense of the term, was initiated in the nineteenth century by British residents. Chakrabarti (2010) shows the complex and at times contradictory values introduced into India by the colonial state regarding its relationship with animals. The dilemma caused by the animal protection issue in the West—seeing animals both as resources for human consumption and as 'objects of compassion'—was further amplified in India because of the complex political and socio-religious dynamics of the colonial situation.

> Along with adopting animals as subjects of science, British residents in India had expressed strong compassion for Indian animals. The British residents and the colonial government cared for and adopted the wretched draught and street animals of India.
>
> (Chakrabarti 2010:130)

Some British residents in India expressed strong opposition to animal cruelty and various practices that had been introduced into India—vivisection, the destruction of vermin for the development of agriculture, and hunting sports. One example was Colesworthey Grant, a British painter residing in Calcutta, who established the first Indian Society for the Prevention of Cruelty to Animals (SPCA) in 1861 (Mittra 1881). Grant (1872) published a pamphlet entitled *On Cruelty* in which, after moral condemnation of the recent history of slavery, he delved into the issue of cruelty to animals, giving numerous gruesome descriptions of how animals are threatened, so as to incite people to join the organisation.

Although Grant's discourse did include Christian religious references, his main message was the idea, already well-established among Western philosophers, that animals are sentient beings, that even if they are unable to speak they can suffer and that their very inability to speak is the 'reason we should speak for them' (Grant 1872:13). His discourse about communality between humans and animals makes

no reference to the idea of reincarnation, as was the case in Buddhist texts and for Hindu religious reformists, but evokes the scientific theory of evolution. He also gives an Utilitarist reading of the Christian message, asking people not to be cruel to animals on the grounds that 'the real way to be happy yourself is to make others happy' and that God himself intended that 'these little creatures should be happy' (ibid.:27). His book directly echoes the battles that had already begun in England a few decades earlier.

The Indian SPCA branch in Calcutta took an active part in the campaign for legislation banning cruelty to animals, prompting the Bengal government to pass the first Act for the Prevention of Cruelty to Animals in India in 1869. This was extended to the whole of India in 1890–1891. As in Britain, those involved in the battle against animal cruelty were often accused of having a 'class bias' by targeting only lower class practices and overlooking the games of the elite (Kreilkamp 2012).

The first Prevention of Cruelty to Animals Acts passed in India under colonial rule reflected 'British perceptions of Indian character and society', with Indians being childlike and cruel, a stereotype that 'shaped the paternalism of colonial legislation' (Chakrabarti 2010:131ff). In Grant's discourse however, at least in his 1872 pamphlet, cruelty is not presented as intrinsic to Indians' nature but as being due to a lack of education, of having never been taught, '*when young*, what things *are* cruel' (Grant 1872:26, original italics); people are not considered to be cruel to animals because 'they love cruelty' but because 'they have got accustomed to it' (ibid.:25).

The debate around the protection of animals, taken up by Indian activists, led to multiple discussions after Independence. For instance, there was a lengthy debate in the Constituent Assembly on 24 November 1948 on banning cow slaughter (Lok Sabha Secretariat 1999). This issue, which as we saw had been strongly promoted by orthodox Brahmans, Hindu reformists and nationalists, was completely intertwined with a communitarian battle, especially against Muslims and their practice of cow sacrifice during the Id festival. The Constitutional debate leading to Article 48, directing the prohibition and restrictions on the slaughter of cows, was 'framed in terms of a scientific organisation of animal husbandry, rather than a religious belief in the sacredness of the cow' (Chigateri 2011:138). Yet Chigateri also shows how in the many court battles challenging Article 48, religious feelings, which had been deliberately left out of the language of the article (seemingly at Ambedkar's request), in fact came to the fore when Muslim butchers, tanners and cattle dealers demanded that restrictions be eased, and Hindu groups asked the court to address the religious basis for the cow slaughter ban.

A ban on animal sacrifice in particular was enacted by Madras Legislative Assembly in 1950, with arguments having less to do with the issue of animal cruelty per se than with the idea of making Hinduism appear more respectable (Smith 1963:235; Good, this volume). However, from 1953 onwards, discussions on the campaign against animal cruelty, including the fight against animal sacrifice, were taken to national level. *The Prevention of Cruelty to Animals Act* (Act 49 of 1960) was eventually passed after a first version had been put forward to the Rajya Sabha

(Upper House of Parliament) by one of its members, Rukmini Devi Arundale, an internationally famed Bharata Natyam dancer, friend of the Nehru family (Jawaharlal Nehru was Prime Minister at the time) and high-ranking official of the Theosophical Society.[22]

Rukmini Devi's battle focused on a wide range of issues: game hunting, vivisection, but also 'animal sacrifice in the name of religion', which she defined in one of her speeches to the assembly as 'one of the most barbarous things that exists in India' (Rajya Sabha Official Debates 1954:1794ff). Her speech was in line with the debate that had begun in Europe within both religious and philosophical circles on animals' ability to suffer. She focused particularly on the question of animal sacrifice, urging people to let their hearts 'go towards our young friends in compassion and in kindness' (ibid.:1803).

> Perhaps people do not know what animal sacrifice is. They may think, 'After all, it is only a killing of animals, and what is the harm in killing animals?' But in reality in the name of religion, there is a great amount of cruelty which is connected with animal sacrifice besides the cruelty of the killing.
>
> (ibid.:1796)

Rukmini Devi was not directly involved in the philosophical or juridical debates taking place in European intellectual circles, but she had certainly been influenced by the same kind of intellectual environment that had led to those legislative battles in Europe, probably through her training and membership in the Theosophical Society. She herself referred to this Western influence in her speech before the Indian Parliament:

> I have known some interesting cases of kindness in Western countries. Though there are many cases of cruelty, there is a general idea of kindness in ordinary life which we do not find here. … These are the things that we can learn from the West.
>
> (ibid.:1793)

Although here Rukmini Devi opposed a supposed Western kindness towards animals to an Indian lack of kindness, in other passages of the same speech, she referred to Indian traditional kindness as expressed by 'the ideas of Ahimsa' and by 'the emblem of Asoka, which is in essence compassion, kindness, and justice to all' (ibid.:1787). Indeed, her commitment to the animal cause was shaped by a spiritualistic and reformist approach to religion. She often referred in her speeches to public morality, a notion which in her case was linked both to the ideal of a 'universal religion' that she most probably drew from the Theosophical society teachings (Dave 2014:437; Tarabout 2019:388ff) and to vegetarianism for which she also actively campaigned.

Following the adoption of an amended version of the Bill in 1960, the Animal Welfare Board of India (AWBI) was established in 1962 and Rukmini Devi became its first President until her demise in 1986. 'Compassion in action' is the motto of

this public board. Rukmini Devi's important role in the development of Indian legislation and institutions for the protection of animals has been underlined by Maneka Gandhi and Chinny Krishna, two leading personalities in animal welfare politics today: 'If animal welfare is accepted, even fashionable, today, it is solely her efforts and crusade in the early years of independence that have made it possible' (Krishna & Gandhi 2005:70).

What is striking is the constant circulation of ideas between Western and Indian traditions. We have seen how, among other things, British and Christian influences marked the development of nineteenth-century Hindu reformist movements, how British involvement coloured activism and legislation for the protection of animals, and how a 'protestant' ideal of religion was projected onto Buddhism and Hinduism by the Theosophical Society. Conversely, European thinking has been deeply influenced by what was known of India and the East. The idea of compassion as well as the notion of *ahiṃsā*, for instance, were used by Western thinkers who, through their reading of ancient Indian texts, portrayed an idealised orientalist view of India.[23] Besides the Theosophical Society, whose founding members were deeply influenced by (their perception of) Buddhism, many found a major source of inspiration in the different philosophical traditions of India. For example, Albert Schweitzer, a theologian, humanitarian and physician, was personally engaged in the animal welfare debate and was a passionate reader of Indian philosophy (as well as of authors of Indian religious reform). He has become one of the moral reference points for animal rights activists who, on their websites, often quote one of his famous sentences: 'Until we extend our circle of compassion to all living things, humanity will not find peace'.[24] This idea of compassion, associated with various ancient or modern Indian figures, is common to animal welfare movements throughout the world.[25] It has regularly been used in India in the multiple battles to ban practices involving animal cruelty—many of them taken up to legislative level by Maneka Gandhi, who has twice been a minister in recent governments. However, and particularly on the question of animal sacrifice, many of these battles, at national or state level, are now fought in court.

Before reviewing how this shift to the court has unfolded in India, we must turn again to the West—from where many changes in modern legal approaches to the issue originated (sometimes, as Le Bot [2007] argues, with India as a model)—and look at how the judicialisation of the issue of sacrifice came about.

Animal protection and the courts

With the gradual adoption of anti-cruelty laws during the nineteenth century in various countries, in Europe and then in other parts of the world, cases concerning animal cruelty began to be taken to court. In the United States, for instance, developments in anti-cruelty legislation led to laws enabling the prosecution of unnecessary cruelty inflicted on animals as a criminal offence, with no regard, as was the case previously, to the civil issue of 'injury to property'. Courts were then called upon to decide not only on how to enforce the law but also how to define key words such as 'cruelty', which had been 'left undefined by the legislature'

(Favre & Tsang 1993:24). By referring to anti-cruelty laws, an increasing number of practices involving animal cruelty—cockfighting, use of horses and cattle in transportation and, of course, the ritual slaughter of animals—began to be challenged.

European legal systems too, as mentioned earlier, still face important issues regarding this question of ritual slaughter.[26] The halal and kosher practices of Muslim and Jewish minorities have been criticised by animal welfare activists (Van der Schyff 2014), on the basis that the slaughtering procedures provoke 'unnecessary pain' if the animal is not stunned beforehand (Zoethout 2013:658). On the other hand, supporters of the practice consider that pre-stunning the animal violates their religious freedom since it interferes with their rule that the animal must be in perfect health and condition before it dies (ibid.:653).[27] In line with this principle of religious freedom, much anti-cruelty legislation, such as the 1979 *European Convention for the Protection of Animals for Slaughter*, includes derogations for kosher and halal practices.[28] However, courts in Europe have repeatedly had to rule on the balance between rights to freedom of thought, conscience and religion, guaranteed by Article 10 of the *Charter of Fundamental Rights of the European Union*,[29] and animal welfare, as set out in Article 13 of the *Treaty on the Functioning of the European Union* (TFEU)[30] and given specific expression in Council Regulation No 1099/2009 on the protection of animals at the time of killing.[31]

Courts at the European level have consistently maintained the freedom of religion principle, established by Article 9 of the *European Convention on Human Rights* (ECHR).[32] This was reaffirmed concerning ritual slaughter by a 2000 decision of the European Court for Human Rights (ECtHR), though in a far more nuanced way than the applicant, a Jewish liturgical association, had wanted (*Cha'are Shalom Ve Tsedek vs. France* 2000). The applicant argued that the refusal by the French authorities to grant it approval to perform ritual slaughter according to its members' religious prescriptions, constituted a violation of Article 9 (Zoethout 2013:664ff). The authorities had approved another organisation (ACIP) that satisfied most of the Jewish community in France but the ultra-orthodox applicants did not view meat slaughtered by ACIP as ritually pure. The earlier judgment in this case by the Conseil d'État (25 November 1994) had held that, by only permitting unstunned ritual slaughter when carried out by approved slaughterers, the French authorities were merely ensuring that freedom of worship was exercised in ways consistent with public policy (para 53). The ECtHR ruled that there would only be interference with religious freedom if government measures made it impossible for ultra-orthodox Jews to eat meat from animals slaughtered according to their religious prescriptions (para 80). That was not the case here because ritually pure meat was available in Belgium, and even in some of the shops controlled by ACIP (para 81; Zoethout ibid.:665).

This decision was far from unanimous, however, illustrating the enduring difficulties that these questions pose for the courts. The court ruled by twelve votes to five that there was no violation of Article 9 of the ECHR taken alone; and by ten votes to seven that there was no violation of Article 9 taken in conjunction with Article 14.[33] In their dissenting opinion, the minority judges noted that

legal tensions were 'unavoidable consequences of the need to respect pluralism' (para 1). Furthermore, by denying the association the status of a 'religious body' and so rejecting its application for approved status, the French authorities 'restricted its freedom to manifest its religion' (ibid.). In the opinion of the minority, the differential treatment of ACIP and the applicant association 'had no objective and reasonable justification and was disproportionate. There has therefore been a violation of Article 14 of the Convention taken in conjunction with Article 9' (para 2).

The controversy surrounding ritual slaughter may involve branches of power within a country as well as individuals belonging to the same branch. This is illustrated by a case decided in Poland in 2014. The Constitutional Tribunal overturned a parliamentary order stipulating that animals be stunned before being ritually slaughtered in order to avoid unnecessary suffering, a decision which, as highlighted in the press, also favoured kosher and halal meat producers and exporters.[34] Gliszczyńska-Grabias and Sadurski (2015:598) note that, here too, there was wide disagreement among the fourteen judges: 'seven judges submitted separate opinions, of which five disagreed with the outcome and justification, while two dissented from the justification but concurred in the outcome'. The animal slaughter issue was addressed by opposing the principle of 'religious freedom', defended by those who wanted to lift the ban, to the principle of 'public morals', defended by those in favour. The authors underline the different understandings of the term 'public morals' as used in the case: by the prosecutor, who limited 'morals' to human relations, referring to the harmful effect animal slaughter could have on humans; by animal activists who considered animals and the question of animal suffering as posing a moral question in itself; and by the court which, though claiming (in the majority opinion) that its role was not to assess whether or not ritual slaughtering was 'moral', interpreted (or, according to some authors, misinterpreted) 'public morals' 'in a way that incorporated religious traditions and the value of freedom of religion' (ibid.:607).

Two Belgian cases coming before the European Court of Justice (ECJ) over a three-year period exemplify the complex and sometimes contradictory interplay between different government agencies and different levels of jurisdiction. Both were requests for preliminary rulings on the interpretation of EU legislation. The first case (*Liga van Moskeeën en Islamitische Organisaties Provincie Antwerpen VZW & ors vs Vlaams Gewest.* 2018) concerned grievances expressed by Muslim organisations against an order passed in the Flemish-speaking region (Peters 2019). Use of temporary slaughterhouses (in addition to permanent ones) had been approved by a 1988 Royal Decree and confirmed by a Federal law in 1998, so that during the Muslim Feast of Sacrifice there would be enough slaughterhouses for the ritual slaughtering of unstunned animals under controlled conditions. However, a 2014 reform conferred on the regions the capacity to manage animal welfare, and the relevant minister in the Flemish region announced that he would no longer grant approval to temporary slaughterhouses. The ECJ noted that although Muslims differed on the necessity for unstunned slaughter, there was no doubt that it qualified as a 'religious rite' for legislative purposes (*Liga van Moskeeën en Islamitische Organisaties Provincie Antwerpen VZW & ors. vs. Vlaams*

Gewest 2018: para 51). The court also noted that the derogations in Council Regulation No 1099/2009 showed the 'positive commitment of the EU legislature to allow the ritual slaughter of animals without prior stunning in order to ensure effective observance of the freedom of religion, in particular of practising Muslims during the Feast of Sacrifice' (para 56). Even so, the court concluded that the EU regulations as applied in this case did not violate the fundamental right to freedom of religion, and 'the refusal to make an exception for the peak demand for slaughter facilities during the feast does not constitute an indirect discrimination against Muslims' (Peters 2019:269).

As Peters (2019:274) notes, although the case was superficially about places of slaughter, 'the real issue is the method of slaughter', that is, slaughter without stunning.[35] Moreover, she points out, the court was only asked to consider the validity of the Flemish regulation, not its interpretation. The question was, did the regulation 'satisfy the three-pronged test as established by Strasbourg case law, namely, a sufficient legal basis, a legitimate aim, and proportionality' (Peters 2019:284)? The court decided that this test was satisfied. It was not asked to consider whether the application of the regulation in this particular case constituted restriction of a religious practice.

The second case (*Centraal Israëlitisch Consistorie van België & ors, Unie Moskeeën Antwerpen VZW, Islamitisch Offerfeest Antwerpen VZW, JG, KH, Executief van de Moslims van België & ors, Coördinatie Comité van Joodse Organisaties van België - Section belge du Congrès juif mondial et Congrès juif européen VZW & ors vs Vlaamse Regering* 2020) arose out of a subsequent Flemish government decree of 7 July 2017, amending the law on the protection and welfare of animals, regarding permitted methods of slaughter. Although the Court's Advocate General had recommended quashing the Flemish law, arguing that stricter animal welfare rules were allowable only if the core religious practice was not encroached upon, the ECJ unanimously ruled that under the EU's animal slaughter regulation, 'States may … impose an obligation to stun animals prior to killing which also applies in the case of slaughter prescribed by religious rites, subject, however, to respecting the fundamental rights enshrined in the Charter' (para 48). The right to manifest religious practice and observance had to be balanced against the capacity of 'reversible' (non-lethal) stunning to meet the EU's objective of animal welfare. The proposed ban in Flanders would also not affect the circulation of kosher and halal meat produced elsewhere, the court added. Not surprisingly, this ruling was widely condemned by Jewish religious groups.[36]

A further complication, not considered by either court, is that the slaughtered animals are not consumed only by religious believers. Up to half the animals slaughtered according to religious prescriptions are sold in the ordinary meat market (Peters 2019:294). This fact did come to the fore in a case decided in between the two Belgian judgments. Here the court was asked to interpret EU legislation following an application by OABA, an animal welfare organisation, asking the French authorities to prohibit use of the 'organic farming' logo on meat derived from unstunned animals (*Œuvre d'assistance aux bêtes d'abattoirs (OABA) vs Ministre de l'Agriculture et de l'Alimentation, Bionoor SARL, Ecocert France*

SAS, & Institut national de l'origine et de la qualité (INAO) 2019:para 17). The court noted that Article 5 of EU *Regulation No 834/2007* specified that organic products required 'observance of a high level of animal welfare', while Article 14 stated that suffering 'shall be kept to a minimum during the entire life of the animal, including at the time of slaughter'. It concluded that even where the slaughter of unstunned animals for religious reasons was permitted by the derogations under Reg. 1099/2009 (see above), Reg. 834/2007 did not authorise use of the 'organic' logo. The Versailles appeal court subsequently ruled that the logo could not be used on the products concerned, saying that this would not adversely affect religious freedom (*Association Oeuvre d'Assistance aux Betes Abattoirs* 2019).

Clearly, then, state institutions within a country may have opposing views about the legal management of these issues. Citizens too, individually or through activist organisations, participate in the public debate and may request the state (government or court) to prohibit a practice or, on the contrary, to lift a previous prohibition. In western countries, such cases mostly involve minority communities, like those just described. Another example (Berti, this volume) is the ruling by the Supreme Court of the United States, in a case brought by a priest of Santeria, an Afro-Cuban religion in which animal sacrifice plays a central role (*Church of the Lukumi Babalu Ayer, Inc., et al. vs. City of Hialeah* 1993). The priest appealed against an ordinance banning animal sacrifice, passed by a Florida city in 1987 following pressure from animal rights advocates and health and safety inspectors. In 1993 the Supreme Court decided that the ban was discriminatory and infringed the First Amendment of the Constitution. Whereas the US court decided against the ban on animal sacrifice in the name of religious freedom, the Indian court (*Ramesh Sharma vs. State of Himachal Pradesh & ors.* 2014) ruled in favour of a ban and opposed principles of religious reform and social progress to the idea of religious freedom (on the notion of animal sacrifice as non-modern, see also Moodie, this volume).

In recent years, the animal welfare movement has exerted growing influence on public policies and court decisions at international level. A recent example of this can be found in the recommendations on animal welfare issued by the World Organization for Animal Health, which refer to the 'five freedoms', a list that was gradually established from the 1960s onwards, by the British Farm Animal Welfare Advisory Committee (later Farm Animal Welfare Council) as a guiding principle for international animal management: freedom from hunger, thirst and malnutrition; freedom from fear and distress; freedom from physical and thermal discomfort; freedom from pain, injury and disease; and freedom to express normal patterns of behaviour (McCulloch 2013).

Animal citizens?

Although, in all the cases mentioned above, animals remained defined by law as 'things' or 'property', even if granted various types of protection ('rights' in a limited sense), there have been perceptible changes in the debates concerning how animals are taken into consideration. For instance, the World Charter for Nature

adopted by the UN General Assembly in 1982 proclaimed a shift from an anthropocentric to an ecocentric view, stressing that 'every form of life is unique, warranting respect regardless of its worth to man, and, to accord other organisms such recognition, man must be guided by a moral code of action'.[37] This changed perception has been applied in cases concerning the protection of both natural resources and animals, and the idea that animals have intrinsic value has recently been argued in courts in cases of cruelty or 'lack of duty', underlining the damage caused to the animal itself, not to its owner. According to Favre, it could be possible to consider animals as 'living property' without changing their legal status as things or property, but granting them the recognition that 'these beings, like human beings, have individual interests worthy of our consideration, both within the world of personal morals and ethics and the world of law' (Favre 2010:1046–1047). Under the 2007 Lisbon Treaty, for instance, Article 13 of the TFEU includes provision for the welfare of animals defined as 'sentient beings'.[38] This was later incorporated into some national legislation, in France, for example—not without some ambivalence (Brunet 2019; Perrin 2016).

The question of animal subjectivity has recently taken a new turn, especially since courts in various countries have been asked to address the question of recognising animals (and natural resources) as legal persons in order to protect them (Bryant 2008). This move concerning animals was initiated by philosophers, lawyers and activists who began to question the boundary between humans and animals (Regan 2004; Singer 2002), notably those with superior cognitive abilities. The 'animal issue' has taken on such importance in legal circles that specific courses are now taught in many law schools.[39]

What is at stake is a statutory change from animals being mere 'things' or 'goods' (as in all current legal systems) to being 'legal persons'. For instance, the American lawyer Steven Wise, who founded the Nonhuman Rights Project,[40] has been fighting legal battles for the last thirty years, arguing that his 'clients' (caged elephants and chimpanzees) may be entitled to writs of habeas corpus, that is, that they may have legal standing to contest their 'imprisonment' (Wise 2000). Indeed, some activists and scholars have put forward the idea of 'animal citizens'. For example, Donaldson and Kymlicka argue that, just as humans have civil statuses such as 'citizens', 'foreigners' 'indigenous people', or 'migrant workers', each entailing specific rights and responsibilities, so, in the same way:

> Some animals should be seen as forming separate sovereign communities on their own territories (animals in the wild…); some animals are akin to migrants … who choose to move into areas of human habitation…; and some animals should be seen as full citizens of the polity because … they've been bred over generations for interdependence with humans (domesticated animals).
>
> (2011:14)

However, such arguments have also met resistance. Planinc criticised the notion that domesticated animals might become 'democratic co-citizens', warning with

reference to Plato's and Rousseau's classic theories of democracy that this might 'render our political institutions dangerously unjust' (2014:3). The fact that animals cannot engage in rational reflection would entail 'a shift from a conception of freedom that requires a conventional and reflective reciprocity … to a democratic sovereignty that demands reciprocity without reflection' (2014:17). Others drew attention to the paradox that despite advocating civil rights for animals, Donaldson and Kymlicka's argument remained deeply anthropocentric; 'it applies human ideals to animals at the same time as it imposes on the latter the preferences of the former' (Brunet 2014, our translation; see also Bruckerhoff 2008).

A similar shift from an animal welfare perspective, focusing on the question of animal cruelty, to a more assertive discourse on animal rights and legal status is also taking place in India. As shown in the previous section, the discourse employed by activists like Rukmini Devi after Independence centred on the idea of animals as sentient beings—in line with debates in the West—as well as principles of non-violence and compassion, presented both as specific to India and in tune with universalistic ideas of religion and moral progress. Indeed, compassion was included as one of a citizen's fundamental duties in an Amendment to the Constitution introduced in 1976 when Indira Gandhi, a friend of Rukmini and herself a nature lover, was Prime Minister (Ramesh 2018). This duty was

> to protect and improve the natural environment including forests, lakes, rivers and wildlife, and to have compassion for living creatures.
>
> (Constitution of India, Part IV-A, Art. 51A (g))

This idea of protecting animals legally or showing them compassion did not include the suggestion of giving them rights. For example, the word 'right' appears only once in the text of India's 1960 *Prevention of Cruelty to Animals Act*, in reference to the rights of humans (right of custody), not animals. By contrast, over the last two decades and in keeping with international developments in the animal rights movement, the idea of granting animals rights has also emerged in India. International organisations such as PETA (People for the Ethical Treatment of Animals) began to open branches in the country, and national and local level NGOs were also set up.

Legal professionals have also been increasingly more sensitive to the animal issue. For instance, Justice K.S. Radhakrishnan, now retired from the Supreme Court of India, is regularly mentioned by animal rights activists regarding his landmark judgments. In 2014 he was named 'Man of the year' by PETA India[41] for having passed a ruling to ban bull coursing, a popular sport in Tamil Nadu and Maharashtra (*Animal Welfare Board of India vs. A. Nagaraja & ors.* 2014; see Good, this volume). In this ruling, he explicitly recalled and adopted legal concepts and ideas circulating in the international debate. After identifying 'a slow but observable shift from the anthropocentric approach to a more nature's right centric approach in International Environmental Law, Animal Welfare Laws etc.' (ibid.: para 47), he emphasised that 'ecocentric principles' were now

internationally recognised,[42] with India playing an active role in the worldwide movement for the protection of animals:

> Universal Declaration of Animal Welfare (UDAW) is a campaign led by World Society for the Protection of Animals (WSPA) in an attempt to secure international recognition for the principles of animal welfare. UDAW has had considerable support from various countries, including India. […] World Health Organization of Animal Health (OIE), of which India is a member, acts as the international reference organisation for animal health and animal welfare. […] On animal welfare, OIE says that an animal is in good state of welfare if (as indicated by Scientific evidence) it is healthy, comfortable, well nourished, safe, able to express innate behaviour and if it is not suffering from unpleasant states such as pain, fear and distress [a reminder of the 'five freedoms'].
>
> (ibid.:paras 52–53; gloss added)

This decision has become a reference for many other animal cruelty cases including the animal sacrifice case discussed by Berti (this volume).

Another former Supreme Court judge, Justice V.R. Krishna Iyer, who was actively engaged in promoting the protection of animals (Clifton 2014), went further by elaborating on the notion of 'animal citizens' in his 2004 book (Iyer 2004). *Animal Citizen* was also the title of the quarterly magazine published by the Animal Welfare Board of India, in which scientific, ethical and legal debates on animals have regularly been reported and promoted.

The idea of attributing a legal personality to animals, and to nature more generally, as seen in various countries around the world such as Colombia, Ecuador and New Zealand,[43] has also begun to gain ground in India. Well-publicised decisions by the High Court of Uttarakhand in 2017 declared the Ganga and Yamuna rivers and their tributaries (*Mohd. Salim vs. State of Uttarakhand & ors*. 2017), and later their entire water systems, including glaciers (*Lalit Miglani vs. State of Uttarakhand & ors*. 2017), to be legal persons. These cases were both brought under the rubric of Public Interest Litigation (PIL), which has increasingly been the vehicle for bringing animal rights and environmental cases before the courts.[44] A few months later, however, the Supreme Court stayed the implementation of both decisions (*The State of Uttarakhand & ors. v. Mohd. Salim & ors*. 2017; *Union of India vs Lalit Miglani* 2017), on the grounds, among others, that a state cannot assert sole jurisdiction over a river that flows beyond its borders (see also Alley 2019).

The Federation of Indian Animal Protection Organizations (FIAPO, established in 2010), in addition to dealing with the issue of animal cruelty—including animal sacrifice, particularly during Bakr'Id (FIAPO 2018)—aims at creating a legal framework that grants personhood to animals. The motto on FIAPO's website, 'Animals feel. They think, they know, they suffer', refers to key issues in the international philosophical and scientific debate and is a virtual paraphrase of Bentham's *Introduction*, quoted above. In 2018, FIAPO organised a *National Consultation on Rights and Personhood for Animals and its linkages with Other Social*

Justice Movements in Delhi. The workshop included prominent figures in the Indian animal welfare movement—such as Chinny Krishna (former Vice-President of AWBI) and Justice Radhakrishnan, both involved in the bull-racing case—as well as international figures, including Steven Wise (Berti 2019).[45]

FIAPO's activities are presented as based both on Wise's Nonhuman Rights Project and India's claimed tradition as a country which 'has always had a welfare-centric attitude towards animals—a very different approach in comparison to the rest of world' (Priya Sanal 2018). As in the welfare debate discussed above, the quest for modernity and progress merges with a discourse on an idealised past where 'Animals have traditionally been treated with dignity and accorded the status of a family member in most Indian families' (ibid.). The Indian discourse as a model for the animal cause has sometimes been taken for granted by jurists (e.g. Le Bot 2007) and by Steven Wise himself. One argument Wise often uses to urge the court to recognise his clients' legal personalities is that in India a Hindu idol—a 'nonhuman' in Wise's terminology—is recognised as a legal person. This legal fiction was introduced by the British to recognise gods as landowners, but in fact the analogy with Hindu idols has never been used in India itself as an argument for attributing legal personality to animals.[46] As mentioned, this latter idea is very new in India.

Very recently, however, a High Court judge, Justice Rajiv Sharma, the very same judge who wrote the judgment in the case analysed by Berti (this volume), ruled in two separate cases that all members of the 'animal kingdom' have similar rights to humans and that 'animals should be treated as legal entities with corresponding rights, duties and liabilities of a living person'.[47] Note that the idea of recognising animals as legal persons did not come from the plaintiffs in these cases: it was an initiative by Justice Sharma himself. These judgments were met with a lot of scepticism from both legal professionals and activists in India, who failed to see what they actually implied and how they could ever be applied (Tore 2018). In fact his rulings may be regarded more as a provocative step, a way of moving forward the public debate on animal issues, as he understands them. But despite the criticism directed at Rajiv Sharma in legal circles and despite the rather rhetorical character that his decisions can assume, what these judgments clearly illustrate (as with other disputes surrounding animal sacrifice discussed in this volume) is the capacity of Indian judges to become promoters of the reforms they wish to push through.

The present volume

This discussion so far has given some indication of the richness and complexity of the sociological, religious and legal contexts in which the following case studies are located. We conclude by highlighting issues raised by the case studies themselves.

Good's chapter begins by describing the importance of animal sacrifice in a typical village goddess festival in southern Tamil Nadu, where it serves as an expression of community unity as well as a guarantor of fertility and prosperity. Blood sacrifices still form the climax of many Tamil religious festivals, especially

at village level, even though legislation banning such sacrifices had been on the statute book in Madras State since 1950. He considers the debates surrounding the passing of the *Madras Animals and Birds Sacrifices Prohibition Act* in that year, as well as the seeming paradox of its initial non-enforcement.

The sudden decision of the state government led by Jayalalitha to implement this ban in 2003, more than 50 years afterwards, and its reversal of this policy a few months later to the extent even of repealing the Act in question, are analysed as manifestations of tensions between reformist, urbanised, often high-caste Hindus and more traditionally minded, largely rural, populations. In modern India, a constitutionally secular state which nonetheless guarantees freedom of belief, faith, and worship, the struggles between these two competing visions of religiosity frequently take on political and legal dimensions too, as exemplified by a series of key legal decisions, through which—as shown briefly above—the Indian Supreme Court accorded itself the power to determine what was 'essential' and socially progressive in the practice of Hinduism. After considering the recent, and related, political and jural disputes around the Tamil practice of *jallikattu* (bull coursing; see above), Good concludes by suggesting that the passing of the 1950 Act may be better understood as an attempt to delegitimise animal sacrifices rather than to criminalise those who perform them.

In a quite different historical and social context at the opposite end of India, but with very similar issues in play, Berti considers a 2014 judgment by the High Court of Himachal Pradesh that banned all animal sacrifices in the state. An appeal against this ruling is still pending before the Supreme Court of India, but in any case, Berti's aim is to go beyond the mere text of the judgment, to try and understand the various circumstances and interactions that led to this legal ruling. Using conversations and interviews as well as documents such as court records, court decisions, and newspaper articles, she introduces the actors involved, their discourses, and the way in which the case was brought to court. The court's handling of the case involved many actors and institutions: not only petitioners, judges or legal professionals but also various kinds of government officers, journalists, villagers, politicians, temple administrators as well as institutional mediums speaking on behalf of village gods. While this 'democratisation' of the controversy was driven by the court, it was also rhetorically constructed by the judge in his attempt to boost reform. Berti analyses how, beyond the official and 'public' aspects of the case which referred to legal, ritual, reformist and ecological arguments or to animal welfare, other framings of the story highlighted by protagonists outside the court emphasised economic or political issues.

Berti concludes by situating the case within a broader legal perspective, contrasting this Indian High Court ruling with the American case mentioned earlier, whereby the US Supreme Court decided in favour of Santeria, a minority religion in the state of Florida whose members claimed that sacrifice was an essential part of their practice. Whereas in the USA case, the court decided against the ban on animal sacrifice in the name of religious freedom, in the Indian case, the court ruled in favour of the ban and applied principles of religious reform and social progress to limit the scope of religious freedom.

Ikegame's chapter returns us to the contemporary South Indian context. She notes that, in contrast to Sanskritised temple rituals, the festivals of village goddesses in South India have been seen by many scholars as non-Brahminical, subaltern, and even inclusive forms of cultural practice. The recent refusal by a section of the Dalit population in Karnataka to participate in buffalo sacrifices or perform their caste duties during village goddess festivals might therefore seem unexpected. Her chapter traces the history of the recent Dalit self-assertion movement and its own particular understanding of the myth of the village goddess, Maramma. In their view, Maramma is not just a furious mother with supernatural power but an angry Brahmin woman who is determined to kill her Dalit husband. After the killing, the husband's true self, a buffalo, emerges. It is interesting to note the structural inversions between this myth and those reported by Moffatt (1979:249) and Good (this volume), in which the (future) goddess is herself decapitated by her son, at the behest of her husband.

After successfully implementing varieties of pro-Dalit (Adijan) activities, the Booshakti Kendra—founded by a charismatic Dalit theologian, the late M.C. Raj—gradually and strategically campaigned for the ending of sacrifice in the largest goddess temple in the region, which they regarded as an ultimate goal. In this process, the state, particularly the police, supported the Dalits. Nonetheless, though animal sacrifice within temple premises is against the law in Karnataka under the *Karnataka Prevention of Animal Sacrifices Act of 1959*, state officials remain secretive about its involvement. Ikegame's chapter thus analyses the complexity of the relationship between the state, the law and Dalits.

Critiques of animal sacrifice, with varied motivations, have become increasingly strident right across India in recent years. However, while such critiques have resulted in many Indian states pushing to ban animal sacrifice, no such generalised legal action has been undertaken in West Bengal, which provides the backdrop to the next two chapters. Sacrifice in Bengal also differs markedly in character from that found in most other parts of South Asia (Fuller, this volume).

Moodie notes that many of the critiques in West Bengal focus on Kālīghāṭ, a prominent Hindu pilgrimage site in Kolkata where goats are sacrificed daily to the goddess Kālī. In 2006, the Calcutta High Court ruled that the practice must be visually concealed at Kālīghāṭ (*Prahlad Roy Goenka vs. Union of India & ors.* 2006). Drawing on modernist notions of cleanliness and public space, the bench argued that the blood and offal produced by the sacrifices created an inappropriate visual experience for visitors at a major pilgrimage and tourist site in the city. In its decision to conceal the sacrifices, the Calcutta High Court echoed other courts across India by deeming the practice non-modern. Yet the Court's orders are flouted daily by practitioners at Kālīghāṭ who seek physical and visual access to sacrificed animals and their blood. They believe that Kālī desires this blood and bestows her power and blessings through it. The situation at Kālīghāṭ thus dramatises fault lines in Hindu conceptions of power: the power of the courts is pitted against the power of the gods as Hindus debate the potency, necessity, and (un)modernity of this practice.

While sacrifice has not been banned by the State of West Bengal as a whole, there have been localised moves in this direction. Voix's chapter considers the situation in the town of Burdwan, where the two main temples banned the practice of animal sacrifice in December 2015. By ordering its replacement with a symbolic sacrifice of fruits and vegetables, they put an end to a centuries-old practice sanctioned by religious scriptures. Voix analyses the social dynamics at stake behind this move: the national campaign of animal welfare activists against animal sacrifice; the local mobilisation of rationalist groups; and the local action of the district magistrate. He shows how—in a region where, for social, economic and religious reasons, a legal ban is still thought to be impossible—local opponents of animal sacrifice have developed subtle modes of intervention so as to reform Hinduism from the inside.

Whereas the other contributors to this volume are all social scientists, Dutta writes from the perspective of a practising advocate and environmental activist with experience of arguing cases before the Indian Supreme Court and National Green Tribunal. He focuses on the relatively little-studied case of camel sacrifice. In contrast to the situation elsewhere in the world, camel populations in India have been in rapid decline, despite the animal's physical adaptability. Unfortunately, however, its natural resilience offers no protection against market forces and the development of motorised transportation. Adding to the list of problems is the growing incidence of ritual slaughter of camels on religious occasions. Camels in India have not just been a source of transport or livelihood, but part of the cultural identity of people in the arid regions of North-West India. The declining camel population thus has cultural as well as conservational implications and poses many policy, legal and ethical challenges. Dutta's chapter examines legal and judicial approaches towards protection and conservation of this threatened domestic animal, with special focus on camel sacrifice. It also examines whether the law and the judiciary can reverse the tide of declining camel numbers and offer a new lease of life to the camel in India. Specifically, it examines whether new legal principles such as the 'species best interest standard' and 'ecocentrism' can help revive the national camel population.

Finally, Letizia and Ripert consider the five-yearly mass animal sacrifice offered at Gadhimai temple in Bara District, Nepal. This drew local and international attention in 2009, when graphic pictures of the slaughter of about 250,000 animals circulated globally, giving rise to vehement protests by individuals and animal rights associations. In November 2014 three Public Interest Litigation cases challenging the practice of animal sacrifice at Gadhimai were filed at the Nepal Supreme Court. One portrayed sacrifice as a cruel ritual deviation, contrary to the spirit of ancient Hindu religion, while the other two highlighted its negative environmental impact and the danger to public health, stressing the authorities' lack of control over the importation, transportation, inspection, and quarantine of animals; the manner and place of the sacrifice; and the management of meat and carcasses. One petition sought an order compelling the government to implement existing regulations on quarantine, public safety, etc., while the other two asked that the sacrifice be stopped altogether. In its lengthy judgment, the Supreme Court decided several

fundamental issues. Most notably, it went beyond the Gadhimai festival to condemn the practice of animal sacrifice in general. Letizia and Ripert present the two perspectives that animate this judgment, one secular legal, the other Hindu reformist, and discuss the Court's call for social progress in the name of modernity and animal rights, its reasoning (based on scriptural analysis of Hindu texts) on whether animal sacrifice is a valid expression of true Hinduism, and its consideration of this 'superstitious' practice deeply rooted in Nepali society.

The court papers, and interviews with petitioners, lawyers and defendants, particularly the *pujaris* and members of Gadhimai Temple Trust, reveal contrasting views of Hinduism: a reformist and textual Brahmanical conception promoted by the Court versus a conception based on traditional practice and devotion to the Goddess defended by the respondents, who invoke the right to religion. The case also raises the fundamental question of who is entitled to intervene in devotees' practices.

This concluding example thus demonstrates that the issues identified for India have wider salience in South Asia. Although, as Fuller (this volume) summarises, there are identifiable regional variations in how animal sacrifice manifests itself, all these studies address in some way the contrast between 'traditional' and 'reformist' understandings of Hinduism; the conflict between the core legal and moral principles of religious freedom and social progress; and the growing concern with environmental issues and animal rights, as opposed to the prior focus on purely human interests. The forms taken by the complex interactions of these three overarching variables depend also upon local history and current circumstances, which serve to give each case study its own unique character.

Notes

1 See, for example, Biardeau and Malamoud (1976), Shulman (1980), Heesterman (1993) and Patton (2005).
2 For example, Herrenschmidt (1978), Reiniche (1979), Tarabout (1986), Fuller (2004:chap. 6), Arumugam (2015), and, most recently, Lecomte-Tilouine (2020).
3 Decisions by Roman emperors to legally abolish animal sacrifice or to forcibly impose it could become an important barometer if not an instrument of political-ideological change (Salzman 2011:20). Particularly after the emergence of Christianity, performing animal sacrifice became a way of showing loyalty to the emperor (Potter & Mattingly 1999), while refusal to perform it could be seen as politically subversive (Green 2008).
4 In the standard English translation, the terms *sacrifiant* and *sacrificateur* are rendered 'sacrifier' and 'sacrificer' (or 'priest'), respectively (Hubert & Mauss 1964:20, 22).
5 These founding anthropological theories stress the eating of the sacrificial victim at least as much as the actual killing, but that emphasis is not necessarily present in the examples discussed in this book.
6 Luc de Heusch (1985:13–14) suggests, however, that Nuer sacrifices are focused on the restoration of cosmic order rather than on individual redemption.
7 See Das (1982:456) for a similar point regarding Vedic sacrifice.
8 On the changing meanings of the terms *religio* and *superstitio*, and the contrast established between them, see Benveniste (1969).
9 See also Conybeare (1903) and Stroumsa (2005).
10 Based on observations in coastal Andhra Pradesh, Herrenschmidt (1978:116) makes a similar point regarding the 'meaning' of sacrifice in popular Hinduism: 'The other cult

units first perform sacrifices, whose leaders know the forms prescribed by the deities concerned: to such and such a goddess, such a ritual, at such a time, at such a place. Why? This is a question nobody cares about' (our translation).

11 'Official conception of colonial subjects held the majority to be ignorant of their religion, which was equated with scripture. Knowledge of the scriptures was held to be the monopoly of Brahmin pundits. [H]owever, their knowledge was conceived as corrupt and self-serving. The civilizing mission of colonization was thus seen to lie in protecting the "weak" against the "artful", in giving back to the natives the truths of their own "little read and less understood Shaster"' (Mani 1998:29). Mani also notes that since the scriptures were established as the source of law, officials were more invested than missionaries in insisting on particular interpretations of them.

12 Quotes are from *The Durgah Committee, Ajmer & anor vs. Syed Hussain Ali & ors* (1961). The 'non-essential test' may be opposed to the 'assertion test'—which the courts 'have consistently rejected'—according to which 'a practitioner could simply assert that his particular practice was a religious practice; all the courts would have to do is establish the existence of such a practice' (Mehta 2010:176–177).

13 Plutarch was not completely opposed to animal sacrifice, which he sometimes presented as a 'necessary ritual practice that guarantees the effectiveness of the divinatory act' (Xenophontos & Oikonomopoulou 2019:142). In this regard, he was opposed to Porphyry who, almost a century later and referring to Pythagoras, clearly rejects animal sacrifice, promoting the sacrifice of inanimate things (ibid.; see also Eckhardt 2014).

14 'Animal sacrifice had always been an integral part of Roman religious practice, the principal means both of honouring the gods and of providing a channel through which to communicate and negotiate with them. But this had never meant that the practice was free from controversy. In fact, there had long existed an anti-animal sacrifice tradition, which can be traced back to Greek philosophers and is particularly associated with the mercurial figure of Pythagoras' (Green 2008:41–42).

15 'The very foundation of the Benthamian principle of utilitarianism rests on the antagonism of pain and pleasure. For Bentham, it meant that all sentient beings should be included in the utilitarian calculus. Though a mere footnote in *Introduction to the Principles of Morals and Legislation* this argument has become a must in the propaganda of the animal movement, consequently promoting Bentham into the ranks of the major thinkers in animal philosophy' (Dardenne 2010:5).

16 Kreilkamp (2012), noting the close links between the anti-slavery and animal welfare movements, comments that 'Given the long history of racist thought associating … non-Europeans with animals, the link here may seem troubling, yet the historical and conceptual logics make sense' because both were challenging prior assumptions 'about the primacy of "Man" presumed to be a universalized white male citizen'.

17 For a presentation of the main bills passed until the end of the nineteenth century, see Ortiz-Robles (2016b).

18 'A calm and mild-natured bull not suited for the fighting pit had been stabbed with knives and pitchforks in an attempt to enrage him. The bull escaped, but was caught and restrained by means of cutting off all four of his hooves' (Hill, quoted in Blosh 2012:27–28).

19 Salt also published an early example of the defence of animals' rights: 'man, to be truly man, must cease to abnegate his common fellowship with all living nature—and ... the coming realization of human rights will inevitably bring after it the tardier but not less certain realization of the rights of the lower races' (Salt 1894:103–104).

20 Indeed, the figure of the renouncer has often been used as a model for the ideal of non-violence up to the present day—even though his effective renunciation of worldly attachments has been challenged by anthropologists (Bouillier 2003) and although some ascetic 'tantric' traditions can be violently transgressive.

21 See for instance: https://triyoga.com/service-karma-yoga/; https://www.workaway.info/829442524915-en.html; https://flexiblewarrior.com/yoga-good-karma-rescue/; https://peepalfarm.org/volunteer (all accessed 15/06/2019).
22 Her father was a theosophist, and her husband, a Cambridge-born Indian, became president of the Theosophical Society (Dave 2014). Rukmini Devi shared with her husband the promotion of national education; she regularly travelled with him around the world on his lecture tours, and in 1925 she became President of the World Federation of Young Theosophists.
23 For a more general discussion of this point see, among others, Inden (1986) and Vidal et al. (2003).
24 https://www.all-creatures.org/aro/q-shweitzer-albert.html (accessed 7/10/2021).
25 In the USA, for example, the organisation Animal Rights Online which campaigns for 'cruelty-free living' according to Judeo-Christian ethics, even quotes one of Rukmini's speeches on their webpage, https://www.all-creatures.org/aro/q-arundale-rukminidevi.html (accessed 25/10/2020).
26 While ritual slaughter has received far more legal attention (possibly because it affects economic as well as religious interests, as shown below), sacrifice does still occur in modern Europe; see for example Brisebarre (2017) on France and Givre (2015) on the Balkans.
27 Five European countries (Switzerland, Norway, Sweden, Luxembourg and Slovenia) prohibit ritual slaughter entirely, whereas most western European countries allow un-stunned ritual slaughter under certain circumstances in the interests of religious freedom (Zoethout 2013:660; Rovinsky 2020:353–354).
28 https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/102 (accessed 21/06/2021).
29 https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:12012P/TXT (accessed 21/06/2021).
30 Art. 13 states: 'the Union and the Member States shall, since animals are sentient beings, pay full regard to the welfare requirements of animals, while respecting the legislative or administrative provisions and customs of the Member States relating in particular to religious rites, cultural traditions and regional heritage' (https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:303:0001:0030:EN:PDF; accessed 21/06/2021).
31 https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:303:0001:0030:EN:PDF (accessed 21/06/2021).
32 Art. 9(2) of the ECHR states: 'Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others' (https://www.echr.coe.int/documents/convention_eng.pdf; accessed 20/06/2021).
33 Art. 14 states that 'Enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as ... religion'.
34 Judgment K 52/13 of 10 December 2014. 'Hidden behind the attractive slogans of religious freedom, there have been huge commercial interests at stake' (Gliszczyńska-Grabias & Sadurski 2015:608).
35 She quotes medical evidence that un-stunned slaughter gave rise to 'serious animal welfare concerns' (Peters 2019:275). This is however disputed by Jewish and Muslim sources (Rovinsky 2020:370–372).
36 https://www.politico.eu/article/eu-states-can-ban-kosher-and-halal-ritual-slaughter-court-rules/; https://www.bbc.co.uk/news/world-europe-55344971 (both accessed 21/06/2021).
37 https://digitallibrary.un.org/record/39295?ln=en (accessed 7/07/ 2021).
38 https://eur-lex.europa.eu/eli/treaty/tfeu_2016/art_13/oj (accessed 25/06/2021).

39 The Animal Legal Defense Fund website lists 178 law schools offering courses on animal law (https://aldf.org/article/animal-law-courses/; accessed 7/10/2021).
40 https://www.nonhumanrights.org/ (accessed 28/10/2020).
41 https://www.petaindia.com/blog/peta-man-woman/ (accessed 28/10/2020).
42 In an earlier judgment concerning the preservation of the Asiatic buffalo, Justice Radhakrishnan had already stressed that animals have 'intrinsic worth', independently of any human use and had advocated an 'ecocentric approach' (on which see also Dutta, this volume), rather than previous anthropocentric ones (*T.N. Godavarman Thirumulpad vs Union of India & ors* 2012:paras 14 & 20).
43 For Colombia see *Center for Social Justice Studies et al. vs. Presidency of the Republic et al.* (2016); for Ecuador, Constitution of the Republic of Ecuador, Ch. 7 (https://pdba.georgetown.edu/Constitutions/Ecuador/english08.html); for New Zealand, *Te Urewera Act 2014*, sec. 11 (https://www.legislation.govt.nz/act/public/2014/0051/latest/whole.html#DLM6183705); (both accessed 4/07/2021).
44 PIL has been growing in popularity in India. It allows cases to be brought by persons without actual legal standing, that is, who do not have a direct interest in the matter at hand and is widely used by activist judges and lawyers in the interests of disadvantaged groups and in environmental and animal rights contexts.
45 https://www.fiapo.org/fiaporg/personhood-for-animals/ (accessed 8/07/2021). FIAPO's campaign has also gained support from Peter Singer and Paola Cavalieri, founders of the Great Ape Project (1993), and Suparna Ganguly, a key environmentalist and animal activist in India, renowned as a 'leading voice' for elephants.
46 Parallels with Hindu idols were however drawn in the case where the Ganga and Yamuna rivers were granted legal personalities (*Mohd. Salim vs. State of Uttarakhand & ors.* 2017). It is not the *god* who has legal personality but the *idol*–not its physical manifestation, but the 'pious purpose' which the idol conveniently embodies but which would exist even if it were destroyed or did not yet exist (*M. Siddiq (D) Thr Lrs vs. Mahant Suresh Das & ors.* 2019:para 121). See also Berti (in press).
47 *Narayan Dutt Bhatt vs. Union of India & ors.* 2018:paras 12, 99; also *Karnail Singh & ors vs. State of Haryana* (2019).

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