

Squashing the Beef: Why American Animal Rights Advocates Should Start Liking Jewish and Islamic Law

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Animal rights advocates in the West decry the mistreatment of animals, such as their use in experimentation and, most notoriously, factory farming. They identify the fact that animals are legally considered mere property as the source of these abuses. They also tend to view Abrahamic religions as responsible for this paradigm and in conflict with animal rights. The most flashpoint in this context is the battle over Jewish and Muslim ritual slaughter. However, this Note argues, animal rights advocates mistarget their animosity. Jewish and Islamic law are quite favorable towards animals in comparison to American law, and while they obviously do not go as far as animal rights advocates would like in according rights to animals, they do cohere with modern animal rights views in several ways, such as by according animals a legal status distinct from mere property, subjecting the use of animals for food to heightened scrutiny, and providing more clearly for the enforcement of animal protection laws. As animal rights advocates and their opponents continue to debate the extent to which animals should be accorded greater legal protections under American law, these religious traditions show that the matters they are debating were considered and debated by Muslim and Jewish jurists thousands of years ago, and that, far from impeding animal rights, religious bodies of law constitute a positive example that can help advance them.

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I. INTRODUCTION

The Talmud speaks of Rabbi Judah ha-Nasi who was famously “forced to endure excruciating pain for a long period of time” due to his cold rebuke of a fearful calf that hid in his robes as it was being led to slaughter.¹ “Go,” Rabbi Judah said, “for this were you created.”² For his lack of pity and compassion, he was cursed with pain and suffering.³ This suffering was alleviated only when, years later, he

¹RABBI ELIJAH JUDAH SCHOCHET, ANIMAL LIFE IN JEWISH TRADITION 164 (1984).

²*Id.*

³*Id.* Some versions say his affliction was specifically a toothache. See, e.g., Lenn E. Goodman, *Respect for Nature in the Jewish Tradition*, in JUDAISM AND ECOLOGY: CREATED WORLD AND REVEALED WORD 227, 258 (Hava Tirosh-Samuelsan ed., 2002).

prevented harm to some other animals, saying “let them be, for it is written: ‘and His tender mercies are over all His works.’”⁴

Commentators have noted this is a “powerful narrative.”⁵ It makes “[p]unishment and absolution . . . clearly contingent upon compassion towards animals.”⁶ The animal’s potential utility to humans is not an apparent factor in the story, and the punished is “the eminent Rabbi Judah the Prince, redactor of the Mishnah,” his stature emphasizing the gravity of the moral issues at stake.⁷ Nevertheless, this story raises several issues. Is there a general duty to come to the aid of distressed animals, even the ones whose injury might otherwise be legitimate in the strictly legal sense?⁸ Wasn’t the calf a kosher animal that was going to be slaughtered in a permissible manner?⁹ If so, what was wrong with what Rabbi Judah did?

In the Islamic tradition, various other stories raise similar questions. Two Hadith,¹⁰ one about a prostitute¹¹ and one about a nondescript man,¹² tell of people who had all of their sins forgiven for giving water to thirsty dogs. What is the moral formula that leads to total moral absolution for one small act of kindness irrespective of whatever else one has done with their life? Another story relates that one of the Prophet Mohammad’s early followers was seen putting bread crumbs out for an ant hill. When asked what he was doing, he responded that he didn’t want the ants testifying against him before God that he failed to fulfill their rights as his neighbors.¹³ This

⁴SCHOCHET, *supra* note 1 at 164; Goodman, *supra* note 3 at 258; Jacob S. Raisin, *Humanitarianism of the Laws of Israel*, in JUDAISM & ANIMAL RIGHTS 17, 26 (Roberta Kalechofsky ed., 1992). Raisin says the creatures Rabbi Judah saved were kittens, Rabbi Schochet’s main version says weasels, and Goodman says “some creeping creature.” The difference between mammals and “creeping” things seems non-trivial; even the most ardent animal rights arguments, both Jewish and non-Jewish, do not seek to extend the scope of significant moral consideration to insects.

⁵Schochet, *supra* note 1 at 164.

⁶*Id.* at 165.

⁷*Id.* at 164–65.

⁸*Id.*

⁹*Id.* at 165.

¹⁰Hadith (pl: *Ahaadith*) are sayings of the Prophet Mohammad, or little anecdotes about him and/or his contemporary followers. FAZLUR RAHMAN, ISLAM 53 – 54 (2002). From a legal standpoint, such reports are considered a primary source of Islamic Law alongside the Quran. *Id.* at 43.

¹¹*Sahih al-Bukhari, Book 59, Hadith 127*, SUNNAH.COM, <https://sunnah.com/bukhari:3321> [<https://perma.cc/U9PK-TTFD>].

¹²James L. Wescoat, Jr., *The ‘Right of Thirst’ for Animals in Islamic Law: A Comparative Approach*, 13 ENV’T PLANNING D: SOC’Y AND SPACE 637, 643 (1995).

¹³Blue Peace, *Food Habit, Animals, and Islam – Hamsa Yusuf*, YOUTUBE (Jan. 1, 2015), <https://youtu.be/Mf10XwsMK1g?t=210> [<https://perma.cc/GEG2-QM4D>].

narration raises a number of questions about the normative relationship Islam seeks to establish between humans and animals. Among them: if feeding ants is so important, why does Islam permit—some might even say celebrate—the slaughter of animals much more similar to humans both physically and psychologically than ants?

Almost every legal, ethical, and religious system on the planet experiences these kinds of tensions with respect to animals. On the one hand, such systems often make lofty claims about the moral worth of animals; on the other, most permit killing animals for food, and none of them accord animals the same levels of legal protection or moral rights as they do humans.

Animal rights advocates in the West assault this paradigm as “speciesist,” and many blame Judaism (or a “Judeo-Christian” worldview) for the plight of animals in countries such as the United States.¹⁴ Such blame is unfair; for one thing, treating animals as “soulless machines” whose sole function is to serve human needs is as much a secular Enlightenment idea as it is a “Judeo-Christian” one,¹⁵ and thus the religious backdrop of Western legal systems is getting an unfair share of the blame. For another, their criticism of Judaism in this regard, whatever its merits, constitutes an insufficiently complete and fair account of Judaism’s view on animals.¹⁶

Today, strong animal rights proponents are in frequent conflict with the Jewish and Muslim communities in their respective geographies

¹⁴See, e.g., STEVEN M. WISE, *RATTLING THE CAGE* 17 (2000). Wise tends to blame Judeo-Christian thought for the way contemporary American law treats animals—specifically, that body of thought’s borrowing of the “Great Chain of Being” concept from the Greeks. *Id.* at 17-19. That concept essentially places all lifeforms in a hierarchy based on how developed their consciousnesses appear to humans, and holds that “lower” animals exist for the purpose of serving “higher ones.” *Id.* at 11. It should be noted that Wise does not confine his criticism to the West. For example, Wise doubts that “dignity-based rights . . . can find acceptance” in places such as East Asia or India “where equality is sometimes pejoratively characterized as a Western ideal.” Katie Sykes, *Nations Like Unto Yourselves: An Inquiry into the Status of a General Principle of International Law on Animal Welfare*, 49 *CANADIAN YEARBOOK OF INT’L L.* 3, 38 (2011). Wise’s contention is not without merit, but it also fails to provide a complete picture of the situation, at least as far as India goes. As Sykes points out, India has rather robust legal protections for animals. *Id.* at 38-39. Sure, they may not be “dignity-based,” but there’s also no reason to think that the blocker is the Western origin of “dignity-based rights,” especially given the extent to which India’s laws pertaining to human rights do purport to enshrine rights in the modern, Western sense. Furthermore, India is the birthplace of two of the most animal-friendly religions: Jainism and Buddhism. SARRA TLILI, *ANIMALS IN THE QURAN* 30-33 (2015) (describing at a very high-level the attitudes of Jainism and Buddhism towards animals).

¹⁵RICHARD C. FOLTZ, *ANIMALS IN ISLAMIC TRADITION & MUSLIM CULTURES* 27 (2006).

¹⁶See Peter Singer, for example, also lays blame on Judaism and Ancient Greek thought, which “unite in Christianity.” TLILI, *supra* note 14, at 5.

over religious animal slaughter.¹⁷ It need not be this way; animal rights and religion need not be opposed. In fact, Judaism and Islam are quite respectful and protective of animals. They are certainly more protective of animals than American law, and their philosophical outlooks and internal debates regarding the status and treatment of animals are interesting foils to the current debate over animal rights in the American legal academy. I contend that animal rights advocates should look to these religious communities as allies instead of viewing them as enemies.

This Note begins with American law, giving a high-level overview of its anti-cruelty provisions, describing the philosophy underlying them, and outlining contemporary lines of thought about animal rights. Next, the paper looks at Jewish law, and, finally, Islamic law. For each of the religious bodies of law, the paper examines specific anti-cruelty provisions as well as the general philosophies underlying the religious laws.

I endeavor to use a consistent framework in analyzing the philosophies of these three legal systems. Professor Sarra Tlili, who has done much work to illuminate Islam's historical attitude towards animals, states that any system of law or morality must determine two things when it comes to animals: first, the legal and moral status non-human animals should have; second, what, concretely, the human obligations towards them should consist of.¹⁸ The former inquiry is

¹⁷See, e.g., *Animal Welfare*, HUMANISTS UK, <https://humanism.org.uk/campaigns/public-ethical-issues/animal-welfare/> [<https://perma.cc/3T3M-FWWX>] (last visited Apr. 23, 2022); see also Brian Klug, *Ritual Murmur: The Undercurrent of Protest Against Religious Slaughter of Animals in Britain in the 1980's*, in JUDAISM & ANIMAL RIGHTS, *supra* note 4, at 114, 134 (describing how British animal rights organizations employed rhetoric against mostly Muslim, but also Jewish, religious slaughter that was indistinguishable from that of neo-Nazis). The lack of pre-slaughter stunning in Jewish and Muslim ritual slaughter is a particularly frequent flashpoint. See Arthur Nelsen, *EU States can Ban Kosher and Halal Ritual Slaughter, Court Rules*, POLITICO (Dec. 17, 2020), <https://www.politico.eu/article/eu-states-can-ban-kosher-and-halal-ritual-slaughter-court-rules/> [<https://perma.cc/GVW7-XUEP>]. Some argue this episode reflects long-standing anti-Jewish and anti-Muslim sentiment in Europe. See, e.g., Azeezah Kanji, *Kosher and Halal Bans: Fur-washing Factory Farming's Brutality*, AL JAZEERA (Nov. 3, 2021), <https://www.aljazeera.com/opinions/2021/11/3/kosher-and-halal-bans-fur-washing-factory-farmings-brutality> [<https://perma.cc/6AJS-HSJ8>]. In addition to noting disturbing parallels between contemporary right-wing European rhetoric on this issue and that of Nazis preceding the Holocaust, Kanji's article describes a number of appalling cruelties—many documented by video and well-known—towards animals with which Europeans are apparently a-okay, such as “showing animals being knifed, scalded, and drowned while fully conscious, as well as beaten, kicked, and dragged by chains.” *Id.*

¹⁸TLLI, *supra* note 14, at 13.

more abstract, while the latter has to do with how that status is operationalized as matters of law and morality.¹⁹ Additional structure will be provided by addressing matters of philosophical contention that are common to all of these legal traditions. Scholars within each tradition have considered and debated issues such as the extent to which the cognitive capacities of animals should determine their legal and moral status, and the extent to which human conduct towards animals should be a matter of law, as opposed to one of mere morality.

While all three bodies of law purport to take animal suffering seriously and contain anti-cruelty provisions pursuant to that goal, American law is less effective than Jewish law and Islamic law at protecting animals because it fails to accord animals the conceptual legal status they deserve. Because it conceives of animals as essentially just property, American law's protections for animals are context-specific and are always about human utility, not animal welfare. This is of course not a new criticism. The meager contribution of this Note, however, is to suggest that these old, religious bodies of law parallel some of the arguments made by modern, secular animal rights advocates in the hope this at least provides some food for thought.²⁰

II. AMERICAN LAW

A. Statutory Scheme

American animal law is divided between state anti-cruelty laws and federal laws and regulation. At the federal level, the Humane Slaughter Act (HSA) mandates that animal slaughter be carried out only via "humane methods" to prevent "needless suffering."²¹ This command is ineffective for two reasons. First, it exempts from this requirement the slaughter of poultry, which constitute about ninety-five percent of farmed animals in the United States.²² Second, it imposes virtually no penalties for failing to comply.²³

Even where HSA requirements are enforced, they do not always actually benefit or protect animals. Among the HSA's enforced

¹⁹*Id.*

²⁰Pun intended.

²¹David J. Wolfson & Mariann Sullivan, *Foxes in the Hen House*, in *ANIMAL RIGHTS: CURRENT DEBATES AND NEW DIRECTIONS* 205, 208 (Cass R. Sunstein & Martha C. Nussbaum eds., 2004).

²²*Id.*

²³*Id.*

requirements, for example, is that animals must be stunned unconscious prior to slaughter, and also must be “shackled and hoisted” (suspended from the ceiling) while awaiting slaughter.²⁴ This often results in the legs of animals being broken while they hang from the ceiling.²⁵ Naturally, this requirement has nothing to do with the comfort of the animal, but instead is imposed for hygiene considerations.²⁶ Other than that, federal law tends to focus on protecting wild animals, particularly endangered ones, a task at which it may actually be quite effective (setting aside the issue of hunting).²⁷

State anti-cruelty laws regulate the day-to-day treatment of animals, and those animals in our midst fortunate enough to enjoy legal entitlements derive them primarily from state law. These laws tend to follow the same general pattern, and are understood to reflect and embody “the proposition that an animal’s interest to be free from unnecessary pain and suffering should be recognized in the legal system.”²⁸ The word “unnecessary” is key. Such laws recognize that human interests will often conflict with the interests of animals, and that thus some pain and suffering must be allowed based on a balancing of the human and animal interests at stake.²⁹ For example, “if a horse has to be hit to make him start pulling the wagon,” such an action would not violate a state anti-cruelty law.³⁰ These statutes sometimes also impose vague standards of affirmative care upon animal owners.³¹ This legal regime may seem reasonable, but it is

²⁴Muslim and Jewish butchers are able to take advantage of a religious exemption from the requirement that an animal be unconscious prior to slaughter, but there is no exemption from shackling and hoisting. Roberta Kalechofsky, *The Multi-layered Contradictions of Shechitah*, in JUDAISM & ANIMAL RIGHTS, *supra* note 4, at 71, 72.

²⁵Temple Grandin, *Humanitarian Aspects of Shechitah in the United States*, in JUDAISM & ANIMAL RIGHTS, *supra* note 4, at 92, 93–95. Naturally, this sort of thing raises issues for many observant Jews and Muslims who believe that causing such pain or injury is violative of the spirit of religious slaughter requirements, even though the injuries at issue may not render an animal’s meat impermissible from a strictly legal standpoint.

²⁶Kalechofsky, *supra* note 24, at 72.

²⁷Oliver A. Houck, *Noah’s Second Voyage: The Rights of Nature as Law*, 31 TUL. ENV’T. L.J. 1, 17–22 (2017); David S. Favre, *Judicial Recognition of the Interests of Animals—A New Tort*, 2005 MICH. ST. L. REV. 333, 342–43 (2005); Danny Waltz, *The “Embarrassing” Endangered Species Act: Beyond Collective Rights for Species*, 45 COLUM. J. OF ENV’T. L. 1 (2020) (arguing that, contrary to the criticisms of many animal rights advocates, the ESA offers robust protections for individual animals, not only for collectives of animals).

²⁸Favre, *supra* note 27, at 346.

²⁹*Id.*

³⁰*Id.*

³¹Wolfson & Sullivan, *supra* note 21, at 209.

generally regarded as ineffective for a variety of reasons, two of which are relevant to this paper.

First, such statutes exempt agriculture, hunting, and scientific research.³² For agriculture specifically, state legislatures have amended criminal anti-cruelty statutes to prevent prosecution for conduct the industry itself determines is acceptable.³³ The practical effect of these exemptions is difficult to understate; factory farming alone kills upwards of nine-billion animals per year, including approximately 266 chickens per second.³⁴ That is a lot of un-or-barely regulated animal slaughter.

Second, explicit exemptions aside, the statutory conceptions of “unnecessary” or “needless” are very narrow. The standard for what counts as “unnecessary” has been interpreted to permit extremely cruel practices that are customary or helpful in making “the animal more serviceable for the use of man.”³⁵ Hence, even in situations where the use of an animal is not explicitly exempted by statute, courts permit cruel and objectively unnecessary acts by interpreting anti-cruelty statutes to permit “the infliction of even extreme suffering if it is incidental to an accepted use of animals and a customary practice on the part of animal owners.”³⁶ I will refer to this as the “customary practice exception.”³⁷ This exception results in “a great deal of difference between what these statutes ban and what in practice is permitted.”³⁸ Examples of torturous practices that have been sanctioned on this basis include the dehorning of cattle,³⁹ the placement of up to eight hens in twenty-by-nineteen-inch cages for the durations of their egg-laying lives, the castration of animals without anesthesia, and deliberate starvation.⁴⁰

³²*Id.* at 206.

³³*Id.*

³⁴*Id.*

³⁵Gary L. Francione, *Animals—Property or Persons?*, in ANIMAL RIGHTS: CURRENT DEBATES AND NEW DIRECTIONS, *supra* note 21, at 108, 118.

³⁶*Id.* at 117–18.

³⁷Wolfson & Sullivan, *supra* note 21, at 219.

³⁸Cass R. Sunstein, *Can Animals Sue?*, in ANIMAL RIGHTS: CURRENT DEBATES AND NEW DIRECTIONS, *supra* note 21, at 251, 253.

³⁹Francione, *supra* note 35, at 118.

⁴⁰Wolfson & Sullivan, *supra* note 21, at 217–18; Kanji, *supra* note 18.

B. Philosophy and Basic Assumptions

i. Property Status

The customary practice exception strikes at the heart of the philosophical debate in the American legal academy. In the view of animal rights advocates, that exception is a logical consequence of a more fundamental problem: the fact that, under American law, animals are simply movable property—chattels,⁴¹ just like socks, sporks, or spandex.⁴²

In order for animals to be legally recognized as something more than mere chattels, they must be summoned into legal existence as such by statute.⁴³ However, no statute applying to animals needs to apply to all animals.⁴⁴ This gives rise to several consequences. First, this enables the American legal system to make animal protections context-specific, and allows it to avoid applying anti-cruelty statutes to entire industries. Second, it means animals under American law are always defined by their use; an animal is always a “laboratory animal” or a “rodeo animal” or an “egg hen.”⁴⁵ Because animals are always so defined, the outcome of any interest balancing under anti-cruelty statutes is always partially, if not totally, predetermined.⁴⁶ Third, it allows courts to feel comfortable assuming that an animal owner would not inflict any more harm than necessary upon an animal because they would be disincentivized from doing so in order to protect their own economic interests.⁴⁷ It is a rather Kafkaesque state of affairs.

⁴¹A term which is of course etymologically related to “cattle.” *Chattel*, DICTIONARY.COM, <https://www.dictionary.com/browse/chattel> [<https://perma.cc/8LYL-CJJK>] (last visited Apr. 21, 2022).

⁴²Taimie L. Bryant, *Animals Unmodified: Defining Animals/Defining Human Obligations to Animals*, 2006 U. CHI. LEGAL F. 137, 141 (2006); Francione, *supra* note 35, at 116.

⁴³Bryant, *supra* note 42, at 150–53. Irrespective of whether animals gain certain legal entitlements, they are still always property.

⁴⁴*Id.*

⁴⁵Francione, *supra* note 35, at 117.

⁴⁶*Id.* There are exceptions. Sometimes farmers manage to run afoul of anti-cruelty statutes when they are baselessly cruel or inattentive to their animals, but these are cases when they couldn’t meet even the minimal standards of the customary practice exception. *Id.* at 119.

⁴⁷See Richard A. Posner, *Animal Rights: Legal, Philosophical, and Pragmatic Perspectives*, in ANIMAL RIGHTS: CURRENT DEBATES AND NEW DIRECTIONS, *supra* note 21, at 51, 73–74 (defending this rationale, but failing to address cases that have sanctioned cruelty on precisely this basis). Of course, there is a difference between the pain an animal feels and impairment to their economic value, but American courts seem to have conflated the two.

ii. The Humane Treatment Principle

American anti-cruelty laws were enacted to implement in law what is commonly referred to as “the humane treatment principle,” a notion traced back to Jeremy Bentham which holds that, because animals are sentient beings that feel pain, we owe them protection from unnecessary suffering.⁴⁸

Bentham decried that animals were treated as mere “things,” but he did not believe that changing this state of affairs required altering their legal status as property.⁴⁹ He also did not seem to consider emotional pain in his calculus or think that animals had what might be called “long-term interests” such as seeing/spoiling one’s grandchildren or even a continued desire to exist in an abstract sense.⁵⁰ American anti-cruelty laws inherited these assumptions, and thus do not consider or cover the emotional well-being of animals.⁵¹

Bentham is of course regarded as the original utilitarian thinker. The humane treatment principle is itself quite utilitarian; the utility to humans must outweigh the loss in utility to animals occasioned by their suffering. However, its implementation in the American context considers only human interests and utility.

This is fairly obvious when it comes to the “customary practice” exception to anti-cruelty statutes, as well as the HSA’s requirement to “shackle and hoist” animals. But it is also readily apparent from the dichotomy between “pets” on the one hand, and farmed, hunted, and researched animals on the other. We love pets, and so the American

⁴⁸Francione, *supra* note 35, at 113. Bentham’s ideas were somewhat revolutionary in the context of the Enlightenment and the Anglo-American legal tradition. *Id.* Of course, Islamic law adopted this principle approximately a thousand years earlier, as did Jewish law a couple thousand years before that. Bentham himself cited both Islam and Hinduism as examples of religions or cultures that treated animals much better than Western civilization did at the time. Sykes, *supra* note 14, at 39.

⁴⁹Francione, *supra* note 35, at 113, 120–22.

⁵⁰*Id.* at 126.

⁵¹Other areas of American law have begun to consider the emotional well-being of animals, in particular family law. Legislation in a number of states empowers or requires states to take the interests of pets into consideration in divorce proceedings, within which it is increasingly frequent that pet custody is hotly contested. Nicole Pallotta, *California’s New ‘Pet Custody’ Law Differentiates Companion Animals from Other Types of Property*, ANIMAL LEGAL DEF. FUND (Nov. 5, 2018), <https://aldf.org/article/californias-new-pet-custody-law-differentiates-companion-animals-from-other-types-of-property> [https://perma.cc/R9WQ-US4U]. Even judges in states without such laws are starting to treat pets less like sofas and more like children. Melissa Chan, *Pets Are Part of Our Families. Now They’re Part of Our Divorces, Too*, TIME (Jan. 22, 2020), <https://time.com/5763775/pet-custody-divorce-laws-dogs/> [https://perma.cc/Q6TP-BH6N]; *See also* Raymond v. Lachman, 695 N.Y.S.2d 308 (N.Y. App. Div. 1999).

legal system makes an effort to protect them via statute. Yet it is perfectly legal to keep farmed animals caged indoors for the duration of their lives and mutilate them in various ways.⁵² This is not because the law deems, in any principled or articulated fashion, “pets” to have superior moral claims to “livestock” or research animals. Instead, this situation arises because we don’t want people to abuse pets because we, as a society, like “pets,”⁵³ but we have decided we get more utility, in an economic sense or otherwise, out of permitting, rather than forbidding, researchers and farmers to do things to animals that we would label “abuse” in other contexts.⁵⁴ This is key; these designations do not necessarily have anything to do with what various animals “are,” at least not in the research context. Killing a cat in a microwave or chopping the head off an iguana are both actions that have been found to violate anti-cruelty statutes when done for no reason other than sadism or because one is annoyed by an animal’s non-threatening action.⁵⁵ However, such actions are perfectly acceptable when done by researchers in lab coats.⁵⁶ The differing legal entitlements of animals in different contexts are thus based on the use humans get out of the animals, and what the animals mean to humans—not on what the animals are in any objective sense. This is a major point of criticism from animal rights advocates.⁵⁷

iii. The Animal Rights Debate

This section seeks to give a high-level overview of the current debate in the American legal academy over animal rights. The debate spans the core issues identified in the Introduction: the grounds for determining the status of non-human animals as well as the legal operationalization and enforcement of that status. The two major points of contention are, first, the extent to which the cognitive capacities of non-human animals should determine their legal or moral status, and, second, whether animals can receive meaningful protection from suffering while fundamentally remaining merely

⁵²Wolfson & Sullivan, *supra* note 21, at 218 (discussing the debeaking of chickens); Philip L. Pick, *Is It Kosher?*, in JUDAISM & ANIMAL RIGHTS, *supra* note 4, at 111, 111 (decrying the fact that factory farmed animals are caged every single day of their lives, violating a provision of Sabbath law).

⁵³See Daisy Yuhas, *Pets: Why Do We Have Them?*, SCI. AM. MIND, May/June 2015, at 28.

⁵⁴See Posner, *supra* note 47, at 70–72; see generally HAL HERZOG, SOME WE LOVE, SOME WE HATE, SOME WE HEAT (2011).

⁵⁵Francione, *supra* note 35, at 119.

⁵⁶*Id.* at 120.

⁵⁷See, e.g., Bryant, *supra* note 42, at 150–53.

human property. These issues are intertwined. Animal rights advocates tend to believe that the property-status of animals is a profound injustice and among the core animal rights issues. They argue that the cognitive capabilities of animals establish that they should not be treated as property, and should instead enjoy various kinds of rights. Because the problems attendant to the property status of animals were described in the preceding sections, this section will focus more on providing a simplistic summary of cognition-based rights theories, as well as the counter-arguments against strong animal rights theories.

It is important to note at the outset that the debate over whether animals need rights is not merely a war pitting the Peter Singers of the world against the Richard Epsteins;⁵⁸ it is also internal to the “pro-animal” side of this philosophical and legal debate. There are two primary pro-animal orientations: strong animal rights, and animal welfare.⁵⁹

Adherents of strong animal rights draw a straight line from animal cognition to animal rights, arguing that since animal cognition differs from human cognition only in degree and not in kind, denying animals rights is arbitrary and wrong.⁶⁰ They hold that those animals who have the “capacity to have propositional attitudes, emotions, will, and an orientation to oneself and one’s future,” have “subjecthood.”⁶¹ An animal who qualifies as a “subject” should get rights that include not only the right to be free from having pain and suffering visited upon them, but also rights to “conditions for integrity of consciousness and activity, including freedom from boredom, freedom to exercise normal capacities, freedom of movement, and the right to life.”⁶² Any creature who can suffer has an absolute right not to—not merely a legal entitlement that competes with other legal entitlements.⁶³ Thus, for a strong animal rights advocate, we shouldn’t do to such animals

⁵⁸See Richard A. Epstein, *Animals as Objects, or Subjects, of Rights*, in ANIMAL RIGHTS: CURRENT DEBATES AND NEW DIRECTIONS, *supra* note 21, at 143, 143 (defending the current legal regime).

⁵⁹Elizabeth Anderson, *Animal Rights and the Values of Nonhuman Life*, in ANIMAL RIGHTS: CURRENT DEBATES AND NEW DIRECTIONS, *supra* note 21, at 277, 277–78.

⁶⁰Francione, *supra* note 35, at 125–27; *see also* James Rachels, *Drawing Lines*, in ANIMAL RIGHTS: CURRENT DEBATES AND NEW DIRECTIONS, *supra* note 21, at 162, 164–65 (providing commentary on the trend of cognition-based theories of animal rights); Epstein, *supra* note 58, at 151 (rebutting some underlying assumptions of cognition-based theories).

⁶¹Anderson, *supra* note 59, at 278; *see also* Goodman, *supra* note 3, at 230–33.

⁶²Anderson, *supra* note 59, at 278.

⁶³Francione, *supra* note 35, at 132.

what we wouldn't be prepared to do to humans with similar cognition and capacities to suffer, namely children and the mentally handicapped.⁶⁴ Prominent proponents of the strong animal rights view include Steven Wise, Professor Tamie L. Bryant, and Professor Gary Francione.

Adherents of the animal welfare position also want to improve the lot of animals, and also feel that animals deserve more moral consideration than American law currently affords them. However, they do not believe that this requires that animals have "rights" in the sense of interests that cannot be overridden.⁶⁵ They thus believe that any creature that can suffer is entitled to not be made to suffer—at least not in the absence of a sufficiently good reason.⁶⁶ Accordingly, even animal welfare advocates would permit some forms of animal experimentation, provided that the gains to humans outweigh the losses to the animals.⁶⁷

An example of a scholar with an animal welfare perspective is Professor Cass Sunstein. He believes that, industry exemptions for animal cruelty aside, the statutes in place already confer rights upon animals.⁶⁸ As a result, Professor Sunstein tends to focus on the lack of enforcement power for animal rights, in particular upon the question of standing. He believes it would be a game-changer to have private standing to enforce anti-cruelty statutes, both at the federal and state level.⁶⁹

Defenders of the status quo offer a number of counter-arguments to the philosophical attacks made by strong animal rights advocates.⁷⁰ As to the notion of animal cognition and its connection to the level of rights animals deserve, defenders point out that human rights are not premised or contingent on any alleged threshold of intelligence or consciousness, and that, similarly, the legal disadvantages of animals

⁶⁴Anderson, *supra* note 59, at 278–79.

⁶⁵*Id.* at 277–278.

⁶⁶*Id.*; *see also* Francione, *supra* note 35, at 113–15.

⁶⁷Anderson, *supra* note 59, at 278.

⁶⁸Cass R. Sunstein, *Standing for Animals (With Notes on Animal Rights)*, 47 *UCLA L. REV.* 1333, 1335 (2000). Thus, in his view, there isn't a big difference between animal rights and animal welfare viewpoints.

⁶⁹*Id.* at 1336.

⁷⁰I am going to group Judge Posner in as such a defender because his primary place in this literature is to rebut animal rights arguments, particularly those of Wise. However, it can be inferred from his writing on the subject that he has some degree of sympathy for the notion that animals deserve stronger legal protections than currently afforded under American law. Professor Epstein, on the other hand, holds himself out explicitly as a defender of the status quo.

are not premised on any misconceptions regarding their cognition, which was fairly well-regarded at various times and places throughout history.⁷¹ Judge Posner also obliquely makes the argument that slavery did not end in the United States because White people became convinced that Black people had as much cognitive capacity as them, and that the same goes for other expansions of civil rights in this country.⁷² Professor Epstein makes similar arguments.⁷³ Thus, status quo defenders assert, animal rights advocates bark up the wrong tree by spending so much effort trying to show everyone how close animal cognition is to that of humans.⁷⁴

Judge Posner also believes that rights are ill-suited to animals.⁷⁵ He thinks instead that property rights are a fine way to protect animals because people tend to protect their property.⁷⁶ He does, however, agree that stricter enforcement of animal cruelty laws would be a good thing, and suggests those who care about animals would be providing a better service for their “clients” if they stopped trying to push a strong theory of rights, because that is unnecessary to animal well-being, and in fact actually counter-productive, given how much opposition the notion of strong animal rights provokes.⁷⁷

III. JEWISH LAW

Like American law, Jewish law considers animals to be property, and seeks to balance the interests of animals in not suffering against human interests in their use. Jewish law also historically permitted a very wide range of conduct that inflicted pain on animals on the rationale that such conduct was in pursuit of legitimate human interests. Nevertheless, Jewish law protects animals more effectively than American law. I will proceed by first quickly enumerating a number of specific provisions in Jewish law regarding animals, most

⁷¹Posner, *supra* note 47, at 57; Epstein, *supra* note 58, at 143, 146–47.

⁷²Posner, *supra* note 47, at 57, 68; *see also* Epstein, *supra* note 58, at 151.

⁷³Epstein, *supra* note 58, at 151–153.

⁷⁴Posner, *supra* note 47, at 57. To a certain extent, Professor Epstein seems to play the game, and thinks that, even accepting *arguendo* that cognition is as relevant a factor as animal rights advocates say it is, animal cognition is insufficient to justify the desired rights. Epstein, *supra* note 58, at 152.

⁷⁵Posner, *supra* note 47, at 57.

⁷⁶*Id.* at 59.

⁷⁷*Id.*

of which are explicitly commanded by the Torah.⁷⁸ Then, I will discuss the core of Jewish animal law, the principle of *tza'ar ba'alei chayyim*. The section ends by discussing Jewish law's underlying philosophy towards animals.

A. Provisions Pertaining to Animals in the Torah

Specific laws regarding animals in Jewish law include both negative injunctions, prohibiting specific conduct towards animals, as well as positive injunctions that require conduct that enhances the well-being of animals. The majority of these can be found in the Written Torah. The notable exception is Shechitah, the rules of which were passed down in the Oral Torah.

The anti-cruelty provisions center upon the use of animals for farming and food. For example, it is forbidden to yoke an ox and a donkey together for labor or transport, “presumably because differences in strength . . . may cause difficulty for the weaker of the two.”⁷⁹ It is also forbidden to cut off and consume flesh from a living animal (*ever min hahai*).⁸⁰ To violate this prohibition, which is also Noahide law,⁸¹ is considered an act of “unspeakable cruelty.”⁸² Jewish law also forbids the castration of animals, a prohibition that was unique in antiquity.⁸³

The anti-cruelty provisions do not only prohibit physical harm to animals, but prohibit mental and emotional harm as well. When gathering eggs from a bird's nest, one is required to send the mother bird away so that it does not witness the taking of the eggs, a

⁷⁸When I speak of “the Torah,” I am referring to the five books of Moses. Furthermore, I will address only “legal” material. Things such as the implications of *Imago Dei/b'tzelem Elohim*, the connection between shepherding and prophethood, and various morally didactic stories involving animals (which are especially numerous in the Aggadah) are useful in forming an overall picture of Judaism's philosophy regarding animals, but they are not decisive in determining the law and, in any case, do not lend themselves to an apples-to-apples comparison with American law.

⁷⁹See Schochet, *supra* note 1, at 59 (citing Deuteronomy 22:10).

⁸⁰*Id.* at 58 (citing Genesis 9:4); *Ever Min Ha-Hai*, JEWISH VIRTUAL LIBRARY, <https://www.jewishvirtuallibrary.org/ever-min-ha-hai> [<https://perma.cc/6ECA-4N66>] (last visited Apr. 21, 2022).

⁸¹J. David Bleich, *Judaism and Animal Experimentation*, 22 TRADITION: A J. OF ORTHODOX JEWISH THOUGHT 1, 3 (1986).

⁸²Schochet, *supra* note 1, at 263.

⁸³This prohibition included a general prohibition against maiming animals, applied also to ritually unclean animals, and is also a Noahide law. See, e.g., *id.* at 58 (citing Leviticus 22:23-24). *Id.* at 155.

commandment referred to as *Shiluakh ha-Ken*.⁸⁴ It is also forbidden to boil an animal's meat in the milk of its mother.⁸⁵ Additionally, newborn calves, lambs, kids, and other livestock must remain with their mothers for at least seven days before they may be sacrificed.⁸⁶

Jewish law goes further than merely forbidding cruelty. It also establishes a number of affirmative obligations upon humans to provide for the general welfare of animals. Both domestic and wild animals must be permitted to share in the product of the sabbatical year.⁸⁷ Additionally, a person is forbidden from feeding himself without first providing food for his animals.⁸⁸ This rule extends even when one is a guest in another's home; one should not eat or drink if they have not fed and watered their animals back at home.⁸⁹

In this area, Judaism distinguishes between different types of animals. Cats and dogs, considered "wild," were traditionally not legally entitled to be fed before humans; that legal entitlement accrued only to "domestic" animals.⁹⁰ This distinction seems to be premised on the fact that wild animals can hunt/find their own sustenance, whereas domestic animals, such as livestock, are totally reliant on humans for food.⁹¹ This distinction was categorical; cats, dogs, and fish were considered "wild," whereas farm animals such as chicken, cows, and goats were "domesticated."⁹²

The Torah also conferred "labor rights" on animals at least two thousand years prior to human workers having such meaningful rights in countries such as the United States. Animals must be given rest on the Sabbath,⁹³ and it is forbidden to muzzle an animal being used to thresh grain; it must be permitted to eat as it works.⁹⁴ Indeed, like human workers, animals are entitled to daily "wages."⁹⁵

Not all duties to animals are tied to an animal's property status; one owes certain duties to animals generally, irrespective of whether one

⁸⁴Aviva Cantor, *Scapegoats: Jews, Animals, and Oppression*, 78 LA RESSEGNA MENSILE DI ISRAEL 95, 97 (2012); Schochet, *supra* note 1, at 54.

⁸⁵Schochet, *supra* note 1, at 70.

⁸⁶*Id.* at 58–60 (citing Leviticus 22:27).

⁸⁷See Bleich, *supra* note 81, at 2; Schochet, *supra* note 1, at 58.

⁸⁸See Bleich, *supra* note 81, at 3 (citing Deuteronomy 11:15).

⁸⁹See Schochet, *supra* note 1, at 155.

⁹⁰*Id.* at 261.

⁹¹*Id.*

⁹²*Id.*

⁹³See Bleich, *supra* note 81, at 3; Schochet, *supra* note 1, at 157.

⁹⁴See Bleich, *supra* note 81, at 2 (citing Deuteronomy 25:4).

⁹⁵See Schochet, *supra* note 1, at 154.

owns them. For example, one is required to assist a beast of burden that is fallen or struggling under the weight of its goods, even if the animal belongs to one's enemy.⁹⁶ Similarly, one must return a lost animal to its owner.⁹⁷ If the owner cannot be located or is unknown, one must care for the animal indefinitely.⁹⁸

The violation of these prohibitions seems to have been criminal. Cruelty to animals was punishable by flogging, though it isn't clear whether "cruelty" here is a catchall referring to general cruelty or a violation of one of the specific commands discussed in this section.⁹⁹ It may be that every single instance of cruelty to animals was so punishable, whether a violation of a specific command or the general prohibition of cruelty to animals.¹⁰⁰

i. Shechitah and Other Rules Pertaining to the Killing of Animals

I have set apart the rules pertaining to Shechitah because they are genuinely distinct. The most obvious distinction is that, in contrast to the above rules, which either protect the animal from some harm or enjoin tending to an animal's needs, the rules of Shechitah seek to minimize an animal's pain during a procedure that results in the animal's death.

There is, however, another distinction: these rules prescribe very specifically what actions to take. The rules of Shechitah prescribe in detail, *inter alia*, the movement that must be made to kill, the length of the knife, and the procedure for checking the knife for blemishes or defects prior to slaughter.¹⁰¹

The requirements of Shechitah are meant to minimize an animal's pain during slaughter as much as possible. Proper Shechitah severs the trachea, esophagus, jugular vein, and carotid artery, and thus

⁹⁶*Id.* at 59.

⁹⁷*Id.*

⁹⁸*Id.*

⁹⁹Max May, *Jewish Criminal Law and Legal Procedure*, 31 J.L. & CRIMINOLOGY 438, 440 (1940).

¹⁰⁰Maimonides, *Sefer Hamitzvot, Negative Commandment 219, Muzzling a Working Animal*, CHABAD.ORG, https://www.chabad.org/library/article_cdo/aid/961853/jewish/Negative-Commandment-219.html (last visited Apr. 7, 2022) (stating that the punishment for muzzling an ox while it treads grain is "lashes"); *see also* Aviva Cantor, *Kindness to Animals: The Soul of Every Living Thing*, in JUDAISM & ANIMAL RIGHTS, *supra* note 4, at 26, 28 ("[T]he punishment for muzzling a working animal is more severe than that for preventing a human laborer from eating as he works.").

¹⁰¹*See* Ronald L. Androphy, *Shechitah*, in JUDAISM & ANIMAL RIGHTS, *supra* note 4, at 76, 77.

should result in a painless death, because rapid blood loss would render the animal unconscious.¹⁰² To this end, the knife must be sharp and free of defect. Furthermore, the *shochet* (butcher) must be of established good character and piety to ensure that he does not take any take glee in butchering.¹⁰³

Shechitah is not the only circumstance in which Jewish law makes explicit when and how animals should or must be killed. The Torah also subjects animals to punishment for certain specific “crimes.” An ox who gores a human to death is punished by stoning,¹⁰⁴ as is an animal involved in bestiality.¹⁰⁵

B. *Tza’ar Ba’alei Chayyim*

The principle of *tza’ar ba’alei chayyim*¹⁰⁶ was derived primarily from the commandments enumerated in the last section regulating human conduct towards animals, as well as from the interpretation of stories in the Torah and other “legends” and “homilies” in the Jewish tradition.¹⁰⁷ The rabbis perceived an underlying rationale of compassion from the commands, and accordingly extrapolated a general principle that mandates treating animals with compassion and taking their moral claim to not suffer seriously.¹⁰⁸ It is generally accepted as *d’orayta*: having the force of Biblical law.¹⁰⁹

The principle is legally operationalized in two ways: first, it forms the basis to extend existing prohibitions and duties relating to animals. Second, for any proposed action that may cause an animal

¹⁰²See Schochet, *supra* note 1, at 161–62, 262.

¹⁰³*Id.* (Rabbi Schochet does not take the opportunity in this part of his book to tell the reader whether or not this is the origin of his surname.)

¹⁰⁴*Id.* at 54 (citing Exodus 21:28-32). Of course, the notion that an animal is capable of committing a “crime” is a bizarre and foreign concept to us in the contemporary world. In antiquity, however, it was apparently not unusual to conceptualize things this way and punish animals for certain acts or events. *Id.* at 54.

¹⁰⁵*Id.* at 189 (citing Leviticus 20:15-16.)

¹⁰⁶Even though *tza’ar ba’alei chayyim* literally means “pain of things having life,” most sources use this name to refer to the overall principle of sensitivity to the pain of animals, as in the sentences “the rabbis attributed a biblical origin to *tzaar baalei hayyim*” or “*tzaar baalei hayyim* supersedes the prohibition of *muktseh*.” See Schochet, *supra* note 1, at 156–57. Hence, I refer to it similarly. *But see* Bleich, *supra* note 81 (using it in a way that makes grammatical sense if translated literally).

¹⁰⁷See Schochet, *supra* note 1, at 151.

¹⁰⁸*Id.*

¹⁰⁹This was (and may still be) a matter of some debate, but the majority position is that it is *d’orayta*. See, e.g., Bleich, *supra* note 81, at 4; Cantor, *supra* note 84, at 97; Schochet, *supra* note 1, at 259.

pain, it mandates weighing an animal's interest in not suffering against the human utility to be gained. Historically, while *tza'ar ba'alei chayyim* was somewhat effective in terms of extending existing prohibitions on human conduct towards animals, the principle's application did not often lead to an animal's interests outweighing human interests, even where the suffering to the animal may have been substantial and the human utility may have been relatively minor. Thus, *tza'ar ba'alei chayyim* did not perform much better than American law, with its customary practice exception. I will briefly discuss some of the additional duties that were added by rabbinic authorities on the basis of *tza'ar ba'alei chayyim*, and then discuss *tza'ar ba'alei chayyim* as it was applied to situations in which humans proposed using animals for certain purposes.

An exhaustive account of expanded duties and prohibitions would be difficult to provide, but some such expansions stand out. The *Shulchan Aruch* forbids tying the legs of animals in a manner causing them pain.¹¹⁰ It also prohibits making a bird sit on eggs that are not her own,¹¹¹ thus extending the concern for animal emotions first evinced in *Shiluakh ha-Ken*. Additionally, the prohibition of castration was extended to fowls, as well as to non-kosher animals.¹¹² One authority extended the prohibition against muzzling to all animals at all times, not just those being used for threshing; the same authority stated that animal laborers were entitled to "payment" on a daily basis, just as human workers were.¹¹³

Jewish law permits hunting only for "utilitarian purpose[s]," which include both "food" and "economic profit," as well as purposes like pest control.¹¹⁴ However, *tza'ar ba'alei chayyim* requires that such hunting must be undertaken in a manner that minimizes the animal's pain, and using dogs to hunt was deemed cruel and violative of this principle.¹¹⁵ Hunting for sport, which is associated with cruelty, villainy, and paganism, is strictly forbidden, as is any blood sport involving animals.¹¹⁶

¹¹⁰See Cantor, *supra* note 84, at 28 (citing *Kitsur Shulchan Aruch*, vol. 5, chap. 191/3).

¹¹¹*Id.*; Schochet, *supra* note 1, at 265.

¹¹²Schochet, *supra* note 1, at 262.

¹¹³*Id.* at 265–66.

¹¹⁴*Id.* at 158.

¹¹⁵Cantor, *supra* note 84, at 31.

¹¹⁶*Id.* at 30; Schochet, *supra* note 1, at 158–59.

A notable expansion of affirmative duties occurred in the context of the Sabbath rules. Because *tza'ar ba'alei chayyim* is deemed *d'orayta*, “an animal’s discomfort and suffering [are] also deemed sufficient cause for superseding Sabbath legislation,” just as threats to human life would be.¹¹⁷ Thus, it is permitted to handle otherwise *muktseh* items on the Sabbath when such items are to be given to animals as food.¹¹⁸ In fact, the handling of such foods is practically required, since, it is a Sabbath obligation to provide food to not only one’s own animals, but strays as well.¹¹⁹ If an animal were to fall in a ditch on the Sabbath, provisions must be made for its sustenance.¹²⁰ Additionally, animals are to be exercised on the Sabbath if they experience pain that can be alleviated by so doing.¹²¹ Some authorities, including Rashi, suggested that exercise, or at least letting animals out of pens to graze, may be required irrespective of whether the animals physically need it; they interpreted the injunction to give animals “rest” on the Sabbath to including giving them the emotional satisfaction of walking around and eating freely of grass.¹²²

i. Tza’ar Ba’alei Chayyim Balancing

Tza’ar ba’alei chayyim is a principle that mandates compassion for animals, enjoining the minimization, and, where possible, elimination, of their pain and suffering.¹²³ However, the scope of this general obligation is limited by the permission to inflict pain when such pain is in aid of “a legitimate human purpose.”¹²⁴

Rabbi Schochet states that the predominant traditional view of how to apply this rule held that human interests “must always take precedence over” animal interests.¹²⁵ Thus, it was held that *tza’ar ba’alei chayyim* should only bar animal pain when such pain provided zero value to humans, or was particularly egregious.¹²⁶ Accordingly, a broad range of purposes counted as legitimate.¹²⁷ Human interests

¹¹⁷*Id.* at 156.

¹¹⁸*Id.* at 156–57.

¹¹⁹*Id.* at 261; Goodman, *supra* note 3, at 251.

¹²⁰Schochet, *supra* note 1, at 156.

¹²¹*Id.*

¹²²*Id.* at 263.

¹²³Cantor, *supra* note 84, at 96.

¹²⁴Bleich, *supra* note 81, at 12.

¹²⁵Schochet, *supra* note 1, at 192 (emphasis in original).

¹²⁶*Id.* at 219–20.

¹²⁷*See id.* at 176.

in financial gain justified causing pain to animals,¹²⁸ as did benefits that may seem merely convenient, such as having an instrument with which to write.¹²⁹ Indeed, even “dignitary benefits” were acceptable bases to avoid obligations otherwise owed to animals—including the obligation to unload beasts of burden, which is a command of the Torah.¹³⁰

Nevertheless, rabbinic authorities were not unanimous that simply any benefit to humans could constitute a “legitimate purpose.” One early authority held that it was impermissible to harm animals solely for financial gain, and the Tosafot also held that only “therapeutic purposes” may justify causing animal suffering.¹³¹ Though such opinions seem to have been in the minority prior to around the 16th century, they indicate that at least one side of the balancing formula, the benefit to humans, was the subject of scrutiny.

It is also important to note that rabbinic authorities considered the ethical implications of *tza’ar ba’alei chayyim* to outstrip its legal implications. Kindness to animals was considered extremely virtuous and a great distinction of the Jewish people compared to the nations with which they were surrounded in antiquity.¹³² Accordingly, it was not uncommon for rabbinic responsa to state that a certain practice, such as plucking feathers from a live bird or cutting off a bird’s tongue, may be legally permissible to advance some human purpose, but should be avoided because of the cruelty involved.¹³³ A number of authorities indicate that divine punishment for cruelty to animals is possible even where no violation of the law occurs.¹³⁴ Thus, historically, there was a gap between what legal authorities thought was morally condemnable and what they in fact permitted.

Later generations of rabbinic authorities, however, began to grow “uncomfortable” with the “stark” notion that utility to humans always superseded an animal’s interest in not suffering.¹³⁵ These later authorities thus began to engage in more sophisticated *tza’ar ba’alei chayyim* analysis by attempting to further distinguish between

¹²⁸Bleich, *supra* note 81, at 14, 16.

¹²⁹*Id.* at 17 (reporting rabbinic discussion of whether it is permissible to pluck a feather out of a live bird for use as a quill).

¹³⁰*Id.* at 13; Exodus 23:5.

¹³¹Bleich, *supra* note 81, at 17; Schochet, *supra* note 1, at 219–20, 264.

¹³²Schochet, *supra* note 1, at 151–53 (citing, among others, Philo).

¹³³*Id.* at 264; Bleich, *supra* note 81, at 18–19.

¹³⁴Bleich, *supra* note 81, at 19; Schochet, *supra* note 1, at 264.

¹³⁵Schochet, *supra* note 1, at 264.

legitimate and illegitimate use, as well as by scrutinizing more closely the measure of pain being inflicted upon the animal.¹³⁶ For example, one authority prohibited poisoning animals “ravaging one’s fields” because such a thing involved foisting a “painful and lingering death upon one of God’s creatures.”¹³⁷ Thus, as it currently stands, the majority opinion is that Jewish law forbids “the infliction of pain upon animals when the desired benefit can be acquired in an alternative manner,” when the pain is great, or when the need is not great.¹³⁸ Medical experimentation is a valid reason to cause pain to animals, but “any unnecessary pain [should be] avoided, and, when appropriate, the animal subject should be anesthetized.”¹³⁹

Animals enjoy a qualified legal entitlement not to suffer under Jewish law, but their legal entitlement does not encompass a general right to life; after all, animals can unquestionably be killed for food. Indeed, Jewish law not only permits this, but specifies requirements for sacrificial offerings, as well as situations in which animals must be killed as matters of criminal law.¹⁴⁰

Tza’ar ba’alei chayyim thus covers only the experience of suffering, and fails to reach an animal’s interest in life at all.¹⁴¹ Rabbi Bleich states quite plainly that “putting an animal to death does not constitute a forbidden form of tza’ar ba’alei hayyim.”¹⁴² Nevertheless, there is little doubt that animals cannot be killed without any reason. At the very least, doing so would conflict with Bal Taschit¹⁴³ as well as the moral and legal opprobrium heaped on sport hunting.

¹³⁶*Id.* at 266.

¹³⁷*Id.* at 265.

¹³⁸Bleich, *supra* note 81, at 22.

¹³⁹*Id.* at 23.

¹⁴⁰Technically, the requirement to kill an animal for homicide is located among laws of tort, but it blurs the boundary between tort and criminal law, since the animal has a right to trial and the punishment is stoning. *See, e.g.*, J.J. Finklestein, *The Ox That Gored*, 71 TRANSACTIONS AM. PHIL. SOC’Y 5 (1981) (treating it as a matter of criminal law); Marilyn A. Katz, *Ox-Slaughter and Goring Oxen: Homicide, Animal Sacrifice, and Judicial Process*, 4 YALE J.L. & HUMANS 249 (1992) (same); *but see* Richard A. Epstein, *Animals as Objects, or Subjects, of Rights*, in ANIMAL RIGHTS: CURRENT DEBATES & NEW DIRECTIONS, *supra* note 21, at 143, 146 (describing it as a matter of noxal liability, a monetary punishment levied on the animal’s owner).

¹⁴¹Schochet, *supra* note 1, at 176, 220, 267; Bleich, *supra* note 81, at 8. Both Rabbi Schochet and Rabbi Bleich cite a number of authorities on this point, and both emphasize a story involving Rabbi Judah and Rabbi Pinchas that lends it considerable support.

¹⁴²Bleich, *supra* note 81, at 10.

¹⁴³*Id.* at 8. *Bal Taschit* is the prohibition against destroying property for no good reason.

C. Philosophy and Basic Assumptions

i. Determinants of the Legal Status of Animals

The legal status of animals under Judaism derives from the facts that animals are God's creatures¹⁴⁴ and that they suffer.¹⁴⁵ Animals are a "first-class" legal category under Jewish law; even though they are subject to ownership, they are never property in the same way inanimate objects are. Jewish law also does not hold that the property status of animals is conducive to their proper treatment. Jewish law does not consider animal cognition to be a major factor in allocating their rights.

Considering cognition first, although Judaism does consider humans to be set above other animals due to their intellect and capacity to reflect on their behavior, its view on this subject is not totally determinative of the legal status of animals.¹⁴⁶ Although some scholars suggest that animals are due compassion and care precisely because of their "inferior . . . intellectual potential," rabbinic explanations for the religious boundaries governing human treatment of animals tend not to discuss the cognitive abilities of animals as major factors in the delineation or setting thereof.¹⁴⁷

Additionally, Jewish law does not tie the obligations owed to animals as closely to their property status as American law does, nor does it believe, as scholars such as Judge Posner do, that the property status of animals disincentivizes their mistreatment. As discussed above, there were a number of obligations owed to animals one did not own. Even animals owned by no one, wild animals, could not simply be killed on a whim via hunting. Indeed, many animal-related prohibitions of Jewish law were quite inconvenient for humans—economically damaging, even. For example, the rules regulating Shechitah are in tension with the efficiency required to satisfy modern

¹⁴⁴Schochet, *supra* note 1, at 65.

¹⁴⁵*See, e.g., id.* at 153. There were lively debates among the rabbis through the ages over this. In particular, they debated whether the anti-cruelty provisions found in the Torah, as well as the rules of Shechitah were geared towards avoiding engendering habits of cruelty in humans that may carry into their conduct towards other humans. *See, e.g., Cantor, supra* note 84, at 97; Schochet, *supra* note 1, at 71–72, 207, 216.

¹⁴⁶Schochet, *supra* note 1, at 188. As shall be seen, Judaism is generally much clearer than Islam about the fact that non-human animals enjoy a station below that of humans, and that the former was likely created specifically to serve the latter. *Id.* at 190. That being said, this matter was not totally settled within Judaism either. Houck, *supra* note 27, at 8 n.44.

¹⁴⁷Raisin, *supra* note 4, at 26–27.

society's demand for meat, a level of demand unique in human history.¹⁴⁸ Similarly, the prohibition of castration was a source of economic hardship for Jewish farmers.¹⁴⁹

It is extremely important that animals exist as a legal category in Jewish law. The rules regulating human conduct towards them do not create that category; instead, the category and the principle of *tza'ar ba'alei chayyim* underlie the rules. Thus, under Jewish law, animals have some objective moral worth because of what they are, and that worth is respected across contexts and uses.¹⁵⁰ Accordingly, Jewish law contains no broad exemptions for particular uses. Instead, because of the intrinsic value of animals, certain uses, such as the use of animals for food, come under heightened regulation.¹⁵¹

IV. ISLAMIC LAW

Islamic law¹⁵² and Jewish law¹⁵³ share many similarities in the realm of animal law. Like Judaism, Islam also does not consider the

¹⁴⁸Kalechofsky, *supra* note 24, at 73.

¹⁴⁹Schochet, *supra* note 1, at 155. Rabbi Schochet relates that some Jewish farmers so resented this prohibition that they engaged in the practice of having non-Jews “steal” calves, castrate them, and then return them, a practice that was of course met with rabbinic disapproval.

¹⁵⁰Houck, *supra* note 27, at 8 n.44 (noting that Maimonides considered animals to exist for their own sakes as opposed to human benefit); Goodman, *supra* note 3, at 233, 238. This is also the predominant view in Islam. S. Nomanul Haq, *Islam and Ecology: Toward Retrieval and Reconstruction*, 130 DAEDALUS 141, 154 (citing Quranic verses suggesting that the creation of nature is more important than the creation of humans and that the earth is meant for all living things); Houck, *supra* note 27, at 8 n.43.

¹⁵¹See Louis A. Berman, *The Dietary Laws as Atonements for Flesh-eating*, in JUDAISM & ANIMAL RIGHTS, *supra* note 4, at 150, 154 (arguing that the “complex system of rules of *kashrut* . . . governing the preparation and eating of meat” are in place in part to atone for the inherent “moral wrong” involved in animal slaughter); Androphy, *supra* note 101, at 76–80 (discussing in a fair amount of detail the requirements of *Shechitah*).

¹⁵²The discussion of Islamic law in this Note derives mainly from sources that speak of Sunni Islam. However, any differences between the Sunni and Shi'a traditions in this area of law and religion are quite minor. See, e.g., ALIREZA BAGHERI & KHALID ABDULLAH AL-ALI, *ISLAMIC BIOETHICS: CURRENT ISSUES & CHALLENGES* (2017) (discussing the same Ahaadith and Quranic concepts discussed throughout this section); FOLTZ, *supra* note 15, at 34 (2006) (providing an example of a Shi'a list of animal rights, all of which are also recognized by Sunni Islam).

¹⁵³Note that Islamic law and Jewish law both develop(ed) through scholarship. For the formative centuries of Islamic society and law, judges were generally independent of political and administrative rulers—and only sometimes were they themselves religious scholars. In general, the law was developed, interpreted, and promulgated by scholars of law who combined scholarly and religious functions, and executed and implemented by judges who took the writings of such scholars into consideration. See generally Phillip Ackerman-Lieberman, *Comparison Between the Halakha and Shari'a*, in A HISTORY OF JEWISH-MUSLIM RELATIONS: FROM THE ORIGINS TO THE PRESENT DAY (Abdelwahab Meddeb & Benjamin Stora eds., 2013); see also

cognitive capabilities of animals to be determinative of their rights. Instead, Islam considers animals to have intrinsic worth, and puts animals in a legal category of their own, in between persons and things. Islam also does not believe that animals are protected from mistreatment by virtue of being property.

Like the section on Jewish law, this section begins by detailing various specific rules on animals. It also describes situations in which Islamic law permits killing animals, and ends by summarizing Islam's philosophy towards animals, looking at some of the same concepts identified earlier in the Note.

A. Specific Commands

Like Jewish law, there are a number of specific commands with respect to animals in Islamic law. Some of these are strictly anti-cruelty, whereas others enjoin conduct to confer some affirmative benefit upon animals. Most specific rules pertaining to the treatment of animals derive from the Hadith literature, which consists of recollections of the Prophet Mohammad's words and actions.¹⁵⁴ For the most part, the Quran does not lay down specific rules pertaining to the treatment of animals. Instead, it furnishes the basis for Islam's philosophical views about animals.¹⁵⁵

The Hadith literature is the primary source of anti-cruelty commands in Islamic law. The Prophet condemned beating animals, and issued a total ban on striking and branding them on the face.¹⁵⁶

generally chapter 2 of KHALED ABOU EL FADL, *SPEAKING IN GOD'S NAME: ISLAMIC LAW, AUTHORITY, AND WOMEN* (2001). Ackerman-Lieberman uses the terms "jurisconsults" and "jurisprudents." The Arabic word for such people or positions is "mufti." I use the terms "jurist" and "scholar" interchangeably in this Note. Anyways, Islamic law, particularly in Sunni Islam, is filtered through different "schools of jurisprudence" (Arabic, *madhhab*, pl: *madhaaheb*). These schools are (in no particular order) the Shafi, Hanafi, Maliki, and Hanbali schools. Generally speaking, these schools of law all agree theologically, but differ as to the specifics of Islamic law. Contrary to popular belief among both Muslims and non-Muslims, Shari'a is not Islamic law, *per se*; it's instead the general sources of the principles, policies, rights, and obligations Islamic law should seek to implement. KHALED ABOU EL FADL, *REASONING WITH GOD: RECLAIMING SHARI'AH IN THE MODERN AGE* xl–xlii (2017). Instead, the interpretation and derivation of law from the Quran and Hadith by the various schools is Islamic law, and it is called *fiqh*. *Id.* at xli.

¹⁵⁴As noted above in footnote 11, the Hadith literature also includes anecdotes about the Prophet's contemporaries, including certain normative statements.

¹⁵⁵Of course, there are also important notes about animal cognition and spirituality in Hadith, as well, and Muslim jurists and scholars did derive certain concrete principles from some Quranic verses, so the distinction is not absolute. Nevertheless, it generally holds.

¹⁵⁶Sira Abdul Rahman, *Religion and Animal Welfare—An Islamic Perspective*, 7 *ANIMALS* 11 (2017); MUSA FURBER, *RIGHTS & DUTIES PERTAINING TO KEPT ANIMALS* 9 (2015).

Islam also forbids, on the basis of Hadith, hunting animals for sport,¹⁵⁷ a prohibition that shall be elaborated upon in the following section. One Hadith speaks of a woman who was condemned to hell for starving a cat to death, thereby indicating that killing animals outside of one of the narrow exceptions making such killing permissible is a grave sin.¹⁵⁸

The Prophet's statements regarding human treatment of animals, particularly in the context of hurting them for sport, are made in terms quite emphatic relative to other Hadith;¹⁵⁹ he consistently "curse[s]" (or states that God curses) those who treat animals cruelly.¹⁶⁰ The sharpness of his language indicates that sins against animals are categorized as major.¹⁶¹

The mutilation of animals is prohibited by both Quran and Hadith.¹⁶² Like Judaism, Islam prohibits in strong terms the practice of cutting off a piece of a living animal to eat.¹⁶³ This general prohibition includes the prohibition of castration of certain animals.¹⁶⁴ Islam also prohibits taking a mother bird's eggs from her nest on the basis of a Hadith wherein Mohammad admonished someone for having caused a mother bird emotional distress in such a way.¹⁶⁵ As to property and usage rights in animals, under Islamic Law, these rights are often curtailed quite clearly and sharply, and animal interests often supersede human commercial interests.¹⁶⁶ Ultimately, owners of animals simply do not have an absolute right to manage and dispose of their animals as they see fit.¹⁶⁷ For example,

¹⁵⁷Engy Abdelkader, *Animal Protection Theory in U.S. and Islamic Law: A Comparative Analysis with a Human Rights Twist*, 14 U.C.L.A. J. ISLAMIC & NEAR E. L. 45, 59 (2015); FOLTZ, *supra* note 15, at 25–26, 33.

¹⁵⁸Wescoat, *supra* note 12, at 643; Haq, *supra* note 150, at 170.

¹⁵⁹Haq, *supra* note 150, at 172.

¹⁶⁰*See, e.g.*, FURBER, *supra* note 156, at 8.

¹⁶¹*Id.*

¹⁶²Sarra Tlili, *Animals Would Follow Shafi'ism: Legitimate and Illegitimate Violence to Animals in Medieval Islamic Thought*, in *VIOLENCE IN ISLAMIC THOUGHT FROM THE QURAN TO THE MONGOLS* 225, 227 (Robert Gleave and Istvan Kristo-Nagy eds. 2015).

¹⁶³*Id.*

¹⁶⁴*Id.* Castration of sheep and cattle is universally permissible, but the castration of horses and other equines is only permissible for Hanafis and Hanbalis, and the latter discourage it. *Id.* at 235, table 1. Within and among the various schools of law, there is disagreement over finer details as well, such as permissible purposes for castration, age limits, and whether castration renders otherwise permissible meat impermissible. *Id.* at 234–36.

¹⁶⁵Abdelkader, *supra* note 158, at 15; FOLTZ, *supra* note 15, at 20.

¹⁶⁶Tlili, *supra* note 162, at 226.

¹⁶⁷FURBER, *supra* note 156, at 32.

male and female animals cannot be separated from one another during mating season, and it seems to be a matter of some debate whether cross-breeding is Islamically permissible.¹⁶⁸

As in Jewish law, Islamic law specifically addresses loading animals with goods. Animals should not be loaded until the owner is ready to get going on the trip, so that the animal doesn't stand around burdened for longer than necessary.¹⁶⁹ Some Islamic scholars also reached the conclusion that when one sees an overburdened animal, one should try to unburden it even against the owner's wishes.¹⁷⁰

The Prophet also placed specific requirements on the use of animals for transportation. He instructed Muslims to not sit on the backs of their animals and chat idly, so as not to burden the animals with having to support human weight for a long time for no good reason.¹⁷¹ Similarly, those traveling by camel or horseback are obligated to give their animals time to graze when there is vegetation and greenery, but to proceed quickly to their destination when there is a drought.¹⁷²

The mere fact that an animal may be usable for a certain task without obvious harm does not render it permissible to use the animal for that task. Islam holds the notion that, insofar as many animals are useful to humans, they provide specific uses only in certain contexts. Thus, for example, it is not permissible to ride a cow as if it were a horse or to use them to plow, even though it is permissible to use cows as sources of dairy and meat.¹⁷³ By similar logic, birds cannot be kept in cages.¹⁷⁴

Islam also evinces a general principle that animals have interests in their own bodies and the products thereof that cannot be overridden or infringed upon. For example, under Islamic Law, owners of sheep do not really own all of the sheep's wool; a contract to sell all of it would be invalid, as cutting the wool down to the sheep's skin would cause the sheep to suffer.¹⁷⁵ A similar limit exists with regard to an animal's milk; it is impermissible to milk all of it.¹⁷⁶ Some milk must

¹⁶⁸FOLTZ, *supra* note 15, at 28–29.

¹⁶⁹Tlili, *supra* note 162, at 229.

¹⁷⁰FURBER, *supra* note 156, at 32.

¹⁷¹Haq, *supra* note 150, at 170.

¹⁷²*Id.*; TLILI, *supra* note 15 at 86.

¹⁷³Haq, *supra* note 150, at 170.

¹⁷⁴*Id.* at 171.

¹⁷⁵Tlili, *supra* note 162, at 226; FURBER, *supra* note 156, at 27.

¹⁷⁶FURBER, *supra* note 156, at 14.

be left over for the animal's young.¹⁷⁷ Muslim jurists also held that an owner must provide nourishment to supplement a mother animal's milk if she doesn't have enough for her young.¹⁷⁸ Likewise, bee-hives cannot be totally stripped of honey.¹⁷⁹

As far as affirmative care goes, not only is proper care of animals one owns required, but Muslim jurists held that it was even permissible to steal food and medical equipment to this end, provided that the animals are on the verge of dying.¹⁸⁰ In such circumstances, one must compensate the victim of the theft at some point.¹⁸¹ Animals must be provided for even if they provide no economic benefit to the owner (e.g., because of sickness or age).¹⁸² Furthermore, an owner is obligated to provide care and nutrition for their animals even at the expense of other property, such as their house, even if such inanimate property is "on the verge of destruction."¹⁸³ Animal owners are responsible for the welfare of animals under their custody, and, if they are unable to care for them, must sell them or free them.¹⁸⁴

Islamic law also confers upon animals a specific right to water (*Haq al-Shurb*).¹⁸⁵ This right is derived from both the Quran and the Hadith.¹⁸⁶ The Quran states that drinking water is a gift from God for human and animal alike.¹⁸⁷ Additionally, one of the details of Moses's story as told by the Quran also helps establish this right. When Moses, out of Egypt, was at the oasis in Midian, he saw two women prevented by the male shepherds there from approaching the water with their

¹⁷⁷*Id.* at 19.

¹⁷⁸*Id.* at 27.

¹⁷⁹*Id.* at 26.

¹⁸⁰FURBER, *supra* note 156, at 21. Most Shaf'is may have even viewed stealing in such circumstances as obligatory. *Id.* at 26.

¹⁸¹*Id.* at 21. This may admittedly be conjecture on my part, but I would assume that there was something almost rhetorical about marking the boundaries of the law this way, and that people didn't actually sneak into their neighbors' homes or barns to pilfer hay and herbs; more likely, the effect of was understood in society that, in such circumstances, one had to help someone out when they didn't have the resources to care for their animals.

¹⁸²*Id.* at 24; FOLTZ, *supra* note 15, at 34.

¹⁸³*Id.* at 21. This injunction comes from Imam al-Ghazaali no less, whose stature among Sunni Muslims approaches sainthood.

¹⁸⁴Haq, *supra* note 150, at 170–71.

¹⁸⁵Wescoat, *supra* note 12, at 637–40; FOLTZ, *supra* note 15, at 35.

¹⁸⁶Technically, one of the "Hadith" bases for this right is a report of the conduct of Umar, the Prophet's second political successor. Such reports are often lumped together with Hadith literature.

¹⁸⁷Wescoat, *supra* note 12, at 641 (citing Quran 25:48–49, 79:33, 80:32).

flocks.¹⁸⁸ He watered the sheep for them, which then led to his meeting their father, the Islamic Prophet Sho'aib, and marrying one of the women.¹⁸⁹ Islamic scholars regard the denial of water as a wrong not only against the two women, but against the animals as well.¹⁹⁰

The right to water is also supported by Ahaadith. A very common Hadith tells of a prostitute who gave some water to a severely dehydrated and thirsty dog, and who had all of her sins forgiven as a result of this act.¹⁹¹ Another Hadith prohibits constructing wells and then prohibiting animals who need the water from obtaining it.¹⁹² And a tradition about Umar, Mohammad's second political successor, states that he flogged a man who was about to slaughter a sheep without first providing it with water.¹⁹³

Thus, we see the general right to water as derived from the Quran and Hadith. The application of this general right at the macro-level has been subject to some variance according to time, place, and the specific creed of the Muslims involved. In general, "running water is common property available to all people and their animals," so long as the animals do not exhaust the entire water supply.¹⁹⁴ Humans do have priority over animals in terms of access to water, at least in Sunni Islam, though some statutory codes, such as the Ottoman Civil Code, did not codify this prioritization.¹⁹⁵

Contemporary scholarship does not present accounts of Muslim jurists opining on particular uses of animals to the extent discussed in the section on Jewish law.¹⁹⁶ However, Professor Tlili recounts somewhat similar material: discussion and debate regarding a set of weirdly specific and cartoonish hypotheticals involving one person's animal either ingesting someone else's valuable good or getting stuck in something.¹⁹⁷ The scenarios presented are, to say the least, obscure: "if a misappropriated thread is used to suture the wound of an animal, then is the thread's owner allowed to take it back?"; "what

¹⁸⁸Quran 28:22-24.

¹⁸⁹Quran 28:24-29. It is not clear whether there is a Biblical analogue to Sho'aib.

¹⁹⁰Wescoat, *supra* note 12, at 642.

¹⁹¹*Id.* at 643.

¹⁹²*Id.*

¹⁹³*Id.* at 645.

¹⁹⁴*Id.* at 643.

¹⁹⁵*Id.* at 644.

¹⁹⁶One assumes that many such legal opinions exist, since that is what *fatwas* are—the Muslim analog of Jewish responsa (Heb: *she'elot u-teshuvot*, "questions and answers").

¹⁹⁷Tlili, *supra* note 162, at 239.

happens if a sheep inserts its head inside a pot to eat something and cannot pull it out?"; "if a small camel goes inside a building and remains there until it becomes too large to exit through the door, should the animal be slaughtered or should a door be [made] or . . . a wall demolished for its sake?"¹⁹⁸

In such situations, Hanafi law accords the least import to the animal interests involved. The school holds that the parties involved should assess the market value of the animal and the other items involved and come to a mutually satisfactory decision on how to proceed.¹⁹⁹ The other legal schools tend to give more consideration to the animal's interest in such situations.²⁰⁰ An important reason for their doing so is the concept of the animals' "hurma," or inviolable rights,²⁰¹ which shall be discussed in Part iii of this section.

Muslim scholars have discussed the treatment of animals during war time rather extensively. Of particular attention was what could be done with animals belonging to the enemy that could not be carried off (apparently for practical reasons) as spoils of war. Hanafi scholars asserted that any such animals could be killed to prevent them from falling into enemy hands, but could not be mutilated to render them unusable to the enemy, such as by hamstringing them.²⁰² Hanbalis believed only animals whose meat was permissible to consume could be killed.²⁰³ The Shaf'i believed that only the mounts of enemy soldiers could be killed.²⁰⁴ Malikis were split between those who believed that any animal potentially useful to the enemy could be killed or mutilated and those who held the Shaf'i position.²⁰⁵

The Shaf'i held this position because they, along with the Hanbalis, tend to be more literalist in their interpretation of the Quran and Hadith than Hanafis and Malikis.²⁰⁶ This literalism, applied to the

¹⁹⁸*Id.*

¹⁹⁹*Id.*

²⁰⁰*Id.* at 240.

²⁰¹*Id.*

²⁰²*Id.* at 236.

²⁰³Tlili, *supra* note 162, at 236.

²⁰⁴*Id.* at 236–37. The Shaf'i jurist al-Maawardi's argument against the positions of other schools does elevate animals in that it analogizes the killing of animals to the killing of humans, and doesn't assume there's a clear legal basis for treating the two scenarios differently. Specifically, he queried why, given that the different legal schools were unanimous that it was illegal to kill the enemy's women or its male non-combatants, the rule should be different as to the killing of their animals. *Id.* at 237.

²⁰⁵*Id.*

²⁰⁶Tlili, *supra* note 14, at 244.

Hadith in particular, inclined them to much more animal-friendly positions than the other schools.²⁰⁷

Islamic law also provides for the conservation of animal species. This is undergirded by the Quran. The Quran states that animals are organized into communities like humans,²⁰⁸ and also that they engage in worship.²⁰⁹ Thus, the extinction of an animal species is the extinction of an entire class of God's worshippers, and, accordingly, a pretty big deal.²¹⁰ Furthermore, the mere fact that God placed the species on the planet is itself reason for humans to preserve them.²¹¹ Accordingly, Islamic law provides for wildlife preserves.²¹²

i. Remedies for Violations of Anti-Cruelty Injunctions

The Islamic tradition heaps much moral opprobrium on animal abuse. Accordingly, Islamic polities generally treated animal cruelty as a matter of criminal law.²¹³ The Andalusian jurist and scholar al-Qurtubi recounts that Umar, the Prophet's second political successor, personally flogged a man who overburdened his camel.²¹⁴ Additionally, at least one legal scholar considers the prohibition against killing animals in times of war to be a matter of "Islamic international criminal law."²¹⁵

Sometimes, however, Islamic governments made certain crimes against animals a matter of regulatory law. During the classical period

²⁰⁷*Id.*

²⁰⁸Sayed Sikander Shah Haneef, *Principles of Environmental Law in Islam*, 17 ARAB L.Q. 241, 250 (2002); Quran 6:38 ("There is no creature that crawls upon the earth, nor bird that flies upon its wings, but that they are communities like yourselves—We have neglected nothing in the Book—and they shall be gathered unto their Lord in the end."). All translations of Quranic verses in this Note are from THE STUDY QURAN (Nasr et al. eds. 2015). The use of the Arabic word "ummah" for "community" here indicates that species of animals are religious communities. *Id.* at 352 (containing a reasonably thorough explanation of the significance of this usage); see also TLILI, *supra* note 14, at 226 (stating that when the Prophet issued the aforementioned ruling concerning stopping to talk idly on their mounts, he said that animals may actually be better than humans, because they might remember God more frequently).

²⁰⁹Quran 6:38; 24:41; TLILI, *supra* note 14, at 166; FOLTZ, *supra* note 15, at 20.

²¹⁰Some have suggested that the story of Noah also supports the notion that the preservation of animal species is an intrinsic good in Islam's view. Abdelkader, *supra* note 157, at 52.

²¹¹Geoffrey E. Roughton, *The Ancient and the Modern: Environmental Law and Governance in Islam*, 32 COLUM. J. ENV'T. L. 99, 110 (2007).

²¹²*Id.* at 113.

²¹³FURBER, *supra* note 156, at 2.

²¹⁴TLILI, *supra* note 14, at 86.

²¹⁵FARHAD MALEKIAN, *PRINCIPLES OF ISLAMIC INTERNATIONAL CRIMINAL LAW: A COMPARATIVE APPROACH* 289 (2011).

of the Ottoman Empire, for example, certain crimes against animals, such as “hunting or disturbing animals on official reserves . . . were often punished exclusively by fines.”²¹⁶ However, the Ottomans extensively used fines during this period not as a way of removing certain matters from the purview of criminal law, but for a variety of practical reasons, such as the logistical difficulties attendant to imprisoning people in rural areas and the high social costs of corporal punishment.²¹⁷

Al-Shaf'i himself said that the legal consequences of failing to properly care for an animal should include government intervention in urban areas, but not in rural areas, likely due to the practical realities prevailing at the time.²¹⁸ The government action al-Shaf'i had in mind was forcing the owner to sell or feed the animal.²¹⁹ Al-Shaf'i stated that when people in rural areas are unable to properly provide for an animal, they could sell or, if the meat is permissible for Muslims, slaughter it.²²⁰ Slaughter is not an option listed by al-Shaf'i for the government to induce or force, however.²²¹ Subsequent Shaf'i scholars added renting out the animal as an option.²²² This is consistent with views from other schools; it was presumed that animal rights would be enforced by the courts and political/executive authorities.²²³

Consistent with government intervention, remedies also included giving the owner money from a common fund to care for the animal, or making the Muslim community as a whole responsible for the animal, though contemporary writers do not explain what this might entail.²²⁴

Remarkably, animals may have legal standing under all Sunni schools of law except the Hanafi school.²²⁵ Apparently, part of the argument made by the other three schools in favor of animals “being represented in court” was “that animals are in reality analogous to

²¹⁶Metin M. Coşgel et al., *Crime and Punishment in Ottoman Times: Corruption and Fines*, 43 J. OF INTERDISC. HIST. 353, 356 (2013).

²¹⁷*Id.* at 357.

²¹⁸FURBER, *supra* note 156, at 18.

²¹⁹*Id.*

²²⁰*Id.* at 18–19.

²²¹*See id.*

²²²*Id.* at 20, 24.

²²³Othman Abd-ar-Rahman Llewellyn, *The Basis for a Discipline of Islamic Environmental Law*, in ISLAM AND ECOLOGY: A BESTOWED TRUST 185, 234 (Richard C. Foltz et al. eds. 2003).

²²⁴FURBER, *supra* note 156, at 25.

²²⁵Llewellyn, *supra* note 223, at 234.

slaves, and . . . [thus] their rights are to be safeguarded by courts.”²²⁶ In the context of contemporary animal rights in the United States, this is pretty significant, but unfortunately this topic does not seem to have been paid sufficient by contemporary scholars conversant with traditional sources of Islamic law.

ii. Dhabihah and Other Rules Pertaining to the Killing of Animals

According to the Hadith, killing an animal is impermissible in Islam unless done for food or the abatement of danger.²²⁷ As shall be discussed shortly, however, Muslim jurists, similar to how their Jewish counterparts applied *tza'ar ba'alei chayyim*, permitted the killing of animals for a variety of reasons that basically all came down to economics and material gain.

Nevertheless, there is unanimity across Islamic law that hunting is forbidden except to procure meat. The Prophet Mohammad stated quite clearly: “I cannot conceive of hunting wild animals except by those who are in need, and for whom therein lies their sustenance.”²²⁸ There may be some disagreement, however, as to whether hunting is permissible when the goal is to use animal products—apparently, some Muslim jurists have taken a broad view of what constitutes “sustenance.”²²⁹ Islam permits the use of dogs and other trained animals to hunt, though the meat from such a hunt is prohibited if the trained animal eats of the animal before ritual slaughter can be performed.²³⁰ When hunting is permissible, it must involve “quick and certain” kills. For example, one may not hunt using stones, as this may injure animals without killing them, causing them prolonged pain and suffering.²³¹ Even permissible hunting is forbidden when

²²⁶*Id.*

²²⁷Haq, *supra* note 150, at 171-72.

²²⁸Omar A. Bakhashab, *Islamic Law and the Environment: Some Basic Principles*, 3 ARAB L.Q. 287, 297 (1988) (citing *Sahih al-Bukhari* and *Sahih Muslim*). It is unclear whether traditional scholars have taken literally that, not only must one eat they kill (and thus only kill animals whose meat is permissible for Muslims to eat), but one must be in a situation where they must rely on consuming meat to adequately nourish themselves.

²²⁹*Id.* at 296–97; see also Tlili, *supra* note 162, at 234 tbl.14.1.

²³⁰See *Sahih al-Bukhari*, Book 72, Hadith 9, SUNNAH.COM, <https://sunnah.com/bukhari/72/9> [<https://perma.cc/9F63-Z3CY>] (last visited Apr. 20, 2022).

²³¹Asmi Wood, *Animal Welfare Under the Shari'a*, 12 MACQUARIE L.J. 155, 163 (2013). This is indeed a major reason why hunting is viewed as cruel by Judaism and permitted in limited fashion by Islam. Contemporary hunting is no doubt a form of animal torture. Animals are often stuck with projectiles that are not retrieved. “Wounded animals often die slowly, over a period

undertaking the pilgrimage to Makkah.²³² And some animals seem to have been categorically impermissible to kill, including ants, bees, hoopoes, and sparrow-hawks.²³³ Islam also forbids the use of animals in blood sport.²³⁴

The requirements of Islamic slaughter (Dhabihah) are extremely similar to those of Jewish slaughter. As per the Prophet's stipulations, the animal's pain during slaughter must be minimized.²³⁵ To this end, the knife used in slaughter must be sharp and free of blemish.²³⁶ It cannot be sharpened in front of any animals, out of consideration for their feelings.²³⁷ The animal should be carried gently to the location of slaughter and permitted to rest on its side.²³⁸ The animal must be securely restrained prior to the cut,²³⁹ which must pierce the trachea and esophagus.²⁴⁰ Further preparation, butchering, and drainage of the carcass can only be done once it is confirmed the animal is fully dead.²⁴¹ Prior to slaughter, animals must be well-rested, well-fed, and well-taken care of in general.²⁴² When animals are mistreated prior to or during slaughter, the meat may be rendered "undesirable."²⁴³

Islam does not have an analogue to the shochet; instead, slaughter following the proper procedures by any mentally competent male or female Muslim, Christian, or Jew constitutes valid slaughter that renders the meat religiously permissible for Muslims to consume.²⁴⁴

of hours or even days, from blood loss, punctured intestines and stomachs, and severe infections." Francione, *supra* note 35, at 109.

²³²Tlili, *supra* note 14, at 81. On this basis, Tlili questions whether hunting even for food is fully morally acceptable in Islamic thought.

²³³*Sunan Abu Dawud, Book 43, Hadith 495*, SUNNAH.ORG, <https://sunnah.com/abudawud/43/495> [<https://perma.cc/6ABG-7Y2W>] (last visited Apr. 21, 2022).

²³⁴Llewellyn, *supra* note 223, at 235.

²³⁵Haq, *supra* note 150, at 172.

²³⁶Abdul Rahman, *supra* note 156; *see also* MUFTI MUHAMMAD TAQI USMANI, *THE ISLAMIC LAWS OF ANIMAL SLAUGHTER* 31–32 (Amir A. Toft trans., 2006).

²³⁷Haq, *supra* note 150, at 172; Tlili, *supra* note 162, at 228.

²³⁸Tlili, *supra* note 162, at 228.

²³⁹Abdul Rahman, *supra* note 156.

²⁴⁰USMANI, *supra* note 236, at 31. For the purposes of this paper, that is a sufficient statement of the rule, but it is actually a little more complicated. *See id.* at 29–31.

²⁴¹Abdul Rahman, *supra* note 156.

²⁴²*Id.* The early Caliph Umar is reported to have flogged a man who failed to provide a sheep with water prior to slaughter. Wescoat, *supra* note 12, at 645.

²⁴³Arabic: "Makrooh". Something that is Makrooh is not impermissible, but it is discouraged (in practice, this really just means it is permissible).

²⁴⁴SHEIKH YASIR QADHI, *IS KOSHER HALAL?* 6 (2012), <https://www.amjaonline.org/wp-content/uploads/2019/02/2012-5-slaughter.pdf> [<https://perma.cc/26TG-UW49>].

Aside from Dhabihah, there are not many circumstances in which the primary sources of Islamic law permit killing animals; they permit killing animals only for food or the abatement of danger posed by the animals in question.²⁴⁵ As mentioned, sport hunting is Islamically forbidden.²⁴⁶

Despite the aforementioned moral opprobrium that the Prophet Mohammad attached to harming animals for sport, the ban on hunting was routinely violated by rich and powerful Muslims throughout history and across diverse geographies.²⁴⁷ The Mughals were especially egregious offenders in this regard. The “hunting” practices they brought with them to India from Central Asia amounted to essentially mass slaughter.²⁴⁸ Thinkers from these time periods sometimes justified hunting on various grounds, such as the training and exercise it provided to both soldiers and their horses.²⁴⁹ However, this justification is not tenable, because the prohibition on hunting derives in part from statements of the Prophet Mohammad specifically condemning the use of animals for sport or target-practice.²⁵⁰

In any event, certain animals are categorically deemed pests or threats and can be killed, according to Hadith, though there is some dispute about this among the Sunni schools of law. The original five animals in this category were rats, scorpions, kites, crows, and rabid dogs.²⁵¹ It seems this category is subject to expansion by Muslim jurists.²⁵² Even though killing these animals is generally permissible, it is impermissible to cause unnecessary pain in doing so, and certain methods, such as burning, are totally off-limits.²⁵³

²⁴⁵Haq, *supra* note 150, at 171.

²⁴⁶Abdelkader, *supra* note 157, at 45, 59; FOLTZ, *supra* note 15, at 25–26, 33. The requirements of ritual slaughter are modified during hunting. USMANI, *supra* note 236, at 27.

²⁴⁷FOLTZ, *supra* note 15, at 33; HOUSNI ALKHATEEB SHEHADA, MAMLUKS AND ANIMALS: VETERINARY MEDICINE IN MEDIEVAL ISLAM 31–32 (2013).

²⁴⁸FOLTZ, *supra* note 15, at 37. The Mughals also practiced the branding of animals on the face, in bald contravention of one of the commands of the Prophet Mohammad discussed in the previous section. *Id.*

²⁴⁹SHEHADA, *supra* note 247.

²⁵⁰FURBER, *supra* note 156, at 8.

²⁵¹*Id.* at 10. Likewise, some animals seem to be categorically impermissible to kill, according to at least one Hadith. See *Sunan Abu Dawud, Book 43, Hadith 495*, SUNNAH.ORG, <https://sunnah.com/abudawud/43/495> [<https://perma.cc/6ABG-7Y2W>] (last visited Apr. 21, 2022); FOLTZ, *supra* note 15, at 21.

²⁵²Tlili, *supra* note 162, at 230.

²⁵³*Id.* at 228, 229. The discussion of pests seems like a good place to note that there is some debate among scholars as to whether insects are subject to the same anti-cruelty provisions as

Despite the clarity of the Hadith, Muslim jurists, like their Jewish counterparts, permitted killing animals in circumstances unsupported by the letter of the law. For example, killing elephants for their tusks was historically permissible under Hanafi and Maliki law, though not under Hanbali or Shaf'i law.²⁵⁴ And the Hanafi school holds a general principle that animals can be killed when there is "need," even if the animals are not to be consumed for food.²⁵⁵

Bestiality is not something addressed in the Quran as it is in the Torah, but there is one Hadith addressing it, which says that, as in Judaism, the animal involved must also be killed.²⁵⁶ The Hadith does not prescribe the method for killing an animal in these cases.²⁵⁷

B. Philosophy and Basic Assumptions

Several features of Islam's philosophy toward animals address topics that are the subject of debate in the American legal academy. First, Islamic scholars on the whole tended to believe that human intellectual superiority over animals was not particularly meaningful in determining the extent of animal rights. Second, Islamic law does not evince a belief that the property status of animals ensures their fair treatment. Third, Islamic law considers animals to have a distinct legal status. Indeed, under Islamic law, animals possess a kind of personhood, just not one that confers the same set of rights as those arising from human personhood.

Islamic scholars did not think that either the right of humans to use animals or human obligations toward animals had anything to do with the mental faculties of animals. To be sure, they did generally believe human faculties to be superior.²⁵⁸ But at least two considerations cut

larger and more familiar animals; for example, some narrations do proscribe the killing of ants and bees. *Id.*

²⁵⁴*Id.* at 234 tbl.1.

²⁵⁵*Id.* at 236.

²⁵⁶See FOLTZ, *supra* note 15, at 21. The Hadith is not universally accepted as authentic. *Id.*

²⁵⁷See *id.*

²⁵⁸Classical Islamic scholars, under the influence of Greeks, divided creatures into the categories of "rational" versus "irrational." FURBER, *supra* note 156, at 4; FOLTZ, *supra* note 15, at 6. Some of them, under this same Greek influence, also subscribed to the "Great Chain of Being" concept. TLILI, *supra* note 14, at 61. They did, however, differ from their Greek predecessors in believing that non-human animals have souls, as well as, of course, their view that all animals worship God. FOLTZ, *supra* note 15, at 6. Interestingly, in light of the debate recounted in Section II.B.iii, the category of "irrational" beings includes not only animals but also children and the mentally defective. TLILI, *supra* note 14, at 139. Thus, although Islamic scholars recognized the cognitive similarity between these human subgroups and animals, they did not think that such similarity

against their believing this superiority should be determinative of the relationship between humans and animals. First, insofar as animals are subjugated to humans in a material sense, in the Islamic worldview, the subjugator is not humans, but God.²⁵⁹ Second, human material dominance over the world was viewed by many within the Islamic tradition as a liability, a power to which is attached serious responsibility,²⁶⁰ not a boon or perk.²⁶¹ Indeed, Islamic theology asserts that humans hold dominion over earth and its creatures in trust, and that “[s]urely the creation of the heavens and the earth is greater than the creation of mankind.”²⁶² Thus, human dominance only increases human obligations towards animals and the rest of the natural world, which Islam generally holds to be of greater import than humanity. Islamic jurists and scholars also often invoked the spiritual nature and capacities of nonhuman animals as bases for their ethical treatment.²⁶³

Muslim jurists also didn’t believe that human owners are incentivized to treat animals well by virtue of economic incentives. Instead, as indicated above, Islam evinces a certain degree of skepticism that people treat animals well when using them for things such as transportation, and thus implements further restrictions and requirements for such uses.

Under Islamic law, animals are accorded legal protections by virtue of their status as living beings. As living things created by God, animals have inviolability, or “hurma.”²⁶⁴ Islam conceptualizes animals as having two layers of hurma, or a kind of dual legal status: they are assets or property of their owners, and injury to them

should necessarily lead to equal treatment of animals. Thus, in this respect, Islamic law is in accord with the arguments of Judge Posner and Professor Epstein.

²⁵⁹TLILI, *supra* note 14, at 92–97, 100; *see also* Haq, *supra* note 150, at 151. Professor Tlili, across multiple writings on this subject, argues that Islam’s primary sources do not assume there is a particularly large gap at all between humans and other animals. *See, e.g.*, Sarra Tlili, *The Meaning of the Quranic Word ‘Dabba’*, 12 J. QURANIC STUD. 167, 182 (2010) (stating that, from an Islamic viewpoint, humans are not “an utterly distinct species . . . excluded from the animal world,” and not “above other animals.”); TLILI, *supra* note 14, at 139 (distinguishing her view that the Quran views animals as moral and rational beings from the predominant traditional view of Islamic scholars that animals are “irrational” along Aristotelean lines).

²⁶⁰*See generally* SPIDER-MAN (Columbia Pictures 2002).

²⁶¹Haq, *supra* note 150, at 150–51.

²⁶²*Id.*; Quran (40:57). The full verse contains the additional sentence: “But most of mankind know not.”

²⁶³Tlili, *supra* note 162, at 226.

²⁶⁴Tlili, *supra* note 162, at 237–38.

violates their owner's rights;²⁶⁵ and they are also creations of God, and thus enjoy certain rights and a degree of inviolability.²⁶⁶ This Godly layer "is much more significant," cannot be abridged, infringed upon, or defeated.²⁶⁷ and the rights it confers exist against the animal's owner him or herself. It is also the same layer of rights that undergirds the rights of humans under Islam.²⁶⁸

V. COMPARISON & CONCLUSION

Jewish, Islamic, and American law all assume that it is permissible to own animals as property and to use them for our purposes, including as food. Neither has granted animals "rights" in the sense of interests that cannot be overridden, such as an unqualified right to life. But Jewish and Islamic legal systems are more protective of animals than American law in several ways, and these ways strike at the heart of what animal rights advocates think is wrong with American law. First, they generally permit, to varying degrees, animal interests to supersede human interests. Second, Islamic law and Jewish law accord animals a distinct status in the law in a way American law does not.

Because Islamic law and Jewish law permit animal interests to supersede human ones at least sometimes,²⁶⁹ they quite simply end up prohibiting a wider range of harmful conduct towards animals than American law, and also establish more robust affirmative duties towards them. As seen in the preceding sections, the religious bodies of law are also more attentive to the emotional needs of animals. American anti-cruelty law, on the other hand, basically amounts to a prohibition against maiming and torturing pets, with the added

²⁶⁵In the Islamic worldview, everything is really owned by God, and human property rights, while they may be strong or even absolute vis-à-vis other humans, are really just usage rights vis-à-vis God. See, e.g., Llewellyn, *supra* note 223, at 198.

²⁶⁶Tlili, *supra* note 162, at 237–38.

²⁶⁷*Id.* at 238.

²⁶⁸*Id.* ("God's rights' generally correspond to humans' obligations, whether in a ritual or social sense."); Llewellyn, *supra* note 226, at 233 (stating that animal rights fall under the category of *Huquq al-Ibaad*, "the rights of God's servants"—i.e., humans and animals); Ebrahim Moosa, *The Dilemma of Islamic Rights Schemes*, 15 J. OF L. AND RELIGION 185, 197–98 (2000) (relating an Islamic conception of rights that views them as theocentric as opposed to the anthropocentric paradigm of Western/secular rights). Note that this conceptual collapse of duties owed to other humans and duties owed to God also occurs in Judaism. See Schochet, *supra* note 2, at 155.

²⁶⁹Examples include, among others, the castration prohibitions, the prohibition against making animals work on the Sabbath, and rules restricting the use of all of an animal's wool or milk.

obligation to feed an animal one owns. As mentioned, it almost totally excludes farmed animals from protection—this exclusion itself a tacit admission that practices that are widespread in that industry would be commonly recognized as cruel.

Of particular note here is the differential treatment of hunting among the various legal systems; the fact that American law permits sport hunting totally undermines any argument that American law accords animals much moral consideration at all. In contrast, Islamic and Jewish law do not think that a human interest in sport, or even practical training for warfare, could justify killing animals. Only a human need for sustenance may do so under Islamic Law, and, as stated above, the activity seems to have been considered historically impermissible by many Jewish scholars.

In further contrast to American law, Jewish and Islamic law do not flinch from the moral and ethical issues attendant to slaughtering animals for food. In fact, they predominantly deal with such issues, and actually subject animal slaughter to heightened regulation and scrutiny. Killing an animal is a serious undertaking under both systems of religious law, subject to numerous particularized rules geared quite explicitly towards minimizing the pain and discomfort of animals during the process. In Jewish law, it is to be performed only by a religious functionary.²⁷⁰ The American system, in contrast, does things such as prescribing the painful suspension of animals from the ceiling for purely hygiene purposes that ultimately redound to the benefit of humans.²⁷¹

The religious systems of law are also much more aggressive in placing affirmative obligations upon humans. For example, whereas the affirmative obligations under American law tend to be *de minimis*, providing basically only that one cannot starve, malnourish,²⁷² or overwork an animal, the obligations under Jewish law reach much further. Jewish law seeks to avoid harm to the animal *ex ante* by forbidding the purchase of an animal if one cannot adequately provide for it.²⁷³ It not only enjoins keeping animals adequately nourished,

²⁷⁰Androphy, *supra* note 101, at 77.

²⁷¹See *supra* text accompanying notes 24–27.

²⁷²Again, due to American law's built-in "customary practice exception," the prohibition against starving animals is meaningless; animals are routinely starved in the Western factory-farming system to achieve practical purposes deemed beneficial to humans. See, e.g., *Farmed Animals*, ANIMAL LEGAL DEF. FUND, https://aldf.org/focus_area/farmed-animals/ (reference the deliberate starvation of egg-laying hens).

²⁷³Cantor, *supra* note 84, at 103 (citing Yevamot 15).

but it obliges this in a manner conferring dignitary benefit on animals, requiring that people feed their animals before they feed themselves. It even goes further, according animals labor rights²⁷⁴ and seeking to ensure their emotional well-being.²⁷⁵ Islamic law contains similar provisions and is quite clear that the obligation to provide affirmative care for animals is one that should be enforced by the government. Given that the lack of government enforcement of American anti-cruelty laws is a consistent complaint of those concerned with animal welfare,²⁷⁶ this is significant.

The fact that animals, under Jewish and Islamic law, have a legal status beyond mere property is fundamental to the superior protections these systems afford animals. Animals under Jewish and Islamic law have status *qua* animals. This status is supra-statutory. It was not invented by legislators or interpreters of the law; the decision to accord animals special status cannot be reversed. In contrast, under the American system, animals are by default merely movable (and destroyable) property, unless statutes or regulations summon them into existence as something else. Anti-cruelty statutes do just that, but only with respect to those animals to which such statutes apply. This situation, whereby, under American law, animals are arbitrarily excluded from protection by certain statutes, could never exist in Jewish or Islamic law.²⁷⁷ Even the provisions both religious systems of law made for categorizing certain species of animals which threaten humans as “pests”²⁷⁸ are consistent with this; such categorizations have to do with the intrinsic characteristics of the animals in question, and not merely, as in American law, with how certain animals or groups of animals affect human interests at a given point in time.²⁷⁹

Obviously, animal rights advocates tend to advocate for far more protection for animals than Islam or Judaism accords them. After all, animals are still on some level property in both Islam and Judaism, and those religions not only permit animals to be killed not only for human dietary purposes, but require such killing acts of ritual

²⁷⁴I refer here to the prohibition against muzzling threshing animals, and the injunction that animals must be given the day off on the Sabbath.

²⁷⁵One example is the warrant, and, in some views, requirement to allow them to roam around on the Sabbath.

²⁷⁶See Sunstein, *supra* note 68.

²⁷⁷Rachels, *supra* note 60, at 163.

²⁷⁸To use the operative word in American law.

²⁷⁹Bryant, *supra* note 42, at 148 n.31.

slaughter. Nevertheless, Islamic and Jewish Law do offer a positive foil to American Law. By conferring upon animals status greater than mere property, they protect animals more thoroughly than American Law, and they do so without needing to establish anything concrete about animal cognition.

Thus, animal rights advocates should stop fighting Jews and Muslims, and instead offer Judaism and Islam as potent examples to counter the narrative advanced by those such as Professor Epstein who portray animal rights arguments as well-meaning, but naïve. These religious traditions show that according animals greater rights would not necessarily lead to some sort of monumental or massive disruption. These are two old, conservative²⁸⁰ bodies of law, one of which has dominated the Near East for nearly the past 1,400 years. The notion that animals should be respected for their status as sentient, feeling creatures and given rights that supersede human interests in at least some contexts is thus not new, however novel such a concept may seem in the West. Accordingly, it hardly seems reasonable for naysayers to claim that the sky will fall down if, for example, the customary practices exception is eliminated, the farming industry is no longer exempted from anti-cruelty statutes, or the United States Department of Agriculture is empowered to promulgate regulations for the benefit of farmed animals. Indeed, the truly time-tested way of relating to animals is to treat them with a great deal of respect and to treat their slaughter for human consumption as a solemn moral undertaking—not to treat them as mere things, their rights as fungible, and to take their pain and suffering casually.

²⁸⁰Notoriously so.