

The limited influence of religious argument in the battle for a fairer legal status of animals used for food

**Introduction**

*“Then God said, ‘Let the earth bring forth living creatures after their kind: cattle and creeping things and beasts of the earth after their kind’; and it was so. God made the beasts of the earth after their kind, and the cattle after their kind, and everything that creeps on the ground after its kind; and God saw that it was good. Then God said, ‘Let Us make man in Our image, according to Our likeness; and let them rule over the fish of the sea and over the birds of the sky and over the cattle and over all the earth, and over every creeping thing that creeps on the earth.’”*

Genesis, The Beginning<sup>1</sup>

The passage above illustrates that the God in which Jews and Christians believe seems to characterize the relationship between humans and animals as one of human dominion. As a result, the view that animals exist to serve humans is a core feature of the ideology of Western, Judeo-Christian cultures. For Christians and Jews, the Torah is a central part of their Holy Scriptures. An analysis of the influence of the Bible in our modern systems of law in France and the United States thus necessarily involves the study of the Old Testament, which builds upon the five books of the Torah.

The sub-standard treatment of animals before the law in Judeo-Christian societies, which consider animals as mere property, has recently been identified by animal protection

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<sup>1</sup> Genesis 1:24

This paper will use the English standard version of the Bible.

movements<sup>2</sup> as one of the main obstacles to the improvement of animal welfare in the present day. This is particularly the case with animals raised for food, which is representative of the idea of domination of humans over animals. France and the United States deal with animals as property under their respective laws in similar ways. However, some differences are noticeable in the ways that each country's laws inform and are informed by religion, especially religious claims related to animals.

As with many complex subjects, Biblical scholars are often in discord when it comes to deciphering what the Bible says concerning the treatment of animals. While religious laws and doctrines exhort humans to treat animals with some degree of respect, the rationale behind these mandates remains ambiguous. Indeed, the concern for animals as creatures of God is very much intertwined with human-centric interests, such as the determination that violence towards animals is often a stepping-stone to violence against humans; however, such underhanded mandates, protecting animals only when it serves human interests, instrumentalizes animals, and from a legal standpoint, leaves them vulnerable the moment they no longer serve a human-centric purpose.

Another important facet of the murkiness of various Biblical interpretations is the way in which readers are left with room to find arguments in support of fairer legal interpretations for animals. This is why animal protection proponents should not dismiss religious arguments out of hand. However, the use of religious claims to support an animal welfare agenda only works in a society that affords legitimacy to legal claims grounded on religious arguments. In that sense, it is interesting to compare the U.S. with France, and determine in which countries the religious arguments for more protection to animals are more likely to shape the law.

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<sup>2</sup> FRANCIONE, GARY, *Animals, Property, and the Law*, Temple University Press, 1995  
FAVRE, DAVID *Living Property: A New Status for Animals Within the Legal System*, 3 Marq. L. Rev. 1021 (2010)

## Animal Law LLM Seminar

This paper will analyze the contribution, if any, of Abrahamic religions to the legal battle for tighter protections for animals. Part I of this paper will give an account of the contribution of the sacred texts of Judaism and Christianity from a historical perspective, examining the traditional Biblical interpretations that have had bearing on our systems of law today. Part II will analyze the potential successes of religious claims, grounded in non-traditional readings of religious texts, in support of a more protective legal status of animals. This paper therefore seeks to determine how the major Western religions might contribute to, or hinder, the contemporary debate over animal welfare. Finally, this paper will attempt to demonstrate the inadequacy of the use of religious arguments in supporting the animal protection agenda. Yet, this is not to say that animal protection advocates should not take such arguments into account, as they can invite religious adherents into the ongoing discussion over the modalities of a more protective legal status for animals.

## **I. The religious texts as the main sources of law**

The Torah sets forth commandments for the Jewish people, and the Talmud interprets, expands, and builds upon those commandments. Even if the interpretation of those laws differs among Jewish scholars, the Old Testament provides a comprehensive body of legal pronouncements that addresses the status of animals. By contrast, the provisions regarding animals in the New Testament are less codified, and require looking at the Church's doctrine and its evolution over time to understand how the Catholics, and subsequently the Protestants, regard animals.

### **A. Torah: Animals are heavily regulated especially those used for food**

The regulations regarding the treatment of animals used for food found in the Torah and in the Talmud go into great detail. The Old Testament enacts a principle of animal ethics, which becomes the basis of many laws regulating the slaughter and consumption of animals.

#### ***1. Animal Welfare in Judaism: the principle of *Tz'ar Ba'alei Hayim****

The principle of *Tz'ar Ba'alei Hayim* in Judaism is complex. While the literal translation from Hebrew means “the suffering of the living creature,”<sup>3</sup> the broader definition of the principle itself and what it entails varies among theologians. Some construe this principle as the prohibition of unnecessary suffering, and others still as the mere suffering, or even more broadly as a duty of compassion for all living creatures.<sup>4</sup> Overall, semantic interpretations notwithstanding, the thrust of *Tz'ar Ba'alei Hayim* is that Jews should consider the suffering of animals. Indeed, according to the principle of *Tz'ar Ba'alei Hayim*,

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<sup>3</sup> CAROLINE DEWHURST, *Protection Animale Et Judaïsme : Compréhension Des Lois De La Torah Concernées, Et Exemples D'applications De Nos Jours*, p. 9 (Ecole Vétérinaire de Maison Alfort, thèse de doctorat 2010)

<sup>4</sup> We find ourselves struggling with various analyses over the interpretation of religious texts, which will be a recurring issue in this paper, as in any work related to religions. More particularly, the issue on the interpretation of what is “necessary suffering” is an issue reminiscent of the interpretation of animal cruelty statutes in French and American law.

## Animal Law LLM Seminar

causing any suffering -or unnecessary suffering depending on the interpretation, to an animal is forbidden in Judaism. More than a mere recommendation, *Tz'ar Ba'alei Hayim* is a Jewish law (*mitzvah*)<sup>5</sup> in the Talmud (Bava Metzia 32b)<sup>6</sup>. *Tz'ar Ba'alei Hayim* is rooted in the following verse of the Torah<sup>7</sup>:

If you meet your enemy's ox or his donkey going astray, you shall bring it back to him. If you see the donkey of one who hates you lying down under its burden, you shall refrain from leaving him with it; you shall rescue it with him.<sup>8</sup>

The prohibition on animal suffering is supported by many other verses in the Jewish Holy Scriptures. For instance, the commentators in the Talmud, and more particularly Maimonides,<sup>9</sup> construe the prohibition on muzzling an ox while tilling the soil<sup>10</sup> as the particular duty humans have to feed the animal with the food it helped produce. More broadly, this verse is understood as a general duty of kindness and compassion towards animals.<sup>11</sup> Another notable provision in Jewish law in one of the seven Noachide laws, that prohibits to tear a limb from a living animal.<sup>12</sup>

Those biblical laws set the basis of an animal ethics in Judaism and have very concrete and far-reaching consequences on the every day life of the Jewish people, historically and up to the present. The table below presents the taxonomy developed by Rabbi Natan Slifkin,<sup>13</sup> which classifies commentary on animals from Jewish Holy texts in three distinct, yet overlapping categories:

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<sup>5</sup> Here "law" has to be understood as command, rather than a law in a strict legal sense. In his book *Man & Beast*, Rabbi Natan Slifkin translates *mitzvah* as a command.

<sup>6</sup> SHLOMO TOPEROFF PESACH, *The Animal Kingdom in Jewish Thought 27* (Jason Aronson Inc., 1995)

<sup>7</sup> RENAN LARUE, *Le Végétarisme Et Ses Ennemis : Vingt-Cinq Siècles De Débat* (PUF 2015)

<sup>8</sup> Exodus 23 4-5

<sup>9</sup> Mishne Torah

<sup>10</sup> Deuteronomy, 25-4, "Thou shalt not muzzle the ox when he treadeth out the corn."

<sup>11</sup> RENAN LARUE, *Le Végétarisme Et Ses Ennemis : Vingt-Cinq Siècles De Débat* (PUF 2015)

<sup>12</sup> SHLOMO TOPEROFF PESACH, *The Animal Kingdom in Jewish Thought 27* (Jason Aronson Inc., 1995) This law is derived from Genesis 9:4, as interpreted in the Talmud (Sanhedrin 59a).

<sup>13</sup> SLIFKIN, Natan, *Man And Beast: Our Relationships With Animals in Jewish Law And Thought*, Yashar Books, 2006, p.138, "Mitsvoths of sensitivity and insensitivity"

<b>Categories of <i>mitzvah</i></b>	<b>The feelings of animals</b>	<b>The value of an animal's life</b>	<b>The role of animals in human's lives</b>
<b>Examples</b>	<ul style="list-style-type: none"> <li>• Prohibition of eating a limb from a living creature<sup>14</sup></li> <li>• Killing an animal by means of <i>Shehita</i><sup>15</sup></li> <li>• Prohibition on slaughtering an animal less than 8 days old<sup>16</sup></li> </ul>	<ul style="list-style-type: none"> <li>• Not slaughtering an animal along with its young<sup>17</sup></li> <li>• Not cooking a kid in its mother's milk<sup>18</sup></li> <li>• Not castrating an animal</li> </ul>	<ul style="list-style-type: none"> <li>• Feeding one's animals before eating<sup>19</sup></li> <li>• Not muzzling a working animal<sup>20</sup></li> </ul>

## 2. Dietary laws and ritual slaughter as an expression of animal welfare concerns

Among the commentary in the Talmud concerning animal-related law, the dietary laws (*kashrut*) and more particularly the ritual slaughter (*shehita*) are illustrative of the general concern Jewish scriptures have for animals and their welfare. The dietary laws, which include the mandate to eat only ritually slaughtered animals, regulate the ways Jews must eat and the content of their food. Thus, biblical laws regarding animal welfare not only apply at specific times of the year, they also apply daily and several times each day.

### a. Dietary Laws

<sup>14</sup> Deuteronomy 12:23

<sup>15</sup> Deuteronomy 12:21

<sup>16</sup> Leviticus 22:27

<sup>17</sup> Leviticus 22:28

<sup>18</sup> Exodus 23:19 ; Exodus 34:26 ; Deuteronomy 14:21

<sup>19</sup> Deuteronomy 11:15

<sup>20</sup> Deuteronomy 25:4

The basic laws of *Kashrut* are based on the books of Leviticus and Deuteronomy. The more detailed provisions of dietary laws were later codified in the Talmud. Food that meets the requirements of *kashrut* is said to be *kosher*.

That Jewish dietary laws exclusively focus on animal products is noteworthy for readers concerned with animal welfare because it allows one a starting point to trace a coherent position on animal ethics in Jewish law. Here is a brief overview<sup>21</sup> highlighting the salient features of those laws:

1. Certain animals such as the camel, the hyrax, the hare, and the pig may not be eaten at all. This restriction includes the flesh, organs, eggs and milk of the forbidden animals.
2. Of the animals that may be eaten, the birds and mammals must be killed in accordance with Jewish law.
3. All blood must be drained from meat and poultry or broiled out of it before it is eaten.
4. Certain parts of permitted animals may not be eaten.
5. Fruits and vegetables are permitted, but must be inspected for bugs (which cannot be eaten)
6. Meat (the flesh of birds and mammals) cannot be eaten with dairy. Fish, eggs, fruits, vegetables and grains can be eaten with either meat or dairy. (According to some views, fish may not be eaten with meat).
7. Utensils (including pots and pans and other cooking surfaces) that have come into contact with meat may not be used with dairy, and vice versa. Utensils that have come into contact with non-kosher food may not be used with kosher food. This applies only where the contact occurred while the food was hot.

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<sup>21</sup> *Kashrut: Jewish Dietary Laws*, Judaism 101, jewfaq.org <http://www.jewfaq.org/kashrut.htm> (last visited May 5, 2016)

b. Kosher slaughter: *shechita*

Ritual slaughter is one of the most prominent embodiments of *kashrut* in Judaism. The Torah's account of God's instructions regarding the diet humans should adopt<sup>22</sup> provides context for ritual slaughter as a measure intended to contribute to the wellbeing of animals. While God prescribes a meatless diet to Adam and Eve<sup>23</sup>, He then seems to revise this prescription, allowing Noah and his sons to eat "every moving thing that lives"<sup>24</sup>. There is, however, one consistent rule concerning meat consumption, which provides the basis for the regulations of ritual slaughter: "You must not eat meat that has its lifeblood still in it."<sup>25</sup> Additionally, according to Rabbi Toperoff: "many of the laws of ritual slaughter are based on the assumption that it is absolutely vital to reduce to a minimum the pain inflicted on an animal when taking its life".<sup>26</sup> Therefore, *Tz'aar Baalei Hayim* also extends to animals used for food. As a result, the following techniques are forbidden:

- "*Shehiyah*" (delay). There should be no delay or interruption while the slaughtering is being performed. The knife should be kept in continuous motion, forward and backward, until the organs are cut through [...].
- "*Derasah*" (pressing). The knife must be drawn gently across the throat, without any undue exertion on the part of the *shoḥet*<sup>27</sup> [...].
- "*Haladah*" (digging). The knife must be drawn over the throat. If it is placed between the windpipe and the gullet, or under the skin, or under a cloth hung over the neck of the animal, so that any part of the knife is not

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<sup>22</sup> WALTERS, KERRY S., PORTMESS LISA, *Religious Vegetarianism* 94 (State University of New York Press, 2001)

<sup>23</sup> Genesis 1:29 "And God said, 'Behold, I have given you every plant yielding seed that is on the face of all the earth, and every tree with seed in its fruit. You shall have them for food.'"

<sup>24</sup> Genesis 9:3

<sup>25</sup> Genesis 9:3

<sup>26</sup> SHLOMO TOPEROFF PESACH, *The Animal Kingdom in Jewish Thought* 26 (Jason Aronson Inc., 1995)

<sup>27</sup> The person whose role is to slaughter the animal



visible while *shehitah* is being performed, although the slaughtering is otherwise correctly executed, the animal is unfit for food [...].

- "*Hagramah*" (slipping). The limits within which the knife may be inserted are from the large ring in the windpipe to the top of the upper lobe of the lungs when inflated, and the corresponding length of the pharynx . [...].
- "*Tkkur*" (tearing). If either the windpipe or the gullet is torn out or removed from its regular position during the slaughtering, the animal becomes unfit for food.<sup>28</sup>

c. The rationales behind *Tz'ar Ba'alei Hayim*

To this point, this paper has suggested that animal welfare is a core, underlying feature of Jewish dietary laws. Yet, neither the Torah nor the Talmud states specific reasons for *Tz'ar Ba'alei Hayim* and the resulting dietary laws. For some, God's commandments should not be subject to questioning or investigation; man's role is simply to obey them.

However, many Jewish scholars have attempted to account for the reasoning behind biblical dietary laws. For instance, Maimonides<sup>29</sup> emphasizes the health and hygiene aspects of such prohibitions. Besides such science-based considerations, ethical explanations might account for the purpose of laws of *kashrut*, including ethics in the treatment of animals. The main difficulty though in determining the ethical basis of Jewish dietary laws is due to the many rival interpretations of what those laws entail.

First and as mentioned earlier, the practical meaning of *Tz'ar Ba'alei hayim* is rather confusing. On the one hand, *Tz'ar Ba'alei hayim* is a requirement to take into account

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<sup>28</sup> Wilhelm Bacher, Julius H. Greenstone, *Shehitah*, Jewish Encyclopedia (May 5, 2016, 10:27 PM) <http://www.jewishencyclopedia.com/articles/13531-shehitah>

<sup>29</sup>Solomon Schechter, Julius H. Greenstone, Emil G. Hirsch, Kaufmann Kohler, *Dietary Laws*, Jewish Encyclopedia (May 5, 2016, 10:27 PM) <http://www.jewishencyclopedia.com/articles/5191-dietary-laws>

animal suffering<sup>30</sup> by enacting rules related to their treatment and killing. For example, one can see an underlying call on compassion in the phrasing of the fundamental prohibition on mixing meat and dairy in the preparation of food.<sup>31</sup> The provision, repeated in three verses, states: “*You shall not boil a young goat in its mother’s milk.*”<sup>32</sup> It seems that it is the fact of boiling a young animal in the milk of its mother, or just any milking female animal, that is being condemned before everything else, because deemed cruel: the mother’s milk is supposed to give life, not serve death. Similarly, Jewish communities argue that ritual slaughter should strive for an ethic of humaneness, by the use of technique designed to reduce the suffering of animal.<sup>33</sup>

On the other hand, *Tz’aar Ba’alei hayim* remains a very human-centric principle: despite numerous restrictions concerning the types of animals that are allowed to be killed, and the many rules surrounding the method of slaughter, *Tz’aar Ba’alei hayim* does not exclude the killing of animals for food. Rather, the law regulates such killing and grounds it even further in Jewish tradition<sup>34</sup>. Furthermore, scholars also explain animal ethics around ritual slaughter in Judaism and the consumption of animal products as a way to protect the human community from any form of cruelty<sup>35</sup>, rather than protecting animals for their intrinsic value. Consequently, it could be argued that *Tz’aar Ba’alei hayim* is more about humans than animals.

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<sup>30</sup> RENAN LARUE, *Le Végétarisme Et Ses Ennemis : Vingt-Cinq Siècles De Débat* 87 (PUF 2015), quoting Maimonides.

<sup>31</sup> CAROLINE DEWHURST, *Protection Animale Et Judaïsme : Compréhension Des Lois De La Torah Concernées, Et Exemples D’applications De Nos Jours* 82 (Ecole Vétérinaire de Maison Alfort, thèse de doctorat 2010)

<sup>32</sup> Exodus 23:19 ; Exodus 34 ; Exodus 26

<sup>33</sup> That some argue to have been designed to reduce –or even suppress, animal suffering. Cacherout, Consistoire de Paris île-de-France, <http://www.consistoire.org/113.la-cacherout?PHPSESSID=tm8p4aor2456o4345gn8l4p390> (last visited May 5, 2016)

<sup>34</sup> Some explanations over *Tz’aar Ba’alei hayim* refers to Jewish identity through food habits. The many laws stemming from *Tz’aar Ba’alei hayim* would thus be a way for Jews to recognize themselves, and also to distinguish from non-Jews –especially the Christians in the Middle Age.

<sup>35</sup> RENAN LARUE, *Le Végétarisme Et Ses Ennemis : Vingt-Cinq Siècles De Débat* 88 (PUF 2015)

*At first, the concept of Tz'ar Ba'alei hayim in Judaism appears to entail a rather protective legal status to animals. However, while Tz'ar Ba'alei hayim does provide some basic protections to animals based on their ability to suffer and through precise regulations, it remains a human-centric legal principle that fails to question the domination of humans over animals.*

*Tz'ar Ba'alei hayim still has the merit to consider animals as sentient beings entitled to respect. Yet, the evolution in the interpretation of the Holy Scriptures through the expansion of Christianity fails to integrate this principle, and that which could have provided a promising basis for more protection of animals in religious law has been lost.*

## B. The New Testament and the emergence of Christianity: a clear distinction from Judaism concerning the treatment of animals

Christianity differs from Judaism in that it leaves aside animal ethics, as addressed in the Old Testament and interpreted in the Talmud. The schism between Catholic and Protestant highlights the position of the Catholic Church even more, as the Catholic dogma positions itself against any forms of compassion towards animals used for food.

### 1. Catholicism: the abandonment of the animal issue

While there is evidence of the existence of animal ethics in the Old Testament, Christian theologians eliminate it by emphasizing the centrality of humans within creation.<sup>36</sup> In this context, the domination of men over animals becomes obvious and remains unquestioned.<sup>37</sup> Again, Christian dietary rituals reflect the minimal degree to which Christian doctrine is concerned with animal suffering. Once liberated from the Jewish dietary laws, Christian teachings allow the consumption of animal flesh in any circumstance, with the notable exception of lean days.

The debate that took place among the apostles over the dietary laws is helpful in understanding the major shift in animal ethics from Judaism to Christianity. By deciding to

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<sup>36</sup> HOBGOOD-OSTER, LAURA, *Holy Dogs and Asses – Animals in the Christian Tradition* 131 (University of Illinois Press, 2008)

<sup>37</sup> See BARATAY, Eric, *L'Eglise et l'Animal*, édition du Cerf, 2015 on the underlying philosophical principles of the Church regarding animals throughout the history of Christianity from Augustinism until the 13<sup>th</sup> century, to Thomism after the Counter-reform, to vehement supporter of the Cartesianism in the late 17<sup>th</sup> century.

give-up the dietary laws<sup>38</sup> during the Council Of Jerusalem,<sup>39</sup> the Apostles pursued a double objective: differentiation from the old religion and proselytism. The expansion of a renewed religion beyond what the apostles seem to consider as too much of a cloistered religious community necessarily involved that the Church be more flexible concerning the consumption of animals and animal products.<sup>40</sup> More than just abandoning Jewish dietary prescriptions, the new Christians openly criticized their former ways in Judaism. That is how Renan Larue interprets Matthew's verses, when he says that a man is primarily defined by what comes out of his mouth, rather than what goes in it.<sup>41</sup> By abolishing the Law of Moses, Christianity breaks with the principle of *Tz'aar Baleim Hayim*.

The decision to leave dietary laws and animal ethics aside is supported by Jesus Christ's view on animals. Larue identifies Christ with what the animal protection movement today would call a speciesist, and cites many examples in the Bible demonstrating Jesus' lack of compassion towards animals.<sup>42</sup> The exorcism of the Gerasene demoniac, as related by Mark, Matthew, and Luke,<sup>43</sup> supports Larue's claim<sup>44</sup>. In this episode, Jesus frees a man from a demon by sending it into a herd of two thousands pigs, who he then sends to drown in the river. Another example of Jesus Christ's speciesism refers to an incident related by Matthew. A man objects that Jesus cure him on the day of Sabbath, and Jesus replies that if the Law allows one to save a lamb from a pit, he should be able to cure a man, adding "How much

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<sup>38</sup> Acts of the Apostles, 11:5-10

<sup>39</sup> The Council Of Jerusalem, as related in the Acts 15:1 – was held in Jerusalem around 50 AD. Essential decisions regarding the new direction of the Christian church were made regarding the compliance with the Law of Moses. The Acts narrate the debate over what should be required of new believers, which mainly focused on male circumcision. However, the compliance with dietary laws was also of importance. On the one hand, some communities, mainly the Pharisees, and James wanted the newly converted to abide by the Law of Moses, as set forth in the Old Testament. On the other hand, Paul deemed those laws unnecessary when preaching outside of Jewish communities. Paul's view eventually won over, while the prohibition on eating blood, fornication and idol worship was retained. The historicity of the Council of Jerusalem is still debated among scholars.

<sup>40</sup> RENAN LARUE, *Le Végétarisme Et Ses Ennemis : Vingt-Cinq Siècles De Débat* (PUF 2015)

<sup>41</sup> Matthew, XV 11;17, quoted in RENAN LARUE, *Le Végétarisme Et Ses Ennemis : Vingt-Cinq Siècles De Débat* (PUF 2015)

<sup>42</sup> RENAN LARUE, *Le Végétarisme Et Ses Ennemis : Vingt-Cinq Siècles De Débat* 92-95 (PUF 2015)

<sup>43</sup> Mark, 5:11-13 ; Mark 5:1–20 Luke 8:26-39 Matthew 8:28

<sup>44</sup> HOBGOOD-OSTER, LAURA, *Holy Dogs and Asses – Animals in the Christian Tradition* 42 (University of Illinois Press, 2008)

more valuable is a person than a sheep! Therefore, it is lawful to do good on the Sabbath."<sup>45</sup>

Jesus Christ, casting a lamb as a nominally valuable creature, firmly places the lives of humans as intrinsically greater than animals.

Paradoxically, Jesus resorts to animal symbolism by frequently comparing himself to an animal to teach care and compassion to others. J. R. Hyland illustrates this with a verse from the gospel of Matthew, where Jesus compares himself to a hen caring for her chicks<sup>46</sup>. Without necessarily incarnating himself into an animal, he would more often use the metaphor of the good shepherd, comparing the relationship between men and God with the relationship between a shepherd and his flock<sup>47</sup>. However, even then, Jesus' point is to either teach compassion between men or exemplify God's love for men, not the duty of compassion men would owe to animals.

Similarly, during the Middle Ages, the blessing of the Catholic Church to certain animals takes an anthropocentric and proselytic posture. The religious rituals during the Middle Ages in French rural areas always involve the presence of a human saint and animals used in the service of human tasks, such as cattle<sup>48</sup>. The blessing serves the purpose of curing the cattle and protecting them from disease. Moreover, it could also serve the purpose of evangelization by a resort to syncretism, mixing pre-Christian religious rituals with Christian ones.

One other way to understand the degree of consideration, or lack thereof, granted to animals by Christians is to analyze the dietary prescription in early Christianity<sup>49</sup>. While the Apostles officially abolished the Law of Moses, meat abstinence was still prescribed during fasting periods. The number of fasting days prescribed by the Roman Catholic Church

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<sup>45</sup> Matthew 12:12

<sup>46</sup> Matthew 6:43-45

<sup>47</sup> Hyland, J.R., *The Slaughter of Terrified Beasts: A Biblical Basis for the Humane Treatment of Animals* 58-59 (Viatoris Communications, 1988)

<sup>48</sup> BARATAY, Eric, *L'Eglise et l'Animal* 44-45 (édition du Cerf, 2<sup>nd</sup> edition 2015) gives many examples and descriptions of the rituals.

<sup>49</sup> Before 325, the Council of Nicaea

evolved over time, but Lent remained the most stable one. Lent is a forty-day period in the Liturgical calendar commemorating Christ's fasting while he endures the Devil's temptation in the Judean desert. This temporary meat abstinence gave rise to paradoxical alimentary rituals: while preaching meat abstinence during Lent, the Church condemned Christians who refrained from eating animal flesh on other days of the Liturgical calendar. For instance, the ecclesiastical councils in the 4<sup>th</sup> century condemned the excessive righteousness of certain communities<sup>50</sup> and even went as far as requiring the clergy to eat meat at least once a week before Lent under penalty of exclusion<sup>51</sup>.

Later in history, the mere condemning of vegetarian sects turned into a bloody repression during the Inquisition. Vegetarianism thus became indicative of paganism as the persecution of Cathars<sup>52</sup> between 1209-1229<sup>53</sup> illustrates. In other words, the Catholic Church's dietary policy relies on the ambiguity consisting in the promotion of meat consumption on one hand, while prescribing meat abstinence during lean days, to make sure that meat abstinence is synonymous with privation and repentance, rather than a legitimate concern for animals.

The subsequent evolution of the diet during Lent, progressively allowing the consumption of animal products, fish and eventually white meat, while considerably reducing the overall number of lean and fasting days in the Liturgical calendar, further demonstrates the general lack of interest of the Catholic Church for animals.<sup>54</sup>

## 2. Reform Christians: a deeper analysis of the Old Testament

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<sup>50</sup> The Encratic and the Manicheans were strictly vegetarian sects, who considered the meat to be impure.

<sup>51</sup> BARATAY, ERIC, *L'Eglise et l'Animal* 16 (édition du Cerf, 2<sup>nd</sup> édition 2015)

<sup>52</sup> Some scholars consider Cathars as the heirs of the Manicheans, who were already condemned by early Christianity because of their vegetarianism. Margaret Puskar-Pasewicz reminds that the Catholic church identifies them as "neo-Manicheans" in *Cultural Encyclopedia of Vegetarianism*, Greenwood, 2010, "France"

<sup>53</sup> This episode is known as the Albigensian Crusade. NIEL FERNAND, *Albigeois et Cathares* (PUF Que sais-je 2010)

<sup>54</sup> RENAN LARUE, *Le Végétarisme Et Ses Ennemis : Vingt-Cinq Siècles De Débat* 114-118 (PUF 2015)

Protestants opposed Catholics on a number of issues ultimately leading to the schisms of 1529<sup>55</sup> and 1536<sup>56</sup>. A recurrent criticism of the Protestants towards Christianity was the overall sense of shallowness the Roman Catholic Church conveys through its discourse. Just like they denounce the abuse of indulgences, the Protestants gave up the few remaining alimentary prescriptions to promote a long-term temperance as opposed to short times of repentance that they deem to be shallow. Without promoting a specific diet, the general trend among Protestants following the 16<sup>th</sup> century schism was to reduce the consumption of animal flesh.

However, the most important role of Protestants in the improvement of animal welfare lies in setting the principles enabling the animal protection movement to emerge in Europe, and Protestants cultivated these conditions more so, later in the British colonies on the American continent. Even though Jean Calvin takes a position against vegetarianism<sup>57</sup>, the liberalization<sup>58</sup> of Protestant and Anglo-Saxon societies allows people to more freely express their opinion, and to influence religious communities. This stands in sharp contrast with the Catholic Church dogma, which has traditionally shut down any philosophical argument favorable to animal welfare. In contrast with the Roman Catholic Church, Protestantism is a movement composed of a multiplicity of strains of Christianity rather than one structured Church.

By refusing the centralization of the church and eliminating many of the clergy, Protestants seek a more direct relationship between human subjects and a transcendent God.

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<sup>55</sup> Martin Luther in Germany. Nicole Lemaître, *Renaissance et réformes. La Réforme en rupture(s)* (May, 5, 2016, 10:51 PM) <http://histoire.univ-paris1.fr/agregation/moderne2003/cours10.htm>

<sup>56</sup> Jean Calvin in Switzerland, *The Calvinist Reformation in 16<sup>th</sup> century*, museeprotestant.org <http://www.museeprotestant.org/en/notice/the-calvinist-reformation/> (last visited May, 5 2016)

<sup>57</sup> RENAN LARUE, *Le Végétarisme Et Ses Ennemis : Vingt-Cinq Siècles De Débat* 129 (PUF 2015) Such prescription is not followed within the Protestant community, given the characteristic of Protestantism which, in contrast with the Roman Catholic Church, opposes dogma.

<sup>58</sup> Sometimes to a such extent that it was described as the “Paradise of Quacks” where any sorts of health claims was allowed, including those related to a vegetarian diet in GREGORY, JAMES, *Of Victorians and Vegetarians, The Vegetarian movement in Nineteenth-century Britain*, 69 (I.B.Tauris, 2007)

As a result, there are no general recommendations or laws enacted by one authority. In such a context, it is thus more relevant to look at the trends and currents in Protestant thought regarding animals. The British Protestant society allows concerns over animal welfare to grow inside and outside of the United Kingdom's borders, as opposed to a more conservative Catholic French society, whose response reaffirms the principles it had long held already<sup>59</sup>.

a. British Protestantism and animals for food: a matter of moral purity

A discourse favorable to animal protection seems to emerge among Protestants during the Victorian period in England, a period defined by its religiosity. The first anticruelty statute applicable to animals used for food<sup>60</sup> was passed in 1822, just a few years before Queen Victoria's reign began. Shortly after, in 1824, the Royal Society for the Protection of Animals was founded. Concern over animal welfare continued to grow during the Victorian era. Once again, the analysis of vegetarian habits is instructive. Vegetarianism in Victorian Britain was a minority practice within society<sup>61</sup> grounded in the wider temperance movement and puritanism. It is also connected to a utopian vision of society.<sup>62</sup> James Gregory<sup>64</sup> defines vegetarianism as a movement rather than an ideology<sup>65</sup>. For this reason, it is hard to determine to what degree vegetarianism is connected to religion.

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<sup>59</sup> BARATAY, ERIC, *L'Eglise et l'Animal* 16 (édition du Cerf, 2<sup>nd</sup> edition 2015)

<sup>60</sup> Martin's Act.

<sup>61</sup> GREGORY, JAMES, *Of Victorians and Vegetarians, The Vegetarian movement in Nineteenth-century Britain*, I.B.Tauris, 2007, Introduction p.1

<sup>62</sup> To that extent, it is interesting to see that the Utopians in Thomas Moore's *Utopia* were vegetarian, as reminded in PUSKAR-PASEWICZ MARGARET, *Cultural Encyclopedia of vegetarianism "France"*(Greenwood, 2010)

<sup>63</sup> GREGORY, JAMES, *Of Victorians and Vegetarians, The Vegetarian movement in Nineteenth-century Britain*, Introduction (I.B.Tauris, 2007)

<sup>64</sup> *id.*

<sup>65</sup> Renan Larue defines it as an "independent doctrine" in RENAN LARUE, *Le Végétarisme Et Ses Ennemis : Vingt-Cinq Siècles De Débat 189-190* (PUF 2015)



On the one hand, vegetarianism could be contextualized in the religious puritan tradition, along with other measures to improve personal hygiene, like teetotalism<sup>66</sup>. Furthermore, in the vegetarian movement, religious adherents comprise the core of its practitioners, and they play an essential role in the diffusion of arguments in favor of such a diet. The creation and development of the Vegetarian Society in England provides an example of this<sup>67</sup>. On the other hand, it could easily be argued that the historical and social context in which the vegetarian movement develops accounts for the prominence of religious arguments in the movement, as in any other social movement at that time. In other words, vegetarianism would happen to be religious because religion is diffuse during the Victorian era and in the late 19<sup>th</sup> century<sup>68</sup>.

Even though animal welfare was a minor element for vegetarians in Victorian England, and vegetarians made little attempts to advance the cause of animal rights via Parliamentary laws,<sup>69</sup> vegetarianism forges a link between the eating of animals and animal welfare that future activists build upon, as this dietary choice rapidly evolves into a more institutionalized activist movement<sup>70 71</sup>.

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<sup>66</sup> GREGORY, James, *Of Victorians and Vegetarians, The Vegetarian movement in Nineteenth-century Britain*, 7 (I.B.Tauris)

To that extent, it is notable that while the vegetarian diet could be seen as liberating, it is nothing more than another conservative injunction.

<sup>67</sup> The Vegetarian Society was founded in 1847 in England, under the patronage of the Bible Christian Church. The Bible Christian Church, founded in 1809 by Rev. Cowherd, promoted meat and alcohol abstinence, was very much influenced by Swedenborgianism. More specifically, Rev. Cowherd would condemn the inhumane treatment of animals. PUSKAR-PASEWICZ MARGARET, *Cultural Encyclopedia of vegetarianism “Christian Bible Church (English)”* (Greenwood, 2010)

<sup>68</sup> Actually, the success of the Vegetarian Society, which would mainly attract members of Bible Christian Church at its creation, coincides with the disinterest of people in the Bible Christian Church. Even more interesting is the fact the Bible Christian Church then merged with a Unitarian church, which could be also considered as a form of “secular” spirituality, where all forms of religions are accepted and celebrated. PUSKAR-PASEWICZ MARGARET, *Cultural Encyclopedia of vegetarianism “Christian Bible Church (English)”* (Greenwood, 2010)

<sup>69</sup> The Martin’s Act was passed in 1822. David Favre, *The Development of the Anti-Cruelty Laws During the 1800’s*, Michigan State University College of Law, 1993

<sup>70</sup> It is interesting to note that the institutionalization of the activism within the Vegetarian Society drew its inspiration from the method of proselytism and evangelization. The description of the Vegetarian Society methods of activism to gain support among the working class and that they inherit from the Bible Christian Church is illustrative of this. PUSKAR-PASEWICZ MARGARET, *Cultural Encyclopedia of vegetarianism “Christian Bible Church (English)”* (Greenwood, 2010) members profiles of the Vegetarian

b. Animal welfare as a secondary motivation in the United States vegetarian movement

In the United States, and prior to the development of the vegetarian movement under the influence of England in the mid-19<sup>th</sup> century, the Puritans of the Massachusetts Bay Colony passed the first statutory protection for farmed animals.<sup>72</sup> The Maine Legislature enacted the first anticruelty statute almost two century after in 1821, followed by New York, Massachusetts, Connecticut and Wisconsin<sup>73</sup>. Shortly after, through the creation of the Vegetarian Society, vegetarians back in England institutionalized the movement. The process in the USA is similar to that which took place in England, but the range and influence of Protestant vegetarian sects was larger<sup>74</sup>. Indeed, the history of vegetarianism in the USA is very much related to the thriving of certain small churches, such as the Bible Christian Church of England, which co-founded the American Vegetarian Society (AVS)<sup>75</sup>.

Similar to their British counterparts, the AVS focuses their discourse in large part around moral and physical health. Animal rights is one of the issues the AVS hoped to reform, along with abolition, women's suffrage, economic equity and health reform. The Seventh-day Adventist church also prescribes vegetarianism, at the behest of its founder, Ellen G. White, who theorizes vegetarianism independently from the development of vegetarianism

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<sup>71</sup> GREGORY, James, *Of Victorians and Vegetarians, The Vegetarian movement in Nineteenth-century Britain*, I.B.Tauris, 2007

<sup>72</sup> "No man shall exercise any Tyranny or Cruelty towards any brute Creature which are usually kept for man's use" DAVID J. WOLFSON, *Beyond the law - Agribusiness and the systematic abuse of animals raised for food or food production*, 14-15, 1999.

<sup>73</sup> David Favre, *The Development of the Anti-Cruelty Laws During the 1800's*, Michigan State University College of Law, 1993 Those law considered cruelty regardless of the owner which reveals concern over animal welfare. They were passed before the Martin's Act in England.

<sup>74</sup> It is important to grasp the few philosophical concepts attached to process of the British colonization, in what will then become the United States of America, and which could explain why vegetarianism resonated more there at that time. The discovery and the conquest of the new American territory were supported by the idea that a new beginning was made possible. Many religious communities attached a biblical meaning to the settlement, seeing America as an untouched land, reminiscent of the promise land, and comparable to a new Eden. Presented with the opportunity to build a new world and society from scratch, and far away from the vices of modernism and industrialization of Europe, many responded to what they interpreted as a call from God to create a more perfect world and that made complete sense with the predestination doctrine in Protestantism.

<sup>75</sup> The AVS is cofounded in 1850 by Reverend William Metcalfe, a member of the Bible Christian Church of England, which officially prescribes vegetarianism PUSKAR-PASEWICZ MARGARET, *Cultural Encyclopedia Of Vegetarianism "Vegetarian Society of America" and "Bible Christians, Philadelphia"* (Greenwood, 2010)

as a social justice movement. Therefore, the concern over health and temperance remains prominent in her writings.<sup>76</sup> Similarly to the Victorian era vegetarian movement, in the Seventh-Day Adventist Church in America, there is no specific mention of animal welfare supporting the doctrine of vegetarianism. Finally, the American Protestant group who uses their theological autonomy to advance the cause of vegetarianism from a different, ecological and pacifist angle, is the Quakers. Quakerism does not fully integrate vegetarianism, but certainly has some interest in the temperance movement, social justice, as well as environment protection, which also integrates animals through wildlife conservation<sup>77</sup>.

To conclude, the doctrines and practices related to the treatment of animals in the context of American Protestantism are not necessarily for the purpose of improving the conditions of the animals themselves. Animals were already the object of anticruelty laws in England and the USA before the thriving of the vegetarian movement. Rather, those Protestant doctrines and practices were part of broader efforts towards moral and physical purity. Even though the numerous movements within Protestantism do not specifically address animal welfare, they advanced the cause of animal protection far beyond the rather reactionary position of the Catholic Church.

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<sup>76</sup> Following a vision where God tells her that the concern over one's health is a duty, she prescribes the abstinence of meat, as well as tobacco, coffee, tea, and medical drugs. She also considers that meat consumption contributes to the excitement of passions and therefore need to be prohibited PUSKAR-PASEWICZ MARGARET, Cultural Encyclopedia Of Vegetarianism "Seventh-Day Adventists" (Greenwood, 2010)

<sup>77</sup> Quakerism also began as a utopian movement and is known to have always promoted gender equality and pacifism. In 1747 Ann Lee, an English Quaker, founded a utopian society called the Shaker Church, and whose members are vegetarian PUSKAR-PASEWICZ MARGARET, Cultural Encyclopedia Of Vegetarianism "The Shakers" (Greenwood, 2010)

## **II. The interpretation and translation of religious laws into modern common and civil law systems in the US and in France**

In this section, this paper will first attempt to analyze what is left of the religious provisions enacted in the Bible and doctrines based on Jewish and Christian religious texts in contemporary laws. Secondly, as animal advocates often set forth religious arguments regarding the treatment of animals used for food in an attempt to resonate with a dominant culture to some degree still influenced by religion, it is relevant to determine whether such a strategy contributes to the creation of a more protective legal status for animals or not.

### A. The heritage of religion in modern Western, Judeo-Christian law

While Israeli law is partly based on biblical law, French law largely mirrors the Catholic legal tradition. On the other hand, the US legal system is built on British Common Law, a Protestant country. This should indicate that each of those countries deals with animals in a different way, influenced to various degrees by their respective religious traditions. However, while they approach animals in a different way, it appears that religious traditions seldom shape legal provisions regarding animals.

#### *I. The not-so-special case of Israel*

Given its history, Israeli law, including provisions regulating animals, is derived from British and Jewish religious law.<sup>78</sup> To that regard, and in spite of being a secular state, the provisions of biblical law regarding the prohibition of unnecessary suffering on animals are still prevalent to some degree in contemporary Israeli law.

Religious law as set forth in the Old Testament and in the Talmud are still enforced within religious communities in Israel, to a varying degree depending on their respective interpretation of the Holy Scriptures. However, even if Israeli law as enacted by the

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<sup>78</sup> MARIANN SULLIVAN & DAVID J. WOLFSON, What's Good for the Goose...The Israeli Supreme Court, Foie Gras and the Future of Farmed Animals in the United States, 70 *Law and Contemporary Problems* 139-174 (Winter 2007)

Legislature and applied by the courts does not strictly follow religious prescriptions<sup>79</sup> in virtue of secularism, there are identifiable traces of the principle of *Tz'aar Balem Hayim* in Jewish contemporary law. Indeed, Israel is arguably one of the most advanced countries in terms of legal protections for animals, mostly because such protections include farmed animals. Following a series of decisions by the Supreme Court, laws were passed extending the legal protections afforded to farm animals.<sup>80</sup>

The Israeli Supreme Court's decision to ban the production and the importation of *foie-gras*, which then provided basis for important regulations in the context of animal farming, illustrates the inclusiveness of animal protection laws in Israel. In the 2003 case *Noah v. The Attorney General*<sup>81</sup>, the Supreme Court decided that the production of fatty liver should be banned under the Animal Protection Act. By doing so, the Israeli Supreme Court applied the proportionality test, which consists of balancing human interests with the animal interests. On the one hand, Israel had a thriving *foie gras* industry<sup>82</sup>; on the other hand, the court found that the suffering of birds was so undeniable, and industry leaders could propose no alternative to their method of production of fatty liver. By determining *foie gras* as a luxury food product, rather than a necessary food product, Justice Strasberg-Cohen determined that the suffering inflicted on bird is unnecessary, thus cruel and therefore illegal<sup>83</sup>.

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<sup>79</sup> Among many other examples, hunting is allowed in Israel, when it is not in according to the Law of Moses.

<sup>80</sup> WOLFSON, YOSSI, Animal Protection Under Israeli Law in Animal Law and Welfare – in Animal Law and Welfare - International Perspectives, Springer International Publishing 2016

<sup>81</sup> *Noah v. The Attorney General*, Israeli Supreme Court Decision, Complete Document Translated and Prepared by Nir Shalev, CHAI – Concern for Helping Animals in Israel  
<http://www.chai.org.il/en/compassion/foiegras/foiegras.pdf> (last visited May, 1 2016)

<sup>82</sup> MARIANN SULLIVAN & DAVID J. WOLFSON, What's Good for the Goose...The Israeli Supreme Court, Foie Gras and the Future of Farmed Animals in the United States, 70 *Law and Contemporary Problems* 139-174 (Winter 2007)

<sup>83</sup> For a more detailed summary of the decision, see Mariann Sullivan & David J. Wolfson, What's Good for the Goose...The Israeli Supreme Court, Foie Gras and the Future of Farmed Animals in the United States, 70 *Law and Contemporary Problems* 139-174 (Winter 2007)

The decision in *Noah* set a precedent for the Legislature<sup>84</sup> to enact laws and regulations improving the welfare of farmed animals in Israel, as thoroughly described by Yossi Wolfson, who insists that most of the regulations follow the EU model<sup>85</sup>, and in some cases, go even further<sup>86</sup>.

Several notable legal scholars consider the legal framework regulating animal welfare in Israel as rooted in religious law. According to Yossi Wolfson, the concern over animal welfare is as much related to the provisions found in the Bible as animal welfare sentiments on the part of the general population in Israel<sup>87</sup>. Mariann Sullivan and David Wolfson also mention that influential rabbis supported the Supreme Court decision and notes that Judge Strasberg-Cohen roots part of her decision in Jewish law<sup>88</sup>. However, the decision in *Noah* also reveals some important limitations.

First, the court still enforces the test of proportionality, which consists in opposing the interests of humans *versus* the interest of animals, rather than considering the animal's suffering independently of any interests which humans might hold. In *Noah*, the category of the final product, classified as a luxury good, was determinative, not the amount of cruelty suffered by the animals. Of course, other decisions by the Israeli Supreme Court, in the case of feral cats, tend to favor animal wellbeing over human interests<sup>89</sup> in applying a proportionality test. But the feral cats case merely shows that the situation of feral animals that associated with domestic cats kept as pets is very different from that which involves the

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<sup>84</sup> Regulations on animal welfare and husbandry practices in Israel are enacted through “the secondary legislation issues by the Minister of Agriculture, subject to approval by a parliamentary committee”, WOLFSON, YOSSI, *Animal Protection Under Israeli Law in Animal Law and Welfare – in Animal Law and Welfare - International Perspectives*, Springer International Publishing 2016

<sup>85</sup> Both Justice Strasberg-Cohen and Grunis also describe Israel as a “third way”, resembling the E.U.

<sup>86</sup> WOLFSON, YOSSI, *Animal Protection Under Israeli Law in Animal Law and Welfare – in Animal Law and Welfare - International Perspectives*, Springer International Publishing 2016

<sup>87</sup> *id.*

<sup>88</sup> MARIANN SULLIVAN & DAVID J. WOLFSON, What's Good for the Goose...The Israeli Supreme Court, Foie Gras and the Future of Farmed Animals in the United States, 70 *Law and Contemporary Problems* 139-174 (Winter 2007)

<sup>89</sup> “In cases where the harm is not to human health but to human convenience and well-being, killing of cats or causing them significant suffering is forbidden” WOLFSON, YOSSI, *Animal Protection Under Israeli Law in Animal Law and Welfare – in Animal Law and Welfare 3765 International Perspectives*, Springer International Publishing 2016,

production of animals used for food. This is actually a point raised in the dissenting opinion in *Noah*.<sup>90</sup>

Second, though *Noah* prohibited the production of *foie gras* and paved the way for reforms in the welfare regulations of farmed animals, it did not fundamentally challenge the status of animals under Israeli law, which remain in the category of property. The only case determining that animals could be treated as non-property<sup>91</sup> involves a pet, which reinforces the idea that animals used for food are discriminated against under the law.

While *Noah* still speaks for the progressiveness of Israeli law, it seems that the only advancement for animals used for food was in the case of the most egregious practices of force-feeding birds for a good that is not massively consumed in Israel, as the court itself recognized. Of course, as mentioned, *Tz'ar Balem Hayim* remains ambiguous, and largely human-centric. It could be that the Israeli law remained faithful to *Tz'ar Balem Hayim* in that it only considers animals in light of human interests. Furthermore, other factors besides Jewish law might play a role in the advancement of legal protections for farmed animals in Israel, such as a more liberal conception of standing, that allows animal protection group to sue more easily and a “more generous standard of judicial review”<sup>92</sup>. Such legal mechanisms hardly relate with the specific Jewish provisions contained in *Tz'ar Balem Hayim*.

In conclusion, considering that Judaism contains a provision regarding the respect to which animals are entitled, it is quite disappointing to see that the legal protections afforded to animals used for food are limited. This either means that *Tz'ar Balem Hayim* was lost

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<sup>90</sup> Justice Grunis minority opinion is further detailed in MARIANN SULLIVAN & DAVID J. WOLFSON, What's Good for the Goose... The Israeli Supreme Court, Foie Gras and the Future of Farmed Animals in the United States, 70 *Law and Contemporary Problems* (Winter 2007), as well as compared to Justice Strasberg's. p. 177 “He noted that the situation was very different from other animal cruelty cases [...] in that it involved raising animals for food”.

<sup>91</sup> *Doe v. Doe* WOLFSON, YOSSI, Animal Protection Under Israeli Law in Animal Law and Welfare in Animal Law and Welfare, p. 3775-3785 International Perspectives, Springer International Publishing 2016

<sup>92</sup> MARIANN SULLIVAN & DAVID J. WOLFSON, What's Good for the Goose... The Israeli Supreme Court, Foie Gras and the Future of Farmed Animals in the United States, *Law and Contemporary Problems* (Winter 2007)

throughout the evolution of Jewish law –which is debatable, since Israeli Justices still refer to it – or that it was meaningless since its inception in the Bible.

## 2. France and the US

### a. France

Since 2015, the French Civil Code regulates animals as property even though they are part of another legal category different from property. Two other codes complete the legal status of animals: the Penal Code and the Rural Code. Under the French Penal Code, since 1810<sup>93</sup>, it is an offense to commit acts of cruelty against animals that have been domesticated, tame, or captive<sup>94</sup>. The Rural Code, which regulates husbandry practices and animals raised for food, considers since 1976<sup>95</sup> animals as sentient beings that “must be placed by its owner in conditions compatible with the biological imperatives of its species.”<sup>96</sup> These developments in each respective French legal code are noteworthy because they paved the way for the amendment of the Civil Code which places animals in a third distinctive legal category, set apart from humans and property.

Jean-Pierre Marguénaud demonstrated in his analysis of the new disposition<sup>97</sup> of the Civil Code that the 2015 amendment implicitly marks the withdrawal of animals from the property regime, though they are regulated as such, based on the location of the new section in the Civil Code and its content. By defining animals as sentient beings chronologically

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<sup>93</sup> BURGAT FLORENCE, MARGUÉNAUD JEAN-PIERRE, *Le Droit Animalier* (PUF 2016)

The prohibition on inflicting cruelty suffering on animals was subsequently reaffirmed in 1850, by the Grammont Law, under the influence of the animal protection movement in the United Kingdom.

<sup>94</sup> Art. 520-1 and 521-1 of the Penal Code: “The unnecessary infliction, in public or otherwise, of serious maltreatment, including sexual maltreatment, towards or the commission of an act of cruelty on any domestic or tame animal, or any animal held in captivity, is punished by two years' imprisonment and a fine of €30,000.” Article 521-1 du Code Pénal, Livre 5 Des autres crimes et délits, Titre II Autres Dispositions, Chapitre Unique : Des sévices graves ou actes de cruauté envers les animaux.

Translation : <https://www.legifrance.gouv.fr/Traductions/en-English/Legifrance-translations>

<sup>95</sup> Law n° 76-629, July 10, 1976 amending the Rural Code

<sup>96</sup> Art. L-214-1 Rural Code

<https://www.legifrance.gouv.fr/affichCode.do?idSectionTA=LEGISCTA000006152208&cidTexte=LEGITEXT000006071367&dateTexte=20080531>

<sup>97</sup> MARGUÉNAUD JEAN-PIERRE, Une Révolution Théorique: L'extraction Masquée Des Animaux Dans La Catégorie Des Biens, *La semaine juridique Edition Générale* n°10-11, 9 mars 2015, doct.305



before inanimate objects, the Civil Code extracts them from the section devoted to non-sentient property. In contrast, before the reform, the legal status of animals was defined either as “movable” or “immovable” things, under the section entitled “The various kind of things,” leaving no doubt as to their status as things.

When looking at the content, the new version specifies that animals are not property. Instead, they are sentient beings whose applicable legal status is that of things, by default of not being fully human persons. Certainly, it is now up to the courts to give a meaningful interpretation of section 515-14 of the Civil Code, and to confirm that animals constitute a third category, separate from humans and property, as non-things. Under French law, which only admits persons and things, the autonomous category of animals as non-things might be the corner stone of an animal personhood yet to be built through case law.<sup>98</sup>

When French animal law scholars present religion as an explanation as to why animals were and continue to be so poorly considered under French law, they usually refer to Genesis.<sup>99</sup> They disregarding the other provisions in the Old Testament that contradict the limitless dominion of men over animals and the more radical speciesist arguments found mainly in the New Testament. It is also noteworthy that authors usually refer to the Cartesian theory<sup>100</sup> because the Catholic Church was a fierce supporter of Descartes’s theory on animal sentience (or lack thereof), and greatly contributed to the diffusion of his ideas in the 17th Century.<sup>101</sup> While one would expect France to be lagging behind in protective measures for animals because of a religious heritage strongly opposed to recognizing animals, the recent changes in the law, in 1976 and 2015, made significant progress by considering animals as

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<sup>98</sup> *id.*

<sup>99</sup> BURGAT FLORENCE, MARGUÉNAUD JEAN-PIERRE, *Le Droit Animalier* (PUF 2016), refer to Genesis, 26 to illustrate the source of the superiority of men over animals, what is referred today as specism.

<sup>100</sup> The philosophy of René Descartes, a French philosopher who would identify animals to machine and deny them any sentience.

<sup>101</sup> BARATAY, ERIC, *L’Eglise et l’Animal* 85-87 (édition du Cerf, 2<sup>nd</sup> edition 2015)

## Animal Law LLM Seminar

sentient beings and initiating the process of granting them personhood. Of course, future case law will reinforce, or invalidate such assumption.

### b. The United States

Under US laws, animals used in industrial farming are not only considered property, but they also have virtually no legal protections. Similar to Israeli law, even if U.S. courts consider animals beyond their market value in some situations, such consideration solely applies to pets.

Animal welfare in the USA is regulated under federal and state laws. There are three federal statutes regulating animal welfare. The only one to address the conditions in which animals should be raised, the Animal Welfare Act, does not apply to farmed animals.<sup>102</sup> Both the Humane Method of Slaughter Act (HMSA)<sup>103</sup> and the Twenty-Eight Hour Law<sup>104</sup> provide some basic protection regarding slaughter and transportation of livestock. However, according to Stephanie J. Engelsman, the many exemptions to the HMSA end up protecting only “the small percentage of nonpoultry slaughtered at federal, non-ritual slaughterhouses.”<sup>105</sup> The 28 Hour Law caps at 28 hours the amount of time that animals can be transported across state lines without being unloaded for at least five hours. While the 28 Hour Law might seem progressive from an animal welfare perspective, a closer examination shows that it ultimately does little good. It does not take into account the scientific research

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<sup>102</sup> AWA, section 2132 “definitions” : “(g)The term “animal” means any live or dead dog, cat, monkey (nonhuman primate mammal), guinea pig, hamster, rabbit, or such other warm-blooded animal, as the Secretary may determine is being used, or is intended for use, for research, testing, experimentation, or exhibition purposes, or as a pet; but such term excludes (1) birds, rats of the genus *Rattus*, and mice of the genus *Mus*, bred for use in research, (2) horses not used for research purposes, and (3) other farm animals, such as, but not limited to livestock or poultry, used or intended for use as food or fiber, or livestock or poultry used or intended for use for improving animal nutrition, breeding, management, or production efficiency, or for improving the quality of food or fiber. [...]”

<sup>103</sup> 7 U.S.C. 1901 et seq.

<sup>104</sup> 49 USC 80502

<sup>105</sup> ENGELSMAN, STEPHANIE J., *World Leader - At What Price? A Look at Lagging American Animal Protection Laws*, 22 Pace Envtl. L. Rev. 329 (2005)

showing that twenty-eight hours of transportation without break is too long for animals,<sup>106</sup> and the federal statute allows for extension. Further, similar to the HMSA, the 28 Hour Law does not apply to birds. Both the HMSA and the 28-Eight Hour law suffer from lack of enforcement.

State laws regarding the treatment of animals used for food are found in criminal anticruelty statutes. Yet, most of them are worded in such broad and undefined terms that they do not provide for the enactment of specific regulations. For example, as emphasized by David Wolfson and Marian Sullivan,<sup>107</sup> state anticruelty statutes expressly exempt all “‘accepted’, ‘common’, ‘customary’, or ‘normal’ farming practices.”<sup>108</sup> Such practices include debeaking, tail docking, and even castration without anesthesia.

In addition, even though state anticruelty statutes leave relatively little room for judicial proceeding, the industry bolstered its legal advantage against animal welfare activists by pushing for the enactment of laws concerning every stage of the criminal prosecution procedures. For instance, recently passed so-called “Ag Gag Laws”<sup>109</sup> shut down any attempt to investigate suspected ongoing violations of anticruelty statutes in six states<sup>110</sup>. According to David Wolfson and Mariann Sullivan, the legal status of animals used for food in the USA under state laws “illustrates how the industry evades criminal law, but also how criminal law delegates enforcement to the industry itself.”<sup>111</sup>

There are two ways to interpret the influence of religious vegetarianism on the current laws regulating animals in the US today. One way is to say that the concern of religions over

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<sup>106</sup> *id.*

<sup>107</sup> MARIANN SULLIVAN & DAVID J. WOLFSON, What’s Good for the Goose...The Israeli Supreme Court, Foie Gras and the Future of Farmed Animals in the United States, *Law and Contemporary Problems* (Winter 2007)

<sup>108</sup> *id.*

<sup>109</sup> Larissa Wilson, *Ag-Gag Laws: A Shift in the Wrong Direction for Animal Welfare on Farms*, 44 *Golden Gate U. L. Rev.* 311 (2014).

<sup>110</sup> Alabama, Iowa, Kansas, Missouri, North Carolina and Utah

<sup>111</sup> MARIANN SULLIVAN & DAVID J. WOLFSON, What’s Good for the Goose...The Israeli Supreme Court, Foie Gras and the Future of Farmed Animals in the United States, *Law and Contemporary Problems* (Winter 2007)

animal welfare has been too much intertwined with many other human-centric considerations, such as health and moral purity, therefore obscuring the issue of animal suffering. Another way to interpret the influence of religious vegetarianism is to say that genuine concerns over animal welfare remained a minor doctrine within religious vegetarianism that never really found prominence within mainstream Christian thought, and consequently, the broader US culture.

*One encounters serious difficulties when attempting to relate religious laws and doctrines to the current legal provisions regarding animals used for food in Israel, France, and USA. Seeming contradictions abound: Israel has moderate animal protections; France shows signs of progressive trajectory; and the USA, despite a history of religious vegetarianism, has minimal enforced animal protections.*

*From those observations, it can be inferred that either religion has minimal influence in modern law, or that religions never provided sufficient legal protections for farmed animals that could have been inherited.*

## **B. The role of religion in the development of animal law**

Despite their limited influence of religious law to contribute to state law, some proponents of a more protective legal status for animals still see religious laws as an opportunity to shape policy and law. Christian and Jewish theologians often take advantage of the flexibility afforded in the Holy Scriptures to interpret religious texts as an equivocal call to compassion towards animals. While some animal advocates may find such religious arguments appealing, especially given the context of a resurgence of the religious question in western societies, these arguments also present numerous drawbacks that animal protection advocates must consider before channeling their demands through religious claims.

1. Religion as a support to a more protective legal status of animals

Some Jewish and Christian theologians not only claim that traditional interpretations of the Holy Scriptures are mistaken in the way they approach animals, but that religious texts conversely teach that animals should be respected for their intrinsic value. Their arguments and interpretation mostly concern the divine commands regarding dietary prescriptions, as they contend that God mandated the inclusion of animals within men's range of compassion. They cite Bible verses that seem to suggest man should adopt a meatless diet.

a. Jewish and Christian vegetarianism and animal ethics

There is also a marginal trend in Judaism to interpret the Torah and Talmud as each issuing calls for a vegetarian diet. Some Protestant scholars also engage in an interpretation of religious texts and advocate that Christians should adopt a vegan way of life to comply with God's commands.

Rabbi Abraham Isaac Kook was one of the foremost Jewish defenders of a vegetarian diet. He was also the first Ashkenazi chief rabbi of British mandatory Palestine. In his extensive body of work published throughout the early 20<sup>th</sup> century, Kook goes back to the justification given by Maimonides on dietary laws and explains the adoption of *Tz'ar Balem Hayim* as a Biblical law, as well as the other many dietary commandments.<sup>112</sup> Kook argues that God intended to include animals within its range of compassion, and commands men to do the same.<sup>113</sup> More specifically, Kook interprets the dietary laws as a "moral therapy"<sup>114</sup> and a divine concession made by God to men after the Great Flood, to satisfy their lust for meat.<sup>115</sup> He even goes as far as asserting that the adoption of vegetarian diet is

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<sup>112</sup> WALTERS, KERRY S., PORTMESS LISA, *Religious Vegetarianism* (State University of New York Press, 2001)

<sup>113</sup> KOOK, ABRAHAM, *A vision of vegetarianism and peace*, 1961  
<http://www.jewishveg.com/AVisionofVegetarianismandPeace.pdf>

<sup>114</sup> WALTERS, KERRY S., PORTMESS LISA, *Religious Vegetarianism* (State University of New York Press, 2001)

<sup>115</sup> *id.*

one of the conditions for the Messiah's coming. Kook's work still resonates today, especially in the work of Roberta Kalechofsky, an American writer and animal rights activist who also finds evidence of a "provegetarian bias"<sup>116</sup> in the Torah. The fact that the Supreme Court in Israel mentions the principle of *Tz'ar Balem Hayim*<sup>117</sup> reinforces the arguments based on a more progressive interpretation of religious texts.

The most proactive supporters of Christian vegetarianism are found among the Protestants. Similar to Kook, Andrew Linzey, an Anglican priest and one of the contemporary leaders of Christian vegetarianism, asserts that compassion towards animals is a requirement in Christianity.<sup>118</sup> Linzey's work largely encompasses the New Testament. While he remains critical of the traditional interpretation, which he blames for providing a strong basis to animal cruelty,<sup>119</sup> Linzey affirms that the Gospels also provide strong arguments in favor of animal protection. Linzey's work is relevant to this paper for at least two reasons.

First, he manages to frame the question of the animal protection in both legal and theological terms. According to Linzey, the lack of protection in the contemporary legal status of animals is a result of the influence of Christianity on western legal culture<sup>120</sup>. He also relates the legal theories of the animal protection movement with the theological theories and gives the example of contractualism, which considers that the contract entered between God and the living creatures necessarily encompasses animals<sup>121</sup>. Second, precisely because religious arguments have been so detrimental towards animals for so long, Linzey argues that

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<sup>116</sup> *id.* p.97

<sup>117</sup> *Noah v. The Attorney General*, Israeli Supreme Court Decision, Complete Document Translated and Prepared by Nir Shalev, CHAI – Concern for Helping Animals in Israel <http://www.chai.org.il/en/compassion/foiegras/foiegras.pdf> (last visited May, 1 2016)

<sup>118</sup> LINZEY ANDREW, *Animal Gospel*, 13 (Westminster John Knox Press, 2000)

<sup>119</sup> LINZEY ANDREW, *Animal Gospel*, 2 (Westminster John Knox Press, 2000) "We have failed to see the face of the Crucified in the faces of suffering animals. We have not allowed the Gospel of Christ to interpret the world of innocent suffering and so have helped to create the very climate in which the Gospel is dismissed as irrelevant to the messy and tragic world of suffering, both human and nonhuman".

<sup>120</sup> *id.* p.48

<sup>121</sup> *id.* p.45

religion has an essential role to play within and outside the animal rights movement, to forward its success<sup>122</sup>. To do so, he calls for a new “animal theology” which would be more faithful to the Christ’s teachings and would also support the animal protection movement. In that sense, Linzey’s animal theology goes beyond simply re-interpreting the religious texts. It aims at playing an active role within both the animal rights movement and the Christian communities. His proposed program has a strong political impetus, in addition to its theological grounding.

Similar is Matthew Scully’s approach in *Dominion*.<sup>123</sup> A former speechwriter for President George W. Bush and self-proclaimed neo-conservative,<sup>124</sup> Scully urges humans to reexamine God’s teachings so that societal interaction with animals is build upon ethics of compassion and respect.

b. Catholic

The contemporary Roman Catholic Church recently evolved regarding animal suffering. One indication of this evolution was the restoration of Saint Francis of Assisi, a prominent figure in Christianity who was said to preach to the animals and to include them within Christians’ range of compassion. St Francis of Assisi long embarrassed the Church,<sup>125</sup> given the obvious contradiction of his teachings with the official doctrine. However, by the end of the 20<sup>th</sup> century, with the approval of the Roman Catholic Church, the creation of small organizations, such as the Catholic Study Circle for Animal Welfare in 1935 in the United Kingdom, led to the restoration of his teachings. Declarations made at the highest level of the Catholic Church further indicate the sea change within the Catholic Church concerning their official stance on animals. In 1992, in the Catechism of the Catholic Church,

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<sup>122</sup> *id.* p.140

<sup>123</sup> SCULLY, MATTHEW, *Dominion*, introduction (St Martin’s Griffin, 2002)

<sup>124</sup> HOBGOOD-OSTER, LAURA, *Holy Dogs and Asses – Animals in the Christian Tradition* 134 (University of Illinois Press, 2008)

<sup>125</sup> RENAN LARUE, *Le Végétarisme Et Ses Ennemis : Vingt-Cinq Siècles De Débat* 126 (PUF 2015)

which summarizes the Catholic doctrine, Pope John Paul II included respect for animals as part of God's creation and called believers to follow St Francis of Assisi's teachings:<sup>126</sup>

**Respect for the integrity of creation**

**2416** *Animals* are God's creatures. [...] Thus men owe them kindness. We should recall the gentleness with which saints like St. Francis of Assisi or St. Philip Neri treated animals.

**2417** God entrusted animals to the stewardship of those whom he created in his own image. Hence it is legitimate to use animals for food and clothing. [...]

**2418** It is contrary to human dignity to cause animals to suffer or die needlessly. [...]<sup>127</sup>

Certainly, the legitimization of the use of animals as food continually hinders such advancements. Similarly, Pope Francis' statement on animals, as part of the encyclical on the environment, calls on tempering man's dominion over creation, including but not limited to animals.<sup>128</sup> Even though the emphasis put on the protection of animals is new in the Pope's discourse, it is still notable that such declarations are, again, intertwined with asceticism and environmental protection, which manage to encompass animal welfare only to a certain extent. The timid evolution of Catholicism towards the recognition of animals' interests illustrates a fundamental disagreement between it and the animal protection movement.

2. The important limits of the instrumentalization of religion in favor of the animal protection movement

As convincing as they may seem to animal advocates, there are two important limitations with religious arguments used to support the animal protection movement. The

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<sup>126</sup> *id.*

<sup>127</sup> Catechism of the Catholic Church, vatican.va

[http://www.vatican.va/archive/ccc\\_css/archive/catechism/p3s2c2a7.htm#III](http://www.vatican.va/archive/ccc_css/archive/catechism/p3s2c2a7.htm#III) (last visited May, 1 2016)

<sup>128</sup> *id.*



first limit has to do with how such claims are received by American and French judicial systems. Such arguments are effective only in societies that afford religious claims a certain degree of legitimacy. The second limit has to do with how such claims are likely to be received by religious communities themselves. Indeed, those arguments are framed on a non-traditional interpretation of religious texts. Further, as animal theologians pick and chose in the Holy Scripture what best supports their opinion, they disregard provisions that go against a more protective status of animals, or those that are simply confusing or contested.

a. Different conception of secularism: the example of ritual slaughter

The success of religious claims depends on how they are considered under the law. To that extent, the overview of the laws regulating ritual slaughter in France and the USA is very illustrative. Moreover, the very question of ritual slaughter also reveals the potentiality of instrumentalization of both religion and animal welfare, to further advance a political agenda that has very little to do with either of those issues.

- France

In France, the government deals with religious claims in compliance with secularism. French secularism, *laïcité*, considers the State's role as an arbitrator in religious matters, which ensures that no citizen imposes their conception of morality and spirituality on others.<sup>129</sup> Certainly, one can understand the concept of *laïcité* in view of the historical and mostly contentious<sup>130</sup> relationship between the French state and the powerful Catholic Church, which had competed for power with the French State throughout history.<sup>131</sup> The Law of Separation of Church and State, adopted in France in 1905, ended such State-religious competition. Such separation serves a double purpose: the prohibition on the involvement of

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<sup>129</sup> HAARSCHER GUY, *La laïcité*, Introduction (Presses Universitaires de France, 2011)

<sup>130</sup> BARB, AMANDINE, *Une laïcité ouverte aux religions? Le modèle américain*, *Études* (January 2016/1)

<sup>131</sup> HAARSCHER GUY, *id.*

religions in government affairs, and the prohibition of the state involvement in religious affairs.<sup>132</sup>

French law mandates that animals be pre-stunned before they are slaughtered; ritual slaughter, however, is the one exception.<sup>133</sup> Though ritual slaughter is not exempted from the principle of *laïcité*, as often claimed by certain animal protection movements,<sup>134</sup> and as reaffirmed by the French Department of Agriculture in 2016.<sup>135</sup> Because the French government is prohibited from interfering with religious affairs and may not subsidize any religious denomination, religious institutions appointed by the government oversee ritual slaughters,<sup>136</sup> and such slaughter is funded by a tax on *kosher* and *halal* meat products.<sup>137</sup>

Given the prohibition on interference of the state in religious affairs, religious claims seem to have little chance to prevail in a system whose purpose is precisely to curtail such interaction. The *Cha'are shalom Ve Tsedek v. France* (2000) case before the European Courts of Human Rights (ECHR) serves as an example of way religious arguments often fail to gain traction in the face of the secular French State. In that case, a Jewish Orthodox association sought to obtain authorization to perform ritual slaughter according to stricter rules (*glatt kosher*)<sup>138</sup> than those followed by the religious body already approved by the French government to perform such a task, the Jewish Consistorial Association of Paris

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<sup>132</sup> “La République ne reconnaît, ne salarie ni ne subventionne aucun culte.” Article 2, loi de 1905

<sup>133</sup> Article R214-70 I.1

<https://www.legifrance.gouv.fr/affichCodeArticle.do?idArticle=LEGIARTI000025078770&cidTexte=LEGITEXT000006071367>

and EU law: Council Regulation (EC) No [1099/2009](#) of 24 September 2009 on the protection of animals at the time of killing

<sup>134</sup> Lettre Ouverte de Bardot au gouvernement contre l’abattage rituel, [lexpress.fr](#), 08/09/2014

[http://www.lexpress.fr/actualite/societe/lettre-ouverte-de-bardot-au-gouvernement-contre-l-abattage-rituel\\_1573731.html](http://www.lexpress.fr/actualite/societe/lettre-ouverte-de-bardot-au-gouvernement-contre-l-abattage-rituel_1573731.html) (last visited May, 1 2016)

<sup>135</sup> Le gouvernement français confirme la légalité de l’abattage rituel

Marie Malzac, [La-Croix.com](#) le 07/01/2016

<http://www.la-croix.com/Urbi-et-Orbi/Actualite/France/Le-gouvernement-francais-confirme-la-legalite-de-l-abattage-rituel-2016-01-07-1401316> (last visited May, 1 2016)

<sup>136</sup> Abattage rituel : la réglementation en vigueur (2013), ministère de l’agriculture. To better understand the history and process of appointment: HAUPT, CLAUDIA, Free Exercise of Religion and Animal Protection: A Comparative Perspective on Ritual Slaughter, p.850.

<sup>137</sup> *CHA’ARE SHALOM VE TSEDEK v. FRANCE JUDGMENT*, p. 7 section 26

<sup>138</sup> *Glatt kosher* requires a more thorough post-mortem inspection of animals’ lungs, *CHA’ARE SHALOM VE TSEDEK v. FRANCE JUDGMENT*, p. 7 section 30 and 32

(ACIP). The French authorities refused to grant permission to the Orthodox group, considering that the ACIP had already been approved<sup>139</sup> and that the association could still have access to *glatt* kosher meat in French supermarkets, exported from abroad.<sup>140</sup> Plaintiffs argue that the French decision infringes upon their right to manifest their religion, in violation of article 9 and 14 of the European Convention on Human Rights.<sup>141</sup> The ECHR sided with the French government, considering that the plaintiffs could still obtain *glatt* meat and could also reach an agreement with the ACIP to obtain such authorization to perform *glatt* slaughter<sup>142</sup> without having to obtain such authorization from the French authorities, who were therefore not compelled to grant it.<sup>143</sup>

More importantly regarding the issue of the legitimacy of religious claims by religious minorities within larger religious communities, the court states:

“Admittedly, the applicant association denied that meat from the ACIP slaughterhouses was truly “glatt”, criticizing the inadequacy of the inspection of the lungs of slaughtered animals by ACIP slaughterers, but the Government noted that in doing so the applicant association was challenging the findings of the legitimate and independent religious authorities who personified the religion it professed. The Government emphasized that it was not for the French authorities, bound as they were to respect the principle of secularism, to interfere in a controversy over dogma, but observed that it could not be contested that the Chief Rabbi of France, whose opinion on the matter was based on the rulings of the Beth Din (the rabbinical court), was qualified to

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<sup>139</sup> *id.* p. 10 section 41

<sup>140</sup> *id.* p. 8, section 34

<sup>141</sup> *id.* p. 17, section 58-59

<sup>142</sup> Interestingly, the ACIP and the plaintiffs had already entered an agreement, but it was ended following disagreement regarding the financial terms of the contract. p. 19-20, section 67.

<sup>143</sup> p. 23, section 83

say what was or was not compatible with Jewish observance.”<sup>144</sup>

The French tribunals thus declared themselves incompetent in judging the legitimacy of a claim brought forward by a minority group within a particular religion. The French government dismisses any religious arguments<sup>145</sup> supporting the requirement of a certain ritual slaughter, and instead, calls the religious communities to agree among themselves, considering the government gave them the appropriate tools and authority to regulate religious practices among themselves.

Just like the Orthodox association in *Cha'are shalom Ve Tsedek v. France*, the proponents of non-traditional interpretations of religious texts that support a stronger protection of animals are a minority within a broader religious community. Similarly, under French law and in virtue of the *laïcité*, Jewish and Christian vegetarians would first need to convince their respective higher religious bodies before seeking regulations that are more protective of animals, based on their freedom of religion. Such requirements are a paramount obstacle to any advancement of animal law based on religious arguments in France.

- USA

As opposed to *laïcité*, American secularism was not built as a result of a competition between the State and the Church.<sup>146</sup> Instead, secularism in the USA stems from a continuous dialog between the State and religious communities.<sup>147</sup> The evolution of case law towards a stricter separation of state and church, and the recent reinforcement of the principle of neutrality,<sup>148</sup> shows that American secularism is still in the process of defining itself. Similar to the French 1905 law on separation of church and state, the First Amendment of the Bill of Rights prohibits “the making of any law respecting an establishment of religion, or

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<sup>144</sup> P.19, 66

<sup>145</sup> Arguments that the French jurisdictions suspect of being firstly about economics p.19-20, section 67

<sup>146</sup> BARB, AMANDINE, Une laïcité ouverte aux religions? Le modèle américain, *Études* (January 2016/1)

<sup>147</sup> *id.*

<sup>148</sup> *id.*

prohibiting the free exercise thereof”.<sup>149</sup> However, the two principles embedded in the Establishment and Free Exercise clauses were only affirmed in the 20<sup>th</sup> century<sup>150</sup> through a series of major case law decisions<sup>151</sup> under the pressure of religious minorities who felt oppressed by what they identified as a “Protestant Establishment,”<sup>152</sup> which they claim imposes its religious views on other religious denominations. In the USA then, religious communities themselves have achieved a stricter separation between church and state.

The historical background of American secularism is helpful to understand the approach adopted in the regulation of ritual slaughter. Under the HMSA, both pre-slaughter stunning and Jewish ritual slaughter are considered humane methods of slaughter.<sup>153</sup> Therefore, ritual slaughter is not an exemption under the law; it is written into the law. The USDA defines ritual slaughter<sup>154</sup> and only exempts the “ritual bubble,”<sup>155</sup> i.e. the moment taking place prior to the cut to the animal’s throat, from the HMSA provisions on humane handling: “ritual slaughter establishments are required to meet all the humane handling regulatory requirements except stunning prior to shackling, hoisting, throwing, cutting, or casting.”<sup>156</sup> As a result, religious communities can conduct their own slaughtering, provided they comply with the regulations set forth by the USDA. In the case of ritual slaughter, U.S. law protects freedom of religion by incorporating the religious provisions, instead of creating

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<sup>149</sup> Bill of Rights, 1<sup>st</sup> Amendment

<sup>150</sup> BARB, AMANDINE, Une laïcité ouverte aux religions? Le modèle américain p.22

<sup>151</sup> *McCullum v. Board of Education*, 1948 ; *Abington v. Schemp*, 1963 ; *Epperson v. Arkansas*, 1968 ; *Edwards v. Aguillard*, 1987 ; *Wallce v. Jaffree*, 1985 ; *Lee v. Weisman*, 1992

<sup>152</sup> BARB, AMANDINE, Une laïcité ouverte aux religions? Le modèle américain, Études (January 2016/1)

<sup>153</sup> ROVINSKY JEREMY A., Regulation of Ritual Slaughter in the Western World, p.95

<sup>154</sup> “(b) by slaughtering in accordance with the ritual requirements of the Jewish faith or any other religious faith that prescribes a method of slaughter whereby the animal suffers loss of consciousness by anemia of the brain caused by the simultaneous and instantaneous severance of the carotid arteries with a sharp instrument and handling in connection with such slaughtering.7 U.S.C. United States Code, 2014 Edition Title 7 – agriculture chapter 48 - humane methods of livestock slaughter Sec. 1902 - Humane methods

<sup>155</sup> [http://www.fsis.usda.gov/wps/wcm/connect/f01f41d1-bc55-42f3-8880-991814f35533/LSIT\\_HumaneHandling.pdf?MOD=AJPERES](http://www.fsis.usda.gov/wps/wcm/connect/f01f41d1-bc55-42f3-8880-991814f35533/LSIT_HumaneHandling.pdf?MOD=AJPERES)

<sup>156</sup> [http://www.fsis.usda.gov/wps/wcm/connect/f01f41d1-bc55-42f3-8880-991814f35533/LSIT\\_HumaneHandling.pdf?MOD=AJPERES](http://www.fsis.usda.gov/wps/wcm/connect/f01f41d1-bc55-42f3-8880-991814f35533/LSIT_HumaneHandling.pdf?MOD=AJPERES) (id)

an exemption under the law and delegating the authority to appointed religious bodies, as done in France.<sup>157</sup>

Such involvement in the ritual slaughter by the US government was challenged in a case before a New York court, where the plaintiffs contended that the HMSA violated the Establishment clause. More specifically, “[...] plaintiffs assert[ed] that subsection (b), in permitting slaughterers to slaughter in accordance with the ritual method and, by implication, to handle livestock by whatever means is appropriate prior to such slaughter, had a religious purpose-- the protection of a religious belief-- and therefore violated the Establishment Clause.”<sup>158</sup> The Court held that the Jewish ritual slaughter was reasonably considered a humane method of slaughter, based on the “persuasive showing”, by the representatives of the “entire spectrum of Jewish organizational life,”<sup>159</sup> that Jewish ritual slaughter [...] was historically related to considerations of [...]”.<sup>160</sup>

American law, because of its conception of secularism, goes as far as integrating religious principles in its law, thereby affording the courts the authority to grant legitimacy to religious groups when it comes to exposing their interpretation of religious principles. Even if the judges in *Jones v. Butz* do not look at the religious texts, they will turn to the Jewish community and afford them the authority to give them an interpretation of what supports the provisions of ritual slaughter in the Bible: humaneness. Certainly, the court does not mention the religious texts anywhere, and refers instead to historical considerations. Granted that the Bible is also a historical account of the Jewish people, it is fair to say that the interpretation given by the intervenors is also largely supported by a system of belief, or at least very much

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<sup>157</sup> Art. R214, al. 3

<https://www.legifrance.gouv.fr/affichCodeArticle.do?idArticle=LEGIARTI000025078770&cidTexte=LEGITEXT000006071367>

<sup>158</sup> *Jones v. Butz* 374 F.Supp. 1284 (D.C.N.Y. 1974)

<sup>159</sup> *id.*

<sup>160</sup> *id.*

intertwined with it. In that specific context, historical considerations are used as a mere secular proxy to talk about religious arguments.

Because secularism in the U.S.A. generously affords legitimacy to religious claims, it would be easier for the proponents of a more protective legal status of animals based on the religious texts to prevail, as the court would be more likely to take their interpretation in consideration.

- The inadequacy of religious arguments in the context of the instrumentalization of the animal rights agenda

In the USA, secularism was established to include and protect even the smallest of religious communities from discrimination as a result of seemingly facially neutral laws. For instance, in the *Church of Lukumi Babalu Aye, Inc. v. City of Hialeah*<sup>161</sup> case in 1993, the Supreme Court struck down a series of city ordinances because they fail to satisfy the neutrality and general applicability requirements. In that case, the city of Hialeah passed a series of ordinances, the effects of which were to prohibit the ritual killing of animals, as part of a religious practice of the Santeria religion. The series of ordinances addressed the goal of protecting public health and limiting animal cruelty, but the Court found that their implementation resulted in discrimination against one specific religious practice while failing to properly address the goal of protecting public health and limiting animal cruelty.

As demonstrated by the Supreme Court in its decision, this case is less concerned with animal welfare and more concerned with balancing conflicting values between the believers of Santeria, and the dominant culture of the city of Hialeah. As a matter of fact, the Supreme Court seems to have said, if the ordinances were really were about animal welfare or sanitation, the Justices would have found them lawful.<sup>162</sup>

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<sup>161</sup> *Church of Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 539 (1993)

<sup>162</sup>HAUTPT, CLAUDIA E., *A Comparative Perspective on Ritual Slaughter*, p.847-848

The *Church of Lukumi* case illustrates the way governmental bodies might seek to discriminate against one religion or religious group under the guise of protecting animals. Various antisemitic or anti-Muslim groups have similarly attempted to wrap their intentions in the cloak of the animal welfare movement<sup>163</sup>, by arguing that ritual slaughter is crueler than pre-stunned slaughter, and that it should therefore be banned. In such context, religious arguments in support of religious animal ethics are an inadequate answer to what is nothing more than hateful speech.

b. The limited success of religious arguments in favor of animal protection in religious communities

Even in societies where the law and religion come together, religious arguments supporting *animal welfare* fail to convince.

- The lack of efficacy of reverse-engineering

Kristen Stilt's research project<sup>164</sup> illustrates the limited success of the use of arguments rooted in religion to achieve a better legal status for animals. The result of her research on the influence of Islamic law in support of the animal welfare agenda in Egypt is transferable to the context of Jewish and Christian communities who will struggle to have their voices heard within their respective religious communities. Similarly to Judaism and Christianity, interpretations of Islamic provisions regarding animals are contested within Islam, given the complexity of the principal texts themselves and the many ways scholars have interpreted them.

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<sup>163</sup> BERGEAUD-BLACKLER F., 2014, "French Animal Welfare Activists and Ritual Slaughter : Postmortem of a Moribund Campaign," dans Gole N. (dir.), *Islam and Public Controversy in Europe*, Ashgate Global Connections Series.

<sup>164</sup> Kristen Stilt Conference delivered at the Animal Law Conference on October 17, 2015 "The Constitutional Protection for Animals"  
<http://lawmedia.lclark.edu/LawMedia/Play/be591043e71448afbe141d633c568c7b1d?catalog=5750c9ac-e2be-4272-85a6-f040f5b57d3a>



Animal protection activists in Egypt saw the drafting of a new constitution in 2014 as an opportunity to include a provision regarding animal welfare in Egyptian constitutional law. In their efforts to lobby the drafting commission, advocates resorted to two sorts of arguments. The first arguments were grounded in Islamic religious texts. Despite the contradiction in the text, advocates strategically considered that such arguments would likely resonate by presenting animal welfare as a value inherent to Egyptian identity, thereby conferring legitimacy to a movement that was perceived as imported from abroad.<sup>165</sup> Kristen Stilt called this process of “taking a modern topic and searching for evidence in the Islamic tradition to support it”<sup>166</sup> reverse engineering. The second argument advocates used was grounded on the connection between animal cruelty and violence to humans.<sup>167</sup>

Such lobbying efforts resulted in the inclusion of a duty for the state to provide for the protection of the “kind treatment of animals” in the Egyptian Constitution of 2014. The language used is the same as the one used in the religious texts, seeming to indicate a link between the duty of kindness owed to animals under constitutional law and the kindness to animals prescribed in Islam.<sup>168</sup> However, the explanation given for such inclusion of an animal welfare provision in the text by the spokesperson of the drafting commission shows to what extent the religious argument put forward by the animal advocate was disregarded, in favor of the second secular argument. The spokesperson for the drafting commission attributed the duty of the state to provide for the kind treatment of animals to the three monotheistic religions, rather than to Islam only, therefore brushing away any element of Egyptian and Islamic identity.

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<sup>165</sup> *Id.*

<sup>166</sup> STILT, KRISTEN, Constitutional Animal protection in Egypt and the Making of a Social Movement, draft paper.

<sup>167</sup> Kristen Stilt Conference delivered at the Animal Law Conference on October 17, 2015 “The Constitutional Protection for Animals”

<http://lawmedia.lclark.edu/LawMedia/Play/be591043e71448afbe141d633c568c7b1d?catalog=5750c9ac-e2be-4272-85a6-f040f5b57d3a>

<sup>168</sup> *Id.*, 00:39:44

He also emphasized the connection between animal cruelty and human violence, paramount given the context of political instability in the country under the growing influence of fundamentalists.<sup>169</sup> Such interpretation dismisses the religious arguments previously set forth by the animal advocates, and focuses instead on the second areligious argument that they had given, that prohibition of violence of any kind should be prohibited. Thus, by seeing in the constitutional provision of kind treatment to animals a more general prohibition on violence, regardless of what is said in the religious texts, the spokesperson shifted the terms of the debate from religion to secularism.

In the Egyptian case, to the activists' surprise, the secular arguments turned out to be more convincing in the advancement of animal protection.

- Procrustean bed

In her book, *Animal Liberation and Atheism*, Kim Socha further theorizes the notion of reverse engineering in the context of the use of religious-rooted arguments to support an animal welfare agenda. Socha resorts to the metaphor of the “Procrustean bed”.<sup>170</sup> Procrustes, “the stretcher” in ancient Greek, was a rogue smith who physically attacked travelers by stretching them or cutting them so as they fit the size of an iron bed. Procrustes would make sure no one fit the bed, and the victims who were either too tall or too short would eventually die, allowing him to rob them. Today, a standard is said to be Procrustean when it arbitrarily enforces “uniformity or conformity without regard to natural variation or individuality”.<sup>171</sup> Socha's thesis is that religious argument for animal protection are procrustean in nature because they “merely hack away at or stretch the parameters of religion to make animal liberation what is essentially an anthropocentric speciesist, hierarchical belief system that

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<sup>169</sup> *Id.*, 01:02:20

<sup>170</sup> SOCHA, KIM *Animal Liberation and Atheism: Dismantling the Procrustean Bed* (Freethought House, 2014)

<sup>171</sup> Oxford dictionary

fails to speak to the liberation of nonhuman animals".<sup>172</sup> In her view, religions are anthropocentric, and even if they call for compassion in general, such compassion is directed primarily to humans. Therefore, using religious arguments to serve the animal welfare agenda would merely consist in forcing them to fit a certain framework, killing the original meaning of the Scriptures.

Larue's critique of Linzey's work illustrates Socha's articulation of what constitutes a procrustean argument. Larue, for instance, points that Linzey voluntarily emphasizes some biblical passages that appear to favor kindness to animals, while setting aside those that instrumentalize or permit harm to them. Such criticism could actually be addressed to any sort of interpretation made of the Holy Scriptures, whether in favor, or against a more protective status for animals, and beyond even the sole issue of animals, regarding women's and homosexuals' rights for instance.

Another more compelling criticism that illustrates Socha's point is the fact that pro-animal interpretations of the Holy Scriptures are sometimes very speculative, and therefore lose their appeal. For instance, Joseph Rosenfeld explains the murder of Abel by his brother Cain in the Old Testament as a punishment by God. Abel offered animals in sacrifice to God, whereas his brother Cain offered fruits and vegetables. According to Rosenfeld, God prohibited animal sacrifice and does not prevent Abel from being murdered as a punishment for that offense. Based on that pro-animal interpretation, Rosenfeld goes as far as speculating on the words that Cain whispered to his brother before killing him. Certainly, there is no correct interpretation of religious text. However, the speculative nature of this account illustrates the instrumentalization of religious texts to inadequately fit an animal welfare agenda.

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<sup>172</sup> SOCHA, KIM *Animal Liberation and Atheism: Dismantling the Procrustean Bed* (Freethought House, 2014)

Based on the limited efficiency of religious arguments, Socha argues that “the very concept of religion is antithetical to liberating animals,” and instead calls on approaching animal liberation from a secular perspective. The Egyptian animal protection experience, as studied by Stilt, by showing that secular arguments are indeed more convincing in the drafting of a Constitution, seems to further support such findings.

### **Conclusion**

While Judaism and Christianity both address the status of animals through religious laws and doctrines, the level of protection afforded to animals used for food changes depending on the interpretations of such provisions. Furthermore, even if Judaism seems to consider animal welfare more thoroughly than Christianity, it remains that the traditional interpretations of religious texts are very much anthropocentric. The extent to which religious prescriptions, and their interpretations regarding animals, influence the contemporary status of animals used for food is difficult to assess. On the one hand, they seem to provide a basis for advancements in the law, such as in the Israeli Supreme Court decision on *foie gras*. On the other hand, their anthropocentric nature limits such advancements by prescribing only that humans should take into account animal suffering, which is insufficient to challenge the legal status of animals as property, for instance. Moreover, the political, economic and sanitary motivations supporting the treatment of animals for food under modern laws makes it even more challenging to distinguish what is left of the influence of religious texts in modern law, especially when religious provisions regarding animals also intertwine with sanitation concerns.

Such ambiguity does not prevent animal advocates from looking into the potential success of religious claims grounded in non-traditional readings of religious texts. Religious animal advocates see in such arguments an excellent path to advance the interest of animals

## Animal Law LLM Seminar

from a legal perspective. Yet, such strategy is limited. First, the success of religious claims depends on the way legal systems define the relationship between church and state. Second, religious arguments in favor of animal protection themselves suffer from artificiality, as they are the result of an instrumentalization to serve a specific agenda that they were not designed to serve.

Rather than opposing the persuasiveness of religious arguments versus that of secular arguments, the purpose of this paper is to call on the animal protection movement to change the paradigm of the discussion on animals and religion. The question presented and debated within the contemporary animal protection movement concerns the impetus for animal welfare in the religious texts. Instead, this paper attempts to show that regardless of the degree to which religious texts command humans to treat animal with respect, and regardless of the supposed influence of religious texts on the legal status of animals in contemporary laws, what really matters is that Jewish and Christian teachings allow adherents to join with and observe the ethics of the animal protection movement.