Animal Protection Theory in U.S. and Islamic Law: a Comparative Analysis with a Human Rights Twist

Engy Abdelkader[*]

Abstract

Across geographically diverse Muslim-majority countries, nascent animal welfare movements have recently emerged, culminating in litigation in some instances and calls for legal reform in others. While Islamic legal precepts are often erroneously characterized as conflicting with Western legal ideals, this article highlights their compatibility vis-à-vis a descriptive, comparative and normative analysis of animal protection theory in both U.S. and Islamic legal theory. Moreover, this article argues that the Islamic legal duty to respect, protect and care for animals helps underscore the heightened legal duty to fellow human beings. To that end, it discusses the human rights implications of animal protection theory in Islamic law in relation to chronic maladies in some Muslim-majority societies, such as the unlawful deprivation of life, violence against women, children and religious minorities and mistreatment of the disabled. This article thereby offers a more expansive and necessary gleaning of the Islamic legal principles surrounding animal welfare and protection theory.

Keywords: *Human rights, Islamic law, Animal welfare, Animal protection, Religious freedom, Comparative and Foreign law*

Across geographically diverse Muslim-majority countries like Indonesia, the United Arab Emirates, Turkey, Bangladesh, Saudi Arabia, Egypt, Malaysia, and Qatar, nascent animal welfare movements have emerged, culminating in litigation in some instances and calls for legal reform in others.

Consider Indonesia: the country recently experienced its first lawsuit related to animal welfare last summer.[1] The facts precipitating the historic legal complaint involve an Indonesian dog owner who entrusted four companion animals to a local kennel for cross-country transportation via train.[2] The kennel confined the dogs to cramped cages and deprived them of food and water during the fifteen-hour journey.[3]

* Engy Abdelkader teaches international human rights law at Rutgers University. She holds two U.S. law degrees including credentials from Rutgers and the University of Pennsylvania Law School.

1. *See Indonesia's animal rights activists have hope in first animal abuse case,* Bikyamasr.com, http://www.bikyamasr.com/75566/indonesias-animal-rights-activists-has-hope-in-first-animal-abuse-case/ (last visited Oct. 14, 2012) (describing the facts of the case and its unique nature as Indonesia's first animal welfare action).
2. *See id.*
3. *See id.*

Three of the four animals died and the aggrieved dogs' owner brought a lawsuit seeking damages. The court's forthcoming ruling is already being billed as a "landmark" decision.[4]

In Malaysia, animal welfare advocates have decried a court's imposition of a mere fine after citizens pled guilty to starving thirty cats to death.[5] Activists demanded legal reform of the nation's anticruelty statute to impose prison sentences in such cases.[6]

Similarly, in Turkey, the Istanbul Bar Association is pushing for new legislation under which animal cruelty offenses would be punishable by a minimum three-year prison sentence.[7] Notably, animal welfare attorneys positively correlate animal abuse with the mistreatment of humans.[8] As such, the proposed bill would prohibit individuals convicted of animal cruelty from working with children in any capacity.[9]

This positive connection linking animal welfare with human rights has also been made by Bangladeshi advocates whose grass roots protests[10] culminated in a new government policy favoring vaccination of stray dogs to prevent the spread of rabies rather than culling them, a practice that involved breaking their necks.[11] There, too, activists positively correlated animal cruelty with brutality perpetrated against humans.[12] Advocates viewed the canine vaccinations, which would protect other dogs as well as humans against the spread of rabies, as more humane than killing them while addressing official concerns.

In addition to citing the connection between animal cruelty and the mistreatment of humans, animal protection advocates have utilized narratives laden with references to Islam and its legal textual sources – the Qur'an and Hadith – in related educational and outreach initiatives aimed at reform. Illustrative are members of Egypt's People for the Ethical Treatment of Animals (PETA) chapter whose pamphlets on the benefits of vegetarianism cite verses from the Qur'an, a primary and authoritative textual source of Islamic law.[13]

4. *See id.*
5. *See Malaysia animal rights activists angered over 'weak' cruelty ruling*, Bikyamasr.com, http://www.bikyamasr.com/71036/malaysia-animal-rights-activists-angered-over-weak-cruelty-ruling/ (last visited Oct.14, 2012) (discussing the current provisions of Section 44(2) of Malaysia's Animal Act 1953).
6. *See id.*
7. *See Turkey prepares to pass stringent animal cruelty laws*, Todayszaman.com, http://www.todayszaman.com/news-236458-turkey-prepares-to-pass-stringent-animal-cruelty-laws.html (last visited Oct. 14, 2012) (summarizing efforts to strengthen existing animal anticruelty statutes in Turkey).
8. *See id.*
9. *See id.*
10. *See Bangla dog lovers protest against culling,* Gulftoday.com, http://gulftoday.ae/portal/4309f27d-797a-4555-a27b-dbd5df9a6d65.aspx (last visited October 14, 2012) (depicting mass protests against government policies targeting stray dogs).
11. *See id.*
12. *See id.*
13. *See Chili Chicks' make appeal for veganism*, Egyptindependent.com (July 18, 2010), http://www.egyptindependent.com/news/chili-chicks-make-appeal-veganism (last visited Oct. 14, 2012) (detailing the advocacy efforts of one group of Egyptian animal welfare advocates persuading others to

In Qatar, a newspaper report featured a young man who runs an animal shelter while actively educating others about animal welfare by invoking Islam.[14] In Saudi Arabia, an opinion piece criticizes the status of animal welfare in the Kingdom while highlighting positive Islamic references to argue in favor of related legal and social reform.[15] And, in the United Arab Emirates, Dubai sponsored a conference titled *Animal Care: Between Legislation and Practice*, during which participants discussed animal welfare issues and stressed Islam's position regarding the protection and ethical treatment of animals.[16]

Set against this contemporary and burgeoning legal backdrop, this article uses primary textual sources to examine animal protection theory in Islamic law.[17] Legal scholarship has largely neglected this subject.[18] Yet for many Muslims across the globe, conservatives and progressives alike, legitimacy surrounding social justice causes hinges upon a perceived compatibility between their faith and its law.[19] To this end, advocates frequently employ religious narratives to advance legal reform; representative are the examples from Egypt, Qatar, UAE and Saudi Arabia referenced above. Such a strategy not only enhances a campaign's validity but also serves as a powerful motivator, prompting what is perceived to be religiously-mandated legal action.

Further, while Islamic legal precepts are often erroneously characterized as categorically at odds with Western legal ideals, this article highlights a number of similarities vis-à-vis a descriptive, normative, and comparative analysis of animal protection in both Western and Islamic theory and law. Moreover, this article argues that the latter's anthropocentric position with an emphasis on one's responsibility to care for nonhuman animals further underscores a heightened legal duty toward humans. This captures a more expansive picture of Islamic legal principles concerning animal protection.

---

adopt vegetarian practices by citing verses from The Qur'an).

14. *See A young Qatari passionate about rehabilitating animals,* Gulftimes.com, http://www.gulf-times.com/site/topics/article.asp?cu_no=2&item_no=448591&version=1&template_id=36&parent_id=16 (last visited Oct. 14, 2012) (highlighting the animal welfare work of Abdulla al-Naemi, a Qatari animal lover, who relies on Islamic teachings to argue in favor of animal protection efforts).
15. Arjuwan Lakkdawala, *Animal lovers lament lack of law against cruelty,* Arab News (Mar. 12, 2009), *available at* http://www.arabnews.com/node/321911 (criticizing the status of animal welfare in Saudi Arabia while highlighting positive Islamic references to argue in favor of reform).
16. *Dubai Municipality Organizes Symposium on Animal Welfare,* Islamic Fin. News (Nov. 15, 2011), *available at* 2011 WLNR 25917164 (detailing a government sponsored conference titled "Animal Care: Between Legislation and Practice" in which participants presented related papers on animal welfare issues while stressing the positive Islamic position towards animals). *See also Dubai looking to improve animal welfare,* Bikya Masr (Egypt) (Nov. 16, 2011) (describing animal welfare advocacy initiatives in Dubai and Abu Dhabi).
17. The primary sources are the Qur'an and Hadith. This article does not address the subject of animal slaughter as it has been analyzed in other scholarship.
18. This is so even in the scholarly realm of comparative legal literature. *See, e.g.,* Thomas G. Kelch, Globalization and Animal Law: Comparative Law, International Law and International Trade (2011) (Legal scholarship provides an impressive exposition of animal rights law globally, but makes no reference to Islamic law or related laws in Muslim majority countries).
19. Kecia Ali, Sexual Ethics & Islam (2006).

Section one provides a brief introduction to Islam and animal protection pursuant to primary textual sources of Islamic law. Section two engages in a descriptive and comparative analysis of animal protection law in the United States. Section three contemplates broader humanitarian insights distilled from the preceding descriptive explorations.

I. Section One: Islam, Islamic Law, and Animal Protection Theory

A. An Introduction to Islam and its Law

Islam is the third and youngest of the Abrahamic faiths, following Judaism and Christianity. At present, it is situated as the world's second largest religion, with practitioners spread across a spectrum of geographically diverse regions. According to Islamic tradition, the Prophet Muhammad began receiving Divine revelation in the seventh century while residing in a largely pagan society on the Arabian Peninsula.[20] These revelations, depicted as having been conveyed to him by the angel Gabriel, occurred in a piecemeal fashion spanning a twenty-three year period.[21] The divine messages revealed to Prophet Muhammad consisted of moral guidance, legal principles, and instructive responses to then-contemporary events.[22]

Qur'an literally means "reading" or "recitation."[23] As the holy book of Islam, the Qur'an is comprised of the divine messages revealed to the Prophet Muhammad.[24] The book consists of 114 separately titled chapters[25] of varying lengths[26] that do not adhere to any thematic order or arrangement.[27] As such, scholars characterize the Qur'an as an indivisible whole to be followed in its entirety.[28] Since Muslims regard the Qur'an as the verbatim word of God, it represents the first source of moral guidance and Islamic law.[29]

20. *See* Susan A. Spectorsky, Women in Classical Islamic Law 4 (2011). Muslims regard the Prophet Muhammad as the seal to a long spiritual tradition inaugurated by the Prophet Adam and which also encompasses the guidance of Abraham, Moses and Jesus, among other messengers and prophets.
21. *See* Mohammad Hashim Kamali, Principles of Islamic Jurisprudence (2005) (mentioning that the Qur'an itself explains the rationale of gradualism in its revelation in the following manner, "The unbelievers say, why has not the Quran been sent down to him [Muhammad] all at once. Thus [it is revealed] that your hearts may be strengthened, and We rehearse it to you gradually, and well arranged" [Qur'an 25:32]. Therefore, Qur'anic legislation was revealed piecemeal so as to avoid overwhelming and overburdening the faith's new adherents).
22. *See* Spectorsky, *supra* note 20; *see also id.* at 16.
23. *See* Kamali, *supra* note 21, at 14.
24. *See id.* (describing that the revelation of the Qur'an began with the Chapter Al-Alaq (96:1) starting with the words 'Read in the name of your Lord' and the revelation ended with the verse in Chapter Al-Maidah (5:3), "Today I have perfected your religion for you and completed my favor toward you, and chosen Islam as your religion.").
25. Also known as *surah* or *sura*.
26. *See* Kamali, *supra* note 21, at 15 (The shortest of the chapters consist of four verses (*ayat*) and the longest of 286 verses).
27. *See id.* (The verses on various topics appear in unexpected places, and no particular order can be ascertained in the sequence of its text).
28. *See id.*
29. *See id.* at 14. The majority of Muslims are either Sunni (80-90 percent) or Shia (10-20 percent); the split largely stems from issues related to the assumption of political authority following the Prophet

It is interesting to note that while the Qur'an is held to yield legal certainty because it represents the literal expression of God, it does not represent a code of laws as often speculated.[30] Rather, the text characterizes itself as general guidance for humankind.[31] Consider, for instance, that while the Qur'an is comprised of more than 6,200 verses, less than one-tenth contain legal material.[32] There are approximately 350 verses explicating Islamic laws, including prohibitions on female infanticide and unrestricted polygamy.[33] The crux of the text, however, relates to belief, morality, and spirituality. [34]

As the first textual source of law, the Qur'an articulates specific guidelines and general principles on legally important topics.[35] Qur'anic verses concerning general principles often require elaboration by the Sunnah, or Hadith.[36] The Sunnah alludes to the Prophet Muhammad's conduct.[37] During his lifetime, the Prophet Muhammad explained and interpreted the Qur'an as lawgiver and adjudicator.[38] Following his demise, Muslims turned to the Prophet Muhammad's conduct as an authoritative source of moral, spiritual, and legal guidance.[39] Sunnah is recorded in written narrations known as Hadith. While no Hadith may be ranked on equal footing with the Qur'an,[40] Hadith frequently supplement Qur'anic text; they expound upon and clarify Qur'anic principles and instructions. Pursuant to this framework, when confronted with a legal query, one first consults the Qur'an for an answer. Next, one resorts to Hadith for further insight and more detailed explication. In the event that the Qur'an sets forth general principles concerning the matter, one turns to Hadith for further elaboration and to facilitate comprehension. Accordingly, this article initially examines animal protection theory in the Qur'an and thereafter turns to Hadith.

Muhammad's demise. This article focuses on the Sunni legal tradition.

30. *See* Spectorsky, *supra* note 20, at 4.
31. *See* Kamali *supra* note 21, at 19.
32. *See id.* at 20 (There are close to 350 legal verses in the Qur'an, most of which were revealed in response to problems that were actually encountered. Some were revealed with the aim of repealing objectionable customs. Others laid down penalties with which to enforce the reforms that the Qur'an had introduced).
33. *See id.*
34. *See id.* at 19 (As such, its call to religion is superior to its legal content; nevertheless, it is the primary source of law).
35. *See id.* (The often quoted declaration that 'We have neglected nothing in the Book' [Qur'an 6:38] is held to mean that the general principles of law and religion are exhaustively treated in the Qur'an).
36. *See id.* at 29.
37. *See* Spectorsky, *supra* note 20, at 4.
38. *See id.*
39. *See* Richard Foltz, Animals in Islamic Tradition and Muslim Cultures 30 (2005) (While there is no "governing body" that can speak to all Muslims within the Islamic tradition, each denomination has various scholars that guide Muslims around the globe. Thus, the average Muslim tends to defer to the judgments of whichever living legal scholar s/he most respects, usually himself a follower of the particular school of law (e.g. Maliki, Shafii, Hanbali, Hanafi). And while some individual Muslims may follow recognized legal schools of jurisprudence, others simply rely upon their own understanding of the Qur'an as a central source of authority).
40. *See* Kamali *supra* note 21, at 15.

B. Animals and Animal Protection Theory in Islamic Law

As previously noted, Islamic law's two primary textual sources include the Qur'an and Hadith. This article contemplates the treatment of nonhuman animals in both, while arguing against the unjustified taking of animal life and for a positive duty of care and protection, particularly for those in one's control or possession, but also more generally.

1. The Qur'an

The Qur'an encompasses a multitude of references to a diversity of animal species in equally diverse moral, legal, and historical contexts. This article shares some related observations.

a. Chapters

Notably, seven of the Qur'an's 114 chapters' titles refer to animals: The Cow,[41] The Cattle,[42] The Bee,[43] The Ant,[44] The Spider,[45] The Stallions[46] and The Elephant.[47] Since other chapters are named after notable figures of great theological stature, such as the Virgin Mother Mary[48] and the Prophet Abraham,[49] the inclusion of animals in this sense arguably speaks to their value within Islamic tradition. This is particularly so given the belief that the Qur'an is divine in origin and orientation.

While the analysis may begin with the chapters' titles, it encompasses the text's substance as well. These chapters impart critical legal material to Muslims. Illustrative is *The Cow*,*50* which promulgates Islamic laws of continued significance and relevance today, including self-defense,[51] bribery,[52] evidence,[53] contracts,[54] and wills.[55] Its provisions constitute a primary source of authority in Islamic jurisprudence.

In addition to imparting importing legal rules, such chapters also describe guiding principles and theological narratives. For instance, *The Cattle* discusses the major articles of faith including the belief in One God, life after death, and past Prophets, as well as the practical application of spiritual principles to one's life. Further, *The Bee* describes the oneness of God while espousing that spirituality should be exhibited in one's moral life. These beliefs are integral to Muslim thought and

41. *See* Qur'an 2.
42. *See* Qur'an 6.
43. *See* Qur'an 16.
44. *See* Qur'an 27.
45. *See* Qur'an 29.
46. *See* Qur'an 100 (discussing human ingratitude).
47. *See* Qur'an 105 (explaining how God accomplishes His Will through the use of animals).
48. *See* Qur'an 19.
49. Qur'an 14.
50. Qur'an 2.
51. *See* Qur'an 2:190.
52. *See* Qur'an 2:188.
53. *See* Qur'an 2:282.
54. *See* Qur'an 2:282.
55. *See* Qur'an 2:180.

tradition. It is significant that they are related under chapters titled after animals. Again, this is particularly so due to the belief that the Qur'an is divine in origin and orientation. For instance, it is intellectually intriguing that a Qur'anic chapter is titled for cattle or bees rather than denoting its substance such as "The Oneness of God," or "The Major Articles of Faith."

Regarding theological narratives, *The Ant* relates the experiences of the Egyptian Pharaoh and Moses as well as those of the Prophets Lot and Solomon.[56] Similarly, *The Spider* describes the trials and hardships endured by Prophets Noah and Abraham, among others.[57] Such narratives are quite significant in Islamic tradition, again implicitly underscoring the value accorded to animal life and roles.

The Qur'an addresses the relationship between humans and animals in largely anthropocentric terms.[58] According to the majority view, the Qur'an classifies humans as superior to animals and as occupying a privileged status.[59] As part of this privilege, as Earth's conscientious stewards, humans are responsible for protecting and serving each other as well as the ecosystem. This framework mandates to humans a responsibility to care for and protect animals as vicegerents.[60] Animal welfare and protection is arguably integral to the trust placed by God in humans as His vicegerents on earth. Thus the Qur'an describes human accountability towards protecting and maintaining God's balanced creation. This accountability is made clearer in related Hadith.[61]

---

56. *See* Qur'an 27.
57. *See* Qur'an 29.
58. *See* Sarra Tlili, Animals in The Qur'an 7 (2012) (pointing out that humans are superior to other animals in Islam. Not only is Islam anthropocentric, but like Judaism and Christianity, it gives humans dominion over other animals). *See also* Al-Hafiz Basheer Ahmad Masri, Animal Welfare in Islam 4 (2009) (stating that "both science and religion assert that man is the apex of creation" and maintains that "Islam, too, declares man as the best of God's creation."). *See also* Foltz, *supra* note 39 ("Islam is what contemporary animal rights activists would probably call a strongly anthropocentric religion, although Muslims themselves might prefer to see their worldview as 'theocentric'. . . [w]ithin the hierarchy of Creation, The Qur'an depicts humans as occupying a special and privileged status. . . it would appear to remain undisputed that the Islamic view of the world is a hierarchal one, in which the human community occupies a higher rank than those of all other animal communities.").
59. *See* Foltz, *supra* note 39 (quoting the Qur'an: "Certainly, we have created Man in the best make," and "Hast thou not seen how God has subjected (*sakhkhara*) to you all that is in the earth?"). *See generally* Tlili, *supra* note 58, at 70 (noting that a number of animal themes in the Qur'an lend themselves to interpretations implying humans' special status. The most important of these is the recurrent theme of *taskhir* of certain animals and, more generally, of all creatures to humans). *See also* Qur'an 2:29 (stating that everything God has created is for human kind which, at least on a surface level, seems to exhibit an anthropocentric outlook. Likewise, it unambiguously permits humans to hunt certain animals and to consume the meat of a certain number of animal species. It also allows humans to use some nonhuman animals in other ways, all of which point to these animals' servility to humans and presumably to their lower status).
60. *See* Foltz, *supra* note 39 (noting that the term *khalifa* applies to humans in the Qur'an and is generally defined by contemporary Islamic scholars as "vice-regent," as in the verses that state "I am setting on the earth a vice-regent [*khalifa*]" and "It is He who has made you his vice-regent on earth."). *See also* Tlili, *supra* note 58, at 5-6.
61. *See* Ibrahim Abdul-Matin, Green Deen: What Islam Teaches About Protecting the Planet 7, 11 (2010) ("Living a Green Deen means understanding that God created us directly from the Earth

b. Narratives

In addition to depicting humans as vicegerents on earth, the Qur'an includes a number of narrations in which animals figure prominently, thus evidencing meaningful purpose and value. Five such narratives are examined here.

The experience of Prophet Noah and his Ark is a familiar story to Muslims, Christians, and Jews alike.[62] The Qur'an explains that when flooding became imminent, God demonstrated His concern regarding the extermination of the species of animals and directed Prophet Noah to "…load in the Ark two of all species – one male and one female of each kind …"[63] Islamic scholars have observed the most significant principle derived from this narration as the continued preservation of species.[64] At minimum, the narrative lends religious legitimacy to Islamic animal protection movements surrounding wildlife conservation and prohibitions on animal exploitation.

The next narrative, commonly referred to as 'The Companions of the Cave,' describes the experience of several young men who rejected idolatry in favor of the God of the Prophet Abraham.[65] The men fled religious persecution seeking refuge in a cave along with their dog.[66] The dog is depicted as both a companion to and protector of the young men, and exegetes speculate that the dog was a hunting dog whose paws were outstretched, ready to protect the men.[67] Given the contemporary cultural fear of dogs in the Muslim world, its inclusion in this Qur'anic narration is noteworthy.[68] It belies the notion that dogs should be reviled and further highlights the positive purpose nonhuman animals serve.

---

and that we must do all that we can to take care of it, protect it and manage all of its bounty in a sustainable way. We all have a blessed beginning and we will all come back to God at the end of our time here on Earth. Will we leave the planet better than we found it? Those who do so are stewards of the Earth."). *Id.* ("[E]verything in creation is made to exist in a perfect balance (*mizan*). . . [T]hink of the sun and the moon, which give us night and day. For thousands of years we have been able to use this balanced system to raise our crops and to know when to sleep, work and pray. Islam provides evidence of an omnipotent God who has properly made humans for the environment. He has ordered the stars and planets into fixed orbits. He has made an invisible energy field – gravity – to keep everything in its place on Earth. He has made plants and animals our friends, protectors and sustenance."). *But see* Tlili, *supra* note 58, at 7-8 (explaining that there are other plausible interpretations of Islamic, and more particularly, Qur'anic views of other animals. Muslims, of course, like the members of any other faith tradition, hold a wide range of views and attitudes toward animals. In any case, the Qur'an cannot only be read in ways that are consonant with modern views on nonhuman animals but also a non-anthropocentric reading of this text, in my opinion, seems even more plausible than anthropocentric. This study will endeavor primarily to offer an alternative reading of the Qur'anic animal themes. Moreover, the earth was not created for the sake of humans alone and "He spread out for all living beings." [Qur'an 6:38]).

62. Qur'an, 23:27.
63. *See* Masri, *supra* note 58, at 14-15 (quoting Qur'an 11:40).
64. *Id.* at 15.
65. Qur'an 18.
66. 6 Tafsir Ibn Kathir 130 (2d ed. 2003).
67. *See id.*
68. Indeed, the story could have as effectively been told without the dog's inclusion.

A third narrative, frequently referred to as 'The Cave of Thawr', also depicts animal species as protectors.[69] The Qur'an relates the experience and spiritual mindset of the Prophet Muhammad[70] when he sought refuge in a cave from contemporaries who viewed his prophecy as a threat and sought his demise. [71] A handiwork of several animals concealed the Prophet and his companions within the cave.[72]

According to Islamic tradition, in front of the mouth of the cave almost covering the entrance was an acacia tree that had apparently grown during the course of the day. Over the gap that was left between the tree and the wall of the cave, a spider had woven its web.[73] Additionally, a rock dove had made a nesting place and was sitting close, as if she had eggs with her mate perched on a ledge above.[74] Given the nest and web, those in pursuit of the Prophet Muhammad did not believe it possible for the men to be hiding in the cave.[75] So, they turned back the way they had come.[76] Here, the spider and nest represent Divine miracles that protected the Prophet Muhammad and his companions from harm. As many Muslims learn in childhood, one of the guiding lessons of this narration is to avoid unnecessarily killing or disturbing animals, even insects, as they serve many untold beneficial purposes.

The next narrative, known as 'The She-Camel', underscores the significance of providing nonhuman animals with adequate resources for continued sustenance.[77] Here, the privileged people in the tribe of Thamud[78] usurped all rights to water and

69. Qur'an, 9:40.
70. *See* 4 Tafsir Ibn Kathir 430-32 (quoting Qur'an 9:40: "If you help him not, for God did indeed help him when the disbelievers drove him out, the second of the two; when they were in the cave, he said to his companion: 'Do not grieve, surely, God is with us.' Then God sent down His tranquility upon him, and strengthened him with forces which you saw not, and made the word of those who disbelieved the lower, while the Word of God became the higher; and God is All-Mighty, All-Wise.").
71. Martin Lings, Muhammad: His Life Based on the Earliest Sources 118-20 (1983).
72. 6 Tafsir Ibn Kathir 129.
73. Lings, *supra* note 71.
74. *See id.*
75. *See id.*
76. *See id.*
77. *See* Qur'an 7:73 ("And to (the tribe of) Thamud (We sent) their brother Salih. He said: O my people! Serve God. Ye have no other God save Him. A wonder from your Lord hath come unto you. Lo! This is the camel of God, a token unto you; so let her feed in God's earth, and touch her not with hurt lest painful torment seize you."); *Id.* at 11:64 ("O my people! This is the camel of God, a token unto you, so suffer her in feed in God's earth, and touch her not with harm lest a near torment seize you."); *Id.* at 26:155-56 ("He said, 'This is a she-camel. For her is a [time of] drink, and for you is a [time of] drink, [each] on a known day. And do not touch her with harm, lest you be seized by the punishment of a terrible day.' But they hamstrung her and so became regretful. And the punishment seized them. Indeed in that is a sign, but most of them were not to be believers. And indeed, your Lord - He is the Exalted in Might, the Merciful."); *Id* at 54:23-31 ("Thamud denied the warning. And said, 'Is it one human being among us that we should follow? Indeed, we would then be in error and madness. Has the message been sent down upon him from among us? Rather, he is an insolent liar.' They will know tomorrow who is the insolent liar. Indeed, We are sending the she-camel as trial for them, so watch them and be patient. And inform them that the water is shared between them, each (day of) drink attended (by turn). But they called their companion, and he dared and hamstrung [her]. And how [severe] were My punishment and warning. Indeed, We sent upon them one blast from the sky, and they became like the dry twig fragments of an [animal] pen.").
78. The inhabitants of Thamud were thought to be descendants of the Prophet Noah.

pasture. The Prophet Salih intervened and asked the residents to respect the rights of the poor and their cattle. As a test, God sent the people a miraculous female camel with instructions concerning the camel's rights to access those resources. The Qur'an relates that the privileged people of Thamud crippled the she-camel and as a result, God punished them for infringing upon the camel's right to access the water.[79] In another Qur'anic narration addressing the inhabitants of Thamud, the residents asked for a sign from God that would prove Salih's prophecy. God sent the she-camel to them with instructions to safeguard her privilege to water, fodder, and safety from physical harm. While initially promising to do so, they later killed the camel. As a result of their collective transgression against this nonhuman animal, the Qur'an informs us that God destroyed the people of Thamud.[80] Commentators have observed that 'The She-Camel' narrative sets forth an important animal welfare principle: depriving an animal's access to resources is so grave a violation that it is punishable.[81] This narration underscores the positive rights of care, food, water, and shelter owed to nonhuman animals within human control or possession. Hadith literature further expounds upon this principle, as will be analyzed below.

The fifth and final Qur'anic narrative illustrating animals' utility value and purposive role is 'The Elephant'.[82] 'The Elephant' references an attack waged against a holy shrine, the Ka'bah,[83] by Abraha, the Christian ruler of Yemen, who intended to destroy the shrine. It is said that in the year that this offensive occurred, the Prophet Muhammad was born, and the Qur'an dedicates a short chapter to the event.[84] The attacking army included at least one elephant; however, when it reached the shrine, the elephant immediately knelt down and refused to move towards the Ka'bah.[85] Additionally, birds flew overhead carrying stones with which they pelted the soldiers attempting to destroy the Ka'bah.[86] From this and other narratives referenced above, one may extrapolate an Islamic ethic concerning the importance of animals. Indeed, in 'The Elephant', animals rather than humans saved the Ka'bah – the holiest site in Islam – from violent attack. Similarly, the animals rather than humans also saved the Prophet Muhammad – the final Messenger of God in Islam –from violent attack. In fact, each of these narrations speaks to the significance of animals in Islamic discourse.

79. Chandra Muzaffar, *Kindness To Animals: An Islamic Virtue*, Islamic Voice, http://islamicvoice.com/May2007/Quran&Science/index.php?PHPSESSID=1fb3a667e976e76c153ffcb8f54926d7.
80. Masri, *supra* note 58.
81. *See id.*
82. *See* Qur'an 105:1-5 ("Have you not considered how your Lord dealt with the Army of the Elephant? Did He not make their treacherous plan a flop? And send against them flocks of birds, which pelted them with stones of baked clay, thus rendered them like the chewed-up chaff.").
83. It is believed by Muslims to be the House of God originally constructed by the Prophet Abraham.
84. Tlili, *supra* note 58, at 66.
85. *See id.* at 104.
86. *See id.* (explaining that anyone struck by a pebble, according to the exegetes, either fell dead immediately or perished by partial disintegration of his body while running away from the scene of the battle).

c. Themes

In addition to such narrations, a number of themes recur throughout the Qur'an. While animals are mentioned in the Qur'an in a number of different contexts, three common themes are evident throughout: animals are often likened to signs of God, are given anthropomorphic qualities, and are commended for their material benefit for human beings. From these themes, principles and lessons concerning animal protection may be effectively extrapolated.

While all of God's creations are signs of the Divine, animals are mentioned specifically on several occasions that they are natural signs of the Divine in which humans can come to know God. For instance, the Qur'an relates that even a mosquito can be used as an example or a parable that communicates the truth of the Divine to humankind.[87] By stating that animals are signs of the Divine, the Qur'an is presenting animals as a testament to God's power and ability.[88] It is telling that the Qur'an states that animals are signs for those "people who use reason" (*li-qawm ya'qilun*).[89] Those who use their intellectual faculties and reflect upon the natural world will be able to recognize all living creatures as divine signs and parables from which to gain a deeper understanding of the Creator. As such, to treat nonhuman animals poorly is to deny such signs of the Divine; [90] to conduct oneself in such a manner, so as to effectuate their extinction, is to destroy those signs and go against human reason.

Anthropomorphism is another prominent theme within the Qur'an, which arguably inspires human empathy towards animals.[91] Illustrative of this theme are verses depicting animals as cohabitating in communities with similar characteristics and organizational features as humans. [92] Within their habitats, animals undertake acts that are human-like in nature, such as guarding one another from potential death

87. *See* Qur'an 22:26 ("Indeed, God is not timid to present as an example [*mathalan*] that of a mosquito or what is smaller than it. And those who have believed know that it is the truth from their Lord. But as for those who disbelieve, they say, 'What did God intend by this as an example . . .?'").
88. *See* Qur'an 67:19 ("Do they not observe the birds above them spreading their wings and folding them in? None can uphold them except [God] Most Gracious: truly it is He that watches over all things."). *See also* Tlili, *supra* note 58, at 42 (explaining that the Qur'anic presentation of animals as loci of miraculous signs upon which humans are invited to reflect to know more about their Creator, as a means of guiding them to His path). *See also* 7 Tafsir Ibn Kathir 105-06 (noting that the exegetes point out all the different kinds of animals with their various forms, colors and ways of moving and stopping, from one kind of water. "There are those that creep on their bellies like snakes and so on. There are others that walk on two legs like humans and birds. There are still others that walk on all four like cattle. He creates what He wills meaning by His power, because what He wills happens and what He does not will does not happen. They are as much recipients of divine blessings and attention as any other creature.").
89. Qur'an 2:164.
90. Abdul-Matin, *supra* note 61.
91. *See* Qur'an 66:38 ("There is not an animal [that lives] on the earth nor a being that flies on its wings but [forms part of] communities like you. Nothing have We omitted from the Book and they [all] shall be gathered to their Lord in the end.").
92. *See id.*

and destruction[93] and participating in prayer.[94] The Qur'an relates that a nonhuman animal may also serve as a teacher to a human, as illustrated in the narration of the raven that taught the son of the Prophet Adam how to bury the dead.[95] The Qur'an also describes animals' ability to possess language and communicate not only among themselves but to select humans (e.g. Prophets) as well.[96] These anthropomorphic attributes of animals underscore the Qur'anic provision that all of God's creation on heaven and on earth—not only human beings—submits to God in worship.[97]

Finally, the last Qur'anic theme speaks to animals' utility value for humans. According to the majority view, the Qur'an permits humans to dominate and benefit from animals for various purposes; the Hadith explicate that such objectives are necessary.[98] Such purposes, the Qur'an indicates, include warmth and protection, derived from animals' wool and fur, food and drink (such as milk),[99] and the transportation of humans and heavy cargo.[100] The Qur'an describes animals' physical beauty as a type of adornment, which is aesthetically pleasing, resulting in positive psychological and mental benefits as well.[101] Some scholars have opined that this utility

93. *See* Qur'an 27:18 ("At length when they [Solomon and his hosts] came to a [lowly] valley of ants one of the ants said: O ye ants get into your habitations lest Solomon and his hosts crush you [under foot] without knowing it."). *See also* Masri, *supra* note 58.

94. *See* Qur'an 24:41 ("See thou not that it is God Whose praises all beings in the heavens and on earth do celebrate and the birds [of the air] with wings outspread? Each one knows its own [mode of] prayer and praise. And God knows well all that they do.").

95. Qur'an 5:31. *See also* Tlili, *supra* note 58, at 72 (quoting Qur'an 5:27: "And recite to them the story of Adam's two sons, in truth, when they both offered a sacrifice [to God], and it was accepted from one of them but was not accepted from the other. Said (the latter), 'I will surely kill you. . . ' Said [the former], 'Indeed, God only accepts from the righteous [who fear Him]. If you should raise your hand against me to kill me - I shall not raise my hand against you to kill you. Indeed, I fear God, Lord of the worlds. Indeed I want you to obtain [thereby] my sin and your sin so you will be among the companions of the Fire. And that is the recompense of wrongdoers . . . ." And his soul permitted to him the murder of his brother, so he killed him and became among the losers. Then God sent a crow searching in the ground to show him how to hide the disgrace of his brother. He said, "O woe to me! Have I failed to be like this crow and hide the body of my brother?" And he became of the regretful).

96. *See* Tlili, *supra* note 58, at 72. *See also* Qur'an 27:16 ("Solomon succeeded David. He said: 'Know, you people, we have been taught the tongue of birds and endowed with all good things. Surely this is the signal favor.'").

97. *See* Qur'an 22:18 ("Do you not see that to God prostrates [*yasajudu lahu*] whoever is in the heavens and whoever is on earth and the sun, the moon, the stars, the mountains, the trees, the moving creatures [*al-dawab*] and many of the people . . . .?").

98. *See* Qur'an 16:5 ("He created cattle, which provide you clothing, food and other benefits . . . And He created the cattle for you, you have in them warm clothing and many [uses] advantages, and of them you can eat. And there is beauty in them for you when you drive them back home and when you send them forth to pasture. And they carry your heavy loads to lands that ye could not otherwise reach except with souls distressed: for your Lord is indeed Most Kind, Most Merciful.").

99.

100. *See* Qur'an 40:79-81 ("God, it is He Who has made cattle for you, so that some you may ride, and some you may eat. And you find [many other] benefits in them; you may reach by their means a desire that is in your breasts [i.e. carry your goods, loads] and on them and on ships you are carried. And He shows you His *Ayat*. Which, then of the *Ayat* of God do you deny?").

101. *See* Qur'an 36:73 ("And they have [other] profits from them besides and they get [milk] to drink. Will they not then be grateful?"); *Id.* at 40:80 ("And there are [other] advantages in them for you besides; that ye may through them attain to any need [there may be] in your hearts; and on them and

function underscores the importance of taking good care of animals and treating them kindly since they play an important role in serving people.[102] As a result, one must achieve a necessary balance where utility is concerned. On the one hand, the Qur'an draws similarities between the animal kingdom and its human counterpart; on the other, animals are subjugated to human control on an as-needed basis.[103] The Hadith literature more fully articulates the guidelines surrounding animal welfare in regards to animal utility, as discussed below.

2. The Hadith Literature

The Hadith literature refers to traditions or reports attributed to what the Prophet Muhammad said, did, or tacitly approved in response to a particular matter.[104] As was discussed earlier, Hadith is regarded as the second textual source of Islamic law.[105] However, unlike the Qur'an, Hadith is not considered to be of Divine origin, but it is still considered authoritative. The relationship between the Qur'an and Hadith in Islamic law is complementary in nature. Whereas the Qur'an frequently provides the general guidelines on religious and legal matters, the Hadith literature elaborates on its provisions.[106] The elaborative role of the Hadith in its relationship to the Qur'an is of critical importance to Islamic law. [107]

---

on ships ye are carried.").

102. Qatar Islamic Cultural Center, *The Rights of animals in Islam* (2011), *available at* http://www.fanar.gov.qa/Publication/Animals.pdf.
103. *See id.* (There is also an implicit message here: using their bodies for work, to drink their milk, for sustenance, and to use the fur that is necessary are all sanctioned within Islam as long as it is done so within strict guidelines. Killing animals to satisfy the thirst for trophies completely goes against Islamic tradition. Killing animals for their fur and to use those in unnecessary areas such as floor coverings, or to kill animals to keep their heads upon walls is a cruelty to animals. To undertake unnecessary experimentation for cosmetics or toiletries is against humane treatment of animals and is a disgrace. Blood sports have found the headlines within certain countries in the last few years, and are a problem within many countries. To hunt for amusement, to aim a weapon at an animal for fun, to cause injury for no other than gratification or tradition is simply prohibited in Islam.).
104. *See* Spectorsky, *supra* note 20, at 7. A Hadith consists of a text (*matn*) that contains information about something the Prophet said, did or affirmed by his silence. The *matn* is preceded by the *isnad*, a chain of authoritative transmitters, which gives credibility to the information in the *matn*. The *isnad* has a list of transmitters going back to the Prophet, his companions, or successors. An *isnad* that ends with "on the authority of the Prophet" means that the text of the Hadith reports an action, saying, or affirmation made by the Prophet himself. For our purposes, the hadith here have been truncated to reflect the substance of the narration only.
105. Kamali, *supra* note 21, at 49. In more than one place, the Qur'an enjoins obedience to the Prophet and makes it a duty of the believers to submit to his judgment and his authority. The following verses are explicit on this theme: "And whatever the Messenger gives you, take it, and whatever he forbids you, abstain from it" (Qur'an 59:7); "Obey God and obey the Messenger and those who are in charge of affairs among you. Should you happen to dispute over something, then refer it to God and to the Messenger" (Qur'an 4:58-59); "Whoever obeys the Messenger verily obeys God." (Qur'an 4:80). Referring the judgment of a dispute to God means recourse to the Qur'an and referring it to the Messenger means recourse to the Sunnah.
106. *See id*. at 32.
107. *See id*. at 32, 49. It is concluded from these and other similar passages in the Qur'an that the Sunnah is a proof next to the Qur'an in all legal matters and that conformity to the terms of Prophetic legislation is a Qur'anic obligation on all Muslims.

Notably, the Hadith are replete with illustrations of the Prophet Muhammad's compassion towards nonhuman animals.[108] The Prophet enjoined his followers to positively care for animals, refrain from mistreatment, exploitation, and cruelty, and to utilize their value only on an as-needed basis. While general principles concerning animal welfare and protection may be gleaned from the Qur'an, more explicit principles may be extrapolated from the Hadith.

The first principle concerns a positive duty of care towards animals in one's possession or control, while the second encompasses a prohibition against human neglect of and cruelty towards animals. One Hadith that succinctly evidences these principles focuses on an anonymous woman who imprisoned her cat within the confines of her home without any means for its sustenance; she deprived it of water and food, causing its painful demise. As a result, she was condemned to Hell for inflicting such suffering and causing another living creature's death.[109] If she could not provide the cat with requisite nourishment, she should have set her free to find its own food.[110]

Taken together with the Qur'anic principles articulated above—as in the narration of 'The She-Camel'—the Hadith arguably support the animal welfare stance that those who possess animals, whether for farming, work purposes, or as pets, must provide them adequate shelter, food, water, and, when needed, veterinary care. Moreover, arrangements must be made, if one is going to be away from home, to have one's animals taken care of.

Other Hadith extol the virtues of human benevolence towards animals that may not be in their possession or control. For instance, a popular Hadith describes a prostitute whose sins were forgiven for providing water to a thirsty, suffering dog. As a result of her act of compassion, God rewarded her with Paradise.[111] This Hadith conveys a significant message concerning the humane treatment of animals, particularly considering the high premium placed upon guarding one's chastity in Islam. Even though this woman engaged in illicit behavior, her kind treatment towards the dog outweighed her transgressions. Similarly, according to another narration, a gentleman was rewarded with Paradise after quenching a parched dog's excessive thirst.[112]

108. Annemarie Schimmel, Islam and the Wonders of Creation: The Animal Kingdom 37 (2003). One of the most widespread legends from the early days of Islam tells the story that the Prophet did not want to disturb his cat Muizza which was sleeping on the sleeve of his coat, so instead of waking the cat when he got up for prayer, he cut off the sleeve instead. This story is found even in European storybooks about Islam – books in which the Prophet is rarely shown in a favorable light.

109. Sahih al-Bukhari, Volume 4, Book 56, Number 689.

110. Sahih al-Bukhari, Volume 3, Book 40, Number 553.

111. The Sahih Collection of al-Bukhari, Volume 4, Book 54, Number 538 (compilation of Hadith reports – narrations regarding Muhammad, the Prophet of Islam – which is regarded as Islamic law's second principal source) [hereinafter Sahih Collection]. Prophet Muhammad said, "God forgave a prostitute because she found a dog panting from thirst near a well and saw that the dog was dying of thirst, so she removed her shoe and strung her head cover around it, and drew out some water for it, so God forgave her." *See also Al-Adab al-Mufrad Al-Bukhari*, *available at* http://spl.qibla.com/Hadith/H0003P0000.aspx [hereinafter *Al-Bukhari]*.

112. *Id.* Prophet Muhammad said, "A man saw a dog eating mud from (the severity of) thirst. So, that man took a shoe (and filled it) with water and kept on pouring the water for the dog till it quenched

Upon the Prophet Muhammad relating this particular narration, those listening asked bewilderingly, "Is there a reward for us in serving animals," to which the Prophet replied, "Yes, there is a reward for serving any animate."[113]

Another Hadith, which has several variants, reports the Prophet Muhammad as saying, "There is none amongst the Muslims who plants a tree or sows seeds, and then a bird, or a person or an animal eats from it, but is regarded as a charitable gift for him." The fact that service to and charity towards a human is likened to that of an animal is revealing, and may serve to inspire human empathy towards animals similar to the Qur'an's anthropomorphic themes.

Notably, the Hadith also explicitly prohibit cruelty against animals. Such cruelty includes branding and striking animals upon the face, but cruelty is not restricted to its physical dimension. Actions that emotionally and/or mentally torment animals are also explicitly forbidden as evinced by the following narration:

> "When a man was showing off some bird's eggs he had found, while the mother bird fluttered about frantically, [the] Prophet Muhammad said, 'Who has caused this bird distress by taking the eggs from her nest? Return them to her.'"

As was stated earlier, according to the Qur'an, animals are available to humans for material benefit (food, wool, fur, etc.). However, humans are prohibited from unjustifiably depriving an animal of its life, and for this reason, the Prophet Muhammad outlawed recreational hunting.[114] Finally, the Hadith elaborate upon the utility value of animals found within the Qur'an by explicating that humans may only use animals on an as-needed basis; use is unjustified if a viable alternative is available. Specifically, the Prophet Muhammad enjoined his followers to use animals only for necessary purposes, and on one occasion, reprimanded some men who were sitting idly on their camels in the marketplace.[115] According to the report, these men were using their camels in excess. While camels were an important means of transportation during the time of the Prophet Muhammad, the fact that these men remained sitting on their

its thirst. So God approved of his deed and made him to enter Paradise." *See also Al-Bukhari*, *supra* note 111.

113. Sahih Collection, *supra* note 111. Prophet Muhammad said, "While a man was walking he felt thirsty and went down a well and drank water from it. On coming out of it, he saw a dog panting and eating mud because of excessive thirst. The man said, 'This (dog) is suffering from the same problem as that of mine.' So he (went down the well), filled his shoe with water, caught hold of it with his teeth and climbed up and watered the dog. God thanked him for his (good) deed and forgave him. The people asked, 'O God's Apostle! Is there a reward for us in serving (the) animals?' He replied, 'Yes, there is a reward for serving any animate.'Kindness to animals was promised by rewards in Life Hereafter." *See Al-Bukhari*, *supra* note 111.

114. Sahih Collection, *supra* note 111. Prophet Muhammad said, "'Whoever kills a sparrow or anything bigger than that without a just cause, God will hold him accountable on the Day of Judgment.' The listeners asked, 'O Messenger of God, what is a just cause?' and he replied, 'That he will kill it to eat, not simply to chop off its head and then throw it away.'" *See also Al-Bukhari*, *supra* note 111. Prophet Muhammad said, "Anyone who would kill a bird, this bird would come on Doomsday and say, 'God, this person killed me for pleasure and not for benefit.'"

115. The Sahih Collection, *supra* note 111. Prophet Muhammad reprimanded some men who were sitting idly on their camels in the marketplace, "Do not treat the backs of your animals as pulpits, for God Most High has made them subject to you only to convey you to a place which you could not otherwise have reached without much difficulty." *See also Al-Bukhari, supra* note 111.

camels even though they had reached their destination was seen by the Prophet as going against the principle of using animals *pro re nata*.

C. Contemporary Application and Relevancy

Islamic law developed during the eighth to tenth centuries as a response to a collective need for an accepted legal code to govern an increasingly diverse and cosmopolitan Muslim society.[116] For many Muslims, no guiding principle can hope to find universal legitimacy unless it derives from Islamic law.[117] Yet, due to a variety of external and internal factors in the modern period, including the dismantling of much of Islamic law during colonialism and the later codification of Islamic legal provisions in majority Muslim countries,[118] Islamic legal discourses have sometimes failed to evolve in response to changing times and circumstances. The process for articulating legal principles is dictated by reliance on the accepted sources of Islamic jurisprudence, including the Qur'an and the Hadith, but also on *ijtihad* (independent legal reasoning) and *maslahah* (public interest).[119] The previous section explored animal welfare and protection theory according to the primary textual sources (Qur'an and Hadith). I will now turn to *ijtihad* and *maslaha* as additional sources of Islamic law that can facilitate the derivation of modern legal principles. These principles, based on analogy and inference in order to accommodate contemporary issues and serve the public interest, contribute to a fuller understanding of animal protection and welfare laws.

Ijtihad represents another important source of Islamic law as it allows for the continuous development and renewal of law in response to changing circumstances.[120] It involves intellectual exertion to infer new legal rules from pre-existing evidence based upon the accepted sources.[121] The doctrine of *ijtihad*, at least in theory, allows scholars to derive fresh legislation on diverse matters in light of general Islamic legal principles and the population's public interest.[122] It is significant to note that *ijtihad* is not only permissible but is also encouraged.[123] Historically, Islamic law promoted individual investigation and expression of opinions based upon

116. Foltz, *supra* note 39, at 43.
117. *See id.*
118. *See generally* Wael B. Hallaq, An Introduction to Islamic Law 85-140 (2009) (providing a general overview of colonialism's impact on Islamic law). *See also* Wael B. Hallaq, Sharia: Theory, Practice and Transformations 355-443 (2009).
119. *See id.* There are many other practical sources of law that are used in deriving Islamic legal rulings, however, for the purposes of this article, it will not be necessary to address them.
120. Kamali, *supra* note 21, at 366. By way of background, most Muslims follow legal rulings laid down during the eighth to tenth centuries when scholars were busy applying the techniques of jurisprudence (*ijtihad* – literally, "mental struggle") to address the problems and issues not explicitly faced by the Prophet Muhammad and his companions. By the end of this period, Sunni scholars, feeling that all-important legal questions had been resolved, declared the "gates of *ijtihad*" to be closed, and since then Sunni law has tended to imitate the precedents laid down by the classical jurists. This pattern of imitation, known as *taqlid*, has led to considerable problems in the modern age, with so many new phenomena and issues appearing that are not addressed in the classical legal texts.
121. *See id.* at 367.
122. *See id.* at 30.
123. *See id.* at 24.

evidence.[124] In fact, according to one hadith, the Prophet Muhammad stated that one who engages in *ijtihad* and makes a mistake will still receive one reward whereas one who engages in it correctly will receive a double reward.

The doctrine of *maslahah* also facilitates new jurisprudence. Literally meaning "benefit" or "interest,"[125] *maslahah* are considerations which secure a benefit or prevent harm and are also consistent with the objectives of Islamic law. [126] These objectives consist of five essential values, including religion, life, intellect, lineage/progeny, and property.[127] Life (animal and human), religion ("signs of the Divine"), and property (e.g., pets) may be of particular relevance in the animal protection context. Notably, the concept of *maslahah* considers that enacting a law may be beneficial at one time and harmful at another; and even during the same period of time, a law may be beneficial under certain conditions but prove to be harmful in other circumstances.[128]

Ijtihad and *maslahah* can facilitate new animal protection laws arising in agriculture, anticruelty measures, entertainment, scientific research, and species preservation. For example, these doctrines allow for modern application of animal welfare principles to derive new laws prohibiting the use of animals in entertainment—particularly where mental, emotional, or physical pain is inflicted—as it can be deemed cruel and unnecessary. This is especially true of cockfighting and dogfighting in which the animals suffer significant fear, pain, and suffering to satisfy a human desire for entertainment. The Hadith's explicit prohibition against animal cruelty, encompassing its physical, mental, and emotional dimensions, as discussed above, is directly applicable here. Furthermore, extending such a legal prohibition to modern forms of cruelty through *ijtihad* and *maslahah* advances the quality of life interests that Islamic law serves to protect and advance. Indeed, the Qur'an and Hadith repeatedly draw positive parallels between animal and human life, thus supporting such a rationale.

Similarly, applying principles of *ijtihad* and *maslahah* would arguably prohibit recreational hunting and other sports involving the use of animals as targets, on account of explicit prohibitions found within the Hadith.[129] On the other hand, the legality of using animals in zoos, aquariums, and circuses particularly where there is no evidence of harm is less clear-cut considering the Qur'anic reference to animals serving an aesthetic purpose where it promotes human mental wellbeing. It is clear,

124. *See id*.
125. *See id.* at 267.
126. *See id*.
127. *See id*.
128. *See id.* at 268.
129. Prophet Muhammad said, " 'Whoever kills a sparrow or anything bigger than that without a just cause, God will hold him accountable on the Day of Judgment' The listeners asked, 'O Messenger of God, what is a just cause?' and he replied, 'That he will kill it to eat, not simply to chop off its head and then throw it away.' " *Sunan an-Nasa'i*, Sunnah.com, www.sunnah.com/nasai (last visited Feb. 20, 2015) [hereinafter *Sunan an-Nasa'i*]. Prophet Muhammad said, " Anyone who would kill a bird, this bird would come on Doomsday and say, 'God, this person killed me for pleasure and not for benefit.' " *Id.*

however, that any mistreatment and/or cruelty in these contexts are prohibited from an Islamic legal perspective.

In the realm of scientific research, conducting tests on animal subjects may arguably be justified if deemed beneficial and necessary for the betterment of human life.[130] The Qur'an directly refers to animals' utility value, while the Hadith explicates the standard of using animals only as is considered necessary.[131] However, even in the context of scientific research, commentators have observed that qualified scientists must conduct the procedures in such a manner that does not inflict fear, pain, or suffering upon the subject animal.[132] This appears to be justified on the basis of the clear Prophetic prohibition against abusing an animal physically, mentally, or emotionally.

Regarding agriculture, the textual sources of Islamic law would seem to prohibit the use of insecticides and other chemicals that may cause harm to both human and animal health. A similar prohibition against contemporary factory farming methods, which subject animals to inhumane and cruel conditions—physically, mentally, and emotionally—and arguably compromising food quality for human consumption as well, could conceivably be legally justified.[133] Also in this context, striking and branding animals on the face would constitute unlawful cruelty. While animals may serve a utility value, they enjoy positive rights to adequate resources for continued sustenance, as illustrated in the Qur'anic narrative 'The She-Camel' and other Hadith concerning the human duty towards animals within their control or possession.[134] Indeed, with the human right to use animals comes a significant responsibility of care, compassion, and protection towards them.[135]

The Qur'an and Hadith literature also provide a solid foundation for legal reform surrounding wildlife conservation. The Qur'anic narrative concerning the Prophet Noah and the Ark as well as recurring themes of animals as "signs of the Divine" directly support such legislative initiatives in the Muslim world. As previously discussed, regarding the Prophet Noah and his Ark, Islamic scholars have observed the most significant principle derived from this narration as the continued preservation of species.[136] At minimum, the narrative lends religious legitimacy to Islamic

130. According to such views, the most important of all considerations is to decide whether the experiment is really necessary and that there is no alternative for it. Necessities refer to the essential needs or interests without which life could not be sustained. "When we damage our health and other interests by our own follies, we have no right to make the animals pay for it by inflicting similar or greater damage on them, such as by doing unnecessary experiments to find remedies for our self-induced ailments." *See* Masri, *supra* note 58, at 28, 32.

131. *See supra* Section B.

132. At least one commentator has objected to such experimentation in connection with non-essentials, however, arguing: "To kill animals to satisfy the human thirst for inessentials is a contradiction in terms within the Islamic tradition. Think of the millions of animals killed in the name of commercial enterprises in order to supply a complacent public with trinkets and products they do not really need. And why? Because people are too lazy or self-indulgent to find substitutes. Or to do without." *See* Masri, *supra* note 58, at 27.

133. *Id*. at 45.

134. *See supra* Section B.

135. *See supra* note 102.

136. Masri, *supra* note 58, at 15.

animal protection movements surrounding wildlife conservation. Additionally, by stating that animals are signs of the Divine, the Qur'an is presenting animals as a testament to God's power and ability.[137] In fact, the Qur'an states that animals are signs for those "people who use reason" (*li-qawm ya'qilun*).[138] Those who use their intellectual faculties and reflect upon the natural world will be able to recognize all living creatures as Divine signs and parables in which to gain a deeper understanding of the Creator. As such, to treat nonhuman animals poorly is to deny such signs of the Divine; [139] to conduct oneself in such a manner, so as to effectuate their extinction, is to destroy those signs and go against human reason.

Finally, so many of the themes, narratives, and principles found within the primary legal sources support stringent animal anticruelty laws. From 'The She-Camel' to the anonymous woman who starved her cat to death, the primary sources support the animal welfare stance that those who possess animals, whether for farming, occupational purposes, or as pets, must provide adequate shelter, food, water, and, when needed, veterinary care.[140] Moreover, such anticruelty laws would advance the principles of life, religion, and property found in Islamic law.

In a number of respects, American animal protection laws may serve as a model for the developing Muslim world to emulate. While these laws are not Islamic, the Islamic principles discussed above could be promoted with a similar framework.

II. Section Two: A Comparative Analysis of Animal Protection Law in the United States

This section examines American animal protection laws through a comparative lens. While Islamic legal precepts are often erroneously characterized as inherently incompatible with Western legal ideals, this section highlights similarities vis-à-vis a descriptive and comparative analysis of animal protection theory in both U.S. and Islamic law. This section begins with state statutes, thereafter focusing upon federal legislation.

137. *See* Qu'ran, 67:19 ("Do they not observe the birds above them spreading their wings and folding them in? None can uphold them except (God) Most Gracious: truly it is He that watches over all things."). *See also*, Tlili, *supra* note 58, at 42 (explaining that the Qur'anic presentation of animals as loci of miraculous signs upon which humans are invited to reflect to know more about their Creator, as a means of guiding them to His path). *See also* 7 Tafsir Ibn Kathir 105-06 (noting that the exegetes point out all the different kinds of animals with their various forms, colors and ways of moving and stopping, from one kind of water. "There are those that creep on their bellies like snakes and so on. There are others that walk on two legs like humans and birds. There are still others that walk on all four like cattle. He creates what He wills meaning by His power, because what He wills happens and what He does not will does not happen. They are as much recipients of divine blessings and attention as any other creature.").
138. Qur'an 2:164.
139. Abdul-Matin, *supra* note 61.
140. *See supra* Section B.

A. State Statutes

Historically, animals have been viewed as property[141] with no legal protections except those extended to their owners.[142] In common law, there was no crime of animal cruelty.[143] While the Puritans enacted the first anticruelty code in 1641, there would be no statutory provisions on the subject until the New York State Legislature enacted its first animal anticruelty statute in 1828.[144] Nineteenth-century laws comprise the core of anticruelty legislation today;[145] punishments vary, but generally include a monetary fine and/or term of imprisonment.[146] Early legislation included both a positive duty of care – an obligation to avoid acts or omissions that result in harm – and a prohibition against specific cruel conduct directed at nonhuman animals.[147] American anticruelty statutes today are incredibly consistent with the animal welfare and protection principles derived from the Qur'an and Hadith literature, as discussed above.

Today, animal anticruelty statutes exist in all fifty states, as well as the U.S. territories.[148] Some statutes limit protection to domestic animals, captive animals, and/or warm-blooded animals,[149] yet most extend anticruelty protection to any nonhuman living creature. With few exceptions, state anticruelty laws are criminal in orientation with a primary objective of imposing criminal sanctions.[150] In so doing, the law renders specific human conduct as socially and legally unacceptable; requires a minimum level of care toward animals; and also protects the economic interest that humans retain in the animals they possess.[151] Nevertheless, the vast majority of cruelty statues are misdemeanor violations.

141. *See* Jordan Curnutt, Animals and the Law: A Sourcebook 28 (2001) ("People who abused animals owned by others could be prosecuted under malicious mischief statutes for malevolently damaging someone else's property, thus causing the owner to lose some (or all) of the economic value to be derived from the beasts. Courts sought to compensate animal owners for these damages, and little or no thought was given to the interests of the creature that suffered the harm. This means that such statutes imposed only an indirect legal duty to treat animals in a certain way, while the true, direct beneficiaries were their owners, not the animals themselves. The direct obligation was to the human. Animal interests were not valued by the law for their own sake, but as a means to securing human interests in property.")
142. *See id.* at 27 ("This means that animals could never have the legal standing to sue in some particular situation to vindicate their rights to life, health, liberty or other matters. The failure to accord animals any legal rights whatsoever, and hence to divest them of all legal standing, weaves an unbroken thread through the fabric of the law, as determined by legislators and judges, stretching for millennia from Rome to England to America.").
143. *See* David Favre & Murray Loring, Animal Law 122 (1983).
144. The first animal anticruelty law in the U.S. dates back to 1641 when the Puritans of the Massachusetts Bay Colony enacted their first legal code, known as "The Body of Liberties." The code was comprised of one hundred "liberties." The ninety-second liberty forbade cruelty to animals under penalty of prosecution. *See* Margaret C. Jasper, Animal Rights Law 7 (2002).
145. Favre & Loring, *supra* note 143.
146. Jasper, *supra* note 144, at 7.
147. Favre & Loring, *supra* note 143, at 122.
148. Jasper, *supra* note 144, at 8.
149. *Id.*
150. Favre & Loring, *supra* note 143, at 121-22.
151. *See id.*

They generally define cruelty to encompass overriding and overdriving animals;[152] torturing, mutilating, beating or killing[153] an animal;[154] depriving an animal of necessary sustenance;[155] using animals for fighting;[156] transporting animals in inhumane conditions;[157] and abandoning[158] a sick[159] or disabled animal.[160] Several states specifically state

152. *See id*. at 124 "This phrase reflects historical concern for those animals most closely associated with humans (beasts of burden) during a period when motorized transportation was unavailable. No standard is given to determine a violation. The number of possible variables (age, strength and health of the animal, duration of load, of effort or weight of load, etc.) make it impossible to be more precise. Ultimately, the definition of a violation must relate to the individual animal and the species of animal. The riding, driving or loading becomes cruel when more is being demanded of the animal than could reasonably be expected under all the circumstances."
153. The death of animals receives the least amount of attention under the cruelty statutes. There are four different categories of this issue: the killing of another person's animal, the killing of one's own animal, the killing of animals by SPCA's and humane organizations, and the commercial slaughtering of animals. The killing of another's animal would be considered destruction of personal property and governed by general criminal law statutes. In addition, some states specifically make it illegal to kill the animals of another without legal privilege or consent. The right to kill one's own animal is an unquestioned attribute of private property ownership. The few states that do focus at all on this issue make it illegal to cruelly, maliciously, or needlessly kill. The ultimate death of an animal is not a defense or excuse for cruel acts preceding the death. Normally, cruelty laws would always govern. But, in most states, if an owner wishes to humanely destroy his own animal there is no criminal sanction. *See id*. at 144.
154. *See id.*
155. *See id.* at 125.
156. State laws prohibit "instigating, promoting, sponsoring or encouraging cockfighting, keeping cockpits or causing the birds to fight." At least seventeen states impose felony penalties for causing or using fowl to fight, or operating a cockfighting business. "Most of these provide a maximum penalty of five years in prison and a $5,000 fine. Half the states criminalize possession and thirty-one do not allow witnessing a cockfight. Eleven states with misdemeanor penalties also ban spectating and possessing gamecocks. Currently, only Michigan has designated cockfighting, spectating and possession of fighting birds as all felony offenses, punishable by up to four years in prison, a $50,000 fine and 1,000 hours of community service. This qualifies as the toughest animal fighting law in the nation." *See* Curnutt, *supra* note 141, at 281-82.
157. *See id.* at 75. "Better than two thirds of the states outlaw cruel methods of transporting animals. Most of these proscriptions are quickly stated in a single sentence without any examples or specifics. The Texas statute is typical: 'A person commits an offense if he intentionally or knowingly transports … an animal in a cruel manner.' Michigan and Minnesota offer the most detail, the latter by prohibiting conveyances without 'suitable racks, cars, crates, or cages in which the animals can both stand and lie down during transportation.' Michigan adds that the animals must have enough space in the vehicle to turn around."
158. Surprisingly, the states usually do not define the term, but Delaware's explication of "abandonment" is representative of those that do: "completely forsaking or deserting an animal originally under one's custody without making reasonable arrangements for the custody of that animal to be assumed by another person." *See also* Favre & Loring, *supra* note 143, at 152. Not only does the animal often face a cruel death, but it may pose a risk to humans and their property. Moreover, society will incur financial cost in the capture, care and disposition of animals abandoned by their owners. To protect the interests of animals and society, many states prohibit the abandonment of animals. *See also* Jasper, *supra* note 144, at 75.
159. *See* Favre & Loring, *supra* note 143, at 113 ("The owner of an ill or injured animal has several options available. Unless constrained by the state's cruelty laws, the owner may chose to do nothing, or he may treat the animal himself. He may also seek the aid and advice of a veterinarian. If the animal is harmed because of the advice or aid of the third party, then the owner of the animal may have a legal cause of action against that person. The standard of conduct to which he must conform to avoid liability is that of a reasonable person under like circumstances.")
160. For example, many statutes specify that animals must have room to both stand and recline during transportation; must be provided adequate food and water; and must not have their feet or legs tied

that failure to provide veterinary or medical care is a legal transgression.[161] Some states require that confined animals receive adequate exercise, ventilation, light, space, and clean living conditions.[162] Again, all of this is perfectly harmonious with the animal welfare and protection principles derived from the Quran and Hadith literature, examined above.

However, in addition to prohibiting particular behavior, state statutes also exempt specific conduct and general activities from liability, not withstanding the actor's intention or the degree of cruelty involved.[163] Many modern anticruelty statutes exempt animals used for scientific experimentation from their protection, although most laws maintain that such treatment must be carried out in a "humane" manner.[164] Nevertheless, "painful" treatment is not generally prohibited provided it is "necessary" to the experiment.[165] In addition to scientific research, other typically exempted practices include veterinary care; "normal" or "generally accepted" methods employed in animal agriculture, such as slaughtering for food, and driving, branding, dehorning, shearing and castration; and hunting and trapping.[166]

Individuals engrossed in animal agricultural work are rarely confronted with charges under a state anticruelty statute.[167] Unique is a federal district court holding, in *Humane Society v. Lyng ,168* that hot iron branding on the face of cows is cruel and inhumane.[169] Typically, farm workers and owners are only found guilty in cases of severe neglect that courts deem not to be customary.[170] Representative is the criminal conviction in *State v. Schott*[171] of a rancher under the state anticruelty statute for depriving his cattle and hogs of food and water thus causing forty-seven of the animals to die.[172] In another case, a man was convicted of animal cruelty because he withheld food from a number of his horses.[173] Notably, the court's holdings in *Humane Society*, *Schott,* and *Barnes* are consistent with Islamic legal proscriptions against face branding and depriving animals within one's possession or control of proper sustenance.

In addition to statutes penalizing the commission of particular acts, states also have criminal laws requiring a minimum duty of care towards nonhuman animals.[174] The public policy underlying "duty to provide care" statutes speaks more directly to

together during transport. *See* Jasper, *supra* note 144, at 7-8.

161. *See* Curnutt, *supra* note 141, at 75.
162. States make reference variously to the provision of fresh air, exercise, and sanitary conditions. *See* Jasper, *supra* note 144, at 8.
163. *See* Favre & Loring, *supra* note 143, at 135.
164. *See* Jasper, *supra* note 144, at 9.
165. *See id*.
166. *See* Curnutt, *supra* note 141, at 77.
167. *See id.* at 164.
168. Human Society of Rochester v. Lyng, 633 F.Supp. 480 (W.D.N.Y.,1986).
169. *See* Curnutt, *supra* note 141, at 163.
170. *See id*. at 164.
171. State v. Schott, 384 N.W.2d 620 (1986).
172. *See id.*
173. *See id.*
174. Favre & Loring, *supra* note 143, at 145.

the animal's interest than an individual's conduct.[175] In essence, such laws set forth a human duty to care for animals that an individual controls, purchases, or propagates for their own purposes.[176] Some states impose the duty on anyone who impounds or confines an animal to assure society that such animals will receive appropriate care.[177] Strikingly similar to the Islamic proscription, the American scope of the duty generally encompasses the provision of adequate food, drink, and shelter.[178]

Finally, states have also enacted legal restrictions regulating the recreational hunting of wild animals.[179] State legislators write and enact hunting statutes while state wildlife agencies or commissions promulgate related regulations.[180] Concerning recreational hunting, it appears that Hadith literature, which prohibits the practice, affords greater protection to wildlife.

B. Federal Statutes

For years, the United States Congress largely relied upon state anticruelty measures, but it began to assume a more active role within the last half of the twentieth century in establishing standards for animal protection, pursuant to its authority to regulate interstate commerce.[181] As a result, there are now federal laws that ex-

175. *See id.*
176. *See id.*
177. *See id.* at 146.
178. The Virginia Animal Welfare Act has the strictest provisions. Each owner of a companion animal has a duty to provide: (1) adequate food and water, (2) adequate shelter, (3) adequate space in the primary enclosure, (4) veterinary care when needed and to prevent suffering, and (5) humane care and treatment. Other aspects of the Act, however, undercut the force of these requirements, significantly. First, it is limited to companion animals. Second, the section makes reference to "pursuant to regulations" and it is unclear whether or not the section is self-executing or will require the existence of regulations before it is binding on pet owners. Finally, this section, unlike others in this Act, does not provide for a penalty. *See id*. at 146-47.
179. *See* Curnutt, *supra* note 141, at 296 ("State hunting regulations contain a list of 'protected species of wildlife.' This catalogue usually and somewhat confusingly lists animals that may not be legally taken at certain times, as well as endangered and threatened species, which may not be recreationally hunted at any time. Some states clarify the quite different legal status of these two wildlife categories by distinguishing protected species from 'game' species. The 'nongame' species of a state often refers to those animals that may not be killed, but are not ordinarily hunted anyway. On the other hand, some states use the term 'nongame' as synonymous with 'unprotected' species, for which there are no hunting restrictions whatever. It is always open season on these animals, and they may be legally killed in any manner. Coyotes and crows, for example, appear on almost every state's list of unprotected or 'nongame' species. The hunting regulations in each jurisdiction must be carefully studied to understand what is meant there by wildlife that is protected, unprotected, game or nongame.")
180. *See id.* at 293.
181. *See id.* at 4 ("The rise of animal protection law in the US is mainly a response by legislators to the heightened concerns of Americans about animal welfare, especially that of their pet dogs and cats. People also became worried about the treatment of other animals used in laboratories, and the fate of several highly social and intelligent wild species such monkeys, apes, whales and dolphins… Ascendancy of this type of legislation can be seen as a dimension of the environmental consciousness that developed in the 1960s, when many in the US and in other nations became increasingly aware of the devastation wrought by human activity on the natural world. People looked to legal mechanisms to do something about it. During the 1970s and 1980s, ordinary citizens, along with activists working for animal protection organizations, marched and lobbied, demanding the attention of people with

tend protection to nonhuman animals on a national basis. This section explores a number here.

The Animal Welfare Act (AWA),[182] originally enacted by Congress in 1966 and amended thereafter several times, requires the humane care of animals in several diverse areas, including animal fighting, animal transportation, animal exhibits,[183] animal sales, and animal use in research and experimentation.[184] It represents a national animal protection statute regulating animal welfare, including the use of animals in research, testing, and education, as well as for exhibition purposes, primarily in zoos and circuses.[185]

Notably, with respect to research, it recognizes the development of alternatives to research animals including methods that are comparatively faster, cheaper, and more accurate.[186] The AWA also depicts unnecessary duplication of research using animals as a wasteful drain on resources to be avoided.[187]

Further, the statute directs the Secretary of Agriculture to develop standards requiring investigators to "minimize pain and distress" during research, as well as to consider alternatives to painful procedures.[188] The AWA also requires consultation with a veterinarian when designing research with painful procedures; satisfactory

political influence, and new laws were written aimed at enhancing the quality of certain animals' lives.") *But see id*. at 5 ("Some legal scholars and commentators, scrutinizing the intentions of legislators and the opinions of judges, contend that at bottom all animal law is meant to serve human interests. They say that once one digs for the reasons why laws protecting animals are enacted, one finds that the ultimate motivation for these legal rules is to regulate the use of a rather curious object – a living, sentient being – to shield our property and our persons, not to benefit the animals themselves.")

182. 7 U.S.C. 54.

183. By statute this includes carnivals, circuses, and zoos but not county fairs, livestock shows, rodeos, or purebred dog and cat shows. Both the research facilities and the exhibitors are bound to standards of humane care. *See* Favre & Loring, *supra* note 143, at 154.

184. "The most important amendments to the Act – The Improved Standards for Laboratory Animals Act – were enacted in 1985. These amendments required the establishment of an information service in the National Agricultural Library in cooperation with the National Library of Medicine. The information service maintains data which assists in (i) preventing unintended duplication of experiments and tests; (ii) finding alternatives to the use of laboratory animals in experiments; and (iii) instructing scientists and laboratory employees concerning the humane animal practices now required under the law. The amendments further require that each registered research facility appoint an Institutional Animal Care and Use Committee, which must include no fewer than three members who possess sufficient ability to assess the questions of animal, care, treatment and practices in the experimental research presented to the Committee. At least one of the members must be a veterinarian; and one must be a non-affiliated individual to represent the community's concern for proper animal care and treatment. The Federal Animal Welfare Act contains the primary legislation enacted governing the use of animals in biomedical experimentation – a practice known as 'vivisection.' The Act applies to any research facility, defined as any school – excluding elementary and secondary schools – institution, organization, or person that uses or intends to use live animals in research, tests, experiments and that (1) purchases or transports live animals in commerce, or (2) receives funds under a grant, award or loan or contract from a department, agency or instrumentality of the US for that purpose of carrying out research, tests or experiments." *See* Jasper, *supra* note 144, at 19.

185. *See* Curnutt, *supra* note 141, at 441.

186. *See id*. at 446.

187. *See id.*

188. *See id.*

pre- and postsurgical care must also be provided.[189] Additionally, the AWA prohibits the use of a single laboratory animal for more than one procedure, formerly a common practice, except in cases of "scientific necessity."[190]

Finally, the Act also requires adequate training for all those involved with animals in the research facilities.[191] The training must help them acquire the requisite competence in the following research methods: humane animal maintenance and experimentation; reduction of the number of animals used and the pain caused to them; and reporting failures in the animal care program.[192] Again, none of AWA's provisions, as set forth above, conflict with the Islamic legal paradigm concerning animal welfare and protection. While the AWA is not without its flaws, it remains a helpful starting point for how a national framework can begin to address animal protection.

In addition to the AWA, The Twenty-Eight Hour Law[193] represents federal anticruelty legislation requiring food, water, and rest at regular intervals for livestock transported by train, aircraft, or motor vehicle.[194] Further, the Endangered Species Act (ESA)[195] is a federal wildlife protection law mandating a wide range of measures to preserve species that are perilously close to becoming extinct.[196] The ESA directs all federal agencies to avoid activities endangering protected species and prohibits capturing such animals within the U.S., in U.S. territorial waters, or on the open ocean.[197] Additionally, the Animal Fighting Venture Prohibition Act,[198] enacted as an amendment to AWA, prohibits animal fighting:[199] making it illegal to sponsor such a fight; buy, sell, transport, deliver or receive an animal for such a venture; or promote an animal fighting event or scheme.[200] Finally, a number of federal laws prohibit hunting selected species, a particular method of hunting, and regulates the pursuit of wildlife in certain public lands.[201] Notably, all of these measures are consistent with Islamic law as set forth in greater detail above.

189. *See id.*
190. *See id.*
191. *See id.*
192. *See id.*
193. 49 U.S.C. § 80502.
194. *See* Curnutt, *supra* note 141, at 69.
195. 16 U.S.C. § 1531 et seq.
196. *See* Curnutt, *supra* note 141, at 369 ("As many as 98 percent of all the animal and plant species that have ever existed on the planet have disappeared. In one massive die-off some 65 million years ago at least eight out of every ten animal species expired when a large meteor collided with Earth, ending the reign of the dinosaurs. Usually, however, extinctions have occurred gradually at a rate of about thirty animal species per millennium, a pace that has been substantially accelerated by human activities over the last few centuries, though one far from meteoric.")
197. *See id.* at 371.
198. 7 U.S.C. § 2156.
199. An animal fighting venture is defined as "any event which involves a fight between at least two animals and is conducted for purposes of sport, wagering or entertainment." Further, the term "animal" refers to "any live bird, or any live dog or other mammal, except man." *See* Curnutt, *supra* note 141, at 289.
200. Violators are subject to a fine of up to $5,000 and/or imprisonment up to one year. Jasper, *supra* note 144, at 28.
201. "It is illegal to hunt any animal listed as either endangered or threatened under the Endangered Species Act. Bald and golden eagles, some migratory bird species, marine mammals, and wild horses

III. Section Three: Broader Insights with a Human Rights Twist

It is interesting to note that state anticruelty statutes were frequently justified as preventing and criminalizing conduct tending to dull humanitarian feelings.[202] For years, American judges have recognized the wider positive consequences of promoting animal welfare:

> "[H]uman beings should be kind and just to dumb brutes, if for no other reason than to learn how to be kind and just to each other.[203]

Indeed, there are similar, broader insights gleaned from the Islamic animal welfare and protection paradigm. The Islamic legal emphasis on the human responsibility to protect and care for nonhuman animals, while refraining from physically, mentally, or emotionally cruel actions, underscores the human responsibility to protect and care for one another.

Consider, for instance, the chronic human rights problems confronting particular segments of the Muslim world, such as violence against religious and other minorities; torture and other cruel, degrading and inhumane punishment; unlawful deprivation of life; violence, harassment, sexual assault against women, including so-called "honor crimes"; mistreatment of those who are physically or mentally disabled; the phenomenon of "street children"; and discrimination against persons with HIV/AIDS.[204] The Prophetic model prohibits cruelty in all of its forms – physical, mental, and emotional – towards nonhuman animals, yet domestic abuse of women and children persists. Government use of torture and other cruel, degrading and inhumane punishment against its citizenry persists.

The anthropomorphic themes within the Qur'an, discussed previously, are arguably intended to inspire human empathy toward animals. If empathy towards animals is mandated, this teaching highlights when such empathy is absent toward other humans. If animals are worthy of empathy, then humans must be as well.

---

and burros are also shielded by the federal government through the Bald Eagle Protection Act, the Migratory Bird Treaty Act, the Marine Mammal Protection Act and the Wild Free Roaming Horses and Burros Act. The states where any of these species occur list them as protected under their own wildlife laws. Additionally, the Airborne Hunting Act is a federal law that makes it illegal for a person in any state to shoot any animal from an aircraft. Persons employed or licensed by state or federal governments to protect humans, land, water, other wildlife, domestic animals or crops are exempt from the prohibition. Finally, hunting of any species is not allowed in National Parks or in some National Wildlife Refuges, although federal regulations permit hunting in many other refuges. Nearly all of these pursue wildlife as a form of recreation, a pastime ("sport" hunting), rather than for subsistence or survival. About half of these are doves, ducks, grouse, quail and partridge and about one-third squirrels, rabbits and raccoons. Over 6 million deer and more than 24,000 bear are also slain each year." *See* Curnutt, *supra* note 141, at 290-91.

202. *See* Favre & Loring, *supra* note 143, at 122.

203. *See* Curnutt, *supra* note 141, at 29.

204. *See, e.g.,* U.S. Dep't of State, Country Reports on Human Rights Practices for 2011: Egypt (2011); *See also, e.g.,* U.S. Dep't of State, Country Reports on Human Rights Practices for 2011: Indonesia (2011); U.S. Dep't of State, Country Reports on Human Rights Practices for 2011: Turkey (2011); U.S. Dep't of State, Country Reports on Human Rights Practices for 2011: Bangladesh (2011).

For example, the primary sources evidence a positive human duty of care towards nonhuman animals within one's possession or control, including as it pertains to an animal's right to food, water, shelter, protection, and when necessary, medical care. Yet governments fail to exercise similar care to "street children," who are often forced to resort to begging simply to realize rights owed to animals. Arguably, such children are as deserving of this minimum standard of care and protection provided animals, if not more so.

Moreover, animal-based Islamic stories also have themes of human compassion towards one another. Recall the popular Hadith depicting a prostitute whose sins were forgiven for providing water to a thirsty, suffering dog[205] or the unnamed gentleman who was rewarded with Paradise after quenching a parched dog's excessive thirst.[206] Note that neither of these narrations specify the actors' faith – nowhere does it specify either man or woman as Muslim, yet they were both granted Paradise. This should call into question the validity of individual acts and government measures persecuting and/or discriminating against members of minority communal groups.

Indeed, this framework represents a more expansive and necessary gleaning of the Islamic legal principles concerning animal protection. Animal protection in Islam is significant not only for its applicability to animals. The human responsibility toward animals also serves as an insightful albeit disconcerting reminder concerning the human duty to care for and protect one another.

IV. Concluding Thoughts

Animal protection advocates utilize Islamic narratives with frequent references to Islam and its legal textual sources in order to inspire socially conscious reform. From Egypt to Qatar to Saudi Arabia to Dubai, activists and governments recognize the power of Islamic law in legitimizing and advancing guiding principles and campaigns. Consequently, this article examined animal protection theory according to the primary legal sources and thereafter employed the doctrines of *ijtihad* and *maslahah* to derive contemporary principles for application. These principles confirm that American animal protection laws represent a religiously harmonious model for Muslim majority countries concerned about Islamic legal strictures to emulate. Such analysis should help further the strategic discourse concerning legal reform to address animal protection – and perhaps, human rights too – in the Muslim world.

205. Prophet Muhammad said, "God forgave a prostitute because she found a dog panting from thirst near a well and saw that the dog was dying of thirst, so she removed her shoe and strung her head cover around it, and drew out some water for it, so God forgave her." Sahih Collection, *supra* note 111.

206. Prophet Muhammad said, "A man saw a dog eating mud from (the severity of) thirst. So, that man took a shoe (and filled it) with water and kept on pouring the water for the dog till it quenched its thirst. So God approved of his deed and made him to enter Paradise." *Id*.