

## SYMPOSIUM ARTICLE

# *Towards Universal Principles for Global Animal Advocacy*<sup>†</sup>

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### Abstract

Globalization now exerts an enormous impact on the human/animal relationship, which has momentous implications for both animal advocacy and the future of animal law. Animal abuse is being outsourced as animal experimentation heads east and agricultural animal production moves south. As a result of, among other things, outsourcing and other impacts of globalization on the industries of animal experimentation and animal agricultural production, parochialism and ‘one state’ strategies will not ultimately be effective in ending animal abuse. Animal advocates and lawyers must therefore construct theories, strategies, principles and campaigns that have resonance around the globe and traverse seemingly impenetrable cultural divides. To accomplish this crossing of cultural boundaries, it is paramount to fashion a common language – one which expresses cross-culturally accepted universal principles. This article proposes a methodology for generating these universal principles for animal advocacy and legal policy proposals, loosely based on Feminist Care Theory, positing that moral principles are based on feelings of compassion, sympathy and empathy. The specific basal notion proposed for grounding these universal principles for animal advocacy and legal policy proposals is the concept of ‘caring’, defined as ‘the suite of feelings and cognitions that an emotionally sound human experiences in response to focusing attention on the suffering of others’. Based on this foundational notion, several examples of uses of animals are analyzed and exemplar universal principles and legal policy proposals are derived.

**Keywords:** Animal law, Universal principles, Globalization, Animal advocacy, Feminist Care Theory

## 1. INTRODUCTION

‘Glob·al·i·za·tion ... *noun* \glō-bə-lə-’zā-shən\ ... : the act or process of globalizing: the state of being globalized; *especially*: the development of an increasingly integrated global economy marked especially by free trade, free flow of capital, and the tapping

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of cheaper foreign labor markets'.<sup>1</sup> The term has become a cliché. Some lament its blurry meaning; others simply note its myriad instantiations.<sup>2</sup> Yet even a quick reading of this definition of globalization reveals its capacity, as a phenomenon, to exert an enormous impact on the human/animal relationship with momentous implications for animal advocacy and the future course of animal law. One need only consider one of the constituent elements of the economics of globalization, outsourcing, to grasp its impact. Animal abuse is being outsourced. Meat production is going south and animal experimentation is heading east. Africa now produces meat for Europe while Brazil does the same for both Asia and Europe.<sup>3</sup> We see animal experimenters abandoning places like Europe in favour of India, Singapore and China.<sup>4</sup> Animal use industries wish to reduce costs and evade regulation of animal use in places like Europe by moving to more favourable regulatory climates. And why not? One can hardly expect globalization to stop at the shore of the human/animal relationship. In addition to outsourcing, the level of trade in animals and animal products increases at a furious pace, with trade in many such products more than doubling in the last 15 years.<sup>5</sup>

<sup>1</sup> Globalization Definition, *Merriam-Webster Dictionary*, available at: <http://www.merriam-webster.com/dictionary/globalization> (emphasis in original). This is the term defined in its modern economic sense, which originated as early as 1981: B.J. Feder, 'Theodore Levitt, 81, Who Coined the Term "Globalization", is Dead', *The New York Times*, 6 Jul. 2006, available at: [http://www.nytimes.com/2006/07/06/business/06levitt.html?\\_r=0](http://www.nytimes.com/2006/07/06/business/06levitt.html?_r=0). It has not always been so used and its origin is subject to some dispute. One author says that it was first used in 1944, but in a sense different from the modern economic meaning, and was first given voice in its modern sense by Harvard Business School Professor Theodore Levitt (the author later retracted this attribution: *ibid.*). Yet another source states that the term 'globalization' was first used in a Western dictionary in 1961: N. Chanda, 'Globalization Has a Long History', Social Science Research Council (SSRC), 30 Apr. 2007, available at: <http://www.ssrc.org/features/view/globalization-has-a-long-history>. But even the date when the term first appeared in a dictionary is, apparently, subject to controversy. 'According to the Oxford Dictionary, the word 'globalization' was first employed in 1930. It entered the Merriam-Webster Dictionary in 1951. It was widely used by economists and social scientists by the 1960s. Marshall McLuhan, a Canadian who analyzed the impact of mass media on society, coined the [derivative] term 'global village' in 1962': 'Globalization – Origin of the Word', *MrGlobalization*, 21 Jul. 2010, available at: <http://www.mrglobalization.com/globalisation/252-globalization-origin-of-the-word>.

<sup>2</sup> M. Ofitserova-Smith, 'Moral Implications of Globalisation' (2003) 143(3) *Polish Sociological Review*, pp. 259–73, at 259 ('globalization' has lost its meaning through overuse); V. Stahovnik, 'Philosophy and Globalization II' (2009) 48(2) *Synthesis Philosophica*, pp. 209–18, at 209 (notes that the meaning of globalization and how it is normatively analyzed differs greatly among various commentators); D.A. Crocker, *Development Ethics, Globalization, and Stiglitz*, available at: <http://terpconnect.umd.edu/~dcrocker/Courses/Docs/PUAF698Q-Dev%20Ethics,%20Globalization%20and%20Stiglitz.pdf> ('globalization' has become a buzzword and a cliché).

<sup>3</sup> M. Pickover, *Animal Rights in South Africa* (Double Story, 2005), pp. 147, 161–5 (discussing meat production moving from Europe to South Africa); J. Foley, 'A Five-Step Plan to Feed the World' (2014) 225(26) *National Geographic*, pp. 26–59, at 54, available at: <http://www.nationalgeographic.com/food/features/feeding-9-billion/#> (documenting Brazilian production of poultry for Asia and Europe).

<sup>4</sup> I. Murnaghan, 'Animal Testing in Asia', *About Animal Testing*, 16 Dec. 2010, available at: <http://www.aboutanimaltesting.co.uk/animal-testing-asia.html>; J.S. Pocha, 'Outsourcing Animal Testing', *The Boston Globe*, 25 Nov. 2006, available at: [http://www.boston.com/business/healthcare/articles/2006/11/25/outsourcing\\_animal\\_testing](http://www.boston.com/business/healthcare/articles/2006/11/25/outsourcing_animal_testing); C. Vaughan, 'Flying Solo – The Maneka Gandhi Interview', *Animal Liberation Front*, available at: <http://www.animalliberationfront.com/ALFront/Interviews/FLYING%20SOLO%20-%20THE%20MANEKA%20GANDHI%20INTERVIEW.htm>.

<sup>5</sup> Data on exports and other economic activity relating to animals and animal products that form the basis of my statement are contained in compilations of the Food and Agriculture Organization of the United Nations, available at: <http://faostat.fao.org/site/535/DesktopDefault.aspx?PageID=535#ancor>.

As a result of the impacts of globalization on animal agricultural production and the animal experimentation industry, parochialism and ‘one state’ strategies will not ultimately be effective in ending animal abuse. Without an integrated global strategy, increases in animal trade and outsourcing will undoubtedly continue apace. Therefore, the horizons of animal advocates must expand outside national boundaries in order to address the impacts of globalization on animal protection and animal rights. Animal advocates and lawyers must construct theories, strategies, principles, legislation, and other campaigns that resonate across the globe. In this endeavour, cultural divides that may seem impenetrable must be traversed. To effectively accomplish this spanning of cultural boundaries, it is paramount to devise a common language so that messages are not misinterpreted by or ineffective in particular cultures. This article undertakes a few initial steps towards shaping a process for fashioning universal principles that can be utilized across cultures to address animal abuse, generate legal policy proposals, and promote the cause of animal rights.

This enterprise is informed by several of my earlier articles on animal law and animal rights issues. I have previously discussed the concept of legal rights for animals and suggested certain foundational rights that should be accorded to animals, such as freedom to pursue their telos and freedom from human-inflicted restraint and pain, except where required to benefit an animal.<sup>6</sup> The role of the emotive in animal rights theory was the subject of ‘The Role of the Rational and the Emotive in a Theory of Animal Rights’, in which I argued, in substantial part from a Feminist Care Theory perspective, that ‘rights’ are not founded on any single concept but are constructed from a compound of constituents including our feelings and emotions, like compassion.<sup>7</sup> More recently, I explored the impact of culture on animal law and advocacy, finding that in the globalized world advocates must consider two aspects of culture and its relation to animals, a ‘culturally solipsistic’ characteristic reflecting the unique perspective of a particular culture, and a universal facet composed of moral, ethical, empirical and other principles posited to be accepted across cultures.<sup>8</sup> It is argued that these latter universal principles can be constructed and utilized to advance the cause of animals worldwide. This article proposes a possible path for bringing many of these ideas together, both theoretically and strategically, to advance the global cause of animals through the suggestion of a process for derivation of universal principles on which global animal advocacy and legal policy proposals can be built.<sup>9</sup>

<sup>6</sup> T.G. Kelch, ‘Toward a Non-Property Status for Animals’ (1998) 6(3) *New York University Environmental Law Journal*, pp. 531–85, at 581–3.

<sup>7</sup> T.G. Kelch, ‘The Role of the Rational and the Emotive in a Theory of Animal Rights’ (1999) 27(1) *Boston College Environmental Affairs Law Review*, pp. 1–41, at 36–9.

<sup>8</sup> T.G. Kelch, ‘Cultural Solipsism, Cultural Lenses, Universal Principles, and Animal Advocacy’ (2014) 31(2) *Pace Environmental Law Review*, pp. 403–74.

<sup>9</sup> Note that the universal principles asserted to be of utility for animal advocacy include not only moral principles, but also empirical and factual propositions (here I am distinguishing ‘empirical’ statements, those founded on present observation and experiment, from ‘factual’ statements, by which I mean statements concerning matters of fact not tied to present observation and experiment, such as ‘the Statute of Elizabeth states ...’ or historical statements). In this article, however, I address only the construction of universal principles that are moral propositions, although these universal moral principles may be based on empirical or factual information.

One obvious response to this project is to assert that there are no principles universally accepted across cultures. This would be the position of, among others, relativists of various hues.<sup>10</sup> Since the sole purpose of this article is to illuminate a route to and process for the construction of universal culturally transcendent principles relating to animal advocacy and animal law, it is beyond the scope of this endeavour to theoretically and empirically justify the idea of cross-culturally accepted universal principles. For present purposes, it is sufficient to note that support for universal culturally transcendent principles can be discovered in many quarters. It finds support in the foundational idea that society itself could not exist without certain universally accepted principles,<sup>11</sup> in common morality theories in philosophy,<sup>12</sup> in value hierarchy and other studies in sociology and psychology,<sup>13</sup> in World Society sociological theory,<sup>14</sup> as well as in the fact that animal-use industries themselves use universal cross-cultural cues in their marketing, lobbying and media control efforts.<sup>15</sup> Also supportive of the idea that at least some cross-culturally

<sup>10</sup> For examples of current perspectives, views and debates relating to cultural relativism, see D. Perusek, 'Grounding Cultural Relativism' (2007) 80(3) *Anthropological Quarterly*, pp. 821–36; F. Varennes, 'The Fallacies in the "Universalism Versus Cultural Relativism" Debate in Human Rights Law' (2006) 7(1) *Asia-Pacific Journal on Human Rights and the Law*, pp. 67–84; M.F. Brown, 'Cultural Relativism 2.0' (2008) 49(3) *Current Anthropology*, pp. 363–83; R.C. Ulin, 'Revisiting Culture Relativism: Old Prospects for a New Cultural Critique' (2007) 80(3) *Anthropological Quarterly*, pp. 803–20; T.H. Johnson, 'Culture Relativism: Interpretations of a Concept' (2007) 80(3) *Anthropological Quarterly*, pp. 791–802; X. Li, 'A Cultural Critique of Cultural Relativism' (2007) 66(1) *The American Journal of Economics and Sociology*, pp. 151–72.

<sup>11</sup> G. Outka & J.P. Reader, Jr., 'Introduction', in G. Outka & J.P. Reader, Jr. (eds), *Prospects for a Common Morality* (Princeton University Press, 1993), pp. 3–28, at 5–9; A. Gewirth, 'Common Morality and the Community of Rights', in Outka & Reader, Jr., *ibid.*, pp. 29–52, at 29–38; D. Little, 'The Nature and Basis of Human Rights', in Outka & Reader, Jr., *ibid.*, pp. 73–92, at 75–85; R. Audi, *Moral Value and Human Diversity* (Oxford University Press, 2007), p. 80. See also L.S Cahill, *Sex, Gender and Christian Ethics* (Cambridge University Press, 1996), p. 56 (arguing that cultures converge concerning 'areas of experience which constitute humanness'); Stahovnik, n. 2 above, pp. 213–5 (proposing 'pluralistic universalism' as a global ethic based, in part, on ideas developed by Robert Audi).

<sup>12</sup> For discussions of various common morality theories, most focused on bioethical questions, see T.L. Beauchamp & J.F. Childress, *Principles of Biomedical Ethics* (Oxford University Press, 2013); S. Bok, *Common Values* (University of Missouri Press, 1995); J.D. Arras, 'The Hedgehog and the Borg: Common Morality in Bioethics' (2009) 30(1) *Theoretical Medicine and Bioethics*, pp. 11–30, at 19–20; T.L. Beauchamp, 'A Defense of the Common Morality' (2003) 13(3) *Kennedy Institute of Ethics Journal*, pp. 259–74; R.A. Lindsay, 'Slaves, Embryos, and Nonhuman Animals: Moral Status and the Limitations of Common Morality Theory' (2005) 15(4) *Kennedy Institute of Ethics Journal*, pp. 323–46; B. Orlau, 'Common Morality, Moral Dilemmas, and Hermeneutic Ability' (2010) 8(2) *Romanian Journal of Bioethics*, pp. 124–33, at 126; J. Keulartz, 'Comments on Gert's Common Morality: Old-Fashioned or Untimely?' (2005) 5 *Wageningen UR Frontis Series*, pp. 141–5, available at: [http://library.wur.nl/frontis/ethics/08b\\_keulartz.pdf](http://library.wur.nl/frontis/ethics/08b_keulartz.pdf).

<sup>13</sup> S.H. Schwartz, 'An Overview of the Schwartz Theory of Basic Values' (2012) 2(1) *Online Readings in Psychology and Culture* pp. 1–20, at 15; S.H. Schwartz & A. Bardi, 'Value Hierarchies Across Cultures: Taking a Similarities Perspective' (2001) 32(3) *Journal of Cross Cultural Psychology*, pp. 268–90, at 272–8.

<sup>14</sup> E. Schofer et al., 'Sociological Institutionalism and World Society', in E. Amenta et al. (eds), *The Wiley-Blackwell Companion to Political Sociology* (Wiley-Blackwell, 2012) pp. 57–68, at 58; J.W. Meyer et al., 'World Society and the Nation State' (1977) 103(1) *American Journal of Sociology*, pp. 144–81.

<sup>15</sup> See, e.g., The Beef Board, 'Promotion', *MyBeefCheckoff.com*, available at: <http://www.beefboard.org/promotion/thecheckpromotion.asp>; The Beef Board, 'Latest News From "Beef. Its What's For Dinner"', available at: <http://www.beefitswhatsfordinner.com/newsreleases.aspx>; 'The Other White Meat Brand', *Pork Be Inspired*, available at: [http://www.porkbeinspired.com/towm\\_promo\\_heritage\\_page.aspx](http://www.porkbeinspired.com/towm_promo_heritage_page.aspx).

accepted principles exist is the fact that there are a number of cross-culturally accepted international standards and rules, including even a few standards for the welfare of animals.<sup>16</sup>

These universal principles, it will be urged, can be derived drawing on a number of theories, but based substantially on a proffered variant of Feminist Care Theory, which posits that moral principles are based on feelings of compassion, sympathy and empathy. The specific foundational notion proposed here to ground universal principles for animal advocacy is the concept of ‘caring’, which I define as ‘the suite of feelings and cognitions that an emotionally sound human experiences in response to focusing attention on the suffering of others’. Grounded on this basal notion, two examples of practices relating to the use of animals will be analyzed and exemplar universal principles for global animal advocacy will be derived and their legal implications examined.<sup>17</sup>

To this end, Section 2 argues that Feminist Care Theory is an appropriate foundation for creating universal moral principles. In Section 3.1 a functional definition of ‘caring’ is developed, designed to avoid cultural, social or economic biases, and to be capable of generating universal moral principles. Several objections to caring as a foundation for universal moral principles are addressed in Section 3.2, and the contours of the concept of caring to be used to produce such principles are further defined. Section 3.3 describes the process of employing the care theory for the analysis of animal suffering and constructing universal moral principles for animal advocacy, and applies this process to two concrete examples. A preliminary sketch of how the proposed theory of care might be used to create a comprehensive catalogue of rights for animals is drawn in Section 3.4.<sup>18</sup> Concluding remarks in Section 4 reinforce the need for animal advocates to develop universal principles for animal advocacy given the cultural, economic and historical forces that confront animal advocates in our globalized world.

<sup>16</sup> See Universal Declaration of Human Rights, New York, NY (US), 10 Dec. 1948, GA Res. 217A (III), UN Doc. A/810, 71, available at: <http://www.un.org/en/documents/udhr>; International Covenant on Civil and Political Rights, New York, NY (US), 16 Dec. 1966, in force 23 Mar. 1976, available at: <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>; Convention for the Amelioration of the Condition of the Wounded in Armies in the Field, Geneva (Switzerland), 22 Aug. 1864, in force 22 June 1865, available at: <https://www.icrc.org/ihl/INTRO/120?OpenDocument>; Convention for the Amelioration of the Condition of the Wounded and Sick in Armies in the Field, Geneva (Switzerland), 6 July 1906, in force 8 Aug. 1907, available at: <https://www.icrc.org/ihl/INTRO/180?OpenDocument>; Convention Relative to the Treatment of Prisoners of War, Geneva (Switzerland), 27 July 1929, in force 19 June 1931, available at: <https://www.icrc.org/ihl/INTRO/305?OpenDocument>; Convention Relative to the Protection of Civilian Persons in Time of War, Geneva (Switzerland), 12 Aug. 1949, in force 21 Oct. 1950, available at: <https://www.icrc.org/ihl/INTRO/380>. The animal welfare codes of the World Organization for Animal Health (OIE) are available at World Organization for Animal Health, ‘OIE’s Achievements in Animal Welfare’, available at: <http://www.oie.int/en/animal-welfare/animal-welfare-key-themes>. See also Gewirth, n. 11 above, p. 29; S. White, ‘Into the Void: International Law and the Protection of Animal Welfare’ (2013) 4(4) *Global Policy*, pp. 391–8, at 393–6.

<sup>17</sup> This project is based on the not uncontroversial notion that there is and should be a connection between law and morality. It is beyond the scope of this endeavour to discuss this issue, but I have discussed it previously in Kelch, n. 6 above, pp. 554–6.

<sup>18</sup> Note that while this article analyzes specific situations under the proposed model and generates specific principles and policies relating to those practices, my perspective is essentially that of an abolitionist and advocate of rights for animals. As a result, in Section 3.4 I briefly address how this proposal might be used in a broader project of generation of principles that would constitute rights for animals.

## 2. A FEMINIST CARE-DERIVED CONCEPT OF COMMON OR UNIVERSAL MORALITY

According to Alison Jagger, there are at least four identifiable schools of feminist thought and these four versions have variations.<sup>19</sup> The first of the four schools is referred to as ‘Liberal Feminism’ and emphasizes rationality, autonomy, individual fulfilment and the liberal tradition.<sup>20</sup> The central moral principle of Liberal Feminism is respect for persons founded on the equal dignity of rational actors and rationality itself to the extent that reason identifies ‘unconditional moral obligations or provides the warrants for a social contract’.<sup>21</sup> This version of feminism advocates the possibility of objectivity in scientific and moral knowledge, and sees its ‘critical function as that of challenging liberalism to consistency and to true impartiality in its recognition of and respect for every human person’.<sup>22</sup> Given the belief in the possibility of objectivity in morality, this form of feminism is more likely than any other to ‘support the possibility of a universal morality’.<sup>23</sup> However, many feminists have become disillusioned with this theory on the basis that liberalism has not led to the emancipation of women.<sup>24</sup>

A second form of feminist theory is ‘Marxist Feminism’, premised on the idea that moral norms are not universal and ahistorical; rather they are social constructions.<sup>25</sup> Even human nature is a social construct.<sup>26</sup> ‘Radical Feminism’, the third in the quadrangle of feminist theories, challenges both Liberal and Marxist Feminism by making gender its central emphasis.<sup>27</sup> This version looks at the peculiar way of knowing of women, placing value on emotion rather than reason, embodiment rather than transcendent mind, and caring rather than ‘abstract principles of justice’.<sup>28</sup> Morality here is founded on applying caring emotions like sympathy, empathy and compassion to real-world relationships. This particular form of feminism is often referred to as ‘Feminist Care Theory’ (FCT).<sup>29</sup>

The fourth variety of feminism is ‘Socialist Feminism’, which borrows elements of Marxist and Radical Feminism.<sup>30</sup> Like Marxist Feminist theory, it asserts that human nature and society are socially constructed and that prevailing views are

<sup>19</sup> M.A. Farley, ‘Feminism and Universal Morality’, in Outka & Reader, Jr., n. 11 above, pp. 170–90, at 172–6.

<sup>20</sup> *Ibid.*, p. 172.

<sup>21</sup> *Ibid.*

<sup>22</sup> *Ibid.*, pp. 172–3.

<sup>23</sup> *Ibid.*, p. 173.

<sup>24</sup> *Ibid.*

<sup>25</sup> *Ibid.*

<sup>26</sup> *Ibid.*, pp. 173–4.

<sup>27</sup> *Ibid.*, p. 174.

<sup>28</sup> *Ibid.*

<sup>29</sup> J. Donovan, ‘Attention to Suffering: Sympathy as a Basis for Ethical Treatment of Animals’, in J. Donovan & C.J. Adams (eds), *The Feminist Care Tradition in Animal Ethics* (Columbia University Press, 2007), pp. 174–97, at 176–82; see also nn. 49–80 and accompanying text.

<sup>30</sup> Farley, n. 19 above, p. 175.

based on the interests of the dominant class.<sup>31</sup> Also like Marxist Feminist theory, it maintains that the perspective of the oppressed is privileged because it is more likely to be impartial.<sup>32</sup> It plucks the argument from Radical Feminism that Marxist theory is mistaken because it does not take account of gender in analyzing oppression.<sup>33</sup>

Universalism is controversial and not generally embraced in feminist moral theory.<sup>34</sup> One reason for feminist scepticism of a common or universal morality is the thought that universalist theories tend to be founded on a masculine perspective that is distrustful of women, nervous about relationships, and fixated on the separation and independence of people from one another.<sup>35</sup> Feminists do not want to see the universalization of perspectives that are harmful to and oppressive of women.<sup>36</sup> Further, FCT in particular is thought antithetical to universalism because of its focus on deriving moral principles through application of caring emotions of sympathy, empathy and compassion to particular concrete relationships.<sup>37</sup> Since moral principles are derived from these particular concrete relationships, the theory is thought unable to construct principles of a general and abstract nature which are necessary to produce universal principles.<sup>38</sup>

Nonetheless, there are those who argue that a universal morality founded on moral claims unbounded by history and culture can be constructed on a feminist foundation.<sup>39</sup> They argue that such a morality might originate in commonalities in human experience:

These convictions [concerning the possibility of a universalist feminist theory] presuppose some commonality in human experience – in the experience of what it means as a person to rejoice and to be sorrowful, to be protected or violated, nurtured or stifled, understood or misjudged, respected or used. Whatever the differences in human lives, however minimal the actuality of world community, however unique the social arrangements of diverse peoples, it is nonetheless possible for human persons to weep over commonly felt tragedies, laugh over commonly perceived incongruities, yearn for common hopes.<sup>40</sup>

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<sup>31</sup> Ibid.

<sup>32</sup> Ibid.

<sup>33</sup> Ibid.

<sup>34</sup> S. Parsons, 'Feminist Ethics after Modernity: Toward an Appropriate Universalism' (1995) 8(1) *Studies in Christian Ethics*, pp. 77–94, at 77–8, 80–4; F. Robinson, *Globalizing Care* (Westview Press, 1999), pp. 40–1 (care theory does not create a unified ethics composed of universal principles).

<sup>35</sup> Parsons, *ibid.*, pp. 81–2.

<sup>36</sup> Farley, n. 19 above, p. 171.

<sup>37</sup> Parsons, n. 34 above, p. 82; N. Noddings, 'Moral Education in an Age of Globalization' (2010) 42(4) *Education, Philosophy, and Theory*, pp. 390–6, at 390 ('In care theory, relation is ontologically basic [citation omitted]. Human beings are born from and into relation; it is our original condition').

<sup>38</sup> Ibid.

<sup>39</sup> Farley, n. 19 above, p. 178; J.C. Tronto, *Moral Boundaries: A Political Argument for an Ethic of Care* (Routledge, 1993), pp. 153, 166–7, 177–8 (it is possible to state universal moral principles founded on care theory); C.L.H. Traina, *Feminist Ethics and Natural Law* (Georgetown University Press, 1999), pp. 13, 320–1 (arguing for a feminist ethic with universal principles made with humility and subject to criticism and revision – 'revisable universals').

<sup>40</sup> Farley, n. 19 above, p. 178.

The idea here is that there are culturally transcendent ‘areas of experience which constitute humanness’.<sup>41</sup> This can be thought of as a sort of ‘anthropological universalism’ founded on the universality of certain aspects of human experience.<sup>42</sup>

Armed with these common experiences, principles can be derived condemning injustices and demanding action for common goals.<sup>43</sup> This set of feminist universal norms may be smaller than those maintained by traditional moral theories, but nonetheless such norms do exist and can be ascertained: ‘[t]he content of universal morality may be modest and in many ways provisional, but it is not empty’.<sup>44</sup>

To attend to reality and to care for it justly may seem too general a requirement to satisfy our need for a common morality. Yet if this obligates us to respect autonomy and relationality, particularity and shared needs, embodiment and human hope, we shall have more morality in common than we have perhaps ever had. The very task of specifying our obligations, and the form of its process, will be part of our just care.<sup>45</sup>

Such a feminist common morality, however, cannot interpret norms solely from the perspective of women; it must be made accessible to men and must cross racial and class boundaries to achieve true universality.<sup>46</sup> Indeed, many feminists do not intend their arguments to be intelligible only to women; instead they are submitted for general acceptance.<sup>47</sup> In making this general appeal, certain universal principles have been advanced: ‘Feminists have not hesitated to critique – across cultures – actions such as footbinding, female genital circumcision, spouse abuse, sexual harassment, reproductive coercion, slavery, and rape’.<sup>48</sup> This article attempts to advance these ideas by suggesting a path towards universal principles relating to animal advocacy and animal law founded on the ideas of Radical Feminism and FCT.

### 3. ‘CARING’ AND UNIVERSAL PRINCIPLES

#### 3.1. *The Concept of Caring*

The path towards universal principles for animal advocacy and animal law requires a theoretical and procedural foundation. FCT lies on a footing with two critical elements. There is the psychological source of moral and ethical principles – ‘caring’ – which is typically grounded in the emotions of compassion, sympathy or empathy of an observer, or simply in practices which constitute ‘caring’. The second element is

<sup>41</sup> Cahill, n. 11 above, p. 57 (arguing that these shared human experiences do not include emotion *per se*, but rather things like mortality, pleasure and pain, cognitive abilities, the human body, including sexual desire and so on).

<sup>42</sup> S. Hurri, ‘What of Tomorrow’s Citizenship? Universal and Politics in Hannah Arendt and Jürgen Habermas’, in A. Soeteman (ed.), *Pluralism and Law: Proceedings of the 20<sup>th</sup> IVR World Congress* (Franz Steiner Verlag, 2003), pp. 119–27, at 122 (using the term ‘anthropological universalism’ to describe the thought of Hannah Arendt (who is not a feminist philosopher)).

<sup>43</sup> Farley, n. 19 above, p. 178.

<sup>44</sup> *Ibid.*, p. 179.

<sup>45</sup> *Ibid.*, p. 185.

<sup>46</sup> *Ibid.*; Robinson, n. 34 above, p. 23 (care theory should not be developed as resting on an association with women).

<sup>47</sup> Farley, n. 19 above, p. 180.

<sup>48</sup> *Ibid.*, p. 181.



the subject matter to which this caring is applied, the ‘web of relationships’ that we encounter in the world and about which we ‘care’.

With respect to the emotive element of FCT, I have previously characterized the emotions grounding our moral world as a kind of compassion composed of sympathy and caring.<sup>49</sup> Similarly, in explaining FCT, David Sztybel describes caring as being composed of emotions which include sympathy or empathy.<sup>50</sup> Sympathy and empathy are, of course, quite different. ‘Empathy’ has been described as losing oneself in the feelings of another; being folded into the state or suffering of another.<sup>51</sup> ‘Sympathy’, on the other hand, keeps its distance; it is a more detached kind of knowledge or understanding of the feelings of another.<sup>52</sup>

Another approach to defining the emotive tools of FCT is Josephine Donovan’s concept of ‘attentive love’, which requires development of one’s ‘power of attention’ directed towards others and their experiences.<sup>53</sup> In Donovan’s view, careful attentiveness to others, being receptive and empathetic, is necessary to avoid misreading what others, including animals, are feeling.<sup>54</sup> The import of this attentiveness to the circumstances of others in shaping morality and ethics is echoed by other authors, including Joan Tronto, who defines ‘caring’ as *‘everything that we do to maintain, continue and repair our “world” so that we can live in it as well as possible’*, and identifies attentiveness as one of the four core elements of caring, along with responsibility, competence and responsiveness.<sup>55</sup> Ethical principles relating to animals are not, in this kind of conception, based on abstract reasoning. Rather, they are founded on ‘consideration of the abuse of the animals *in and of itself*’.<sup>56</sup> Nonetheless, this ethic should not be seen as restricted to the personal and particular; it must be both personal, dealing with individual cases, and political, evaluating the larger picture, the context in which the individual exists.<sup>57</sup> We do not observe just the slaughtered cow, but also the agriculture industry and other

<sup>49</sup> Kelch, n. 7 above, pp. 3, 36–41.

<sup>50</sup> D. Sztybel, ‘The Rights of Animal Persons’ (2006) 4(1) *Animals Liberation Philosophy and Policy Journal*, pp. 54–90, at 65.

<sup>51</sup> Donovan, n. 29 above, pp. 176–7.

<sup>52</sup> *Ibid.*, pp. 176–7.

<sup>53</sup> *Ibid.*, p. 190. A similar idea is described by Marti Kheel, who characterized the highest form of feminist sensitivity as love: M. Kheel, ‘The Liberation of Nature: A Circular Affair’, in Donovan & Adams, n. 29 above, pp. 39–57, at 52.

<sup>54</sup> J. Donovan, ‘Caring to Dialogue: Feminism and the Treatment of Animals’, in Donovan & Adams, n. 29 above, pp. 360–70, at 364.

<sup>55</sup> Tronto, n. 39 above, pp. 103, 127–36 (emphasis in original); D. Engster, ‘Care Ethics and Natural Law Theory: Toward an Institutional Political Theory of Caring’ (2004) 66(1) *Journal of Politics*, pp. 113–35; see also D.P. Judges, ‘Taking Care Seriously: Relational Feminism, Sexual Difference, and Abortion’ (1995) 73(4) *North Carolina Law Review*, pp. 1323–480 (discussing receptiveness to the circumstances of others in feminist theory).

<sup>56</sup> B. Luke, ‘Justice, Caring and Animal Liberation’, in Donovan & Adams, n. 29 above, pp. 125–52, at 130 (emphasis in original); see also J. Derrida, ‘The Animal that Therefore I Am (More to Follow)’ (2002) 28(2) *Critical Inquiry*, pp. 369–418, at 395 (trans. D. Wills) (discussing how seriously feeling compassion towards animals ‘would have to change even the very basis ... of the philosophical problematic of the animal’).

<sup>57</sup> Donovan, n. 29 above, p. 192; Donovan, n. 54 above, p. 364; J.C. Tronto, ‘Beyond Gender Difference to a Theory of Care’ (1987) 12(4) *Signs*, pp. 644–63, at 661.

institutions behind the slaughter.<sup>58</sup> This broader political perspective identifies the locus of responsibility for the observed suffering and misery, and intends to eliminate it.<sup>59</sup>

It is not only feminists who have grounded morality on these sorts of feelings: David Hume, Adam Smith and others have argued that there is an innate sense of human sympathy that grounds morality.<sup>60</sup> Hume, for instance, maintained that an innate sense of sympathy derives inferentially from the passions (feelings, desires and emotions):<sup>61</sup>

We may begin with considering a-new the nature and force of *sympathy*. The minds of all men are similar in their feelings and operations; nor can anyone be actuated by an affection, of which all others are not, in some degree, susceptible. As in strings equally wound up, the motion of one communicates itself to the rest; so all the affections readily pass from one person to another, and beget correspondent movements in every human creature. When I see the *effects* of passion in the voice and gesture of any person, my mind immediately passes from these effects to their causes, and forms such a lively idea of the passion, as is presently converted into the passion itself. In like manner, when I perceive the *causes* of any emotion, my mind is convey'd to the effects, and is actuated with a like emotion ... No passion of another discovers itself immediately to the mind. We are only sensible of its causes or effects. From *these* we infer the passion: And consequently *these* give rise to our sympathy.<sup>62</sup>

Adam Smith also viewed the moral world as coloured by feelings of sympathy, but in his view sympathy was not inferred from passions, as Hume asserted, but rather arose from imagining ourselves in the position of others.<sup>63</sup>

One disquieting facet of endeavouring to define morality by reference to emotive states like sympathy, empathy and compassion is that the feelings constituting these emotions cannot be neatly parsed out and categorized. They are complexes of emotional and cognitive activity churning, blending, and colliding in our minds. Moreover, using emotive labels predicated on definitions of one language does not serve the purpose of discovering principles that can be understood and utilized across cultures. Different languages and cultures define, categorize and use emotive words in different ways.

Rather than try to define particular emotive states on which to base a set of principles, I propose a functional concept of what is meant by 'caring'. I define 'caring' as 'the suite of feelings and cognitions that an emotionally sound human experiences in response to focusing attention on the suffering of others'. There are three important points to make regarding this definition. Firstly, characterizing the psychological state as a 'suite of feelings and cognitions' addresses the puzzle of parsing out the boundaries of emotive concepts like 'sympathy', 'empathy' and 'compassion', and acknowledges the fact that the emotive and cognitive are intermingled in our experience. I argue that this counters the issue of cultural bias

<sup>58</sup> Donovan, n. 29 above, p. 192.

<sup>59</sup> Donovan, n. 54 above, pp. 364–6.

<sup>60</sup> Farley, n. 19 above, p. 181.

<sup>61</sup> D. Hume, *A Treatise of Human Nature* (Oxford University Press, 1978), pp. 275–7; see also Tronto, n. 39 above, p. 43.

<sup>62</sup> Hume, *ibid.*, pp. 575–6 (emphasis in original).

<sup>63</sup> Tronto, n. 39 above, p. 46.

and linguistic difference, and is therefore a better grounding for the generation of universal moral principles than some particular emotive state.

The second point is that analyzing emotional responses from the perspective of an ‘emotionally sound human’ excludes the perspective of those not able to process emotions in the manner of most humans. Undoubtedly, it will be remarked that the model of an ‘emotionally sound human’ is one without commonly accepted contours. It nonetheless performs a central function here in addressing the problem that certain humans, such as those with certain kinds of brain injury and psychological condition, do not experience emotions or experience them differently from the vast majority of people.<sup>64</sup> Importantly, there is support for the idea that humans do, across cultures, experience emotions in the same manner.<sup>65</sup> Thus, the concept of an ‘emotionally

<sup>64</sup> J. Stamatakis, ‘Can You Make a Sociopath – Either Through Brain Injury or Other Types of Trauma?’, *Scientific American*, 2 Aug. 2012, available at: <http://www.scientificamerican.com/article/can-you-make-sociopath-through-brain-injury-trauma>; K. McDermott, ‘Is This Proof Evil Killers Are Born not Made? Psychopaths’ Brains “Lack Basic Wiring that Triggers Empathy and Compassion”’, *Daily Mail*, 24 Apr. 2013, available at: <http://www.dailymail.co.uk/sciencetech/article-2314130/The-proof-evil-killers-born-Psychopaths-brains-lack-basic-wiring-triggers-empathy-compassion.html> (research indicates that ‘psychopaths lack basic hard-wiring in the brain that enables most people to be compassionate and caring’); ‘Lack of Empathy Following Traumatic Brain Injury Associated with Reduced Responsiveness to Anger’, *ScienceDaily*, 29 Jun. 2011, available at: <http://www.sciencedaily.com/releases/2011/06/110628094835.htm> (lack of empathy and lowered emotional responsiveness has been found in persons with traumatic brain injury); R. Preidt, ‘Psychopaths’ Lack of Empathy Mimics Brain Injury: Research’, *Healthday*, 28 Jan. 2011, available at: <http://consumer.healthday.com/mental-health-information-25/behavior-health-news-56/psychopaths-lack-of-empathy-mimics-brain-injury-research-649287.html> (persons with frontal brain injury and psychopaths have difficulty showing empathy); R. Kreger, ‘Lack of Empathy: The Most Telling Narcissistic Trait’, *Psychology Today*, 24 Jan. 2012, available at: <http://www.psychologytoday.com/blog/stop-walking-eggshells/201201/lack-empathy-the-most-telling-narcissistic-trait> (narcissists are unwilling to recognize the feelings and needs of others and, thus, lack empathy); ‘What is Narcissistic Personality Disorder?’, *Medical News Today*, available at: <http://www.medicalnewstoday.com/articles/9741.php> (narcissistic personality disorder is a condition which has the characteristic, among others, of a lack of empathy). There is evidence that persons with autism do not experience empathy and other emotions in the same way as persons without the condition, but there is controversy over this subject. For some sources that indicate that there is a connection between autism and a lack of empathy, see D.N. McIntosh et al., ‘When the Social Mirror Breaks: Deficits in Automatic, but Not Voluntary, Mimicry of Emotional Facial Expressions in Autism’ (2006) 9(3) *Developmental Science*, pp. 295–302, available at: [http://psy2.ucsd.edu/~pwinkiel/McIntosh-Reichmann-Decker-Winkelman-Wilbarger\\_Mimicry-ASD-DS-2006.pdf](http://psy2.ucsd.edu/~pwinkiel/McIntosh-Reichmann-Decker-Winkelman-Wilbarger_Mimicry-ASD-DS-2006.pdf); D. Bons et al., ‘Motor, Emotional, and Cognitive Empathy in Children and Adolescents with Autism Spectrum Disorder and Conduct Disorder’ (2013) 41(3) *Journal of Abnormal Child Psychology*, pp. 425–43; S. Baron-Cohen & S. Wheelwright, ‘The Empathy Quotient: An Investigation of Adults with Asperger Syndrome or High Functioning Autism, and Normal Sex Differences’ (2004) 34(2) *Journal of Autism and Developmental Disorders*, pp. 163–75. For some sources that do not find a link between autism and emotional deficits, see Y. Fan et al., ‘Empathic Arousal and Social Understanding in Individuals with Autism: Evidence from fMRI and ERP Measurements’ (2013) 9(8) *Social Cognitive and Affective Neuroscience Advance Access*, pp. 1203–13, available at: [http://www.researchgate.net/publication/255716050\\_Empathic\\_arousal\\_and\\_social\\_understanding\\_in\\_individuals\\_with\\_autism\\_evidence\\_from\\_fMRI\\_and\\_erp\\_measurements](http://www.researchgate.net/publication/255716050_Empathic_arousal_and_social_understanding_in_individuals_with_autism_evidence_from_fMRI_and_erp_measurements); P.L. Lockwood et al., ‘Dissecting Empathy: High Levels of Psychopathic and Autistic Traits are Characterized by Difficulties in Different Social Information Processing Domains’ (2013) 7 *Frontiers in Human Neuroscience*, pp. 1–6, available at: <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3826592>; M. Schulte-Rüther et al., ‘Dysfunctions in Brain Networks Supporting Empathy: An fMRI Study in Adults with Autism Spectrum Disorders’ (2011) 6(1) *Social Neuroscience*, pp. 1–21, available at: [http://www.researchgate.net/publication/47416064\\_Dysfunctions\\_in\\_brain\\_networks\\_supporting\\_empathy\\_an\\_fMRI\\_study\\_in\\_adults\\_with\\_autism\\_spectrum\\_disorders](http://www.researchgate.net/publication/47416064_Dysfunctions_in_brain_networks_supporting_empathy_an_fMRI_study_in_adults_with_autism_spectrum_disorders).

<sup>65</sup> S. Callahan, *In Good Conscience: Reason and Emotion in Moral Decision Making* (Harper, 1991), pp. 100–2; P.S. Churchland, *Braintrust: What Neuroscience Tells Us About Morality* (Princeton University Press, 2011), pp. 9, 14, 27 (focusing on the neurochemical foundations of caring, attachment and bonding); P.J. Zak, *The Moral Molecule* (Dutton, 2012), pp. x, xi, xii, 6, 51–75, 211 (detailing the

sound human’ rests on two pillars: (i) certain individuals, as a result of brain injury or psychological condition, do not experience emotions as do the vast majority of humans, and this emotional perspective must be excluded from the concept; and (ii) there is a common culturally unbiased emotional perspective generally shared by humans.<sup>66</sup> The central idea behind the concept of an ‘emotionally sound human’ in the present context is that the presentation of a particular instance of suffering, human or animal, will elicit comparable feelings of caring in humans who are not suffering from some psychological or emotional deficit or injury. As such, caring emotional responses can be appropriately considered a basis for universal types of reaction and the generation of moral and, ultimately, legal policy principles based on those reactions.

Finally, including the ‘focusing attention on the suffering of others’ element of the definition of ‘caring’ blends in the ideas of Donovan, Tronto and others, who denote that properly evaluating a situation, and the emotional and cognitive experiences emanating from it, requires a careful attentiveness to the experience evaluated. This attentiveness is composed of several essential elements. Firstly, it is informed and founded on the best information available from all relevant scientific and other disciplines regarding the nature of animals, the practices applied to them and the social, political and cultural context in which they exist. Secondly, the attentiveness must be detached – blinded to cultural, social or economic biases – applying the suite of caring emotions and cognitions without predisposed prejudice. Thirdly, the attentiveness is evaluative; it is not purely emotive, but guided and structured by reason and logic. So we can summarize the prescribed attentiveness as ‘informed, detached and evaluative’. Given this conception, it is necessary to determine upon what attention must be focused in order to derive culturally transcendent universal principles.

FCT applies its emotive substance to relationships. Morality and ethics are not conceived in abstract application of *a priori* reasoning but through evaluation of particular concrete relationships.<sup>67</sup> The focus is on ‘relationships between persons,

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biochemical foundations of emotions); J.L. Goetz et al., ‘Compassion: An Evolutionary Analysis and Empirical Review’ (2010) 136(3) *Psychological Bulletin*, pp. 351–74, at 364 (‘as an adaptation, compassion should be a universal feature of the human species’); D.A. Sauter et al., ‘Cross-Cultural Recognition of Basic Emotions Through Nonverbal Emotional Vocalizations’ (2010) 107(6) *Proceedings of the National Academy of Sciences*, pp. 2408–12, at 2408–9 (certain emotions are recognized across cultures based on facial expressions); M. Birkett, ‘Self-Compassion and Empathy Across Cultures: Comparison of Young Adults in China and the United States’ (2013) 3(1) *International Journal of Research Studies in Psychology* pp. 25–34, at 29–32 (reveals evidence of cross-cultural universality of ‘self-compassion’: the trait of being caring and compassionate towards oneself); P. Eckman, ‘Are There Basic Emotions?’ (1992) 99(3) *Psychological Review*, pp. 550–3, at 550–2 (evidence of recognition of emotions across cultures through facial expression); P. Eckman & K.G. Heider, ‘The Universality of a Contempt Expression: A Replication’ (1988) 12(3) *Motivation and Emotion*, pp. 303–8, at 304–6 (finding a ‘very high agreement about the expressions that signaled contempt’, regardless of the culture from which the person expressing the emotion came).

<sup>66</sup> The first pillar is, I believe, not subject to debate. The second pillar is one on which scientific study continues, but not one without scientific support: see n. 65 above.

<sup>67</sup> Kheel, n. 53 above, pp. 44–5; see also Cahill, n. 11 above, p. 56; Engster, n. 55 above, p. 114 (care ethics emphasizes ‘the concrete and particular’ and sees the concrete needs of individuals as the beginning point of determining what needs to be done); M.U. Walker, *Moral Understandings* (Oxford University Press, 2007), pp. 262–5 (morality is concretely situated in human arrangements).

cooperation, communication, and caring'.<sup>68</sup> These relationships are not structured hierarchically; rather they are a 'seamless web'.<sup>69</sup> In this vision of the world, human consciousness is not 'different from other life forms, but is continuous with the "biomorphic" spirit inherent in other living beings'.<sup>70</sup> This seamless web of relationships includes not only humans but other forms of life; boundaries between the human, animal and plant world are blurred.<sup>71</sup> The stolid subject/object relationship of science is replaced with the perspective of a variegated web of relationships which recognizes differences between forms of life, but does not hierarchically categorize them; instead it respects the life in all and shows affect, respect and awe towards these forms of life.<sup>72</sup> Morality springs from within a person in her active involvement with the world and this web of relationships.<sup>73</sup>

Using this approach, many feminists take the position that evaluation of moral issues occurs only in a particular concrete context. Thus, universalizing is not possible. Nonetheless, this does not seem an inevitable result of a viewpoint centred on applying a caring emotive perspective to relationships.<sup>74</sup> Firstly, why is it that universal principles cannot be derived from evaluation of particular concrete circumstances?<sup>75</sup> If I observe a particular concrete example of cold-blooded murder, for instance, can I not derive from it moral and legal policy principles that condemn murder? Surely, we can generalize from individual cases to larger contexts. Secondly, though we often perceive suffering in the context of the individual, we also regularly perceive the suffering of groups small and large. We can feel the plight of families displaced by violence and war, or animals confined in factory farms. These latter examples reveal that we can be conscious of suffering caused by practices or institutions, such as the exploitation of animals in factory farming and animal experimentation. It is possible to direct attention not just to individual circumstances, but also to the whole.<sup>76</sup> Donovan emphasizes the possibility that generalization is possible, from both the perspective of the observer and the subject matter observed:

I would argue that it is not illogical to contend that one might easily generalize from an individual ethical reaction, extending that reaction to others similarly situated, thus

<sup>68</sup> Farley, n. 19 above, p. 183 (discussing Carol Gilligan's theory of care); see also Tronto, n. 57 above, p. 648.

<sup>69</sup> J. Donovan, 'Animal Rights and Feminist Theory', in Donovan & Adams, n. 29 above, pp. 58–86, at 72.

<sup>70</sup> *Ibid.*, p. 72.

<sup>71</sup> *Ibid.*, pp. 73–4.

<sup>72</sup> *Ibid.*, p. 74.

<sup>73</sup> Kheel, n. 53 above, pp. 51–2.

<sup>74</sup> For more on the scope of the relationships to which the present care theory is to apply, see nn. 105–126 and accompanying text.

<sup>75</sup> Walker, n. 67 above, p. 265 (arguing that a universal morality can be concretely situated in human arrangements).

<sup>76</sup> Kheel, n. 53 above, p. 44. She proposes a holism 'that perceives nature (much like the new physics perceives subatomic particles) as comprising individual beings that are part of a *dynamic* web of interconnections in which feelings, emotions, and inclinations (or energy) play an integral role' (emphasis in original).

positing a general or universal precept. Thus, one might reason: if others could see the horrendous conditions in this slaughterhouse, they too would be revulsed and moved to take an ethical stand against such practices – for example, to condemn the slaughter of animals for food as morally wrong, to become vegetarians. Moreover, one can likewise generalize from the treatment of one in the slaughterhouse to contend that no cows should be treated in this way.<sup>77</sup>

A theory like FCT therefore need not concentrate only on particular instances but, in the context of animal treatment, can focus on ‘consideration of the abuse of the animals *in and of itself*’.<sup>78</sup> In this way, according to Brian Luke, sympathy towards the plight of oppressed animals leads to objection to the practices themselves, not a particularized solution involving one or another individual animal.<sup>79</sup> It is this caring about the predicament of these beings that is the real reason why people support animal liberation and rights.<sup>80</sup>

### 3.2. *Objections to Care Theory as a Foundation for Universal Principles*

#### *The bankruptcy of emotion as a foundational principle*

A number of reasons have been advanced to disqualify an emotive caring perspective as a firm foundation for universal principles. In Western tradition, emotion has been seen as an enemy of knowledge.<sup>81</sup> Emotion is associated with the female and rationality with the male.<sup>82</sup> There is normative content in this supposed dichotomous relationship of emotion and reason: emotion is bad; rationality is good.<sup>83</sup> Thus, moral principles based on the emotive are unsound.

There is good reason, however, to reject this traditional prejudice. Firstly, the divaricated ‘cognition’ and ‘affect’ categories themselves can be argued to be ‘Euroamerican cultural constructions’.<sup>84</sup> Moreover, there is considerable evidence to debunk the myth that a state of emotion is an absence of reason.<sup>85</sup> Instead the two can be viewed as intertwined in an unceasing gambol in our consciousness; the cognitive

<sup>77</sup> J. Donovan, ‘Feminism and the Treatment of Animals: From Care to Dialogue’ (2006) 31(2) *Signs*, pp. 305–29, at 308.

<sup>78</sup> Luke, n. 56 above, p. 130 (emphasis in original).

<sup>79</sup> *Ibid.*

<sup>80</sup> *Ibid.*

<sup>81</sup> A.M. Jagger, ‘Love and Knowledge: Emotion in Epistemology’, in A.M. Jagger & S.R. Bordo (eds), *Gender, Body, Knowledge: Feminist Reconstructions of Being and Knowing* (Rutgers University Press, 1989), pp. 145–71, at 145.

<sup>82</sup> *Ibid.*

<sup>83</sup> M. Stocker, *Valuing Emotions* (University of Cambridge, 1996); Kelch, n. 7 above, p. 26.

<sup>84</sup> Jagger (n. 81 above, p. 147) states: ‘Not only do some cultures identify emotions unrecognized in the West, but there is reason to believe that the concept of emotion itself is a historical invention, like the concept of intelligence or even the concept of mind. For instance, anthropologist Catherine Lutz argues that the “dichotomous categories of ‘cognition’ and ‘affect’ are themselves Euroamerican cultural constructions, master symbols that participate in the fundamental organization of our ways of looking at ourselves and others both in and outside of social science”’ (citations omitted, quoting C. Lutz, ‘Goals, Events and Understanding in Ifaluk and Emotion Theory’, in N. Quinn & D. Holland (eds), *Cultural Models in Language and Thought* (Cambridge University Press, 1987), pp. 290–312, at 308.

<sup>85</sup> See nn. 88–96 and accompanying text; see also Kheel, n. 53 above, p. 48; Szybel, n. 50 above, p. 65.

and emotive are inextricably interwoven in the fabric of human experience.<sup>86</sup> To reason effectively it is necessary to have a 'feeling for the truth'.<sup>87</sup>

Similarly, a focus on caring and feeling does not exclude reason – there is a sort of unity between reason and emotion.<sup>88</sup> Donovan argues that sympathy has a cognitive and intellectual aspect: sympathy does not produce the total losing of oneself in the feelings of another as with empathy, but rather keeps a certain distance so that the situation can be intellectually understood.<sup>89</sup> Similarly, Max Scheler argues that sympathy is not merely a feeling, but a kind of knowledge or understanding.<sup>90</sup> In addition, scientific evidence reveals that certain types of reasoning are not separable from emotion.<sup>91</sup> It has further been discovered that emotion affects information processing and thinking,<sup>92</sup> and that emotions and information may be stored together in the brain.<sup>93</sup> Emotions can be seen as a form of knowledge – our anger at practices inflicted on animals or others informs us of certain truths, like the fact that such practices are cruel or unjust.<sup>94</sup> Going even further, it has been asserted that 'rationality is mostly aspirational in character and often little more than a façade masking pure, unprincipled feeling'.<sup>95</sup> Emotions can impact on our evaluations of the world and affect how we observe phenomena around us that may be wrong, thereby leading us to challenge 'dominant conceptions of the status quo'.<sup>96</sup>

It is accepted even by non-feminist moral theorists that emotions are at work in moral attitudes: 'There is a case for claiming that emotions are sometimes a critical element of moral attitudes, being powerful motives for which there is no conventional vocabulary'.<sup>97</sup> That the emotive is relevant to moral issues has even been recognized by a United Kingdom government advisory committee, which asserted that the emotive nature of an objection to particular treatment of animals is not a reason for

<sup>86</sup> Callahan, n. 65 above, p. 106; A. Damasio, *Descartes' Error: Emotion, Reason and the Human Brain* (Penguin, 1994), p. 175 (stating that the cognitive and emotive work in partnership); R.J. Dolan, 'Emotion, Cognition, and Behavior' (2002) 298 *Science*, pp. 1191–4, at 1191 ('Emotion exerts a powerful influence on reason and, in ways neither understood nor systematically researched, contributes to the fixation of belief').

<sup>87</sup> Damasio, *ibid.*, p. 192; S. Harris, *The Moral Landscape* (Free Press, 2010), p. 126. I do not subscribe to all of the views of Sam Harris, but make several references to his work which I believe are insightful relating to, among other things, the relationship between reason and emotion.

<sup>88</sup> Kheel, n. 53 above, p. 48.

<sup>89</sup> Donovan, n. 29 above, pp. 176–7 (noting also that Edmund Husserl has said the same about empathy).

<sup>90</sup> *Ibid.*

<sup>91</sup> Harris, n. 87 above, p. 126.

<sup>92</sup> Callahan, n. 65 above, p. 105; G.H. Bower, 'Emotional Influence in Memory and Thinking: Data and Theory', in M.S. Clark & S.T. Fiske (eds), *Affect and Cognition: The 17<sup>th</sup> Annual Carnegie Symposium on Cognition* (Psychology Press, 1982), pp. 291–332.

<sup>93</sup> Callahan, n. 65 above, p. 105.

<sup>94</sup> C.J. Adams, *Neither Man Nor Beast: Feminism and the Defense of Animals* (Continuum, 1994), pp. 187–8.

<sup>95</sup> Harris, n. 87 above, p. 127.

<sup>96</sup> Adams, n. 94 above (discussing the views of A.M. Jagger in Jagger, n. 81 above).

<sup>97</sup> B. Mepham, "'Würde Der Kreatur" and the Common Morality' (2000) 13(1) *Journal of Agricultural and Environmental Ethics*, pp. 65–78, at 73.

discounting it: revulsion towards an activity can be purely rational.<sup>98</sup> Thus, the emotive cannot be divorced from rationality and cognition.

Another perennial argument against emotively founded principles is that the object of human feelings of caring, however defined, does not extend beyond a very restricted group of persons, like close family members, and surely does not extend to animals.<sup>99</sup> This is patently inaccurate. Humans routinely show caring for those beyond some nuclear group surrounding the individual. Donovan correctly points out that we do have sympathy for those who are strangers to us, such as starving children in a foreign land.<sup>100</sup> If this were not the case humans would not, as they often do, come to the aid of injured or imperilled strangers, or contribute to charities. We also see this caring extended to animals:<sup>101</sup> it is observed, for example, in interactions between therapy animals and humans,<sup>102</sup> and in the many human-to-animal rescue attempts such as the rescuing of whales.<sup>103</sup> Rituals of expiation of guilt in cultures that hunt animals also highlight the human/animal emotive relationship.<sup>104</sup>

Thus, traditional objections to basing moral or ethical principles on caring emotions and related cognitions are found wanting. They do not conform to our experience or observations of human behaviour grounded in caring.

### *Relationships, hypothetical persons and universality*

Another objection to caring as a ground for universal principles is the focus of FCT on particular relationships.<sup>105</sup> It was observed earlier that even if we confine ourselves to consideration of particular concrete individuals, this does not necessarily preclude the generation of universal principles from these individual cases, and that the relationships to which we apply principles of caring need not be restricted to those of a particular, individual and concretely interpersonal nature.<sup>106</sup> To further develop this latter notion, consider what we mean by a ‘relationship’. Dictionary definitions of ‘relationship’ are not limited to those between individual entities.<sup>107</sup> What is essential in a relationship is an interaction between two or more entities or objects which can be referred to in the present context as the ‘subject matter’ and the ‘observer’.

<sup>98</sup> Ministry of Agriculture, Fisheries and Food, *Report of the Committee to Consider the Ethical Implications of Emerging Technologies in the Breeding of Farm Animals* (HMSO, 1995); Mephram, *ibid.*, p. 73.

<sup>99</sup> Donovan, n. 29 above, pp. 184–5; Luke, n. 56 above, pp. 133–5.

<sup>100</sup> Donovan, *ibid.*; see also Noddings, n. 37 above, pp. 390–1; Robinson, n. 34 above, pp. 27–31.

<sup>101</sup> Luke, n. 56 above, p. 134.

<sup>102</sup> *Ibid.*, p. 135.

<sup>103</sup> *Ibid.*

<sup>104</sup> *Ibid.*

<sup>105</sup> See nn. 67–80 and accompanying text.

<sup>106</sup> See nn. 74–80 and accompanying text.

<sup>107</sup> ‘Relationship Definition’, *Merriam-Webster Dictionary*, available at: <http://www.merriam-webster.com/dictionary/relationship> (‘the way in which two or more people, groups, countries, etc., talk to, behave toward, and deal with each other’); ‘Relationship Definition’, *Dictionary.com*, available at: <http://dictionary.reference.com/browse/relationship?s=t> (one definition provided: ‘a connection, association, or involvement’).



This kind of relationship need not be between individual entities. Do we not have relationships with groups, institutions, cultural and commercial practices, the environment, ecosystems, and society in general?<sup>108</sup> Consider Donovan's example of the dilemma of people denied access to a life-saving drug because of lack of money and a healthcare system that fails to provide free access to the drug. Can we not have feelings of caring for this group that dictate a moral response and identifiable action? Donovan argues that we can indeed have such feelings in this case and might, from a caring perspective, steal the drug to end the suffering and death of persons in this position.<sup>109</sup> In the FCT tradition we can see the villainous subject matter of the observation as the broad political system that does not ensure that everyone has access to healthcare.<sup>110</sup>

This general 'political' view of the subject matter of the observation provides a standpoint that is appropriate for analyzing and discovering responsibility for observed suffering and how it can be alleviated.<sup>111</sup> Similarly, a caring ethic applied to animals can be formed from this general political context or view.<sup>112</sup> Indeed, this broad political perspective is necessary to accurately assess the needs of animals.<sup>113</sup> So this broad definition of the subject matter of our observations and analyses, this 'political' perspective, allows groups, institutions, cultural and commercial practices, the environment, ecosystems, and society in general to be the subject matter of observation, analysis and reform in a care theory as proposed here. This sort of idea has been described by Donald Judges:

If individuals are able to connect with the suffering of others (even if only through imagination or cognition), to recall their own experiences of care and connection, and to experience an urge to relieve others' suffering and to promote well-being, it is difficult to see why that capacity – no less than the capacity for abstraction and reason – ought not to be engaged (to the extent possible) when individuals make decisions for institutions and bodies politic as well as for their own private lives. Inclusion of a caring perspective in the impersonal sector will not be 'care' in the sense described because it will not entail particularistic personal relation. We still can ask, though, what a caring person 'would like to have done' in a given situation. After all, laws and policies are ultimately the manifestations of the decisions of individuals, even if acting collegially or collectively.<sup>114</sup>

Seen from this broader subject matter perspective, care-based principles of a general nature can be constructed that are not rooted in an individual or particular subject matter, but are fabricated from the perspective of a larger frame of view. This allows the development of abstract general norms applicable to the broader subject matter

<sup>108</sup> See Robinson, n. 34 above, pp. 28–31 (arguing that 'caring' can be applied to groups, institutions and structures).

<sup>109</sup> Donovan, n. 29 above, p. 187; Donovan, n. 77 above, p. 323.

<sup>110</sup> Donovan, n. 29 above, pp. 187–8.

<sup>111</sup> See Donovan, n. 54 above, p. 364; Tronto, n. 39 above, pp. 157–78. Consider also the discussion of the intersection of care theory and democracy in J. Tronto, *Caring Democracy: Markets, Equality and Justice* (New York University Press, 2013).

<sup>112</sup> See Donovan, n. 29 above, p. 187; Tronto, n. 57 above, p. 661.

<sup>113</sup> Donovan, *ibid.*, pp. 188–9.

<sup>114</sup> Judges, n. 55 above, pp. 1391–2.

context of groups, institutions, cultural and commercial practices, the environment, ecosystems, and society in general. It is this ‘political’ posture, allowing for breadth in the subject matter of observation, which provides a possible path to the discovery of principles of general application from a caring viewpoint.

Having determined that caring can be applied to subject matters of expansive latitude, consider now the viewpoint of the observer. Must the observer be you or me, or some other identified individual? If so, it would appear that universal principles cannot be manufactured from a caring perspective; any principles derived would be mired in the psyche of the particular observer and not subject to being universalized. This problem can, however, be addressed through the conceptual construct of an abstract non-particularized observer. I previously defined ‘caring’ as ‘the suite of feelings and cognitions that an emotionally sound human experiences in response to focusing attention on the suffering of others’. A way to express an observational perspective from which the individuality of the observer may be purged and an abstract non-particularized observer perspective constructed is the position of a ‘hypothetical emotionally sound human’. Such a point of view assumes commonality in human experience,<sup>115</sup> an anthropological universalism, and allows the application of caring principles not from a particular individual’s stance, but rather from an abstract and generalized perspective. From this abstract viewpoint, it is possible to communicate about and analyze the feelings and cognitions that such a hypothetical observer would have. So this perspective not only supplies a non-particular platform for observation, but also provides a forum for dialogue, with the goal of determining the feelings that humans generally have in response to circumstances of suffering.

The perspective of the hypothetical person is a common one in the law. Both common law and civil law countries use a reasonable person standard as the determinant of liability for negligence.<sup>116</sup> In civil law countries, the reasonable person standard is used as ‘a test of liability for negligence’ and defendants’ conduct is often measured according to ‘reasonable care’ or the ‘degree of care that a prudent and competent person engaged in the same line of business or endeavor would exercise under similar circumstances’.<sup>117</sup> In both civil and common law jurisdictions, the negligence test revolves around determining what a ‘reasonable person in the position of the defendant’ would have done.<sup>118</sup>

<sup>115</sup> Farley, n. 19 above, pp. 178–80.

<sup>116</sup> E.g., in the US: ‘The courts have dealt with this ... by creating a fictitious person, who never has existed on land or sea: the ‘reasonable man of ordinary prudence’. Sometimes he is described as a reasonable person, or a person of ordinary prudence ...’: W.P. Keeton et al., *Prosser and Keeton on Torts* (West Group, 1984), p. 174.

<sup>117</sup> M.A. Diwan, ‘Conflict between State Legal Norms and Norms Underlying Popular Beliefs: Witchcraft in Africa as a Case Study’ (2004) 14 *Duke Journal of Comparative & International Law*, pp. 351–88, at 378–9; see also L.M. Finley, ‘A Break in the Silence: Including Women’s Issues in a Torts Course’ (1989) 1(1) *Yale Journal of Law and Feminism*, pp. 41–73, at 56. Note that South Africa utilizes the concept of *diligens paterfamilias*, which means the ‘diligent patron of the family’, but this is now completely interchangeable with the *reasonable person* standard: C.J. Roederer, ‘Working the Common Law Pure: Developing the Law of Delict (Torts) in Light of the Spirit, Purport and Objects of South Africa’s Bill of Rights’ (2009) 26(1) *Arizona Journal of International and Comparative Law*, pp. 427–504, at 451.

<sup>118</sup> Roederer, *ibid.*

Hypothetical persons appear in many places in the law of the United States (US). They exist in bankruptcy law,<sup>119</sup> contract law,<sup>120</sup> constitutional law,<sup>121</sup> criminal law,<sup>122</sup> employment and discrimination law,<sup>123</sup> and patent law.<sup>124</sup> These varied hypothetical tests are not bounded by the shores of the US. In interpreting contracts in Germany an objective reasonable person test is utilized.<sup>125</sup> Good Samaritan laws in

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- <sup>119</sup> The trustee is given the rights of certain hypothetical creditors or purchasers: 11 U.S.C. § 544(a) (2014). A hypothetical *bona fide* purchaser is also used in s. 545(2) of the Bankruptcy Code: J. Lockhart, 'Avoidance, under 545(2) of Bankruptcy Code of 1978 of Statutory Lien not Perfected or Enforceable at Date of Bankruptcy as to Bona Fide Purchasers of Property at Time of Commencement of Case' (1999) 154 *American Law Reports Federal*, p. 1.
- <sup>120</sup> L.A. DiMatteo, 'The Counterpoise of Contracts: The Reasonable Person Standard and the Subjectivity of Judgment' (1997) 48 *South Carolina Law Review*, pp. 293–355, at 302 (a reasonable person standard is used to determine reasonable reliance on promises).
- <sup>121</sup> See the following on the question of whether one is in 'custody' depends on whether a reasonable person in the position of the criminal suspect would have believed she was in custody under *Miranda: Carol Howes v. Randall Lee Fields*, 132 S. Ct. 1181, 1189 (2012); *J.D.B. v. North Carolina*, 131 S. Ct. 2394, 2402 (2011); *Carl Thompson v. Patrick Keohane*, 516 U.S. 99, 112 (1995); J.F. Ghent, 'What Constitutes "Custodial Interrogation" within Rule of *Miranda v. Arizona* Requiring that Suspect be Informed of His Federal Constitutional Rights before Custodial Interrogation' (1970) 31 *American Law Reports Federal* 3d, p. 565.
- <sup>122</sup> Whether entrapment has occurred is tested from a hypothetical perspective: police conduct must be analyzed by determining what an 'average law-abiding citizen would have done under the same circumstances': M.F.J. Whelan, 'Lead Us Not Into (Unwarranted) Temptation: A Proposal to Replace the Entrapment Defense with a Reasonable Suspicion Requirement' (1985) 133(5) *University of Pennsylvania Law Review*, pp. 1193–230, at 1210–1. This same issue is discussed in D. Nesheim, 'Criminal Law – Entrapment: Illegal Police Conduct Gets Stung by the Entrapment Defense in *State v. Kummer*' (1994) 69(4) *North Dakota Law Review*, pp. 969–98, at 980–3. See also *Joseph George Sherman v. United States*, 356 U.S. 369, 383–4 (1958) (Frankfurter, J., concurring). A reasonable person standard is also utilized to determine the validity of claims of self-defence: M. Moran, 'Who Is the Reasonable Person? The Reasonable Person: A Conceptual Biography in Comparative Perspective' (2010) 14(4) *Lewis & Clark Law Review*, pp. 1233–83, at 1250; see also C. Jackson, 'Reasonable Persons, Reasonable Circumstances' (2013) 50 *San Diego Law Review*, pp. 651–706, at 664–5.
- <sup>123</sup> A reasonable person standard is used to determine whether sexual harassment has reached a high enough level of severity to be actionable, with some courts using a 'reasonable woman' standard to jettison the possibility that courts might judge the reactions of women through the eyes of a male perpetrator: *Lisa Ann Burns v. McGregor Electronic Industries Inc.*, 989 F. 2d 959, 965 (1993); *Kerry Ellison v. Nicholas F. Brady*, 924 F. 2d 872, 878–80 (1991); *Charlotte Lynn Rawlins Yates and Cheryl Jenkins Mathis v. Avco Corporation*, 819 F. 2d 630, 637 (1987); Moran, *ibid.*, pp. 1260–3. In addition, one factor in establishing whether a constructive discharge has occurred as a result of an employer's conduct is determined by whether a reasonable person would have felt the need to resign under the circumstances: *Jody L. Robson v. Eva's Super Market Inc. et al.*, 538 F. Supp. 857, 862 (1999); D.F. Harris, 'Circumstances in Title VII Employment Discrimination Classes which Warrant Finding of "Constructive Discharge" of Discriminatee Who Resigns Employment' (1981) 55 *American Law Reports Federal*, p. 418.
- <sup>124</sup> To evaluate whether an invention is obvious and, thus, not patentable, it is asked whether a hypothetical person with ordinary skills in the art in question would have considered a claimed invention to be obvious: *Indiana General Corporation v. Krystinel Corporation*, 421 F. 2d 1023, 1027–8 (1970); D.S. Chisum, 2 *Chisum on Patents* § 5.04[1] (n.d.); J.M. Mueller, 'Chemicals, Combinations, and "Common Sense": How the Supreme Court's KSR Decision is Changing Federal Circuit Obviousness Determinations in Pharmaceutical and Biotechnology Cases' (2008) 35(3) *Northern Kentucky Law Review*, pp. 281–314, at 281, 283–4, 287, 302; J.F. Rydstrom, 'Application and Effect of 54 U.S.C.A. § 103 Requiring Nonobvious Subject Matter in Determining Validity of Patents' (1975) 23 *American Law Reports Federal*, p. 326; M. Abramowicz & J.F. Duffy, 'The Inducement Standard of Patentability' (2011) 120(7) *Yale Law Journal*, pp. 1590–680, at 1605.
- <sup>125</sup> L.A. DiMatteo & D.T. Ostas, 'Comparative Efficiency in International Sales Law' (2011) 26(2) *American University International Law Review*, pp. 371–439, at 406.

both France and Spain focus on a reasonable person in determining whether a duty to rescue exists, and whether the risk to the potential rescuer is too great.<sup>126</sup>

It is clear that the perspective of a hypothetical person is central to legal doctrine across a variety of jurisdictions and legal traditions. Hence, use of the perspective of a ‘hypothetical emotionally sound human’ fits the parameters of traditional legal discourse and forms a solid foundation for universality based on caring feelings in response to the suffering of animals.

The traditional FCT focus on particular concrete relationships then is not an impediment to the construction of universal principles based on a platform of caring. Instead, it is possible to eliminate the ‘particular’ focus of FCT both from the perspective of the subject matter of a relationship (it need not be a particular entity, but can include groups, institutions, practices, the environment, ecosystems, society in general, and so on), and from the perspective of the observer (the perceiving person need not be a particular individual, but can be a hypothetical person with typical human emotions). From this observational promontory it is proposed that universal principles and legal policy proposals can be derived through a logical process of analysis of and reflection on the suffering of others.

### 3.3. *Development of Universal Principles of Caring for Animal Advocacy*

I argued earlier that there is a set of moral, ethical, empirical, and other principles generally accepted across cultures.<sup>127</sup> Note that these principles are not just moral and ethical. Rather, it is asserted that there are culturally transcendent principles that deal also with matters of fact. The complete set of these principles is designated a ‘universal lens’ through which all cultures view the world, including the relationship between humans and animals. The present goal is to identify a mechanism to construct a subset of this larger set of principles – in particular, moral principles relating to the human/animal relationship – so that they may be used to create legal policy proposals relating to animals. It is important to realize, however, that in constructing these moral principles, empirical and factual information will be used as a part of ‘informed, detached and evaluative’ attentiveness. Indeed, the analysis of any situation for the purpose of identifying an applicable moral rule requires some knowledge about the facts of the situation. Thus, the content of the moral principles derived will necessarily be dependent in part on the use of empirical and factual information. The moral principles so identified will then be used to fashion concrete legal policy proposals.

To map a path for deriving universal principles and legal policy proposals from caring requires fashioning a multi-step logical process bridging the emotive response of caring in a chosen situation to the practical result of a legally significant moral principle capable of being operationalized as a legal policy proposal. To accomplish this there must, firstly, be an identifiable subject matter to which caring is applied,

<sup>126</sup> D. Schiff, ‘Samaritans: Good, Bad and Ugly: A Comparative Law Analysis’ (2005) 11(1) *Roger Williams University Law Review*, pp. 77–141, at 99.

<sup>127</sup> Kelch, n. 8 above, and accompanying text.

which I will refer to as the ‘stimulus’.<sup>128</sup> The caring suite of emotions proposed to provide a substructure for the construction of universal principles is initiated by experiencing the suffering of others, including the suffering of animals. The stimulus envisioned here is the suffering of animals in one context or another. This stimulus could be a specific concrete situation involving a single animal, a practice relating to animals, an institution or institutions dealing with animals, or even an abstract notion such as a social or cultural norm or belief.<sup>129</sup> Secondly, there is the observer attentively experiencing caring in response to the stimulus; and this observer has previously been identified as a ‘hypothetical emotionally sound human’. Thirdly, there is application of ‘caring’ – which I have defined as ‘the suite of feelings and cognitions that an emotionally sound human experiences in response to focusing attention on the suffering of others’ – to the stimulus. In addition, arising from the emotive and cognitive response of the observer to the stimulus will usually spring a desire to end the suffering and prevent its recurrence.<sup>130</sup> Fourthly, there is the derivation of a moral principle or principles from the emotive and cognitive reaction to the stimulus. Fifthly, from the caring desire to end suffering, a means to end the suffering is ultimately discovered from the attentive emotive and cognitive focus of the hypothetical person on the stimulus.

Depending on the generality of the stimulus, the means to end the suffering may present itself as a particular action or as a generalizable principle or policy which can be translated into a proposal for a legal rule. Indeed, even from the experience of the suffering of a particular animal, it is possible to derive principles of general application that may be transformed into legal policies and rules as our attention focuses on the underlying institutional, cultural, social, economic or other causes of the suffering. As an example of this step, in experiencing the suffering of an individual bull from the inception to the denouement of a bullfight, our informed, detached and evaluative attention and caring feelings will surely be directed to, among other things, the institutional, cultural, social, economic and other forces that support and permit these practices, with as the ultimate result the development of a legal policy proposal prohibiting the practice of bullfighting. By identifying and attending to stimuli that elicit caring, the practices, institutions and other forces resulting in these negative stimuli can be identified, and legal policies and principles prohibiting or regulating these practices can be formulated.

The argument will undoubtedly be made that the suffering of animals is frequently observed by ‘emotionally sound humans’ without any apparent principled, caring or other seemingly appropriate response. Indeed, why do people continue to promote and participate in practices like bullfighting if observation of this cruel institution would result in emotionally sound humans condemning it? I argue that it is the failure of humans to appropriately and fully attend to and experience these stimuli that is a root cause of the failure of humans to radically change their treatment of animals and

<sup>128</sup> A ‘stimulus’ is a particular instance of a ‘subject matter’ described in nn. 107–126 and accompanying text.

<sup>129</sup> See nn. 105–126 and accompanying text.

<sup>130</sup> See Donovan, n. 54 above, p. 366.

come to see them as morally relevant holders of rights. It is for this reason that the attentiveness required by the proposed model is described as ‘informed, detached and evaluative’. The failure of humans to experience these stimuli in the attentive way posited here is a result of self-deception, dissimulation and concealment of cruelty to and abuse of animals.<sup>131</sup>

Enormous amounts of ‘social energy are expended to forestall, undermine, and override our sympathy for animals’.<sup>132</sup> Various mechanisms are used to accomplish this. There are religious justifications for the plight of animals – our dominion over animals.<sup>133</sup> ‘Defects’ in animals, like a lack of rationality, are typical justifications for the human exploitation of animals,<sup>134</sup> notwithstanding the enormous amount of scientific evidence being uncovered that reveals the cognitive, emotive and other similarities between humans and animals.<sup>135</sup> Simple denial of the harm inflicted on animals also plays a role.<sup>136</sup> Cultural and social pressure to go along, and ‘me too’ attitudes, surely contribute to human ignorance about the suffering and capacities of animals. Moreover, there are conscious, substantial and often effective efforts by animal-use industries to foster human ignorance about the treatment and characteristics of animals. Such industries, for example, block media access to their facilities, resulting in inability to observe their practices.<sup>137</sup> The US agricultural industry is actively pursuing the enactment of ‘Ag-Gag’ laws that will inhibit the ability of citizens to expose the abuses of the industry;<sup>138</sup> similar proposals are inching their way around the globe with Ag-Gag proposals being made in Australia.<sup>139</sup> Then there are the utilitarian ‘cover stories’ asserting that, while there is harm done to animals, it is all necessary and important in advancing human and other interests.<sup>140</sup> Similar to Jacques Derrida’s thoughts on the objectification of animals<sup>141</sup> is the denial of animal subjectivity, leading to the idea that animals are here for some human purpose.<sup>142</sup> Derogation of sympathy for animals – the thought that sympathy for animals is irrational – is also a tool of self-deception and concealment used by humans to mask the suffering of animals.<sup>143</sup> Here, again, a

<sup>131</sup> See Adams, n. 94 above, p. 32.

<sup>132</sup> Luke, n. 56 above, p. 136.

<sup>133</sup> Ibid.

<sup>134</sup> Ibid., p. 137; see also J. Dunayer, ‘Sexist Words, Speciesist Roots’, in C.J. Adams & J. Donovan (eds), *Animals and Women* (Duke University Press, 1995), pp. 11–31, at 15–8.

<sup>135</sup> T.G. Kelch, *Globalization and Animal Law* (Kluwer Law International, 2011), pp. 38–64.

<sup>136</sup> Luke, n. 56 above, pp. 138, 141–4.

<sup>137</sup> Ibid., p. 141.

<sup>138</sup> See Iowa Code § 717A.3A (2012); Utah Code Ann. § 76-6-112 (West 2012); Kan. Stat. Ann. § 47-1827 (West 1990); Mont. Code Ann. § 81-30-103 (West 1991); N.D. Cent. Code Ann. § 12.1-21.1-02 (West 1991).

<sup>139</sup> W. Potter, ‘Australia Risks Copying US “Ag-Gag” Laws to Turn Animal Activists into Terrorists’, *The Sydney Morning Herald*, 1 May 2014, available at: <http://www.smh.com.au/environment/animals/australia-risks-copying-us-ag-gag-laws-to-turn-animal-activists-into-terrorists-20140501-37k8i.html>.

<sup>140</sup> Luke, n. 56 above, p. 138.

<sup>141</sup> Derrida, n. 56 above, pp. 393–5.

<sup>142</sup> Luke, n. 56 above, pp. 144–6.

<sup>143</sup> Ibid., pp. 146–7.

distinction is often made between the masculine and feminine, and the view is advanced that the feminine – sympathy, empathy and caring – is normatively deficient.<sup>144</sup> The concept of informed, detached and evaluative attentive caring applied in this article is intended to purge these defects from our vision of the world and provide a crystalline view upon which dialogue and legal policy can sensibly be based.

When the suffering of animals is not hidden by biases and prejudices but is attentively experienced, when the invisible is made visible, the defects in traditional institutions, social and cultural practices, and religious, ethical and moral theories as they relate to the human/animal relationship become evident.<sup>145</sup> When the veil of ignorance concerning the true nature, capacities and suffering of animals is lifted and our collective attention is directed to these aspects of animals, I argue that our feelings of caring will dictate a vital transformation of the human/animal relationship, and the principles and legal policies applied to that relationship. This sort of insight is not confined to those who systematically advocate on behalf of animals. Derrida had considerable interest in the concept of the ‘animal’, but it can hardly be said that this was the focus of his career. Derrida nonetheless viewed factory farming as a monstrous form of genocide, identifying what he referred to as a ‘war on pity’ relating to animals in which animals are inappropriately objectified and their suffering not heeded.<sup>146</sup> As in the example of Derrida, when proper attentiveness is applied to understand the true nature, capacities and suffering of animals, and feelings of caring are then appropriately employed, practices like factory farming and bullfighting would be clearly recognized as morally repugnant and the human/animal relationship transformed along with legal policy.

Let us consider two examples that illustrate how universal principles relating to animals might be formulated from a perspective of caring by making the formerly invisible visible. The first is one that leads to seemingly obvious results; the second is more nuanced and complex. The first scenario is dog fighting. The barbarity of this practice and the preparation leading to these fatal contests can hardly be denied. Consider the well-publicized case of Michael Vick and his dog-fighting operation.<sup>147</sup> Vick forced family pets to fight, resulting in critical injuries to these animals,<sup>148</sup> and personally aided the killing of six to eight dogs which had performed poorly or refused to fight.<sup>149</sup> Dogs were electrocuted,<sup>150</sup> shot,<sup>151</sup> slammed to the ground until dead,<sup>152</sup>

<sup>144</sup> *Ibid.*, p. 146.

<sup>145</sup> Adams, n. 94 above, p. 200.

<sup>146</sup> Derrida, n. 56 above, pp. 393–5; C.J. Adams, ‘The War on Compassion’, in Donovan & Adams, n. 29 above, pp. 21, 32–4.

<sup>147</sup> This description of Michael Vick’s dog-fighting operation is based in substantial part on my description in Kelch, n. 135 above, pp. 213–5.

<sup>148</sup> US Department of Agriculture, Office of Inspector General-Investigations, ‘Bad Newz Kennels Smithfield, Virginia – Animal Fighting’, File No. HY-3330-0018, 28 Aug. 2008 (USDA Investigation).

<sup>149</sup> *Ibid.*

<sup>150</sup> *Ibid.*, p. 5.

<sup>151</sup> *Ibid.*

<sup>152</sup> *Ibid.*, p. 4.

strangled,<sup>153</sup> and drowned.<sup>154</sup> Training for dog fights was centred in three black sheds, called ‘the black hole’,<sup>155</sup> which also housed young dogs and bait dogs, while others were chained to auto axles in the woods.<sup>156</sup> Live rabbits and chickens were used as bait for training the dogs.<sup>157</sup> Spring bars from which dogs were suspended were used to strengthen the dogs’ jaws.<sup>158</sup> All of this occurred outside the main event of the fights themselves – orgies of violence, blood, pain, suffering and piteous death.

What would be the reaction of a hypothetical emotionally sound human attentively observing these practices from a caring perspective, knowing the nature, capacities and suffering of these creatures? What suite of feelings and cognitions would such a person experience? It is likely to be a complex of feelings and cognitions about these practices best characterized as ‘revulsion’; a revulsion composed of horror, dread, anxiety and tension, as well as feelings of empathetic identification with the animals and their agony, suffering, terror and ultimate helplessness. From this, our hypothetical emotionally sound human would also experience evaluative cognitions about these practices and the persons engaged in them, and these cognitions would be decidedly negative: anger, disgust and outrage. Based upon these feelings and cognitions, our hypothetical human would then derive several principles like ‘torture of sentient beings is morally wrong’ and ‘intentionally causing mayhem and violence among sentient beings is morally wrong’. Importantly, from these principles the hypothetical human could propose a legal policy banning this practice. The process and substance of this analysis can be represented as illustrated in Figure 3.3.1 below.

Thus, the process of analysis and derivation of universal principles and associated legal policy proposals is composed of several steps: (i) observation and analysis of the stimulus; (ii) focusing attention on the feelings and cognitions that a hypothetical emotionally sound human would experience in response to the stimulus; (iii) cognitively evaluating these feelings and cognitions; (iv) deriving a general principle or principles from these feelings and cognitions; and (v) determining an appropriate legal policy to alleviate the suffering observed.

However, not all subject matters are quite as jarring, and not all will so obviously lead to a particular conclusion. For this reason, a second, more nuanced and difficult example will be analyzed: the use of battery cage hens for the mass production of eggs. The stimulus here is the practice of confining egg-laying hens to battery cages. If we attentively observe the life of battery cage hens we see a long queue of practices that are likely to invoke many feelings and cognitions. After hatching, a hen is typically debeaked with what is often called a ‘hot knife’ and this procedure is

<sup>153</sup> Ibid.

<sup>154</sup> Ibid., p. 10.

<sup>155</sup> Ibid., p. 13.

<sup>156</sup> J. Gorant, ‘What Happened to Michael Vick’s Dogs ...’, *Sports Illustrated*, 23 Dec. 2008, available at: <http://sportsillustrated.cnn.com/2008/magazine/12/22/vick.dogs/index.html>.

<sup>157</sup> USDA Investigation, n. 148 above, p. 10.

<sup>158</sup> Gorant, n. 156 above.



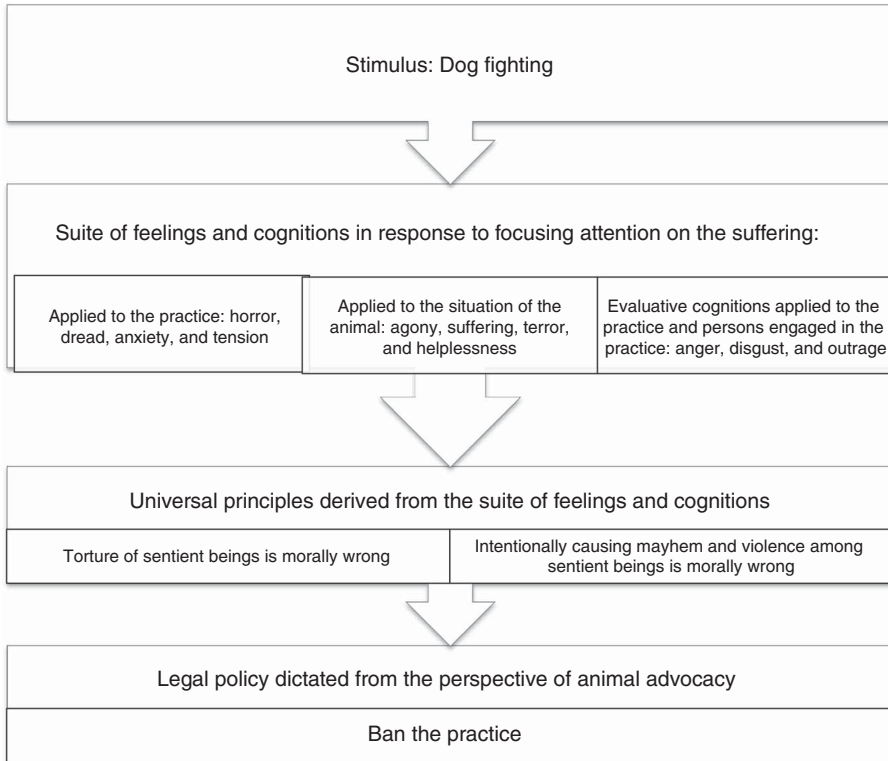


Figure 3.3.1. Dog fighting

performed again at around seven weeks of age.<sup>159</sup> When old enough to lay eggs, hens spend the remainder of their short ten- to eighteen-month lives<sup>160</sup> (outside the factory farm chickens typically live for eight to ten years)<sup>161</sup> standing in an uncomfortable wire mesh battery cage with no room to spread their wings<sup>162</sup> in a factory-like complex containing perhaps millions of hens.<sup>163</sup> The cages are so crowded it is impossible for the birds to turn around without hitting one another and frequently the birds are on top of each other.<sup>164</sup> Hens are also observed suffering from diseases such as fatty liver haemorrhagic syndrome resulting in an enlarged liver inundated with blood clots, and osteoporosis leading one in six laying hens to exhibit

<sup>159</sup> K. Davis, 'The Battery Hen: Her Life is Not for the Birds', *All Creatures.org*, Jan. 2003, available at: <http://www.all-creatures.org/articles/egg-battery.html>. The discussion here of the lives of laying hens is based, in significant part, on a similar discussion in Kelch, n. 135 above, pp. 20–1.

<sup>160</sup> Davis, *ibid*.

<sup>161</sup> 'How Long Do Chickens Live?', *Mypetchicken.com*, available at: <http://www.mypetchicken.com/backyard-chickens/chicken-help/How-long-do-chickens-live-H106.aspx>.

<sup>162</sup> Humane Society of the United States, 'The Humane Society Cage-Free vs. Battery-Cage Eggs: Comparison of Animal Welfare in Both Methods', 1 Sept. 2009, available at: [http://www.humanesociety.org/issues/confinement\\_farm/facts/cage-free\\_vs\\_battery-cage.html](http://www.humanesociety.org/issues/confinement_farm/facts/cage-free_vs_battery-cage.html).

<sup>163</sup> See Foley, n. 3 above, p. 30.

<sup>164</sup> J.S. Foer, *Eating Animals* (Back Bay Books, 2009), p. 47.

broken bones.<sup>165</sup> Hens' necks are denuded of feathers and spotted with blisters from desperately grasping for nourishment on the other side of what is called a 'feeder fence'.<sup>166</sup> The observer also sees hens thrown into transport cages headed for the slaughterhouse when they become 'spent' (unable to produce eggs economically).<sup>167</sup> If a hen has no broken bones before this final trip, it is likely she will before actually being slaughtered.<sup>168</sup> By the time of slaughter, hens frequently will have oozing abscesses and internal haemorrhaging.<sup>169</sup> Slaughter itself is usually a slit throat, perhaps with stunning by electric shock beforehand.

From this scenario, what feelings and cognitions would a hypothetical emotionally sound human experience, giving full attention to the stimuli? The most salient aspects of this situation are confinement and restriction of movement, like living one's life in an overcrowded elevator, as well as suffering from illness, injury and slaughter. The feelings and cognitions evoked are many, and include sympathy, empathy and compassion as a result of suffering from confinement, illness and injury; yearning for release and freedom; pity, considering the conditions generally; anger, outrage and offence at those who would maintain these conditions. From this suite of feelings and cognitions our hypothetical observer would derive several principles: 'freedom of movement and action are morally good'; 'maltreatment and neglect of sentient beings are morally wrong'; and 'infliction of pain and suffering on sentient beings is morally wrong'. Evaluative cognitions of the practice and persons involved in this activity would again be negative and identical to those identified in the dog-fighting example: anger, disgust and outrage. The legal policy that would be born of this situation is a proposal to end the confinement and suffering, thereby resulting in prohibiting the practice. So the observation and analysis here can be summarized as shown in Figure 3.3.2 below.

One might respond to the proposed model that, while the process of observation, analysis and identification of the types of caring feelings engendered in a given situation may be fairly straightforward, the derivation of universal principles and legal policy proposals from these feelings is not. Why would our hypothetical emotionally sound human arrive at the principles and policies identified above as opposed to others? Firstly, let us recall that the larger set of universal principles to be employed in the observation and analysis procedure contains empirical and other principles.<sup>170</sup> Presumably, among these principles are principles of logic and common sense. It is by the use of these tools of deduction that our hypothetical human can derive moral principles from emotions and cognitions resulting from observation of animal suffering. In the example of dog fighting, from the empathetic feelings of

<sup>165</sup> Davis, n. 159 above.

<sup>166</sup> Ibid.; 'The Real Cost of Caged Eggs', *Animals Australia*, available at: <https://www.youtube.com/watch?v=IdzQf95rpeU>.

<sup>167</sup> Davis, n. 159 above.

<sup>168</sup> Ibid.

<sup>169</sup> Ibid.

<sup>170</sup> See n. 9 and accompanying text. Note that there is scientific evidence that moral principles are an amalgam of both emotive and cognitive elements: J. Decety & J.M. Cowell, 'Friends or Foes: Is Empathy Necessary for Moral Behavior?' (2014) 9(5) *Perspectives on Psychological Science*, pp. 525–37 (describing, among other things, recent scientific studies relating to the nature of morality).

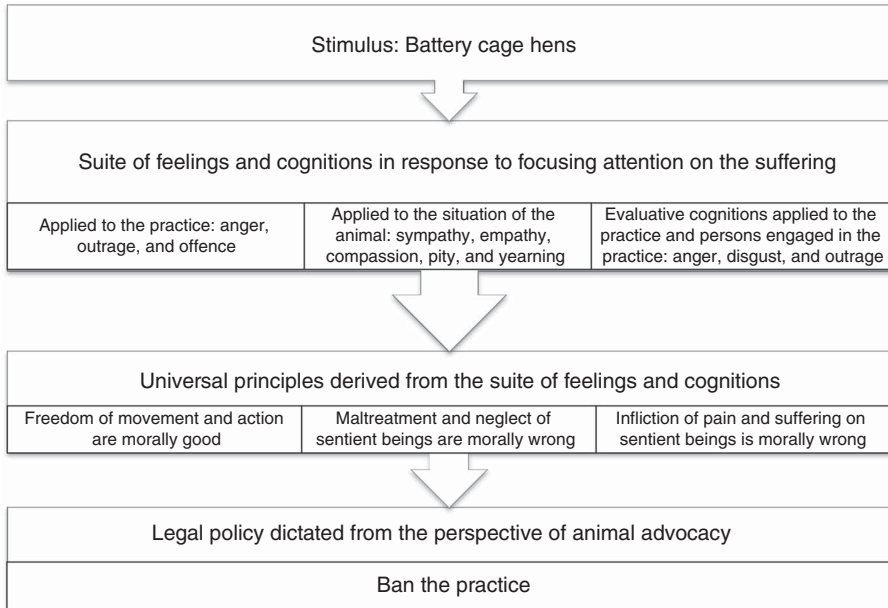


Figure 3.3.2. Battery cage hens

identification with the agony, suffering, terror and helplessness of the dogs involved, the logical and common-sense derivation of the principles ‘torture of sentient beings is wrong’ and ‘intentionally causing mayhem and violence among sentient beings is wrong’ does not seem problematic, and flows naturally from the stimulus observed. Similarly, from these empathetic feelings, as well as the evaluative content of the observation which includes anger, disgust and hatred, a policy decision to ban the practice appears to be the necessary policy result. Indeed, in the case of dog fighting it is hard to conceive of a policy choice other than an outright prohibition. How can dog fighting be regulated to avoid torture and mayhem? It is simply the nature of the practice to include these elements, which result in the emotional responses, and the need to address those feelings with a policy solution that will result in terminating the suffering observed. Moreover, in cases of torture of humans, our laws – from those enacted in individual countries to those at the international level – simply prohibit the practice; it is not permitted in limited or regulated circumstances. At a policy level this guides the policy choice here to the result we apply to torture elsewhere: a prohibition of the practice.

The case of battery cages may be thought logically, and from a common-sense stance, to admit of at least one policy choice other than banning the practice or simply continuing the use of battery cages. This policy choice is to allow consumers the choice of eggs produced in various ways, including in battery cages. There are several reasons why this policy choice cannot appropriately follow under the proposed model. This model requires that moral principles and policy choices be made from a hypothetical caring perspective that requires informed, detached and evaluative attentiveness. Choices made in the context of shopping decisions are not made from

this perspective, and are subject to the self-deception and biases described above.<sup>171</sup> Moreover, even if one could make such a choice in this context, from the emotive responses engendered as described above the decision would be the one that ends the observed suffering: choosing eggs produced in some other manner or not buying eggs at all. The end result would be the same; there would be no demand for battery cage eggs and the practice would end as a matter of economics.

Secondly, even if our hypothetical human might formulate the universal principles somewhat differently, the policy result is constant. For instance, from the example of dog fighting the principles ‘forcing animals to fight is morally wrong’, or ‘inflicting gratuitous suffering on a sentient being is morally wrong’, or ‘causing extreme pain in animals for sport is morally wrong’ could be derived equally well as those previously suggested. Nonetheless, these modified formulations of the universal principles arising from observation of the stimulus are really just different iterations of the principles derived earlier of ‘torture of sentient beings is morally wrong’ and ‘intentionally causing mayhem and violence among sentient beings is morally wrong’.<sup>172</sup> Indeed, one could accurately say that they are all applicable. Thus, while one can formulate the principles arising from the emotional response of our hypothetical human using various words, phrases and semantic forms, the ultimate meaning of the principles derived from the observation would be essentially identical. Similarly, the different formulations of the universal principles derived from the observation would not seem to have any effect on the policy proposal that would follow – in any case prohibiting the practice seems appropriate.

It might be remarked, however, that there are types of behaviour that we consider immoral which we do not believe to be suitable subjects of a legal prohibition or other regulation. Why might it not be argued that such a result obtains here? For example, the act of entering into a what appears to be a relationship of love while harbouring the secret intention of swiftly ending the relationship without reason, thereby causing psychological suffering, is something that our fourth analytic step of constructing a moral principle from a caring viewpoint would identify as immoral.<sup>173</sup> Nonetheless,

<sup>171</sup> See nn. 132–146 and accompanying text.

<sup>172</sup> It might be argued that the newly suggested principles are really different from the principles derived in the initial analysis. There are good reasons to believe, however, that even if this is true these differences are not substantive and would not lead to differing policy results. As an example, consider the definition of ‘torture’ as ‘the act of inflicting excruciating pain, as punishment or revenge, as a means of getting a confession or information, or for sheer cruelty’, or simply as ‘a method of inflicting such pain’: *Dictionary.com*, ‘Torture’, available at: <http://dictionary.reference.com/browse/torture?s=t>. ‘Forcing animals to fight’ is a method of inflicting excruciating pain and can also be viewed as an act of cruelty, thus fitting well into what is generally meant by ‘torture’. Similarly, ‘inflicting gratuitous suffering on a sentient being’ falls within what we think of as ‘cruelty’, ‘wilfully or knowingly causing pain or distress to others’, and thus fits within the scope of the definition of ‘torture’: *Dictionary.com*, ‘Cruel’, available at: <http://dictionary.reference.com/browse/cruel?s=t>. ‘Causing extreme pain in animals for sport’ seems to fit within the sense of ‘torture’ as an act of ‘inflicting excruciating pain’ and within the idea of so inflicting pain cruelly since it is ‘wilfully or knowingly causing pain or distress’. Thus, it seems, from a common-sense semantic analysis of these newly derived principles, that they are functionally equivalent to those originally developed.

<sup>173</sup> See nn. 127–131 and accompanying text. It might be argued that this is actually not immoral at all, but rather just ‘bad manners’. Nonetheless, I would conclude it is immoral and, for the sake of addressing the concern, I will treat it as a case of immorality.

we would not think this is a practice that should be prohibited as a policy matter. What this points out is the separate nature of the model's fourth analytic step of identifying moral principles, and the fifth step of logically and in a common-sense fashion determining proper legal policy choices in response to the suffering analyzed.<sup>174</sup> There are certain practices and types of behaviour which are properly considered the subject of legal regulation and those which are not. For instance, the enforcement of contracts, compensation for tortious conduct, providing for the health, safety and welfare of both humans and animals are subject areas traditionally regulated by law. Matters of interpersonal conduct in many areas of human interaction, like the behaviour of friends and those engaging in loving relationships, are beyond the scope of legal policy and the generation of legal rules. Moreover, wholly apart from the fact that such behaviour has never been within the ken of legal policy and legal rules, the difficulty of enforcing and determining legal remedies for such immoral conduct would make them beyond the logical and common-sense scope of legal regulation. The treatment of animals, however, has long been thought to be in the purview of legal policy and regulation and, thus, differs from this kind of immoral conduct.

It should also be emphasized that this process is one that can be used as a platform for discussion of and education about the human/animal relationship. Indeed, in performing the observation and analysis, input from everyone appropriately attending to the situation will undoubtedly enhance our confidence in the process, add new insights, and ensure the accuracy of the derivation process in its identification of emotions, generation of principles and proposal of policies. As a platform for discussion and generation of principles and policies, this model can evolve over time; as our knowledge, cultures and moral principles change over time, so too can the application of the proposed process. In this way, the 'hypothetical emotionally sound human' is analogous to the 'reasonable person' of tort law at common law – an entity who responds to each situation from a unique historical perspective embodying the knowledge, culture and values extant at the time of application of the model, thereby enabling an evolution of the model over time as knowledge, cultures and moral principles change.

Since the proposal can be used as a platform for discussion, it also has educational implications. The process requires that informed, detached and evaluative attention be applied to, among other things, the facts of a chosen scenario involving animals. This necessarily includes an understanding of the practices involved and the scientific facts relating to the cognitive and other characteristics of the animals that are the subject of an observation. It is likely that learning about the way in which animals are actually treated and the latest developments in cognitive ethology and related science concerning animals would be both enlightening and surprising to many people.

### 3.4. *Using Care Theory to Move Animal Rights Forward*

It is my contention that the process outlined above can and should be utilized to create a broad caring picture of the human/animal relationship, capable of generating

<sup>174</sup> See nn. 127–131 and accompanying text.

a set of rights for animals, including rights such as freedom to pursue their telos and freedom from human-inflicted restraint and pain. To complete this mission is beyond the scope of this initial exploration. Nonetheless, let me suggest some preliminary ideas on how this process might work.

One possible path for accumulating a workable catalogue of animal rights is by analyzing numerous situations<sup>175</sup> involving the use and treatment of animals under the process described above. If, as I suspect would be the case, principles like ‘torture of a sentient being is morally wrong’ and ‘freedom of movement and action are morally good’ were repeatedly the results of the analyses, this would provide confidence that these repeatedly occurring principles are of such force and importance that they deserve to be categorized as legal rights. This sort of process might be characterized as an ‘algorithmic’ mechanism for the generation of rights for animals. Another possible path to the generation of rights from the proposed model would be to focus the proposed process on the totality of the life of the animal, observing it from all angles and perspectives. What are the possible sources of suffering in the totality of this life? What are our emotive and cognitive responses to all of these sources of suffering? What moral principles would we draw from these responses? What are the legal policy implications of these principles? This intensive focus on the characteristics of and ways in which a creature can suffer may also provide a mechanism for deriving a set of principles relating to animals that can be expressed in terms of a set of legal rights. In this case, the rights identified would be dependent on the nature of the animal involved. For instance, the rights we would derive from this analysis relating to a human animal would presumably be far different from those one might derive for a mollusc. In any event, determining the best path to accomplish this more ambitious task of constructing rights for animals is the next logical step in developing the model proposed here, and will require further elaboration and refinement.

Ultimately, the value of the proposed process of derivation of universal principles and concomitant policy principles will arise from the iterative and continuous application of the process to various practices and circumstances relating to the use of animals. What is presented here is a rough preliminary sketch of this method for deriving universal principles for animal advocacy and the generation of proposed legal policies based on a concept of caring. Further explication and refinement of this process is necessary to fully realize the potential of this tool for animal advocacy and animal law, and its implications on such issues as the existence of rights for animals.

#### 4. CONCLUSIONS AND IMPLICATIONS

The cultural, economic and historical forces that confront animal advocates and propel the continued exploitation of animals in agriculture, animal experimentation, and entertainment are global, organized and daunting. Fragmented, muddled or

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<sup>175</sup> I mean ‘numerous’ situations in the broadest possible sense, and perhaps another word that would describe what is meant is ‘innumerable’. In any event the number of situations analyzed in this process would be very large.

disorganized advocacy opposing these forces can only fail. What is compulsory for effective animal advocacy in our globalized world is more than just consideration of these forces and the cultural differences that exist across the globe. Effective animal advocacy in a globalized world requires a unified voice and a universal linguistic and conceptual palate that spans the gulfs of cultural barriers. To reinvent animal advocacy in every cultural context would be inefficient, costly and most likely counter-productive. With modern animal-use industries flowing freely across borders and choosing regulatory locales to suit their interests, uniformity in message, style and voice is not merely desirable, it is imperative for animal advocates. What is presented here is a first step towards the development of a process for constructing such a uniform language and message.

The method proposed is not the only one that might be advanced. There is no dearth of moral and ethical theories that might be introduced to ground universal principles of animal advocacy and legal policy. There are, nonetheless, reasons to believe that a caring foundation for universal principles of animal advocacy has advantages. A caring perspective on fashioning cross-cultural principles and legal policies for animal advocacy does not require everyone around the globe to agree on some linear rational argument. It requires us only to feel and experience caring – feelings and cognitions in response to suffering – something all humans experience. Since we all have these feelings and cognitions, the development of universal principles and legal policies based on these responses is something in which we may all participate and to which we can all contribute through a global dialogue.

It is important to grasp that to develop these universal principles and legal policies for animal advocacy and the advance of animal law based on caring, it is necessary to be attentive and to observe the suffering of animals in an informed, detached and evaluative way. This requires having accurate information on the characteristics of animals, including their sentience, cognitive abilities and emotional lives, and on the treatment of animals in animal-use industries notwithstanding the secrecy of these industries, their political and economic power, and the protections given to these industries by law, which they jealously guard and endeavour to expand. The effort to advocate across cultural boundaries from a common caring perspective depends vitally on developing and obtaining accurate information on animals themselves and on the practices of animal-use industries, disseminating this information to the public, and developing in the public the informed, detached and evaluative attentiveness necessary to reach principled universal conclusions and, as an ultimate goal, appropriate legal policies. Only in this way can the promise of globalizing animal advocacy through universal feelings of caring be attained, and universal principles and legal policies for animal advocacy authored to advance the protection and rights of animals.