

Christian Perspectives and Pet Inheritance Rights

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I. INTRODUCTION

Lily sits, sad and alone, orphaned. She never had a dad or siblings, and her mom has died. To make matters worse, Lily is now homeless. Her distant relatives do not want her and are forcing her to compete against other orphans for a chance to live. She misses her mom while she crouches behind bars, begging someone to take her home, but she is past her prime. She is twelve years old, and her chances of being adopted are disappointing.¹ She will likely be put to death. The problem is that Lily is a cat, and her mom created no pet trust to provide for her. Because the law views pets as mere property,² Lily cannot inherit any part of her mom's estate,³ and she will be passed along like unwanted silverware before being caged and eventually put to death.

Although specific statistics on orphanage are not readily available, more than six million pets are surrendered each year,⁴ many of which are undoubtedly surrendered due to loss of a parent. The current law of wills, trusts, and estates inadequately addresses this problem. Although there are ways to provide for pets' well-being following a parent's death, such as pet trusts and contracts, courts have historically found ways to deny full enforcement of inheritance-alternative measures for

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¹ See *Shelter Intake and Surrender*, ASPCA, <https://www.aspc.org/helping-people-pets/shelter-intake-and-surrender>, (last updated Oct. 8, 2024) (stating that more than 900,000 shelter cats and dogs are euthanized annually).

² See, e.g., *Rabideau v. City of Racine*, 627 N.W.2d 795, 798 (2001).

³ Frances H. Foster, *Should Pets Inherit?*, 63 FLA. L. REV. 801, 812 (2011).

⁴ *Shelter Intake and Surrender*, *supra* note 1.

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protecting beloved pets.⁵ Additionally, these alternative means for pet inheritance require forethought and prior action on the part of the pet parent. In other words, they are opt-in methods of disposition, rather than automatic, default intestacy statutes. This creates a practical obstacle to financially providing for pets as most Americans do not have wills.⁶ In fact, even those who are wealthy often do not have wills.⁷ Many of these wealthy people are still pet parents whose non-human children need and deserve quality care under a better-prepared probate system.⁸ This paper seeks to provide a solution to the current pet-probate system by suggesting a paradigm shift and an accompanying pet inheritance right.

This paper will begin by discussing animal rights terminology which will help provide a basic understanding of the ongoing animal rights movement. To better understand the current probate system in relation to pet inheritance, the author will explore Christianity's teachings about pets, with a special focus on Christianity's perspectives on animal souls, human dominion, and required stewardship. The paper will then briefly discuss Biblical references to inheritance; carefully considering the historical perception of animals' place in the world and Biblical guidance as to inheritance will help demonstrate the integral relationship between religious philosophy and current law. The ultimate goal of this article is to provide a general overview of Christian teachings, demonstrating

⁵ Foster, *supra* note 3, at 811.

⁶ Jeffrey M. Jones, *How Many Americans Have a Will*, GALLUP (June 23, 2021), <https://news.gallup.com/poll/351500/how-many-americans-have-will.aspx>.

⁷ Jack B. Osborn, Opinion, *How Could Someone Rich and Famous Like Prince Die without a Will? It's Not Unusual Just Ask an Estate Lawyer*, LA Times (Apr. 28, 2016, 3:34 AM), <http://www.latimes.com/opinion/op-ed/la-oe-0428-osborn-prince-died-without-will-20160428-story.html>.

⁸ See, e.g., Julie Miller, *How Prince's Beloved Pet Doves Reacted to His Death*, VANITY FAIR, (Oct. 5, 2016, 8:06 PM), <https://www.vanityfair.com/style/2016/10/prince-pet-doves> (discussing the two pet doves that survived Prince).

where American society has been, and to provide a changing but still religiously consistent solution to the current pet inheritance problem. To that end, the paper will suggest that pets should have an automatic, default right to inherit part of a parent's estate when the parent is unmarried and without human children. Finally, the article will provide a brief summarization.

II. TERMINOLOGY

This section provides a brief overview of certain terminology needed to better understand the problem of pet inheritance rights and the animal rights movement in general.

Attitudes toward animals exist on a wide spectrum. On one end, there are livestock farmers who may deeply respect animal welfare concepts but are concerned that animal welfare regulations threaten their own economic independence and well-being. However, on the other end, there are people who love and dote upon their pets⁹ and passionately advocate on behalf of animals.¹⁰ Most people

⁹ See, e.g., *A Woman's Best Friend: Dog Who Inherited \$12MILLION from Billionaire Leona Helmsley Dies*, DAILY MAIL, (June 10, 2011), <http://www.dailymail.co.uk/news/article-2001471/Trouble-dog-inherited-12m-billionaire-Leona-Helmsley-dies.html> (discussing that Helmsley's dog traveled via limo and jet, took trips with her human mom, wore stylish dog clothes, and was loved enough that her mom requested they be buried in the same cemetery). Note that the article uses the word "inherit" colloquially rather than in the more technically accurate, legal sense in which this paper uses the term.

¹⁰ See, e.g., Jaimi Dolmage, *10 Amazing Ways Ian Somerhalder is Changing the World for Animals!*, ONE GREEN PLANET, (last visited Oct. 14, 2024), <http://www.onegreenplanet.org/animalsandnature/ian-somerhalder-is-changing-the-world-for-animals/> (discussing Ian Somerhalder's work to better animal lives).

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fall somewhere within this range.¹¹ Likewise, attitudes toward laws benefitting animals are on a spectrum. However, this spectrum of beliefs is founded upon two contrasting philosophical approaches that support laws benefitting animals. On one end of the spectrum, there is the animal welfare approach, and, on the other end, there is the animal rights approach.

A. Animal Welfare

The animal welfare approach seeks to protect animals from “unnecessary” suffering.¹² For example, animal cruelty laws that forbid torturing or killing certain animals for most purposes¹³ would qualify as animal welfare laws. However, the animal welfare approach does not prohibit the “use of animals in entertainment, sports, recreation, and agriculture, as long as there are anti-cruelty civil and criminal laws to protect the animals from

¹¹ Of course, there is a wider spectrum of animal welfare beliefs consisting of noteworthy outliers. For example, the FBI acknowledges a significant connection between human and animal violence, such as domestic violence related to pets and sadistic crushing videos. See e.g. Charlie Robinson and Victoria Clausen, *The Link between Animal Cruelty and Human Violence*, L. ENFT BULL. (Aug. 10, 2021), <https://feb.fbi.gov/articles/featured-articles/the-link-between-animal-cruelty-and-human-violence>. This represents a stark minority with fewer than 2% of American adults engaging in animal cruelty. See Michael G. Vaughn et al., *Correlates of Cruelty to Animals in the United States: Results from the National Epidemiologic Survey on Alcohol and Related Conditions*, 43 J. OF PSYCHIATRIC RSCH., 1213, 1215 (2009). Likewise, the extreme opposite end of the spectrum consists of people who support ending all non-reciprocally beneficial animal uses. This is also a very small percentage of the population, with only 5% of Americans claiming vegetarianism, veganism, or both. See Jeffrey M. Jones, *In U.S., 4% Identify as Vegetarian, 1% as Vegan*, GALLUP (Aug. 24, 2023), <https://news.gallup.com/poll/510038/identify-vegetarian-vegan.aspx>.

¹² Gary L. Francione, *Animal Rights and Animal Welfare*, 48 RUTGERS L. REV. 397, 397 (1996).

¹³ See, e.g., N.C. GEN. STAT. § 14-360 (2024).

abuse and maltreatment.”¹⁴ Furthermore, animal welfarists have traditionally considered animals as property and have derived from that conclusion that humans’ sole moral obligation to animals is preventing “. . . unnecessary infliction of pain or death . . .”¹⁵ This idea of animals as *mere* property has been slowly changing. Animal welfarists now generally view animals as a special type of property.¹⁶ In other words, most people no longer consider animals exactly the same as sofas or televisions but as *something* more, even if still legally classified as property.¹⁷ Thus, animals are below people on a hierarchy but are increasingly considered above regular property. Animals are somewhere in the relative middle of the hierarchy and are further subdivided into groups along the hierarchy. For example, traditional pet animals are generally considered higher on the hierarchy, closer to humans, than farm animals, which are generally used to produce food and food products.¹⁸ To summarize, the basis for the animal welfare position is that humans are superior to animals but that animals, especially pets, need and deserve humans’ protection to ensure their well-being.¹⁹

B. Animal Rights

On the other hand, animal rights advocates seek to endow or, rather, to acknowledge animal rights to more

¹⁴ Ralph A. DeMeo, *Defining Animal Rights and Animal Welfare: A Lawyer’s Guide*, 91 FLA. B. J. 42, 44 (2017) (citing Animal Welfare Council, *Welfare vs. Rights*, ANIMAL WELFARE COUNCIL, http://www.animalwelfarecouncil.org/?page_id=16).

¹⁵ Francione, *supra* note 12, at 401.

¹⁶ DeMeo, *supra* note 14, at 42, 46-47.

¹⁷ *Id.*

¹⁸ See Amanda Radke, *Activists Push for Vegan Lifestyle through Billboard Campaigns*, BEEF MAGAZINE (May 31, 2016), <http://www.beefmagazine.com/blog/activists-push-vegan-lifestyle-through-billboard-campaigns>, (refuting the premise for an “All animals want to live. Where do you draw the line?” billboard, which has a red line drawn between domesticated animals and farm animals and reiterating that some animals are for pets and some animals are for food.).

¹⁹ DeMeo, *supra* note 14, at 43.

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than just freedom from unjustifiable suffering and killing. Animal rights advocates argue that animals have at least some rights similar to those of humans, such as the right to be free from experimentation and hunting.²⁰ Unlike the theory of animal welfare, animal rights theory begins with the premise that animals are not property.²¹ Because animals are not property but are instead living, non-human, sentient beings,²² people owe animals just treatment.²³ In other words, animal rights advocates elevate animals in the hierarchy such that animals are considered close to, and perhaps even on par with, humans.²⁴ This is a complete paradigm shift. The emergence of this new philosophical approach to animals' place in the world has and will continue to have stark

²⁰ *Id.* at 42.

²¹ Francione, *supra* note 12, at 398.

²² Sentience is generally defined in terms of consciousness. *See, e.g., Sentient*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/sentient> (last visited May 23, 2024). However, this results in circular argument because scholars do not agree as to what "consciousness" means. In fact, some people have even defined consciousness in terms of a soul. *See, e.g.,* Oliver Burkman, *Why Can't the World's Greatest Minds Solve the Mystery of Consciousness?*, THE GUARDIAN (Jan. 21, 2015, 4:23 PM), <https://www.theguardian.com/science/2015/jan/21/sp-why-cant-worlds-greatest-minds-solve-mystery-consciousness> (discussing David Chalmers's famous speech on consciousness). This puts us right back where we started. There is no definitive list of what constitutes a sentient being, although some have tried, even specifically regarding animal consciousness. *See, e.g., Criteria for Recognizing Sentience*, ANIMAL ETHICS, <https://www.animal-ethics.org/criteria-for-recognizing-sentience/> (last visited May 23, 2024) (providing a detailed suggestion from an animal rights nonprofit that to be sentient animals must have the ability to experience suffering and enjoyment and to do so must possess at least a centralized nervous system and possibly more). We are left not with proverbial boxes to check but a vague definition that seems focused on feelings and experiences. *See, e.g., id.*

²³ Francione, *supra* note 13, at 398-399.

²⁴ *Id.* at 402 (citing ROBERT GARNER, ANIMALS, POLITICS AND MORALITY 49 (1st ed. 1993)).

ramifications for the legal field.²⁵ In fact, since the year 2000, the number of law schools offering courses in animal law has grown from nine to more than 150.²⁶ At the heart of this animal law expansion is the emergence and increasing shift from the animal welfare theory to the animal rights theory. Hence, what is in large part driving the law is not just legal questions but philosophical questions—namely, what are animals and where are their place in the world—that have religious roots and influences. Thus, it is important to consider these philosophical questions with special consideration of historical religious viewpoints.

III. ANALYSIS

This section will explore the philosophical questions of what animals are (whether they possess souls) and what constitutes their proper place in the world. Thereafter, the paper will discuss the Christian Bible's approach to inheritance law. The Christian perspective has been chosen because of Christianity's historical tendency to answer big-picture questions, such as what constitutes life, and to serve as a moral compass for numerous Americans, importantly including legislators and judges. Put simply, Christian views have strongly influenced American law, historically contributing to its structure.²⁷ In the 1950s,

²⁵ See, e.g., Fran Ortiz, *Animal Law: A New Breed of Practice*, 45 HOUS. L. 30, 31 (2008) (discussing the explosion of animal law cases and animal law education course offerings).

²⁶ *Where Should You Go to Law School?*, ANIMAL LEGAL DEF. FUND, <https://aldf.org/article/where-should-you-go-to-law-school/> (last visited Oct. 16, 2024).

²⁷ See, e.g., DAVID TAYLOR, *THE HERITAGE OF AMERICA: THREE AMAZING LEGACIES* 174 (2013) (noting that the Bible served as a key component of the very "... foundation of law for the Western World."); Francis J. Powers, *Religion and Law*, 1 CATH. UNIV. L. R. 115, 115 (1951) (stating that "[r]eligion is a basic component of our legal blood stream").

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almost all Americans identified as Christian²⁸, and even today a strong majority of Americans identify as religious with 68% of Americans specifically claiming a branch of Christianity as their religion.²⁹ As early as the 1800s, even the Supreme Court acknowledged that Christianity is seen as the very pillar of American society.³⁰ This connection between law and Christianity, due largely to historical significance and the related principle of *stare decisis*, is inseparable, especially in relation to such big-picture considerations as animals' essence and animals' consequential place in the world.³¹ For these reasons, the analysis section will utilize Christian theology to help explore animal law and its underlying philosophical questions.

A. *What are Animals: Animals and Souls*

This part of the analysis will consider the main, traditional, philosophical disagreement between animal welfarists and animal rights advocates—whether an animal is mere property or whether an animal is more akin to humankind. To explore this issue, the author will first document historical approaches to animal nature and will then provide Biblical text relevant to answering this foundational question.

²⁸ Frank Newport, *Percentage of Christians in U.S. Drifting Down, but Still High*, GALLUP, (Dec. 24, 2015), <https://news.gallup.com/poll/187955/percentage-christians-drifting-down-high.aspx>.

²⁹ *How Religious Are Americans?*, GALLUP, (Mar. 29, 2024), <https://news.gallup.com/poll/358364/religious-americans.aspx>.

³⁰ *Church of the Holy Trinity v. U.S.*, 143 U.S. 457, 471 (1892) (stating that there is “. . . a volume of unofficial declarations . . . that this is a Christian nation”).

³¹ See Ellen P. Goodman, *Animal Ethics and the Law: A Review of Animal Rights: Current Debates and New Directions* (Cass R. Sunstein & Martha C. Nussbaum eds., Oxford University Press 2004), 79 TEMP. L. R. 1291, 1315 (2006) (noting the special connection between religion and animal law).

1(i). Historical Answers: The Starting Point

Historically, there are three primary approaches to animals' divinely-ordained place in the world—(1) animals are inferior and subservient to humans, (2) animals are inferior to humans but are important because of humanity's reliance upon them, and (3) animals are human equivalents.³² These approaches represent a continuum. In the first instance, animals are unimportant. Within this approach, animals are seen as most similar to pure property; they are solely for human's use. What an owner does with his property is his prerogative. Restraints are largely lacking. Almost all people, and law itself, have moved beyond this viewpoint. The second approach states that animals are important, but their importance lies in their relation to humanity. Much of the human race relies upon animals for food, clothing, and shelter, i.e. property uses. However, this approach does not consider animals as *only* property. To destroy a bin of silverware has no apparent ethical ramifications. A bin of silverware is an inanimate object - property in its simplest sense. However, animals are living beings. This second approach to animal consideration recognizes this distinction between inanimate object and living being. Under this approach, destroying an animal is acknowledged as ethically different from destroying a bin of silverware. The fact that an animal is living changes its relation to humanity. This second approach emphasizes the connection between human and animal, whereas the first approach emphasizes the separateness, and prioritizes the human end of that connection. For example, in philosopher Immanuel Kant's indirect duty position on animal's moral treatment. Kant posited “. . . that if we develop a habit of treating animals cruelly this will damage our character and ultimately lead to inappropriate treatment of other human beings.”³³ In other words, treatment of the living animal, unlike the

³² Margit Livingston, *Desecrating the Ark: Animal Abuse and the Law's Role in Prevention*, 87 IOWA L. REV. 1, 8 (2001).

³³ J. Skidmore, *Duties to Animals: The Failure of Kant's Moral Theory*, 35 J. OF VALUE INQUIRY 541, 541 (2001).

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inanimate silverware, affects a person's soul and influences his treatment of other humans.³⁴ Thus, animals may be used for human purposes, but those purposes must be limited. Animals are important as they provide food, clothing, and shelter, for humans, but to treat them cruelly, to abuse them, risks humans' morality. Finally, the third approach moves beyond connection to instead emphasize similarity. This approach posits that animals are similar enough to humans as to be entitled to certain unalienable rights. The importance of animals and their positive treatment does not hinge upon their connection to humans but is based upon their own intrinsic worth. Herein, animals are all reflections of the same one. For example, the Non-human Rights Project, "the only civil rights organization in the United States dedicated solely to securing rights for nonhuman animals," uses the term "non-human" to remind people that human beings are also animals—the only animals with legally recognized and enforceable rights.³⁵ Today, tensions between the second and third approaches, as illustrated by the animal welfare and animal rights positions, largely drive issues in the law's treatment of animals, especially those related to wills, trusts, and estates.

This continuum of approaches results largely from the give-and-take between philosophy and religion. For instance, philosophers Aristotle and St. Thomas Aquinas laid a foundation for considering animals' essence and their place in the world.³⁶ These philosophers believed animals do not possess the capacity for morality and rationality,

³⁴ This approach aligns well with the FBI and National Sheriff's Association's stance on animal abuse tracking. See, *Tracking Animal Cruelty: FBI Collecting Data on Crimes Against Animals*, FBI (Feb. 1, 2016), <https://www.fbi.gov/news/stories/-tracking-animal-cruelty> (discussing connection between animal cruelty and human-targeted crime as a justification for animal abuse tracking).

³⁵ NON-HUM. RTS PROJECT, <https://www.nonhumanrights.org/about-us/> (last visited Oct. 7, 2024).

³⁶ See Livingston, *supra* note 32, at 8.

marking them as, consequently, lacking moral standing.³⁷ St. Thomas Aquinas, philosopher and theologian, expanded upon these views by suggesting that animals were inferior to humans. He asserted that regard for animals was only important because treating animals cruelly might make humans more apt to treat other humans cruelly.³⁸ This position was later expanded upon by Immanuel Kant.³⁹ However, such a lax approach to animal welfare can lead to animal abuse.

Early Christian views also provided support for this "... idea that humans, because of their superior nature, may properly subject animals to any use, including abuse."⁴⁰ An important underlying argument regarding animals' essence was, and still is, whether animals have souls.⁴¹ This is largely, if not wholly, a religious question that strongly informs beliefs about animals, any obligations owed to them, and their general place in the mortal and spirit worlds. It was common for early philosophers to proclaim that animals had souls but that their souls were qualitatively different from human souls,

³⁷ *Id.* at 8-9 (quoting Aristotle, *The Politics*, § 1253a, at 4 (William Ellis trans., E.P. Dutton 1912)) (citing St. Thomas Aquinas, *Basic Writings of Saint Thomas Aquinas* 220-24 (Anton C. Pegis trans., Random House 1945)).

³⁸ John Martin, *The Rights of Man and Animal Experimentation*, 16 J. MED. ETHICS 160, 161 (1990).

³⁹ See Skidmore, *supra* note 34.

⁴⁰ Livingston, *supra* note 32, at 10.

⁴¹ For much of human history there has been confusion as to what the word "soul" means in the Bible. Rather than using the word soul, the Hebrew Bible uses the word "nephesh," which literally translates to "life," "self," "person," or as "emotions, especially the appetites." Edmund Hill, *'Soul' in the Bible*, 13 LIFE OF THE SPIRIT 530, 530-31 (1959). "Thus St Paul does not contrast soul and body; he contrasts soul and spirit." *Id.* at 537. This may lead one to ponder the mind-body connection, which may help explain ancient philosophers' (such as Aristotle and Aquinas) approaches to the soul. However, the author of this paper uses the word "soul" in the more modern sense to refer to the essence of life and psychological and/or physical energy of personality that survives after death and is resurrected in Christ.

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such that animal souls were not immortal.⁴² A soul itself was not special—people had souls, animals had souls, and even plants had souls.⁴³ What made a soul special was that it was an adult human soul⁴⁴ capable of rationality.⁴⁵ Put simply, animals were just seen as inherently different.

Some philosophers and theologians, such as Rene Descartes, went a step further by believing that animals lacked souls altogether and were the equivalent not of humans but of machines.⁴⁶ As machine-like entities, Descartes argued that animals were incapable of feeling pain.⁴⁷ In other words, Descartes thought that an animals' tears came not from an emotionally-feeling soul but from an ingrained instinct or reflex.⁴⁸ Such beliefs allowed adherents to view animals not just as inferior but as completely inconsequential *things*.

These two approaches to the soul (possessing a lower quality of soul or possessing no soul) center around the idea of rationality, i.e. the ability to choose, and conclude that

⁴² See, e.g., M. Varn Chandola, *Dissecting American Animal Protection Law: Healing Wounds with Animal Rights and Eastern Enlightenment*, 8 WIS. ENV'T L.J. 3, 18-19 (2002) (first citing Steven M. Wise, *Rattling the Cage: Toward Legal Rights for Animals* 53, 12 (2000); then citing Patrick Halligan, *The Environmental Policy of Saint Thomas Aquinas*, 19 ENV'T. L. 767, 780-781 (1989)) (discussing that Plato and Aquinas believed that immortal souls could belong only to people).

⁴³ See e.g., Peter Harrison, *Animal Souls, Metempsychosis, and Theodicy in Seventeenth-Century English Thought*, 31 J. OF THE HIST. OF PHIL. 519, 521-23 (1993) (discussing philosophical debate about whether nature itself possesses a soul and about the type of soul that animals possess).

⁴⁴ Chandola, *supra* note 42, at 18 (citing Wise and Halligan).

⁴⁵ Harrison, *supra* note 43, at 519 (first citing Aristotle, *Politics*, I.iii.7 (Loeb ed.); then citing Aristotle, N.E.I.xiii; De gen. an. 736a-b; and then citing Aristotle De anima 415a.) (stating that many ancient philosophers believed that animals lacked rationality and that humans owed no responsibility to animals regarding their treatment).

⁴⁶ Chandola, *supra* note 42, at 19 (citing PETER SINGER, *ANIMAL LIBERATION*, 207-09 (1975)).

⁴⁷ Harrison, *supra* note 43, at 521-22.

⁴⁸ Caitrin Nicol, *Do Elephants Have Souls?*, 38 NEW ATLANTIS: J. OF TECH. & SOC'Y 10, 25 (2013).

animals lack it. At least historically, most scientists have rebuffed attempts to personify animals by giving them thoughts and feelings.⁴⁹ Instead, they have suggested that animals are mindless machines, driven by instinct. Their logic proceeds as follows: animals are mindless machines → machines cannot think → something that cannot think lacks rationality → something that lacks rationality cannot choose (i.e. lacks free will), → something without choice (something without free will) lacks the capacity for morality. As a result, animal souls must either be non-existent or must be different from those of human beings, and this idea has historically led to animal neglect and abuse.

1(ii). Historical Answers: The Gradual Shift

Religious and philosophical views gradually changed over time.⁵⁰ People began to accept that treating animals well, or at least not mistreating animals, was important to humanity's interests.⁵¹ This change was, at least in part, driven by changes in religious belief. During the colonization of what is now the United States of America, the Western world was embroiled in religious upheaval spurred by the Protestant Reformation, which pitted Catholic rulers against Protestant resistance. This figurative and literal battle generated substantial philosophical, theological, and legal friction resulting in world-altering change, including changes for animals. An often-overlooked argument is centered specifically on animals' place in the world. Sects of radical Protestants felt a kinship with animals.⁵² They considered how Catholics oppressed them just as people oppress animals.⁵³ Likewise, they compared how God smites and damns

⁴⁹ *Id.* at 20-21.

⁵⁰ Livingston, *supra* note 33, at 14.

⁵¹ *Id.* at 15.

⁵² Robert N. Watson, *Protestant Animals: Puritan Sects and English Animal-Protection Sentiment, 1550-1650*, 81 ENG. LITERARY HIST. 1111, 1116 (2014).

⁵³ *Id.* at 1118-19.

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humans and how humans condemn animals.⁵⁴ This radical shift in religious positionality marked a turning point for the legal treatment of animals. In fact, “[t]he earliest modern law directly forbidding cruelty to domestic animals was imposed by Lord Deputy Wentworth in 1635, as part of his campaign to steer Ireland away from its Catholic traditions and toward English Protestantism...”⁵⁵ Although the extreme factions of Protestantism never gained control, the questions they raised and the friction they created had lasting impact on American animal law. For example, some of the first American colonists provided legal protection for animals.⁵⁶ This marked a monumental turning point for animal law. Although the primary focus of these early laws was still largely protection of another human-being’s property, to prevent economic injury to another person, these laws represented a strong foundation for animal welfare expansion.⁵⁷ In other words, law was slowly, but steadily, moving from a view of animal welfare as solely inferior to human welfare to a view of animal welfare as important for human’s well-being.⁵⁸

As the seventeenth century progressed, pet ownership began to increase.⁵⁹ Pets provide a unique service for humans—companionship—that results in different consequences than does an animal’s use for food, shelter, or labor. Pet ownership allows people to have constant interaction with animals on a personal level. It allows them to look into the eyes of a being that they care for every day. As a result, many people have experienced that, “[t]hey [animals] are not us, but to look into their eyes is to know that *someone* is in there.”⁶⁰ Pet ownership has greatly contributed to a gradual shift in animal moral consideration and treatment and has provided a second

⁵⁴ *Id.*

⁵⁵ *Id.* at 1115. (citation omitted).

⁵⁶ Livingston, *supra* note 123, at 23.

⁵⁷ *Id.* at 24.

⁵⁸ See *id.* at 8 (discussing animals’ positionality).

⁵⁹ Harrison, *supra* note 44, at 520 (citing KEITH THOMAS, MAN AND THE NAT. WORLD, ch. 3 (1983)).

⁶⁰ Nicol, *supra* note 49, at 24.

basis for animal welfare laws. Despite this something or someone-like quality, people continued to propound that animals lacked rationality and free will yet maintained that animals deserved protection because they are *something* different than a chair. However, the animal welfare theory's focus was still on people. More specifically, the focus was on duties of humans, rather than on the rights of animals. As noted, this focus arises from the traditional view that animals lack rationality and free will. The underlying presumptions have been perpetuated because it is "easier" (less controversial) to argue that human morality requires moral treatment of animals than to argue that animals are, at least in a sense, moral, and therefore worthy of protection in their own right.⁶¹ The shift in beliefs and resulting animal protective laws continued throughout the proceeding centuries. Acceptance of animals as important to humankind and consequential implementation of anti-cruelty laws, based on property rights or animal welfare ideals, began flourishing in the nineteenth century onward.⁶²

I(iii). Historical Answers: The theological bridge between periods in the animal welfare and animal rights movements

Before continuing to discuss the gradual and ongoing shift from the animal welfare perspective to the animal rights movement, it is important to note that part of the difficulty in a Christian determination of whether animals exist as unfeeling, machine-like property or as sentient beings with a mortal soul or with an immortal soul actually arises not simply from the consideration of animals' essence but in the human understanding of God's essence. In other words, there is a theological question about God, rather than just animals, that further complicates the issue of animal souls and their place in the

⁶¹ Grace Clement, *Animals and Moral Agency: The Recent Debate and Its Implications*, 3 J. OF ANIMAL ETHICS 1, 10 (2013).

⁶² See Livingston, *supra* note 32, at 24-29 (detailing the animal welfare movement during the 1800s).

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world. More specifically, the problem is in understanding God's perfect justice. (For if God is not perfect, how then can He be God? Likewise, if God is not just, how then can He be perfect?)

At least historically, animals have been considered incapable of free will and, thus, incapable of sin.⁶³ If one, however, acknowledges that animals feel pain, one must conclude that many animals endure unspeakable suffering. If animals are free of sin but are made such that they are capable of experiencing the great suffering of the world and are yet denied an eternal reward, it would seem that God treats animals unjustly.⁶⁴ How then can God be God? This desire to "safeguard[] the goodness of God"⁶⁵ helps explain humanity's seeming back-step from believing animals had mortal souls to believing animals lack souls altogether. It further helps explain the longstanding resistance to accepting animals as more than mere property, despite individuals' increasing knowledge of pets' physical and emotional pain. Thus, the ability to reconcile this seeming contradiction is of the utmost importance for animals' well-being. Fortunately, such a theologically plausible reconciliation does exist.

This theological reconciliation derives from the idea of original sin. The argument goes that animal suffering exists because animals essentially inherited Adam and Eve's original sin.⁶⁶ The Devil and the resulting acts of Adam and Eve have corrupted the entire being of Earth. "[C]ursed is the ground for thy [Adam or humanity's] sake."⁶⁷ Thus, animal suffering can be thought of not as the result of an unjust God, but as the result of sin, just as with human suffering. In fact, the Bible specifically refers

⁶³ See e.g. Harrison, *supra* note 43, at 523 (quoting English translation of *Recherche-Father Malebranche, His Treatise Concerning the Search After Truth*, and ed., tr. T. Taylor (London: Pr. by W. Bowyer, for Thomas Bennet, (1700)) (quoting philosopher Nicolas Malebranche's explanation of animals' sinless nature).

⁶⁴ Harrison, *supra* note 43, at 523.

⁶⁵ *Id.* at 522.

⁶⁶ *Id.* at 527.

⁶⁷ *Genesis* 3:17 (King James).

to the cursing of animals. "And the LORD God said unto the serpent, Because thou hast done this [tempted Eve], thou art cursed above all cattle, and above every beast of the field; upon thy belly shalt thou go, and dust shalt thou eat all the days of thy life."⁶⁸ This suggests that animals might be more directly to blame for their own suffering via inheritance of original sin from the serpent rather than solely from Adam and Eve's sins.⁶⁹ Such theological groundwork has opened the metaphorical door to new thinking about animal souls and animals' place in the world that has allowed for the emergence of the animal rights movement.

I(iv). Historical Answers: The Current Trend

In the nineteenth century, Henry Salt laid a foundation for the modern animal rights theory.⁷⁰ Although his 1892 book was not the first argument in favor of animal rights, his work represents an important moment in animal rights history.⁷¹ In fact, Salt, a founding father

⁶⁸ *Genesis* 3:14 (King James).

⁶⁹ *But see, Romans* 8:20 (King James) (stating "[f]or the creature was made subject to vanity, not willingly, but by reason of him who hath subjected the same in hope"). This seems to directly contradict *Genesis* 3:14 and, again, begs the question why animals must suffer if they are without moral fault. The passage is especially troublesome because it is not even apparent who is doing the subjecting. If man is doing the subjecting, the verse appears to contradict *Genesis* 3:14. However, if the passage is referring to God, the two passages are in harmony. Unfortunately, *Romans* 8:20 would then create different questions regarding the existence of determinism and whether God can "hope." Further complicating matters, there is some confusion regarding whether the word should be translated as "creature" or as "creation." *See e.g., Romans* 8:20 (New American Bible); *Romans* 8:20 (New International). These translations would maintain the subdivision, of man, creature/beast, and creation. Thus, the passage is problematic and appears to create a contradiction, but its meaning is not entirely clear.

⁷⁰ Lois Fischer Black, *Animal Rights and Animal Welfare: Historical Resources*, 41 *Ref. Libr.* 123, 124 (2004).

⁷¹ Harold D. Guither, *Animal Rights: History and Scope of a Radical Social Movement* 15 (1998).

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of animal rights,⁷² was a man before his time⁷³ as his animal rights approach would not take hold until decades after his death.⁷⁴ Subsequently, the animal rights theory truly became a movement in the 1970s.⁷⁵ Rather than seeking protection for potentially soulless or imperfectly souled animals based on human kindness and religious generosity, animal rights advocates seek societal and legal recognition that animals possess rights and constitute “moral equivalents” of human beings.⁷⁶

The modern animal rights theory is at direct odds with the beliefs of early philosophers, such as Aristotle and St. Thomas Aquinas, who argued that animals lack rationality and, consequently, moral standing. Whereas animal welfare, rooted in earlier understandings of animals as inferior, anchored animals’ treatment to their relation to humans., animal rights theory suggests that animals deserve protection and a higher level of legal recognition because animals “have moral standing, or a moral right, deriving from a quality or property intrinsic to them, such as sentience or reason.”⁷⁷ In this theoretical approach, animals are no longer located in an inferior hierarchical position tied to humans, but exist on their own, separate, and potentially equal, plane of moral existence.

Ideas about animals’ ability to feel, think, and choose have also started to change. Since the 1980s, “a number of philosophers and scientists have made the case

⁷² *Id.*

⁷³ See Aaron Garrett, *Francis Hutcheson and the Origin of Animal Rights*, 45 J. OF THE HIST. OF PHIL. 243, 244 (2007) (noting that animal rights ideas were originally not well accepted and were considered outside the moral norms of society).

⁷⁴ Kim Stallwood, *Henry S. Salt Died Today in 1939*, KIM STALLWOOD BLOG (Apr. 19, 2011), <http://kimstallwood.com/2011/04/19/henry-s-salt-died-today-in-1939/> [<https://web.archive.org/web/20231209173510/https://kimstallwood.com/2011/04/19/henry-s-salt-died-today-in-1939/>] (commemorating Henry Salt’s death).

⁷⁵ Guither, *supra* note 71, at 4.

⁷⁶ *Id.*

⁷⁷ Garrett, *supra* note 73, at 236. (italics omitted).

that at least some nonhuman animals are best understood as moral agents in some ways”⁷⁸ Today, it is generally accepted, at least by lay people, that animals feel physical pain. However, many people also believe that animals are capable of feeling emotional pain. For example, in his 1962 book *The Dynasty of Abu*, Ivan T. Sanderson, a zoologist, wrote about an elephant who threw herself upon the ground and bawled because she could not learn a circus trick and, perhaps, because her teachers were therefore disappointed in her.⁷⁹ Likewise, elephants show an interest in death, going so far as “temporal gland streaming,” that has been documented as “possibly emotional in nature.”⁸⁰ The only way people truly know what another person is thinking or feeling is if the other person tells them. Animals lack the physical ability to tell us what they might be thinking or feeling. Thus, it is impossible to determine their full capability of thought. However, such anecdotal evidence has led many to believe that animals do both think and feel.

Beliefs about animals’ ability to make decisions and the importance of decision making to moral agency have also begun to shift. Animals appear to have at least some capacity for choice.⁸¹ For instance, if a law student were to set both a book and a laptop on her bed, her cat would choose whether to sit on the book or the laptop. Thus, at least in some sense, animals have a capacity for choice. The question is simply to what *extent* animals have a choice (a question not exclusively reserved for animals).⁸² Humans have the ability to think about the future and make plans. Until very recently, though, people believed animals were incapable of any concept of future or

⁷⁸ Clement, *supra* note 60, at 1.

⁷⁹ Nicol, *supra* note 48, at 14-15.

⁸⁰ Shifra Z. Goldenberg & George Wittemyer, *Elephant Behavior Toward the : A Review and Insights from Field Observations*, 61 PRIMATES 119, 127 (2020).

⁸¹ See *supra* Nicol note 78, at 11-12 (discussing the belief that animals have a conscious choice, such as an elephant’s choice whether or not to maintain musth).

⁸² See *id.* at 12 (stating that much of human behavior can be equated to human biology).

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planning. Today, we know that at least some animals, such as dolphins, can “think about the future”⁸³ and some, such as ravens and apes, can even plan.⁸⁴ In other words, some animals, such as ravens, understand delayed gratification and appear to make decisions based upon the length of delay, i.e. a seemingly conscious decision.⁸⁵ This is illustrated in Kabadayi and Osvath’s 2017 study with ravens wherein ravens chose a tool needed to obtain a larger food reward later over a single, smaller food reward now, which was specifically moderated by the length of time they had to wait for that larger food reward.⁸⁶ The ravens were, thus, able to think about reward now versus reward later and make a decision that affected their future. Additionally, some new-age philosophers have gone a step further by shifting the focus of morality from reason to sentiment.⁸⁷ This focus on emotion helps bolster the animal rights theory as a valid approach to protecting animals.

In summary, the view of animals’ essence and the importance of different aspects of morality dramatically changed beginning in the 1970s. People began seeing animals as having feelings and, at least to an extent, capable of reason, in a way that was similar even if not always the same as human-beings. These perspective and philosophical changes have contributed to growing the paradigm shift from animal welfare laws based on human interests and human duties to animal rights based on animals’ intrinsic qualities.

⁸³ Lee Dye, *Are Dolphins Also Persons?*, ABC NEWS (Feb. 24, 2010), <https://abcnews.go.com/Technology/AmazingAnimals/dolphins-animal-closest-intelligence-humans/story?id=9921886>.

⁸⁴ Elizabeth Pennisi, *Ravens—Like Humans and Apes—Can Plan for the Future*, SCI. MAG. (July 13, 2017, 2:00 PM), <http://www.sciencemag.org/news/2017/07/ravens-humans-and-apes-can-plan-future>.

⁸⁵ *Id.*

⁸⁶ Can Kabadayi & Mathias Osvath, *Ravens Parallel Great Apes in Flexible Planning for Tool-use and Bartering*, 357 SCI. 202, 203 (2017).

⁸⁷ Clement, *supra* note 61, at 5.

1(v). Historical Answers: The Current Trend and Religion

This evolving philosophy has also been complexly intertwined with religion. Part of the difficulty in analyzing current religious thought on animal souls and their place in the mortal and spirit worlds is that those beliefs are currently in flux, in a potentially monumental way.

Catholicism represents one of America's most politically important religions. Although the greatest share of Americans, 33%, identify as Protestant⁸⁸ and only 22% identify as Catholic⁸⁹, Catholics are disproportionately over-represented in both Congress and the Supreme Court.⁹⁰ More specifically, Catholics currently account for six of the nine Supreme Court justices⁹¹ and about 28% of Congress.⁹² Thus, it can be argued that Catholic understandings of animal souls and their place in society are especially important for current law.

However, Catholicism has been facing massive cultural pressure that has resulted in the potential for theological shift or, at least, increased theological division. The general, traditional Catholic belief has been that animals have different, lesser souls than do humans and that animal souls are incapable of attaining the Beatific

⁸⁸ GALLUP, *supra* note 29.

⁸⁹ *Id.*

⁹⁰ Aggregate data on the religion of state-level judges and state legislatures is not readily accessible. This limitation is herein acknowledged with Congressional and Supreme Court data being used only as an imperfect proxy.

⁹¹ This dramatic overrepresentation of Catholicism in the Supreme Court is a new phenomenon that can be traced back to the 1980s. See Marci A. Hamilton & Leslie C. Griffin, *How Did Six Conservative Catholics Become Supreme Court Justices Together?*, VERDICT (May 3, 2023), <https://verdict.justia.com/2023/05/03/how-did-six-conservative-catholics-become-supreme-court-justices-together>.

⁹² *Faith on the Hill: The Religious Composition of the 118th Congress*, PEW RSCH. CTR. (Jan. 3, 2023), <https://www.pewresearch.org/religion/2023/01/03/faith-on-the-hill-2023/>.

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Vision.⁹³ This is a belief that traces back to before Christ.⁹⁴ However, the Catholic Church has never actually given a direct authoritative answer as to whether animals go to Heaven.⁹⁵ This leaves the matter open for debate,⁹⁶ and there is now potential for a powerful theological paradigm shift. The current pope's 2015 encyclical letter evidences the currently simmering theological debate. In the 2015 letter, Pope Francis wrote, "Eternal life will be a shared experience of awe, in which each creature, resplendently transfigured, will take its rightful place and have something to give those poor men and women who will have been liberated once and for all."⁹⁷ However, Pope Francis has since attempted to negate any interpretation of

⁹³ Karlo Broussard, *Do Pets Go to Heaven*, Catholic Answers, <https://www.catholic.com/qa/do-pets-go-to-heaven> (last visited May 20, 2024).

⁹⁴ See earlier discussion starting on page seven.

⁹⁵ Broussard, *supra* note 93.

⁹⁶ Whether certain popes have even debated animals' souls is itself debated. See Rick Gladstone, *Dogs in Heaven? Pope Francis Leaves Pearly Gates Open*, The New York Times (Dec. 11, 2014), <https://www.nytimes.com/2014/12/12/world/europe/dogs-in-heaven-pope-leaves-pearly-gate-open.html> (discussing Pope Pius IX's rejection of animals souls in the 1800s, Pope John Paul II's embracing of animal souls in the late 1900s, and Pope Emeritus Benedict XVI's realignment with Pope Pius IX in the early 2000s). See also Arden Dier, *Pope Francis Says Dogs Can Go to Heaven*, USA Today (Dec. 13, 2014, 11:54 AM) <https://www.usatoday.com/story/news/nation-now/2014/12/12/pope-francis-dogs-can-go-to-heaven/20296955/#> (stating "New information refutes reports Pope Francis said animals go to heaven. Those remarks were once made by Pope Paul VI. Reports also call into question whether John Paul II made remarks that animals have souls" in the corrections and clarifications update). This too significantly contributes to a lack of clarity on the Catholic stance on animals. Further discussion on this journalistic failing and the underlying debate regarding which pope said what are beyond the scope of this article.

⁹⁷ Pope Francis, *Encyclical Letter Laudato Si' of the Holy Father Francis on Care for Our Common Home*, The Holy See (May 24, 2015), ¶243, http://w2.vatican.va/content/dam/francesco/pdf/encyclicals/documents/papa-francesco_20150524_enciclica-laudato-si_en.pdf.

“intrinsic value independent of their usefulness”⁹⁸ for God’s non-human creation and their sharing in eternal peace as belonging to Catholic theology. In 2022, Pope Francis further remarked that couples’ nurturing of pets in lieu of human reproduction is “selfish” and sinful, as non-human animals are morally lesser than human beings.⁹⁹ Likewise, papal comments on eternal life for animals have even been debated without sufficient clarification.¹⁰⁰ Pope Francis’s pronouncements contextualize his earlier encyclical letter as supporting, not animal rights, but only animal welfare.¹⁰¹ In short, the modern Catholic stance has become more divisive with a lack of consistent, authoritative clarity. Nonetheless, the Catholic church still supports animal welfare, leaving potential room for debates on animal rights due to inconsistent and unclear communication from Catholic authority. Consequently, the Catholic church lacks a concrete perspective on animal souls and animals’ place in the mortal and spirit worlds, leaving its followers with insufficient command. Nonetheless, it is apparent that philosophy and theology are complexly interrelated and that animals’ ensoulment and value serve as persistent theological points of contention for those of the Catholic faith.

Alongside Catholics, Protestants wield substantial political power. Although only two members of the

⁹⁸ *Id.* at ¶140.

⁹⁹ Elisabetta Povoledo, *Pope Scolds Couples who Choose Pets over Kids*, THE NEW YORK TIMES (Jan. 6, 2022), <https://www.nytimes.com/2022/01/06/world/europe/pope-pets-kids.html>.

¹⁰⁰ See, e.g., Shanna Johnson, *All Animals Go to Heaven*, U.S. Catholic (Feb. 11, 2016), <https://us catholic.org/blog/a-heaven-for-all/> (interpreting the 2015 encyclical letter as meaning all animals share in eternal life); See also Arden Dier, *Pope Francis Says Dogs Can Go to Heaven*, USA Today (Dec. 13, 2014, 11:54 AM) <https://www.usatoday.com/story/news/nation-now/2014/12/12/pope-francis-dogs-can-go-to-heaven/20296955/#> (evidencing problems in accurately reporting on Catholic theology).

¹⁰¹ See also Pope Francis, *supra* note 97, at ¶92 (supporting kind animal treatment by stating that “our indifference or cruelty towards fellow creatures of this world sooner or later affects the treatment we mete out to other human beings,” in line with animal welfare, rather than animal rights).

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Supreme Court identify as Protestant,¹⁰² roughly 57% of Congress members identify as Protestant¹⁰³, which far outpaces the general American population's identification as 33% Protestant.¹⁰⁴ Thus, Protestantism is the other primary religion with potential influence on American law. Of the Protestant religions, most Congress members identify simply as "Christian" or as an unlisted Protestant religion,¹⁰⁵ which does not lend itself to detailed theological consideration. However, Congress's second largest Protestant identification group is Baptist, which accounts for roughly 22% of the Protestant-identifying Congress members.¹⁰⁶

The term "Baptist" is a bit of a misnomer, as "Baptist" is an umbrella term that includes different types of Baptists. The most prominent of these are the American Baptists¹⁰⁷ and the Southern Baptists, which split in the mid-1800s due to disagreement on the morality of slavery.¹⁰⁸ Today, the Southern Baptist branch dominates

¹⁰² Frank Newport, *The Religion of the Supreme Court Justices*, Gallup (Apr. 8, 2022), <https://news.gallup.com/opinion/polling-matters/391649/religion-supreme-court-justices.aspx>.

¹⁰³ PEW RSCH. CTR., *supra* note 92.

¹⁰⁴ GALLUP, *supra* note 29.

¹⁰⁵ PEW RSCH. CTR., *supra* note 92.

¹⁰⁶ *Id.*

¹⁰⁷ They are sometimes referred to as "Northern Baptists." See, e.g., Daniel K. Williams, *Northern Baptists (Not Just the Southern Baptist Convention) Define American Evangelicalism*, PATHEOS (June 16, 2021), <https://www.patheos.com/blogs/anxiousbench/2021/06/northern-baptists-not-just-the-southern-baptist-convention-define-american-evangelicalism/> (discussing the American Baptist Churches USA and the general acceptance of Southern Baptist theology over Northern Baptist theology).

¹⁰⁸ See *Our History*, AM. BAPTIST CHURCHES USA, <https://www.abc-usa.org/what-we-believe/our-history/> (last visited May 17, 2024). See also *Resolution on Racial Reconciliation on the 150th Anniversary of the Southern Baptist Convention*, S. BAPTIST CONVENTION (June 1, 1995), <https://www.sbc.net/resource-library/resolutions/resolution-on-racial-reconciliation-on-the-150th-anniversary-of-the-southern-baptist-convention/> (apologizing for the Southern Baptists' history of racism).

as “the largest Protestant group in the U.S.,” second only to Roman Catholicism.¹⁰⁹ Like Catholicism, the Southern Baptist religion has been experiencing both internal and external pressure regarding the topic of animals’ value and place in the world.¹¹⁰ Although they do not possess a hierarchical authority like the Catholic church, Southern Baptist churches may often look to the Southern Baptist Convention (SBC) for guidance.¹¹¹ The SBC has not provided a resolution on the issue of animal souls and their potential place in Heaven, but the Convention has adamantly opposed “...elevat[ing] animal and plant life to the place of equal—or greater—value with human life.”¹¹² This very strongly suggests a repudiation of animal rights, as animal rights are premised on animals’ independent moral value. Individual Southern Baptist churches and sects of Southern Baptist churches also often explicitly reject animal rights. For example, Frankie J. Melton Jr. of South Carolina’s Heath Springs Baptist Church writes in the Baptist Courier¹¹³ that “[f]or believers, we should not think in terms of animal rights, but in terms of animal care.”¹¹⁴ This is premised upon the explicit belief “that animals do not have a soul.”¹¹⁵ This position was also adamantly supported by the most famous of the Southern

¹⁰⁹ Frank Newport, *A Look at Southern Baptists in the U.S. Today*, GALLUP (June 11, 2021), <https://news.gallup.com/opinion/polling-matters/350987/look-southern-baptists-today.aspx>.

¹¹⁰ See *On Environmentalism and Evangelicals*, S. BAPTIST CONVENTION (June 1, 2006), <https://www.sbc.net/resource-library/resolutions/on-environmentalism-and-evangelicals/> (discussing the threat of environmentalism to the faith).

¹¹¹ See *Constitution*, S. BAPTIST CONVENTION, <https://www.sbc.net/about/what-we-do/legal-documentation/constitution/> (last visited May 17, 2024) (noting that the Southern Baptist Convention is not in an authority position over related Southern Baptist churches).

¹¹² S. BAPTIST CONVENTION, *supra* note 110.

¹¹³ The Courier is the “official newspaper of the South Carolina Baptist Convention” (The Courier, *About Us*, <https://baptistcourier.com/about-us/> (last visited May 20, 2024)).

¹¹⁴ Frankie J. Melton Jr., *Worldview: Do Animals have Rights?*, The Courier (Nov. 6, 2017), <https://baptistcourier.com/2017/11/worldview-do-animals-have-rights/>.

¹¹⁵ *Id.*

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Baptist-ordained ministers, Billy Graham.¹¹⁶ Thus, the perspective of animals as soulless and calling only for animal welfare, rather than rights, has been given much weight in general Southern Baptist circles. However, this position is not universal. For example, Kyle Lewis, senior pastor at the Southern Baptist church of Island Pond in New Hampshire, openly admits that the Bible is unclear on earthly animals' ascension to Heaven but provides Biblical support for animals' Heavenly inclusion.¹¹⁷ Thus, in accordance with earlier radical sects of Protestantism, small sects of Baptists may also leave the proverbial door open for animal ensoulment, Heavenly ascension, and better treatment.

This review illustrates religious tensions in animal belief and treatment. The two most powerful religions in the United States, Catholicism and Southern Baptist, both demonstrate a strong movement away from perceptions of humans as being the *only* important creatures. However, both religions also continue to promote ideology that, as the center of creation, human beings are far more important than any and all other living beings. Relying upon a conception of animals as lacking immortal souls, both religions predominately advocate for only animal welfare. For example, Pope Francis's 2015 encyclical letter pronounces that "our 'dominion' over the universe should be understood more properly in the sense of responsible stewardship."¹¹⁸ Likewise the SBC requires "caring

¹¹⁶ See Billy Graham, *Answers*, BILLY GRAHAM EVANGELISTIC ASS'N (Nov. 2, 2015), <https://billygraham.org/answer/value-pets-but-not-over-people/> (stating that "animals do not have . . . soul[s] or spirit[s]").

¹¹⁷ Kyle Lewis, *Ask the Pastor: Do Pets Go to Heaven?*, Island Pond Baptist Church (June 23, 2022), <https://islandpondbc.com/ask-the-pastor-do-pets-go-to-heaven/>.

¹¹⁸ Pope Francis, *supra* note 97, at ¶116. (citing *Love for Creation. An Asian Response to the Ecological Crisis*, Declaration of the Colloquium sponsored by the Federation of Asian Bishops' Conferences (Tagatay, 31 January-5 February 1993), 3.3.2).

stewardship and wise dominion over the creation.”¹¹⁹ Thus, the predominate strands of both religions seek implementation of animal welfare. However, a growing minority¹²⁰ of Americans are exerting cultural pressure for reconsideration of the relevant religious doctrine and text. This minority sect shakes the very legal foundation of animals as property while even the majority welfare position struggles to maintain animals as *only* property. Hence, religion and law intersect creating new conceptions of animals’ treatment under the law.

2. Biblical Translations

The previous section provided a historical overview of the philosophical and theological approaches to animal souls and animals’ place in the mortal and spirit worlds. In other words, the previous section provided an overview of humanity’s interpretation of animals’ existence that is largely derived from a Christian perspective founded upon the Bible. Interpretation of the Bible is therefore important to the discussion of animal souls and animals’ place in the universe, and interpretation cannot be had without some underlying phenomenon or text.¹²¹ Thus, this section will provide a very brief overview of some relevant Biblical text for consideration of whether animals have souls and what their place in the world is.

¹¹⁹ S. BAPTIST CONVENTION, *supra* note 101, (citing *Genesis* 1:28; *Psalms* 8).

¹²⁰ See David W. Moore, *Public Lukewarm on Animal Rights: Supports Strict Laws Governing Treatment of Farm Animals, but Opposes Bans on Product Testing and Medical Research*, GALLUP (May 21, 2003), <https://news.gallup.com/poll/8461/public-lukewarm-animal-rights.aspx> (In 2003, 25% of Americans claimed to believe that animals should have the same rights as people do against harm and exploitation). See also Rebecca Riffkin, *In U.S., More Say Animals should have Same Rights as People*, GALLUP (May 18, 2015), <https://news.gallup.com/poll/183275/say-animals-rights-people.aspx> (However, in 2015, the most recent Gallup poll on the subject, 32% of Americans claimed to support animal rights against harm and another 62% stated that animals “deserve some protection.”).

¹²¹ See *Interpret*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/interpreting> (last visited May 23, 2024) (defining interpret as “explain[ing] or tell[ing] the meaning of”).

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Here it is important to note that Biblical interpretation presents its own challenges, as numerous translations exist and passionate debate about these translations occurs in certain sects. Catholicism offers a clear mandate for its followers to utilize the *New American Bible* (NAB) for mass,¹²² with several translations, most notably including the *New American Bible Revised Edition* (NABRE), permitted for private reading.¹²³ However, Southern Baptists are less clear and more divided as to translation usage. The SBC proclaims that “all Scripture is totally true and trustworthy” and does not require a specific translation be used for church services or private reading.¹²⁴ However, the SBC does have a long history of rejecting translations. For example, in 1997, without naming any specific translation, the SBC implored the rejection of translations that utilize “so called gender inclusive language” and to “refrain from any deviation to seek to accommodate contemporary cultural pressures. . . .”¹²⁵ Although very many Southern Baptists embrace the 1984 *New International Version* (NIV) translation, the SBC has also strongly rebuked the *Today’s New International*

¹²² See United States Conference of Catholic Bishops, *Liturgy*, <https://www.usccb.org/offices/new-american-bible/liturgy> (last visited May 21, 2024) (stating that the only approved lectionary for American mass is “based on the *New American Bible*...”).

¹²³ See United States Conference of Catholic Bishops, *USCCB Approved Translations of the Sacred Scriptures for Private Use and Study by Catholics: 1983-Present*, <https://www.usccb.org/offices/new-american-bible/approved-translations-bible> (last visited May 21, 2024). See also Michelle La Rosa, *New American Bible to be Revised into Single Translation*, Catholic News Agency (June 19, 2012 12:56 PM), <https://www.catholicnewsagency.com/news/25138/new-american-bible-to-be-revised-into-single-translation> (stating that Catholic authorities are working to complete and have approved a single translation of the *New American Bible* to be used for both mass and private reading but that this will take years).

¹²⁴ *Baptist Faith & Message 2000*, S. BAPTIST CONVENTION (June 14, 2000), <https://bfm.sbc.net/bfm2000/>.

¹²⁵ *Resolution on Bible Translation*, S. BAPTIST CONVENTION (June 1, 1997), <https://www.sbc.net/resource-library/resolutions/resolution-on-bible-translation/>.

Version (TNIV) translation in 2002¹²⁶ and the *2011 New International* translation¹²⁷ as being erroneously gender-inclusive. The SBC would come to eventually endorse the *Holman Christian Standard Bible* (HCSB) as an option in 2004,¹²⁸ with later versions of the HCSB (known as the *Christian Standard Bible*) being seen as a Southern Baptist compromise on gender-inclusive translation.¹²⁹ Additionally, the King James Version (KJV) also remains a prominent option with a majority of Bible-reading Americans thought to still prefer it.¹³⁰ Thus, Southern Baptists have a plethora of translation options. This article seeks to incorporate the *New American Bible*, *New International Version*, and the standard *King James Version* to encapsulate the widest breadth of Catholicism and Protestantism without becoming unwieldy. These translations were chosen based on their popularity and general acceptance within their reflective faiths.¹³¹ Unless otherwise noted, Bible citations throughout this article reference all three translations.

¹²⁶ *On Today's New International Version*, S. BAPTIST CONVENTION (June 1, 2002), <https://www.sbc.net/resource-library/resolutions/on-todays-new-international-version/>.

¹²⁷ *On The Gender-neutral 2011 New International Version*, S. BAPTIST CONVENTION (June 1, 2011), <https://www.sbc.net/resource-library/resolutions/on-the-gender-neutral-2011-new-international-version/>.

¹²⁸ *On The Holman Christian Standard Bible*, S. BAPTIST CONVENTION (June 1, 2004), <https://www.sbc.net/resource-library/resolutions/on-the-holman-christian-standard-bible/>.

¹²⁹ See, e.g., Tom Gjelten, *Southern Baptists Update Bible's Language on Gender*, NPR (June 14, 2017, 5:11 AM), <https://www.npr.org/2017/06/14/532879706/southern-baptists-update-bibles-language-on-gender> ("Faced with declining membership among millennials, The Southern Baptists are seeking to modernize their language.").

¹³⁰ PHILIP GOFF ET AL., *The Bible in American Life Today*, in *The Bible in American Life* 5, 10 (Philip Goff, Arthur E. Farnsley II, & Peter J. Thuesen eds., 2017).

¹³¹ Note that some churches strongly endorse a King James only approach, known as the King James Only Movement or King James Onlyism. This may also help explain the translation's popularity and further recommend the King James as being a vital translation for study.

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3. Biblical Answers

Animals have been an essential element of the world since the very beginning. The very first chapter of Genesis says that God created animals and blessed them on the fifth and sixth days of Creation along with human-beings.¹³² The Bible suggests that humans' relation to animals and perhaps even the very nature of animals has changed since animals' original creation. In fact, a close reading of Genesis suggests that animals were not originally created as food for people or even for other animals. Genesis reads, "And God said, Behold, I have given you [mankind] every herb bearing seed, which is upon the face of all the earth, and every tree, in the which is the fruit of a tree yielding seed; to you it shall be for meat."¹³³ Despite using the word "meat," God only appears to have condoned eating vegetation. What is very noticeably missing is that which modern people consider meat—animal flesh. This reading is further supported by the NAB and NIV translations. The NAB and the NIV translations do not even use the word "meat," but rather the more general word, "food."¹³⁴ Likewise, the KJV reads, "And to every beast of the earth, and to every fowl of the air, and to every thing that creepeth upon the earth, wherein there is life, I have given every green herb for meat: and it was so,"¹³⁵ with the NAB and NIV translations again replacing "meat" with "food."¹³⁶ It appears that at least most animals, with only the possible exception of

¹³² *Genesis* 1:20-28, 31.

¹³³ *Genesis* 1:29 (King James).

¹³⁴ *Genesis* 1:29 (New American Bible); *Genesis* 1:29 (New International).

¹³⁵ *Genesis* 1:30 (King James).

¹³⁶ *Genesis* 1:30 (New American Bible); *Genesis* 1:30 (New International).

aquatic life,¹³⁷ did not eat other animals either. This suggests that there is some inherent difference in animals and other items legally classified as property, such as plants.

There are numerous other passages that suggest a strong distinction between animals and other property. For example, Eve had an intelligent, albeit foolish, conversation with a snake.¹³⁸ This suggests that animals and people could at one point communicate using higher-level reasoning. However, the Bible makes no mention of inanimate objects, such as plants, having intelligent conversations with humans. Likewise, there is no mention of Adam naming inanimate objects, yet the Bible states that Adam named all the animals of the earth and the air.¹³⁹ Such distinctions between animals and other property are prevalent throughout the Bible.

However, the Bible never clarified what creates this distinction. The easiest way to distinguish between animals, especially pets, and other property is that animals are alive. The word 'alive' is not used here in merely a biological sense but in a *spiritual* sense.¹⁴⁰ The Bible never states whether animals have souls, but the observance of animals as spiritually alive in contrast to inanimate objects is apparent. As a simple example, a rose will never request petting like a dog or a cat would.

¹³⁷ But see *Genesis* 1:30 (New International) (“And to all the beasts of the earth and all the birds in the sky and all the creatures that move along the ground—everything that has the breath of life in it—I give every green plant for food.” And it was so.”) This translation’s punctuation could suggest that aquatic animals were included in the vegetarian lifestyle as well as the land and sky-dwelling creatures.

¹³⁸ *Genesis* 3:1-5. But see Ronald Hendel, *Was the Snake in the Garden of Eden Satan*, HUFFPOST: THE BLOG (Dec. 6, 2017), https://www.huffpost.com/entry/was-the-snake-in-the-garden-of-eden-satan_b_1900973 (explaining that the snake in the Garden of Eden may have been the Devil). However, the Biblical text does not make it clear whether the snake was an actual animal (influenced by the Devil), a snake possessed by the Devil, or the Devil himself. Thus, this verse, like most verses, is subject to debate regarding interpretation.

¹³⁹ *Genesis* 2:20.

¹⁴⁰ See *supra* note 41 (discussing the meaning of “nephesh”).

Perhaps the most interesting and compelling argument for animals having souls comes from the idea of demonic possession. Although the Bible repeatedly mentions demonic possession,¹⁴¹ there is no Biblical record of a demon possessing an inanimate object, such as someone's sofa. The Bible references demons possessing both humans¹⁴² and animals.¹⁴³ Although this is only circumstantial evidence, it suggests that people and animals, unlike property, can host evil spirits. From this it is possible to deduce that animals, like people, must then have spirits in the first place. In other words, it makes sense that only people and animals can host demons because only people and animals (unlike mere property/inanimate objects) have souls that a demon can control or replace.

***B. What are Humans' Relation to Animals:
Dominion and Stewardship***

This section shifts focus from animals' essence to their relationship with humans and their place in the mortal world. As historical background information regarding society's view of animals' place in the mortal hierarchy has already been discussed in the preceding sections, this part of the article will focus more directly on Biblical text, specifically, providing a brief overview of the Biblical underpinnings of dominion and stewardship.

Even if animals have a soul, mortal or immortal, it can be asked, "so what?" Although God made distinctions between animals and mere property, God also made distinctions between animals and people,¹⁴⁴ suggesting some type of hierarchy. From a Biblical standpoint, there consequently appears to be a clear difference between people, animals, and other property. The question then

¹⁴¹ See, e.g., *Matthew* 8:28; *Matthew* 9:32-33; *Mark* 1:32.

¹⁴² See, e.g., *Acts* 16:16 (King James); *Matthew* 4:24; *Luke* 4:33.

¹⁴³ See *Matthew* 8:30-32 (depicting pigs as demonically possessed).

¹⁴⁴ See e.g. *1 Corinthians* 15:39 (noting that people and animals are of different flesh).

becomes the precise structuring of the hierarchy. God commanded man to “have dominion over the fish of the sea, and over the fowl of the air, and over every living thing that moveth upon the earth.”¹⁴⁵ This places mankind at the top of the hierarchy. However, it is important to not simply consider the ordering of each being or thing on the hierarchy but to also consider the positioning of each. In other words, one needs to consider the *spacing* between the beings and things within the hierarchy. This is where law must intercede in relation to wills, trusts, and estates.

As evidenced in previous sections, animals have been moving up the societal hierarchy throughout the centuries, coming closer to human beings. Many people have resisted this movement in large part because historically Biblical “dominion” has been erroneously interpreted to mean a nearly “unrestricted dominion”¹⁴⁶ or complete power over animals allowing for outright abuse. However, this interpretation has slowly lost popularity and is increasingly being replaced with the idea of stewardship (i.e. responsibility toward animals).¹⁴⁷ This interpretation does not alter the hierarchy positions but the spacing within that hierarchy. Put more simply, this is meant to move animals’ well-being closer to that of human-beings without replacing humans as the primary moral concern. Animals are no longer mere property, but *something* more.

The Bible makes clear that animals are to be treated humanely and that dominion does not encompass limitless

¹⁴⁵ *Genesis* 1:28 (King James). See also *Genesis* 1:28 (New American Bible) (commanding “...fill the earth and subdue it. Have dominion over the fish of the sea, the birds of the air, and all the living things that move on the earth”); *Genesis* 1:28 (New International) (instructing to humanity to “... fill the earth and subdue it. Rule over the fish of the sea and the birds of the air and over every living creature that moves on the ground”).

¹⁴⁶ Livingston, *supra* note 31, at 11.

¹⁴⁷ See e.g. Rebecca J. Huss, *Valuing Man's and Woman's Best Friend: The Moral and Legal Status of Companion Animals*, 86 Marquette L. Rev. 47, 57 (2002) (noting that the idea of dominion as complete power is not universally accepted).

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power.¹⁴⁸ In fact, although man is granted “dominion” over animals,¹⁴⁹ the Bible also propounds that “[a] righteous man regardeth the life of his beast: but the tender mercies of the wicked are cruel.”¹⁵⁰ Mankind was never meant to heedlessly murder or torture animals but, on the contrary, to actively care for them.¹⁵¹ Here, it is important to consider why animals were first created (i.e. to consider animals’ purpose prior to The Fall). Animals were not created to serve as food,¹⁵² but rather, to serve as companions for humankind¹⁵³ and as a means of God’s own enjoyment.¹⁵⁴ Thus, read in context, the Bible strongly evidences that its usage of “dominion” refers to stewardship rather than to unbridled power.

¹⁴⁸ See, e.g., *Numbers* 22:23-32 (depicting the angel of the Lord, armed with a sword, reprimanding Balaam for beating his humble and hardworking donkey).

¹⁴⁹ *Genesis* 1:28 (King James); *Genesis* 1:28 (New American Bible).

¹⁵⁰ *Proverbs* 12:10 (King James). See also *Proverbs* 12:10 (New American Bible) (instructing that “[t]he just man takes care of his beast, but the heart of the wicked is merciless”); *Proverbs* 12:10 (New International) (explaining that “[a] righteous man cares for the needs of his animal, but the kindest acts of the wicked are cruel”).

¹⁵¹ See, e.g., *Proverbs* 27:23 (King James) (“Be thou diligent to know the state of thy flocks, and look well to thy herds.”); *Proverbs* 27:23 (New American Bible) (“Take good care of your flocks give careful attention to your herds”); *Proverbs* 27:23 (New International) (Be sure you know the condition of your flocks, give careful attention to your herds.”).

¹⁵² See *Genesis* 1:29-30 (evidencing that animals were not originally intended as meat).

¹⁵³ See *Genesis* 2:19-20 (stating that animals were brought to Adam for him to name).

¹⁵⁴ See, e.g., *Psalms* 145:9 (King James) (stating that “The LORD is good to all: and his tender mercies are over all his works”); *Psalms* 145:9 (New International) (stating that “The LORD is good to all; he has compassion on all he has made”); *Psalms* 145:9 (New American Bible) (stating that “The LORD is good to all, compassionate to every creature”); *Luke* 12:24 (noting that God cares even for birds); *Genesis* 1:25 (stating that God’s creation of beasts was good).

C. Inheritance

In this section, the author will provide a brief overview of the Bible's treatment of inheritance.¹⁵⁵ Although the Bible does not say as much about inheritance as it does about animals, the Bible does provide a decent amount of information. This information is important for readers' understanding of the proceeding solution section.

The Old Testament provides an early version of an intestacy statute. Under Biblical law, the order of inheritance was as follows: the decedent's sons, daughters, brothers, uncles, and lastly next of kin.¹⁵⁶ This Biblical scheme, just like today's intestacy statutes, appears to be based upon a then-current understanding of "family."¹⁵⁷ There is also an underlying notion of fairness. In other words, even the Biblical intestacy scheme was amenable to considerations of who most deserved an inheritance. At least early versions of intestacy rules in the Bible stated that a first-born son was to inherit more than later-born sons because the first-born son had the duty of carrying the family legacy¹⁵⁸ and caring for his aging parents.¹⁵⁹ Other passages and traditions supplement the then-practiced intestacy scheme.¹⁶⁰ For example, Biblical depictions suggest that widows could inherit, at least to an extent.¹⁶¹ Most notably, "[a] few texts suggest that in the absence of other offspring, a slave might inherit, possibly as a "constructive" son, that is, a son by operation of law."¹⁶² For instance, Abraham was concerned that a slave would

¹⁵⁵ By "inheritance," the author refers to the legal concept of a probate system rather than to the more theological concept of Earth as an inheritance for mankind.

¹⁵⁶ *Numbers* 27:7-11.

¹⁵⁷ See *id.* (speaking in familial terms such as "father," "brothers," "brethren" and "family").

¹⁵⁸ *Deuteronomy* 21:15-17.

¹⁵⁹ E.g., *1 Timothy* 5:4; *1 Timothy* 5:8.

¹⁶⁰ Richard H. Hiers, *Transfer of Property by Inheritance and Bequest in Biblical Law and Tradition*, 10 J. OF L. AND RELIGION 121, 152 (1994).

¹⁶¹ *Id.* at 153.

¹⁶² *Id.* at 127.

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inherit his estate.¹⁶³ This illuminates the question as to what constitutes a son or daughter or even other kin for purposes of inheritance. This is a problem which intestacy laws have been reluctant to address even in the modern era.¹⁶⁴ The law has failed to adequately account for modern preferences in legal construction.

IV. LEGAL SOLUTION

In this section, the author will consider pet inheritance laws within the philosophical framework of the animal welfarist and the animal rights philosophies. This section will continue to illuminate the connection between Christian ideas of stewardship and the specific animal “right” of inheritance. The following paragraphs will demonstrate that a limited, automatic right of pet inheritance can be considered in line with general Christian principles and modern familial constructs. Consequently, the author will offer a solution to the current problem of pet inheritance and the often-resulting, unnecessary euthanizing of beloved but orphaned pets.

Current law does not reflect modern understandings of animals’ place in the world. Because animals are legally considered property, they are deemed unable to inherit. This creates substantial gaps that allow animals to be left to die.¹⁶⁵ Pet inheritance laws would most accurately reflect the evolving concept of animal welfare and animal rights. Such laws would accomplish an animal welfarist goal in that they would prevent many non-human children from being needlessly euthanized and would prevent them from suffering loneliness in cages while awaiting their untimely death. In short, humans’ duty of stewardship includes financially providing for pets, to the extent possible, after death. Failure to do so jeopardizes pets’ very

¹⁶³ *Genesis* 15:2-3.

¹⁶⁴ Susan N. Gary, *Adapting Intestacy Laws to Changing Families*, 18 L. & INEQUALITY: A J. OF THEORY & PRACTICE 1, 4 (2000).

¹⁶⁵ See generally Foster, *supra* note 3 (providing a review of how all current types of succession fail animals).

lives, violating the explicit charge to care for one's animals.¹⁶⁶ Pet inheritance laws could also reflect the growing animal rights movement. Such inheritance laws could, therefore, be firmly rooted in both the idea that (1) animals are sentient, feeling creatures with souls that are worthy of rights in themselves because of their intrinsic value and that (2) animals have been entrusted to humans' care via a command of dominion, or stewardship. This joining of animal welfare and animal rights would offer the best foundation for providing for non-human children in the event of their human parent's death.

The author suggests that, in the event that a pet parent has no living spouse nor living human children, that the parent's cash and monetary funds held in bank accounts or in the form of bonds or stocks be automatically inheritable by their orphaned non-human children as a matter of law rather than as a mere option via pet trusts. This would help prevent the legal system from avoiding pet's protection without completely dismantling the current family paradigm approach to intestacy law,¹⁶⁷ which would move intestacy law out of alignment with the Bible. In other words, this shift in the default inheritance rules would both better represent Christian ideals of stewardship and more accurately resemble the modern family structure. This is important because, to be effective, a proposed legal solution needs to possess both characteristics. For instance, although American ideology espouses separation of church and state, a majority of American Christians believe that the Bible should influence law.¹⁶⁸ Additionally, whereas 51% of Catholics believe the Bible should influence law¹⁶⁹, more than 75% of

¹⁶⁶ See *Proverbs*, *supra* note 148.

¹⁶⁷ See generally Foster, *supra* note 3 (arguing for the abandonment of the family paradigm).

¹⁶⁸ Michael Lipka, *Half of Americans Say Bible Should Influence U.S. Laws, Including 28% Who Favor It Over the Will of the People*, PEW RSCH. CTR. (April 13, 2020), <https://www.pewresearch.org/short-reads/2020/04/13/half-of-americans-say-bible-should-influence-u-s-laws-including-28-who-favor-it-over-the-will-of-the-people/>

¹⁶⁹ *Id.*

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Protestants¹⁷⁰, who religiously dominate the legislature¹⁷¹, believe the same. Realistically, this means that legislative changes in alignment with Biblical principles will be easier¹⁷² to secure than those without Biblical support. Likewise, in order for intestacy changes to be accepted, they need to be in accord with intestacy law's purpose "...of giving effect to the decedent's probable intent."¹⁷³ This provides both a social and legal means of supporting intestacy law's alteration.

In terms of both animal welfare and animal rights, adopting a pet is referred to as "adopting" rather than "buying" for a reason. A pet is not a mere piece of property. By adopting a pet, parents accept special responsibilities for them even beyond those commanded in the Bible for all animals. Once a pet is adopted, just like a human child, that pet is dependent upon his or her parent for food, water, shelter, and protection. That non-human animal should not be left without potentially life-saving inheritance and condemned to death in favor of more distant relatives' desire for monetary (rather than sentimental) inheritance.¹⁷⁴ As a blessed and, potentially soul-bearing, creature of God, pets should be allowed to inherit for the purpose of life preservation. This is in accordance with both animal welfare and animal rights as it provides justification in relation to both care and deservingness.

Amending the intestacy laws such that the default for unwed, pet-only parents would also more closely

¹⁷⁰ *Id.*

¹⁷¹ PEW RSCH. CTR., *supra* note 90.

¹⁷² Author does not intend to suggest that laws opposed to Christian theology are impossible to pass. Author means only that laws in agreement with Christian theology are likely to be *easier* to pass than those without Christian theological support.

¹⁷³ Robert H. Sitkoff, *Trusts and Estates: Implementing Freedom of Disposition*, 58 ST. LOUIS UNIV. L.J. 643, 644 (2014) (citing Restatement (Third) of Prop.: Wills and Other Donative Transfers §10.1 cmts. a.c (2003)).

¹⁷⁴ See *Luke* 12:13-15 (saying that Jesus refused to force a man's brother to share his inheritance and warned the requester about coveting wealth).

resemble the modern understanding of family, which is a Biblical¹⁷⁵ and legal purpose of intestacy law.¹⁷⁶ Today, the majority of Americans are pet owners, and 97% of these pet owners consider their pets family.”¹⁷⁷ Not only do Americans consider their pets as family, but a slight majority consider pets “as much a part of their family as a human member” with “[u]nmarried pet owners and those who do not have [human] children younger than 18 at home...” being the most likely to hold this viewpoint.¹⁷⁸ In other words, the data shows that the only group affected by this herein proposed change in intestacy law, the unwed and childless, is the group most likely to consider their animal family members equivalent to their human family members. Furthermore, although most people still have human children, a growing number of Americans are choosing to forgo marriage and human children altogether¹⁷⁹ paired with a general trend¹⁸⁰ toward pet

¹⁷⁵ See *Numbers* 27:7-11 (speaking in familial terms such as “father,” “brothers,” “brethren,” and “family”).

¹⁷⁶ Gary, *supra* note 167, at 2 (citing Mary Louise Fellows et al., *Public Attitudes About Property Distribution at Death and Intestate Succession Laws in the United States*, 1978 AM. B. FOUND. RES. J. 319, 324).

¹⁷⁷ Anna Brown, *About Half of U.S. Pet Owners Say their Pets are as Much a Part of their family as a Human Member*, PEW RSCH. CTR. (July 7, 2023), <https://www.pewresearch.org/short-reads/2023/07/07/about-half-us-of-pet-owners-say-their-pets-are-as-much-a-part-of-their-family-as-a-human-member/>.

¹⁷⁸ *Id.*

¹⁷⁹ Thomas Gryn et al., *Family Households Still the Majority*, UNITED STATES CENSUS BUREAU (May 25, 2023), <https://www.census.gov/library/stories/2023/05/family-households-still-the-majority.html>.

¹⁸⁰ Michelle Megna, *Pet Owner Statistics 2024*, FORBES (Jan. 25, 2024, 11:09 AM), https://www.forbes.com/advisor/pet-insurance/pet-ownership-statistics/#sources_section (discussing American Pet Products Association data).

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ownership.¹⁸¹ In fact, as early as the 1930s, some judges began noting that pets are often a decedent's "sole immediate family."¹⁸² This pattern is likely to continue.¹⁸³ Put simply, the family structure has changed such that intestacy laws are no longer consistent with Americans' definition of "family" or with their views of animals as sentient beings worthy of care and consideration. The involvement of the animal rights movement has largely outdated the law's approach to animals, especially as to the general classification of orphaned, non-human children as property. Furthermore, this limited alteration in intestacy law strikes an appropriate balance between animal welfare and animal rights as the proposed change is restricted to cases in which the decedent is unmarried and has only non-human children. Thus, neither a spouse nor human child's share is decreased by this change. Limiting this proposal also maintains a bright-line rule, rather than, for example, an ad hoc adjudication of each intestacy instance. In summation, the intestacy laws should be updated to reflect the evolving societal views so strongly influenced by changing conceptions of Christian theology and general philosophy. Doing so will result in intestacy laws that better reflect the probable desires of today's decedents

V. CONCLUSION

This article has explored the problem presented by current intestacy laws in relation to orphaned pets. To

¹⁸¹ See American Pet Products Association, *Latest Pet Ownership and Spending Data from APPA Reveals Continued Strength of National Pet Industry in the Face of Economic Uncertainty* (Mar. 23, 2023), <https://www.americanpetproducts.org/news/press-release/latest-pet-ownership-and-spending-data-from-appa-reveals-continued-strength-of-national-pet-industry-in-the-face-of-economic-uncertainty> (stating 66% of American households own at least one pet).

¹⁸² See, e.g., *In re Estate of Howell's*, 260 N.Y.S. 598, 602 (Sur. Ct. 1932) (1932).

¹⁸³ See, e.g., Daniel Crown, *The Demographic Outlook: 2024 to 2054*, CONGRESSIONAL BUDGET OFFICE, 1, 3 (2024) (predicting a continued pattern of lowered fertility rates for Americans).

better understand this problem and its potential solution, the author provided extensive detail regarding the historical development of the animal welfare theory and the animal rights theory. The author continued by discussing historical perceptions of animals' essence (whether they possess souls) and their place in the mortal and spirit worlds. Relevant Biblical text was provided to better illuminate Christianity's big-picture conceptions of animals. To that end, the author also delved into the Biblical concepts of dominion and stewardship. The article also provided Biblical background information concerning inheritance to better inform readers of Christianity's approach specifically to the intestacy system. In concluding, the article set forth the solution of automatic pet inheritance rights for those adopted by unmarried parents who lack human children and further limited that right by suggesting non-human children only be automatically entitled to inherit money and its equivalent. Such limitations present an adequate balance of non-human children's divinely-given right to live and be cared for with the legally cognizable rights of more distant relatives to inherit sentimentally-valuable property.

It is the author's hope that this article has inspired a kinder and gentler view of animals, especially pets. It is also hoped that readers have obtained a better historical, philosophical, and theological understanding of animals and their place in the world. Lastly, the author is hopeful that this article will encourage readers to treat animals more humanely, to advocate on their behalf, and to consider their pets when addressing final affairs.