

ANIMAL WELFARE LEGISLATION IN  
TAIWAN AND CHINA:  
EXAMINING THE PROBLEMS AND KEY ISSUES

By  
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*This Article offers an overview and evaluation of Taiwan's and China's draft laws for protecting animals, which were drafted by countries that have not experienced comprehensive animal welfare movements. The Article focuses on interpreting the statutory offenses for cruelty and animal welfare infringements, and the problems and deficiencies of the draft laws' substance and enforcement mechanisms—the most critical factors affecting the effectiveness of the animal protection legislation.*

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## I. INTRODUCTION

Animal welfare has become one of the most significant international issues in modern civil society.<sup>1</sup> More and more countries and regions around the world have begun to promulgate minimum standards for animal protection with a variety of extents and scopes of protection.<sup>2</sup> The largest driving forces behind this international trend are the increased awareness of animals as sentient beings and the growing influence and impact of the animal welfare movement and relevant social and legal reforms that it has brought about.<sup>3</sup>

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<sup>1</sup> Animal welfare is not only the priority for the World Organization for Animal Health (OIE), it is also an issue which has been acknowledged by the Treaty on the Functioning of the European Union (TFEU), which requires the EU and its member states to pay full regard to the welfare of animals when formulating and implementing relevant legislation and policies. Consolidated Version of the Treaty on the Functioning of the European Union art. 13, May 9, 2008, 2008 O.J. (C 326) 54. Notwithstanding that the theoretical and empirical effects of EU legislation and the OIE animal welfare standards are keys guiding today's developments in animal welfare, the major challenge of promoting and improving animal welfare, either within the EU or at the global level, remains the competitive disadvantages of international agricultural production trade arising from differences in standards between the EU and their third-country trading partners. These differences in standard have the clear potential to undermine higher animal welfare standards. Thus, both the EU and the OIE have been emphasizing the goal of helping non-EU countries and the OIE member countries implement adopted animal welfare standards while taking into account the cultural, religious, and economic variations between regions and countries of the world.

<sup>2</sup> See BRUCE A. WAGMAN & MATTHEW LIEBMAN, *A WORLDVIEW OF ANIMAL LAW* 28–47 (2011) (discussing the development of animal law in China, Japan, Philippines, South Korea, India, Israel, South Africa, Egypt, United States, Brazil, Ecuador, European Union, United Kingdom, Germany, Italy, Croatia, Slovakia, Australia, and New Zealand).

<sup>3</sup> See, e.g., MIKE RADFORD, *ANIMAL WELFARE LAW IN BRITAIN: Regulation and Responsibility* 19–95 (reprt. 2005) (relating the historical development of animal law in Britain to developments in philosophy, morality, and relevant social understandings).

In most Asian countries, however, the legislation for protecting animals is either lacking or still lagging far behind.<sup>4</sup> An exception to this is the former British colonies;<sup>5</sup> their legal systems were inherited from the United Kingdom, and their animal protection legislation is primarily based on the Protection of Animals Act 1911 (UK).<sup>6</sup> So far, China has virtually no law protecting animals,<sup>7</sup> though the first draft law for protecting animals in China (the Animal Protection Law of the People's Republic of China 2009 (APL))<sup>8</sup> was unveiled in 2009 and its proposed version (the Prevention of Cruelty to Animals Law of the People's Republic of China 2011 (PCL))<sup>9</sup> was submitted to the National People's Congress in 2011,<sup>10</sup> the possibility of enactment remains uncertain in the near future.<sup>11</sup>

On the other hand, in Taiwan, a country sharing the Chinese culture,<sup>12</sup> the Taiwan Animal Protection Law 2016 (TAP)<sup>13</sup> has been in place since 1998. Taiwan is one of the few countries in Asia that has promulgated general animal welfare legislation and criminalized animal cruelty.<sup>14</sup> Numerous studies also suggest that the TAP is fairly progressive and comprehensive in providing animals due statutory

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<sup>4</sup> THE GLOBAL GUIDE TO ANIMAL PROTECTION 24 (Andrew Linzey ed., 2013).

<sup>5</sup> For example, Hong Kong, Singapore, and Malaysia.

<sup>6</sup> Alvin W. L. See, *Animal Protection Laws of Singapore and Malaysia*, SING. J. L. STUD. 132, 132 (2013); Amanda S. Whitfort & Fiona M. Woodhouse, Review of Animal Welfare Legislation in Hong Kong 4–5 (June 2010) (unpublished manuscript, University of Hong Kong).

<sup>7</sup> JOAN SCHAFFNER, AN INTRODUCTION TO ANIMALS AND THE LAW 2 (Andrew Linzey & Priscilla Cohn eds., 2011).

<sup>8</sup> Zhong Hua Ren Min Gong He Guo Dong Wu Bao Hu Fa (中華人民共和國動物保護法) [The Animal Protection Law of the People's Republic of China 2009] (Experts' Draft Proposal), translated in ROYAL SOC'Y FOR THE PREVENTION OF CRUELTY TO ANIMALS 3–5 (Paul Littlefair & Chang Jiwen trans., 2010).

<sup>9</sup> Zhong Hua Ren Min Gong He Guo Fan Nue Dai Dong Wu Fa (中華人民共和國反虐待動物法) [The Prevention of Cruelty to Animals Law of the People's Republic of China 2011] (Experts' Proposal), translated in ROYAL SOC'Y FOR THE PREVENTION OF CRUELTY TO ANIMALS (Paul Littlefair trans., 2009).

<sup>10</sup> Amanda Whitfort, *Evaluating China's Draft Animal Protection Law*, 34 SYDNEY L. REV. 347, 347–49 (2012).

<sup>11</sup> See Song Wei, China Animal Welfare Legislation: Current Situation and Trends —From Analysis of Three Cases in Recent Years 7 (Oct. 16, 2015) (unpublished manuscript), <http://animallawconference.org/wp-content/uploads/sites/7/2015/09/China-Animal-Welfare-Legislation.pdf> (accessed Feb. 22, 2017) (explaining that due to the slow process by which laws are enacted by the Chinese government, the timeline for enactment of these animal protection laws is highly uncertain).

<sup>12</sup> See Junhao Hong, *Cultural Relations of China and Taiwan: An Examination of Three Stages of Policy Change*, 6 INTERCULTURAL COMM. STUD. 89, 92 (1996) (explaining the common cultural roots of Taiwan and China).

<sup>13</sup> Zhong Hua Min Guo Dong Wu Bao Hu Fa (中華民國動物保護法) [The Taiwan Animal Protection Law 2016] (promulgated by the President, Nov. 4, 1998), <http://law.moj.gov.tw/Eng/LawClass/LawAll.aspx?PCode=M0060027> (accessed Feb. 27, 2017).

<sup>14</sup> Shih-Yun Wu et al., *Attitudes of Taiwan Veterinarians Towards Animal Welfare*, 24 ANIMAL WELFARE 223, 223 (2015).

care and legal protection.<sup>15</sup> However, the truth is that the TAP was developed in a relatively limited time due to international pressure; consequently, both the effectiveness of the TAP and its anti-cruelty provisions have been questionable.<sup>16</sup> Although several studies have explored the developmental issues of animal welfare from the perspectives of culture, legislation, history, and social movement in Taiwan and China separately, remarkably little legal scholarship has comparatively examined the draft animal welfare laws in the two countries with limited developmental history of animal welfare movements.<sup>17</sup> However, understanding the features and problems of drafting such legislation in different developmental stages is fundamental and necessary in helping these non-western countries further promote or improve their animal welfare standards and legislation.

Therefore, the purpose of this study is to examine the animal cruelty offenses and major animal welfare infringements under the draft laws in Taiwan and China and to further identify the specific deficiencies and problems behind the laws and their enforcement mechanisms. This study provides objective perspectives and guidelines for improving animal welfare legal regimes in Taiwan, China, and other Asian countries with similar situations.

## II. ANIMAL WELFARE MOVEMENT AND ITS DEVELOPMENT IN ASIA

### A. *The History of the Animal Welfare Movement*

Throughout the history of the social movement for protecting animals from human harm and cruelty, the structure and content of modern animal protection legal regimes and enforcement mechanisms were mainly constructed during two major developmental periods.<sup>18</sup>

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<sup>15</sup> Whitfort, *supra* note 10, at 348; *see also* WAGMAN & LIEBMAN, *supra* note 2, at 175–76 (giving examples of the breadth of the Taiwan Animal Protection Act).

<sup>16</sup> Govindasamy Agoramoorthy, *Enforcement Challenges of Taiwan's Wildlife Conservation and Animal Protection Laws*, 12 J. INT'L WILDLIFE L. & POL'Y 190, 202–03 (2009); Wu et al., *supra* note 14, at 223.

<sup>17</sup> Agoramoorthy, *supra* note 16, at 202–03 (giving various examples of problems with efficacy of anti-cruelty provisions); Wu et al., *supra* note 14, at 223.

<sup>18</sup> *See* RADFORD, *supra* note 3, at 15–59 (describing developments to animal protection theory and legislation in the late 1700s and early 1800s); *see also* Elaine L. Hughes & Christiane Meyer, *Animal Welfare Law in Canada and Europe*, 6 ANIMAL L. 23, 25 (2000) (stating that animal protection emerged from eighteenth century philosophy and Enlightenment-era social reform); Thomas G. Kelch, *A Short History of (Mostly) Western Animal Law: Part I*, 19 ANIMAL L. 23, 26 (2012) [hereinafter Kelch, *A Short History Part I*] (designating two periods of human history: “recent modern period” (1800 to 1970) and “modern period” (1970 to the present and possibly the future)); Thomas G. Kelch, *A Short History of (Mostly) Western Animal Law: Part II*, 19 ANIMAL L. 347, 353, 367–69 (2013) [hereinafter Kelch, *A Short History Part II*] (explaining these two periods in more depth); Kate M. Natrass, “. . . und die Tiere” *Constitutional Protection for Germany's Animals*, 10 ANIMAL L. 283, 285–87 (2004) (describing the period of ethical debates about animals in the early 1800s and a second period of animal legislation in post-WWII 1950s and '60s).

The first period started in England in the 1800s, where attempts to introduce legislation to protect animals began,<sup>19</sup> the structure and content of which were based on the cumulative influence of associated philosophical debates and a series of developments in the economy, society, science, and politics in the Age of Enlightenment throughout the seventeenth and eighteenth centuries.<sup>20</sup> This is also the period in which the growing denunciation of animal cruelty was gradually accepted by society, and the scope of morality was significantly extended to include other species.<sup>21</sup> By the end of the eighteenth century, the call for introduction of legislation against animal cruelty began to emerge, and the notion that animals deserve protection as entities, and not merely as human property, took root.<sup>22</sup>

It was not until 1822 that Martin's Act, the first-ever animal cruelty statute, was successfully passed after the failure of four previous attempts to introduce bills for protecting animals.<sup>23</sup> During the following decades until the consolidation of the Protection of Animals Act of 1911, subsequent legislation continued to broaden the degree and the scope of protection and strengthen their regulatory measures.<sup>24</sup> Following the British model, the trend and influence of using law to protect animals rapidly spread throughout Europe and most Western countries shortly after Martin's Act, particularly in the former colonies of Great Britain such as Nova Scotia, the United States, Australia, and New Zealand, which passed their animal protection laws in 1869, 1828, 1883, and 1878, respectively.<sup>25</sup> France was the first European country to emulate Great Britain, passing its anti-cruelty legislation in 1850.<sup>26</sup> After 1871, Germany was united as one nation and enacted its first national law to punish anyone who "publicly or offensively beats or plainly mishandles an animal."<sup>27</sup> The former German lands' previous formal anti-cruelty statute had appeared in Saxony in 1838, which "closely reflected developing humane attitudes in other parts of Eu-

<sup>19</sup> RADFORD, *supra* note 3, at 33–40; Hughes & Meyer, *supra* note 18, at 25; Kelch, *A Short History Part II*, *supra* note 18, at 353; Natrass, *supra* note 18, at 286.

<sup>20</sup> RADFORD, *supra* note 3, at 59; Hughes & Meyer, *supra* note 18, at 25–28; Kelch, *A Short History Part II*, *supra* note 18, at 353–67; Natrass, *supra* note 18, at 285–86.

<sup>21</sup> RADFORD, *supra* note 3, at 15–30.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.* at 33–59 (discussing the failed attempts of the 1800 and 1809 Bull-Baiting Bills and the 1809 and 1810 Erskine's Cruelty to Animals Bills).

<sup>24</sup> *Id.* at 61–93. The legislation of this period includes the Prevention of Cruelty to Animals Act 1849, the Prevention of Cruelty to Animals in Scotland Act, the Cruelty to Animals Act 1876, and the Wild Animals in Captivity Protection Act 1900. *Id.*

<sup>25</sup> Danielle Rebecca Duffield, *Instant Fines for Animal Abuse? The Enforcement of Animal Welfare Offences and the Viability of an Infringement Regime as a Strategy for Reform* 8 (2012) (unpublished Master's thesis, University of Otago National), <http://www.otago.ac.nz/law/research/journals/otago043939.pdf> [<https://perma.cc/KB8Z-CZK7>] (accessed Apr. 9, 2017); ANDREW LINZEY, *THE GLOBAL GUIDE TO ANIMAL PROTECTION* 19 (2013); Hughes & Meyer, *supra* note 18, at 26.

<sup>26</sup> Hughes & Meyer, *supra* note 18, at 26.

<sup>27</sup> Natrass, *supra* note 18, at 286 (emphasis omitted).

rope.”<sup>28</sup> Despite this developmental period of the animal welfare movement, most Western countries already had laws in place to provide a certain extent of protection for animals, and different historical, legal, and social factors in different countries affected the development and scope of their various animal protection laws.<sup>29</sup> Like Martin’s Act, most of the laws at the early developmental stage were still based on utterly anthropocentric grounds, which deemed animal cruelty as imprudent, unseemly behavior but did not intend to prevent animals from human-caused harm or suffering.<sup>30</sup> However, due to the constant development and improvement in response to well-organized lobbying and advocacy, the concept of preventing animals from unnecessary suffering was gradually becoming the central basis and characteristic under the animal protection legal regime.<sup>31</sup> The irreplaceable role of animal protection organizations’ involvement and influence on promoting the development of the animal welfare movement was also established in this period.<sup>32</sup>

However, followed by the outbreak of the First World War and then the upheaval of the Second World War, the movement went into abeyance for several decades, and the demands for legislative reforms regarding the treatment of animals ceased to feature as significant social and political issues during this period of time.<sup>33</sup> Notwithstanding that fairly strict animal protection law was adopted in Nazi Germany with a set of contradictory motivations during this period of stagnation,<sup>34</sup> in the following years, the animal protection organizations predominantly shifted their focus from the wide-ranging animal exploitation and mistreatment issues towards the plight of companion animals, such as looking after unwanted dogs and cats.<sup>35</sup> In North America, such a tendency also partially resulted from rapid post-war urbanization; when the urban visibility of livestock-related cruelty disappeared and owners of companion animals within cities became the

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<sup>28</sup> *Id.*

<sup>29</sup> See, e.g., Hughes & Meyer, *supra* note 18, at 25 (discussing how early British animal protection statutes were enacted to prevent destruction of property); Kelch, *A Short History Part I*, *supra* note 18, at 49 (arguing that early sodomy on animals laws, including those in the U.S., were based on “the religious idea that animals involved in bestiality must also be put to death, as would the human”); Natrass, *supra* note 18, at 286 (“[T]he first German [anti-cruelty] laws were based firmly on the anthropocentric grounds that animal abuse was imprudent and unseemly.”).

<sup>30</sup> See, e.g., Natrass, *supra* note 18, at 286 (explaining that early German anti-cruelty laws were created because animal abuse was thought to be “imprudent and unseemly”).

<sup>31</sup> See RADFORD, *supra* note 3, at 61–93 (stating that the National Anti-Vivisection Society met with the Home Secretary to propose legislation which would limit animal experimentation). The concept of protecting animals from unnecessary suffering is still from an anthropocentric view nowadays. Hughes & Meyer, *supra* note 18, at 31.

<sup>32</sup> E.g., Kelch, *A Short History Part II*, *supra* note 18, at 355–56 (stating that the American Society for the Prevention of Cruelty to Animals was formed in 1866).

<sup>33</sup> RADFORD, *supra* note 3, at 168–69.

<sup>34</sup> Kelch, *A Short History Part II*, *supra* note 18, at 364–65.

<sup>35</sup> RADFORD, *supra* note 3, at 168–69.

primary financial supporters of animal welfare organizations,<sup>36</sup> various animal welfare issues such as farmed animals and vivisection were unintentionally ignored and thus became “out of sight, out of mind.”<sup>37</sup>

After a half-century of inertia, the movement was once again re-suscitated in the 1960s, when the second developmental period—namely the scientific animal welfare era—commenced.<sup>38</sup> In 1964, in response to public concern after the publication of Ruth Harrison’s book *Animal Machines*, in which the reality of intensive livestock farming practice was first disclosed and greatly condemned, the scientific concept of “welfare” and relevant criteria (the Five Freedoms)<sup>39</sup> were being developed and entered into the UK’s legislation.<sup>40</sup> The Agriculture (Miscellaneous Provisions) Act 1968 is the first legislation specifically aimed to regulate the way in which livestock ought to be treated and kept on farms.<sup>41</sup> These basic scientific criteria for animal welfare were gradually expanded and applied to different categories of animals in the following years and have become the most accepted international animal welfare standards in the last twenty years.<sup>42</sup> Meanwhile, the new stream of debate about the moral status of animals and humans’ responsibility towards them by several philosophers including Peter Singer, Tom Regan, and Richard Ryder<sup>43</sup> has also profoundly revived the discussion and rethinking of the wide-ranging animal rights and welfare issues in the Western world.<sup>44</sup> More significantly, the revitalization of animal protection organizations’ lobbying and advocacy activities—either in traditional, moderate ways or in more radical, conflicting ways—came together with the wider general concern regarding environmental protection or wildlife conservation issues.<sup>45</sup> These not only brought action against modern agribusiness and the scientific and medical research fields, but also resulted in the relevant issues rising up the political and legal agenda.<sup>46</sup>

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<sup>36</sup> Hughes & Meyer, *supra* note 18, at 27–28.

<sup>37</sup> *Id.*

<sup>38</sup> RADFORD, *supra* note 3, at 167–92; Hughes & Meyer, *supra* note 18, at 28; Kelch, *A Short History Part II*, *supra* note 18, at 359–60.

<sup>39</sup> *Five Freedoms*, FARM ANIMAL WELFARE COUNCIL (Apr. 16, 2009), <http://www.fawc.org.uk/freedoms.htm> [<http://webarchive.nationalarchives.gov.uk/20121007104210/http://www.fawc.org.uk/freedoms.htm>] [<https://perma.cc/22NL-PRWE>] (accessed Apr. 9, 2017).

<sup>40</sup> RADFORD, *supra* note 3, at 169.

<sup>41</sup> *Id.*

<sup>42</sup> RADFORD, *supra* note 3, at 261–87; SCHAFFNER, *supra* note 7, at 71; see Kenneth L. Easton, *The Veterinarian’s Role in Animal Welfare*, 45 CANADIAN VETERINARY J. 1030, 1030 (2004) (“The essence of [the proposed legislation] is enshrined in the [Five Freedoms.]”; Wu et al., *supra* note 14, at 225 (concluding that Taiwanese veterinarians generally support the Five Freedoms and use of animal welfare courses in veterinary education).

<sup>43</sup> RADFORD, *supra* note 3, at 168–69.

<sup>44</sup> See *id.* at 169 (discussing the impact of Singer, Regan, Ryder, and other philosophers on animal welfare issues).

<sup>45</sup> *Id.* at 168; Hughes & Meyer, *supra* note 18, at 28.

<sup>46</sup> RADFORD, *supra* note 3, at 168; Hughes & Meyer, *supra* note 18, at 28.

By the 1970s, following this developmental pattern, many Western countries began to revise and update their existing animal protection legislation or increase the scope of their protection to reflect the public's changing attitudes toward animals and the social and legal needs of animal protection.<sup>47</sup> After the movement's rapid development over two hundred years, the present trend of national legislation to protect animals not only prevents animals from cruelty, but also places duties on those who are in charge of animals to provide them with a satisfactory standard of care.<sup>48</sup> In other words, the animal protection issue is extended from a concern of animal cruelty in criminal law to that of animal welfare in administrative law and related public policy.<sup>49</sup> More strikingly, the scope of animal protection issues has been developed far beyond domestic boundaries and national doctrines, and its influence or importance has spread internationally.<sup>50</sup> Particularly during this scientific era of animal welfare, international governments and non-governmental organizations, such as the EU, the OIE, and the WTO, have regarded animal welfare as one of the priorities or major issues they give due regard to when they formulate or promulgate any relevant legislation or policies related to animals.<sup>51</sup> Among these major issues, different animal welfare standards in global agricultural trade, animal health and food safety problems, etc. have become the

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<sup>47</sup> See, e.g., ELLEN-MARIE FORSBERG, WORK RESEARCH INST., PRINCIPLES OF ANIMAL ETHICS IN SCANDINAVIAN ANIMAL WELFARE LEGISLATION AND GOVERNANCE 6 (2008), [http://www.hioa.no/content/download/53804/811919/file/animal\\_ethics\\_principles\\_in\\_Scandinavia%20Dec08.pdf](http://www.hioa.no/content/download/53804/811919/file/animal_ethics_principles_in_Scandinavia%20Dec08.pdf) [<https://perma.cc/FBW3-4RDX>] (accessed Apr. 9, 2017) (stating that the purpose of the 1974 Scandinavian legislation is that “[a]nimals are to be treated well and the animal’s instincts and natural needs shall be considered so there is no risk that it suffers without cause”); RADFORD, *supra* note 3, at 169 (explaining that British legislation passed in 1968 regulated how livestock was to be kept); Kelch, *A Short History Part II*, *supra* note 18, at 363 (“The Marine Mammal Protection Act and the Endangered Species Act of the 1970s marked a major new concern coming to the fore relating to animals—the emergence of an environmental ethic in the law and the idea of protecting groups or species of animals.”); Natrass, *supra* note 18, at 287 (discussing German legislation passed in 1972 which “reflect[ed] the changing needs of animal protection and regulation”).

<sup>48</sup> Whitfort, *supra* note 10, at 348.

<sup>49</sup> See RADFORD, *supra* note 3, at 261–341 (“Whereas the concept of cruelty to animals has been entrenched in the law since 1822, and a similar idea has existed in common parlance to refer to the abuse of animals for much longer, welfare did not emerge as an identifiable area of . . . public policy towards animals until the second half of the 1960s.”).

<sup>50</sup> See, e.g., PETER L. FITZGERALD, INTERNATIONAL ISSUES IN ANIMAL LAW: THE IMPACT OF INTERNATIONAL ENVIRONMENTAL AND ECONOMIC LAW UPON ANIMAL INTERESTS AND ADVOCACY 138 (2012) (“[T]he [Universal Declaration on Animal Welfare] aims to protect all animals from suffering and cruelty as a ‘universal’ international issue.”); RADFORD, *supra* note 3, at 99–192 (stating that animal welfare is an issue “on the [European Community]’s legal agenda”). See generally THOMAS G. KELCH, GLOBALIZATION AND ANIMAL LAW: COMPARATIVE LAW, INTERNATIONAL LAW AND INTERNATIONAL TRADE (2011) (providing a comprehensive overview of international animal law).

<sup>51</sup> See FITZGERALD, *supra* note 50, at 137–70 (discussing the importance of animal welfare to the EU, OIE, and WTO).

current, but not the latest, challenges to the animal protection movement.<sup>52</sup>

### B. *The Emerging Animal Welfare Movement in Asia*

In several Asian countries or regions such as India, Malaysia, Singapore and Hong Kong, which used to be colonies of the U.K., their legal systems and jurisdictions are deeply influenced by the British colonial heritage.<sup>53</sup> Thus, even though these former British colonies did not experience the first period of the animal protection movement or have any relevant legal or social revolutions as most Western countries did, they started to promulgate their wildlife protection laws as early as 1870, followed by the legislation of the animal protection law in Hong Kong in 1935,<sup>54</sup> which was before the second developmental period of the movement commenced.<sup>55</sup> In comparison with those of other neighboring Asian countries, the public attitude toward animals and the domestic animal protection movement in these former colonial countries or regions is much more progressive or active.<sup>56</sup> However, with the exception of Malaysia's newly passed Animal Welfare Act 2015 in 2015,<sup>57</sup> their laws, which are based on the now replaced Protection of Animals Act 1911 (U.K.), have not been largely amended or further improved since the laws have been enacted.<sup>58</sup>

On the other hand, notwithstanding that Japan passed its first comprehensive animal protection law in 1973,<sup>59</sup> the law was primarily legislated under the more political context for maintaining the nation's reputation in animal protection instead of intending to provide overall statutory protection for animals.<sup>60</sup> Although the law criminalizes animal cruelty, the purpose of the law mainly concerned the public

<sup>52</sup> *Id.* at 171–279; RADFORD, *supra* note 3, at 131–65; Kelch, *A Short History Part I*, *supra* note 18, at 27; Kelch, *A Short History Part II*, *supra* note 18, at 348, 388–89.

<sup>53</sup> Whitfort, *supra* note 10, at 348, 350; See, *supra* note 6, at 132 (stating that the laws in Singapore and Malaysia are largely derived from the now replaced Protection of Animals Act 1911 (U.K.)); Whitfort & Woodhouse, *supra* note 6, at 8–9 (stating that Hong Kong's current Prevention of Cruelty to Animals Ordinance is based on the Protection of Animals Act 1911 (U.K.)).

<sup>54</sup> Amanda S. Whitfort et al., *A Review of Hong Kong's Wild Animal and Plant Protection Laws 6* (Sept. 2013) (unpublished manuscript, University of Hong Kong), <http://www.cpao.hku.hk/media/130917lawreview.pdf> (accessed Jan. 25, 2017).

<sup>55</sup> Whitfort, *supra* note 10, at 366–67.

<sup>56</sup> See Whitfort & Woodhouse, *supra* note 6 (comparing Hong Kong animal legislation to that of the European Union, United States, Australia, New Zealand, Singapore, and Taiwan).

<sup>57</sup> Animal Welfare Act 2015 (Malay.), Act 772, <https://www.aalac.org/resources/Malaysia.pdf> (accessed Apr. 7, 2017).

<sup>58</sup> Whitfort & Woodhouse, *supra* note 6, at 8–9.

<sup>59</sup> However, the first time Japan used a legal approach to prohibit animal cruelty in its legal history was in 1880. HITOSHI AOKI, CENTRE FOR NEW EUROPEAN RESEARCH, 21ST CENTURY COE PROGRAMME, HITOSUBASHI UNIV., *LEGAL CULTURE RELATING TO ANIMALS: A COMPARISON BETWEEN JAPAN AND EUROPE 6* (2007).

<sup>60</sup> *Id.*; WAGMAN & LIEBMAN, *supra* note 2, at 32.

health and control issues such as protecting citizens from zoonosis.<sup>61</sup> In addition, despite the fact that the protected animals in the 1973 law included many general farm animals, companion animals such as dogs and cats, and other mammals and birds that were in the possession of a person, only the protection of dogs and cats was the major concern of the law.<sup>62</sup> Furthermore, without corresponding enforcement mechanisms, it was recognized as an ineffective and rarely enforced law.<sup>63</sup> Another similar case was in Israel. Although Israel has criminalized animal abuse offenses since 1977, there were no enforcement provisions provided.<sup>64</sup>

After the 1960s, the international community has emphasized and focused on the animal welfare movement, together with environment and wildlife conservation and protection issues.<sup>65</sup> Corresponding multilateral environmental agreements, such as the Convention on Biological Diversity (CBD), the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), and the International Convention on the Regulation of Whaling, were subsequently promulgated and signed.<sup>66</sup> Due to rising domestic awareness of wildlife and environmental protection, threats of economic sanctions from other nations, and enormous international public pressure,<sup>67</sup> countries outside the Western world began to formulate relevant domestic laws in accordance with these multilateral treaties and agreements.<sup>68</sup> For example, China joined CITES in 1981 and promulgated its Wildlife Protection Law (WPL) in 1988.<sup>69</sup> Similarly, Taiwan is not a member of the United Nations and is ineligible to be a party to CITES, but it enacted its Wildlife Conservation Act (WCA) in 1989 in order to seek more international recognition and support.<sup>70</sup>

Such trends of influence and pressure not only had a vast impact on promoting wildlife protection laws, but also on the legislation for protecting domestic animals in these countries.<sup>71</sup> It was not until the

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<sup>61</sup> WAGMAN & LIEBMAN, *supra* note 2, at 32.

<sup>62</sup> AOKI, *supra* note 59, at 6–7.

<sup>63</sup> *Id.* at 2.

<sup>64</sup> WAGMAN & LIEBMAN, *supra* note 2, at 35.

<sup>65</sup> *What Is CITES?*, THE CONVENTION ON INTERNATIONAL TRADE IN ENDANGERED SPECIES OF WILD FAUNA AND FLORA, <https://www.cites.org/eng/disc/parties/chronolo.php> (accessed Jan. 29, 2017).

<sup>66</sup> FITZGERALD, *supra* note 50, at 33–134.

<sup>67</sup> WAGMAN & LIEBMAN, *supra* note 2, at 30; Agoramorthy, *supra* note 16, at 195.

<sup>68</sup> FITZGERALD, *supra* note 50, at 33–104.

<sup>69</sup> Zhong Hua Ren Min Gong He Guo Ye Sheng Dong Wu Bao Hu Fa (中華人民共和國野生動物保護法) [Wildlife Protection Law of the People's Republic of China] (promulgated by the President of the People's Republic of China, Nov. 8, 1988, effective Mar. 1, 1989), [http://www.law-lib.com/law/law\\_view.asp?id=5353](http://www.law-lib.com/law/law_view.asp?id=5353) [<https://perma.cc/QJP7-U4RG>] (accessed Apr. 9, 2017); WAGMAN & LIEBMAN, *supra* note 2, at 30.

<sup>70</sup> Zhong Hua Min Guo Ye Sheng Dong Wu Bao Hu Fa (中華民國野生動物保護法) [Wildlife Conservation Act] (promulgated June 23, 1989) (Taiwan), <http://law.moj.gov.tw/Eng/LawClass/LawAll.aspx?PCode=M0120001> [<https://perma.cc/4MS8-H7LU>] (accessed Apr. 9, 2017); Agoramorthy, *supra* note 16, at 194–95.

<sup>71</sup> Agoramorthy, *supra* note 16, at 209.

1990s that Japan revised its existing law and Israel enacted two additional animal protection laws, in 1994 and 1999 respectively.<sup>72</sup> It should be noted that this is also the period when other Asian countries had begun to formulate and promulgate their own animal protection legislation, including South Korea in 1991,<sup>73</sup> Taiwan in 1998, and the Philippines in 1998.<sup>74</sup> In other words, this is about the period of time when the animal protection movement emerged in Asia. In comparison with the development of wildlife protection laws which were usually formulated in order to meet the requirements of relevant multilateral environmental treaties or agreements, the animal protection laws or penal codes which regulate the treatment of animals and prohibit various forms of animal cruelty behavior are generally regarded as domestic issues within national legal systems.<sup>75</sup> Accordingly, domestic animal protection laws would reflect the society's attitude towards animals and the way they ought to be treated; however, like in Japan, the laws in most Asian countries were mainly legislated under enormous external influence and without experiencing domestic long-term development of an animal protection movement.<sup>76</sup> In terms of protecting animals from cruelty and harm, both the scope of protection and the effectiveness of enforcement are fairly narrow and problematic.<sup>77</sup> Approaching the 2000s, several countries such as Japan, South Korea, and Taiwan subsequently amended and improved their laws, specifically by increasing statutory penalties for animal cruelty in response to severe public outrage owing to growing incidents of brutal animal abuse cases.<sup>78</sup> With such a short-term history of a domestic animal protection movement and with limited public consensus and social movement on a variety of animal welfare issues, the structure of the laws and their scope of protection are still lagging far behind the development of scientific animal welfare during the modern era.<sup>79</sup> So far, there are still many Asian countries, such as China, that have not actively developed animal protection measures.<sup>80</sup>

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<sup>72</sup> WAGMAN & LIEBMAN, *supra* note 2, at 32, 35.

<sup>73</sup> *Id.* at 33.

<sup>74</sup> *Id.* at 33, 175.

<sup>75</sup> SCHAFFNER, *supra* note 7, at 12–18.

<sup>76</sup> AOKI, *supra* note 59, at 7–8.

<sup>77</sup> *Id.*

<sup>78</sup> WAGMAN & LIEBMAN, *supra* note 2, at 32–33, 176.

<sup>79</sup> AOKI, *supra* note 59, at 7–8; Shusuke Sato, *General Attitude Towards Animals in Japan*, in 2014 INTERNATIONAL CONFERENCE ON “ANIMAL LIBERATION, ANIMAL RIGHTS, AND EQUAL ECOLOGICAL RIGHTS: DIALOGUES BETWEEN EASTERN AND WESTERN PHILOSOPHIES AND RELIGIONS” 377, 385–86 (2014); WAGMAN & LIEBMAN, *supra* note 2, at 32–33; Weng Hy et al., *Animal Protection Measures in Taiwan: Taiwanese Attitudes Toward the Animal Protection Law and Animal Shelters*, 9 J. OF APPLIED ANIMAL WELFARE SCI. 315, 316 (2006); Mau-Sheng Lee, *The Concept of Animal Rights and the Cultural Implication of Taiwan Animal Protection Law*, 94 TAIWAN L. REV. 155, 155–86 (2003); Wu et al., *supra* note 14.

<sup>80</sup> DEBORAH CAO, ANIMALS IN CHINA: LAW AND SOCIETY, at viii–ix (Andrew Linzey & Priscilla Cohn eds., 2015); Jiaqi Lu et al., *Current Status of Animal Welfare and Animal Rights in China*, 41 ATLA 351, 355 (2013); Whitfort, *supra* note 10, at 369.

### III. ANIMAL PROTECTION LEGISLATION IN TAIWAN

Before Taiwan passed its Animal Protection Law (TAP) in 1998, there were several laws and regulations related to animals, such as the Veterinary Drugs Control Act and Wildlife Conservation Act (WCA).<sup>81</sup> Most of these statutes, with the exception of the WCA, were legislated only for administrative or public health management purposes.<sup>82</sup> Though the WCA aims at providing protection for wildlife and their habitat by maintaining the balance of natural ecosystems,<sup>83</sup> in terms of enforcement, initially it merely concentrates on the prohibition of endangered species and related products in international trade.<sup>84</sup> On the other hand, the law outlawed the killing, disturbing, and abusing of wildlife, though these provisions protecting wildlife from human exploitation or harm were still fairly limited in scope and mostly unenforced.<sup>85</sup> For example, except listed endangered animals and some protected wildlife, the sale and storage of most protected wildlife is still allowed under the law.<sup>86</sup> More importantly, there was virtually no statutory protection for domestic animals kept by or under the control of human beings, including captured wildlife.<sup>87</sup>

However, along with continuous advocacy from local animal protection groups and their disclosure of various animal cruelty events to the public and international community in the 1990s,<sup>88</sup> there was a rising public safety concern caused by stray animals, and criticism mounted regarding the extremely inhumane and cruel manner used to 'deal with' stray animals;<sup>89</sup> for example, impounded strays were usu-

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<sup>81</sup> *Yeshen Dongwu Baoyu Fa* (野生動物保育法) [Wildlife Conservation Act] (promulgated June 23, 1989) (Taiwan).

<sup>82</sup> Shin-Yun Tsai, *Discussing the Development and Practice of Local Animal Welfare with the Legislation and Evolvement of Animal Protection Law—Regarding Dogs and Cats as the Illustrations* 31 (Aug. 2009) (unpublished Master's thesis, National Taiwan University).

<sup>83</sup> *See* Agoramoorthy, *supra* note 16, at 191 ("Chapter 1 [of the WCA] highlights principles and covers wildlife conservation, species diversity, and maintaining the balance of natural ecosystems.").

<sup>84</sup> *Id.* at 192 ("Chapter 3 [of the WCA] covers import and export of wildlife, providing most importantly that 'no import or export of live wildlife or protected wildlife products is allowed without prior approval from the NPA.'").

<sup>85</sup> *Id.* ("Protected wildlife shall not be disturbed, abused, . . . [or] killed . . . [but] may be hunted or killed for traditional cultural or ritual hunting . . . of Taiwan aborigines.").

<sup>86</sup> Wildlife Conservation Act, art. 16 (Taiwan).

<sup>87</sup> Wildlife Conservation Act (Taiwan).

<sup>88</sup> Teng-Kai Yang, *Evolution of Animal Protection Legal System in Taiwan—Exploring the History of Controlling or Protecting Animals by Law* 147 (Jan. 2011) (unpublished Master's thesis, National Taiwan University) (on file with *Animal Law*).

<sup>89</sup> *See* Agoramoorthy, *supra* note 16, at 202–03 ("Forty-five animal protection organizations in Taiwan, after revealing an incident of inhumane treatments of impounded strays in a public animal shelter, filed petition requests that the Taiwanese government investigate and improve the poor condition of animal shelters. [Additionally, the inefficient management of roaming stray dogs can result in] . . . disease breakouts and violent dog-human encounters . . .").

ally brutally drowned or starved to death in many animal shelters.<sup>90</sup> With such poor animal management and an outright lack of proper public policies for solving the problem, the amount of stray animals hardly decreased and resulted in further serious public safety problems such as children being chased and attacked by animals on the street.<sup>91</sup> Under public pressure and with the concern of damaging Taiwan's international image due to various animal cruelty events, urgent demands were made for new legislation protecting domestic animals.<sup>92</sup>

However, in addition to conflicts of interests between different animal-related industries, businesses, and academic units, the disputes between state authorities and animal protection groups regarding their disagreement about different scopes of protection in the draft law caused certain difficulties in passing further legislation into law.<sup>93</sup> The animal protection groups and a few legislators attempted to come up with a comprehensive version of the draft law that extended the scope of protection for various categories of animals, while the official motive for drafting the law was only an attempt to lessen stray animal problems in response to the critique of the poor stray animal management.<sup>94</sup> According to meeting records of the first scrutiny conference for the animal protection draft law in Legislative Yuan in 1997, the chairman specifically noted: "The main legislative purpose of the animal protection law should be the consideration of public health rather than that of something relevant to animal love or animal rights."<sup>95</sup>

After nearly five years of negotiation and coordination from different parties and representatives involved, the first version of the TAP eventually officially passed in November 1998.<sup>96</sup> The law was composed of five substantive parts: general protection of animals, scientific application of animals, management of pets, administrative supervision of animals, and penalties.<sup>97</sup> Overall, the TAP was comprehensive in regulating various issues related to animals; however, except the several concrete provisions for protecting animals, the majority of the provisions were mainly in furtherance of administrative management and public health control. In particular, the lessening of the stray animal problems and regulating companion animal issues were a major part of the legislation.<sup>98</sup>

Against such a background, this feature of the TAP resulted in the inability and ineffectiveness of the law for providing actual protection

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<sup>90</sup> Yang, *supra* note 88, at 153.

<sup>91</sup> Tsai, *supra* note 82, at 51–52; Yang, *supra* note 88, at 146–54.

<sup>92</sup> Tsai, *supra* note 82, at 51–52; Yang, *supra* note 88, at 146–54.

<sup>93</sup> Tsai, *supra* note 82, at 53–60; Yang, *supra* note 88, at 155–57.

<sup>94</sup> Tsai, *supra* note 82, at 53–60; Yang, *supra* note 88, at 155–57.

<sup>95</sup> Tsai, *supra* note 82, at 58.

<sup>96</sup> Tsai, *supra* note 82, at 59.

<sup>97</sup> Agoramoorthy, *supra* note 16, at 199–201.

<sup>98</sup> Tsai, *supra* note 82, at 68–84.

for animals, thereby causing frequent amendments to the law in the following eighteen years,<sup>99</sup> including the criminalization of animal cruelty offenses in 2007<sup>100</sup> and the inclusion of a positive statutory duty of care towards animals in 2015.<sup>101</sup>

#### IV. THE DRAFT LAWS FOR PROTECTING ANIMALS IN CHINA

Contrary to its neighboring countries, so far China has virtually no law protecting most domestic animals and captive wildlife,<sup>102</sup> but it has several administrative laws and regulations regarding animal health and disease, specific animal raising and management methods, and laboratory animal welfare such as the Beijing Dog Regulations, the Regulations on the Management of Experimental Animals, and the Guideline for Humane Treatment of Laboratory Animals. Most of these rules are not based on the purpose of animal protection and humane treatment nor are they well implemented, and some even lack enforcement mechanisms.<sup>103</sup> Despite the fact that China enacted the Wildlife Protection Law (WPL) in 1988, which was similar to the legislation in Taiwan, the law was amended under international pressure and threats of imposing economic sanctions.<sup>104</sup> In addition to its ambiguous objectives and fairly limited scope of protection, the law was barely enforced owing to the dearth of funding and various domestic political and economic factors such as institutional constraints and local protectionism.<sup>105</sup>

Before the latest amendment of the WPL was passed in July 2016,<sup>106</sup> unlike the Wildlife Conservation Act in Taiwan which outlawed the killing, disturbing, or abusing of general wildlife species in particularly restricted areas and further criminalized the same behaviors done to protected wildlife species,<sup>107</sup> the WPL did not include any anti-cruelty protection for any wildlife. Rather, it only punished the

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<sup>99</sup> *Id.* at 68–90.

<sup>100</sup> *See* The Taiwan Animal Protection Law 2016, art. 25 (criminalizing behaviour leading to injury, mangled limbs, organ failure, or death of an animal as well as killing a dog, cat, or other animal banned from slaughter).

<sup>101</sup> *See id.* art. 30-1 (imposing fines for failure to take corrective actions with respect to violations of certain animal cruelty offenses or accidentally harming an animal or causing it to be harmed).

<sup>102</sup> *See* Whitfort, *supra* note 10, at 350 (“China . . . still has . . . no laws prohibiting animal cruelty . . .”).

<sup>103</sup> *See* CAO, *supra* note 80, at 128, 130 (explaining that the policy document Guidelines for the Humane Treatment of Laboratory Animals was intended for animal welfare, unlike Chinese animal Regulations, which have no enforcement mechanism); Lu et al., *supra* note 80, at 355 (listing examples of Chinese laboratory animal legislation).

<sup>104</sup> WAGMAN & LIEBMAN, *supra* note 2, at 30–31 (“[I]n 1993, China prohibited the manufacture of medicines containing rhinoceros horn after [certain] nations threatened to institute economic sanctions against China.”).

<sup>105</sup> WAGMAN & LIEBMAN, *supra* note 2, at 30; Peter J. Li, *Enforcing Wildlife Protection in China: The Legislative and Political Solutions*, 21 CHINA INFO., 71, 71 (2007).

<sup>106</sup> Wildlife Protection Law of the People’s Republic of China.

<sup>107</sup> Wildlife Conservation Act, arts. 10, 18 (Taiwan).

hunting, catching, or killing of specific protected species in the wild.<sup>108</sup> Although the new amended law does prohibit inflicting cruelty on captive breeding wildlife, it does not prescribe any corresponding punishment for the violation of this animal cruelty provision.<sup>109</sup> In this sense, the law still provides no substantial protection for any species being abused either in the wild or in captivity; furthermore, once protected species are placed in captivity, they lose their protected status under the law and are usually sold as farm animals after being caught.<sup>110</sup>

It should also be noted that because the WPL not only allows, but to some extent encourages, the breeding and rearing of wildlife under comparatively unrestricted circumstances,<sup>111</sup> large numbers of impounded wildlife are being kept for commercial purposes.<sup>112</sup> The ways in which they are raised and treated are extremely inhumane and cruel,<sup>113</sup> generally owing to the legalized exploitation and abuse.<sup>114</sup> This not only promotes the development of animal cruelty-based businesses such as tiger and bear farming, but also provides a black market for the illegal trading, selling, and buying of wildlife products in

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<sup>108</sup> See Wildlife Protection Law of the People's Republic of China, arts. 8, 9 (prohibiting the hunting and destroying of wild animals and dividing wild animals into first-grade protected and second-grade protected as listed by the department of wildlife administration).

<sup>109</sup> See *id.* art. 26 (“[Captive] breeding of national key protected wild animals shall be conducive to the protection . . . of [the] species, and shall . . . ensure that they have the necessary space for activities and reproduction, health and health conditions . . .”).

<sup>110</sup> See Li, *supra* note 105, at 84, 90 (“Protected species in captivity in China are either not protected at all or their protection is minimal under separate regulations . . . [T]he protected species lose their protected status once they are placed in captivity . . . What local officials refuse to see is that wildlife animals caught in the wild are often sold as farmed animals.”).

<sup>111</sup> See Wildlife Protection Law of the People's Republic of China, arts. 25, 28–29 (encouraging the breeding of wild animals and permitting individuals who breed wild animals to sell wild animals or their products to other individuals holding a breeding license); *id.* arts. 25–29 (allowing captive breeding of wildlife for scientific purposes as well as non-scientific purposes with a permit and authorizing the sale, purchase, and utilization of wildlife and wildlife products for a broad range of purposes).

<sup>112</sup> Li, *supra* note 105, at 72 (“Commercial exploitation of wildlife is a booming business.”).

<sup>113</sup> WAGMAN & LIEBMAN, *supra* note 2, at 31 (explaining the torture of Moon Bears who are kept for their production of bile on “bear farms” in China but are trapped in tiny cages with hardly any room for movement).

<sup>114</sup> See CAO, *supra* note 80, at 95, 97 (“[T]he WPL legalizes the trade of protected wildlife through breeding and commercial farming. [W]ildlife parks [in China] breed and raise tigers in the same manner as they would breed and raise pigs, and eagerly[] await their death for monetary gain.”); Alisha F. Carpenter & Wei Song, *Changing Attitudes About the Weak: Social and Legal Conditions for Animal Protection in China*, 48 CRITICAL ASIAN STUD., 380, 381, 388 (2016) (“Many of the laws regarding animals that were passed in the 1980s, which are the current foundation of animal protection laws in China, were guided by the principle of ‘rational use,’ or sustainable exploitation through management. Increased media attention on the cruelty practiced toward animals in commercial industries . . . ha[s] spread awareness of the unsustainable nature of the current human-animal relationship in China.”).

China.<sup>115</sup> According to the State Forestry Bureau, in 2003, China had forty-five wildlife species for commercial farming in order to meet different demands for wildlife consumption, entertainment, traditional Chinese medicine, fur production, etc.<sup>116</sup> In 2006, there were about seventy bear farms across China, providing twelve tons of bear bile a year.<sup>117</sup> In these bear farms, “highly intelligent Moon Bears are trapped in tiny cages for their lifetime in which they can barely move in order to remove their bile.”<sup>118</sup>

With the absence of general animal protection laws and the presence of the “protection for human use” provision in the existing Wildlife Protection Law,<sup>119</sup> China is hardly able to provide any statutory protection for animals to protect them from any form of human-caused harm and cruelty. Moreover, such deficiencies in the WPL may further deteriorate the situation and cause more animals to suffer from the consequences of emphasizing and encouraging the objectives of human use and “wildlife resource” management under the law.<sup>120</sup>

However, the turning points of drafting the new law for protecting animals happened in 2004 and 2009.<sup>121</sup> In 2004, the Beijing municipal government released its draft laboratory animal welfare law, but withdrew it from consideration soon afterwards due to concerns over the difficulties of enforcing the law raised by opposing officials and scholars.<sup>122</sup> These officials and scholars generally believed the draft was completely impractical and premature even though the scope of protection under the law only covered the welfare of experimental animals.<sup>123</sup> In June 2009, 36,000 dogs were brutally killed by the Hanzhong government after an outbreak of rabies; the massive, cruel slaughter attracted the attention of the international community and aroused immense controversies and criticisms.<sup>124</sup> In response to the outbreak, in the following two months, the Chinese central government released a comprehensive animal protection draft law, entitled the Animal Protection Law of the People’s Republic of China (APL), providing various minimum animal welfare standards for companion, farm, laboratory, wild, and entertainment animals and protecting them from deliberate cruelty.<sup>125</sup> Yet, later in March 2010, the draft law was revised and its name was changed to the Prevention of Cruelty to Animals Law of the People’s Republic of China (PCL) as the

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<sup>115</sup> See CAO, *supra* note 80, at 48 (“[M]ore and more wildlife trade is being conducted worldwide via the Internet [in China]. . .”).

<sup>116</sup> Li, *supra* note 105, at 90.

<sup>117</sup> *Id.*

<sup>118</sup> WAGMAN & LIEBMAN, *supra* note 2, at 31.

<sup>119</sup> Li, *supra* note 105, at 71.

<sup>120</sup> Carpenter & Song, *supra* note 114, at 39; Li, *supra* note 105, at 96.

<sup>121</sup> SCHAFFNER, *supra* note 7, at 2; Li, *supra* note 105, at 95.

<sup>122</sup> Li, *supra* note 105, at 95.

<sup>123</sup> *Id.*

<sup>124</sup> SCHAFFNER, *supra* note 7, at 3.

<sup>125</sup> *Id.*; Carpenter & Song, *supra* note 114, at 393; Whitfort, *supra* note 10, at 351.

proposed version.<sup>126</sup> The new version of the draft mainly emphasizes the prohibition of animal cruelty and excludes the majority of the provisions regarding minimum animal welfare standards because of political pressure and resistance.<sup>127</sup>

However, it is essential to note that both the APL and the PCL are the result of collaboration between the Chinese Academy of Social Science and the Royal Society for the Prevention of Cruelty to Animals (RSPCA) through an animal protection legislation project panel<sup>128</sup> in extremely short times, but without complimentary domestic animal protection movements by local advocacy groups. As discussed, the key success factor of promoting animal protection legislation and its enforcement lies in the irreplaceable influence of local animal protection groups for their persistent legislative and political lobbying and advocacy.<sup>129</sup> However, so far China's lawmaking is still an exclusive state prerogative without political liberalization and open policymaking space for society.<sup>130</sup> Today, the formation and operation of environmental or any other grassroots groups remain highly restricted, in that their activity and advocacy are both under the state's control and supervision.<sup>131</sup> This is the main reason why the amendment of the Wildlife Protection Law (WPL) hardly moved forward before July 2016 even if the obvious inabilities and severe deficiencies of the law have been widely noticed and resulted in massive controversy and criticism at the national and international levels.<sup>132</sup> Moreover, the critical problems of the WPL as mentioned remain even though the latest amendment of the law was passed, as it still allows and encourages wildlife utilization instead of protection.<sup>133</sup> As Professor Li states:

Chinese activists, particularly those who are versed in the politics of contemporary China, are extremely cautious not to get involved in controversies that could cause government reprisal and lead to a reversal of what has already been accomplished.<sup>134</sup>

The difficulty and limitation of legislative and political openness in China not only hinders development of the animal protection movement, it also causes enactment of the draft laws to remain questionable.<sup>135</sup>

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<sup>126</sup> Carpenter & Song, *supra* note 114, at 393; Whitfort, *supra* note 10, at 357.

<sup>127</sup> Carpenter & Song, *supra* note 114, at 393; Whitfort, *supra* note 10, at 357.

<sup>128</sup> Whitfort, *supra* note 10, at 349.

<sup>129</sup> RADFORD, *supra* note 3, at 167–92 (explaining and assessing the political nature of animal protection legislation, changing attitudes, and potentials for reform); Hughes & Meyer, *supra* note 18, at 28.

<sup>130</sup> Li, *supra* note 105, at 95.

<sup>131</sup> *Id.* at 96.

<sup>132</sup> CAO, *supra* note 80, at 27–99 (discussing China's approach to wildlife law and crimes, and the barriers to furthering legislation); Li, *supra* note 105, at 96.

<sup>133</sup> Wildlife Protection Law of the People's Republic of China, ch. III, arts. 25–29.

<sup>134</sup> Li, *supra* note 105, at 96.

<sup>135</sup> Carpenter & Song, *supra* note 114, at 391; Shih-Yun Wu, *Animals in China—Law and Society*, 2 GLOBAL J. ANIMAL L. 20, 23 (2016) (reviewing CAO, *supra* note 80).

## V. THE ANIMAL CRUELTY OFFENSES UNDER THE DRAFT LAWS

### A. *The Scope of Protection*

Before the Taiwan Protection Law (TAP), the only statutory protection for animals from cruelty in Taiwan was under the Wildlife Conservation Act (WCA).<sup>136</sup> The definition of “wildlife” under Taiwan’s WCA (WCA (TW)) is much wider, including any animal living in a natural habitat such as mammals, birds, reptiles, amphibians, fish, insects and other kinds of animals,<sup>137</sup> yet its scope of protection only covers protected wildlife in the wild, which is similar to that of the Wildlife Protection Legislation (WPL).<sup>138</sup> The purpose of both the WCA (TW) and China’s WPL (WPL (CH)) is mainly to preserve wildlife and their habitat as natural resources instead of protecting wildlife from suffering or harm by humans,<sup>139</sup> in that the definition of animal cruelty under the WCA (TW) is conduct so harmful that an animal “cannot maintain their normal physiological condition.”<sup>140</sup> As for the WPL (CH), although the latest version of the WPL also prescribes relevant requirements for keeping captive breeding wildlife, the law neither provides any punishment under its new animal cruelty provision nor protects any wildlife from cruelty.<sup>141</sup>

The scope of protection of the TAP (TW) seems to be much narrower compared to that of the draft laws in China (the APL and the PCL).<sup>142</sup> The definition of “animal” under the TAP (TW) is “a vertebrate, such as a dog and a cat, and other animals reared or tended by humans as a pet, an economic animal or a laboratory animal.”<sup>143</sup> By contrast, the scope of protection in the first version of the APL included “all mammals, birds, reptiles, amphibians, fish, mollusks, insects, coelenterates, etc., but excludes micro-organisms,”<sup>144</sup> whereas the second version of the PCL excludes protection for invertebrate animals.<sup>145</sup> Although, today there is little controversy regarding the fact that only nonhuman vertebrates have similar capabilities to perceive, feel, and suffer pain as humans do—as learned from empirical evidence in neurobiology, physiology, and animal behavior. It is also fairly

<sup>136</sup> *International References*, AAALAC INT’L, [http://www.aaalac.org/intlRefs/international\\_references.html#Taiwan2](http://www.aaalac.org/intlRefs/international_references.html#Taiwan2) [<https://perma.cc/3CCL-8E4U>] (accessed Apr. 9, 2017).

<sup>137</sup> Wildlife Conservation Act, ch. I, art. 3 (Taiwan).

<sup>138</sup> Wildlife Protection Law of the People’s Republic of China, ch. I, arts. 1–2.

<sup>139</sup> Wildlife Conservation Act, ch. I, art. 1 (Taiwan); Wildlife Protection Law of the People’s Republic of China, ch. I, art. 1.

<sup>140</sup> Wildlife Conservation Act, ch. I, art. 3 (Taiwan).

<sup>141</sup> Wildlife Protection Law of the People’s Republic of China, art. 26.

<sup>142</sup> The Taiwan Animal Protection Law 2016, ch. I, art. 2; The Prevention of Cruelty to Animals Law of the People’s Republic of China 2011, ch. I, art. 2; The Animal Protection Law of the People’s Republic of China 2009, ch. I, art. 2.

<sup>143</sup> The Taiwan Animal Protection Law 2016, ch. I, art. 3.

<sup>144</sup> The Animal Protection Law of the People’s Republic of China 2009, ch. I, art. 3.

<sup>145</sup> The Prevention of Cruelty to Animals Law of the People’s Republic of China 2011, ch. I, art. 3.

typical to either limit the definition of “animals” to all nonhuman vertebrates or to have definitions that expressly list the categories of protected animals, such as various vertebrate animals (mammals, birds, etc.).<sup>146</sup> There are still numerous jurisdictions aiming to expand the protection coverage to all animals including invertebrates, such as Germany.<sup>147</sup> In the U.K., though its Animal Welfare Act 2006 limits the definition of “animal” to vertebrates, the law additionally authorizes the appropriate authority to extend the definition to invertebrates for any and all purposes of the law.<sup>148</sup> Since the notion of unnecessary suffering is central to the legal definition of “animal cruelty,” any animal that has any possible capability to feel pain ought to be accorded statutory protection based on the latest scientific studies and veterinary advice.<sup>149</sup> Notably, according to the most recent studies, except for insects, some invertebrate animals such as cephalopods and decapods have been proven to be able to feel pain to a certain extent, and cephalopods have recently been included in a European Union Directive (2010/63/EU) that provides them with protection from suffering in animal experimentation.<sup>150</sup> Considering that the degree of animal welfare in Asia is still lagging behind, providing vertebrates with sufficient protection seems to be the current priority.<sup>151</sup> However, even if the laws extend the definition to invertebrates, the degree and extent of “suffering” required by law can be used to broaden or narrow the scope of legal responsibility as needed. It seems unnecessary to limit the scope of protection at the very beginning, while much more flexible and broader definitions of “animal” would be more desirable in an attempt to adopt the latest developments from scientific studies.

The anti-cruelty provision of the first version of the TAP (TW) in 1998 was very similar to many early Western anti-cruelty laws, which were principally based on protecting animals as property.<sup>152</sup> It only prohibited harassing, abusing, or injuring “owned” animals, that is, the law expressly provided no protection for ownerless animals, including stray animals, and thus was severely criticized by many local groups in Taiwan.<sup>153</sup> Later in 2001, the anti-cruelty provision was amended to forbid “anyone to be cruel to any (protected) animals.”<sup>154</sup> However, unlike the APL and the PCL (CH), which include protection

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<sup>146</sup> Hughes & Meyer, *supra* note 18, at 50.

<sup>147</sup> Natrass, *supra* note 18, at 288.

<sup>148</sup> Animal Welfare Act 2006, c. 45, § 1 (UK).

<sup>149</sup> Hughes & Meyer, *supra* note 18, at 25.

<sup>150</sup> Lynne U. Sneddon et al., *Defining and Assessing Animal Pain*, 97 ANIMAL BEHAVIOUR 201, 206, 212 (2014).

<sup>151</sup> Duckworth et al., *Why South-East Asia Should Be the World's Priority for Averting Imminent Species Extinctions, and a Call to Join a Developing Cross-Institutional Programme to Tackle This Urgent Issue*, 5 SAPIENS 77, 78 (2012) (illustrating that protecting vertebrates in Asia needs to be a priority).

<sup>152</sup> Tsai, *supra* note 82, at 70–71.

<sup>153</sup> The Taiwan Animal Protection Law 2016, art. 3.

<sup>154</sup> *Id.*

for wildlife either in the wild or in captivity,<sup>155</sup> the TAP expressly limits its scope of protection to certain types of vertebrates and does not provide any protection for any animals living in the wild. In light of the literal interpretation of the provision, only animals kept to serve some purpose for the use of humans or kept under certain control of human beings for a certain period of time can benefit from the statutory protection.<sup>156</sup> Accordingly, no domestic animals are necessarily included unless they are in a state of confinement. For example, ownerless, free-roaming dogs and cats (feral cats) do not come within the ambit of statutory protection.<sup>157</sup> However, as mentioned, given the special status of dogs and cats under the law,<sup>158</sup> the definition of protected animals under the TAP usually extends to any dogs and cats, including those that are ownerless.<sup>159</sup>

Similar limitations providing no protection for wildlife can also be seen under the replaced UK Protection of Animals Acts 1911 and 1912,<sup>160</sup> although the statutory protections under the replaced Acts are applicable to any domestic animals.<sup>161</sup> Moreover, according to the approach adopted in *Nye v. Niblett*, the definition of domestic animals includes those species and breeds belonging to a class of animals that are generally kept in captivity or for domestic purposes, “it was not therefore necessary to prove that the particular [cats killed in the case] were ‘ordinarily kept in confinement.’”<sup>162</sup>

While those that are not classified as domestic animals may nevertheless benefit from the statutory protection, if they fall within the definition of a captive animal under the replaced Acts, the meaning of captive animal had been interpreted fairly narrowly by the courts. According to the leading case of *Rowley v. Murphy*,<sup>163</sup> “‘mere captivity’ is not in itself sufficient to bring an animal within the protection of the 1911 Act. Rather, some period of time during which acts of dominion are exercised over the animal is necessary before the animal can be

<sup>155</sup> The Prevention of Cruelty to Animals Law of the People’s Republic of China 2011, arts. 21–22; The Animal Protection Law of the People’s Republic of China 2009, art. 43.

<sup>156</sup> See The Taiwan Animal Protection Law 2016, art. 3 (interpreting the various definitions of animals listed in the statute).

<sup>157</sup> Ming-Chiang Lin, *The Fundamental Issue of Legal Systems of Animal Protection, Democracy ♦ Human Rights ♦ Justice—Essays in Honor of Professor Dr. Jyun-hsyong Su for His 70th Birthday* (2005), at 727–67 (Taiwan).

<sup>158</sup> The main legislative purpose of the Taiwan Animal Protection Law is to deal with the issue of stray animals.

<sup>159</sup> Lin, *supra* note 157, at 730–67.

<sup>160</sup> “[A]ny horse, ass, mule, bull, sheep, pig, goat, cat or fowl, or any other animal of whatsoever kind or species, and whether a quadruped or not which is tame or which has been or is being sufficiently tamed to serve some purpose for the use of man.” Protection of Animals Act 1912, 2 & 3 Geo. 5 c. 14, § 13(b), sch. 2 (Scot.); Protection of Animals Act 1911, 1 & 2 Geo. 5 c. 27, § 15(b) (U.K.); see RADFORD, *supra* note 3, at 210 (providing common law example where Protection of Animals Act 1911 provides no protection for wildlife).

<sup>161</sup> RADFORD, *supra* note 3, at 210–11.

<sup>162</sup> *Id.* at 211.

<sup>163</sup> *Id.* at 212.

said to be in a state of captivity.”<sup>164</sup> However, in light of the rationale and principle of anti-cruelty laws, as long as humans can exercise any power over an animal, they have an obligation not to abuse it,<sup>165</sup> in that the distinction between an animal’s state of being merely captured and being in captivity seems completely unnecessary.<sup>166</sup> Accordingly, such a limitation has been replaced by the Animal Welfare Act 2006.<sup>167</sup> The 2006 Act still does not cover feral animals living in the wild, but under section 2 of the Act, any animal that is under the temporary control of a human is a protected animal.<sup>168</sup>

By contrast, the scope of protection under the TAP is much narrower and restricted compared with either the draft laws or the replaced UK Acts.<sup>169</sup> Although this seems reasonable since there is already a specific protection law for wildlife (the WCA) in Taiwan, both the WCA and the TAP (TW) clearly do not provide comprehensive protection for all animals.<sup>170</sup> Thus, unless the WCA (TW) is able to further expand its scope of protection to all wildlife and the definition of “protected animal” under the TAP (TW) can be interpreted beyond the ordinary definition,<sup>171</sup> the legal regime can hardly provide sufficient statutory protection for all vertebrates. It should also be noted that, unlike common law systems in which the decision of each new case is determined in accordance with precedent, the result of any case in a civil law system is purely decided based on the provisions of the applicable code.<sup>172</sup> Thus, this suggests that the definition of “protected animal” included in the law should be explicitly broad by either removing “reared or tended by humans” from the provision or expressly expanding the meaning of “in captivity” within the corresponding provisions.<sup>173</sup>

## B. General Animal Cruelty Offenses

### 1. The Definition of Cruelty

The offenses of animal cruelty are central to animal protection legislation and provide the most fundamental statutory protection for animals.<sup>174</sup> The reason why animal cruelty offenses have been taken most seriously, in addition to the connection between animal abuse and vio-

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<sup>164</sup> *Id.*

<sup>165</sup> *Id.* at 210–14.

<sup>166</sup> *Id.* at 213–14.

<sup>167</sup> Animal Welfare Act 2006, c. 45, § 2 (UK).

<sup>168</sup> *Id.*

<sup>169</sup> The Taiwan Animal Protection Law 2016, arts. 3, 5, 9.

<sup>170</sup> The Taiwan Animal Protection Law 2016, arts. 3, 5, 9; Wildlife Conservation Act, arts. 4, 16, 21 (Taiwan).

<sup>171</sup> RADFORD, *supra* note 3, at 211.

<sup>172</sup> PATRICK GLENN, *LEGAL TRADITIONS OF THE WORLD: SUSTAINABLE DIVERSITY IN LAW*, 142–45 (4th ed. 2010).

<sup>173</sup> Animal Welfare Act 2006, c. 45, § 2 (UK).

<sup>174</sup> SCHAFFNER, *supra* note 7, at 22–23.

lence against humans,<sup>175</sup> is the widely accepted notion that animals ought to be protected because they have the capability to suffer.<sup>176</sup> The concept or prerequisite of “unnecessary suffering” is a long established legal test for defining cruelty under animal protection legislations in the Western world with either a common law system or civil law system;<sup>177</sup> it has also been widely adopted as an international standard for relevant statutes and regulations in the EU and OIE.<sup>178</sup> After experiencing two periods of growth in the animal protection movement and its on-going development, the fundamental principles and the legal nature of the unnecessary suffering test have been well developed and established.<sup>179</sup> First, whether pain and suffering has been inflicted is a question of *fact*, which is based on the scientific understanding of animal behavior, physiology, and ethology, and neither the severity nor duration of suffering caused is a determining factor.<sup>180</sup> Secondly, determining whether suffering is unnecessary or without good reasons inevitably involves a balancing exercise,<sup>181</sup> in which all the circumstances ought to be taken into consideration, including whether the suffering could reasonably have been avoided or reduced, whether it was in pursuit of an adequate and reasonable purpose, and whether the suffering involved was balanced against the purpose and the means<sup>182</sup>—that is, “there must be proportion between the object

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<sup>175</sup> RADFORD, *supra* note 3, at 26–27; SCHAFFNER, *supra* note 7, at 28–32; *supra* note 6 and accompanying text.

<sup>176</sup> RADFORD, *supra* note 3, at 26–28, 51–52; *see* Hughes & Meyer, *supra* note 18, at 25–26 (providing a historical recollection of the 1911 Protection of Animals Act’s enactment); *supra* note 6 and accompanying text (explaining that the British colonies in Asia protected animals on the basis of their capacity to suffer while surrounding countries failed to implement similar protections).

<sup>177</sup> FORSBERG, *supra* note 47, at 4; RADFORD, *supra* note 3, at 241–42; Natrass *supra* note 18, at 289.

<sup>178</sup> RADFORD, *supra* note 3, at 241; Bernard Vallet, *The Strategies and Priorities Long Advocated by the OIE Prove Their Effectiveness*, WORLD ORG. FOR ANIMAL HEALTH (OIG), <http://www.oie.int/en/for-the-media/editorials/detail/article/the-strategies-and-priorities-long-advocated-by-the-oie-prove-their-effectiveness/> [https://perma.cc/T8W2-7E3P] (accessed Apr. 9, 2017).

<sup>179</sup> RADFORD, *supra* note 3, at 241–42.

<sup>180</sup> *Id.* at 242–43.

<sup>181</sup> Such a utilitarian balancing exercise between human interests and animal welfare based on animals’ legal status as property and so-called welfarism is criticized by the inherent value theory—animal rights or abolitionists’ notion that any human use of animals is unacceptable and ought to be prohibited since animals have their own right to live naturally and deserve protection regardless of their species and value to humans as a resource. Hughes & Meyer, *supra* note 18, at 32–33.

<sup>182</sup> RADFORD, *supra* note 3, at 246–47, 254–55.

and the means.”<sup>183</sup> This is known as the *Ford v. Wiley* test,<sup>184</sup> which has been expressly adopted by the Animal Welfare Act 2006 (U.K.).<sup>185</sup>

Notwithstanding the wide adoption of the standard of liability of “unnecessary suffering” under many legal regimes, the degree and scope of the applications accorded by laws or interpreted by courts and the acceptability of activities and businesses involved in animal cruelty still vary significantly among jurisdictions in light of the various degrees of their development of the animal protection movement and social consensus.<sup>186</sup> This is particularly the case when the inflicted suffering arises as a consequence of a legitimate activity, such as various commercial purposes of animal use.<sup>187</sup> For example, in the United States, animals used for food are exempted from the anti-cruelty laws, and there is virtually no law regulating their treatment.<sup>188</sup>

Yet Israel has already outlawed the force-feeding of ducks and geese used to produce foie gras, making this cruelty a criminal offense at the expense of eradicating an entire industry in the country.<sup>189</sup> Several European countries have also officially banned force-feeding.<sup>190</sup> Although the Council of Europe condemns the practice in light of the scientific report and further issued regulations that encourage a ban on force-feeding in all countries where it is still practiced, and requires research on alternative methods for countries where the practice still exists,<sup>191</sup> foie gras is still produced in five EU countries—namely, France, Bulgaria, Spain, Hungary and Belgium. These countries have formed the European Foie Gras Federation since 2008.<sup>192</sup> Generally, statutory protection of animal cruelty laws can hardly be applied to

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<sup>183</sup> *Id.* at 248 (internal quotations omitted).

<sup>184</sup> *Ford v. Wiley* (1889) 23 OBD 203 (UK) (ruling that “profitability” did not equal “necessity,” in that any pain and suffering caused must be reasonably proportionate to the purpose achieved); RADFORD, *supra* note 3, at 248–47; Whitfort, *supra* note 10, at 362.

<sup>185</sup> Animal Welfare Act, c. 45, § 4(3) (UK).

<sup>186</sup> See RADFORD, *supra* note 3, at 241–42 (acknowledging that there is no single standard of unnecessary suffering and detailing the United Kingdom’s legal approach to the standard); SCHAFFNER, *supra* note 7, at 22–23, 32 (describing the limited scope of mainland America’s anti-cruelty laws compared with the more progressive jurisdiction of Puerto Rico); WAGMAN & LIEBMAN, *supra* note 2, at 143–52 (discussing the disparity in scope and effectiveness that exists in anti-cruelty laws around the globe); Hughes & Meyer, *supra* note 18, at 36, 46 (providing examples of Canadian and select international laws that address “unnecessary suffering”); Natrass, *s upra* note 18, at 288–89 (explaining the German standard of “unnecessary suffering”).

<sup>187</sup> SCHAFFNER, *supra* note 7, at 22.

<sup>188</sup> *Id.* at 49.

<sup>189</sup> *Id.* at 49–51.

<sup>190</sup> Including Luxembourg, Germany, Norway, Denmark, the Czech Republic, Finland, Poland, the United Kingdom, Italy, and most of the Austrian provinces.

<sup>191</sup> ANIMAL EQUALITY, FOIE GRAS: HOW MUCH CRUELTY CAN YOU SWALLOW? 1–3 (2012), [www.foiegrasfarms.org/report\\_foiegras\\_eu.pdf](http://www.foiegrasfarms.org/report_foiegras_eu.pdf) [https://perma.cc/AD89-V8Y9] (accessed Apr. 9, 2017); Katie Lindsay, The Foie Gras Journey 2–5 (2015) (unpublished student thesis and capstone projects, Humane Society University), [http://animalstudies-repository.org/hsu\\_students/2](http://animalstudies-repository.org/hsu_students/2) [https://perma.cc/LZ7V-5UKV] (accessed Apr. 9, 2017).

<sup>192</sup> Lindsay, *supra* note 191, at 7.

commercial cases, even if there is extreme animal suffering involved as so-called institutional cruelty. However, relevant animal welfare regulations may be used to regulate to a certain degree the treatment of animals and safeguard the minimum standards of animal welfare instead.<sup>193</sup> Such a major weakness of statutory protection for animals under most of the current legal regimes has also been criticized by the inherent value theory, or abolitionists' notion that animals can never gain sufficient protection under the law if their legal status cannot be changed or even reappraised.<sup>194</sup> In this regard, Drs. Aaltola and Wahlberg claim that animals can be used only under certain restricted conditions based on the principles of necessity and precaution,<sup>195</sup> while Professors Hughes and Meyer suggest that if these commercial activities are not able to be viable when using current practices without causing avoidable animal suffering, then "alternatives must be developed."<sup>196</sup> Otherwise, they ought to be completely forbidden.<sup>197</sup> Indeed, different extents of the standard of balancing conflicting interests between animals and humans in defining the necessity of exploiting or even abusing animals are always the critical dilemma and challenge of animal protection regimes; their development and improvement still mainly depend on domestic animal welfare movements and their influence on society, public consensus, and relevant legislation.<sup>198</sup> However, under the current legal structure, the challenge of improving and promoting the statutory protection in practical terms is still based on

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<sup>193</sup> RADFORD, *supra* note 3, at 250.

<sup>194</sup> Any balance of interests is inevitably biased and sacrifices most if not all animal interest. Even though treatment of animals would more or less be limited by anti-cruelty or animal welfare law, human ownership and property rights always prevail and most, if not all, sufferings inflicted on animals would be regarded as "necessary" and "unavoidable." The legal notion and standard of "unnecessary suffering" thus becomes the balanced result only in favor of human benefit. Gary L. Francione, *ANIMALS AS PERSONS: ESSAYS ON THE ABOLITION OF ANIMAL EXPLOITATION* 1-169, 210-29 (2008); David Bilchitz, *Moving Beyond Arbitrariness: The Legal Personhood and Dignity of Non-Human Animals*, 25 *South Afr. J. Hum. Rts.* 38, 38-72 (2009); David Favre, *Living Property: A New Status for Animals Within the Legal System*, 93 *Marq. L. Rev.* 1021, 1021-71 (2010); Hughes & Meyer, *supra* note 18, at 55-56.

<sup>195</sup> Elisa Aaltola & Birgitta Wahlberg, *Nonhuman Animal: Legal Status and Moral Considerability*, 4 *RETFAERD: NORDIC J. L. JUST.* 83 (2015). "The principle of necessity means that before animals (as defined above) can be used for human purpose, the following cumulative criteria must be stratified: (A) the use is necessary for the survival of humans, nonhumans or the environment; (B) the use does not harm or restrict an animal's natural physiology, mental, and/or behavioral needs in a negative sense; (C) the use does not harm the welfare or health of an animal. The principle of precaution means that if the use, practice or action, involving an animal or animals, either causes (or is likely to cause) harm and/or to restrict the animal's natural physiology, mental, and/or behavioral needs and interests in a negative sense, this use, practice or action should be prohibited and immediately stopped. Steps should be taken to ensure that fundamental animal rights and freedoms established in law are immediately restored to the animal or animals." *Id.*

<sup>196</sup> Hughes & Meyer, *supra* note 18, at 58.

<sup>197</sup> *Id.*

<sup>198</sup> *Id.* at 42.

how to expand the definition of suffering, in light of scientific developments, and narrow the allowed standard of necessity in causing animal suffering.<sup>199</sup>

In Asia, however, most of the legislation for protecting animals, including the TAP (TW) and the WCA (TW), does not include ‘unnecessary suffering’ or use any other similar or related standard as its major liability element and benchmark within their general anticruelty provisions.<sup>200</sup> In fact, before the animal cruelty offense under the TAP (TW) was criminalized in 2007, the law not only has specifically imposed the tangible liability of “preventing the animal from harassment, abuse or injury”<sup>201</sup> on animal keepers since the law was enacted in 1998, it also has explicitly required that “one must not harass, abuse or injure any animal” since 2001.<sup>202</sup> In addition to several specific types of prohibited activities and conduct such as animal abandonment and animal fighting, the law neither provides any clear definition of ‘abuse’ nor states what liability a violation would establish under the law. This is not only against the principle of legal certainty, but results in further difficulties of law enforcement owing to problems of law interpretation and enforcement discretion.<sup>203</sup> After the law was amended in 2008, the definition of “cruelty” under the TAP (TW) refers to “using violence, improper drug or other means—beyond what is necessary to rear, tend or dispose of an animal—to harm an animal or cause it to be unable to perform physical functions properly” as the WCA (TW) does,<sup>204</sup> while such a definition pays much less attention to preventing an animal from other degrees or different forms of suffering.<sup>205</sup> In addition to the evidence of deliberate intention, the successful criminal prosecution or verdict under the law mostly depends on whether animal cruelty has caused injuries “leading to mangled limbs, vital organ failure, or death of an animal”<sup>206</sup> instead of causing animals any unnecessary suffering, which has a much wider modern meaning, including both physical and mental sufferings or distress such as starvation or excessive heat and cold.<sup>207</sup> Therefore, a much broader, general definition of animal cruelty is essentially required under the law; it can be applied to a wider variety of different cases and can extend the scope of protection beyond physical injury to other physical and mental distress.<sup>208</sup> More significantly, it

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<sup>199</sup> *Id.* at 55.

<sup>200</sup> The Taiwan Animal Protection Law 2016, arts. 25, 30; Wildlife Conservation Act, arts. 42, 50 (Taiwan).

<sup>201</sup> The Taiwan Animal Protection Law 2016, art. 5.

<sup>202</sup> *Id.* art. 6.

<sup>203</sup> CHIH-KUANG WU, ADMINISTRATIVE LAW 36–51 (2010).

<sup>204</sup> The Taiwan Animal Protection Law 2016, art. 3; Wildlife Conservation Act, art. 3 (Taiwan).

<sup>205</sup> The Taiwan Animal Protection Law 2016, art. 3; Wildlife Conservation Act, art. 3 (Taiwan).

<sup>206</sup> The Taiwan Animal Protection Law 2016, art. 25.

<sup>207</sup> RADFORD, *supra* note 3, at 241–57.

<sup>208</sup> *Id.*; Hughes & Meyer, *supra* note 18.

enables courts or authorities to interpret and apply these criminal or administrative provisions in accordance with their developing scientific understanding of animal suffering and changing social attitudes towards the issue.<sup>209</sup>

Similarly, the relevant problem and deficiency can also be found under the APL and the PCL (CH).<sup>210</sup> “Cruelty” under both of the draft laws is defined as “deliberate use of brutal means or methods to cause unnecessary suffering and harm to an animal or using brutal means or methods to kill an animal,”<sup>211</sup> which expressly includes the concept of “unnecessary suffering” as their crucial liability element, thereby covering a much wider range of animal suffering situations.<sup>212</sup> However, as for most Asian countries like Taiwan and China with a comparatively short history of developing an animal welfare movement or animal protection legislation, the term ‘unnecessary suffering’ is not only unfamiliar but also fairly abstract when it comes to legal concepts and liability standards. However, neither of the draft laws further provide any specific definition in determining what is meant by ‘unnecessary suffering.’<sup>213</sup> Likewise, it would inevitably cause difficulties in interpreting the animal cruelty offense, thus resulting in the problems of relevant law enforcement as discussed; the similar problems of wording in legislation could also be a major challenge for other Asian countries. Accordingly, in addition to general wording for defining animal cruelty, further definition or formula of an abstract concept such as “unnecessary suffering” is utterly desirable and required, either by issuing a relevant decree or expressly including it within the corresponding provisions.<sup>214</sup>

On the other hand, after the previous amendment of the TAP (TW) was passed in 2015, it remarkably imposes a positive statutory duty of care on animal owners or keepers.<sup>215</sup> This not only allows the authority to be able to take positive action and intervene in the cases or situations in which animals *are very likely* prone to owners’ or keepers’ carelessness and omission instead of waiting until animals are actually inflicted with suffering, but also further confirms the positive statutory responsibility of owners under the laws, which is also the most progressive trend and direction of reform in modern animal protection legislation.<sup>216</sup> The TAP (TW) goes further than merely prohib-

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<sup>209</sup> RADFORD, *supra* note 3, at 241–57.

<sup>210</sup> The Prevention of Cruelty to Animals Law of the People’s Republic of China 2011, art. 3; The Animal Protection Law of the People’s Republic of China 2009, art. 3.

<sup>211</sup> The Prevention of Cruelty to Animals Law of the People’s Republic of China 2011, art. 3; The Animal Protection Law of the People’s Republic of China 2009, art. 3.

<sup>212</sup> The Prevention of Cruelty to Animals Law of the People’s Republic of China 2011, art. 10; The Animal Protection Law of the People’s Republic of China 2009, art. 4.

<sup>213</sup> The Prevention of Cruelty to Animals Law of the People’s Republic of China 2011, art. 10; The Animal Protection Law of the People’s Republic of China 2009, art. 4.

<sup>214</sup> The Prevention of Cruelty to Animals Law of the People’s Republic of China 2011, art. 10; The Animal Protection Law of the People’s Republic of China 2009, art. 4.

<sup>215</sup> The Taiwan Animal Protection Law 2016, art. 30-1.

<sup>216</sup> Animal Welfare Act 2006, c. 45, §§ 9–10 (UK); Whitfort, *supra* note 10, at 357.

iting cruelty either by deliberateness or negligence; it imposes and promotes positive animal welfare by requiring owners to provide animals with certain reasonably satisfied standards of care.<sup>217</sup> However, as the definition of animal cruelty and its narrow liability criterion of inflicted suffering do not have any remedy under the 2015 version of the amendment, the lack and the problem of defining and including “unnecessary suffering” or a similar standard within the anticruelty provisions remain its major challenge.

## 2. *The Requirement of Intention*

Offenses of animal cruelty either with criminal liability or administrative liability must establish to a certain degree an offender’s mental state in addition to his or her conduct of perpetrating an offense beyond a reasonable doubt.<sup>218</sup> This statutory evidence requirement of deliberate intention is the minimum standard for mental factors, and is solely based on an offender’s own view of treating an animal.<sup>219</sup> When such a subjective test is applied, it requires proof of an offender’s *mens rea* (a guilty mind) by showing that he or she knew, had known, or was aware of the likely outcome of the act or omission leading to animal suffering.<sup>220</sup> Generally, the deliberate cruelty offense is the most basic and condemnable type of animal abuse and once used to be the only punishable type of offense.<sup>221</sup> However, after a certain period of development in the animal protection movement and legal regime, most Western jurisdictions have long appreciated the intrinsic disadvantages and problems of requiring deliberate intention of inflicting cruelty to establish the offense. It would cause difficult evidentiary problems creating a real barrier to successful prosecutions and convictions of offenders,<sup>222</sup> and it would narrow the range of governing behaviors and thus limit its scope of protection.<sup>223</sup> Left out of this limited scope of protection is the most common type of cruelty—negligent treatment—such as failure to provide sufficient food, water, shelter, or any necessary care for an animal.<sup>224</sup>

As far back as the nineteenth century, there were Scottish and English judges who changed their ideas about a requirement that an

<sup>217</sup> The Taiwan Animal Protection Law 2016, art. 5; *see id.* arts. 25, 30, 30-1 (stating penalties for violations of art. 5 standards of care).

<sup>218</sup> RADFORD, *supra* note 3, at 221–22.

<sup>219</sup> *See id.* at 223 (describing the subjective test as requiring deliberate cruelty).

<sup>220</sup> RADFORD, *supra* note 3, at 223; Hughes & Meyer, *supra* note 18, at 61; *See, supra* note 6, at 144; Whitfort, *supra* note 10, at 363.

<sup>221</sup> *See, e.g.*, RADFORD, *supra* note 3, at 224 (describing the subjective test and deliberate cruelty); Whitfort, *supra* note 11, at 356–57 (describing subjective deliberate animal cruelty as the only punishable offense in China due to lack of enforcement under the new draft legislation).

<sup>222</sup> RADFORD, *supra* note 3, at 223.

<sup>223</sup> *See* RADFORD, *supra* note 3, at 223 (describing how the subjective test requiring deliberate cruelty creates a greater burden for plaintiffs and lessens animal protections).

<sup>224</sup> Whitfort, *supra* note 10, at 357.

offender's intention of inflicting cruelty was a necessary factor in establishing cruelty.<sup>225</sup> In particular, in the leading English case *Ford v. Wiley* decided in 1889,<sup>226</sup> the court pointed out that determining whether the offense of cruelty has been committed was no longer solely based on the defendant's own view or knowledge, but on whether the court considered the conduct objectively justifiable under a reasonable and prudent person standard. Likewise, modern case law also endorses such reasoning and proposition. In the 1949 case of *Easton v. Anderson*, the Scottish High Court adopted a similar approach, since "the proved circumstances would have conveyed such knowledge to any normal and reasonable person."<sup>227</sup> Accordingly, adopting such an objective test is equated with applying the civil law standard of negligence liability, and the animal cruelty offense will be established when the court or the authority holds that an offender either actually knew that he or she was inflicting suffering on an animal or *at least should have known or ought to have been aware of the implications of his or her conduct*.<sup>228</sup> In other words, the standard looks to the offender's foresight of the likely outcome of the conduct leading to animal suffering by reference to the understanding and standards of a reasonable person in that society, instead of being based on the subjective standards of an individual offender.<sup>229</sup> Indeed, imposing such liabilities arising from negligence and omission by animal owners or keepers, as a result of indifference, ignorance, and failure of meeting any necessary and accepted standards of care for an animal is significant and indispensable in terms of providing animals with minimum standards of reasonable protection, which has also been commonly adopted under most of the progressive animal protection legislation nowadays.<sup>230</sup> However, in many Asian countries, the deliberate offense of cruelty is still the only type of general cruelty that has been outlawed with either criminal sanction or administrative penalty.<sup>231</sup>

In Taiwan, in the first few versions of the TAP (TW), the law only proscribed offenses of deliberate animal cruelty with an administrative penalty under its general anti-cruelty provisions.<sup>232</sup> In spite of the criminalization of the deliberate animal cruelty offense under the TAP (TW) in 2007, the law still completely ignored cruelty caused by an

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<sup>225</sup> RADFORD, *supra* note 3, at 225, 227.

<sup>226</sup> *Id.* at 227; *Ford v. Wiley* (1889) 23 QBD 203 (UK).

<sup>227</sup> *Easton v. Anderson* (1949) JC 1, 6 (Scot.); RADFORD, *supra* note 3, at 228; Mike Radford, *Toward a Better Understanding of Animal Protection Legislation*, in *VETERINARY ETHICS: AN INTRODUCTION* 40, 41–42 (Giles Legood ed., 2011).

<sup>228</sup> RADFORD, *supra* note 3, at 223; Hughes & Meyer, *supra* note 18, at 57. See *supra* note 6, at 142; Whitfort, *supra* note 10, at 348.

<sup>229</sup> RADFORD, *supra* note 3, at 223; Hughes & Meyer, *supra* note 18, at 57. See *supra* note 6, at 142; Whitfort, *supra* note 10, at 348.

<sup>230</sup> RADFORD, *supra* note 3, at 233–34; Hughes & Meyer, *supra* note 18, at 63; See *supra* note 6, at 139; Whitfort, *supra* note 10, at 348.

<sup>231</sup> See, e.g., WAGMAN & LIEBMAN, *supra* note 2, at 30–33 (discussing anti-cruelty animal welfare legislation in China, Japan, and South Korea).

<sup>232</sup> Whitfort, *supra* note 10, at 358–59, 369.

owner's omission or negligence until the law specifically penalized it with both administrative and criminal penalties under its 2015 amendment.<sup>233</sup> Before that, in practical terms, a substantial portion of cruelty cases, despite clear and confirmed facts of inflicted animal suffering, would go unpunished because those sufferings were the "mere" result of ignorance or omission, not an intent to inflict cruelty.<sup>234</sup> In June 2015, right before the amendment of the TAP (TW) was officially passed, a 1.3 ton male hippo suffered extremely severe injuries for nearly three days after it fell from a moving truck as he was being transported to a zoo and suffered a second fall from a height of two meters while being transported to receive treatment—the hippo was eventually found dead in Taichung, Taiwan.<sup>235</sup> After investigation by the authorities, it was clear that the accident resulted from the negligence of the hippo's keeper, who not only failed to provide necessary care while transporting the animal but also was unable to provide proper medical treatment to alleviate the animal's pain and suffering before its death.<sup>236</sup> Although the authority imposed upon the keeper a fine of TWD 500,000 over the hippo's death, the keeper was eventually found not liable after successfully appealing to the Taichung High Administrative Court.<sup>237</sup> The main basis for the appeal court's decision was that it could not find that the appellant (the keeper) had any intention of harming or inflicting cruelty on the animal.<sup>238</sup>

While in China, either the APL or the PCL (CH) expressly excludes liability of inflicting unnecessary suffering on animals by ignorance of or omission from their general anti-cruelty provisions; the definition of *cruelty* under the draft laws merely refers to *deliberate* cruelty.<sup>239</sup> Although the draft laws have been criticized by many arguing that given the current social situation in China, the draft laws are too progressive and the country is not yet ready for such a comprehensive animal protection law,<sup>240</sup> there are also scholars arguing that at least the Wildlife Protection Law (WPL) should be the first place to include deliberate anti-cruelty provisions.<sup>241</sup> However, as an applied

<sup>233</sup> Tsai, *supra* note 82, at 85–95 (discussing the possible problem and challenge of criminalizing deliberate animal cruelty law in 2007); The Taiwan Animal Protection Law 2016, arts. 30, 30-1.

<sup>234</sup> Li Pingting, *Why Most of Animal Cruelty Cannot Be Prosecuted?*, TAIWAN ANIMAL NEWS (June 5, 2015), <http://www.tanews.org.tw/info/7916> (accessed Jan. 26, 2017).

<sup>235</sup> Jenny W. Hsu, *Hippo Death Raises Weighty Questions About Taiwan's Private Zoos*, WALL STREET J. (Dec. 29, 2014), <http://blogs.wsj.com/chinarealtime/2014/12/29/hippo-death-weighs-heavily-on-taiwan-animal-rights-activists/> [<https://perma.cc/M8PN-CRS9>] (accessed Apr. 9, 2017).

<sup>236</sup> *Id.*

<sup>237</sup> *The Owner of Hippo A-Ho Found Not Guilty Eventually*, CENT. NEWS AGENCY (Mar. 10, 2016), <http://www.cna.com.tw/news/firstnews/201603105018-1.aspx> [<https://perma.cc/22M8-779T>] (accessed Apr. 9, 2017).

<sup>238</sup> *Id.*

<sup>239</sup> Whitfort, *supra* note 10, at 356–57.

<sup>240</sup> *Id.* at 349.

<sup>241</sup> Li, *supra* note 105, at 94.

objective test which is based on sensitivity and standards of a reasonable person in his or her own society,<sup>242</sup> in spite of the fact that the animal welfare concept and animal protection consensus are not yet well developed in China,<sup>243</sup> such a liability standard for mental factors in establishing cruelty will be particularly narrowing and limiting in light of the early stage of developing an animal protection movement in the country.<sup>244</sup> Therefore, adopting an objective test and proscribing cruelty caused by negligence or omission under general animal cruelty offenses are still more desirable, leaving the interpretation open to developing attitudes of society rather than being too strict or too progressive a law under varying social situations.

### C. *Specific Offenses and Animal Welfare Infringement*

In addition to their general offenses of animal cruelty, both the TAP (TW) and the draft laws (CH) proscribe several specific types of animal cruelty offenses and animal welfare infringements with administrative or criminal penalties, which not only reflect the particular animal-related problems and controversial practices in societies, but also trace the historical root of these laws,<sup>245</sup> especially those regarding the prohibitions of slaughtering dogs and cats.<sup>246</sup> However, the problem of this “listing” approach lies in the fact that it still fails to be comprehensive for preventing animals from all forms of undesirable actions and treatments without many well-constructed general anti-cruelty provisions.<sup>247</sup>

#### 1. *Abandonment*

Abandoning an animal is one of the most significant and common offenses in many Asian countries;<sup>248</sup> it is a major cause of the serious stray animal problem and is due to poor responsibility of animal ownership.<sup>249</sup> The TAP (TW) explicitly started to penalize the offense for the purpose of dealing with Taiwan’s stray animal problem instead of preventing animals from suffering under the earlier versions of the law; however, the nature of the offense is meant to prevent animals not only from actual, but also from any likely, danger or suffering aris-

<sup>242</sup> RADFORD, *supra* note 3, at 223; Hughes & Meyer, *supra* note 18, at 57; See, *supra* note 6, at 142; Whitfort, *supra* note 10, at 348.

<sup>243</sup> CAO, *supra* note 80; Lu et al., *supra* note 80, at 356; Xiaolin You et al., *Survey of Chinese Citizens’ Perceptions on Farm Animal Welfare*, 9 PLOS ONE 1, 1 (2014).

<sup>244</sup> See Lu et al., *supra* note 80, at 351 (describing the developing degree of the animal protection movement in the country).

<sup>245</sup> Whitfort, *supra* note 10, at 350, 359, 368–69.

<sup>246</sup> SCHAFFNER, *supra* note 7, at 2–3; WAGMAN & LIEBMAN, *supra* note 2, at 175–76; Wei, *supra* note 11, at 1.

<sup>247</sup> Hughes & Meyer, *supra* note 18, at 52.

<sup>248</sup> CAO, *supra* note 80, at 100; Agoramoorthy, *supra* note 16, at 203; See, *supra* note 6, at 146; Whitfort, *supra* note 10, at 356; Weng Hy et al., *supra* note 79, at 316.

<sup>249</sup> Agoramoorthy, *supra* note 16, at 203.

ing from abandonment.<sup>250</sup> Notably the offense can be established without requiring a deliberate intention of abandonment or any suffering.<sup>251</sup> In fact, this feature of the offense is particularly important when animal cruelty offenses caused by neglect or omission are exempted from general anti-cruelty provisions like the draft laws (CH) and earlier version of the TAP (TW), due to the fact that it is very difficult to prove that an animal's owner had the intention to abandon the animal.<sup>252</sup> Additionally, the owner can always have a variety of reasons to explain why the animals were found by the roadside or somewhere else, such as, "it just ran out of the door or slipped the leash accidentally; I did not mean to let it happen." On the other hand, in practical terms it is also not easy to find an animal owner liable without fully enforcing mandatory animal identification and registration systems, which are also required under the draft laws.<sup>253</sup> It is also the reason why the stray animal problem has barely improved, even though the TAP (TW) has been put into effect since 1998.<sup>254</sup>

## 2. *Failure to Seek Necessary Medical Treatment for an Injured or Sick Animal*

Like abandonment, this specific type of offense applies to animal owners and it can also be dealt with under general anti-cruelty offenses, which penalize animal cruelty caused by neglect or omission in providing necessary care to animals.<sup>255</sup> However, as discussed, the definition of cruelty under the TAP (TW) is much narrower and can only be established based on whether an animal has been inflicted with concrete and obvious physical injury instead of unnecessary suffering;<sup>256</sup> this would cause its current general cruelty provisions to rarely apply to cases which merely involve, for example, a sick animal which suffered from physical distress without any actual wound.<sup>257</sup> Moreover, the draft laws (CH) require that animal owners only have to seek necessary medical treatment for those "seriously" injured or sick animals, which narrows the scope of its statutory protection for animals.<sup>258</sup>

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<sup>250</sup> RADFORD, *supra* note 3, at 206.

<sup>251</sup> *Id.*

<sup>252</sup> *Id.*

<sup>253</sup> The Prevention of Cruelty to Animals Law of the People's Republic of China 2011, arts. 23; The Animal Protection Law of the People's Republic of China 2009, art. 73; The Taiwan Animal Protection Law 2016, arts. 19, 22.

<sup>254</sup> Wu et al., *supra* note 14, at 1; Weng Hy et al., *supra* note 79, at 315.

<sup>255</sup> The Taiwan Animal Protection Law 2016, art. 11.

<sup>256</sup> *Id.* arts. 3, 25, 30, 30-1

<sup>257</sup> *Id.*

<sup>258</sup> The Prevention of Cruelty to Animals Law of the People's Republic of China 2011, art. 64; The Animal Protection Law of the People's Republic of China 2009, art. 168.

### 3. Slaughter

Stunning before slaughter is required under the TAP (TW)<sup>259</sup> and the draft laws (CH).<sup>260</sup> Additionally, the draft laws specifically prohibit the practice of force-feeding animals with water, food, or anything before slaughter,<sup>261</sup> which is a very cruel and common way to increase the weight of animals at slaughter in Taiwan and China.<sup>262</sup> Clearly it is abnormal to sanction what may be termed “institutional cruelty” with animal cruelty offenses, which enable these relevant animal welfare regulations and measures of public control such as licensing, certification, and registration to become the most available and practical ways of safeguarding at least a certain degree of animal treatment, notwithstanding that these regulatory standards are mostly intended to safeguard public health and food safety.<sup>263</sup> However, any specific welfare standard regarding farm animal rearing and production is still lacking under the TAP (TW) and other related regulations,<sup>264</sup> and most of the animal welfare requirements under the APL (CH) are removed under another version of the draft law (PCL).<sup>265</sup>

### 4. Transport

Along with flourishing development of trade activities in agriculture, the welfare of animals during transport has become a more and more important issue in both domestic and international contexts.<sup>266</sup> Relevant requirements and specific standards are also formulated under both national and international animal welfare legislations and regulations, which basically are applied to not only the transport of farm animals, but also that of other vertebrate animals.<sup>267</sup> By the

<sup>259</sup> The Taiwan Animal Protection Law 2016, art. 10.

<sup>260</sup> The Prevention of Cruelty to Animals Law of the People's Republic of China 2011, art. 58; The Animal Protection Law of the People's Republic of China 2009, art. 147.

<sup>261</sup> The Animal Protection Law of the People's Republic of China 2009, art. 58.

<sup>262</sup> Whitfort, *supra* note 10, at 355; Yu-Li Lin, *The Ideal and Reality of Farm Animal Welfare-Centering on an Examination Analysis for the Legal System in Taiwan* 267–71 (unpublished master's thesis, National Taiwan University) (on file with *Animal Law*).

<sup>263</sup> RADFORD, *supra* note 3, at 293, 295.

<sup>264</sup> Lin, *supra* note 262, at 257–58.

<sup>265</sup> Whitfort, *supra* note 10, at 356–57.

<sup>266</sup> Håkansson et al., *Improvement of Animal Welfare by Strategic Analysis and Logistic Optimisation of Animal Slaughter Transportation*, 25 *ANIMAL WELFARE*, 255, 255–63 (2016); Outi Ratamäki, *Animal Perceptions in Animal Transport Regulations in the EU and in Finland*, 2 *REL. Beyond Anthropocentrism* 79, 80 (2014).

<sup>267</sup> For example, the Council Regulation (EC) put forth standards regarding the protection of animals during transport and related operations—the OIE standards related to the transport of terrestrial animals and farmed fish, by sea, land and air. WORLD ORG. FOR ANIMAL HEALTH, *OIE Standards and Animal Welfare* (2004), <http://www.oie.int/en/animal-welfare/oie-standards-and-international-trade/> [<https://perma.cc/PDB8-XC7J>] (accessed Apr. 9, 2017); Animal Transport Act 2006, *translated in* <http://www.finlex.fi/fi/laki/kaannokset/2006/en20061429.pdf> [<https://perma.cc/T586-7J9D>] (accessed Apr. 9, 2017).

same token, the APL (CH) also provides fairly detailed provisions and animal welfare requirements regarding the transport of physically large and small animals.<sup>268</sup> Although there are several related provisions under the TAP (TW)<sup>269</sup> and the law also issues a specific decree for safeguarding the welfare of animals during transport,<sup>270</sup> the scope of protection under the law is considerably restricted, in that it is only applied to a few specific animal species, including pigs, cows, sheep, and goats.<sup>271</sup> Even though the TAP (TW) has penalized animal cruelty caused by neglect and acts of omission in 2015, such limitations would still cause many animal cruelty cases arising from transport to go unpunished unless the animals involved suffer extremely severe injuries or even death, because, just like the animals involved in other practices of “institutional animal cruelty,” animals can hardly receive any basic humane treatment without the protection of relevant animal welfare regulations.<sup>272</sup>

### 5. Research

It is acknowledged that the concept of the ‘3Rs,’ which seeks to reduce the number of animals used, to refine the procedures employed so as to minimize animal suffering, and to replace the use of animals with possible alternative methods,<sup>273</sup> is a major guideline and statutory requirement for regulating and safeguarding the welfare of laboratory animals through domestic laws or international regulations,<sup>274</sup> and this concept is also being adopted and prescribed under the TAP (TW) and the draft laws (CH).<sup>275</sup> However, the problem lies in the fact that the draft laws merely lay down the basic general principles of the 3Rs, failing to prescribe further specific relevant requirements, including indicating permitted purposes of performing experiments on animals and providing specific guidelines for anesthetic and pain control programs and their permitted exception conditions.<sup>276</sup> In addition, successful enforcement of laboratory animal welfare regulations generally relies on the operation of the (well-constructed) licensing system.<sup>277</sup> However, unlike the TAP (TW), neither the draft laws (CH)

<sup>268</sup> The Animal Protection Law of the People’s Republic of China 2009, arts. 122–136.

<sup>269</sup> The Taiwan Animal Protection Law 2016, art. 9.

<sup>270</sup> Dong Wu Yun Song Guan Li Ban Fa (動物運送管理辦法) [The Management of Animal Transport 1998] (Taiwan).

<sup>271</sup> *Id.* arts. 9, 12.

<sup>272</sup> See RADFORD, *supra* note 3, at 262–63, 266–67.

<sup>273</sup> W.M.S. Russell & R.L. Burch, *The Principles of Humane Experimental Technique*, JOHN HOPKINS BLOOMBERG SCH. PUB. HEALTH (1959), [http://altweb.jhsph.edu/pubs/books/humane\\_exp/het-toc](http://altweb.jhsph.edu/pubs/books/humane_exp/het-toc) [<https://perma.cc/T9AU-CXAJ>] (accessed Apr. 9, 2017).

<sup>274</sup> RADFORD, *supra* note 3, at 296; SCHAFFNER, *supra* note 7, at 79.

<sup>275</sup> The Prevention of Cruelty to Animals Law of the People’s Republic of China 2011, arts. 30–33; The Animal Protection Law of the People’s Republic of China 2009, arts. 88–101; The Taiwan Animal Protection Law 2016, arts. 15–18.

<sup>276</sup> The Prevention of Cruelty to Animals Law of the People’s Republic of China 2011, arts. 33–37.

<sup>277</sup> RADFORD, *supra* note 3, at 294–302.

nor the Guideline for Humane Treatment of Laboratory Animals (CH) makes the compliance with the 3Rs a precondition for the authorization for issuance of an animal experiment license.<sup>278</sup> Notably, the TAP requires that researchers have to obtain experiment licenses granted by animal welfare committees at their own institutions or establishments instead of other independent competent authorities.<sup>279</sup> However, in order to avoid any conflict of interests, the law should expressly require that either committee members or committees themselves be completely unconnected with any applicant for an experiment license.<sup>280</sup>

#### 6. *Animal Fighting and Baiting*

Animal fighting for the purpose of gambling, entertainment, other profits, etc. is expressly prohibited under the TAP (TW) and the APL (CH);<sup>281</sup> however, in light of preventing an animal from such a cruel activity, there seems to be little to no possible purpose that can be reasonably allowed under the laws.<sup>282</sup> In addition, animal baiting, feeding live prey to carnivores, and other similar cruel practices, which are common forms of animal abuse in zoos or circuses in China,<sup>283</sup> are outlawed under both the draft laws (CH).<sup>284</sup> Although this kind of specific cruel practice is rarely seen in Taiwan and not expressly prohibited under the TAP (TW), it can still be dealt with under its general animal cruelty offense.<sup>285</sup>

#### 7. *Animal Competition and Performance*

The TAP (TW) specifically makes animal competitions for gambling illegal, for the purpose of banning gambling activities instead of providing animal protection.<sup>286</sup> Unlike the APL (CH) and other animal protection laws,<sup>287</sup> the TAP (TW) does not require any specific animal welfare standard for preventing animals from experiencing pain, suffering, and excessive exertion in a competition.<sup>288</sup> Likewise, before the amended version of the TAP (TW) was passed in 2015, the TAP (TW) also did not provide any requirement regarding safeguarding proper

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<sup>278</sup> The Prevention of Cruelty to Animals Law of the People's Republic of China 2011, arts. 33–37; The Animal Protection Law of the People's Republic of China 2009, arts. 88–101; Whitfort, *supra* note 10.

<sup>279</sup> The Taiwan Animal Protection Law 2016, art. 16.

<sup>280</sup> RADFORD, *supra* note 3, at 367.

<sup>281</sup> The Taiwan Animal Protection Law 2016, art. 10; The Animal Protection Law of the People's Republic of China 2009, art. 45.

<sup>282</sup> *Id.*

<sup>283</sup> Whitfort, *supra* note 10, at 352.

<sup>284</sup> The Prevention of Cruelty to Animals Law of the People's Republic of China 2011, art. 67; The Animal Protection Law of the People's Republic of China 2009, art. 45.

<sup>285</sup> The Taiwan Animal Protection Law 2016, arts. 25, 30.

<sup>286</sup> The Taiwan Animal Protection Law 2016, art. 10; Lee, *supra* note 79, at 155–86.

<sup>287</sup> The Animal Protection Law of the People's Republic of China 2009, arts. 117–121; WAGMAN & LIEBMAN, *supra* note 2, at 100–07.

<sup>288</sup> The Taiwan Animal Protection Law 2016.

treatment of animals on display or in performances, while relevant cases of inhumane treatment of animals in these entertaining industries or businesses were fairly common in Taiwan.<sup>289</sup> Although the current law lays down the relevant licensing system for regulating and promoting the welfare of animals on exhibition and in performances,<sup>290</sup> the statutory definition of “animals” involved in such activities is comparatively limited under the law, as it only refers to those specifically based on the purpose of recreation.<sup>291</sup> Animals in a zoo, an aquarium, or other similar institution are completely exempted from the law, since they are established for educational purposes as they claim.<sup>292</sup> Such a loophole, therefore, leaves most of the animals on display or in performances utterly unprotected.

#### 8. *Consumption of Dogs and Cats*

Under the TAP (TW), any slaughter or killing of dogs or cats and sale of their meat is absolutely prohibited without any exception.<sup>293</sup> However, the draft laws (CH) principally legalize humane slaughter or killing of dogs and cats for either commercial or non-commercial purposes based on reasonable grounds and additionally empower individual local authorities to determine whether a specific area officially prohibits such practice or not in light of its local tradition, custom, and religion.<sup>294</sup> Such features of the draft laws and their different extents of protection for dogs and cats reflect the historical factors in development of the draft laws—the external influence of modern Western culture under which consumption of dog and cat meat is usually considered to be taboo and uncivilized and the development of features of the Asian animal protection movement—which mainly focus on protection for companion animals.<sup>295</sup> Moreover, it should be noted that the consumption of dog and cat meat in China is associated with animal rescue and protection issues, as well as stolen owned animals and worsening food safety problems.<sup>296</sup>

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<sup>289</sup> Agoramoorthy, *supra* note 16, at 202, 204–05.

<sup>290</sup> The Taiwan Animal Protection Law 2016, art. 3, 6.1.

<sup>291</sup> *Id.*

<sup>292</sup> Most of the business involving animal performance and exhibition are exempted from the law; Xin-Tian WU, Su-Mei Ou, *A U-Turn Made for Exhibited Animal Protection—Less Than Three Premises Are Under Regulation*, LIBERTY TIMES NET (Feb. 2, 2016), <http://news.ltn.com.tw/news/life/paper/956659> [<https://perma.cc/SL8X-7ARH>] (accessed Apr. 9, 2017).

<sup>293</sup> *Id.*

<sup>294</sup> The Prevention of Cruelty to Animals Law of the People’s Republic of China 2011, art. 76; The Animal Protection Law of the People’s Republic of China 2009, art. 162.

<sup>295</sup> CAO, *supra* note 80, at 148–69; WAGMAN & LIEBMAN, *supra* note 2, at 30–33, 175–76; Yang, *supra* note 88, at 166.

<sup>296</sup> CAO, *supra* note 80, at 116, 119. “Most of the dogs and cats eaten today in China come from illegal sources. As no dogs and cats are being bred commercially for meat, a major source is pets stolen from their owners by professional cat and dog thieves or traffickers, who specialize in trapping and stealing cats and dogs and transporting them to restaurants and illegal slaughterhouses in different parts of China.” In addition, “the

### 9. *Removal of Organs from a Live Animal for Commercial Uses*

Several common forms of cruel practices in China are particularly criminalized under the draft laws, including the removal of organs from a live animal, cruel animal performances, force-feeding animals with water, food, or anything else before slaughter, the abandonment of large numbers of animals, and the indiscriminate and inhumane culling of animals in the control of an animal epidemic.<sup>297</sup> Among them, similar to the cruel practice of removing bear bile for commercial uses, the removal of organs from a live animal for commercial use is so extremely cruel and controversial that the public and international community have severely condemned it in recent years.<sup>298</sup> This criminalization of these extremely inhumane commercial practices to a certain extent reflects that the critical animal protection problem in China mainly lies in the booming development of its cruelty-based businesses and institutional systems.<sup>299</sup> However, as long as the animal-related legal system in China remains in the position of encouraging commercial exploitation of wildlife, further statutory prohibition and punishment under the draft laws can hardly be passed or enforced.<sup>300</sup>

### 10. *Animal Epidemic*

As mentioned, the draft laws (CH) were drawn up and released in response to immense controversies and criticisms, which resulted from the massive brutal killing after the outbreak of rabies in June 2009.<sup>301</sup> Against this background, the APL (CH) criminalized the indiscriminate and inhumane culling of animals in the control of an animal epidemic, and included a section specifically targeting the relevant humane procedures in dealing with affected animals.<sup>302</sup> In contrast, the Statute for Prevention and Control of Infectious Animal Disease in Taiwan required that animal culling shall be conducted in a humane manner which shall be reviewed and updated appropriately in accordance with the guidelines of international animal welfare science.<sup>303</sup> However, Taiwan still has virtually no law or ordinance specifically addressing these issues.<sup>304</sup>

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main illegalities associated with cat and dog trafficking include violation of existing animal health regulations . . . violation of existing animal slaughtering regulations and food safety laws, and the illegal and dangerous methods in killing and obtaining street dogs posing threats to the general public.” *Id.*

<sup>297</sup> The Prevention of Cruelty to Animals Law of the People’s Republic of China 2011, art. 76; The Animal Protection Law of the People’s Republic of China 2009, art. 181.

<sup>298</sup> Whitfort, *supra* note 10, at 369.

<sup>299</sup> Lu et al., *supra* note 80, at 355; Wu, *supra* note 136, at 21.

<sup>300</sup> Carpenter & Song, *supra* note 114, at 393–95.

<sup>301</sup> SCHAFFNER, *supra* note 7, at 3.

<sup>302</sup> The Animal Protection Law of the People’s Republic of China 2009, arts. 21–34.

<sup>303</sup> Dong Wu Chuan Ran Bing Fang Zhi Tiao Li (動物傳染病防治條例) [Statute for Prevention and Control of Infectious Animal Disease 2004], art. 20 (Taiwan).

<sup>304</sup> Lin, *supra* note 262, at 267–68.

### D. Exemptions

#### 1. Humane Slaughter

Both of the draft laws (CH) explicitly exclude the requirement of prior stunning before slaughter for sacred ceremonies—which are carried out in religious rites or in accordance with ethnic minority customs or practices—or in emergency situations.<sup>305</sup> Likewise, the Humane Slaughter of Livestock and Poultry Decree issued under the TAP (TW) has similar grounds for statutory exemption of humane slaughter.<sup>306</sup> However, unlike the draft law, the TAP (TW) does not require that slaughter without pre-stunning should still be conducted in a way in which animals are not subjected to avoidable severe suffering or pain, allowing for some controversial religious customs involving extreme animal cruelty to still be held every year.<sup>307</sup> No matter what statutory grounds the law uses to exempt inhumane slaughter methods (e.g., to bleed animals without pre-stunning), it does not mean other cruel killing methods should be allowed under the law. In addition to the grounds of religion and custom, the decree additionally empowers the competent authority to exempt the application of humane slaughter for any appropriate reason.<sup>308</sup> However, the principle of humane slaughter is the basic and minimum protection for farm animals;<sup>309</sup> it should not be an exemption based merely on the decision of the competent authority. Indeed, any exemption of any statutory requirement under the law ought to be determined by a formal legislative procedure.<sup>310</sup>

#### 2. Cruelty to Wildlife

The WCA (TW) only provides general wildlife protection in particular restricted areas determined by the competent authority;<sup>311</sup> as for the statutorily protected animals, the WCA (TW) expressly excludes the application of its animal cruelty offenses to activities or conduct in several particular circumstances, including population control, academic research for educational purposes, and traditional cultural or ritual hunting, killing, or utilization needs of Taiwanese aborigines.<sup>312</sup> Furthermore, the WCA (TW) does not require that the method used to

<sup>305</sup> The Prevention of Cruelty to Animals Law of the People's Republic of China 2011, art. 63; The Animal Protection Law of the People's Republic of China 2009, art. 163.

<sup>306</sup> Xu Qin Ren Dao Tu Zai Zhun Ze (畜禽人道屠宰準則) [Humane Slaughter of Livestock and Poultry Decree 1998], art. 10 (Taiwan).

<sup>307</sup> Agoramorthy, *supra* note 16; Sam Savage, *Taiwan God Pig Sacrifice: Religious Rite or Cruelty?*, REDORBIT (Sept. 2005), [http://www.redorbit.com/news/international/234273/taiwan\\_god\\_pig\\_sacrifice\\_religious\\_rite\\_or\\_cruelty](http://www.redorbit.com/news/international/234273/taiwan_god_pig_sacrifice_religious_rite_or_cruelty) [https://perma.cc/Q6EQ-PJCT] (accessed Apr. 9, 2017).

<sup>308</sup> Humane Slaughter of Livestock and Poultry Decree, art. 10 (Taiwan).

<sup>309</sup> RADFORD, *supra* note 3, at 336–38.

<sup>310</sup> Wu, *supra* note 203, at 40.

<sup>311</sup> Wildlife Conservation Act, art. 10 (Taiwan).

<sup>312</sup> *Id.* arts. 18, 21.1.

kill or hunt animals should be as humane as the draft laws prescribe,<sup>313</sup> since as mentioned, the purpose of the WCA (TW) is only to preserve the wildlife and their habitat but not to prevent them from experiencing any pain or suffering.<sup>314</sup>

### E. Defenses

Although the TAP, the WCA (TW), and the draft laws do not provide any specific defenses to the offenses of animal cruelty and animal welfare infringement, a possible justification or exculpation for breaking the draft laws can still be made in accordance with the statutory grounds for defenses such as necessity and right of self-defense under the Chinese and the Taiwanese Penal Codes or the Taiwanese Administrative Penalty Act.<sup>315</sup> Furthermore, as the standard of unnecessary suffering is used to execute a balancing exercise in establishing animal cruelty offenses, measuring proportionality between the harm to be avoided and the defendant's reasonable reaction, the statutory defenses will only be meaningful for establishing those offenses or infringements that do not require proof of unnecessary suffering.<sup>316</sup> Accordingly, the statutory defenses will play more significant roles under the general animal cruelty prohibitions of the TAP (TW), since the law does not accept the concept of unnecessary suffering as its definition of cruelty.<sup>317</sup>

### F. The Penalties

The penalties under the TAP (TW) are various and comprehensive. The law provides both administrative and criminal fines ranging from the minimum administrative fine of TWD 3,000 to the maximum criminal fine of TWD 1,000,000, or a term of imprisonment not exceeding one year for general animal cruelty offenses—dog and cat slaughter and the failure to fulfill the positive statutory duty of care for an animal.<sup>318</sup> As for other specific offenses and animal welfare infringements, the law provides several various administrative fine ranges from the minimum fine of TWD 15,000 to the maximum fine of TWD 250,000, or a term of imprisonment not exceeding one year.<sup>319</sup> Notably, the standard of imposing penalties under the TAP (TW) depends not only on the seriousness of the offenses but also on whether those

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<sup>313</sup> The Prevention of Cruelty to Animals Law of the People's Republic of China 2011, art. 22; The Animal Protection Law of the People's Republic of China 2009, art. 46.

<sup>314</sup> Wildlife Conservation Act, art. 1 (Taiwan).

<sup>315</sup> *Zhonghua Renmin Gongheguo Xingfa* (中華人民共和國刑法) [Chinese Penal Codes 2015], art. 21; *Zhonghua Minguo Xingzheng Fa Fa* (中華民國行政罰法) [Taiwanese Administrative Penalty Act 2011], art. 13; *Zhonghua Minguo Xingfa* (中華民國刑法) [Taiwanese Penal Codes 2006], art. 24.

<sup>316</sup> See, *supra* note 6, at 151.

<sup>317</sup> *Id.*

<sup>318</sup> The Taiwan Animal Protection Law 2016, arts. 25, 30, 30-1.

<sup>319</sup> *Id.* arts. 27, 29–30.

who commit the offenses are recidivists or not.<sup>320</sup> In addition to the general criminal and administrative sanctions, the law also imposes both confiscation orders and disqualification orders (ownership bans) on those convicted of cruelty so as to prevent the animal victims or other animals from being inflicted with further suffering or any future potential cruelty,<sup>321</sup> which is indeed significant from the points of view of animal protection and crime prevention.<sup>322</sup> In addition, the law requires those who are liable for any of the offenses under the TAP (TW) to attend an animal protection course arranged by the competent authority.<sup>323</sup> However, mandatory psychiatric treatment is much more necessary if the abuse stems from mental illness; therefore, providing the relevant conditional probation or discharge is also highly desired.<sup>324</sup>

As for the WCA (TW), the law also provides both administrative and criminal fine ranges for its wild animal cruelty offenses, and the penalties are much heavier than those under the TAP (TW), based on different legislative purposes.<sup>325</sup> The penalties range from the minimum fine of TWD 20,000 to the maximum fine of TWD 5,000,000, or a term of imprisonment not exceeding two years, depending mainly on what kind of wildlife—general or protected—is subjected to animal cruelty and whether such cruelty causes the result of animal death or not.<sup>326</sup>

In contrast, the penalties under the draft laws are relatively uniform. As mentioned, except for that the draft laws impose criminal sanctions for several of the worst types of animal cruelty offenses,<sup>327</sup> the draft laws provide the same administrative fine range for most of the rest of the offenses, including their deliberate animal cruelty offenses, specific offenses, and other animal welfare infringements.<sup>328</sup> Except for the violation of humane slaughter,<sup>329</sup> a person committing any offense under the draft laws (CH) is liable to a fine of CNY 1,000 and will be required to sign a statement of repentance.<sup>330</sup> If there is a corporate body liable to the offenses under the draft laws, it will be

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<sup>320</sup> *Id.* art. 30.

<sup>321</sup> *Id.* arts. 32 to 33-1.

<sup>322</sup> Hughes & Meyer, *supra* note 18, at 23; RADFORD, *supra* note 3, at 235–40.

<sup>323</sup> The Taiwan Animal Protection Law 2016, art. 33-1.

<sup>324</sup> Hughes & Meyer, *supra* note 18, at 66.

<sup>325</sup> Wildlife Conservation Act, arts. 53, 54 (Taiwan).

<sup>326</sup> *Id.* arts. 42, 50.

<sup>327</sup> The Prevention of Cruelty to Animals Law of the People's Republic of China 2011, art. 79; The Animal Protection Law of the People's Republic of China 2009, art. 181.

<sup>328</sup> The Prevention of Cruelty to Animals Law of the People's Republic of China 2011, arts. 64–79; The Animal Protection Law of the People's Republic of China 2009, arts. 168–181.

<sup>329</sup> The Prevention of Cruelty to Animals Law of the People's Republic of China 2011, art. 71; The Animal Protection Law of the People's Republic of China 2009, art. 176.

<sup>330</sup> The Prevention of Cruelty to Animals Law of the People's Republic of China 2011, arts. 64–79; The Animal Protection Law of the People's Republic of China 2009, arts. 168–181.

sanctioned with several fines, ranging from a minimum fine of CNY 5,000 to the maximum fine of CNY 200,000.<sup>331</sup> Although the TAP (TW) does not have a similar additional penalty for others standing behind the direct perpetrator of the offenses, the statutory liability will still generally extend to an owner of animals.<sup>332</sup>

Although it is unclear what specific criminal sanctions the draft laws (CH) will impose for the worst types of offenses,<sup>333</sup> the penalties under the TAP (TW) are relatively higher than those under the draft laws. In fact, the TAP (TW) has been increasing its maximum fine and terms of imprisonment through ten law amendments in eighteen years in response to the demand for a more effective and competent law for protecting animals.<sup>334</sup> Indeed, much more severe penalties, to a certain extent, can directly influence competent authorities, prosecutors, or judges by showing the seriousness of the offenses and also further providing the possibility of effective deterrence for either common individuals or those engaged in large commercial practices which usually involve poor animal treatment.<sup>335</sup> However, as Professors Hughes and Meyer state, “deterrence can be only achieved primarily through adequate enforcement, not by severity of penalty.”<sup>336</sup>

## VI. ENFORCEMENT

The role of law enforcement is not only to ensure the effective statutory protection for animals but also to identify problems and weaknesses of the law in practical terms and thereby further provide directions for future reform.<sup>337</sup> As the law enforcement data under the successfully amended Act is not yet clear, the recent data from 2011 to 2014 under the TAP (TW) has been collected for the purpose of analyzing practical issues of law enforcement.<sup>338</sup>

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<sup>331</sup> The Prevention of Cruelty to Animals Law of the People’s Republic of China 2011, arts. 64–79; The Animal Protection Law of the People’s Republic of China 2009, arts. 168–181.

<sup>332</sup> The law imposes on animal owners a statutory duty of care towards animals and punishes animal cruelty caused by animal neglect and an act of omission in 2015. The Taiwan Animal Protection Law 2016, arts. 30 to 30-1.

<sup>333</sup> The Prevention of Cruelty to Animals Law of the People’s Republic of China 2011, art. 79; The Animal Protection Law of the People’s Republic of China 2009, art. 181.

<sup>334</sup> Tsai, *supra* note 82, at 69–90.

<sup>335</sup> Hughes & Meyer, *supra* note 18, at 67; See, *supra* note 6, at 151.

<sup>336</sup> Hughes & Meyer, *supra* note 18, at 66.

<sup>337</sup> RADFORD, *supra* note 3, at 345–46.

<sup>338</sup> *Id.* at 30.

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Offense \ Year	2011				2012			
	Investigation	Caution	penalty	seizure	Investigation	Caution	penalty	seizure
Law enforcement								
General animal cruelty	2198	263	22	1	2010	230	24	6
Abandonment	503		20	13	759		30	22
Necessary medical treatment	6620	15	0	0	5256	79	1	0
Slaughter	476		1		531		2	
Research	51	9	0		227	3	0	
Animal fighting and competition	5		2	1	1		0	0
Consumption of dog and cat meat	78		2		67		2	
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Offense \ Year	2013				2014(until Aug.)			
	Investigation	Caution	penalty	seizure	Investigation	Caution	penalty	seizure
Law enforcement								
General animal cruelty	2370	368	15	2	2023	602	16	5
Abandonment	817		57	44	623		48	39
Necessary medical treatment	7707	134	1	0	4292	103	0	0
Slaughter	691		2		339		0	
Research	241	2	0		261	24	0	
Animal fighting and competition	5		0	0	7		0	0
Consumption of dog and cat meat	73		5		39		2	
Source: The Council of Agriculture of the central government, Taiwan. <sup>339</sup>								

The figures of the investigations include calls from the public that report their concern to the competent authority, and the regular inspection duties of the competent authority regarding the general animal cruelty offense and major animal welfare infringement under the TAP.<sup>340</sup> The data explicitly indicates that nearly all of the investigations end up going unprosecuted or unpunished, resulting mainly from the exemption of animal neglect and the relatively narrow definition of cruelty under the law as mentioned, as well as the problem of enforcement mechanisms and their operation.<sup>341</sup> Under the TAP (TW), except the licensing system of laboratory animal welfare,<sup>342</sup> most law enforcement is primarily conducted by local animal protection inspec-

<sup>339</sup> THE COUNCIL OF AGRIC. OF THE CENT. GOV'T, ANNUAL REPORT (2011–2014).

<sup>340</sup> *Id.*

<sup>341</sup> *Id.*

<sup>342</sup> The Taiwan Animal Protection Law 2016, art. 16.

tors;<sup>343</sup> however, they are fairly understaffed and overworked.<sup>344</sup> There were only 114 local inspectors assigned all over Taiwan in 2014, and only 63 of them were full-time dedicated personnel,<sup>345</sup> which showcases Taiwan's difficulty in having enough manpower to carry out adequate regular and irregular inspections of slaughterhouses, pet shops, or any other establishments where animals are kept captive.<sup>346</sup> Moreover, notwithstanding the criminalization of general animal cruelty after 2007, the police still merely play an assistant role in enforcing the law and its criminal provisions.<sup>347</sup> It is widely acknowledged that the role of veterinarians in either animal welfare or law enforcement is significant and irreplaceable.<sup>348</sup> However, except for some official veterinarians who also serve as full time animal protection officers, neither the TAP (TW) nor Taiwan Veterinarian Act demands or assigns any animal welfare requirement or participation related to veterinarians, such as the requirements that some specific institutions, businesses, or activities involving animals must be under certain supervision of veterinarians or the obligation for veterinarians to report abuse cases to authorities.<sup>349</sup> In addition, it should also be noted that animal welfare education and relevant training is fairly lacking in formal veterinary education in Taiwan.<sup>350</sup> Such a problematical enforcement operation thereby substantially decreases the efficiency and ability of investigation and law enforcement agencies, since an effective operation of enforcement mostly depends on key enforcement participants with skills and competences through cooperation, including inspectors, police officers, prosecutors, veterinarians and supervisory board members.<sup>351</sup>

After the passage of the 2015 version of the amendment, the TAP not only penalizes animal neglect but also includes a positive statutory duty of care towards animals. This means the workloads of local inspectors will substantially increase, since the new statutory requirement of protection will involve more investigations, follow-up visits and formal caution messages issued to those owners who do not take care of their animals properly, but have not yet committed acts of animal cruelty or neglect.<sup>352</sup> Thus, it will require a local inspector to possess not only the ability and expertise of conducting professional investigations, but also the practical knowledge and communication

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<sup>343</sup> *Id.* art. 23.

<sup>344</sup> Shih-Che Huang, *The Comparative Research of Animal Protection Laws-and the Prevention of Cruelty to Animals* 227–31 (2008) (unpublished master thesis, National Taiwan University (2008) (on file with *Animal Law*); Wu et al., *supra* note 14, at 226.

<sup>345</sup> THE COUNCIL OF AGRIC. OF THE CENT. GOV'T, *supra* note 339.

<sup>346</sup> Huang, *supra* note 344, at 231; Wu et al., *supra* note 14, at 226.

<sup>347</sup> The Taiwan Animal Protection Law 2016, art. 23.

<sup>348</sup> Wu et al., *supra* note 14, at 223.

<sup>349</sup> Wu et al., *supra* note 14, at 226.

<sup>350</sup> *Id.* at 223.

<sup>351</sup> Helena Striwing, *Animal Law and Animal Rights on the Move in Sweden*, 8 ANIMAL L. 93, 101 (2001).

<sup>352</sup> Hughes & Meyer, *supra* note 18, at 70–72.

skills of being an educator so as to promote animal owners' compliance with the law and thereby ensure adequate care for animals.<sup>353</sup>

In order to improve these law enforcement difficulties under the 2015 amendment, the TAP has introduced additional enforcement mechanisms to assist with increasingly demanding tasks, which implies that local competent authorities may delegate the relevant inspection tasks to third-party agencies, legal entities, groups, or individuals.<sup>354</sup> In addition, the TAP provides a reward policy that encourages the public to provide related evidence leading to the discovery of any violation of the law.<sup>355</sup> Under such a new enforcement mechanism and operation, however, the issue of having qualified and competent enforcement participants still has to be addressed.

In China, the draft laws provide fairly detailed provisions regarding the competent authorities in central and local levels and their scopes of responsibilities of law enforcement, supervision, and management.<sup>356</sup> Although it is not clear how the enforcement will be conducted practically under the current versions of the draft laws, the draft laws astonishingly introduced public interest litigation under their rules of enforcement.<sup>357</sup> Although public interest litigation is a fairly effective legal approach in ensuring that competent authorities fulfill their statutory duties and has commonly been used under the environmental law regime, it is still a completely new legal strategy and enforcement mechanism in the animal protection regime.<sup>358</sup> Considering the current degree of development of the animal protection movement in China, it is extremely doubtful that there is any possibility of adopting and implementing such a creative and progressive litigation practice to ensure law enforcement in this country in the near future.<sup>359</sup> However, encouraging the public to actively engage in animal protection by providing rewards for those who report violations of the law is a much more practical approach to law enforcement given China's current situation, and this approach has also been adopted under the draft laws.<sup>360</sup>

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<sup>353</sup> *Id.*

<sup>354</sup> The Taiwan Animal Protection Law 2016, art. 23.

<sup>355</sup> *Id.* art. 33-2.

<sup>356</sup> The Prevention of Cruelty to Animals Law of the People's Republic of China 2011, arts. 6–9; The Animal Protection Law of the People's Republic of China 2009, arts. 13–16.

<sup>357</sup> The Prevention of Cruelty to Animals Law of the People's Republic of China 2011, art. 8; The Animal Protection Law of the People's Republic of China 2009, art. 15.

<sup>358</sup> Graeme McEwen, *Animal Law: Principles and Frontiers*, BARRISTERS ANIMAL WELFARE PANEL (June 17, 2011), <http://www.bawp.org.au> [<https://perma.cc/MPP5-SZPV>] (accessed Apr. 9, 2017).

<sup>359</sup> Lu et al., *supra* note 80, at 355.

<sup>360</sup> The Prevention of Cruelty to Animals Law of the People's Republic of China 2011, art. 73; The Animal Protection Law of the People's Republic of China 2009, art. 178.

## VII. CONCLUSION: REFORM IN DIFFERENT STAGES

The current development stages of animal protection legislation in Taiwan and China are fairly different; however, the evaluation and comparison between the draft laws in different legislative periods to a certain extent reflects their common problems and weaknesses.<sup>361</sup> This results from the fact that the original legislative intent of the draft laws was not based on the notion of preventing animals from unnecessary suffering or other similar standards, but rather to resolve their controversial animal issues in society.<sup>362</sup>

After eighteen years of developing animal protection legislation, the inclusion of the positive duty of care towards animals and the penalization of animal cruelty caused by neglect and acts of omission<sup>363</sup> under the passed amendment of the TAP (TW) in 2015 are major milestones indicating that the nature of law has significantly transformed from animal management regulation to actual animal protection legislation.<sup>364</sup> Notwithstanding that the statutory scope of protection has been improved, the definition of cruelty under the law is still narrow and the statutory exemption is widely unrestricted, without prescribing a maximum limit on activities involving extreme animal cruelty.<sup>365</sup> Therefore, further identifying and including a statutory standard of unnecessary suffering as the essential liability factor and a maximum limit for statutory exemptions will be necessary steps for future law reform. In addition, given the nature of animal cruelty offenses,<sup>366</sup> requirements and criteria of animal welfare provisions play very critical roles in regulating practices and activities involving institutional cruelty, by prescribing how animals should be treated and cared for.<sup>367</sup> Such criteria are still lacking under the TAP (TW) and other relevant regulations, in particular regarding the treatment of animals in husbandry, transport, research, and animal culling for disease control.<sup>368</sup> As a member of OIE, Taiwan certainly ought to be fully obligated to give due regard to and comply with relevant international require-

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<sup>361</sup> Hans Hsienchuan Chen, *The Past to Present Animal Use and Current Animal Protection Law in Taiwan*, 14 ALTERNATIVES TO ANIMAL TESTING & EXPERIMENTATION J. 743, 743–48 (2007), <http://altweb.jhsph.edu/wc6/paper743.pdf> [<https://perma.cc/EP8N-8UTF>] (accessed Apr. 9, 2017); Gui H, *Animal Welfare and Rights Legal Protection in China: The Problems and Their Solutions*, 7 ARTS & SCI. J. 199, 199–201 (2016), <https://www.omicsonline.com/open-access/arts-and-social-sciences-journal.php> [<https://perma.cc/26K2-FKEK>] (accessed Apr. 9, 2017).

<sup>362</sup> Whitfort, *supra* note 10, at 349–53; Wildlife Protection Law of the People's Republic of China, *supra* note 69.

<sup>363</sup> The Taiwan Animal Protection Law 2016, arts. 30–30-1.

<sup>364</sup> *Id.* arts. 1, 4.

<sup>365</sup> *Id.* arts. 25, 30, 30-1; *see also* Hughes & Meyer, *supra* note 18, at 35–37 (showing the current limit of suffering outlined in draft).

<sup>366</sup> RADFORD, *supra* note 3, at 199–201, 241–43.

<sup>367</sup> *Id.* at 262–341.

<sup>368</sup> The Taiwan Animal Protection Law 2016, art. 12.

ments and guidelines regarding animal welfare so as to be in keeping with the trend of modern science-based animal welfare legislation.<sup>369</sup>

As for China, overall, both the APL and the PCL (CH) are comparatively progressive animal protection laws seeking to deal with China's controversial animal cruelty issues with different extents and scopes of protection for animals,<sup>370</sup> in particular the various detailed animal welfare requirements under the APL which remarkably provide much more statutory protection for animals than the TAP (TW) does.<sup>371</sup> However, in addition to the current political restriction of a developing animal protection movement,<sup>372</sup> animal welfare regulation plays a significant role in regulating activities involving animals and confronts the enormous conflicts between animal welfare and commercial interests.<sup>373</sup> This imposes major difficulties on the promotion of codifying 'animal welfare' as a standard for liability into most relevant laws or regulations in China, since the country still mainly relies on short-term economic development which it deems the highest priority, regardless of any social cost such as environmental damage and pollution.<sup>374</sup> This is also the reason why its Wildlife Protection Law is still based on encouraging the human use of wildlife, rather than on conservation of wildlife and its habitat.<sup>375</sup> Yet, a certain degree of animal welfare can still be fulfilled through combination with other administrative measures,<sup>376</sup> such as the control of animal health and food safety, which has become one of the most serious and emergent social issues for the country due to its membership in OIE in recent years.<sup>377</sup>

Accordingly, from the perspective of legislation and the current stage of animal protection development in China, the very first step should be to promote legislation prohibiting not only deliberate animal cruelty, but also animal neglect either at the local or national level. Establishing offenses or infringements based on identifying unnecessary suffering and adopting an objective test will be determined by reference to the social value regarding animals and their treatment, as well as the standards of a reasonable person's conduct in society. These can be reasonably accepted in a country with any stage of animal protection development and also provide flexibility for applying the law in light of changing social consensus and public attitude towards animal protection.<sup>378</sup> More significantly, promoting such legislation would further influence the introduction of a statutory responsibility on animal

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<sup>369</sup> Wu et al., *supra* note 14, at 223, 226.

<sup>370</sup> Lu et al., *supra* note 80, at 356; Whitfort, *supra* note 10, at 347.

<sup>371</sup> The Animal Protection Law of the People's Republic of China 2009, arts. 1–7; The Taiwan Animal Protection Law 2016, art. 1.

<sup>372</sup> CAO, *supra* note 80, at 148–69; Li, *supra* note 105, at 74.

<sup>373</sup> Lu et al., *supra* note 80, at 355.

<sup>374</sup> *Id.*

<sup>375</sup> CAO, *supra* note 80, at 28–99; Li, *supra* note 105, at 73.

<sup>376</sup> Lu et al., *supra* note 80, at 355.

<sup>377</sup> CAO, *supra* note 80, at 116–22; Whitfort, *supra* note 10, at 367–70.

<sup>378</sup> RADFORD, *supra* note 3, at 239–40; Hughes & Meyer, *supra* note 18, at 50; See, *supra* note 6, at 156–57; Whitfort, *supra* note 10, at 369–70.

owners or keepers, which is a major step to educate the public and promote a responsible attitude towards the care and treatment of animals.<sup>379</sup> On this basis, legislation further prohibits the controversial and extreme animal cruelty practices and businesses in the country, since the role of legislation is not only to deter conduct that is deemed unacceptable and immoral in society with adequate and appropriate sanctions, but also to educate the public and shape social values, obligations, and responsibilities.

Any animal protection improvement in any country cannot be easily and successfully accomplished overnight. For China and any other country without any animal protection laws, there is still a long way to go; however, penalizing both deliberate animal cruelty and animal neglect is a priority which has to be done without any delay.

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<sup>379</sup> Whitfort, *supra* note 10, at 369–70.