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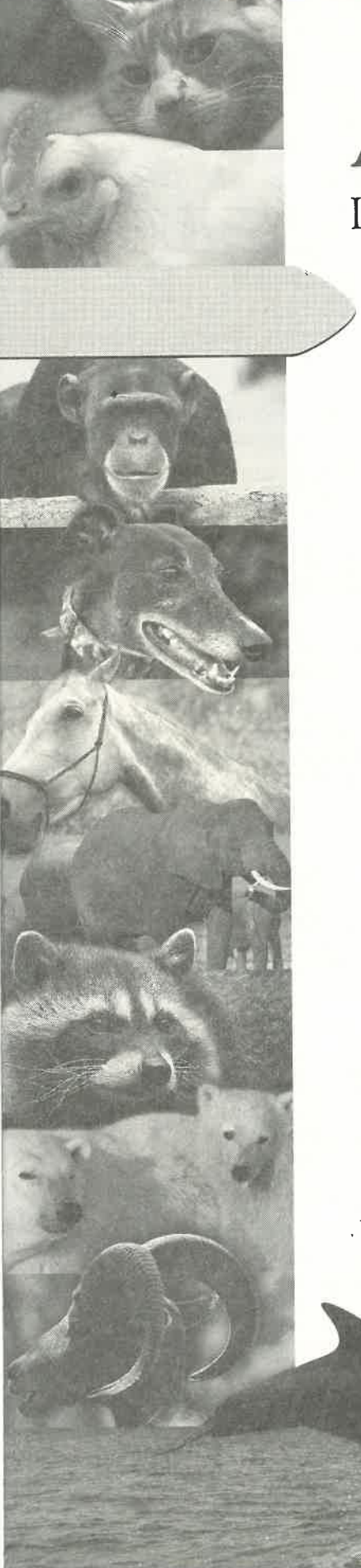

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VOLUME 19 2013

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ANIMAL LAW

VOLUME 19 2013

CONTENTS

uncertainty reigns in the lower courts and among commentators over the issue of constitutionally compelled religious exemptions. Despite the Court's general disavowal of such exemptions in *Employment Division v. Smith*, *Lukumi* appeared to breathe life into a potentially significant exception to *Smith*. Under that exception—which this Article calls the "selective-exemption rule"—the Free Exercise Clause may still require religious exemptions from a law when the government selectively makes available other exemptions from that law. This Article addresses the key unresolved questions about the scope of the selective-exemption rule and challenges the broad interpretation of the rule that leading religious-liberty advocates have been pressing in courts around the country. That broad interpretation, which played a prominent role in the recent animal-sacrifice case of *Merced v. Kasson* and has been further developed in the ongoing *Stormans, Inc. v. Selecky* litigation over emergency contraception, would go a long way to achieving a de facto reversal of *Smith*. But while there are credible arguments for reconsidering *Smith* and its "equal protection" interpretation of the Free Exercise Clause, those arguments should not be advanced through the backdoor of the selective-exemption rule. That rule was adopted as part of the *Smith* paradigm, and it only makes sense to interpret it within that paradigm. Accordingly, this Article makes the case for a more appropriately tailored reading of the selective-exemption rule—a reading grounded in the rule's origins as a tool to prevent intentional discrimination, and a reading that would enable the government to enforce animal-welfare laws that have only an incidental effect of limiting religious animal sacrifice.

ARTICLES

This Article, presented in two parts, travels through animal law from ancient Babylonia to the present, analyzing examples of laws from the ancient, medieval, Renaissance and Enlightenment, recent modern, and modern historical periods. In performing this analysis, particular attention is focused on the primary motives and purposes behind these laws. What is discovered is that there has been a historical progression in the primary motives underlying animal laws in these different periods. In Part I of this Article, it was discovered that while economic and religious motives dominate the ancient and medieval periods, in the Renaissance and Enlightenment, we see social engineering—efforts to change human behavior—come to the fore. In this Part II of the Article, it is found that in the recent modern historical period we finally see protecting animals for their own sakes—animal protection—motivating animal law. In our present historical period, this Part II of the Article uncovers a movement towards what is defined as "scientific animal welfare"—the use of modern animal-welfare science as the inspiration for animal laws and regulations. Does this historical trend toward the use of modern science in making animal law portend a change that may transform our relationship with animals? Modern science tells us that many animals

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