

## NOTES / AANTEKENINGE

### CULTURAL IDENTITY, TRADITION, AND THE RITUAL KILLING OF BULLS – A NOTE ON A RECENT DECISION OF THE FRENCH CONSTITUTIONAL COUNCIL ON THE LEGALITY OF BULLFIGHTING

#### 1 Introduction

In a recent two-part article in this journal, the authors of this note analysed the controversy surrounding the ritual bull-killing which takes place during the *Ukweshwama* “first fruits” ceremony held each year in northern KwaZulu-Natal, South Africa (Peté and Crocker “Ancient Rituals and Their Place in the Modern World: Culture, Masculinity and the Killing of Bulls – Part One” 2012 33(2) *Obiter* 278–296; and Peté and Crocker “Ancient Rituals and Their Place in the Modern World: Culture, Masculinity and the Killing of Bulls – Part Two” 2012 33(3) 580–599). While much of the *Ukweshwama* ceremony is uncontroversial, the ritual killing of a bull by young Zulu warriors with their bare hands attracted strong opposition from certain animal-rights groups, which resulted in legal action and public controversy. The authors attempted to disentangle the different legal, historical, political and philosophical strands which combined to make up a complex story about the place of ancient rituals in the modern world, particularly those involving animal sacrifice. They also attempted to situate the controversy around the *Ukweshwama* bull-killing ritual within a contemporary global context, by comparing and contrasting the Zulu bull-killing ceremony on the one hand, and Spanish bullfighting on the other.

The purpose of the present note is to report on recent developments in what is a global debate on the place of ancient rituals which involve the ritual killing of animals, within modern constitutional democracies. In particular, this note will examine and discuss the outcome of a recent legal challenge brought before the Constitutional Council of the Republic of France by certain animal-welfare groups in that country. The challenge was directed at bringing an end to a legal exception which operates in certain parts of the country – that is, those with an uninterrupted local tradition of bullfighting – excluding bullfighting from the provisions of animal-welfare legislation.

The legal, political and cultural issues which arise as a result of this legal challenge are of relevance to those in South Africa who are concerned, one way or the other, about the future of the annual *Ukweshwama* bull-killing ritual in KwaZulu-Natal. Like it or not, although the bull-killing rituals which take place in the South of France and in KwaZulu-Natal South Africa are

very different, the similarities between the rituals and their impact on broader society (legally, politically and culturally), are such that they cannot be ignored. The authors make a similar point in relation to the links between Spanish bullfighting and the *Ukweshwama* bull-killing ritual:

“There are clear parallels between the *Ukweshwama* bull killing ritual, which is fiercely opposed by animal rights groups, and Spanish bullfighting, which is similarly targeted by such groups. Both practices have ancient pre-modern roots and are deeply embedded in local culture and tradition; both are linked to spiritual and religious traditions and values, and lie at the heart of particular cultural identities; both speak to issues of honour and masculinity; and, finally, both are subject to fierce opposition from groups who operate within a completely separate discourse, which postulates an alternative view of the relationship between humans and nature” (See Peté and Crocker 2012 33(3) *Obiter* 584).

## 2 A brief overview of French rituals involving bulls

Before turning to the specific case involving the French “bullfighting exemption”, which was brought before the Constitutional Council of the French Republic on 21 June 2012, it is useful to set the scene with a brief overview of the various rituals involving bulls in Europe generally and France in particular. (What we have termed the French “bullfighting exemption” case was deliberated upon by the Constitutional Council on 20 September 2012 and resulted in decision no. 2012–271 QPC of 21 September 2012.)

Approximately 40,000 bulls die at the hands of the Matadors every year in the European countries of Spain, France, and Portugal (see <http://blogcritics.org/archive/2008/09/01/> accessed on 2012-11-28). In Spain, the blood sport is kept alive with the help of a healthy national subsidy (funded by Spanish taxpayers) of around 530 million Euros each year (see <http://blogcritics.org/archive/2008/09/01/> accessed on 2012-11-28). The League Against Cruel Sports, a UK-based charity established in 1924 that uses lawful investigations, campaigning and lobbying to stop cruelty to animals in the name of sport, estimates that “bull breeders who provide bulls for bullfighting receive around £37 million a year in subsidies through the EU’s Common Agricultural Policy” (see <https://www.e-activist.com/ea-ampaigh/clientcampaign.do?ea.client.id=122&ea.campaign.id=10561> accessed on 2012-12-11).

In the South of France, both Spanish-style and local bullfights take place during the bullfighting season, which runs from February to October. The centre of bullfighting is the city of Nîmes, where a bullfighting school is located. Other cities where bullfighting takes place are Arles, Béziers, Bayonne and Carcassonne” (see <http://www.cas-international.org/en/home/suffering-of-bulls-and-horses/bullfighting/france/> accessed on 2012-12-11). In France, this centuries-old practice sees around two million people attending the *corridas* each year, witnessing the killing of approximately 1000 bulls annually in the Spanish-style bullfights (Dartford “France Rejects Celebrity Animal Campaigners’ Pleas and Declares Bullfighting Legal” 21 September 2012 *Mail Online*).

It must be made clear at the outset that not all French rituals which involve bulls or cows involve the killing of the animal as part of the ritual. There are three main types of rituals involving bulls and cows which take place in

---

France each year: The *Corrida* (Spanish-style bullfighting); the *Course Landaise*; and the *Courses Camarguaises*. The latter two types of ritual are not as overtly cruel to the animal involved, since the animal is not killed as part of the ritual. It is only the first type of ritual, the *Corrida*, which involves the killing of the animal as part of the ritual. It should be noted, however, that most international animal-welfare organizations regard all three types of ritual as being cruel, in some way or the other, to the animal involved. Each type of ritual mentioned above will be examined in turn:

The *Corrida* bullfights are a tradition originating in Spain. The first French *Corrida* took place in the city of Bayonne in the year 1853 (see <http://myprovence.us/2010/12/hello-world/> accessed on 2012-11-29). The *Corrida* bullfights essentially involve fights to the death, either of the matador or the bull, although it is very seldom that a matador is killed. Only fifty-two matadors have been killed in the arena since 1700 (see [http://iberianature.com/spain\\_culture/tag/how-many-bullfighters-have-been-killed](http://iberianature.com/spain_culture/tag/how-many-bullfighters-have-been-killed)). The bullfight is completed in four stages. During the first stage, the power of the bull and its ability to charge is tested by the *toreros* waving a red cape. In the second stage, *picadors* on horseback puncture the large muscle at the rear of the bull's neck with a long lance at least twice, in order to prevent the bull from lifting its head too high when bucking or charging. During the third stage, men called *banderilleros* enter the ring and plunge a total of six short spears called *banderillas* into the back of the bull's neck, in order to slow the animal down and tire it out. In the fourth and final stage, the Matador toys with the bull, teasing it with a smaller red cape. In this way, the Matador slowly wears the bull down, tiring it until he is able to thrust a sword into the back of the animal's head. This is meant to sever the aorta and kill the animal. Should the sword miss the aorta (which is often the case) the bull's lungs are punctured and the animal dies by drowning in its own blood, which pours from its nose and mouth. If those involved in the bullfight conclude that the bull is taking too long to die, a small knife is used to sever its spinal cord at the neck. If the crowd watching the ritual is happy with the Matador's performance, the bull's ears and tail are cut off as a reward. Sometimes this happens while the bull is still alive. The events described above take place over a period of approximately 20 minutes (see <http://blogcritics.org/archive/2008/09/01/> accessed on 2012-11-28). The bull is then taken away and the meat sold by the kilo in local butcheries (see <http://www.touradour.com/towns/bull.htm> accessed on 2012-11-20).

The *Course Landaise* is an ancient game which takes place in the Landes Region in the Southwest of France. This ritual differs from the *Corrida* in that it involves a specially bred cow rather than a bull, and tests the skill and agility of an unarmed man against that of the animal. The man involved is armed neither with a red cape nor any other form of weapon. The aim of the sport is for the man involved to provoke the animal against which he is pitting his skills into charging. This is achieved by pulling on a rope tied to the cow's horns or by poking the cow with a sharp stick. The man then uses his skill and agility to leap out of the way of the charging beast, using a variety of acrobatic moves (see <http://www.touradour.com/towns/bull.htm> accessed on 2012-11-20). Every year, about 500 *Courses Landaises* are organized in the southwest of France, in municipalities such as Dax (the

“capital” of the Course Landaise), Capbreton, Mont de Marsan, Nogaro and Aire sur l’Adour (see <http://www.cas-international.org/en/home/suffering-of-bulls-and-horses/bullfighting/courses-landaises> accessed on 2012-11-20).

The *Courses Camarguaises* is a tradition which arose in 1402 in Arles and takes place in the Camargue region of south-eastern France (see <http://www.tarascon.fr/tarascon-in-provence/visit/art-vivre-traditions/traditions-bullfighting-traditions.html> accessed on 2012-11-20). The ritual takes place in a bullring and lasts about fifteen to twenty minutes. It involves participants (called “raseteurs”) competing with each other to remove trophies tied between a bull’s horns. They do this by making use of metal hooks which they carry in their hands and they earn points if they manage to cut the threads securing the trophies. The raseteurs often have to jump over the wooden fence surrounding the bullring in order to escape the charging bull. Afterwards, the bulls involved are herded back into their pen. Every year, about 800 *Courses Camarguaises* take place in municipalities around Nîmes and Arles (see <http://www.cas-international.org/en/home/suffering-of-bulls-and-horses/bullfighting/courses-landaises> and <http://www.tarascon.fr/tarascon-in-provence/visit/art-vivre-traditions/traditions-bullfighting-traditions.html> accessed on 2012-11-20).

Having briefly described the three types of rituals involving bulls and cows which take place in the south of France, it is worth noting certain of the central themes which arise in the often spirited public debates around these practices. Supporters of the practices often point out that they are deeply rooted in traditional culture and have a long and rich history within certain communities. Aside from their cultural significance, supporters point out that these practices generate significant income for local economies as a result of increased tourism. Using the situation in Spain as a point of comparison, however, it is interesting to note that, according to the League Against Cruel Sports, fewer than 400 people are employed full-time all year round by the bullfighting industry in that country (see <http://www.league.org.uk/content/339/Bullfighting-Facts> accessed on 2012-12-11).

French politicians have not hesitated to become involved in the debate. For example, the Interior Minister Manuel Valls, who was born in Spain and moved to France as a child, called for the *corrida* not to be banned, reportedly stating that: “We have to preserve our culture – we need these roots, we should not pull them out” (see <http://www.dailymail.co.uk/news/article-2206617/France-rejects-celebrity-animal-campaigners-pleas-declares-bullfighting-legal.html> accessed on 2012-11-20). Another example is Harlem Désir, nominated as leader of the Socialist Party, who was reported as stating that: “There are traditions and every region should be allowed to decide for itself.” (See <http://rendezvous.blogs.nytimes.com/2012/09/21/bullfighting-hallowed-tradition-or-animal-torture/> accessed on 2012-11-29.)

On the other side of the debate are those lobbying against such practices, particularly the *Corrida*, who maintain that excessive cruelty to animals cannot be condoned. For example, the Perpignan Project quotes Claudine Dénarnaud, a spokesperson for the Fédération des Luttes pour l’Abolition des Corridas, an organization fighting for the abolition of bullfighting, as stating that: “What we reject is the systematic torture, that is always the same against these animals ... It must not be forgotten that during a bullfight

there are six bulls that go through 20 or 25 minutes of torture before being slaughtered before an audience.” (See <http://inperpignan.net/students/victoria/bullfighting.html> accessed on 2012-11-29.) Dénarnaud makes the further point that: “For the majority of animals, cruelty is illegal ... No one accepts a picador placing a spike in a dog’s back. Why is it acceptable for a bull?” (See <http://inperpignan.net/students/victoria/bullfighting.html> accessed on 2012-11-29.)

One final point to be noted is that the French anti-bullfighting campaigns are connected to broader global campaigns against such practices. For example, in 2000, the World Society for the Protection of Animals took its campaign against bullfighting a step further by lobbying for a Universal Declaration on Animal Welfare to be recognized by the United Nations (see <http://blogcritics.org/archive/2008/09/01/> accessed on 2012-11-28).

### 3 The French bullfighting exemption case

What we have termed the French “bullfighting exemption” case, concerned an application brought before the Constitutional Council of the French Republic, for a preliminary priority ruling on the constitutionality of a certain exemption clause within Article 521-1 of the French Penal Code. (Decision no. 2012–271 QPC of 21 September 2012. See <http://www.conseil-constitutionnel.fr/conseil-constitutionnel/english/priority-preliminary-rulings-on-the-issue-of-constitutionality/decisions-of-the-constitutional-council-qpc/2012/decision-no-2012-271-qpc-of-21-september-2012.115825.html> accessed on 2012-11-29.) As explained below, the effect of the exemption clause in question was to exclude bullfighting in certain regions of France from the provisions of Article 521-1 which, in essence, criminalises cruelty to certain animals.

The application was brought by two separate groups: the *Comité Radicalement Anti-Corrida Europe* (CRAC), an anti-bullfighting group, and *Défense Des Animaux* (DDA), an animal-welfare organization. In addition to the arguments put forward by these two applicant groups, in its deliberations the Council had regard to the views of the following two associations: the *Observatoire National des Cultures Taurines*, a group dedicated to the defence of bullfighting, and the *Union des Villes Taurines de France*, a grouping of French towns which support bullfighting.

The central focus in the matter was Article 521-1 of the French Penal Code, which prohibits “the unnecessary infliction, in public or otherwise, of serious maltreatment, ... towards or the commission of an act of cruelty on any domestic or tame animal, or any animal in captivity”, and provides for a sentence of up to two years’ imprisonment and a fine of thirty thousand Euros for anyone found guilty of contravening the Article. Crucially, however, the said Article provides for two exemptions to its provisions: Firstly, its provisions do not apply to bullfights, when an “uninterrupted local tradition” can be invoked. Secondly, its provisions do not apply to cockfighting, in localities in which an “uninterrupted tradition” can be established.

The legal attack launched by CRAC and DDA was directed against the “bullfighting exception” referred to above. The groups contended that this

exception infringed the principle of equality before the law and was therefore unconstitutional. (The principle of equality before the law is set out *inter alia* in Article 6 of the 1789 Déclaration des droits de l'homme et du citoyen, which states: "La loi ... doit être la même pour tous, soit qu'elle protège, soit qu'elle punisse", which means: "The law ... must be the same for everyone, with respect to protection as well as to punishment." See <http://www.intlawgrrls.com/2012/09/bullfighting-survives-french.html> accessed on 2012-12-12.) The Constitutional Council of the French Republic rejected this contention. The Council held that the exemption, based as it was on a factual circumstance which could be determined by the courts – that is, whether or not there was an "uninterrupted local tradition" of bullfighting in a particular geographical area – was sufficiently precise so as to avoid the risk of arbitrariness. For this reason, the exemption did not violate the principle of equality before the law.

As to the relevance of this decision of the Constitutional Council, it seems clear that it represents only one small skirmish in what is bound to be a long war. As a preliminary ruling, this particular decision is certainly not decisive as to the underlying merits of the arguments for and against French bullfighting. If not decisive from a legal point of view, however, the decision is important from the perspective of the public and political debates surrounding this issue. The decision received much publicity around the world, placing the issue firmly on the global agenda. It also raised the profile of the debate around the ethics of bullfighting within France itself. A feature of the public debate in France was the conducting of public opinion polls around the time of the ruling, with one newspaper reporting as follows:

"On the eve of the ruling, a poll carried out on behalf of CRAC, a European anti-bullfighting lobby group, indicated that 57 percent of the French wanted a ban, and another survey put the figure at 48 percent. The CRAC poll also suggested a political split on the issue, with 58 percent of left-leaning respondents favoring a ban, compared with 41 percent of right-leaning respondents" (Morris "Bullfighting: Hallowed Tradition or Animal Torture? France Rules" 21 September 2012 *International Herald Tribune*).

It seems highly likely that, sooner or later, this matter will be taken before the European Court of Human Rights, where the complex legal arguments on both sides of the French bullfighting debate are sure to be aired. It seems relevant, therefore, to turn to a brief discussion of certain of the moral arguments which underpin legal submissions in matters of this kind. These moral arguments are relevant not only to bullfighting in France, but also to certain sacrificial rituals in South Africa.

#### **4 Moral arguments surrounding cruelty to animals in the context of French bullfighting**

In 1789, the year of the French Revolution, the great English utilitarian reformer Jeremy Bentham argued as follows:

"The day may come when the rest of the animal creation may acquire those rights which never could have been withholden from them but by the hand of tyranny. The French have already discovered that the blackness of the skin is no reason why a human being should be abandoned without redress to the caprice of a tormentor ... A full-grown horse or dog is beyond comparison a

---

more rational, as well as a more conversable animal, than an infant of a day, or a week, or even month, old. But suppose the case were otherwise, what would it avail? The question is not, Can they reason? Nor, Can they talk? But, Can they suffer?" (cited in Singer *Animal Liberation* (2002) 7).

Whether or not animals are capable of suffering may have been a controversial issue in Bentham's day, but it is submitted that in most parts of the modern world this is no longer the case, particularly not in modern developed constitutional democracies such as France. It is submitted that the vast majority of French citizens would agree that many animals are able to feel pain and are consequently capable of suffering. Furthermore, they would agree that conduct which deliberately causes unnecessary suffering to animals ought to be prohibited and punishable by law.

If asked why deliberately causing unnecessary suffering to animals – that is, cruelty to animals – ought to be illegal, they might answer that allowing such behaviour would cause those French citizens engaging in it to become increasingly cruel in their nature, which would then "spill over" into cruel or sadistic treatment of their fellow citizens. This argument was famously advanced by Immanuel Kant when he stated as follows:

"If man is not to stifle his human feelings, he must practise kindness towards animals, for he who is cruel to animals becomes hard also in his dealings with men. We can judge the heart of a man by his treatment of animals" (Kant *Lectures on Ethics* (1979) 240).

Alternatively, French citizens might answer that, disregarding any such possible "spill over" effects, the unnecessary suffering of animals, just like the unnecessary suffering of human beings, carries a certain "negative moral weight", which demands positive action on the part of a moral community, aimed at the elimination (in so far as it is possible) of conduct which causes unnecessary suffering. Views of this kind are most famously advanced by Peter Singer who puts forward a powerful utilitarian argument to the effect that all suffering, whether it is human or animal suffering, is to be avoided. According to Singer:

"If a being suffers there can be no moral justification for refusing to take that suffering into consideration. No matter what the nature of the being, the principle of equality requires that its suffering be counted equally with the like suffering – insofar as rough comparisons can be made – of any other being" (see Singer *Animal Liberation* 8.)

Finally, a small percentage of the French people might argue that the unnecessary suffering of animals not only carries a "negative moral weight", but that deliberately causing such suffering ought to be classified as the violation of a legal right held by the animal concerned. One of the most well-known advocates of animal rights is Tom Regan. While it is impossible to summarize Regan's subtle and powerful arguments adequately in a short note such as this, it is worth pointing to the basic foundation of his arguments – the fact that there are remarkable similarities between humans and many non-human animals:

"Some nonhuman animals resemble normal humans in morally relevant ways. In particular, they bring the mystery of a unified psychological presence to the

world. Like us, they possess a variety of sensory, cognitive, conative, and volitional capacities. They see and hear, believe and desire, remember and anticipate, plan and intend. Moreover, what happens to them matters to them. Physical pleasure and pain – these they share with us. But also fear and contentment, anger and loneliness, frustration and satisfaction, cunning and imprudence. These and a host of other psychological states and dispositions collectively help define the mental life and relative well-being of those (in my terminology) subjects-of-a-life we know better as raccoons and rabbits, beaver and bison, chipmunks and chimpanzees, you and I” (see Regan “The Case for Animal Rights” 2004 *University of California* xvi).

From this starting point, Regan works towards the inexorable conclusion that many non-human animals must possess rights.

Whatever of the above positions is adopted, however, it is submitted that the vast majority of the population of France (and, indeed, South Africa) would agree that cruelty to animals is unacceptable and would support penal legislation aimed at the prohibition and punishment of human conduct which could be defined legitimately as such. This conclusion is supported by scholars such as Nathalie Melik, who contends that the evolution of French anti-animal cruelty legislation gives a clear indication of society’s changing mind set on animal protection. She describes this evolution as follows:

“Initially, the Grammont law of 1850 prohibited the ill-treatment of animals in public. At the time it was a matter of protecting the image of human kind through a ban on degrading acts committed in public. In the 20<sup>th</sup> century, from the 1960s onwards, the law shifted in favour of animals, extending this prohibition to all ill-treatment, whether committed in public or not. The emphasis was no longer on the image of people but on the welfare of the animals themselves. In French law, animal protection as enshrined in current legislation is based on the law of 10 July 1976, which was the real starting point for the legal texts ... Finally ... the status of animals, classified as moveable assets in the Civil Code, changed in 1999 to distinguish them from inanimate objects. Thoughts are now being turned to granting animals reinforced protection status within that code” (Melik “France and Animal Rights Issues” in The Council of Europe *Ethical Eye: Animal Welfare* (2006) 221–230).

If we take as a “base line” the fact that the vast majority of French citizens would agree that cruelty to animals – that is, causing unnecessary suffering to animals – is unacceptable, at least two main factual and moral questions emerge in relation to the practice of bullfighting in France: Firstly, does bullfighting in fact cause the animals involved to suffer? Secondly, if it is established that the animals do in fact suffer, is this suffering “necessary” or “unnecessary”? Each of these issues will be dealt with in turn:

The onus of establishing that the animals involved in bullfighting do in fact suffer, would seem to be on those groups calling for the practice to be banned. Once the fact of suffering is established, these groups would also need to establish the extent of the suffering involved, since a prolonged period of agony is very different to a short period of less intense pain. From the descriptions of the *Corrida* provided earlier in this note it seems likely that it will not be difficult to convince a court that the animals involved in these rituals do in fact undergo a significant period of intense suffering. This is not as clear when it comes to the other rituals described in this article – the *Course Landaise* and the *Courses Camarguaises* – in which the animals involved are not wounded or killed.



---

Once the fact of suffering as well as the general nature and extent of the suffering have been established, the moral onus would seem to shift to those who support the practice of bullfighting, to show that the suffering of the animals involved in the *Corrida* may be described as “necessary” as opposed to “unnecessary” suffering. The moral weight of this burden – justifying the deliberate infliction of intense suffering – should not be underestimated. This is especially so in a country such as France which, in significant ways, has contributed to shaping the moral structures which underpin modern notions of constitutional democracy. Two main arguments present themselves: Firstly, the fact that the practice is deeply engrained in the culture and way of life of the people of Southern France. Secondly, the fact that French “bullfighting towns” derive considerable economic benefit due to increased tourism resulting from the *Corrida*. The first argument involves complex issues surrounding the historical, social, cultural and moral context within which this particular practice occurs. Perhaps it may be argued that the practice comprises a set of cultural “goods” (in the Aristotelian sense), which contribute to the identity, dignity, sense of self-worth, and perhaps even religious sensibility of the community members involved. Of course, those opposed to bullfighting may argue that it is possible for the communities of Southern France to achieve these same cultural “goods” by making use of rituals which do not involve the suffering of animals – for example, the *Course Landaise* and/or the *Courses Camarguaises* in place of the *Corrida*. The second argument in support of bullfighting would involve an assessment of the economic benefits which are allegedly derived from the practice. Once again, those opposed to bullfighting may argue that it is possible to derive these same economic benefits by promoting rituals, such as the *Course Landaise* or the *Courses Camarguaises*, which do not of necessity involve the suffering of animals (or at least not the extent of suffering involved in the *Corrida*).

Having sketched certain of the moral lines of argument which may be adopted by the parties to this debate, it is useful to end with four lines of argument in favour of bullfighting which, it is submitted, are *not* tenable: Firstly, the argument that bullfighting in Southern France should be allowed to continue simply on the basis that it is a long established practice. Secondly, the argument that bullfighting should be allowed to continue because it is profitable to continue with the practice. Thirdly, the argument that bullfighting should be allowed to continue because it causes less overall suffering than other practices involving animals – for example, the slaughter of millions of animals for their meat. Fourthly, the argument that bullfighting should be allowed to continue if it transpires that the practice is supported by the majority of citizens in Southern France. Each of these arguments will be dealt with in turn:

The first argument is not valid because the length of time that a practice has been in operation ought not to alter the moral standing of that practice at the time it is being judged. For example, the practice of wife-beating may have a long history, but this does not affect the fact that it is considered morally reprehensible by constitutional democrats today. The mere passage of time will not make an immoral practice moral. The fact that the “bullfighting exemption” in the French Penal Code seems to focus so

strongly on the mere passage of time – that is, emphasizing the invocation of “an uninterrupted local tradition” – may serve as a line of legal attack against the provision in future.

The second argument is not valid because “moral loss” cannot be weighed up against economic gain. In other words, moral issues do not have a “price”. It is one thing for proponents of bullfighting to claim that these rituals are indispensable to the economic well-being of their communities (which would be very difficult to prove), and quite another to ask that the practice be retained simply because it makes a profit. In any event, as stated previously, those opposing bullfighting will probably argue that animal suffering is not indispensable to a ritual which is designed to attract tourists.

The third argument is not valid because of the simple reason that two “wrongs” do not make a “right”. Furthermore, although the total number of animals killed in the *Corrida* only numbers in the hundreds, as opposed to the millions of animals killed for meat, those opposing bullfighting will contend that the suffering of the animals involved in bullfighting is prolonged and intense. In any event, issues of morality cannot simply be reduced to a “numbers game”. If the deliberate infliction of unnecessary suffering on animals is morally wrong, it remains morally wrong, whether one animal, or a thousand animals, or a million animals are involved.

The fourth argument is not valid because a popular vote would reflect merely the “popular” morality of citizens, as opposed to their “critical” morality. (We borrow here from a distinction made by the great English positivist philosopher Herbert Hart in a famous debate with Lord Patrick Devlin, which took place in England in the late 1950s and early 1960s and which forms part of the standard jurisprudence curriculum in most law schools which follow the Anglo-American tradition.) In other words, it would reflect the “kneejerk” opinion of citizens, as opposed to their more deeply held “critical” values. Interrogating the deeply held values of the citizens of Southern France in a consistent manner, might well lead to the conclusion that support for bullfighting is inconsistent with these values. Of course, in a constitutional democracy, it is the task of the courts to resist popular opinion when they feel that such opinion is out of line with the deepest values of the people as reflected in, and refracted through the lens of, the Constitution.

## 5 Conclusion

Clearly, the stakes are high on both sides of the broad debate involving the place in the modern world of ancient rituals which involve the killing of animals. The authors describe the two sides in the debate over the *Ukweshwama* bull-killing ritual in KwaZulu-Natal, South Africa as follows:

“On the one hand, an ancient ritual shrouded in the mists of time, deeply embedded at the very heart of Zulu culture, is at last able to demand the respect due to all diverse cultural practices which form part of the ‘rainbow nation’. On the other hand, a profound concern that the future of South Africa’s constitutional democracy not be tainted with the cruelties of the country’s tragic past, demanding a decisive rejection of all practices which cause unnecessary suffering to humans or animals” (Peté and Crocker 2012 33(3) *Obiter* 598.)

The issues at stake in the French bullfighting-exemption case are similarly complex and intractable. Upon examining the views expressed in the public media by different participants in the debate, it quickly becomes clear just how passionately the various stakeholders feel about this matter. A good example of the passions aroused by the debate is to be found in the words of Manuel Valls, the French Interior Minister, who delivered the following emotional public plea in support of bullfighting: "It's something I love, it's part of my family's culture ... It's a culture that we have to preserve ... We need these roots, we should not tear them out" (see <http://www.brecorder.com/world/europe/78592-manuel-valls-defends-bullfighting-as-ban-looms.html> accessed on 2012-12-12). Another example is to be found in the words of Frédéric Nihous, the leader of the *Chasse, Pêche, Nature, Traditions* (CPNT) political party, who stated that bullfighting was "part of the south's DNA" and that the "respect of traditions is a duty ... a people without roots, and therefore without traditions, are a people who will die" ("Chasse, Pêche, Nature, Traditions" means "Hunting, Fishing, Nature, Tradition". The CPNT political party is an agrarianist party which seeks to defend and promote the traditions and values of rural France. See [http://www.google.com/hostednews/afp/article/ALeqM5jL60CtLWWA6LAU3\\_Bt3iLRDjCTkQ?docId=CNG.7c65b2be493a8f4e43ed0190afbeb09c.61](http://www.google.com/hostednews/afp/article/ALeqM5jL60CtLWWA6LAU3_Bt3iLRDjCTkQ?docId=CNG.7c65b2be493a8f4e43ed0190afbeb09c.61) accessed on 2012-12-12).

On the other side of the debate are those who believe that bullfighting is a form of animal torture, an antiquated and inherently cruel ritual perpetuated in the name of tradition and culture, which has no place in an enlightened constitutional democracy. For example, on 22 April 2011, Claire Starozinski of the Anticorrida Alliance stated as follows in response to bullfighting being added to an official list enumerating the cultural heritage of France:

"Today, as well as the preservation of historical monuments, museums, and French cuisine, our government is the only one to recognize as French Intangible Heritage, an activity punishable under the criminal code throughout the country, except in a few areas granted special dispensation. How can our Minister of Culture, a man responsible for publicly safeguarding the national heritage and making available works of art and mind, in all decency encourage the survival of anything as archaic as a public display of animal torture?" (see <http://www.french-news-online.com/wordpress/?p=5712#axzz2EwNGa8uT> accessed on 2012-12-13).

Aside from the heated passions aroused by debates surrounding the ritual killing of bulls, it seems clear that a long and bitter series of political and legal battles lies ahead, before any progress will be made towards a resolution of the complex issues involved.

Stephen Peté and Angela Crocker  
*University of KwaZulu-Natal, Durban*