

Weighing the necessity of animal suffering in religious slaughter: religious freedom versus consumer choice and animal welfare

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In July 2011 the European Parliament was faced with the contentious issue of the religious slaughter of animals. A few months earlier its Environmental Committee had adopted amendments to the Food Labelling Regulations which required labelling of 'meat from slaughter without stunning'. Under the Jewish laws of Shechita animals intended for food must be healthy and uninjured at the time of slaughter and consequently stunning is not permitted for meat to be kosher. According to Islamic law halal meat comes from the Dhabiha method of slaughter which uses a sharp knife to make a deep incision in the animal's throat and in some cases also prohibits the prior stunning of the animal. Therefore the decision of the Environmental Committee jettisoned the relatively mundane subject of food labelling into the highly controversial and emotive area of ritual slaughter and animal welfare. Perhaps not surprisingly in these circumstances the amendment was rejected by the European Parliament. However the matter is far from laid to rest and in January 2012 the European Commission issued its second strategy for the welfare of animals 2012-15.¹ This includes plans to

consider the labelling of meat from slaughter without stunning.

In his recent article Bruce identifies two possible regulatory responses that the Australian government can take to address the conflict arising between respect for religious diversity on the one hand and the welfare of animals on the other: the government can prohibit religious slaughter or it can introduce new food labelling laws identifying meat from slaughter without stunning.² This article will consider these same two regulatory responses but analysed in the context of UK law. In a similar vein to Bruce it concludes that a ban on religious slaughter is unrealistic at the present time and we should instead concentrate on the more attainable goal of food labelling which allows meat consumers to make an informed choice. Interestingly the position of the Coalition Government was summarised by Lord Henley who stated that there were "*no plans whatever to make the practice of halal or kosher killing illegal. However, we think it worth considering the appropriate labelling of all meat so that people know exactly what it is that they are eating and how the meat has been killed*".³ In reaching our conclusion that the

best current regulatory response is to implement new food labelling laws, we recognise that the concept of unnecessary suffering, which underpins much of the UK animal welfare law, requires a balancing of competing interests in order to assess the necessity of any animal suffering. Determining the necessity of animal suffering is vital as necessary suffering is lawful whilst unnecessary suffering is not. Consequently it is crucial to accurately identify what is being weighed in the balance to decide the question of necessity. This is especially important with such an emotive subject as religious slaughter. This article will identify the interests to be weighed in the balance for each of Bruce's two regulatory responses and thereby predict the likelihood of any legislative changes.

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¹ Communication from the Commission on the European Union Strategy for the Protection and Welfare of Animals 2012-2015, COM(2012) 6 final/2.

² Bruce 'Do Sacred Cows make the best Hamburgers? The Legal Regulation of Religious Slaughter of Animals' (2011) UNSW Law Journal, Vol.34, p.351.

³ HL Deb 23 November 2010 c1006.

Is a ban or religious slaughter likely?

With this in mind we will first consider why a ban in the UK on religious slaughter is unrealistic at present even though the Government's own advisory body, the Farm Animal Welfare Council has recommended a ban⁴ – a measure which is supported by the British Veterinary Association.⁵ The rules governing the slaughter of farm animals are set out in the Welfare of Animals (Slaughter or Killing) Regulations 1995 (WASK regulations) which implement Directive 93/119/EC.⁶ The WASK regulations require the prior stunning of animals before slaughter but there is an exemption in Schedule 12 in relation to religious slaughter. This exemption permits religious slaughter “without the infliction of *unnecessary suffering*” by Jews and Muslims who hold the requisite licence and comply with the conditions set out in Schedule 12. In addition the Animal Welfare Act 2006 applies to all domestic animals including farm animals and under s.4 it is an offence to cause *unnecessary suffering* to an animal. It is important to appreciate that s.4 does not prohibit necessary suffering. Consequently the crux of whether or not an offence has been committed is whether the suffering was necessary or not. There are a set of statutory considerations set out in s.4(3) which include the presence of a legitimate purpose and the question

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of proportionality between the object to be achieved and the means of achieving it. Slaughtering animals for food is seen by society as a legitimate purpose but the WASK regulations aim to protect the welfare of farm animals and keep any suffering to a minimum.⁷

Proportionality requires a weighing in the balance of different, often competing, interests. Let us illustrate this with the example of a pig raised in an intensive farming system and slaughtered in an abattoir for meat. There is evidence that pigs suffer in intensive farms.⁸ Is this suffering necessary? Here we weigh in the balance the suffering of the pigs against the human desire for pig meat and the need for large quantities of it at a cheap price. The reality is that the suffering of the pig is given less weight than the benefit to humans of eating pork. In the affluent West meat is not requisite for a healthy diet and consequently the interest which competes with animal suffering, and trumps it, is that of taste and price. Let us now apply this to religious slaughter. It is unclear to what extent the Kosher and Halal slaughter methods cause increased suffering. In the USA the Humane Slaughter Act

defines ritual slaughter as one of two “humane” methods of slaughter. However recent scientific evidence indicates that there is increased suffering for the animal⁹ but this suffering is for a relatively short period i.e., 20 seconds to 2 minutes.¹⁰ So this increased and intense suffering for a relatively short period of time needs to be weighed in the balance against the freedom of the Islamic and Jewish communities in the UK to comply with specific requirements concerning the slaughter of animals for food. Having accurately identified the competing interests to be weighed in the balance we need to be realistic about the weighting to be attached to these interests. Religious freedom is a strongly protected human right.

The case of *Cha'are Shalom Ve Tsedek v France*¹¹ in the European Court of Human Rights illustrates this. The case confirmed that ritual slaughter is a religious custom and comes within the scope of Article 9 of the European Convention on Human Rights as a fundamental freedom of religion. The Jewish community in France was granted a licence for ritual slaughter but a minority group of Jews wanted to perform their own religious slaughter and were refused an exemption under French law to permit them to slaughter animals without pre-stunning. The Court's decision, that there was no infringement of Art.9, could be seen to support a ban as it suggests that

⁴ Farm Animal Welfare Council ‘*Report on the Welfare of Livestock when Slaughtered by Religious Methods*’, 1985; ‘*Report on the Welfare of Farmed Animals at Slaughter or Killing, Part 1: Red Meat Animals*’, 2003 and ‘*Part 2: White Meat Animals*’, 2009.

⁵ www.bva.co.uk, ‘Disappointment at backwards step on religious slaughter’ Feb 2011.

⁶ Council Regulation 1099/2009 will replace Directive 93/119/EC from 1st January 2013. However this new regulation retains the current derogation from stunning for religious beliefs.

⁷ Under the Welfare of Animals (Slaughter or Killing) Regulations 1995 it is an offence to cause or permit an animal avoidable excitement, pain or suffering.

⁸ For example, Meunier-Salaün, MC; Vantrimpont, A; Raab, A; Dantzer, R (1987) Effect of floor area restriction upon performance, behaviour and physiology of finishing pigs. *Journal of Animal Science*, 64: 1371-1377; and Prunier, A; Mounier, AM; Hay, M (2005) Effects of castration, tooth resection, or tail docking on plasma metabolites and stress hormones in young pigs. *Journal of Animal Science*, 83: 216-222.

⁹ Gibson, T.J., Johnson, C.B., Murrell, J.C., Hulls, C.M., Mitchinson, S.L., Stafford, K.J., Johnstone, A.C., and Mellor, D.J., 2009. Electroencephalographic responses of halothane-anaesthetised calves to slaughter by ventral-neck incision without prior stunning. *New Zealand*

Veterinary Journal. 57:77-85. This research detected pain signals in the brains of the calves lasting up to 2 minutes after the incision of the knife.

¹⁰ Farm Animal Welfare Council ‘*Report on the Welfare of Farmed Animals at Slaughter or Killing; Part 2: White Meat Animals*’, May 2009. The report cited research measuring the time to loss of consciousness and found that birds were likely to be conscious for up to 20 seconds after the incision is made across the neck. However, it recommended that further research is needed.

¹¹ (2000) Eur.Ct H.R. 232. Application number, 27417/95.

animal welfare outweighed religious freedom, but in fact that was far from the case. Reading the judgement it is clear that this case turned on its own particular facts and the Court confirmed that the right of religious freedom will be fiercely protected.

In conclusion, past experience demonstrates that the suffering of farm animals generally is given less weight than the interests of humans' food preference and price. How much more important is religious freedom? Haupt observes that "...it is asserted that in weighing the interest in religious free exercise against the legitimate state interests in health and animal protection, religious freedom would prevail".¹² This is certainly endorsed by the views of the European Court of Human Rights in *Cha'are Shalom Ve Tsedek v France*.

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Lerner and Rabello, opponents to a ban on ritual slaughter, argue that the issue of animal rights can be misinterpreted as a cloak for religious discrimination.¹³ Perhaps whilst intensive farming practices are permitted under our legislative system and whilst the concept of unnecessary

suffering, involving the balance of human interests versus animal interests, is the benchmark for permissible practice this could be seen as a valid danger which in arguing our case we must be careful to avoid. Interestingly Lerner and Rabello do acknowledge that religious law should not be static and should be harmonized with science and new knowledge. There has been recent discussion of new methods which may allow prior stunning and still be in compliance with shechita law, however this is not in place at present.¹⁴

The implementation of food labelling laws to address public concerns over animal welfare

We agree with Bruce that the way forward is by indirect regulation through food labelling laws. In England food labelling is currently governed by the Food Labelling Regulations 1996.¹⁵ The new European Union Food Information Regulation (EU/1169/2011) will be directly applicable in all Member States thereby replacing our current legislation and will apply from 13 December 2014. During negotiations on the content of the Food Information Regulation the European Parliament Environment Committee adopted amendments in April 2011 which would have required clear labelling to indicate 'meat from slaughter without stunning'. This needed to be followed by a vote by the full European Parliament and then approved by the EU Council of Agriculture. However in July 2011 the

amendment was rejected by the European Parliament. It approved the requirement for country of origin labelling for meat but rejected the requirement to label it as un-stunned. Nevertheless in January 2012 the European Commission issued its second strategy for the welfare of animals 2012-15 and this includes plans to consider the labelling of meat from un-stunned animals.

Shechita UK is opposed to a requirement that meat labels have to specify 'meat from slaughter without stunning'. It argues that such a requirement is discriminatory against certain religious communities. It observes that "The EU's recommendation for labelling this meat as "not stunned" is discriminatory because a) it suggests that shechita slaughtered meat comes from a non-humane process, and b) there will be no label to indicate how non-kosher meat is slaughtered or if their stunning methods have failed (as they so frequently do)".¹⁶ In addition, it argues that labelling meat as un-stunned would reduce the market value of the meat and "this could in turn represent a large financial loss for the abattoirs that produce kosher meat. This would drive the price of kosher meat up to a level where many would be unable to afford it".¹⁷

There is a recognition here that many consumers may choose not to buy meat without stunning if that information is available to them. The Farm Animal Welfare Council in its 1985 report found that a high proportion of Shechita meat was distributed on the open market.¹⁸

¹²Haupt, 'Free exercise of Religion and Animal Protection: A comparative perspective on ritual slaughter' (2007) *Geo Wash. Int'l L. Rev.* Vol 39 p.839.

¹³Lerner and Rabello 'The prohibition of ritual slaughtering and freedom of religion of minorities' 22 *J.L. & Religion* 1 2006-07.

¹⁴JL Cohen 'New Methods may allow animals to be stunned during Shechita', *Jewish Chronicle* online, 22nd February 2010.

¹⁵SI 1996 No.1499.

¹⁶www.shechita.co.uk, at Frequently Asked Questions

'Why is the labelling of un-stunned meat so controversial?'

¹⁷Shechita UK *The Jewish Chronicle* 9th March 2012, p.2.

More recently, a newspaper investigation in 2010 found that schools, hospitals, pubs and sporting venues in the UK were serving halal meat to the general public without informing them of this fact.¹⁹ It should however be noted that a large quantity of halal meat is pre-stunned and so would not be affected by the proposed new food labels.²⁰ Even so it is likely that there would be a large reduction in the number of animals slaughtered without pre-stunning and consequently this is a significant step to improving the welfare of farm animals in the UK.

This article concludes that implementing changes in food labelling laws is currently the best option in the UK for addressing the concerns for animal welfare raised by religious slaughter. It is suggested here that this is an attainable goal because under our legislation animal suffering is prohibited unless it is necessary. In assessing the necessity of the suffering the question of proportionality is crucial and in this respect it is vital to accurately determine what interests are to be weighed in the balance. To implement changes in the food labelling laws the interests are the convenience of having halal and kosher meat affordable and readily available as against the importance of consumer choice. It is submitted that the interest of informed consumer choice is likely to be given significant weighting and may tip the balance in its favour. This is a very different prospect than weighing in the balance the sanctity of religious freedom – an interest that attracts fierce protection

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in the courts - against animal suffering. This significantly alters the odds of achieving a legislative breakthrough. Food labelling is a proportionate measure and would benefit animal welfare by reducing the number of animals killed in the UK without prior stunning.

¹⁸Farm Animal Welfare Council, Report on the Welfare of Livestock when Slaughtered by Religious Methods, 1985, para.27.

¹⁹Simon McGee and Martin Delgado, 'Britain goes Halal but no-one tells the public' Mail on Sunday, 19th September 2010.

²⁰C. Barclay 'Religious Slaughter' House of Commons Standard Note SN/SC/1314, March 2012. Barclay notes that "Most Halal meat in the UK comes from animals that were stunned before slaughter". He cites figures from a recent survey of UK abattoirs carried out by the EU funded Dialrel project (www.dialrel.eu/).