

HEINONLINE

Citation: 45 Cal. W. Int'l L.J. 79 2014



Content downloaded/printed from
HeinOnline (<http://heinonline.org>)
Wed Jun 10 14:22:02 2015

-- Your use of this HeinOnline PDF indicates your acceptance
of HeinOnline's Terms and Conditions of the license
agreement available at <http://heinonline.org/HOL/License>

-- The search text of this PDF is generated from
uncorrected OCR text.

-- To obtain permission to use this article beyond the scope
of your HeinOnline license, please use:

[https://www.copyright.com/cc/basicSearch.do?
&operation=go&searchType=0
&lastSearch=simple&all=on&titleOrStdNo=0886-3210](https://www.copyright.com/cc/basicSearch.do?&operation=go&searchType=0&lastSearch=simple&all=on&titleOrStdNo=0886-3210)

THE CUTTING EDGE: THE DEBATE OVER REGULATION OF RITUAL SLAUGHTER IN THE WESTERN WORLD

JEREMY A. ROVINSKY*

TABLE OF CONTENTS

| | | |
|------|---|----|
| I. | INTRODUCTION | 80 |
| II. | BACKGROUND OF RITUAL SLAUGHTER | 82 |
| | A. <i>Religious Origins and Requirements of Ritual Slaughter</i> | 82 |
| | B. <i>Underlying Philosophical Justifications for Kosher Slaughter</i> | 84 |
| | 1. <i>The Rationale for Eating Meat in Jewish Thought</i> | 84 |
| | 2. <i>Human Responsibilities to Animals</i> | 86 |
| | 3. <i>Judaism and Vegetarianism</i> | 87 |
| | C. <i>Arguments against Ritual Slaughter</i> | 88 |
| III. | LEGAL DEVELOPMENTS IN THE WESTERN WORLD RELATING TO RITUAL SLAUGHTER REGULATION | 91 |
| | A. <i>Early Cultural Hostility toward Ritual Slaughter</i> | 91 |
| | 1. <i>Switzerland</i> | 91 |
| | 2. <i>Norway and Sweden</i> | 91 |
| | B. <i>General Acceptance of Ritual Slaughter</i> | 92 |
| | 1. <i>Germany and Poland</i> | 92 |
| | 2. <i>The United States</i> | 94 |

* Dean, National Juris University & General Counsel, National Paralegal College. BA, American University, JD, The George Washington University. The ideas expressed in this piece should be attributed solely to the author and are not necessarily a reflection of the author's affiliated institutions.

| | |
|---|-----|
| 3. <i>The United Kingdom</i> | 96 |
| 4. <i>France</i> | 97 |
| 5. <i>Italy</i> | 98 |
| C. <i>Recent Global Changes Accepting the Practice of Ritual Slaughter, and the Subsequent Backlash</i> | 99 |
| IV. THE CURRENT DEBATE AND STEPS FOR THE FUTURE | 101 |
| A. <i>Animal Rights Activists' Efforts and Philosophy</i> | 101 |
| B. <i>Weaknesses of the Animal Rights Activists' Position on Ritual Slaughter</i> | 101 |
| 1. <i>Animal Rights Activists' Position toward Religion and Religious Individuals</i> | 102 |
| 2. <i>Animal Rights Activists' Position toward Animals Themselves</i> | 103 |
| C. <i>Proposing a Solution in the Face of Conflicting Evidence</i> | 104 |
| V. CONCLUSION | 107 |

I. INTRODUCTION

How should society balance competing values when minority religious rights often conflict with animal protections? On December 10, 2014, Poland's Constitutional Court overturned a ban on ritual slaughter, ruling that animal rights laws cannot take priority over the guarantees of religious freedom.¹ Roughly five years earlier, on May 6, 2009, the European Parliament adopted a resolution that mandated all European Union ("EU") member states to permit kosher ritual slaughter in their territories, effective January 1, 2013.² Previously, each EU member state had the autonomy to decide whether to permit the ritual slaughter of animals in accord with religious rituals.³

1. Vanessa Gera, *Polish Court Overturns Ban on Ritual Slaughter*, ABC NEWS (Dec. 10, 2014, 4:53 PM), <http://abcnews.go.com/International/wireStory/polish-court-overturns-ban-ritual-slaughter-27498131>.

2. European Parliament Legislative Resolution on the Protection of Animals at the Time of Killing, 2010 O.J. (C 212) 2, 16, *available at* <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52009AP0369&rid=7> [hereinafter European Parliament Legislative Resolution].

3. European Convention for the Protection of Animals for Slaughter, art. 17, May 10, 1979, C.E.T.S. 102, *available at* <http://conventions.coe.int/Treaty/en/Treaties/Html/102.htm>.

Conversely, New Zealand passed the Animal Welfare (Commercial Slaughter) Code of Welfare in 2010, banning kosher slaughtering methods.⁴ The Dutch Parliament followed with similar legislation in June 2011, and, in early 2014, Denmark also followed suit.⁵ When the Danish minister signed the law, he remarked, “Animal rights come before religion.”⁶

Animal welfare advocates argue that banning ritual slaughter and mandating a pre-slaughter stunning procedure amounts to a more humane treatment of animals. However, religious groups affected by the prohibitions believe them to be based largely on underlying discriminatory motives.⁷ This article explores the tension between animal rights activists and certain religious groups. It argues that governments should permit ritual slaughter, and that governments should have to prove that ritual slaughter is more harmful to animals than alternatives such as stunning before outlawing ritual slaughter. Part II provides a background of ritual slaughter, focusing primarily on the Jewish method of *shechita* and also touching on Islam’s Halal

4. Animal Welfare (Commercial Slaughter) Code of Welfare 2010 (N.Z.); see also Tzvi Ben Gedalyahu, *New Zealand Bans Kosher Slaughtering*, ISR. NAT’L NEWS, May 30, 2010, http://www.israelnationalnews.com/news/news.aspx/137759#.Tm40qM1_9gq.

5. See *Denmark Bans Religious Slaughter*, NAT’L SECULAR SOCIETY (Feb. 14, 2014), <http://www.secularism.org.uk/news/2014/02/denmark-bans-religious-slaughter>; Ivana Sekularac, *Dutch Vote To Ban Religious Slaughter Of Animals*, REUTERS (June 28, 2011), <http://in.reuters.com/article/2011/06/28/us-dutch-religion-slaughter-idINTRE75R4E420110628>; Tzvi Ben Gedalyahu, *Dutch Legislators Vote To Ban Kosher Slaughter*, ISR. NAT’L NEWS (June 28, 2011), http://www.israelnationalnews.com/news/news.aspx/145263#.Tm40ss1_9gp.

6. *Denmark Outlaws Kosher Slaughter*, YNETNEWS (Feb. 13, 2014), <http://www.ynetnews.com/articles/0,7340,L-4488196,00.html>.

7. See, e.g., *Halal and Kosher Slaughter ‘Must End’*, BBC NEWS (June 10, 2003), <http://news.bbc.co.uk/2/hi/2977086.stm>; *In Dutch Schechita Ban, Jews See Sign They’re Unwanted*, THE JERUSALEM POST (July 11, 2011), <http://www.jpost.com/Jewish-World/Jewish-News/In-Dutch-shechita-ban-Jews-see-sign-theyre-unwanted> [hereinafter *In Dutch Schechita Ban*]; Aisha Labi, *A Stunning Debate: Ritual Slaughter Forms Unlikely Alliance*, TIME (June 15, 2003), <http://www.time.com/time/magazine/article/0,9171,458740,00.html> (“Muslim and Jewish leaders say the proposal smacks of cultural bias. . .”); Shimrit Golan, *Current Challenges for Religious Freedom in Europe: The Case of Ritual Slaughter of Animals* 4 (The Helmut Kohl Institute for European Studies, The Hebrew University of Jerusalem, Working Paper No.47, 2005).

dynamics. Part III analyzes the ritual slaughter legal developments in the Western world. Part IV offers a resolution to the current conflict, suggesting that, due to the lack of conclusive scientific evidence, the Western world should not forbid *shechita* under the assumption that an alternative such as pre-slaughter stunning is more humane.

II. BACKGROUND OF RITUAL SLAUGHTER

Recent animal protection legislation targets the ritual slaughter techniques that originated from the Hebrew Bible, as well as the similar procedures that originated from the Quran. The background of ritual slaughter underscores the philosophical question, and resulting political debates, as to the proper relationship between humans and animals.

A. Religious Origins and Requirements of Ritual Slaughter

The practice of *shechita*, the Jewish ritual slaughter of certain types of animals for consumption, has been described as being both “marked . . . by compassion and consideration for the welfare of . . . animal[s]” and “a central pillar in the sustaining of Jewish life.”⁸ According to Jewish tradition, God communicated the laws of *shechita* to Moses.⁹ As one organization described the procedure:

Shechita is performed by a highly trained *shochet* [ritual slaughterer]. The procedure consists of a rapid and expert transverse incision with an instrument of surgical sharpness (a *chalaf*), which severs the major structures and vessels at the neck . . . The frontal structures at the neck of permitted animals including the trachea, esophagus, the carotid arteries

8. A GUIDE TO SHECHITA, SHECHITA UK 3, (2009), available at http://www.shechitauk.org/uploads/tx_resources/A_Guide_to_Shechita_2009__01.pdf.

9. Deuteronomy 12:21 states: “You may slaughter . . . as I [God] commanded you [Moses]. . .” (New Int’l Version) *Deuteronomy* 12:21. Rashi, the author of the classic traditional Jewish commentary on the Bible, comments that this verse “teaches us that there are specifications pertaining to slaughtering, how to do shechita, and these are the laws that were taught to Moses on Mount Sinai.” See 5 RASHI: COMMENTARY ON THE TORAH 135 (Rabbi Yisrael Herczeg, ArtScroll Mesorah Publications, Sapirstein ed.) (1998) (author’s translation from the original Hebrew text).

and jugular veins are severed in a rapid and uninterrupted action causing an instant drop in blood pressure in the brain.¹⁰

Of most relevant significance, the laws of *shechita* mandate that the animals are “healthy and uninjured” at the time of their slaughter.¹¹ Notably, this requirement forbids animals from being stunned before being slaughtered.¹² Stunning involves subduing an animal in order to render it unconscious prior to slaughter.¹³ There are two primary methods of stunning red meat: shooting a steel bolt into the animal’s skull, and electrocuting the animal.¹⁴ When stunning poultry, the general practice is to either gas the animal before slaughtering it, or to invert the bird and immerse its head in an electrified water tank.¹⁵ In the eyes of Jewish law, pre-slaughter stunning injures an animal and thus disqualifies it for consumption purposes.¹⁶

Islamic law requires somewhat analogous procedures.¹⁷ Similar to Jewish law, Islam requires that the slaughter be conducted by a “single cut to the throat, rather than the more widespread method of stunning with a bolt into the head before slaughter” in order to produce a sudden loss of blood to the brain.¹⁸ Muslims are also

10. A GUIDE TO SHECHITA, *supra* note 8, at 3, 5. One ritual slaughterer who works in a kosher slaughtering plant in Nebraska noted the sharpness of the knife, as well as the speed and angles at which the kosher slaughterers cut, makes it so that the animals are dead before they even realize they have been cut. Interview with David Gottlieb, Ritual Slaughterer for Triangle-K Kashruth Organization, in Denver, Colorado (Oct. 1, 2011). According to this slaughterer, he once sliced part of his finger by accident and did not realize he cut himself with the knife until he looked at his hand and saw the blood. *Id.* Because of the sharpness of the knife, he did not feel the cut. *Id.*

11. A GUIDE TO SHECHITA, *supra* note 8 at 8.

12. *Id.*

13. *Id.* at 3.

14. *Id.*

15. *Id.*

16. *Id.*

17. Many verses in the Quran describe what foods are halal (lawful) and haram (unlawful). See *Halal And Haram Foods According To Quran*, PARSQRAN, <http://www.parsquran.com/eng/subject/halal.htm> (last visited Oct. 11, 2014). An animal that has “died of itself” is forbidden, according to chapter 5, verse 3, chapter 6, verse 145, and chapter 16, verse 115. See *id.*

18. *Halal and Kosher Slaughter ‘Must End’*, *supra* note 7.

permitted to eat kosher meat, and Muslim consumption of kosher food is economically significant.¹⁹

B. Underlying Philosophical Justifications for Kosher Slaughter

1. The Rationale for Eating Meat in Jewish Thought

To the majority of observant Jews, eating meat is central to living a fully Jewish lifestyle. According to Rabbi Yosef Albo, author of *The Book of Principles*,²⁰ humanity originally misconstrued God's instructions to Adam (which mandated a purely vegetarian human diet), falsely believing that humanity and the animals were equal, and that humans were simply another species of beasts.²¹ This false belief led to the erosion of civil society, resulting in violence, corruption, and murder; in response to this degeneration, God brought the great flood to cleanse the world.²² After the flood, God established a new world order, commanding Noah to eat animals in order for humanity to realize that humans were superior to animals.²³ God, therefore, charged humans with the responsibility to rise above our animal instincts and perfect the world.²⁴

Similarly, Rabbi Isaac Luria, who claimed that humankind is destined to vegetarianism,²⁵ also argued from a mystical perspective

19. Phil Lempert, *Muslims A Prime Market For Kosher Foods*, SUPERMARKET GURU, <http://www.supermarketguru.com/articles/muslims-a-prime-market-for-kosher-foods.html> (last visited Oct. 11, 2014) ("Muslims already comprise 16% of the U.S. market for kosher food, which it pegged at \$14.6 billion in 2005 and called one of the fastest-growing segments in the retail food business."); AMY BROWN, UNDERSTANDING FOOD: PRINCIPLES AND PREPARATION 12 (2010); Muhammad Ridha, *Islam In The Workplace*, KWINTESSENTIAL, <http://www.kwintessential.co.uk/cultural-services/articles/islam-in-the-workplace.html> (last visited Oct. 11, 2014).

20. Rabbi Albo argued that God's original plan was to allow humans to maintain only vegetarian diets. See Part II.B.3.

21. Baruch S. Davidson, *Judaism and Vegetarianism*, CHABAD.ORG, http://www.chabad.org/library/article_cdo/aid/858870/jewish/Judaism-and-Vegetarianism.htm (last visited Oct. 11, 2014).

22. *Id.*

23. *Id.*

24. *Id.*

25. See Part II.B.3.

that when humans eat meat with the intention to use the energy to do positive things, the meat becomes elevated in a way that it could not have been by remaining as a live animal.²⁶ As one Rabbi observed after studying this idea, “It may be cruel to *not* eat meat because doing so robs the animal of its chance to serve a higher purpose.”²⁷

Eating meat also appears in the context of Jewish law, and for those who enjoy the taste, eating meat is seen as an obligation to best appreciate festive days on the Jewish calendar. For example, according to Jewish law, Jews are commanded to make the Sabbath day enjoyable and delightful.²⁸ Rabbi Yisroel Meir Ha-Cohen, a prominent authority on Jewish law, writes: “Since . . . most people find their main delight in meat, wine and dainties, it is therefore stated . . . that one should be lavish with meat, wine, and dainties.”²⁹ A similar obligation to eat meat and other foods that bring a person joy exists during the Jewish holidays.³⁰

Even the first Chief Rabbi of the modern State of Israel, Rabbi Abraham Isaac Kook, perhaps the most vocal advocate of a Jewish vegetarian way of life, was not a vegetarian.³¹ Rabbi Kook echoed the teaching of Rabbi Albo, fearing that people adhering to a strictly vegetarian diet may forget their human superiority over the animals and come to regard themselves as beasts.³² Thus, Rabbi Kook himself ate a small amount of chicken every week, and when confronted by his son, disapproved of his son’s desire to become a full-fledged vegetarian.³³

26. Davidson, *supra* note 21.

27. *Id.* (emphasis added).

28. See RABBI YISROEL MEIR HA-COHEN & MISHNAH BERURAH, THE CLASSIC COMMENTARY TO SHULCHAN ARUCH ORACH CHAYIM, COMPRISING THE LAWS OF DAILY JEWISH CONDUCT § 242 (Aviel Orenstein trans., 1999).

29. *Id.*

30. See Aryeh Citron, *Rejoicing On The Holidays: Parshat Emor*, CHABAD.ORG, http://www.chabad.org/library/article_cdo/aid/1192936/jewish/Rejoicing-on-the-Holidays.htm (last visited Oct. 11, 2014).

31. Richard Schwartz, *The Vegetarian Teachings of Rav Kook*, JEWISH VEGETARIANS N. AM., <http://www.jewishveg.com/schwartz/kook-expanded.html> (last visited Oct. 11, 2014).

32. *Id.*

33. *Id.*

2. *Human Responsibilities to Animals*

Although Jewish law certainly does not consider humans and animals to be equal,³⁴ it does place a tremendous responsibility on humans to treat animals compassionately.³⁵ For example, the Talmud³⁶ discusses the obligation to refrain from causing undue harm to animals.³⁷ The Torah enumerates many responsibilities incumbent upon Jews in their dealings with animals: Jews are obligated to mitigate an animal's distress, and must allow animals to eat freely while working on fields; Jewish law prohibits muzzling animals to prevent them from eating freely, and similarly forbids harnessing oxen and donkeys to work together to avoid an unequal strain on the animals.³⁸ Jews are commanded to feed their animals before they themselves eat,³⁹ and Jewish law forbids breaking off a limb from a live animal in order to eat the meat.⁴⁰ As one prominent kosher certification agency recently explained, "These and similar statutes make it clear that inhumane treatment of animals is not the Jewish way."⁴¹ Even a serious critic of kosher slaughter methods noted, "It is

34. For a widely respected articulation of the differences between humans and animals from a Jewish mystical perspective, see RABBI MOSHE CHAIM LUZZATTO, *THE WAY OF GOD 77* (Aryeh Kaplan trans., Feldheim Publishers 6th ed. 1999).

35. RABBI SHLOMO GANZFRIED, *2 KITZUR SHULCHON ORUCH: THE CLASSIC GUIDE TO THE EVERYDAY OBSERVANCE OF JEWISH LAW 717* (Rabbi Elijah Touger, trans., Moznaim Pub. Corp. 1991) ("The Torah prohibits causing suffering to any animal. On the contrary, we are required to prevent any animal – even one without an owner or one that belongs to a gentile – from suffering.").

36. The Talmud is the "basic compendium of Jewish law, thought, and Biblical commentary." See *Glossary of Terms*, JEWISH CONTENT, <http://jewishcontent.org/general/glossary> (last visited Oct. 11, 2014).

37. See *BABYLONIAN TALMUD, TRACTATE BAVA MEZI'A 32a* (H. Freedman & Rabbi Dr. I Epstein trans., Vilna Chadash Publishers).

38. See generally *Deuteronomy* Chapters 22-25; see also GANZFRIED, *supra* note 35, at 711-12.

39. See generally *Deuteronomy* 11:15.

40. *Genesis* 9:4. Many commentators point out that breaking off the limbs of an animal while it was still alive in order to eat it was the common practice among the gentiles during the Biblical era. See, e.g., DENNIS PRAGER & JOSEPH TELUSHKIN, *NINE QUESTIONS PEOPLE ASK ABOUT JUDAISM 59* (Simon and Schuster 1986).

41. *Setting The Record Straight On Kosher Slaughter*, OU KOSHER (DEC. 29, 2004), <http://oukosher.org/blog/news/setting-the-record-straight-on-kosher-slaughter/>.

clear when reading the numerous Biblical and Talmudic provisions that provide guidelines on man's dealings and interactions with animals that the authors of those texts have the utmost concern for kindness and compassion to animals."⁴²

3. *Judaism and Vegetarianism*

Throughout the centuries, some notable Jewish authorities have interpreted the commandments relating to kindness to animals as a sign that, ideally, Jews should be vegetarians. In the creation story in the Book of Genesis, after God created Adam, the first man, the Bible recounts God instructing Adam what he may and may not eat: "Behold, I have given you [mankind] all seed-bearing herbage that is on the face of the entire land, and every tree that bears fruit; they will be your food."⁴³ Only after the story of Noah and the flood, over sixteen-hundred (1600) years later, does God permit humankind to eat meat: "Every moving thing that lives will be for you for food, like green vegetation I have given you everything."⁴⁴

In the fifteenth century, Rabbi Yosef Albo asserted that God's original instruction to Adam in the Genesis creation story to keep a strictly vegetarian diet constituted the "original . . . plan . . . that man should refrain from killing and eating meat."⁴⁵ Around the same time, Rabbi Solomon Ephraim Lushitz of Prague, better known as the Keli Yakar, advocated a similar proposition: "What was the necessity for the entire procedure of ritual slaughter? For the sake of self-discipline, it is far more appropriate for man not to eat meat . . ."⁴⁶

Perhaps the most famous Jewish mystic, Rabbi Isaac Luria, espoused a similar philosophy in the 1500s, arguing that humans will return to the vegetarian diet that Adam maintained in the Garden of

42. Michelle Hodkin, *When Ritual Slaughter Isn't Kosher: An Examination Of Shechita And The Humane Methods Of Slaughter Act*, 1 J. ANIMAL L. 129, 136 (2005).

43. *Genesis* 1:29.

44. *Genesis* 9:3.

45. Davidson, *supra* note 21.

46. ABRAHAM CHILL, *THE COMMANDMENTS AND THEIR RATIONALE* 400 (Urim Pub. 2d ed. 2000).

Eden at the time of the coming of the messiah.⁴⁷ Similarly, Rabbi Kook viewed the extensive regulations involving kosher slaughter techniques as a reprimand meant to lead people away from eating animals, and also asserted that in the messianic time humanity would become vegetarian.⁴⁸ While current Jewish authorities are in agreement that the world is not currently in the messianic state, prominent Rabbis, such as Sir Jonathan Sacks, the former Chief Rabbi of England, and Rabbi David Rosen, former Chief Rabbi of Ireland, are vegetarians.⁴⁹

C. Arguments against Ritual Slaughter

Animal rights activist groups argue that governments should prohibit ritual slaughter because the process causes unnecessary suffering to animals.⁵⁰ The Atheist Foundation of Australia, for example, stated that ritual slaughter is “yet another example of religious thinking and superstition actively causing suffering, and inhibiting progress in society.”⁵¹ The National Secular Society has proclaimed: “animals should not be made to suffer because of

47. See generally Schwartz, *supra* note 31. This idea that humanity would return to a vegetarian diet in the messianic future had previously been stated by some prominent medieval Jewish thinkers, including Rabbi Isaac Arama, author of *Akaydas Yitzchok*, and Rabbi Joseph Albo, author of *The Book of Fundamentals*. See *id.*

48. *Id.*

49. Davidson, *supra* note 21.

50. See, e.g., Naomi Phillips, *Response From The British Humanist Association To The Defra Consultation On 'The Proposal For A Council Regulation On The Protection Of Animals At The Time Of Killing,'* BRIT. HUMANIST ASS'N (April 2009), http://www.humanism.org.uk/_uploads/documents/BHA-Response-to-Defra-consultation-on-animal-welfare-at-time-of-slaughter.pdf (“We believe that the case against allowing religious methods of slaughter without prestunning is overwhelming. The evidence shows that slaughter without pre-stunning undoubtedly means a far greater degree of pain, suffering and distress which does not occur in the properly stunned animal.”) (citation omitted).

51. *Religious Slaughter Ritual Must Be Challenged*, ATHEIST FOUNDATION OF AUSTRALIA, INC. (May 31, 2011, 9:00 AM), <http://www.atheistfoundation.org.au/media-releases/religious-slaughter-ritual-must-be-challenged> (“Halal stipulates that the animal must be slaughtered while it is conscious. It is the reason most of the suffering is inflicted. If stun guns were allowed (as is practiced in Australia) then much unnecessary suffering would be avoided.”).

centuries-old religious practices.”⁵² Furthermore, the British Humanist Association (“BHA”) has argued that because Judaism and Islam do not mandate that the members of their faith eat meat, “common morality” dictates that, even if observant Jews and Muslims enjoy eating meat, they should abstain entirely, because in order for them to be allowed to eat meat, the animals must experience immense pain.⁵³ The BHA has also suggested that, in light of modern science and societal trends, religious leaders should reinterpret the requirements for ritual slaughter and re-examine whether such laws remain necessary today.⁵⁴

As an alternative to ritual slaughter, animal rights groups advocate the practice of stunning an animal to reduce the amount of pain felt by animals when slaughtered. Animal rights groups rely on scientific studies to advocate that stunning is a less painful alternative to ritual slaughter. For example, in 2004, the Scientific Panel on Animal Health and Welfare published findings relating to the pain felt by animals by both the practice of stunning and ritual slaughter.⁵⁵ The panel concluded that animals suffer more pain when ritually slaughtered than they do when stunned first:

The animals which are slaughtered have systems for detecting and feeling pain and, as a result of the cut and the blood loss, if not stunned, their welfare will be poor because of pain, fear and

52. Harold Hillman, *There Will Be Blood*, NEW HUMANIST, Sept.-Oct. 2010, at 12, 13, available at <http://newhumanist.org.uk/2382/there-will-be-blood>; see also *Religious Non-Stun Slaughter of Animals*, NAT’L SECULAR SOC’Y, <http://www.secularism.org.uk/religious-slaughter-of-animals.html> (last visited Oct. 11, 2011).

53. See generally Phillips, *supra* note 50, § 3.3 at 2.

54. *Id.* “The history of religion is littered with similar rules that have over time been neglected and abandoned.” *Id.* The association also advocates that, in the event that government officials refuse to completely ban ritual slaughter, a labeling system should be in place to identify meat that has been killed without being stunned first, in order for consumers to make educated choices about their food consumption. *Id.* Their primary position, however, is that all ritual slaughter exceptions be banned completely. *Id.* at 4.

55. Dr. Harry J. Blokhuis et al., *Opinion Of The Scientific Panel On Animal Health and Welfare On A Request From The Commission Related To Welfare Aspects Of The Main Systems Of Stunning And Killing The Main Commercial Species Of Animals* 1, 1-29, THE EFSA J. (June 15, 2004), <http://www.efsa.europa.eu/de/scdocs/doc/45.pdf>.

other adverse effects. The cuts which are used in order that rapid bleeding occurs involve substantial tissue damage in areas well supplied with pain receptors. . . . Without stunning, the time between cutting through the major blood vessels and insensibility, as deduced from behavioral and brain response, is up to 20 seconds in sheep . . . up to 2 minutes in cattle, up to 2 ½ or more minutes in poultry.⁵⁶

Additionally, in 2009, researchers at Massey University in New Zealand attempted to reproduce ritual slaughter methods in calves: “The calves were first anesthetized so although their pain responses could be detected, they wouldn’t actually feel anything. They were then subjected to a neck incision. A pain response was detected for up to two minutes following the cut, although calves normally fall unconscious after 10 to 30 seconds.”⁵⁷ The researchers then stunned the calves five seconds after cutting their throats, and the pain signal ceased.⁵⁸ These results convinced the researchers that stunning was a more humane method than ritual slaughter.⁵⁹

As discussed below, the philosophical contemplation and scientific study of slaughter and stunning techniques have led to legal enactments spanning both continents and centuries.

56. *Id.* § 1.1 at 5. At least one animal rights group relies directly on these findings. See *Ritual Slaughter in Australia*, ANIMALS AUSTRALIA (June 23, 2011), http://www.animalsaustralia.org/features/ritual_slaughter.php.

57. Tim Edwards, *Proof Of Pain Leads To Calls For Ban On Ritual Slaughter*, THE WEEK (Oct. 16, 2009), available at <http://www.theweek.co.uk/politics/19151/proof-pain-leads-calls-ban-ritual-slaughter>.

58. *Id.*; see also Albert Sikkema, *Scientists Confirm: Ritual Slaughter Hurts*, RESOURCE (June 23, 2011), available at <http://resource.wageningenur.nl/en/show/Scientists-confirm-ritual-slaughter-hurts.htm> (“In a . . . report of last year, nine researchers . . . concluded that throat cutting without anesthetic carried the highest risks of animals suffering.”).

59. Edwards, *supra* note 57.

III. LEGAL DEVELOPMENTS IN THE WESTERN WORLD RELATING TO RITUAL SLAUGHTER REGULATION

A. *Early Cultural Hostility toward Ritual Slaughter*

1. *Switzerland*

In 1893, Switzerland enacted a law banning the “bleeding to death of animals which have not been stunned first,” thus outlawing all ritual slaughter.⁶⁰ In 2002, the Swiss Parliament considered amending the law to allow for ritual slaughter.⁶¹ The proposal provoked a wave of opposition from animal rights and consumer groups, veterinary surgeons, and farmers, who argued that ritual slaughter inflicted undue suffering on animals; the government ultimately decided to maintain the ban.⁶² In Switzerland today, although imported kosher and halal meat are available in the country, “[a]ttempts to bring about the prohibition of importation have been made throughout the years.”⁶³

2. *Norway and Sweden*

Similar legislation banning slaughter without stunning animals first was passed in Norway in 1929 and Sweden in 1937.⁶⁴ Some

60. *Switzerland: International Religious Freedom Report 2003*, U.S. DEPT. OF STATE, <http://www.state.gov/g/drl/rls/irf/2003/24436.htm> (last visited Oct. 11, 2014); see also Pascal Krauthammer, *L'abattage Rituel des Animaux*, CHOISIR 14-15 (June 2002), available at http://www.choisir.ch/IMG/pdf/L_abattage_rituel_des_animaux.pdf; see generally SWISS CONSTITUTION May 29, 1874, available at http://www.servat.unibe.ch/icl/sz01000_.html (last visited Oct. 11, 2014).

61. Golan, *supra* note 7, at 14; Krauthammer, *supra* note 60, at 14, 15. The current Swiss law is codified in the Law for the Protection of Animals (“LPA”), which was promulgated on September 3, 1978. The Swiss Federal Act on Animal Protection of March 9, 1978 does not allow for any exemptions for religious rituals. See [Swiss Federal Act on Animal Protection of March 9, 1978] March 9, 1978.

62. Golan, *supra* note 7, at 15.

63. *Id.*

64. Pablo Lerner & Alfredo Mordechai Rabello, *The Prohibition of Ritual Slaughtering (Kosher Shechita And Halal) and Freedom of Religion of Minorities: 'His Tender Mercies Are Over All His Works'*, 22 J. LAW & REL. 1, 15 (2007) (citing Macellazioni Rituali e Sofferenza Animale (Comitato Nazionale per la Bioetica 2003)); see also Manfred Gerstenfeld, *Norway: Extreme Expressions of*

believe that these laws were influenced by nineteenth century objections to Jewish ritual slaughter, and the belief that such slaughter caused unreasonable pain to animals.⁶⁵ Currently in Sweden, the slaughter of un-stunned animals is “prohibited in all circumstances except in extreme emergencies.”⁶⁶ Additionally, Sweden is the only member of the European Union that completely forbids ritual slaughter.⁶⁷ In Norway, although section 12 of the current Norwegian Animal Welfare Act requires animals to be stunned before being killed, the Norwegian government, however, does not ban importing kosher meat in order to provide for its religious minorities.⁶⁸

B. General Acceptance of Ritual Slaughter

1. Germany and Poland

The debate in Germany over ritual slaughter is an emotionally charged discussion stemming from historical atrocities committed during the Holocaust. One of the reasons that the debate over ritual slaughter often becomes emotionally charged is because the Nazis outlawed kosher slaughter as part of their anti-Semitic legislation.⁶⁹

Anti-Israeli and Anti-Semitic Attitudes, INSTITUTE FOR GLOBAL JEWISH AFFAIRS (Nov. 7, 2007), <http://www.jcpa.org/JCPA/Templates/ShowPage.asp?DBID=1&TMID=111&LNGID=1&FID=624&PID=0&IID=1919> (“After a heated debate in the parliament in 1929, it was decided to ban *shechita* by an 88-21 vote . . . Jens Hunsleid . . . who later became . . . prime minister . . . said: ‘We have made no commitments to hand over our animals to the cruelties of the Jews, we have not invited the Jews to our country, and we have no commitments to provide animals for their religious orgies.’” (citing VEBJØRN K. SELBEKK, *JØDEHAT PÅ NORSK-FRA EIDSVOLLSMENNENE TIL BOOT BOYS 45* (Skjetten: Hermon Forlag 2001))); Lotta Berg, *Shechita Of Electrically Stunned Cattle In Sweden 1952-1979*, SWEDISH ANIMAL WELFARE AGENCY 99 (2011), <http://www.scribd.com/doc/46683145/Stunning-Shechita> (“In 1937, a legal act aimed at protecting animal welfare at slaughter was launched in Sweden banning slaughter without stunning (SFS 1937:313)”).

65. Lerner & Rabello, *supra* note 64.

66. ASA LEXMON, SWEDEN: LIVESTOCK AND PRODUCTS: ANIMAL WELFARE LEGISLATION IN SWEDEN: 2005, USDA FOREIGN AGRIC. SERV. 4 (2005).

67. Golan, *supra* note 7, at 7.

68. See Norwegian Animal Welfare Act (2010).

69. See *In Dutch Schecita Ban*, *supra* note 7 (“[T]he prospect of a ban is especially disturbing for Holocaust survivors because the Nazis imposed a ban on

In response, modern German law carves out a special exception to stunning regulations based on religious rights.⁷⁰ It is fair to say that Germany is careful to allow kosher food to be produced and sold throughout the country, even in the face of animal rights protests, because of its sensitive history of anti-Semitism and genocide.⁷¹

Poland, like Germany, experienced a demographic metamorphosis after the Holocaust, as the Nazis had built six concentration camps in Polish territory, including Auschwitz.⁷² Before the Holocaust over three million Jews lived in Poland; today there remain somewhere between six and ten thousand.⁷³ There are also about 25,000 Muslims in Poland today.⁷⁴

shechita as one of their first acts after invading the Netherlands in 1940.”); *see also* Sekularac, *supra* note 5 (“The very fact that there is a discussion about this is very painful for the Jewish community . . . Those who survived the [second world] war remember the very first law made by the Germans in Holland was the banning of shechita.”); Golan, *supra* note 7, at 32-36.

70. Paige M. Tomaselli, *International Comparative Animal Cruelty Laws*, ANIMAL LEGAL & HIST. CTR. (2003), available at <http://animallaw.info/articles/ddusicacl.htm>. According to Article 4a of the German Animal Welfare Act, warm-blooded animals may only be slaughtered if they are first stunned; however, the same Article provides for an exception for ritual slaughter “only where [it is] necessary to meet the requirements of members of religious communities . . . whose mandatory rules require ritual slaughter and prohibit consumption of meat of animals not slaughtered in this way.” *See* VERORDNUNG [Federal Act on Animal Welfare], [BANZ] at 1094 (Ger.), available at <http://animallaw.info/nonus/statutes/stdeawa1998.htm> (last visited Oct. 10, 2011).

71. *See* Golan, *supra* note 7, at 36 (“The better position of the Jewish community, especially in regard to ritual slaughter, can only be explained as a reaction to the country’s Nazi past.”); *see also* Bundesverfassungsgericht [BVerfG] [Federal Constitutional Court] Jan. 15, 2002, 104 Entscheidungen des Bundesverfassungsgerichts [BVerfGE] 337 (Ger.) (finding German ritual slaughter law demanding animals be stunned first is constitutional, but state of Hesse was also obligated to grant an exception to the Muslim petitioner); *see* Claudia E. Haupt, *Free Exercise Of Religion And Animal Protection: A Comparative Perspective On Ritual Slaughter*, 39 GEO. WASH. INT’L L. REV. 839, 856-73 (2007) (discussing the background, findings, and implications of this decision).

72. *Concentration Camps Maps: Extermination Camps in Poland*, JEWISH VIRTUAL LIBRARY, <http://www.jewishvirtuallibrary.org/jsource/Holocaust/extcamps.html> (last visited Dec. 15, 2014).

73. Don Snyder, *Poland Poll Reveals Stubborn Anti-Semitism Amid Jewish Revival Hopes*, THE JEWISH DAILY FORWARD (Jan. 18, 2014), <http://forward.com/articles/191155/poland-poll-reveals-stubborn-anti-semitism-amid-je/?p=all>; JTA, *Poland To Run Out Of Kosher Meat In A Month, Following*

The Polish Constitutional Court originally banned ritual slaughter in Poland, beginning January 1, 2013 when it struck down an exception to the mandatory pre-slaughter stunning law that had exempted Jewish and Muslim ritual slaughter.⁷⁵ Subsequently, the Sejm (the Polish Parliament) declared the legality of Jewish ritual slaughter, and Poland's Jewish community filed a complaint, asserting that the ban contravened the guarantees of religious freedom granted under the Polish Constitution and the European Convention of Human Rights.⁷⁶ The court overturned the ban on ritual slaughter on December 10, 2014; in the final verdict, Judge Maria Gintowt-Jankowicz noted, "The constitution guarantees the freedom of religion . . . to religious activities which differ from conventional behavior . . . including activities that are perhaps unpopular among the majority of society."⁷⁷

2. *The United States*

In the United States, the killing of animals for consumption purposes is regulated by the Humane Slaughter Act.⁷⁸ The Act notes that the "policy of the United States" is "the slaughtering of livestock and the handling of livestock in connection with slaughter shall be carried out only by humane methods."⁷⁹ At the end of the statute, section 1902 outlines two "[h]umane methods" of acceptable slaughter.⁸⁰ The first category includes animals that "are rendered insensible to pain by a single blow or gunshot or an electrical,

Ban On Ritual Slaughter, HAARETZ (Apr. 8, 2013, 10:00 PM), <http://www.haaretz.com/jewish-world/jewish-world-news/poland-to-run-out-of-kosher-meat-in-a-month-following-ban-on-ritual-slaughter-1.514394>.

74. *Poland To Run Out Of Kosher Meat In A Month*, *supra* note 73.

75. JTA, *Poland To Hold Hearing On Ritual Slaughter Ban*, HAARETZ (Oct. 27, 2014, 5:23 PM), <http://www.haaretz.com/jewish-world/jewish-world-news/1.622988>.

76. *Id.*; *Polish Court Overturns Ban on Ritual Slaughter*, *supra* note 1.

77. *Poland's Constitutional Court Overturns Ban Of Ritual Slaughter Of Animals In The Country, 'Important Day' For European Jews*, EUROPEAN JEWISH PRESS (Dec. 10, 2014, 11:20), http://ejpress.org/index.php?option=com_content&view=article&id=50970&catid=11.

78. Humane Methods of Livestock Slaughter, 7 U.S.C. §§ 1901-1907 (1970).

79. *Id.* § 1901.

80. *Id.* § 1902.

2014] REGULATION OF RITUAL SLAUGHTER IN THE WESTERN WORLD 95

chemical or other means that is rapid and effective, before being shackled, hoisted, thrown, cast, or cut.”⁸¹ The second, equally legitimate method of slaughter that the statute categorizes as “humane” is:

By slaughtering in accordance with the ritual requirements of the Jewish faith or any other religious faith that prescribes a method of slaughter whereby the animal suffers loss of consciousness by anemia of the brain caused by the simultaneous and instantaneous severance of the carotid arteries with a sharp instrument and handling in connection with such slaughtering.⁸²

Thus, by definition, the Humane Slaughter Act categorizes both pre-slaughter stunning, and Jewish ritual slaughter, as humane methods of slaughter.

The Humane Slaughter Act is not without controversy. In *Jones v. Butz*,⁸³ six individuals and three organizations dedicated to “the principle of the humane treatment of animals” and “the principle of the separation of church and state” brought suit in a federal district court, challenging the provisions relating to the ritual slaughter allowances under the Humane Slaughter Act.⁸⁴ Specifically, the plaintiffs did not challenge the actual act of ritual slaughter, but rather the procedures that some factories were employing before the slaughter was taking place.⁸⁵ In fact, the plaintiffs conceded that a cut to the throat is in fact humane.⁸⁶

81. *Id.* § 1902(a).

82. *Id.* § 1901(b).

83. *Jones v. Butz*, 374 F. Supp.1284 (S.D.N.Y 1974).

84. *Id.* at 1285-87. As the court explained:

The crux of [the plaintiffs’] complaint rests upon the proposition that in failing to require that the animal be rendered insensible to pain before the handling process, and thus before it is shackled and hoisted, the provisions permitting ritual slaughter are offensive to and inconsistent with the humane purposes of the Act and have a special religious purpose in contravention of the First Amendment.

Id. at 1289-90.

85. *Id.* at 1290.

86. *Id.* at 1291.

The court ultimately held that the plaintiffs' challenge lacked merit, and analyzed the legislative history of the Humane Slaughter Act, particularly its ritual slaughter provision:

Congress considered ample and persuasive evidence to the effect that the Jewish ritual method of slaughter, and the handling preparatory to such slaughter, was a humane method. It formulated a general policy after evaluating the abundant evidence before it. Congress did not create a religious preference, nor did it create an exception to any rule. The interveners have made a persuasive showing that Jewish ritual slaughter, as a fundamental aspect of Jewish religious practice, was historically related to considerations of humaneness in times when such concerns were practically non-existent . . . the proper forum for the plaintiffs is in Congress and not the courts.⁸⁷

3. *The United Kingdom*

Current law in the United Kingdom requires all animals to be stunned prior to being slaughtered for consumption, but contains an exception for kosher and halal meat.⁸⁸ Many animal welfare organizations in the UK have opposed the ritual slaughter exception, and numerous bills have been introduced in Parliament seeking to eliminate or restrict ritual slaughter.⁸⁹ All of these attempts have been unsuccessful.⁹⁰

In 2003, the Farm Animal Welfare Council ("FAWC"), an independent advisory group, urged the British government to ban halal and kosher slaughter methods, claiming that these methods cause "severe suffering" to animals.⁹¹ Other animal welfare groups, such as Compassion in World Farming, supported FAWC's suggestion.⁹² The Humanists movement also backed the suggestion, calling for the elimination of ritual slaughter.⁹³ The Humanists' spokesman Roy

87. *Id.*

88. *Halal and Kosher Slaughter 'Must End'*, *supra* note 7.

89. Golan, *supra* note 7, at 39.

90. *Id.*

91. *Halal and Kosher Slaughter 'Must End'*, *supra* note 7.

92. *Id.*

93. *Id.*

2014] REGULATION OF RITUAL SLAUGHTER IN THE WESTERN WORLD 97

Saich commented that ethical values should be prioritized over religious values, that “[t]here is no imperative for Muslims or Judaists [sic] to eat meat produced in this manner,” and that “[t]here is no reason why they should not simply abstain from eating meat altogether if they do not wish to eat the same meat as the rest of us.”⁹⁴

Many Jews and Muslims in the United Kingdom have argued that such suggestions and statements are really a cover for deeper societal issues concerning the treatment of religious minorities in British society. One Muslim in London stated, “[e]verything about the Islamic way of life is under attack so it makes you wonder if this is actually about humanity to animals.”⁹⁵

4. France

In France, ritual slaughter is generally protected for both Jews and Muslims.⁹⁶ One examiner suggested that the “relatively tolerant attitude” of the French government “can be explained by France’s nature as a secular state, and by the early and large-scale presence of Jews and Muslims in the country.”⁹⁷

French law mandates that slaughter must be conducted in slaughterhouses by slaughterers.⁹⁸ This mandate was approved by the Minister of Agriculture upon a proposal from the Minister of the Interior.⁹⁹ For the Jewish practice of *shechita*, the French government has granted exclusive approval to authorize kosher slaughterers to the Joint Rabbinical Committee (“JRC”).¹⁰⁰ The JRC is a part of the Jewish Consistorial Association of Paris (“ACIP”), an institution originally established by Napoleon in 1808.¹⁰¹ This approval has been a serious cause of controversy in France.¹⁰²

94. *Id.*

95. *Id.*

96. Ritual slaughter is regulated by Decree no. 80-791 of January 10, 1980 and Decree no. 97-703 of January 10, 1997. Golan, *supra* note 7, at 25.

97. *Id.*

98. *Id.*

99. Golan, *supra* note 7, at 25.

100. *Id.*

101. *Id.*

102. *See* Cha’are Shalom Ve Tsedek v. France, 2000-VII Eur.Ct. HR. 232, available at www.echr.coe.int (last visited Nov. 10, 2011).

5. *Italy*

Italy also permits ritual slaughter. On September 19, 2003, the National Commission on Bioethics released a document entitled “Ritual Slaughter and Suffering,” which explored the issues and ultimately advocated for a tolerant policy toward ritual slaughter.¹⁰³ The introduction to the document makes clear that the aim of the Commission is to examine the practice of ritual slaughter to determine whether it results in increased pain and suffering.¹⁰⁴ It also articulates the need to achieve a “balance between the respect of a few universal values and the attention given to the peculiarities of each individual culture.”¹⁰⁵ The report goes on to describe the findings pertaining to ritual slaughter:

[I]n ritual slaughtering there is no intention to be cruel with animals: on the opposite, avoiding any useless suffering has always been a target . . . ritual slaughtering is, for the Islamic and Jewish culture and religion, much more than a mere dietary practice whereas it constitutes a true element of worship.¹⁰⁶

The report also acknowledged that human beings have specific responsibilities with respect to animals, and that ritual slaughtering also involves a relationship with religious freedom.¹⁰⁷ “Religious freedom,” according to the Commission, “not only consists of acts of worship but also of behaviors and activities that followers deem to be implicitly requested by the rules.”¹⁰⁸ With these principles in mind, the report then notes that there is no definite method to measure the pain felt by an animal being slaughtered, and therefore it would be disingenuous to draw any concrete conclusions.¹⁰⁹

103. See Lerner & Rabello, *supra* note 64, at 15; *Ritual Slaughtering and Animal Suffering*, COMITATO NAZIONALE PER LA BIOTICA (Sept. 19, 2003), http://www.governo.it/bioetica/eng/Ritualslaughtering_AnimalSuffering.pdf.

104. *Ritual Slaughtering and Animal Suffering*, *supra* note 103, at 4.

105. *Id.*

106. *Id.* at 6.

107. *Id.* at 7.

108. *Id.*

109. *Id.* at 9.

2014] REGULATION OF RITUAL SLAUGHTER IN THE WESTERN WORLD 99

The Commission suggests a balancing test approach, which allows religious exceptions to animal slaughtering while attempting to minimize animal suffering and continuing research “to achieve conclusions in both the scientific and religious fields.”¹¹⁰ As one article summarized the report, “[b]ecause, in the Commission’s view, there are no currently reliable means to determine which slaughtering methods result in what amounts of suffering by animals, it is impossible for nation-states to make unequivocal statements on these matters.”¹¹¹ A prominent American-based kosher certification agency also expressed approval of the report’s findings, stating that the Commission’s decision “should have . . . notable influence in guiding the legislative and executive authorities” involving policies aimed at regulating ritual slaughter.¹¹²

C. Recent Global Changes Accepting the Practice of Ritual Slaughter, and the Subsequent Backlash

As of January 2013, all European Union member states must allow kosher ritual slaughter in their territories.¹¹³ Conversely, the government of New Zealand recently adopted a policy banning *shechita* and requiring all animals to be stunned prior to slaughter.¹¹⁴ This change in policy was a surprise to many, especially since the Prime Minister of New Zealand is Jewish.¹¹⁵ In outlawing ritual slaughter, Agriculture Minister David Carter rejected the recommendations of his advisors that Jewish ritual slaughter be exempted from the prohibition.¹¹⁶ The National Animal Welfare

110. *Id.* at 10.

111. Lerner & Rabello, *supra* note 64, at 17.

112. Rav Riccado Di Segni, *Jewish Ritual Slaughter: A Three-Thousand Year Old Method That Respects Animal Suffering*, OU KOSHER (Jan. 4, 2005), <http://oukosher.org/blog/kosher-in-the-factory/jewish-ritual-slaughter-a-three-thousand-year-old-method-that-respects-animal-suffering/>. This seems to be the only voiced opinion from an English-speaking association pertaining to the Commission’s findings.

113. European Parliament Legislative Resolution, *supra* note 2, at 2, 16.

114. Gedalyahu, *supra* note 4; *see generally* Animal Welfare (Commercial Slaughter) Code of Welfare, *supra* note 4.

115. Gedalyahu, *supra* note 4.

116. *Id.*

Advisory Committee explained that although it prefers that all animals in the country be stunned before being killed, “banning Jewish ritual slaughter may violate the country’s Bill of Rights.”¹¹⁷ Nevertheless, the Government of New Zealand decided to prohibit ritual slaughter.¹¹⁸ The prohibition ultimately passed because the Government wanted to promote what it believed to be “a somewhat more humane method of slaughter.”¹¹⁹

The implications of this regulation are more far-reaching in New Zealand than in other countries that have also prohibited ritual slaughter. Although kosher beef can be imported into New Zealand, due to unrelated quarantine restrictions, the government restricts all chickens from being imported into New Zealand.¹²⁰ Thus, these quarantine regulations effectively preclude New Zealand’s observant Jewish citizens from eating chicken at all.¹²¹ The managing partner of FoodLegal commented on these new restrictions, exclaiming, “The New Zealand authorities are demonstrating a hostile lack of understanding of Jewish culture, and of kosher slaughter practices in particular . . . The effect will be to place pressures on observant New Zealand Jews to leave their country.”¹²²

More recently, hostility has also increased in the Netherlands, where the lower house of Parliament “passed a bill banning the slaughter of livestock without prior stunning,” and removed the exemption that had allowed for Jewish and Muslim ritual slaughter.¹²³

117. *Id.* Section 13 of the New Zealand Bill of Rights states, “Everyone has the right to freedom of thought, conscience, religion, and belief, including the right to adopt and to hold opinions without interference,” and Section 15 guarantees, “Every person has the right to manifest that person’s religion or belief in worship, observance, practice, or teaching, either individually or in community with others, and either in public or in private.” New Zealand Bill of Rights Act of 1990 (N.Z.).

118. Animal Welfare (Commercial Slaughter) Code of Welfare, *supra* note 4.

119. Mac McDaniel, *New Zealand Bans Kosher Slaughter*, CARE2 (June 11, 2010, 1:55 AM), <http://www.care2.com/causes/new-zealand-bans-kosher-slaughter.html>.

120. Joe Lederman, *NZ’s Ban On Kosher Meats Is A Disgrace*, AFN: THOUGHT FOR FOOD (June 3, 2010), <http://www.ausfoodnews.com.au/2010/06/03/nzs-ban-on-kosher-meats-is-a-disgrace.html>.

121. *Id.*

122. *Id.*

123. Toby Sterling, *Religious Animal Slaughter Ban Passes in The Netherlands*, THE HUFFINGTON POST (June 28, 2011, 5:12 AM),

2014] REGULATION OF RITUAL SLAUGHTER IN THE WESTERN WORLD 101

The following year, before the bill became law, the Senate rejected the bill by 51 votes to 21, preserving the rights of Jews and Muslims to slaughter according to their religious practices.¹²⁴ By contrast, shortly thereafter, Denmark passed a law mandating that all slaughterhouses stun animals before killing them, with no exceptions.¹²⁵

IV. THE CURRENT DEBATE AND STEPS FOR THE FUTURE

A. Animal Rights Activists' Efforts and Philosophy

Animal rights activists should be commended for displaying a genuine interest in lobbying the government to reduce animal suffering. A philosophy driving most animal rights activists is one of care for all living things that feel pain, not just humans. These activists invest a significant amount of time and money to a cause they feel passionate about because they envision and hope to achieve a more compassionate society, and not necessarily to gain a benefit for themselves.¹²⁶

B. Weaknesses of the Animal Rights Activists' Position on Ritual Slaughter

While animal rights activists' efforts are commendable, there appears to be two primary difficulties with the animal rights activists' position: their misunderstandings of both the religious individuals' needs, and the needs of animals.

http://www.huffingtonpost.com/2011/06/28/religious-animal-slaughter-ban-netherlands_n_885842.html.

124. Dr. Ruchama Weiss & Rabbi Levy Brackman, *Dutch Upper House Rejects Ban on Ritual Slaughter*, YNETNEWS (June 20, 2012), <http://www.ynetnews.com/articles/0,7340,L-4244734,00.html>.

125. *Denmark Bans Religious Slaughter*, NAT'L. SECULAR SOC'Y. (Feb. 14, 2014, 4:52 PM), <http://www.secularism.org.uk/news/2014/02/denmark-bans-religious-slaughter>.

126. It may be the case that animal rights activists also seek personal benefit. They may be trying to assuage their own guilt, or may be seeking a less coarse human society in which they can more comfortably exist. However, it seems that any possible self-interest they may have in the matter of ritual slaughter is less direct than the religious individuals on the other side of the debate, who directly benefit from having meat available for consumption that meets their religious needs.

*1. Animal Rights Activists' Position toward
Religion and Religious Individuals*

As stated above, animal rights activists have suggested that governments should completely prohibit ritual slaughter. They further suggest that religious individuals, negatively affected by these regulations, should either alter their religion or alter their residence. Many religious individuals and groups are offended when non-believers, especially individuals ignorant of the minute details of religious law, attempt to persuade religious leaders to alter their interpretation of the holy texts. Jews have been adhering to the same set of complex rules regarding methods of ritual slaughter and animal welfare for thousands of years. It seems ignorant, or perhaps even disingenuous, for an outsider who has not studied and implemented these laws to suggest that these religious leaders need to re-evaluate the way the texts have always been interpreted, and change their established religious practices.

Furthermore, it is insensitive for animal rights activists to suggest that religious individuals emigrate from their countries if they want to continue their dietary practices. Religious individuals do not necessarily view their dietary practices as a choice. In such a case, they are not treated equally as everyone else in a society, who can eat readily available stunned meat. Equal treatment would involve religious individuals having access to their ritually slaughtered meat in the same way that others have access to stunned meat.

The alternative to completely precluding observant members of society any access to ritually slaughtered meat in a country is to ban ritual slaughter in that country, but allow the importation of ritually slaughtered meat. This proposal, however, while attempting to strike a middle ground, is philosophically problematic. A country that bans ritual slaughter makes a clear statement that it is immoral to kill an animal in this fashion. But, by allowing the import of ritually slaughtered meat, the country is sending a conflicting message; namely that it is acceptable to harm animals with the practice of ritual slaughter, so long as the harm occurs outside of the given territory.

From a philosophical perspective, the act of ritual slaughter should either be unacceptable, and therefore individuals should not be able to benefit from it, or it should be an acceptable, allowed practice. To draw such a distinction based solely on arbitrary territorial lines

does not address the actual issue. Additionally, by allowing imported ritually slaughtered meat, the same amount of animals will likely suffer and be killed by the process of ritual slaughter, only in a different location. Therefore, the treatment of animals will either remain unaffected, and animals will continue to suffer in a completely unregulated, or substantially less regulated, jurisdiction that allows ritual slaughter.

2. *Animal Rights Activists' Position toward Animals Themselves*

Perhaps the most troubling aspect of the animal rights activists' movement to prohibit ritual slaughter is that true animal rights activists should view such a policy as *not* doing enough to protect animal life. A true "party for the animals" should advocate a complete end to all forms of animal killing, not simply an end for what it perceives to be the least humane forms of animal slaughter.¹²⁷ No one would argue that it is morally acceptable to kill an innocent person as long as the person feels no pain in the process. True animal rights activists should lobby their governments to adopt legislation mandating completely vegetarian societies, and also educate the public about the benefits of a vegetarian diet for humans, animals, and the planet at large.

If entire societies attempt to become completely vegetarian, religious groups may react less negatively to slaughter restricting legislation. In such a case, religious groups would not be singled out as the cause of undo harm to innocent animals. Rather, the line would be drawn between meat-eaters and non-meat-eaters, not between society at large and a few religious groups. This re-focus may serve to alleviate most of the tension that religious groups feel when they perceive that they are being targeted not because of a genuine interest

127. Animal rights activists have different visions of a perfect society. Some activists clearly envision a day when humanity will be entirely vegetarian. *See, e.g.,* McDaniel, *supra* note 119. However, as described above, the animal rights parties that have passed or proposed legislation banning ritual slaughter have advocated not for a vegetarian society, but rather only for a meat-eating society void of ritual slaughter. *See supra* Part II.

in animal well-being, but rather simply because of their religious heritage.¹²⁸

Furthermore, as described above, there is a strong argument within Jewish philosophy for adhering to a vegetarian diet.¹²⁹ If an entire society decides to become vegetarian, then perhaps the observant members of that society would also transition to a vegetarian diet, viewing the move by the greater society as representative of a shift in global human consciousness and a move closer to the messianic era. The “temporary concession” that God had granted humanity, the right to eat meat, would perhaps no longer be seen as necessary in the eyes of the religious if humanity itself chooses to adopt a meat-free diet.

C. *Proposing a Solution in the Face of Conflicting Evidence*

In the face of conflicting evidence, it is impossible to determine with a reasonable degree of certainty whether ritual slaughter actually causes more pain to animals than stunning. Therefore, liberal governments should take the same position as the Italian Commission and the European Union. Both allow ritual slaughter under regulated conditions, so long as credible scientific evidence continues to yield mixed results.¹³⁰

In fact, scientific evidence focusing on stunning procedures reveals that stunning may actually cause even more significant pain than ritual slaughter.¹³¹ Generally, animal rights activists overlook the possibility that stunning has the potential to cause any pain to animals; they simply assume that stunning is synonymous with humane

128. See, e.g., *In Dutch Schechita Ban*, *supra* note 7 (“[F]or many in the Jewish community, the most disconcerting element of the drive to outlaw shechita isn’t so much the legality of kosher slaughter per se but the symbolism of Holland’s move to outlaw a basic element of Jewish life.”); Golan, *supra* note 7, at 4 (“Historically, the opposition to the practice was aimed at the Jewish communities in Europe, and was part of anti-Semitic and Nazi propaganda. Today, the same criticism is directed at the growing community of Muslims in Europe.”); *Halal and Kosher Slaughter ‘Must End’*, *supra* note 7 (“One worshipper at the Central London Mosque [said] . . . ‘Everything about the Islamic way of life is under attack so it makes you wonder if this is actually about humanity to animals.’”).

129. See *supra* Part I.

130. See *supra* Part II.

131. See, e.g., Sterling, *supra* note 123.

2014] REGULATION OF RITUAL SLAUGHTER IN THE WESTERN WORLD 105

treatment.¹³² However, there is currently no conclusive evidence that stunning renders an animal insensible to pain; rather, the evidence merely shows that stunning paralyzes the animal, preventing it from displaying any pain it feels.¹³³ In a significant percentage of cases, stunning methods involving captive bolt and electrical shock fail, resulting in substantial additional pain to the animals.¹³⁴ Before Dutch legislators decided to pass their regulations banning ritual slaughter, Rabbi Jonathan Sacks visited Holland, and presented evidence that in ten percent of the cases, “stunning is actually more painful than the ritual cutting of an animal’s throat.”¹³⁵ Similarly, according to the Humane Society of the United States, there has been “very little” research probing the effectiveness of the commonly used stunning procedures, and the evidence available dealing with birds “demonstrate[s] that the parameters used might not render birds immediately unconscious or may not stun them effectively.”¹³⁶ The Humane Society therefore concludes, “Because birds may experience electrically-induced paralysis, seizures, and cardiac arrest while still conscious and because stunning may be delayed and/or ineffective, the existing electrical water-bath stunning system in and of itself cannot be considered humane.”¹³⁷

Some may argue that the debate between humanistic and religious groups boils down to a fundamental and irreducible culture clash. Religious groups may never accept the premise that their methods of slaughter, which they believe to be conceived of by God, could be inhumane, while humanistic animal rights activists may never accept the premise that ancient religious rituals may be more than modern day stunning technology. Perhaps this culture clash is not irreducible,

132. See, e.g., *American Humane Association Endorses New Method of Controlled Atmosphere Stunning for Poultry as Humane*, AM. HUMANE ASS’N. (Sept. 7, 2010), <http://www.americanhumane.org/animals/animal-welfare-news/american-humane-association-endorses-new-method-of-controlled-atmosphere-stunning-for-poultry-as-humane.html>.

133. A GUIDE TO SHECHITA, *supra* note 8, at 9.

134. *Id.*

135. Gedalyahu, *supra* note 5.

136. *The Welfare of Birds At Slaughter*, THE HUMANE SOC’Y OF THE U.S. 5 (Nov. 2, 2009), http://www.fao.org/fileadmin/user_upload/animalwelfare/HSUS—The%20Welfare%20of%20Birds%20at%20Slaughter.pdf.

137. *Id.*

but in order for the different groups to see eye to eye, reform may have to begin from within one or both of these groups. Once each group can evaluate the issue objectively, perhaps then animal rights activists and religious individuals will be able to talk to each other.

In a recent article in *New Humanist: Ideas For Godless People*, Harold Hillman analyzes the evidence for and against ritual slaughter, noting that medical literature reveals that electric currents used for stunning cause pain to humans and animals, and concluding that stunning by means of electricity almost certainly causes pain to animals.¹³⁸ Additionally, Hillman notes that the scientific studies that have recently concluded that stunning is humane have failed to analyze whether animals are insensate after being stunned, or simply incapable of conveying their pain.¹³⁹ He ultimately concludes:

There is plenty of evidence . . . that an electrically stunned animal suffers more pain than a ritually slaughtered one. 'Shechita' and 'dhabihah' may be 'centuries-old religious practices,' but it does not necessarily follow that we should oppose their use today without first thoroughly reviewing the evidence. That is the rational approach that we, as humanists and secularists, should adopt, taking care not to be driven by any prejudices we may have against religion . . . it would be very sad if an alliance of well-meaning vegetarians, humanists and European lawmakers were to encourage the spread of cruel practices in the belief that they were being humane.¹⁴⁰

In the face of conflicting scientific evidence, the best advice for a liberal government would be to proceed with caution. Ritual slaughter should be permitted, with the burden on the government to prove that it is more harmful to animals than stunning before the government could outlaw the practice.¹⁴¹ The alternative, requiring concrete proof

138. Hillman, *supra* note 52. Hillman compares electric stunning in animals to electric torture practices against humans by totalitarian governments. *Id.*

139. *Id.*

140. *Id.*

141. Although scientific evidence may always conflict to a certain degree, at the current time, as described above, the evidence points in diametrically opposite directions, sometimes suggesting that ritual slaughter inflicts significantly more pain on animals, and sometimes suggesting that it significantly mitigates the pain that animals would feel if they were subjected to non-ritual practices such as stunning.

2014] REGULATION OF RITUAL SLAUGHTER IN THE WESTERN WORLD 107

from religious groups that their methods are more humane than stunning before allowing any ritual slaughter,¹⁴² places an unfair and unattainable burden on the individuals affected, and limits their freedom of religion solely on account of a scientific uncertainty.

V. CONCLUSION

More research is needed to attempt to determine more precisely how different methods of treatment affect the animals at issue. Only after such conclusions have been firmly established can governments attempt to ask the next round of questions, namely, how much additional pain would be acceptable? If further advances in scientific research ultimately reveal that ritual slaughter produces no additional pain to animals, or even less pain than stunning, governments should reconsider whether to mandate stunning at all. If further research reveals that ritual slaughter is only slightly more painful than modern stunning technology, governments will have to grapple with the question of how much additional pain a society should allow a person to inflict on an animal as an expression of freedom of religion. The most difficult question would arise if concrete scientific studies would reveal that ritual slaughter results in significantly more pain to the animals affected.¹⁴³ In the meantime, ritual slaughter options should be left accessible to everyone.

Although the scientific evidence may never be one hundred percent conclusive, this paper argues that governments should not outlaw ritual slaughter unless a much clearer scientific consensus is reached regarding any possible harm that such a method causes.

142. This is the policy in the recent Dutch legislation. *See* Sterling, *supra* note 123.

143. There is a source for such religious self-introspection in the face of a conflict between scripture and reality. *See* MOSES MAIMONIDES, THE GUIDE FOR THE PERPLEXED 110-13 (M. Friedlander trans., 2d ed. 1956) (“Themistius was right in saying that the properties of things cannot adapt themselves to our opinions, but our opinions must be adopted to the existing properties. . . . I shall not contradict the laws of nature. . . . The universe must be examined as it is.”).

