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In Search of the Missing Ingredient: Religious Slaughter, Incremental Failure and the Quest for the Right to Know.

A Response to Anna Joseph.

Simon Brooman, Liverpool John Moores University, UK

Abstract

This article examines Anna Joseph's suggestion to introduce into United States (US) law a requirement to stun an animal still found to be conscious after forty seconds following initial cutting during religious slaughter. It is suggested that the proposed law fails to address significant ethical concerns based on scientific evidence. The conflict with human rights legislation, especially religious freedom, is discussed. A new consumers' rights approach is proposed which highlights the life of the animal and may provide a universally applicable legal framework for meat production. This may avoid the pitfalls of conflicting with human rights thereby enabling the revision of practices through education, information and changing consumer behaviour.

Keywords

religious slaughter, scientific evidence, human rights, consumer rights, education and animal rights

Introduction

The long-running, and sometimes bitter, discussion around the religious slaughter of animals by some religious communities illustrates the ethical complexities of developing laws to govern the interrelationship of human and animal interests. The conflict between two opposing philosophical and religious positions is likely to retain a high profile in light of evidence that the market for such meat is rapidly expanding (House of Commons, 2015, p. 4).

Anna Joseph (2016) suggests a new law aimed at treading the delicate line of balancing religious interests and animal welfare interests in the area of regulating religious slaughter of animals in the US. Joseph suggests that an animal should be stunned if it is still showing signs of consciousness forty seconds after cutting by traditional religious methods. This might, Joseph contends, provide better welfare for animals as well as protecting the rights of religious observance which require live slaughter without stunning.

The arguments concerning the conflict between religious freedom and animal welfare are mirrored across the globe and are not restricted by national boundaries. The methodology of this article comprises a discussion of Joseph's proposals from the rather different legal

position of English and European Union law, within a comparative socio-political context through which the scientific and ethical considerations which arise can be addressed. It is generally accepted that regulation of religious slaughter of animals is weaker in the US than in England or the EU (Lewis, 2010). For example, religious slaughter is automatically assumed to be “humane” in the US Methods of Livestock Slaughter Act of 1978, despite welfare concerns raised by science, animals being regularly turned up-side-down before slaughter and the infamous process of “shackle and hoist”.

Joseph’s proposal is examined in order to answer four central questions. Firstly, what is the legal context for Joseph’s suggestion considering the success or otherwise of other incremental improvements in the law relating to religious slaughter? Secondly, what is the scientific context for such proposals? Thirdly, what philosophical considerations are raised by the interaction of the law and science in this case? And fourthly, is there an alternative campaigning strategy which might carry better prospects to improve the welfare of these animals?

The extent of religious slaughter

Many animals killed in religious slaughter are stunned prior to cutting. The British Food Standards Agency produced an Animal Welfare Survey based upon the statistics gathered in one week in September 2013. It determined that 84% of animals slaughtered by halal methods were actually stunned beforehand. None were stunned under the Jewish method, but fewer animals were slaughtered under this method. The overall number of animals killed without being stunned is low in relation to overall numbers of animals killed for meat.

The British Veterinary Association is concerned that the trend in non-stun slaughter is rising (House of Commons, 2015, p. 13). There is evidence that the number of animals killed by Halal methods continues to rise whilst the number killed in kosher slaughter may be falling. The relatively small number of animals killed, as well as concerns about alternative slaughterhouse methods, has led religious communities to complain that they have been singled out for unfair scrutiny. This article accepts the position that there are published and well-known problems with the use of stunning before slaughter in mainstream slaughterhouses which need to be addressed. However, this does not preclude an ethical debate around religious slaughter. I suggest that that to enter the realm of comparative culpability is undesirable and unethical treatment of animals is deserving of serious scrutiny wherever it occurs.

The English/EU legal context

As with many jurisdictions, including the US, English law provides that all animals are stunned prior to slaughter in The Welfare of Animals (Slaughter or Killing) Regulations 1995, with an exemption for animals killed by Jewish and Muslim methods in Schedule 12. EU Council Regulation 1099/2009 lays down minimum standards along similar lines and requires religious slaughter to be carried out by licensed slaughter men. Animals must be

held in a restraining pen in an upright position, not the traditional Shechita method with the animal on its back. A protocol on the welfare of animals, was added to the Treaty of Amsterdam in 1997 and came into force in 1999. This recognises animals as sentient beings and requires that animal welfare be taken into account in the formulation and implementation of EU policy (European Union, 2006). However, the impact of this protocol has been minimal with free trade remaining as the focus of the EU (Brooman & Legge, 2000).

EU law allows member states the flexibility to apply stricter requirements in light of their own socio-political context.ⁱ This derogation has been used by Denmark and the Netherlands. Denmark opted, in February 2014, to effectively ban religious slaughter by requiring immediate post-cut stunning. The Dutch opted for a law requiring that the animal be stunned if it were still conscious after forty seconds following cutting. New Zealand, Iceland and Sweden have banned non-stun slaughter. The effective ban on religious slaughter in New Zealand was partially withdrawn for some animals following a legal challenge but remains in place for cattle (Bayvel, Diesch & Cross 2012, p. 16). Joseph's article recommends the application of the Dutch system in the US. She suggests that it would decrease animal suffering whilst recognising the freedoms of religious communities.

The second legal context is the protection of Human Rights. Article 9 of The European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR, 1950) provides for freedom of thought, conscience and religion. The right to hold a religious belief is absolute under the ECHR (Herne, Pannick & Herberg, 2009, p. 442). However, the right to exercise all and every religious expression can be subject to limitation by individual states (ECHR, 1950, Art. 9(2)). So, for example, states may limit the freedom accorded by the religion for an individual to marry at a young age.ⁱⁱ The slaughter of animals falls within the definition of "manifestation of religion" and can, therefore, be subject to limitation by signatories in the light of local social or political contexts and morality.

The international commitment to protect minority religious interests is strong. In 1993 the United Nations Human Rights Committee stated (UNHRC, 1993, para 2):

The Committee therefore views with concern any tendency to discriminate against any religion or belief for any reason, including the fact that they are newly established, or represent religious minorities that may be the subject of hostility by a predominant religious community.

However, even primary legislation such as the European Convention on Human Rights or the Human Rights Act 1998 in the UK, recognises that such interests are not absolute and have to be balanced against competing societal and moral interests, which could include the welfare of animals. Zoethout (2013, p. 672) argues that EU law will, eventually, recognise this claim as completely outweighing the human rights of religious communities to engage in slaughter without stunning.

However, governments in the UK have tended to side with religious groups. For example, changes to strengthen regulation of religious slaughter recommended by the second Farm Animal Welfare Council Report on Religious Slaughter (FAWC, 2003) were rejected by Tony Blair's Labour Government on the grounds of respect for the rights of religious groups.

The context of science and welfare

Whether animals suffer in the process of religious slaughter beyond that of animals slaughtered using modern methods is contested (Bergeaud-Blackler, 2007, p. 974). The FAWC report of 2003 recognised the difficulties in measuring pain and distress. However, they were persuaded that “such a massive injury would result in very significant pain and distress in the period before insensibility supervenes” (FAWC, 2003, para 195). They were satisfied, for example, that science had shown that there was responsiveness in some cattle 60 seconds after religious slaughter, but none in those that had been stunned. They also cited studies which show that a process of occlusion (rapid retraction and sealing of blood vessels) might sometimes occur, thus preventing full exsanguination and loss of consciousness. The Report concluded that the UK Government should repeal the religious exemption or ensure immediate post-cut stunning takes place (FAWC, 2003, paras 200-3).

In the years since this FAWC report, science has provided more evidence of the potential of animals to suffer in the post-cut moments. Mellor, Gibson and Johnson (2009) concluded that a ventral neck incision would be likely to be perceived as painful by the animal and this might last for 60 seconds or more. They also supported stunning prior to religious slaughter. Gregory et al. (2010) found that 14% of cattle in their study stood up again following an initial collapse after cutting. They also concluded that 8% of cattle remained conscious beyond 60 seconds or more.

A joint statement by the British Veterinary Association, the RSPCA and the Humane Slaughter Association (Joint Statement, 2015) starts from the clear position that slaughter without stunning compromises animal welfare. In addition, some authors appeal directly to religious communities to change religious slaughter practices on the basis of scientific research on the welfare of animals during slaughter (e.g. Anil et al, 2006).

However, there are those who contest the validity of this growing body of scientific evidence. For example, Zivotofsky (2012, p. 755-6) contests the findings of Mellor, Gibson and Johnson (2009) above on the grounds that the research failed to take into account the sharpness of the knife or the training of the slaughter men involved. He suggests that moving to a system involving compulsory stunning might not be the best move for the welfare of animals as those systems are, themselves, far from perfect - a ban on Shechita slaughter would, therefore, be discriminatory. Moreover, Jewish and Muslim representatives often claim that religious slaughter brings about immediate and irreversible loss of sensation and death.

The over-whelming weight of scientific evidence is that there is a higher incidence and level of suffering for animals killed by religious methods rather than those which involve stunning. If evidence of pain and suffering was the sole determinant in framing a policy on religious slaughter then it is highly likely that killing without stunning would be banned in most countries.

Changing the law of religious slaughter: philosophical and practical considerations

There are three potential directions for the future of the law relating to religious slaughter: retaining the status quo as an acceptable balance of religious and animal welfare concerns; regulating and/or potentially banning the practice altogether and; searching for other methods to improve overall animal welfare which does not infringe upon religious freedoms. None of these is ideal for the parties involved. Bayvel, Diesch & Cross note (2012, p. 17) that changing animal welfare practice is more often a process of change management rather than sweeping reform based upon sound ethical principles – thus, expectations may be compromised.

The first option is to retain the status quo – accepting that the current legal position is the best that can be expected in the current political climate. Using Michael Leahy's contention that the status quo is the strong position which should only move if there is very good reason, then this is a powerful starting point to defend the current legal position (Leahy, 1997, p. 177). This is clearly where the law makers of England and the EU have positioned themselves in recognising that suffering occurs but being unwilling to hinder religious observance. However, the maintenance of the status quo is undesirable as it fails to recognise scientific evidence. To ignore the findings of such research takes us back to pre-Darwinian times where observation was passed off as mere conjecture or anthropomorphism (Brooman & Legge, 1997, p. 97).

The second position is to support a change in the law to either ban, or further regulate religious slaughter, as Joseph suggests for the US. There is good deal of scientific evidence which supports the need for change in the light of increasing knowledge and proof about the suffering of animals during the religious slaughter process. It is becoming clearer that animals suffer in ways which would simply not be tolerated elsewhere. However, it is notable how little the basic situation has changed since the 1920s when the UK Humane Slaughter Association first called for stunning for all slaughter animals (Humane Slaughter Association, 2015). Certain elements have changed such as the requirement for licensing and upright positioning of animals, but religious slaughter has avoided the sweeping reforms to the welfare protection of animals that has occurred in almost every other area of human interaction with non-human species.

Although Joseph's suggestion to use the Dutch forty seconds rule to amend US law is an attractive compromise with the protection of minority interests, it too must stand the scrutiny of evidence and ethical reliability. It might reasonably be asked why we might replace one form of law which has been shown to fail ethical standards of animal welfare (Gregory et al, 2010), with another which also retains serious flaws. The forty second rule fails two tests in terms of acting as a potential way forward to resolve the philosophical issues of religious slaughter. Firstly, evidence appears to call into question the potential for such a change in the law to ameliorate animal suffering. Secondly, it may act as a legislative marker which actually reduces the potential for progress in improving animal welfare by signalling an acceptable period of suffering enshrined in law - a time-period recognised as encompassing significant pain and suffering (AHAW, 2004). The danger with adopting such a

proposal is that such a law might be seen, not as the protection of last resort, but as the identifier of normal practice.

Is seeking incremental welfare adjustments the answer?

Law in the area of animal welfare does not move quickly. It is prone to very gradual improvement even if the philosophical argument is strong (Bayvel, Diesch & Cross 2012, p. 17). When viewed through the lens of what has been achieved, it is clear that welfare claims for the slaughter of animals have been only partially successful. There is more regulation and control, but the basic practice continues to thrive and expand in many countries. The welfare deficit is widening and would not be addressed by a universal forty second rule. The focus on specific, incremental changes such as this has, arguably, failed.

EU and UK legislators have shown themselves to be only partially influenced by ethical considerations of animal welfare, even if these are supported by a convincing weight of scientific evidence. Legislators show a clear preference for human religious observance against concerns for other species, even where the latter is supported by scientific evidence.

Many of the most significant advances in the care and husbandry of animals, enshrined in legislation, have been achieved through bringing to the attention of governments scientific evidence of animal stress, suffering and pain. The use of evidence from the Farm Animals Welfare Council on animal husbandry and rearing conditions in the UK is one example. However, in more recent times, the UK Government has not been consistent in this regard and has acted decisively in support of certain interest groups at the expense of its own scientific advice. For example, evidence that badger-culling would not lead to a reduction in the incidence of bovine tuberculosis (Bourne Report, 2007, para 9) has been ignored by the UK government. It has repeatedly introduced badger-culling trials to stem the spread of TB in cattle, raising concerns over badger welfare.

Religious slaughter is a legal anomaly. It allows for practices known to cause suffering to continue relatively unabated. The fact that politicians have not, in many countries, tackled the underlying welfare concerns has its grounds in the unwillingness of law-makers to draw boundaries for the right to exercise religion according to one's choice. These rights are protected in well-established national and international law.

Where religious slaughter has been challenged by legislators there is usually a back-lash from the communities concerned. New codified English regulations were planned to come into force 20 May 2014. However, the day before, a revoking order was hurriedly issued by Parliament as it became apparent that the increased electrical currents required for stunning might not be suitable for Halal slaughter and were to be the subject of a legal challenge through judicial review in the courts (House of Commons, 2015, p. 9).ⁱⁱⁱ

The political and social complexities of religious slaughter have proved to be contentious for politicians in the United Kingdom, EU and elsewhere. Governments from both sides of the political divide have rejected opportunities to legislate in relation to the point of slaughter

or the point of sale (labelling). The line taken to dismiss the FAWC recommendations of 2003 has continued.

In search of the level playing field - a move to consumer rights?

Might consumer power be a more productive route for those concerned for animal welfare which does not conflict with deeply held religious beliefs? Religious slaughter has become caught up in ongoing discussions about the information provided to consumers on the packaging of products which indicate welfare standards for animals. Concerns have been raised, for example, that unlabelled meat produced without stunning has been making its way into the general market. The proposal to move to treat the religious slaughter of animals as a market-driven labelling issue has been suggested before in other jurisdictions (Bruce, 2011, p. 376). However, labelling only according to slaughter techniques may not adequately resolve the issue in any country.

The part played by education in alleviating the suffering of animals cannot be underestimated (Brooman & Legge, 1997, p. 433). It helps to ensure compliance with the law, understanding of what is being protected and changing behaviours. It is well-documented that the knowledge gap between consumption of meat products and the ways in which those animals were raised and slaughtered has increased with the advent of industrial slaughter processes. A remedy to this may be to label products according to the welfare standards afforded to animals during, and at the end, of their lives. The situation with eggs is a case in point. The effect of two simple words, "Free Range", has been profound in some countries. What effect might wording, for example, "*humanely reared, produced and slaughtered according to agreed welfare standards of the [fictitious] British Advisory Panel on Ethical Meat Production,*" have on the market? Another possibility is a traffic light system to summarise compliance. Such labelling would move into the "red zone" for any meat product produced by slaughter without stunning, failure to keep animals in scientifically and ethically supportable conditions, or any other evidence of unethical treatment.

In May 2014, the British Government opposed EU measures to require that meat should carry labels confirming whether it came from stunned or non-stunned animals (Doward, 2014). They agreed with religious communities that such labelling ignored other aspects of the animals' lives which might well have involved suffering and it was wrong to single out the process of slaughter. Concerns have been raised from many sources over a significant period of time regarding rearing conditions and the distances travelled by animals to slaughter. This is certainly a valid complaint and might be addressed by more informative labelling.

The BVA, HSA and RSPCA (Joint Statement, 2015) have called for better education of consumers by providing evidence of stunning on labels. The All Party Parliamentary Group for Beef and Lamb published "Meat Slaughtered in Accordance with Religious Rites" in 2014 and concluded that labelling appeared to be desirable, but that research as to the cost was

required (APPG, 2014). They restricted their suggestion to stunning rather than other welfare indicators during the animal's life.

One prima facie advantage of discussing the religious slaughter of animals through the need for labelling is that it moves this apparently irresolvable issue of opposing rights and interest positions, into a neutral arena. It is difficult to argue against a person's right to know where their food comes from. A logical extension of this is to know something of the ethical standards in which an animal was kept, transported and slaughtered. This allows for an informed choice to be made on the part of the consumer. In terms of the right to know, this may be just as important as whether the product contains salt, and may have an impact on the choice to buy.

Conclusion

Anna Joseph's suggestion is made in the context of a relatively poor welfare situation for religious slaughter in the US (Lewis, 2010, p. 285). In that regard it may have value in at least acting as a step forward. However, as well as being a step backward for many countries, if introduced elsewhere, it carries animal welfare risks for the American jurisdiction. Bearing in mind Diesch and Cross' observation about the slow process of animal welfare reform which has been evident across the globe (2012, p.7), this intervention might give unscientific and ethically unsupportable practice a strong and long-lasting foothold in US law.

An investigation of Joseph's proposal naturally leads to a discussion of how best to change a legal framework which has an ethical deficit as it falls behind emerging scientific knowledge. If Joseph's suggestion is difficult to support in the long term, then other avenues need to be sought. The reason that animal welfare groups find themselves achieving small advancements in the welfare of animals is the dominant position of human rights which is the cornerstone of liberal democracy. When there is a conflict between human rights and animal welfare, there is likely to be only one winner.

Those who wish to see an end to religious slaughter without stunning have a strong ethical and scientific case for continuing to campaign for such an outcome. The protection of animals in slaughterhouses in the US is strongly criticised (Bennett, 2014, p. 546). However, the overall record of securing change is at best unspectacular, at worst, a failure. The production of Halal meat seemed to be moving towards stunning animals, but recent evidence may suggest that the market for traditional slaughter is beginning to grow again. Animal welfare groups are faced with the difficult campaigning position of respecting the right to religion – but not the right to cause unnecessary harm and distress to animals (CIWF, 2015). Challenging minority interests head-on leads those seeking change into the murky waters around defining and restricting the manifestations of religious practices, as opposed to the right to hold religious beliefs.

In this difficult situation, the advancement of the scientifically-proved suffering of animals may need to find another way so as not to conflict directly with human rights. One method may be to approach the treatment of animals in agriculture via the rights of people to know

the source of their food through ethical labelling. This may not be in tune with a strong animal rights perspective (Brooman & Legge, 1997, p. 97; Austin & Flynn, 2015, p. 153) but it may carry with it a greater potential for change. Other successful labelling campaigns have shown that the effect on consumer conscience and behaviour can be profound. Education is a vital component of this approach (Bennett, 2014, p. 559).

The process of labelling meat according to its welfare standards may be difficult – there are justified concerns expressed by religious groups that slaughter is only one area of welfare concern. The standard of care, living a natural life, avoiding cramped conditions and not enduring arduous journeys to slaughter, all need to be addressed. The sheer level of suffering of millions of animals involved in the meat industry is too large to ignore. There has been success in utilising advisory bodies to update law-makers on welfare requirements - another might be useful here. Once the need for labelling and monitoring are accepted then specific wording, and the membership and remit of the advisory body could be negotiated, including welfare and religious groups.

Setting up a legal framework where the right of the consumer to know becomes the lynchpin of control would shift the burden of proof. Instead of arguing why a practice which appears to compromise animal welfare should stop where religious freedom is involved, we might find ourselves asking “why shouldn’t the eventual consumer know?” The market has given us religious slaughter but it could provide its greatest challenge to allow the buyer to make an informed choice (McMullen, 2015, p. 133).

It might provide the missing ingredient on the back of packaging – a consistent ethical measure as to the way in which this once living, sentient, being was treated.

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Biography

Simon Brooman is a Senior Lecturer in Animal Law, School of Law, Liverpool John Moores University, Fellow of the Oxford Centre for Animal Ethics, and Senior Fellow of the UK Higher Education Academy. He is co-author of *Law Relating to Animals* (Cavendish Publishing: 1997) with research interests in the areas of socio-legal perspectives on the development of animal law, and the influence of historical attitudes to animals on current legal practice. s.d.brooman@ljmu.ac.uk

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ⁱ At the time of writing UK law covering religious slaughter is due to be consolidated into a new piece of legislation. Details of current legislation in the UK can be found at <https://www.gov.uk/guidance/farm-animal-welfare-at-slaughter> Accessed 20th October 2015.

ⁱⁱ Application 11579/85: *Khan v United Kingdom* 48 DR 253 (1986), E Com HR, considered under art 12 (marriage).

ⁱⁱⁱ The Welfare of Animals at the Time of Killing Regulations 2014 No.1240 and The Welfare of Animals at the Time of Killing (Revocation) Regulations 2014 No.1258