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Accommodating Religious Slaughter in the UK and Germany: competing interests in carving out legal exemptions[1]

Farrah Raza [2]

Abstract

This paper discusses the challenges of accommodating the religious slaughter of animals for consumption. Religious slaughter continues to be a controversial practice that is debated regularly in several European states. Religious slaughter, also known as ritual slaughter, is predominantly practised by the Jewish and Muslim communities in Europe. Most recently, the 2018 European Union's Court of Justice ruling on religious slaughter highlights the need for European states to adopt appropriate regulatory frameworks. This working paper discusses the challenges of accommodating religious slaughter by assessing select issues in the UK and Germany. The first section introduces the issues raised by religious slaughter and contextualises these within the broader political context of the UK and Germany. The second section outlines how religious freedom is protected in the UK and Germany by providing a brief overview of the respective constitutional contexts. The third section analyses the multi-faceted issues raised by religious slaughter in the UK and Germany by assessing three key arguments: (a) the argument of discrimination and (b) the argument of choice, before arguing for (c) the need for balancing of interests. The final section offers some tentative solutions to the problems raised by religious slaughter. The paper concludes by arguing that religious slaughter is worthy of legal protection as it is a core aspect of dietary choice for some religious minorities. Thus, religious slaughter should be protected as an aspect of the fundamental right to religious freedom. However, the paper submits that both non-religious and religious groups should take seriously the concerns of animal and environmental welfare. Perhaps the mutual concern for animal welfare can encourage dialogue between different stakeholders, and thereby bring about better negotiation of competing interests. An approach to religious slaughter that goes beyond the use of formal law might be more productive than revisiting well-trodden arguments that often set different groups against one another.

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1. Introduction

This paper analyses specific issues raised by the practice of religious slaughter with a focus on the UK and Germany. In the European context, religious slaughter is typically accommodated by way of a legislative exemption from the general laws that regulate the slaughter of animals. However, legal exemptions that are granted on the grounds of religious and/or cultural rights continue to be controversial. Objections to legal exemptions are often based on the argument that the law should apply equally to everyone. The rationale for this argument is based on the premise that religion is neither special nor distinct, and therefore, does not warrant special legal protection (Barry 2001). In particular, the rise in both anti-Semitism (European Union Agency for Fundamental Rights 2018) and Islamophobia (Abdelkader 2017) in Europe raise concerns about the rights of religious minorities. Therefore, the accommodation of religious slaughter continues to be an sensitive issue that requires on-going accommodation.

Religious slaughter has been the subject of recent debates in Europe, and several regional authorities have introduced measures that restrict religious slaughter. For example, Lancashire County Council in the UK recently voted to ban non-stunned *halal* meat in its schools for the purposes of upholding the interests of animal welfare (Pidd, Perraudin, and Solomon 2017). The proposals to ban non-stunned meat were initiated by Geoff Driver, a Conservative Party council leader, who described un-stunned meat as 'abhorrent' (Pidd, Perraudin, and Solomon 2017). A second example of restrictive measures includes the recent 2018 decision of the Court of Justice of the European Union (CJEU) on religious slaughter that upheld the decision of the Minister for the Flemish Region in Belgium to revoke authorisation of licences granted for temporary slaughterhouses for the Muslim Festival of Sacrifice, when there is a need to meet the higher demand for meat.[3] Because minority rights are vulnerable to the political environment, these calls for the limitation or regulation of religiously slaughtered meat must be contextualised within the broader current political tensions and the rise of the far right in Europe and beyond. To that end, the specific question of accommodating religious slaughter also depends on the general question of religious accommodation that continues to be contentious, as some feel that their identity and culture is undermined when minority practices are accommodated. The political context can put pressure on the accommodation of specific religious practices, and as such there is a need for more scholarly and policy work on religious accommodation so that balanced and workable solutions are possible. This working paper focuses on the key issues raised by religious slaughter and concludes by making a few tentative suggestions for the way forward.

The accommodation of religious slaughter concerns the following interests: the right to religious freedom, cultural community rights, animal welfare rights, commercial interests, and state neutrality towards religion. For example, in 2018 Advocate General Nils Wahl submitted an opinion to the CJEU on the question of whether *halal* meat could also be certified as organic in accordance with European Union (EU) law or whether the relevant EU laws permitted only

[3] EUECJ C-426/16, *Liga van Moskeeen en Islamitische Organisaties Provincie Antwerpen VZW and Others* [2018].

stunned meat to be certified as organic.[4] The multi-faceted nature of religious slaughter highlights just how complex the right to religious freedom is because there are various conceptual and pragmatic interests that need to be considered. This paper sifts through arguments made in favour of and against accommodating religious slaughter in order to provide some clarity about the competing interests in carving out legal exemptions for religious slaughter before making some suggestions on how competing interests could be somewhat reconciled. There has been a recent proliferation of competing claims made about religious slaughter, and therefore, it is useful to assess the merits of the elements of the different arguments. The questions that arise include: How is religious slaughter an aspect of religious freedom? How do religious groups determine or alter their practices of religious slaughter? What are the legitimate limits to religious slaughter and why? As explained below, there is no single approach to religious slaughter. Strict secularist groups and animal welfare groups both lobby against religious slaughter, while religious groups themselves disagree about what constitutes permissible method(s) of religious slaughter. The aim of this paper is therefore partly educative to the extent that it outlines the various arguments made about religious slaughter and seeks to clarify the issues. The paper concludes by proposing an approach geared towards accommodating religious slaughter by balancing competing interests through non-legal forums such as negotiation.

The accommodation of religious slaughter is complex for several reasons. Firstly, as a long-established and transnational practice, religious slaughter is subject to transformation and regulation by religious groups, sometimes beyond the reach of state law. In other words, religious communities themselves shape the practice of religious slaughter. This means that legal exemptions for religious slaughter are subject to evolving interests. Secondly, states that attempt to accommodate religious slaughter must consider the plurality of religious groups, because religious communities, such as the Jewish and Muslim communities, are internally diverse, with some religious adherents more willing to adapt their practices than others. The internal pluralism means that different religious organisations offer different interpretations of religious doctrine and often compete for official state recognition. Thirdly, religious slaughter is a transnational commercial practice too, because businesses sell religiously slaughtered food products across borders. Thus, religious slaughter is not exclusively 'a religious act' – it is also a commercial activity pursued by religious organisations, as well as by secular companies, for profit. Since religious slaughter involves different stakeholders, competing interests could be somewhat mediated through non-legal processes such as negotiation. Cooperation between different groups, as I argue, could be productive in a way that enables religious and animal welfare groups to work together to uphold both religious freedom and animal welfare. The factors outlined here demonstrate that there is a need for policy approaches to religious slaughter that take into account the changing complexities.

Some European states refuse to accommodate religious slaughter on the grounds that it is inhumane and/or goes against the prevailing scientific standards, which favour stunning animals prior to slaughter. This paper seeks to problematise the claims of the different parties, including religious organisations, state institutions, and animal welfare groups. The paper argues that one set

[4] EUECJ Case C-497/17, Opinion of AG Wahl in *Euvre d'assistance aux bêtes d'abattoirs (OABA) v Ministre de l'Agriculture et de l'Alimentation, Bionoor, Ecocert France, Institut national de l'origine et de la qualité (INAO)* [20 September 2018]. The Administrative Court of Appeal, Versailles, France (Cour administrative d'appel de Versailles) requested a preliminary ruling from the CJEU on the following question "Do the applicable rules of EU law permit or, on the contrary, do they prohibit the issue of the European 'organic farming' label to products from animals which have been subject to ritual slaughter without pre-stunning carried out in the conditions defined by Regulation (EC) No 1099/2009?" at paras. 1–2.

of interests cannot automatically trump other interests; rather a balancing and negotiation process is the preferable option. Negotiation incorporates a range of techniques that include setting up working groups, conferences, and cross-disciplinary studies in order to facilitate a better understanding of religious slaughter (see also Guesnet, Laborde, and Lee 2017).

Moreover, arguments about the accommodation of religious slaughter need to be situated within the wider discussions on the role of religion in European states. As mentioned above, religious slaughter is typically accommodated by way of a legal exemption: as an exception to the general law. Religious slaughter is very often referred to as a *ritual*, which carries certain connotations that are sometimes negative. However, religious slaughter has not always been considered a ritual in the way that this is now understood in the modern context, namely as a category that encompasses a range of religious and cultural practices performed in *other* cultures. Rather, some religious groups have considered religious slaughter to be a religious law and the cleanest and most humane method of animal slaughter. In this way, legal categories are sometimes the product of formalised procedures that do not always correspond to the historical evolution of a religious practice. It is for this reason that legal debates on religious slaughter can be enriched by anthropological and empirical studies that have the potential to provide better understandings of the issues at stake and can supplement legal analysis of religious slaughter. This working paper is partly a result of insightful and inspiring engagement with legal anthropologists. Its aim is to make a modest contribution to the debate on religious slaughter by drawing on a number of non-legal sources to enrich the analysis of accommodating religious slaughter as a preliminary to future work on this topic. The combination of factors outlined above make religious slaughter a key case study, especially in light of the apparent need to integrate religious minorities within European states. Food choices and dietary requirements, such as meat from animals slaughtered according to particular criteria, are important daily activities for many religious and cultural communities, and therefore, require on-going accommodation. However, accommodation is related to the question of integration, a debate that is currently relevant to both Germany and the UK.

In Germany, dissatisfaction about immigration and integration are pressing issues. The need to integrate and accommodate the new influx of refugees, many of whom are of Arab and/or Muslim background, in addition to the established Muslim Turkish and Jewish communities, make religious accommodation a live issue. Anna Korteweg and Gökçe Yurdakul note that multiculturalism was not the preferred policy choice of the Christian Democratic Party, as evidenced by the party's position paper in 2000 that stated "multiculturalism and parallel societies are not a model for the future" (as cited in, and translated by, Korteweg and Yurdakul 2014: 140). It will be interesting to observe what policy approach the German government adopts in order to integrate its new minorities, especially in light of the backlash that Chancellor Angela Merkel has faced in response to her initial policy approach to the refugee crisis. These political developments are relevant to the accommodation of religious slaughter because this practice is partly dependent on the overall state policy approach to religious freedom and cultural rights. In particular, as the Muslim population increases in Germany, it is conceivable that a number of religious organisations and companies will also want to conduct religious slaughter for their growing customer base.

In the UK, the public voted in a historic referendum on 23 June 2016 in favour of leaving the European Union (EU), a decision popularly referred to as 'Brexit'. The fact that the British public voted by a narrow margin to leave the EU itself makes the question of the legal rights of European and other immigrants a live issue in the UK. The political context raises questions about the rights

of religious and cultural minorities, as accommodation of religious minority practices does not occur in a vacuum and must be situated in its wider context. It is, however, still too early to say in which direction the UK will head with regards to accommodating non-nationals and religious and cultural rights in the future, given that the UK has a relatively longer tradition of accommodating religious and cultural practices that pre-date its membership of the EU (Bamforth, O'Cinneide, and Malik 2008). And it is not yet clear how Brexit will affect the existing legal frameworks, some of which implement EU law directly into domestic law. The UK's policy approach to accommodating diversity since the 1960s has taken shape in part through the enactment of several anti-discrimination laws such as the Race Relations Act 1965.[5] The rationale for enacting anti-discrimination laws was to address the problem of discrimination against and integration of the UK's new immigrant communities. The UK's approach can be referred to as, broadly speaking, a multiculturalist approach,[6] particularly in the context of education and employment. Nasar Meer and Tariq Modood summarise the UK's policy as follows:

> "Multiculturalism in Britain consists of an approach through which post-war migrants who arrived as Citizens of the United Kingdom and Commonwealth, and subsequent British-born generations, have been recognised as ethnic and racial minorities requiring state support and differential treatment to overcome distinctive barriers in their exercise of citizenship" (Meer and Modood 2009: 479).

In addition to laws that protect citizens against racial discrimination, it became necessary to enact laws that also protect against religious discrimination, because the category of racial discrimination did not provide protection to some minorities.[7] Julian Rivers submits "social tensions were conceived in terms of race and addressed though race discrimination law until this was seen as inadequate when a series of cases demonstrated how race could be correlated with religion" (Rivers 2012: 377). A report compiled in 1997 by Lord Parekh of the Commission on the Future of Multi-Ethnic Britain adopted an accommodative approach based on multiculturalism and the recognition of difference (Runnymede Trust 2002). It remains to be seen whether the multiculturalist approach will come under pressure in light of the current political tensions and increasing dissatisfaction about immigration by a significant portion of the UK population. Moreover, the 2016 Casey Review on Integration highlighted the problems with realising social integration in the UK. In particular, the review draws attention to the findings that "black boys [are] still not getting jobs, white working class kids on free school meals [are] still doing badly in our education system," while "Muslim girls [are] getting good grades at school but no decent employment opportunities" (Casey 2016: 5). These pressing concerns require well-thought-out policies. These political developments shape the state's relationship with religion and its approach to the limits of

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[5] See Bamforth, O'Cinneide, and Malik (2008) on the historical development of anti-discrimination law in the UK.

[6] Does multiculturalism mean permitting difference or facilitating difference through state support or affirmative action? The debate about the meanings of multiculturalism is beyond the scope of this paper, but see: Charles Taylor, *Multiculturalism: Examining the Politics of Recognition* (Princeton University Press 1994) and Bhikhu Parekh, *Rethinking Multiculturalism: Cultural Diversity and Political Theory* (Macmillan 2000), Tariq Modood, *Multiculturalism* (Polity Press 2013).

[7] See the legal criteria for what constitutes an 'ethnic group' as laid down in *Mandla v. Dowell Lee*, [1983] 1 All ER 1062 (HL). Muslims were not considered to be an ethnic group, and therefore, could not benefit from more extensive legal protection. See: *Commission for Racial Equality v. Precision Manufacturing Services Ltd.* (10 Oct.1991), No. 4106/91 (Sheffield Industrial Tribunal). This case law pre-dates the Equality Act 2010, which consolidated the UK's anti-discrimination legislation and provides extensive and consistent protection.

accommodating minorities. This paper will examine religious slaughter within this larger context where the accommodation of religious and cultural practices continues to be vulnerable.

2. Religious Freedom and the Constitutional Context of the UK and Germany

This section provides a brief overview of how religious freedom is protected in the UK and Germany in order to contextualise religious slaughter within each country's constitutional frameworks. Religious freedom is protected in different ways in the UK and Germany, although both states are secular liberal democracies that are currently bound by the jurisdiction of the European supra-national courts. This section examines the legal protection of religion in the UK and Germany by (i) outlining the relationship between the Church and state in the constitutional law of both countries and (ii) setting out the domestic laws that enforce the European Convention of Human Rights and European Union anti-discrimination law, both of which protect religious freedom.

The UK has an established church, which has a fairly stable constitutional position. The church focuses on pastoral care and does not exert strong political influence. 26 Lords Spiritual, all members of the Church of England, sit in the House of Lords (the second chamber of Westminster Parliament). There is no immediate desire for reforming church-state relations in the UK. Moreover, discussions about reforming the House of Lords tend to endorse the retention of church representation (see the Wakeham Report 2000). In addition, the English monarch remains the Head of State and the 'Defender of Faith'. It appears that the current church-state relations are preferred for a combination of historical and pragmatic reasons (Baldry 2015).

There is no established church in Germany as is set out in the 1949 German Constitution, often referred to as the Basic Law (*Grundgesetz*), which incorporated certain provisions of the Weimar Constitution.[8] The Basic Law does, however, permit religious societies to obtain the status of a public law corporation (*Körperschaft des öffentlichen Rechts*) if they have enjoyed this status in the past or as new organisations provided that certain conditions are met. Through their status as public law corporations, churches are afforded certain privileges (see Robbers 2010: 75–79), which includes the right to offer employment contracts and benefit from state funding through their ability to levy taxes.[9] However, the Federal Labour Courts and the Federal Constitutional Court retain jurisdiction as ultimate adjudicators in case of disputes.[10]

Religions that have obtained the status of public law corporations include the mainstream Christian churches, Christian minorities, and non-Christian religions such as Judaism.[11] The German Federal Constitutional Court and the German Federal Parliament (the *Bundestag*) ultimately have the final determination on constitutional issues arising from religious freedom and the activities of public law corporations. At the same time, the courts must also consider the constitutional significance of the status of public law corporations granted to religious

[8] Article 137 (Weimar Constitution) of the Basic Law states that "there shall be no state church". See: Basic Law for the Federal Republic of Germany, 1949, translated version. https://www.btg-bestellservice.de/pdf/80201000.pdf accessed: 6 March 2016. The translation from German to English is provided by Professor Christian Tomuschat, Professor David P. Currie, Professor Donald P. Kommers, and Raymond Kerr, in cooperation with the Language Service of the German Bundestag.

[9] See Article 137(6) (Weimar Constitution) of the Basic Law.

[10] See *Obst v. Germany* (application no. 425/03) and *Schüth v. Germany* (application no. 1620/03).

[11] For an accessible English source that explains the legal framework of Church-state relations in Germany see: US State Department, 2004. "Germany", International Religious Freedom Report 2004, Bureau of Democracy, Human Rights and Labor. https://www.state.gov/j/drl/rls/irf/2004/35456.htm accessed 16 October 2017.

organisations, because the Basic Law guarantees religious freedom. Moreover, some commentators describe the church-state relationship in Germany to be one that is based on dialogue and upholds the principles of neutrality, equality, and tolerance (see Haupt 2012 for a more detailed discussion on neutrality), rather than a relationship based on indifference or hostility towards religion.

The German legal system is based on a civil law system, whereas the English legal system is based on common law. This can lead to different types of reasoning: factually similar legal cases are approached differently. The key constitutional difference between the UK and Germany is that the British constitution is uncodified and the discourse on constitutional rights in Britain is fairly recent. In Germany, the Basic Law is supreme. After the horrors of the Nazi period, the framers of the Basic Law placed a strong emphasis on constitutional rights. In particular, the Basic Law's emphasis on dignity is symbolically powerful.

Germany is a federal state consisting of 16 states (*Länder*) with their own laws, meaning that there may be some variation in laws between different *Länder*. For example, the *Länder* have the power to recognise religious organisations as public law corporations. It is notable that official public law corporation status has not been granted to many Muslim groups (Rosenow-Williams 2012: 3). Despite regional differences, all the *Länder* are subject to the jurisdiction of the German Federal Constitutional Court, which has the power to find legislation to be incompatible with constitutional rights.

In the UK, the uncodified nature of the constitution coupled with the fundamental principle of parliamentary sovereignty results in a situation in which constitutional rights are less stable (see Hiebert 2013). Certainly, there has been an increase in 'rights discourse' and the legal enforcement of fundamental rights, especially after the enactment of the Human Rights Act 1998 (HRA 1998). However, the HRA 1998 continues to be vulnerable in light of recent political developments, as demonstrated by the criticisms of the HRA 1998 made by members of the British Conservative Party (see Stone 2016). Various policy papers and human rights observers have noted that the Conservative government's views on the HRA 1998 leave the protection of human rights in the UK in a somewhat unsatisfactory position. Calls for the repeal of the HRA 1998 have been based on a number of arguments, in particular, the argument of preserving British parliamentary sovereignty (Dzehtsiarou et al. 2015: 7). However, the well-known human rights organisation Liberty has submitted that the Conservative Party's proposals on the HRA 1998 are problematic; for example, the option of the UK obtaining preferential status within the Council of Europe would result in downgrading of decisions of the European Court of Human Rights (ECtHR) to the status of mere recommendations (Ogilvie et al. 2015). This would mean that the UK courts could potentially provide *less* protection than what the ECtHR currently requires. Kanstantsin Dzehtsiarou et al. point out that an attempt to downgrade the status of ECtHR decisions is complicated; in particular, they note that the proposal to make the judgments of ECtHR advisory "is legally impossible as it directly contradicts Article 46 of the Convention" and would only be possible if all Parties to the Convention agreed to amending the ECHR in order to permit this (2015: 7–8). Stephen Dimelow and Alison Young argue that reforming the HRA 1998 in the specific manner suggested by the Conservative Party in their 2014 policy document could be highly damaging to the UK's international reputation, not least because the perception of human rights protection in the UK could be adversely affected (2015: 13). Currently, debates about the HRA 1998 have been eclipsed by the debates about Brexit and it appears that Prime Minister Theresa May has no immediate plans to repeal the HRA 1998. However, this does not mean that there will be no future attempts to

challenge the HRA 1998, especially as Theresa May and other prominent Conservative Party members have explicitly advocated for repealing the HRA (see Zander 2016). These uncertainties de-stabilise the permanency of legal sources of human rights in the UK, making them more susceptible to changes in the political situation. As a matter of formal law, the UK can be contrasted with states like Germany that entrench fundamental human rights in their constitutions.

The legal basis for the right to religious freedom is found in various sources in the UK and Germany. Both the UK and Germany are bound by obligations under the European Convention on Human Rights (ECHR) and the EU Employment Equality Framework Directive (Council Directive 2000/78/EC).[12] Article 9 of the ECHR reads

> "Freedom of thought, conscience and religion
>
> 1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.
>
> 2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others."

Article 9 of the ECHR makes a distinction between the freedom to hold any beliefs and the manifestation of that belief (Article 9(2) of the ECHR). These legal mechanisms provide for a potential legal basis for the accommodation of religious slaughter.

In the absence of a codified constitution in the UK, religious freedom is protected by several Acts of Parliament and by different bodies of law. The first key source of protection is the HRA 1998, which directly incorporates ECHR into domestic law and provides for the right to religion in accordance with Article 9 of the ECHR. The second key source is the Equality Act 2010 (EA 2010), which implements the EU Council Directive 2000/78/EC and provides for freedom from discrimination. Thus, there are both human rights law and anti-discrimination law mechanisms that protect religious freedom. The right to religion – and this includes belief – is also protected by other specific Acts of Parliament; a number of common law rights also protect religion (for a more detailed discussion on common law rights see Bradley, Ewing and Knight 2014: chapters 1–2). In addition, UK anti-discrimination law protects religion as a protected characteristic. A series of anti-discrimination laws enacted over several decades in the UK are now consolidated in the EA 2010. As pointed out earlier, religion developed as a ground for protection in the later phases of anti-discrimination law.[13] Currently, the EA 2010 guarantees freedom from discrimination on the grounds of religious or philosophical belief. Specifically, section 10 of the EA 2010 covers "religion or lack of religion and belief including philosophical belief or lack of belief". Section 13 of the EA 2010 covers direct discrimination and section 19 covers indirect discrimination. These legislative sources provide a fairly comprehensive statutory protection for religious freedom in the UK.

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[12] Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation [2000] OJ L303/16.

[13] See Fredman (2011: 50–61) for the historical context and (ibid.: 61–63) for the legislative developments.

In Germany, Article 4 of the Basic Law guarantees "freedom of faith and conscience", and also sets out the explicit right to conscientious objection to military service under Article 4(3). The German constitutional right to religion is phrased in terms of 'faith', 'conscience' and 'philosophical creed', which arguably allows for a prima facie wide definition of religion. However, German authorities have been somewhat resistant towards new or small religions, which are often labelled 'sects' and not religions, such as the Church of Scientology (Seiwert 2003).[14] Article 4 of the German Basic Law does not set out explicit limitations to the constitutional right of freedom of faith and conscience, unlike Article 9(2) of the ECHR. However, the jurisprudence on Article 4 of the Basic Law holds that the right to religious belief is not absolute and must be balanced against competing constitutional rights and considerations. Religious freedom can "only be limited by a law that enforces public interests laid down in the Constitution itself" and "these limits should be interpreted narrowly" (Robbers 2001: 647). In other words, religious freedom, like other fundamental constitutional rights, is subject to strict limitations. Additional rights that protect religion in Germany include Article 3 of the Basic Law, which provides for equality before the law and prohibits discrimination based on a person's faith and religious opinions. Stefan Korioth and Ino Augsberg assert "both aspects of individual religious freedom and the separation of state and church constitute the basic principle for the relationship of state and religion in Germany (…) known as the idea of state neutrality" (2010: 323).

German law also incorporates the ECHR through the Statute on the Convention on Human and Fundamental Rights (*Gesetz über die Konvention zum Schutze der Menschenrechte und Grundfreiheiten*),[15] however, the Basic Law remains the supreme source of law for fundamental rights. Eirik Bjorge states that "the relationship between the jurisprudence of the Federal Constitutional Court on the fundamental rights guaranteed by the German Basic Law and the ECHR is plainly one of dialogue" (2011: 26). Thus, human rights are also protected at different levels in the German context too. The EU Equality Framework Directive 2000/78/EC was implemented into German law by the General Equal Treatment Act (*Allgemeines Gleichbehandlungsgesetz*) which came into force in August 2006 and is the first comprehensive anti-discrimination legislation in Germany. Tobias Lock notes that the General Equal Treatment Act faced resistance from some, especially from those who "alleged that the legislation would reduce private autonomy" (2013: 5). These concerns are discussed in section three of this paper. However, since 2006 the Federal Anti-Discrimination Agency (*Antidiskriminierungsstelle*) has only received approximately 801 enquiries related to religion or belief out of a total of 13,776 enquiries concerning discrimination.[16] It could be that discrimination on the grounds of religion or belief is not generating high levels of litigation because of lack of reporting; whether there are in fact disparities between the experience of discrimination and the degree to which it is reported is a question for further investigation.

In light of the key constitutional differences between the UK and Germany outlined above, it is clear that the rights discourses in each country differ. Article 1 of the Basic Law emphasises that

[14] In the UK, on the other hand, the Supreme Court held that the Church of Scientology was a religion for the specific purpose of registering marriages. See *R. (on the application of Hodkin and another) (Appellants) v. Registrar General of Births, Deaths and Marriages (Respondent)* [2013] UKSC 77.
[15] 1952 BGBl. 1952 II, 685.
[16] Data received from the Anti-Discrimination Agency, December 2015.

protecting human dignity as the overarching duty of the state and the courts.[17] The Basic Law constitutes the superior source of law and enables citizens to rely on a stable or entrenched source of law. In contrast, as mentioned above, in the UK fundamental rights are protected by the HRA 1998 and various Acts of Parliament which cover more specific areas. However, the precise relationship of the HRA 1998 to the ECHR continues to be debated as outlined above. From a legal technical point of view, the HRA 1998 is an ordinary statute that can be repealed by a subsequent Parliament. The approach of British judges to the ECHR has been mixed. In *Regina v. Special Adjudicator ex parte Ullah* Lord Bingham stated

> "It is of course open to member states to provide for rights more generous than those guaranteed by the Convention, but such provision should not be the product of interpretation of the Convention by national courts, since the meaning of the Convention should be uniform throughout the states party to it. The duty of national courts is to keep pace with the Strasbourg jurisprudence as it evolves over time: no more, but certainly no less."[18]

The application of what has become to be known as the 'Ullah principle' has been subject to debate in subsequent case law (see Andenas and Bjorge 2012 and also Hale 2012) but the key point is that the jurisprudence of the ECtHR lays down the minimum level of protection that signatory states should adhere to. However, the HRA 1998 only empowers the courts to issue a declaration of incompatibility. This means that an Act of Parliament cannot be invalidated by the courts even if the provisions of the Act breach fundamental rights. Section 3 of the HRA 1998 requires that "so far as it is possible to do so, primary legislation and subordinate legislation must be read and given effect in a way which is compatible with the Convention rights". However, section 4(6) of the HRA 1998 limits the power of the court because "a declaration of incompatibility does not affect the validity, continuing operation or enforcement of the provision in respect of which it is given". In other words, the UK courts do not have the power to invalidate an Act of Parliament even if the act is in breach of fundamental human rights. This approach contrasts with the power afforded to many constitutional courts globally – including in Germany – that have the legal authority to declare legislation that breaches constitutional rights as unconstitutional. Accordingly, it can be said that "the ECHR plays a less significant role in German law than in other states such as the UK because German Basic Law itself proffers an extensive catalogue of basic rights which in the eyes of German lawyers almost renders the ECHR supererogatory" (Bjorge 2011: 26). An entrenched constitutional right to religious freedom means that the right is, *prima facie*, of high priority within the hierarchy of constitutional norms. Moreover, entrenched constitutional rights as set out in a codified constitution must be interpreted in light of other constitutional rights, and therefore, limitations to constitutional rights must be strictly justified, which is a significant safeguard.

Of course, a codified constitution that contains a bill of rights does not necessarily guarantee generous protection of religious freedom, because courts might interpret the right narrowly. The policy approach adopted by a state can influence the protection of human rights in practice. Christopher Soper and Joel Fetzer suggest that the UK has been fairly accommodating of the

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[17] Basic Law for the Federal Republic of Germany, 1949, translated version. Accessed from: https://www.btg-bestellservice.de/pdf/80201000.pdf (access date: 6 March 2016). The translation from German to English is provided by Professor Christian Tomuschat, Professor David P. Currie, Professor Donald P. Kommers and Raymond Kerr, in cooperation with the Language Service of the German Bundestag.

[18] *Regina v. Special Adjudicator (Respondent) ex parte Ullah (FC) (Appellant)* [2004] UKHL 26, at 20.

cultural and religious needs of minorities such as Muslims. Examples of multiculturalism in the UK include the adoption of a multiculturalist approach in school education and accommodation of religious symbols such as the Islamic headscarf (Soper and Fetzer 2007: 934–935). The case law on religion highlights the accommodative approach in the UK. In *The Queen on the application of Sarika Angel Watkins-Singh (A child acting by Sanita Kumari Singh, her Mother and Litigation Friend) v. The Governing Body of Aberdare Girls' High School*, a Sikh schoolgirl won her case to wear the *kara* (a steel bangle) to school as part of her faith.[19] In *Mrs A Azmi v. Kirklees Metropolitan Borough Council*, the decision-maker did not automatically reject the applicant's argument that she should be permitted to wear a *niqab* to work, although ultimately the court found in the council's favour and upheld their refusal.[20] The decision of *Azmi v Kirklees MBC* contrasts with the decisions of courts in other European states such as France, where religious symbols, in particular the Islamic headscarf, are highly politicised and receive limited accommodation.[21]

In sum, the key constitutional differences between the UK and Germany influence the way in which religious freedom is interpreted and how legal exemptions are carved out. It can be concluded that the UK has generally adopted an accommodative approach towards religion through its piecemeal development of both human rights law and anti-discrimination law. However, the human rights legislation in the UK provides weaker protection than human rights protection in Germany because section 4 of the HRA 1998 offers limited protection in comparison to entrenched constitutional guarantees, which have a stronger degree of a permanency and normative supremacy. In Germany, whilst there is no established church, the historically dominance of Christianity is protected through the various Christian churches' status of public law corporations, which helps to secure the prominence of Christianity in the legal constitutional culture. In addition, specific legislation in both the UK and Germany provides for religious freedom in various contexts such as marriage, freedom of association, and the regulation of religious slaughter. In the next section, the paper focuses on religious slaughter in the UK and Germany and draws on the wider European context where relevant. The paper argues that religious slaughter is a multi-faceted issue and the use of non-legal approaches such as negotiation could help to achieve a better balancing of the various interests.

3. The Legal Accommodation of Religious Slaughter

There are various arguments for and against the legal accommodation of religious slaughter. In this section, I provide an overview of the key arguments with the aim of clarifying the issues. Arguments against religious slaughter include the need to uphold the interests of animal welfare. But other arguments against religious slaughter are made from strict secularist perspectives, and some arguments are discriminatory towards religious minorities such as Jewish and Muslim groups. Arguments for religious slaughter include the need to protect religious freedom and the importance of protecting a historical cultural practice. They also include the argument, advanced by religious groups, that religious slaughter is in fact a respectful and humane method of slaughter. Moreover, commercial interests are also relevant to religious slaughter because animal slaughter is

[19] [2008] WL 2872609.
[20] 2007 WL 1058367. For clarity, the school that Mrs Azmi worked at was controlled by the council, and therefore, the challenge is against the council.
[21] See *SAS v France* App no 43835/11 Grand Chamber Judgment [2014] ECHR 695 (1 July 2014).

a profitable activity. These various arguments need to be unpacked and assessed in order to look beyond the black-and-white positions adopted by some groups.

The method of slaughtering animals for consumption is an emotional topic that not only highlights religious and cultural choices about food but also involves health and safety regulation and consumer choice. As Tetty Havinga notes, "food has always been the subject of taboos and obligations (…) which food we prefer and what we consider fit for (human) consumption differs depending on the place and time we live and the faith we adhere to" (2010: 242). A historical and contextual understanding of religious slaughter is necessary because choices relating to food are not merely preferences but are often connected to a lifestyle choice such as religion. *Halal* and *kosher* religious slaughter are an aspect of religious freedom in addition to raising important public health interests in the UK and Germany; it is accordingly regulated and subject to review.

Both the UK and Germany are bound by EU laws that regulate animal slaughter. In 2009 the European Parliament passed a legislative resolution that emphasised the need to develop better stunning practices, but it retained the possibility of granting an exemption for religious rites.[22] EU Regulation 1099/2009 on the protection of animals at the time of killing came into effect on 1 January 2013 in all member states (Downing 2015: 7). The adoption of the resolution highlights that as technological and regulatory issues change with time, the conditions for granting exemptions could be subject to further contestation. If and when the UK exits the European Union it is unlikely that the UK will radically change its laws on animal slaughter given that prevailing scientific views endorse stunning methods. Religious slaughter remains an *exception* to the general legal rules governing animal slaughter across the EU. The standardised slaughter methods are considered to be preferable to religious slaughter, which some consider to be a pre-modern and irrational practice. The different views about the legitimacy of religious slaughter means that it is a 'contested' legal exemption that is carved out by specific legal conditions.

Although the EU law permits a legal exemption for religious slaughter, it will probably remain a disputed issue, not least because the regulatory issues concerning slaughter evolve. This paper will now address three key arguments concerning religious slaughter: (3a) the argument of discrimination, i.e. the claim that religious groups face discrimination if the practice of religious slaughter is not accommodated; (3b) the argument of choice, i.e. the claim that religious individuals choose to eat meat, and therefore, choose to follow a burdensome rule of their own volition; and (3c) the paper argues that religious slaughter calls for a balancing of interests approach, one which takes seriously the various arguments made for and against religious slaughter, in particular, the concerns of animal and environmental welfare.

3a: The Argument of Discrimination

The argument of discrimination includes various arguments made in favour of religious slaughter. The core of the argument of discrimination is that religious minorities are discriminated against if religious slaughter is not accommodated. Religious slaughter of animals has attracted considerable media and legal attention in both the UK and Germany, as well as across Europe more generally. The legal complexities arise from the fact that religious slaughter engages various bodies of law,

[22] See Article 4(4) of EU Regulation 1099/2009 on the protection of animals at the time of killing. Article 28 of EU Regulation 1099/2009 repealed EU Council Directive 1993/119/EC of 22 December 1993 on the protection of animals at the time of slaughter or killing.

including national constitutional law, EU fundamental rights and regulatory law, in addition to the ECHR law (Schyff 2014: 76). Given the variety of legal regulations that potentially apply to the slaughter of animals, differing norms may come into conflict with each other. These conflicting interests generate public debates on the extent to which religious slaughter should be accommodated: should it be banned outright or regulated, and in the case of regulation, which regulations should apply?

Arguments against religious slaughter are often based on the need to protect animal welfare. Pablo Lerner and Alfredo Rabello point out that "the necessity of protecting animals is not seriously questioned in any modern Western nation-state today, even while its scope remains unclear" (2006–2007: 6). Moreover, the extent to which animal welfare is actually protected is inconsistent. Therefore, arguments against religious slaughter are sometimes discriminatory when they single out two religious minorities and ignore the fact that there is a wider range of organisations and groups that also should work to protect the welfare of animals.

The main religious groups that exercise what is referred to as religious slaughter are predominantly Jews and Muslims. The Jewish method of slaughter is called *shechita* and food that fulfils the requirements of Jewish law is labelled *kosher*. The Muslim method of animal slaughter, and the dietary laws that comply with Islamic rules, are referred to as *halal*. The differences as to what constitutes *kosher* or *halal* are discussed below. Furthermore, diversity within Jewish and Muslim groups about what constitutes *kosher* or *halal* makes regulation a multi-faceted issue, because there is a range of interpretations on what constitutes religious slaughter and different groups complete for official state recognition.

Generally, religious slaughter methods avoid prior stunning of animal that is to be slaughtered; instead, the animal is killed with a sharp knife, usually by cutting the vein in the neck. Stunning methods, by contrast, are intended to make an animal unconscious before slaughter/death. *Some* religious groups do accept certain versions of stunning methods as discussed below. There are a range of stunning methods that include using a captive bolt, electrical shock, water-bathing, or even the use of certain gases in order to make the animal unconscious (Needham 2012: 3). The prevailing view is that stunning methods are more humane because stunning is quicker than the traditional slaughter methods, a view that is supported by scientific research. The faster the method of slaughter, the more humane it is, as it reduces the animal's pain and suffering. However, stunning methods are not necessarily faster in practice, because they are not always carried out properly or consistently (see Needham 2012). This means that some animals do continue to suffer for a longer period of time even with the use of stunning methods. The evidence on slaughter methods is thus not black-and-white and opens up space for contestation. The law regulating religious slaughter has to grapple with these complex disagreements. Therefore, there is a need to assess the arguments made by different stakeholders so that a contextualised and negotiating approach to the question of religious slaughter could be achievable.

(i) Examples from the UK

In the UK, legislation requiring the pre-stunning of animals in slaughterhouses permits an exemption for Jewish and Muslim methods of slaughter. The exemption dates back to the Slaughter of Animals (Scotland) Act 1928 and the Slaughter of Animals Act 1933 (which applied to England and Wales only). Under EU law, the stunning of animals prior to slaughter is a legal requirement in accordance with EU Regulation 1099/2009 on the protection of animals at the time of killing,

which lays down conditions for slaughter and permits an exemption for 'religious rites'.23 The UK enacted The Welfare of Animals at the Time of Killing (England) Regulations 2015 (WATOK) to comply with the new EU law. The UK provides a legal exemption for religious slaughter if certain conditions are met as stipulated in Schedule 3 of WATOK. In addition, religious slaughter must also comply with the UK Animal Welfare Act 2006 (Downing 2015: 6).

Several groups in the UK have called for a ban on religious slaughter. Indeed, petitions have been signed calling for the end of non-stunning slaughter (Pocklington 2015.) Groups against non-stunning slaughter include the Farm Animal Welfare Council and the National Secular Society, both of which argue that the legal exemption is an unfair 'privilege' granted to religious minorities.[24] These arguments are similar to Brian Barry's conceptual framework on equality and legal exemptions, which classifies religiously slaughtered meat as an "expensive taste" (2001: 40). This more limiting approach to religious freedom and legal exemptions holds that people have different tastes, choices, and preferences, and that religious preferences are just one set of preferences which do not justify special treatment in law. However, Christine Langenfeld asks "whether the legitimate aim of integration can be attained by depriving minorities of their rites and customs" (2003: 146). It is not necessary to establish the conceptual *uniqueness* of religion, and specifically of religious slaughter, in order to recognise the social fact that religious and/or cultural beliefs are important to many people (and of course secular beliefs are equally important to others). Accommodation is necessary precisely because some religious practices, such as religious slaughter, differ from the majority's set of beliefs. Indeed, this pluralism is what religious freedom seeks to protect. It follows that denying a significant portion of the population their right to practice their religious beliefs in the meaningful and practical sense can thus constitute discriminatory treatment.

In the UK, in addition to mainstream debates in the newspapers about the permissibility of *halal* meat, there are concerns about the serving of *halal* meat without the customer's knowledge. However, the newspaper and media debates have ignored some of the nuances relevant to religious slaughter. For example, many news stories ignored the statistical evidence that a significant amount of *halal* meat is in fact stunned prior to slaughter and that there is a lack of consensus amongst Muslim scholars and Muslims more generally on the permissibility of stunning (see Gardner 2015 and the pages on stunning on the Halal Food Authority's website). In fact, recent data reveals that most – around 80% – of the UK *halal* meat is stunned (Downing 2015: 2–3). The misrepresentation of the diverse reality of *halal* slaughter can lead to discrimination against minorities, and furthermore in such discussions, minorities are incorrectly represented as a homogenous group.

Another proposal for limiting and regulating religious slaughter includes the demand for explicit labelling of *halal* and *kosher* meat. In April 2012, Philip Davies MP argued for compulsory labelling of *halal* and *kosher* meat because in his words "as a strong believer in freedom of choice, I think one of the consumer's fundamental rights is to know what they are purchasing" (Barclay 2012: 6). However, Gerald Kaufman MP argued that Davies' proposal to label religiously slaughtered meat was in fact inconsistent with the aim of informing consumers, because the proposal essentially singled out two minority groups, and, moreover, did not also call for the labelling of the specific method of stunning that was used (Barclay 2012: 7). Kaufman pointed out

[23] The earlier regulations applicable in the UK was The Welfare of Animals (Slaughter or Killing) Regulations 1995 (S.I. 1995/731).

[24] See National Secular Society. 2012. *National secular society briefing religious slaughter of animals.* Available online at: http://www.secularism.org.uk/uploads/religious-slaughter-of-animals-briefing.pdf accessed 20 October 2017).

that labelling the exact method of stunning before slaughter – for an example, whether a lamb or chicken had been gassed or bolted first – is also information that could also be valuable consumer knowledge. But perhaps detailed labelling would be too much (uncomfortable) information for the consumer. The range of stunning practices and the fact that some stunning methods are ethically questionable makes it difficult to justify arguments against religious slaughter that are based exclusively on animal welfare or consumer choice. This might constitute a reason for maintaining the status quo of retaining a general exemption for religious slaughter, subject to certain conditions because arguments against religious slaughter often single out two particular religious minorities.

Religiously slaughtered meat makes up a significant segment of the meat market in the UK. The *halal* market in the UK is economically thriving. The diverse and settled Muslim population (mainly of South Asian background) initially trusted independent *halal* butchers over general supermarkets; however, this has preference has decreased and supermarket sales of *halal* certified food have steadily increased (Lever and Miele 2012: 530). This trend might be because of generational differences, as fourth-generation immigrants appear to be more inclined to follow the mainstream trend of buying from general supermarkets to a greater degree than their parents or grandparents did, and therefore, the younger generation does not necessarily feel the need to buy meat exclusively from traditional butchers. Even the *halal* meat sold in supermarkets is subject to some certification processes. The two main *halal* certification bodies in the UK are the Halal Monitoring Committee and Halal Food Authority. However, the two bodies are, in a sense, competitors for authority, as they do not always agree on fundamental issues. For example, the Halal Monitoring Committee has criticised the Halal Food Authority because the latter permits some variations of stunning prior to slaughtering. The Halal Food Authority has justified their position by pointing out that, in light of the increasing numbers of animals slaughtered for *halal* meat, some form of mechanisation is necessary (Lever and Miele 2012: 530). Therefore, although *halal* slaughter is traditionally associated with non-stunning methods, this is no longer always the case. Moreover, the UK Agriculture and Horticulture Development Board, which is the statutory board representing farmers and growers, has recently recommended introducing a new Halal Quality Standard Mark (Pocklington 2017).

The diversity of the UK's *halal* meat must be contextualised within the diverse global *halal* meat market, both of which reflect the plurality of various certification and authentication processes. Spiegel et al.'s findings on the verification of global *halal* supply chains are a testament of this pluralism because different countries – both Muslim and non/Muslim – have different legislation regulating animal slaughter (2012). In particular, several certification organisations have been founded globally and these bodies do not necessarily adopt uniform standards, which points to the trend that at least some Muslim majority countries and Islamic organisations are open to modifying rules pertaining to *halal* slaughter (ibid.: 111). The result is that some *halal* certification bodies do accept some forms of stunning (Lever and Miele 2012: 531). Thus, populist media reporting about *halal* food is inaccurate and selective.

Moreover, official food-certification processes can raise questions about religious slaughter. For example, the compatibility of *halal* meat certification and organic certification in accordance with EU's regulations was recently disputed. In his submissions to the CJEU, Advocate General Wahl opined that religiously slaughtered meat could potentially meet the technical requirements

necessary for obtaining organic certification.[25] There can be, therefore, conflicts between different certification processes. Cenci-Goga et al. point out that "the lack of an overarching halal authority has left the European market open to doubts in the areas where religion and consumer culture meet" (2013: 460). As a result of the diverse range of views on *halal* slaughter, some Muslims have questioned the authenticity of the *halal* meat sold in supermarkets and fast-food restaurants. Some Muslims have resisted the practice of stunning and the use of mechanical blades, particularly in the case of poultry, where stunning methods are widely practised. These different religious opinions mark out an area of conflict or dispute *within* the Muslim community about what constitutes the 'best' *halal* or ethical practice. The need for making legal regulations work in practice, coupled with the increased diversity of religious opinions, poses a challenge for the state to accommodate numerous claims for official recognition as religious organisations must obtain licences in order to conduct religious slaughter. Eoin Daly points to the risk that "well-meaning religious product authentication laws may also amount to preferential state 'establishment' of the dominant viewpoint within the religion in question" (2011: 298). Therefore, religious slaughter not only raises the question of what the general standard of slaughter should be but also how exemptions should be carved out and who should benefit from an exemption; in other words which bodies should have the authority to decide on religious dogma. Thus, the UK context reveals a diverse and complex picture with regards to religious slaughter, which is subject to a legal exemption, but where increased pluralism means that there are competing views about the permissibility of stunning. Calls for stricter regulation of religious slaughter have often glossed over the nuances outlined above. More often than not, religious minorities have been singled out as the main perpetrators of animal cruelty.

(ii) Examples from Germany

In Germany, religious slaughter has also received recent public attention, in part because of growth of the Muslim minority population in Germany. Yet debates on religious slaughter in Germany are far from new. In the late nineteenth century, there were heated debates on Jewish slaughter and calls for the prohibition of religious slaughter in the context of rising anti-Semitism. Shai Lavi's analysis of how Jewish rituals such as animal slaughter and also burial, ritual bathing, and circumcision, were problematised in Germany during the eighteenth and nineteenth century sheds light on the processes of secularisation that were relevant to 'exceptionalising' religious rituals. But Lavi also challenges the some assumptions of the secularisation thesis. Lavi argues that "theories of secularization emerged, at least in part, out of a specifically Christian understanding of religion and were applied to Jewish ritual without a proper appreciation of the unique characteristics of Jewish law" (2011: 818). This meant that some Jewish practices were marked out as different and considered to be 'pre-modern', although Lavi notes that the standard Weberian analysis does not fully capture the paradoxes of the process of the ritualisation of Jewish practices (2011: 824–826). Despite the historical complexity of the secularisation thesis, it is evident that at least some arguments made both in the past and present against religious slaughter have been concerned with 'othering' a religious minority rather than being exclusively concerned with animal welfare.

For the purposes of this working paper, I am interested in how the category 'ritual' is sometimes employed as a marker of difference as in the case of religious slaughter. Talal Asad has already

[25] Case C-497/17, Opinion of AG Wahl in *Euvre d'assistance aux bêtes d'abattoirs (OABA) v Ministre de l'Agriculture et de l'Alimentation, Bionoor, Ecocert France, Institut national de l'origine et de la qualité (INAO)* [20 September 2018].

highlighted how the concept of ritual has undergone transformation and how the notion of ritual influences how we come to understand religion as a category.[26] Accordingly, religious slaughter is often taken to be a practice that is not necessarily geared towards the practical activity of consuming meat, but rather, related to a symbolic activity that is spiritual or even irrational and out-dated. For example Lavi, in his discussion of Jewish rituals in nineteenth-century Germany, argues that "the Jewish religion was 'ritualised' at least as much as it was 'secularised'" (2011: 830). In other words, there existed both mystical and rational explanations of Jewish practices with some alleging that "Jewish law failed to meet enlightened standards of science and morality" (ibid.: 823). As the slaughter of animals in western and industrialised countries became a standardised, technological, and non-religious process, religious slaughter, by contrast, came to be understood as a 'ritual' and a pre-modern practice subject to *toleration*. In turn, the question of granting specific legal exemptions for religious communities that practice religious slaughter emerged and continues to be disputed. As outlined earlier, legal exemptions granted on the grounds of religion and culture are also vulnerable to the political environment, and as such, lawmakers are sometimes less accommodative to minority rights, thereby highlighting the limits of toleration.

The cases on religious slaughter highlight the demarcation of practices that are deemed 'religious' or 'secular'. Salamano et al. assert that "the sense of guilt following the act of killing any living being" is mitigated through "offering an animal to the divinity because slaughtering, as a sacred ritual, reduces feelings of guilt when killing an animal" (2013: 445). And Bruce Friedrich states that in both cases of "Jewish slaughter where Rabbis oversee slaughter, and Islamic slaughter where prayers are said over the animal, the entire process is deeply religious" (2015–2016: 242). However, whether these views fully explain the complex dietary rules of various religious communities is debatable. An appeal to Jewish and Islamic methods of slaughter as *religious* can also be problematic in at least two ways. Firstly, religious slaughter is considered to be a legal obligation to many Jews and Muslims. Lavi argues that in the late eighteenth and nineteenth century Jewish practices were 'ritualised' in the sense that what came to be understood as 'rituals' were not necessarily how the Jewish community understood their practices (2011). Lavi states that "thinking of Jewish practice as 'ritual' would have made little sense to traditionalist Jews (…) [the practices] were simply the way Jews led their daily lives and belonged to the *world* created by Jewish law" (ibid.: 826). That is not to say that religious slaughter is not thought of as a ritual by some Jews and Muslims but that the issue is rather how certain descriptions of the practice have been used as a marker for difference. So while this paper defends religious slaughter on the basis that it is an important aspect of religious freedom, it does not make further claims about the 'sacredness' or 'ritual' nature of religious slaughter as such a finding requires empirical study of the attitudes of current Jewish and Muslim communities. Secondly, when religious slaughter is considered by the majority culture to be a pre-modern 'ritual', it is not regarded as simply another *mechanical* process. Jonathan Cohen argues that

> "One reason kosher slaughter entails such difficulty may be that it represents a particularly awkward challenge to Western societies: On the one hand, it reflects a Jewish insistence upon

[26] Asad argues that "changes in institutional structures and in organizations of the self make possible (…) the concept of ritual as a universal category of behaviour" (1993: 55) and that "the emphasis on ritual as symbolic behaviour that is not necessarily religious is entirely modern", with 'symbolic' here denoting "a type of behaviour to be classified separately from practical, that is technically effective behaviour." (ibid.: 57–58).

> the primacy of pre-modern patterns of religious authority and practice, and a resistance to subjecting them to modern review, let alone regulation" (2009: 358).

The point here is that the way in which religious slaughter is exceptionalised is sometimes misleading, especially since, as discussed above, some religious groups do permit forms of stunning, and also that some religious groups think religious slaughter is primarily a legal obligation (as opposed to an irrational practice).

It is useful to briefly refer to some historical debates that shed light on how religious slaughter was problematised, and in time, exceptionalised, to flesh out the points made above. In the late nineteenth century, debates about animal welfare emerged in Germany which often alleged that slaughterhouses "encouraged brutal behaviour, attracted unsavoury characters as employees, and facilitated the accumulation of contaminants from its dirty and bloody surfaces" (Judd 2003: 117). Some of these debates specifically addressed Jewish slaughter methods. Whilst anti-Semitic views fuelled calls for the prohibition of religious slaughter in Germany, there were also arguments from animal rights activists who respected religious freedom and minorities but nevertheless held that religious freedom was of a higher value than the value of animal welfare.

Yet some arguments made by animal welfare groups about the brutality of not stunning animals before slaughter were later used as a weapon to vilify the Jewish minority and Jewish practices because, as Judd notes, conflicting interests and statements made by relevant actors involved in the debates on religious slaughter complicated the developments that led up to the introduction of stunning before slaughter (2003: 119). In particular, Judd submits that although the debates about animal welfare emerged in the late 1700s, from 1890 onwards the animal protection campaigns shifted to a new focus on *kosher* butchering (ibid.: 122–123). Both political developments and activism in favour of animal welfare, in addition to the growing hostility against Jewish practices in Germany, eventually resulted in the implementation of reforms where the prohibition of religious slaughter was enforced by law. The prohibition of religious slaughter negatively and disproportionately impacted German Jews; even if the rules implemented were neutral and generally applicable, they constituted a significant reduction of religious freedom. This was only one part of the process of creating the 'other'. The historical debate about Jewish ritual slaughter has specific (albeit limited) similarities with the current debates about *halal* slaughtering – one particular point of comparison is that the debates are not confined to Islamic religious slaughter alone but often extend to debates about the place of Muslims within European culture more generally. During the horrors of the Nazi period, Jewish slaughter was indeed banned. After the Nazi period, the ban of religious slaughter was gradually lifted in countries where it had been prohibited, including in Germany and Poland; however, religious slaughter has been recently litigated in these countries, too. As Ronit Gurtman points out, attacks on religious slaughter methods did not end with the Nazi regime and in fact many European countries continue to subject religious slaughter to specific legal regulations or in some cases a total ban (see Gurtman 2005: 41 and 45–48). Thus, arguments against religious slaughter have indeed been based on a wider, systemic discrimination of religious minorities. Today the 'othering' of the Jewish community and Jewish religious practices remains a live issue. Current debates on religious slaughter, should therefore, be informed by a sober and negotiation-based approach that could enable different groups to discuss common grounds/standards with regards to animal welfare.

There is also internal diversity within the Jewish community. Michelle Hodkin outlines the different ways in which Jewish groups have understood and interpreted the requirements of Jewish law (2005: 130). She notes that for those who follow Orthodox Judaism, "the halacha [that is the body of law comprised of the *Torah, Mishna,* and *Talmud*] is binding upon Jews and does not evolve as time passes, which means that the laws of kashrut are equally applicable today as they were for Jewish people thousands of years ago" (ibid.: 131). Thus, according to some Jewish people, Jewish dietary laws cannot be adapted in order to fit within current modern animal slaughter laws. The perceived 'immutability' of certain religious practices for some religious groups means that the secular state faces a challenge: to what extent should it accommodate a pluralism of conceptions of the good and maintain a standard regulatory framework?

Currently, German law requires prior stunning of animals and provides for an exemption for religious slaughter. The Animal Protection Act (*Tierschutzgesetz*) of 1972 as amended in 2006 requires stunning of animals; however, an exemption is provided for religious slaughter.[27] EU Regulation 1099/2009 on the protection of animals at the time of killing applies in Germany too and is implemented by the Animal Welfare Slaughter Regulation (*Tierschutz-Schlachtverordnung*) of 2012, which lays down the conditions necessary for obtaining an exemption for religious slaughter.[28] In order to obtain an exemption from the authorities, the rule against stunning must be a mandatory requirement for the religious community.[29] However, the eligibility of groups that can apply for the exemption has been subject to legal debate.

In 1995, the Federal Administrative Court upheld a decision that denied a Muslim applicant a permit for religious slaughter; one of the reasons for the refusal was based on the view that Islamic laws do not specifically forbid the stunning of animals for slaughter.[30] The Federal Administrative Court held that the test for determining the mandatory nature of religious slaughter was objective and not subjective, and on the facts, found that the applicant had not proven that religious slaughter was mandatory.[31] Thus, the Federal Administrative Court interpreted the 'traditional slaughter' exemption as provided in the Animal Protection Act narrowly and found that applicant's religious freedom was not violated.[32] The court's reasoning was problematic on the grounds of state neutrality, as the court essentially adopted a position on the internal doctrinal questions of a religious community. Whereas the jurisprudence of the ECtHR emphasises the need for state neutrality, according to which member states and courts should avoid deciding on the validity of internal religious doctrine.[33]

In a subsequent case, an applicant was refused a permit to perform religious slaughter and brought a claim before the administrative court in Hessen, where he was unsuccessful.[34] The applicant then appealed to the higher courts and his claim was successful in the German Federal

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[27] *Tierschutzgesetz* [Animal Protection Act] 1972 as amended in 2006: 18 May 2006, BGBL. I at 1206, 1313, § 4a, http://www.gesetze-im-internet.de/tierschg/TierSchG.pdf.
[28] *Tierschutz-Schlachtverordnung* [TierSchlV] [Animal Welfare Slaughter Regulation], 20 December 2012, BGBL. I at 2982, § 4 and § 12(2), http://www.gesetze-im-internet.de/tierschlv_2013/TierSchlV.pdf.
[29] Section 32 *Tierschutzgesetz* at 1206, 1313, § 4a.
[30] BVerwGE 99, 1 (4–11).
[31] BVerwGE 99, 1 (4).
[32] BVerwGE 99, 1 (4–11).
[33] See *Lautsi v Italy* Application no. 30814/06 (18 March 2011) Grand Chamber paras. 57–60 and *Refah Partisi (Welfare Party) and Others v Turkey* App. Nos340/98 (2002) 35 E.H.R.R. 3. paras. 43–51.
[34] Judgment of the Administrative Court (Verwaltungsgericht) of Gießen dated 2 December, 1997 – 7 E 1572/97 (3).

Constitutional Court in 2002.[35] The Federal Constitutional Court stated that both the religious freedom and Muslim butchers' fundamental right to occupational freedom carried weight, and it held that it would be unconstitutional to interpret § 4a.2, number 2, part 2 of the Animal Protection Act so narrowly as to exclude those Muslims who believed religious slaughter was mandatory.[36] The Federal Constitutional Court also noted that the Federal Administrative Court had adopted a less restrictive view of the concept of 'religious group' since its 1995 decision.[37]

The outcomes of the appeal represented a modest shift towards a more generous approach to religious freedom of a new minority. The litigation on the religious slaughter exemption in Germany highlighted the need for accommodating a new religious minority. Mathias Rohe commented on the 2002 decision of the Constitutional Court, "for the first time it was made clear that it is upon the Muslims in Germany (only) to decide on their creed and needs" (2007: 86). This was a significant case given that earlier decisions made by German law-makers (in the Bundestag and courts) on religious slaughter in 1982 and 1995 generally failed to give due regard to the nuances of stunning animals for slaughter in Islam,[38] and instead, had held that "stunning was not illegal in Islam" (Bergeaud-Blackler 2007: 968). It will, therefore, be interesting to see how the jurisprudence on legal exemptions more generally develops in Germany[39] as compared to the UK, where several religious and cultural exemptions are granted.[40]

It is worth discussing a few points arising from the leading case on religious slaughter in Germany. In the above-mentioned religious slaughter case, it is interesting that the German Federal Constitutional Court also considered the argument that the prohibition of religious slaughter would have meant that the applicant would not be able to serve his Sunni Muslim clientele. The applicant argued that the refusal to permit him to conduct religious slaughter would constitute a limitation on practicing his occupation as protected by the Basic Law. The right to practice one's occupation is an intersectional human rights issue when specific minorities face socio-economic disadvantages as a result of structural discrimination. For example, a study conducted in Germany by Leo Kaas and Christian Manger revealed that job applications made by people with Turkish-sounding names received fewer responses from employers than those applications made by German-sounding names (2012). Further studies have brought to light similar experiences of discrimination of minorities, in particular of the Muslim minority, in European countries such as Germany and the

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[35] Federal Constitutional Court, BVerfG, Judgment of 15 January 2002 – 1 BvR 1783/99 – Rn. (1–61). Available online at: https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/EN/2002/01/rs20020115_1bvr178399en. html (accessed 18 February 2017), which overturned Judgment of the Administrative Court (Verwaltungsgericht) of Gießen dated 2 December, 1997 – 7 E 1572/97 (3) and the Order of the Higher Administrative Court (Verwaltungsgerichtshof) of the Land (Federal State) Hessen dated 9 September, 1999 – 11 UZ 37/98. See also the case note: The Constitutional Court's 'Traditional Slaughter' Decision: the Muslims' freedom of faith and Germany's freedom of conscience, *German Law Journal* 3 (2002).

[36] 1 BvR 1783/99 – Rn. (1–61), paras. 52–53..

[37] 1 BvR 1783/99 – Rn. (1–61), para. 55.

[38] Bergeaud-Blackler refers to two decisions: one is the acceptance of the German authorities of a fatwa issued in 1982 from Al-Azhar University which pointed to the need for the death of the animal to not be directly caused by stunning, and therefore, some stunning methods were considered to be permissible to *some* Muslims. The second decision is one that is discussed in Langenfeld, Christine. 2003. Germany. *International Journal of Constitutional Law* 1: 141–147, specifically the discussion of the 1995 decision is at pages 142–143.

[39] There are additional cases on religious slaughter in the German courts. Other judgments include; Federal Administrative Court, 23/11/2006, 3 C 30/05; Higher Administrative Court of Hessen, 24/11/2009, 11 UE 317/03 and Bavarian Higher Administrative Court, 26/11/2009, 9 CE 09.2903. I am grateful to Professor Mathias Rohe and his research team for directing me to these cases. These decisions of the lower courts highlight that religious slaughter continues to be a regulatory issue. Due to limitations of language and scope, I do not discuss these cases in this working paper.

[40] On exemptions for minorities in the UK, see the UK Deregulation Act 2015, section 6 for exemptions granted to Sikhs who wish to wear the turban.

UK where the issue of integrating Muslims continues to be politicised (Carmichael 2017; Soper and Fetzer 2005: 32).[41] These studies highlight that the distinction between religious and ethnic discrimination is not always clear-cut. Stephanie Berry also points to the "intersection between the ethnic and religious identities of Muslim immigrant communities in Western Europe", which can mean that "when discrimination targets the religious identity of these groups, this constitutes indirect discrimination against ethnic minorities" (2011: 426). Berry's argument has some force even if it does not necessarily apply in all cases of discrimination against Muslims. The point is that discrimination can be complex and intersectional. The practice of religious slaughter operates within this intersection where there is a need to protect religious, racial, and cultural identities. And not much is gained by making circular arguments that religious slaughter is either *exclusively* a religious or *exclusively* a cultural practice: it may well be a mix. Nevertheless, the intersection of identity and religious belief is relevant to religious slaughter because sometimes arguments against religious slaughter are based on wider objections to the accommodation of religious and cultural difference or to policies of multiculturalism, as proposed by theorists like Brian Barry.

Given the importance of religious slaughter for some minorities in Europe who also face discrimination, and the simultaneous importance of animal welfare, there is then a need to aim for the highest protection possible for both religious communities and animal interests. In 2002, the amendment to the Basic Law to explicitly include animal welfare interests was a positive development. Article 20a states

> "Protection of the natural foundations of life and animals
> Mindful also of its responsibility toward future generations, the state shall protect the natural foundations of life and animals by legislation and, in accordance with law and justice, by executive and judicial action, all within the framework of the constitutional order."[42]

Carla Zoethout submits that "the constitutional recognition of animals in the Federal Republic of Germany (albeit as a state objective and not a right as such) is a unique development" (2013a: 315). Thus, there have been some legal developments in the last two decades that have advanced both religious freedom and animal welfare, marking a progressive shift in the right direction.

The examples from the UK and Germany demonstrate that there is force in the argument that non-accommodation of religious slaughter can constitute discrimination against two religious minorities in Europe. As outlined above, misrepresentations about what constitutes religious slaughter mean that religious slaughter has often been singled out as a particularly problematic practice both historically and in the contemporary context. Whilst religious slaughter has been accommodated to some extent, the exemptions continue to be vulnerable and subject to debates. This section has demonstrated that not all the arguments about welfare are concerned with protecting animals, but rather, that some of these arguments have led to discrimination against minorities.

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[41] Of course, in non-Christian contexts outside of Europe, Christian minorities face discrimination. However, this issue is beyond the scope of this paper.

[42] Basic Law for the Federal Republic of Germany, 1949, translated version. https://www.btg-bestellservice.de/pdf/80201000.pdf accessed: 6 March 2016. The Translation from German to English is provided by Professor Christian Tomuschat, Professor David P. Currie, Professor Donald P. Kommers and Raymond Kerr, in cooperation with the Language Service of the German Bundestag.

3b: The Argument of Choice

Another key argument against religious slaughter is based on the argument of choice. Essentially, the argument of choice asks whether religious adherents have the choice to adopt a particular lifestyle, and if so, whether they should bear the burden of that choice or whether the state should support them and alleviate the burdens of that choice. But the argument of choice can pull in opposite directions. Some argue that religious slaughter should not be exempted from generally applicable laws because religious adherents choose to place themselves in a burdensome situation. Others argue that religious adherents do *not* have a choice in the meaningful sense to eat any type of meat or food, and therefore, are bound to eat meat that is religiously slaughtered. In addition, religious adherents are also consumers who make choices. For example, a variation of the argument of choice featured in Advocate General Wahl's opinion on the question of whether non-stunned *halal* meat could be certified as organic too; AG Wahl submitted that *if* religious slaughter was prohibited in the context of 'organic farming' it would not impair the very essence of the right of religion of Jews and Muslims to eat religiously slaughtered meat.[43] Jews and Muslims would just not be able to access organically labelled foods. Therefore, the argument of choice has different dimensions.

The argument of choice should be contextualised within the jurisprudence on the scope of the right to religious freedom. Several courts, including the ECtHR, have discussed religious freedom from the point of view of individual choice as discussed below. In the leading UK case of *R (on the application of Begum* (*by her litigation friend, Rahman*) *v. Headteacher and Governors of Denbigh High School* Lord Bingham stated that

> "The Strasbourg institutions have not been at all ready to find an interference with the right to manifest religious belief in practice or observance where a person has voluntarily accepted an employment or role which does not accommodate that practice or observance and there are other means open to the person to practise or observe his or her religion without undue hardship or inconvenience."[44]

Lord Bingham outlines one prevalent view in the jurisprudence on religious freedom, namely that religious adherents should make choices about education and employment that are consistent with their beliefs, rather than placing burdens on institutions to accommodate religious beliefs. However, the claim that a religious adherent *voluntarily* places herself in a situation where interests conflict, such as where her employment duties conflict with her religious beliefs, should be considered in light of the argument of discrimination. This is because minorities sometimes face discrimination in the workplace or on the job market as discussed above.

A leading proponent of limited accommodation of religious and cultural practices is Brian Barry, who argues that religiously slaughtered meat is an 'expensive taste' because the individual chooses to place him- or herself in a conflicting situation (2001: 14). Barry argues that there are two options for religious adherents; either the religious person must comply with the general law or they must forego eating meat. He further argues that an appeal to religious liberty provides limited support for

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[43] Case C 497/17 *Euvre d'assistance aux bêtes d'abattoirs (OABA) v Ministre de l'Agriculture et de l'Alimentation, Bionoor, Ecocert France, Institut national de l'origine et de la qualité (INAO)* [20 September 2018] Opinion of AG Wahl at paras. 39–40.
[44] [2006] UKHL 15, at 23.

legal exemptions because the law does not restrict religious liberty per se as it only limits the ability to eat meat (ibid.: 44). Barry separates the choice of eating meat from eating religiously slaughtered meat. However, for some, eating religiously slaughtered meat is the *only* option if they choose or desire to eat meat. Barry's view is based on a problematic and narrow definition of religion. Moreover, the majority's preferences cannot easily be compared to the minorities' preferences.

While it might be the case that, at one level, Jews and Muslims do make the choice to (a) eat meat and (b) eat religiously slaughtered meat, for many religious adherents meat is a necessary part of their diet. Once the choice/need to eat meat is established, many Jews and Muslims consider themselves *bound* by their legal religious obligations. In this way, choices pertaining to food are not merely part of a particular lifestyle but form a central aspect of a thicker conception of the good in the Rawlsian sense. Some go further and argue that eating meat is absolutely necessary: and that there is no choice. Jeremy Rovinsky argues that to the majority of observant Jews, "eating meat is central to living a fully Jewish lifestyle" (2014–2015: 84). Therefore, a religious obligation can eliminate or reduce the choice of an individual in practice. Markha Valenta argues that the distinction between 'involuntary and voluntary minorities' can be used to limit the rights of religious minorities because essentially the responsibility to integrate is placed primarily on religious minorities as it is assumed that they voluntarily choose to deviate from the social norms of the majority (2012: 33).

Moreover, Barry's division of religiously slaughtered meat from religious liberty does not take into account the reality of indirect discrimination where neutral laws have a disproportionate impact on or disadvantage for certain groups. Valerie Paisner notes that Barry's argument is based on the premise that "as long as choice sets are identical, then opportunities are equal" (Paisner 2004: 5). However, Paisner argues, this claim is based on a "fundamental fallacy": because "his argument only works where all other things are equal", and in a multicultural or plural society "this is not the case". Paisner points out that "What is allowed within the identical choice sets created by uniform rules may have a completely different meaning for the minority culture than it does for the majority culture" (ibid.: 5). Therefore, the argument that religious adherents and religious minorities have the choice to either assimilate or accept their burdensome position is far from straightforward.

Another argument made by those who argue for the limitation of religious slaughter is that a prohibition still leaves open the opportunity to consume *imported* religiously slaughtered meat. Carla Zoethout argues that "the core of the practice, that of the consumption of ritually slaughtered meat, therefore remains unaffected" (2013b: 664). Whilst a choice to import religiously slaughter meat exists in theory, in practice religious minorities will have only limited options, and therefore, the case for accommodating religious slaughter is stronger, especially where the majority is not denied the choice to eat meat even though this would be better for the environment. In its 2002 decision on religious slaughter, as outlined in section 3a above, the German Federal Constitutional Court was not satisfied by the argument that the Muslim applicants should either simply not eat meat or pursue an alternative way of obtaining the desired meat.[45] The Federal Administrative Court had previously held that the applicant and his clientele had the choice to eat meat even if the applicant was refused a licence to conduct religious slaughter.[46] The Federal Constitutional Court,

[45] 1 BvR 1783/99 – Rn. (1–61), at para. 43.
[46] BVerwGE 99, 1 (4).

however, held that the applicant's choice would be curtailed by the unsuccessful licence application. It turns out that the argument of choice and the finding of suitable alternatives is harder to achieve in practice.

The ECtHR also considered the argument of choice and the option of buying imported religiously slaughtered meat in its first case on religious slaughter, *Jewish Liturgical Association Cha'are Shalom Ve Tsedek v. France*. However, the ECtHR followed a different reasoning to the German Constitutional Court and arrived at a different conclusion. In this case, Cha'are Shalom Ve Tsedek, an Orthodox Jewish association, was refused a licence to conduct religious slaughter by the relevant French authority. The French authority justified its decision on the basis that another Jewish association, the Association Consistoriale Israélite de Paris (ACIP) already had permission to perform religious slaughter. Therefore, the French authorities held that an option for religiously slaughtered meat was available for Jewish religious adherents. However, Cha'are Shalom Ve Tsedek claimed that they used more thorough standards than the ACIP. For example, they claimed that their examination of the slaughtered animals included an additional inspection of the lungs of the animal after death. These inspections were considered to be necessary so that the meat could be certified as *glatt* in addition to being certified as *kosher*. For meat to be considered *glatt*, the slaughtered meat must not have any impurity or any trace of previous illness.[47] Thus, the applicant association argued that their standard was more rigorous and that this difference was significant. The case highlights how, just as for *halal* meat, there are different interpretations of *kosher* meat.

The French government argued that it was not for the French authorities, which are bound by the principle of secularism, to involve themselves with controversies of religious dogma. However, the government recognised the Office of the Chief Rabbi of France as a leading and representative authority.[48] The French government emphasised that Cha'are Shalom Ve Tsedek could negotiate with the ACIP or pursue alternative means such as importing meat. The French government also noted that the ACIP and Cha'are Shalom Ve Tsedek had in fact entered into negotiations but ultimately were not able to agree on the financial terms of the contract.[49] The government, therefore, considered the dispute as primarily an economic issue and not an issue of religious freedom as such. The ECtHR concluded

> "Since it has not been established that Jews belonging to the applicant association cannot obtain '*glatt*' meat, or that the applicant association could not supply them with it by reaching an agreement with the *ACIP*, in order to be able to engage in ritual slaughter under cover of the approval granted to the *ACIP*, the Court considers that the refusal of approval complained of did not constitute an interference with the applicant association's right to the freedom to manifest its religion."[50]

The ECtHR did not find a violation of Article 9 of the ECHR and held that existing *kosher* butchers sold meat certified as *glatt* by the Beth Din (the Jewish rabbinical court) and that *glatt* meat was obtainable from Belgium.

The ECtHR's decision contrasts with the 2002 judgment of the German Federal Constitutional Court. The German court held that that the option of being a salesperson who only *markets* the

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[47] See *Jewish Liturgical Association Cha'are Shalom Ve Tsedek v. France* (2000) Application no. 27417/95 at 30–35.
[48] Ibid.: 66.
[49] Ibid.: 67.
[50] Ibid.: 83.

imported religiously slaughtered meat would mean that being a butcher is not an option, and moreover, the marketing-only role could create doubts as to whether the meat which is marketed as religiously slaughtered actually meets the religious requirements of the customers.[51] In other words, there could be a doubt about legitimacy and authenticity. The German court thus acknowledged that importing religiously slaughtered meat carries its own risks for both the seller and the consumer. Rovinsky argues that the permissibility of importing religiously slaughtered meat means that a state would be "sending a conflicting message; namely that it is acceptable to harm animals with the practice of religious slaughter so long as the harm occurs outside of the given territory" (2014–2015: 102). So importing religiously slaughtered meat is not without problems. In addition, the importation of religiously slaughtered meat is likely to also be subject to regulation and scrutiny. For example, there have been attempts to ban the importation of *kosher* or *halal* meat in Switzerland (ibid.: 2014–2015: 91). Thus, the option of importing religiously slaughtered meat still would not satisfy all parties, and it is evident that no easy solution exists to the challenge of accommodating different types of religious slaughter.

Moreover, the argument of choice can be used in another sense: religious consumers can demand the choice to consume certain products, thereby providing the incentive for commercial businesses to supply the desired meat for profit. In other words, religious adherents are also consumers and both the *halal* and *kosher* food markets exist to serve a significant portion of the population. Therefore, the argument of choice is not simply about accepting burdens and/or discrimination against minorities, choice can also be used to support the consumer needs of a certain segment of the consumer market.

In sum, the argument of choice is misleading for at least three key reasons. Firstly, choice is not an all-or-nothing issue: choice is contingent on the possibility of actual realisation of free choice and the existence of valuable options. As such, the decision to eat religiously slaughtered meat is not as straightforward as Brian Barry argues. Religious obligations are considered to be legally binding norms for some religious communities and this should be respected (within limits) by liberal states. Secondly, choice sets are not identical for the majority and minorities. The reality of discrimination against religious minorities means that some accommodative measures are necessary. Thirdly, the argument of choice would also mean that religious adherents as consumers can make a demand for their 'expensive taste' (if accepted as such), and therefore, there is no need to distinguish between expensive wine and 'expensive' meat because the market and consumer should decide what should be available. The discussion in this section confirms that the arguments of discrimination and choice are often pulled in different directions by different groups. The arguments and the examples outlined above demonstrate that while animal welfare is important for many groups, some of the arguments against religious slaughter are not simply about animal welfare but are geared to limiting religious freedom and the rights of religious minorities within Europe. It has also been outlined that religious slaughter is an aspect of a conception of the good, which the right to religion seeks to protect.

[51] Federal Constitutional Court, BVerfG, Judgment of 15 January 2002 – 1 BvR 1783/99. https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/EN/2002/01/rs20020115_1bvr178399en.html accessed 20 October 2016.

3c: The Argument of Balancing Interests

Religious slaughter requires a careful balancing of different interests because there are different types of religious slaughter (different standards of *halal* and *kosher* etc.) and different types of stunning methods. The argument of balancing interests means that one interest cannot automatically trump another. There are various interests that are relevant to the accommodation of religious slaughter, including: religious freedom, animal welfare, the interests of both different religious organisations and commercial companies and the interests of law-makers and regulators in ensuring standards are met. This section argues that there is a need for the courts to engage in balancing exercise that takes seriously the various interests; it discusses a few additional cases on religious slaughter in Europe to demonstrate this argument.

Balancing the needs of a religious community against other interests means that courts must rank the relevant 'goods'. Gideon Cohen states that "the pluralist society which Article 9 [of the ECHR] envisions involves giving everyone a presumptive right to pursue certain goods. Those goods, on this view, are too important to ask people to give up simply because they adhere to a particular religion" (2010: 182–183). At the general level of principle, religious freedom is a fundamental right that is worthy of legal protection. But the extent to which a manifestation of religion is protected under Article 9(2) of the ECHR is subject to disagreement. In *Jewish Liturgical Association Cha'are Shalom Ve Tsedek v. France* the importation of the specific type of religiously slaughtered meat was held to be a legitimate option, and therefore, the court did not consider it impossible for religious adherents to pursue their good (meat). The court did not even find an interference with Article 9 of the ECHR. However, drawing on the German Federal Court's decision above, it is arguable that the ECtHR's decision was too limiting. The need to balance the interests of different groups was highlighted in the cases discussed above, especially in light of the internal disagreements within religious communities themselves.

Moreover, in *Cha'are Shalom* the French authorities engaged with internal religious affairs to the extent that they had to decide which religious bodies should receive official recognition and therefore are eligible to conduct animal slaughter. Jonathan Cohen submits that "government backing of the backing for the Consistory and the ability of the Chief Rabbi to determine kosher slaughter standards are central to [the] dispute" (2009: 380). The official recognition of a religious authority can be fundamental to realising religious freedom, while at the same time, claims for recognition open up a space for both negotiation and competition between groups. The state must devise criteria to determine which religious bodies are eligible to conduct religious slaughter. The majority of judges in *Cha'are Shalom* held that consumption of religiously slaughtered meat did not guarantee a *right to participate* in ritual slaughter.[52] The judges separated the issue of *eating* religiously slaughtered meat from the option to *conduct* religious slaughter.

However, the dissenting judges in *Cha'are Shalom* held that the difference in treatment between the applicant association and the ACIP was incorrect. The dissenting judges reasoned that a minority religious body should not be dismissed simply on the grounds that another religious body already performs the same function that they seek to carry out. In particular, the dissenting judges stated

[52] *Jewish Liturgical Association Cha'are Shalom Ve Tsedek v France* (2000) Application no. 27417/9.5.

> "The mere fact that approval has already been granted to one religious body does not absolve the State authorities from the obligation to give careful consideration to any later application made by other religious bodies professing the same religion (…) while it is possible for tension to be created where a community (…) is divided (…) the role of the public authorities is not to remove any cause of tension by eliminating pluralism, but to take all necessary measures to ensure that the competing groups tolerate each other (…)."[53]

The dissenting opinion draws attention to the need for balancing the various interests that inevitably arise where there is pluralism. This diversity within a religious group means that various religious bodies must negotiate with the state because no single authority is representative of all members of the community or group. For example, empirical evidence reveals that Jewish people adhere to *kosher* rules in– and outside the house to varying degrees. Some Jewish adherents observe *kosher* requirements strictly and others opt for vegetarian alternatives when outside the house and still others eat non-*kosher* food (Cohen 2009: 381). Therefore, it is necessary to balance the interests of different groups with both the interests of the state and animal welfare. This could be done by paying attention to how the legal framework might need to be adapted or tailored to meet the changing needs of groups.

The accommodation of religious slaughter has been tested in a number of European countries in addition to Germany and the UK; these include countries such as Austria, Poland, and the Netherlands, where the permissibility of religious slaughter has also been litigated. The cases on religious slaughter will be briefly outlined here in order to demonstrate how competing interests have been balanced by different European courts. In 1998, a case on religious slaughter was heard by the Austrian Constitutional Court that concerned an applicant who was convicted for permitting and *tolerating* religious slaughter on his farm.[54] The court stated that

> "The Court observes a shift in values concerning animal welfare which today represents a widely recognised and important public interest. Regarding the scale of values typified in the fundamental rights, animal welfare nevertheless does not exceed the freedom of thought and religion."[55]

The Austrian Constitutional Court held that a ban on religious slaughter interfered with religious freedom. The court also held that ritual slaughter was not a threat to the public order (as quoted and discussed in Vašek 2009: 230). This question about public morals has been a key part of the debates on accommodating religious slaughter as discussed earlier with reference to the rise of anti-Semitism in Germany in the late nineteenth/early twentieth centuries.

However, arguments based on public morals may also result in the opposite outcome. In a case in 2014 in Poland on religious slaughter there was a disagreement about how to interpret the argument of public morals.[56] The Attorney General commenting on the case "emphasised the importance of the evolution of moral conceptions" and argued that slaughter without prior stunning is "inhumane, and hence immoral, under the dominant moral sensitivities in Poland today" (as discussed in

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[53] Ibid.: 26.
[54] Austrian Constitutional Court Judgment of 17 December 1998 B 3028/97, VfSlg 15394, commentary in Vašek, Markus. 2009. Ritual slaughter and the freedom of religion. *Vienna Online Journal on International Constitutional Law* 3: 228–231.
[55] Ibid.
[56] Judgment K 52/13 10 December 2014 (Tryb Konst PL).

Gliszczynska-Grabias and Sadurski 2015: 600). Yet appeals to public morals and dominant moral sensitivities can result in discrimination against minorities. The Union of Jewish Religious Communities argued that the ban on religious slaughter violated their constitutional rights to religious freedom, equality, and non-discrimination. The Constitutional Court of Poland held that there was "no link between the absolute ban on ritual slaughter and the necessity to protect (…) constitutional values", and accordingly, the ban was considered to be disproportionate (as discussed in Kustra 2015: 1562). The Constitutional Court of Poland "accepted the claimants' arguments that 'morals', in the constitutional sense, must be understood as informed by Judeo-Christian religion and tradition" (Gliszczynska-Grabias and Sadurski 2015: 607). However, the endorsement of specific moral conceptions can undermine state neutrality and/or have discriminatory effects because minority or new religions are assessed in accordance with their compatibility with the dominant majority standard.

Ultimately, in 2014 the Constitutional Court of Poland struck down legislation that sought to prohibit religious slaughter. The decision was criticised by various parties. Aleksandra Gliszczynska-Grabias and Wojciech Sadurski criticise the decision of the court on the grounds that its reasoning constituted an over-reach in that the court unduly elevated the right to religious freedom and this could lead to a future challenge to the secular nature of the constitution (2015: 601). Some commentators on the decision argued that religious freedom should not be prioritised over public morals and animal welfare, whilst others argued that public morals must be considered *in light of* the right to religious freedom, meaning that religious freedom is not necessarily opposed to public morals but is an aspect of it (ibid.: 588). The latter argument essentially means that both religious freedom and animal welfare considerations are both a part of public morality; in other words, they are to be balanced against each other, as opposed to being considered as two separate values. However, whether the relevant interests are framed as religious freedom vs. public morality (including animal welfare) or as public morality that includes both religious freedom and animal protection, the court still must balance the various interests and decide on the proportionality of a restriction.

Just precisely how a court balances the conflicting interests will determine the permissibility of a legal exemption and this will partly depend on the context including the facts of the case. On the one hand, some religious groups will continue to practice their religion even if their religious practices are considered to be out-dated by the majority. On the other hand, modern scientific processes such as stunning methods that are not based on religious beliefs or religious law can put pressure on ancient religious practices. Moreover, the case in Poland demonstrates that sometimes there exist different reasons for interpreting religious freedom narrowly: as Gliszczynska-Grabias and Sadurski submit, these reasons can include the need to protect the secular constitution from the majority religion.

In the Netherlands, the exemption granted to Jews and Muslims for religious slaughter also came under pressure by Marianne Thieme, the leader of the Party for Animals, who argued for an end to religious slaughter and proposed a legislative bill in 2008 (Schyff 2014). The House of Representatives, however, rejected the removal of the religious exemption on the grounds of protecting religious freedom, but suggestions for amendments were welcomed. Valenta submits that the debates on religious slaughter in the Dutch Parliament were also concerned with the question of religious accommodation and the place of religion in modern secular life more generally (2012: 32). This highlights that the possibility of obtaining a legal exemption may depend

on factors such as the number of religious adherents and the strength of the religious organisations lobbying for exemptions.

The examples of litigation of religious slaughter in the Netherlands, Austria, and Poland confirm that religious slaughter is subject to the political context and that arguments against religious slaughter are often based on a broader political view that religious minorities should not be granted legal exemptions. As such, many of the debates have overlooked the opportunity to engage in a more nuanced form of negotiation where different interests could be balanced. Overall, the decision whether to prohibit or permit religious slaughter raises significant issues, as a closer look at both the historical and contemporary context confirms. The German experience is a key example because the banning of religious slaughter during the Nazi period severely curtailed religious freedom for the Jewish community as the Jewish way of life as a whole came under attack. And as the historical evidence on the debates about animal slaughter show, the attack on Jewish slaughter practices developed gradually, revealing, at the same time, some paradoxes about the arguments made by different parties in the lead up to the Nazi period (see Judd 2003 and Lavi 2011). Religious slaughter is thus not a narrowly circumscribed issue about animal welfare; it also affects the identity of groups that practice religious slaughter.

The accommodation of religious slaughter is not just of symbolic importance as the cases above demonstrate; in practice, it relates to both the emotional and economic well-being of the community. These are factors that need to be balanced too. The *kosher* and *halal* industries generate millions of pounds annually and removing this segment of the market would have significant economic implications. Estimates on the size of religiously slaughtered meat products demonstrate the profitability of these markets. For example, estimates in 2008 held that "the EU market for *kosher* meat alone (…) was worth around €5 billion" (Needham 2012: 2). In the EU, the countries with the most sizeable Jewish and Muslim communities are the UK, France, and Germany: the UK and France have some of the largest Jewish populations in the world,[57] while France and Germany have the largest Muslim populations in the EU (Hackett 2016). The banning of religiously slaughtered meat would either push religious slaughter 'underground', or reduce the options available to Jews and Muslims. In 2012, Spiegel et al. estimated that "the *halal* food market is currently worth 16% of the entire global food industry" and they further predicted that the *halal* food market "could account for 20% of world trade in food products in the future" (2012: 109). The *halal* and *kosher* food market thus is an opportunity for businesses and religious organisations. It also creates a need for regulation. Religious or ethical based food markets are no longer a niche, but are growing markets where transnational forms of regulation also come into play. For example, as pointed out above, a variety of national regulators and transnational bodies are involved in the process of defining what constitutes *halal*. One of the problems for *halal* certification, as with other forms of food certification, is the risk of contamination of the food, especially as food chains are becoming longer and/or more complex in an international market (Lever and Miele 2012). Although states are responsible for implementing laws regulating the slaughter of animals, these laws cannot always address the entire complex reality of religious practices such as religious slaughter. Cenci-Goga et al. note that "the complexities involved and the lack of clear information and guidance has contributed greatly to the growth of 'hybrid' forms of governance and third-party

[57] See the website of the Jewish Virtual Library. http://www.jewishvirtuallibrary.org/jsource/Judaism/jewpop.html accessed 20 October 2017.

certification within the halal supply chain" (2013: 460). The fact that a chain of parties or a range of groups are involved in a global meat market means that regulation is far from simple.

As the range of religious and ethical beliefs increase, so does the opportunity for new food products. In his seminal work *A secular age,* Charles Taylor (2007) traces how there has been an increase in the plurality of beliefs but also how, particularly in Western societies, there has been a shift away from belief in God as the ultimate belief or framework of reference. Taylor notes that there is increasing diversity "not only of religious views, but also of those which involve no religion, and of beliefs unclassifiable in this [religion-no religion] dichotomy" (2010: 27). It is no surprise then that a range of beliefs pertaining to dietary choices exist. The burgeoning market for ethically aware or healthy food products includes fair trade, organic, vegetarian, vegan, gluten free etc. For example, some Muslims make a distinction between *halal* and *tayyib* meat – the latter term refers to broader issues of whether the meat is ethically good or wholesome.[58] Religious slaughter is subject to market changes, too, and as such *halal* meat and *halal* animal products (such as jelly sweets) are increasingly available in 'non-traditional' stores such as supermarket chains and fast-food restaurants, especially in urban cities. This expansion of food products engages the interests of both animal welfare and environmental advocates, especially because animals are exploited to meet the increasing demands of consumers. These are key concerns that ought to be taken into account; but the problem of animal welfare is broader than the question of the specific method of slaughter. The ethical and animal welfare issues raised, therefore, do not simply concern the question of whether religious minorities should be coerced to adopt stunning methods prior to slaughter. Animal welfare also concerns how animals are fed, treated in slaughterhouses, transported, and so forth. Different countries adopt different standards, which is why as discussed earlier the possibility of importing meat does not necessarily resolve the range of ethical issues raised. Therefore, whilst there is a need for the balancing of competing interests, there are ways in which this could be achieved. Below I outline some potential options that could result in shaping policies on religious slaughter.

4. A Way Forward: how to balance competing interests

The case law and debates outlined above on religious slaughter confirm that the arguments for and against prior stunning of animals are not straightforward for a number of reasons. Firstly, there are a variety of methods of both stunning and religious slaughter. For example, some stunning methods do not necessarily kill an animal, and some religious groups accept certain types of stunning methods. This deeper pluralism has generally been ignored in the debates on religious slaughter as religious slaughter has generally been represented as a monolithic practice in the media. So arguments against religious slaughter are sometimes misleading. Florence Bergeaud-Blackler emphasises that "a plurality of opinions" on religious slaughter is "inevitable" given the diversity of managing such a complex practice (2007: 974). The arguments of discrimination and choice demonstrated that there is a need to protect against religious discrimination but that there is also a need to regulate a transnational practice.

Secondly, the paper argued that choices about individual diet are sometimes an aspect of conception of the good or religious belief, and therefore, should be protected under religious

[58] See: http://www.freerangehalalmeat.co.uk/halal-and-tayyib/ accessed 14 February 2017.

freedom. The paper discussed the different approaches to the question of religious exemptions. One approach, as put forward by Brian Barry, favours limited religious accommodation including religious slaughter. The argument of discrimination demonstrated that the non-accommodation of religious slaughter has historically been a form of religious discrimination particularly in Germany. The argument of choice demonstrated that preventing religious minorities from eating religiously slaughtered meat would in practice reduce their choice, because alternatives such as importing meat would not necessarily remove the regulatory burdens.

Thirdly, the argument of balancing interests outlined that that no single argument or interest should automatically trump other interests because both sides have important arguments that should be taken seriously. Rovinsky asks "How should society balance competing values when minority religious rights often conflict with animal protections?" (2014–2015: 80). For some, animal welfare can mean that eating meat should be banned altogether and/or that the practice of religious slaughter is too cruel. However, as Shannon Doheny points out, arguments in favour of animal ethics are sometimes arbitrary because "those who disagree with animal sacrifice on an ethical level should reflect on why that practice is more disagreeable than other practices involving the use of animals" (2006: 142) such as animal experimentation (some groups do consider these wider concerns). The arguments above outlined that various stunning methods are ethically questionable, too. Defenders of religious slaughter question the possibility of quantifying and interpreting animal suffering. Some argue that "interpretations of animal suffering are made in terms of levels of *human* tolerance" (Bergeaud-Blackler 2007: 974). Bergeaud-Blackler highlights that "the validity of the arguments depends on the way in which the problem is circumscribed and defined (in experimental situations, integrated, or not, in the life of the animal). How is it measured? Interpreted? At which stage? Using which means of measurement?" (ibid.: 974). Therefore, some defenders of religious slaughter argue that it is in fact the more humane method if the animal is slaughtered quickly. However, Zoethout asserts that "it is obvious that those in favor of a ban on ritual slaughter intend to improve the wellbeing of animals" (2013b: 667). But it is not automatically *obvious* that all objections to religious slaughter are concerned with improving animal welfare. It would be too hasty to assume that *all* of the groups who have campaigned against religious slaughter are solely concerned with animal welfare, because if this were true, these groups would also consider extending their scrutiny and campaigns to problematic stunning practices and the practice of eating meat at all. There continues to be a range of ethical and welfare concerns created by the mass meat industry and these include the conditions under which animals are kept in abattoirs, fed, and transported, in addition to the stunning practices (Lerner and Rabello 2006–2007: 7). Moreover, if animals are slaughtered more quickly, the question does arise as to whether this is because of animal welfare or because of the desire to produce more meat to meet the increased demands. For example, animal welfare objectives are not necessarily distinct from economic considerations generated by meat industry (see Smith 2007: 91). Welty, for example, points to the range of cruel practices that harm fish, which includes slaughtering them by "gill-cutting, asphyxiation, or immersion in an ice slurry" and he submits that "although there is a scientific consensus that this is cruel treatment (…) these methods continue to be used presumably because they are inexpensive" (2009–2010: 66–67). Therefore, activist groups should also engage more closely with the ethical dilemma of whether killing animals faster leads to more animals being consumed and with the environmental consequences of producing more meat. For example, Lavi argues that practices of humane killing are narrowly defined; in particular, institutional

practices at various places such as hospitals, prisons, and slaughterhouses are also ethically questionable and the need to overcome the pain and suffering of humans and of animals that are slaughtered can be juxtaposed with the continued existence of "inhumane conditions that remain unchallenged" (2014: 321). The irony is that the conditions under which many animals are kept are ethically questionable, and therefore, singling out religious slaughter does not resolve the core concerns of animal welfare.

Overall what is clear is that the case study of religious slaughter raises some complex questions that require further investigation in order to go beyond the deadlock that is often presented in the media. Moreover, in addition to the diversity of viewpoints, there are a variety of interested stakeholders who have different goals and interests. Valenta submits that because such a wide range of parties are engaged, including "political parties, religious communities, scientists, the meat industry, and engaged citizens", means that it is "impossible to describe any one standpoint as either religious or secular per se" (2012: 27). As seen in the case of both Jewish and Muslim groups, there exist different interpretations of the requirements of the religious rules concerning religious slaughter. The existence of a plurality of views of the good in modern societies – religious, philosophical, and secular (even if distinctions between them are not always clear-cut) – means that there is a range of views about the place of animals in the world. The significance of the role of animals in this world and in the 'hereafter' (for some) is an aspect of many conceptions of the good. Jeff Welty asserts that "a hierarchy of slaughter exists, in which the degree of care taken in ending an animal's life diminishes along with the animal's relationship to humans" (2009–2010: 62). There is no consensus about the ethics of different slaughter and stunning methods. And it is this diversity that the state and its laws must confront and regulate. As Zoethout points out, "it is obvious that the results of scientific research after the welfare of animals during slaughter all point in the same direction – that of rejection of unstunned slaughter" (2013a: 320). Friedrich, on the other hand, points out that "the advent of modern slaughter technology has turned what was once the kindest form of slaughter, leading to death within a minute or two at the most, into the opposite, where even in a best case ritual slaughter, the animal will suffer much more than necessary" and that "both science and experience show that the best case is not reality" (2015–2016: 254). Scientific arguments have been employed by religious groups, too, and therefore result in another set of irreconcilable arguments over the interpretation of scientific evidence. However, scientific arguments do not necessarily resolve the need for balancing competing values and interests. In the famous exchange between Pope Benedict XVI (Joseph Ratzinger) and Jürgen Habermas, Ratzinger draws attention to the ethical problems that science does not readily provide solutions for (2007: 56). This means that we need policy decisions that take into account that some value judgements and balancing of interests is necessary. Along similar lines, Valenta argues that "scientific expertise offers few, if any, solutions to the question of the place of religious truths in secular democracy, but only changes the terms under which they are politicized" (2012: 27). Some of the ethical dilemmas that animal slaughter raises cannot be resolved by only appealing to the scientific evidence that supports stunning methods. Instead, the various arguments must be interpreted and balanced against each other. In 2003 the Italian National Commission on Bioethics published a document on religious slaughter and suffering in which it held that a state should not reject a custom "(…) deeply rooted in the culture and tradition of a community simply because it is different from that of another religious or secular sector of the population, even though that may be the majority" (as summarised in Lerner and Rabello 2006–2007: 16). Thus, a balancing of the

religious, secular, and scientific interests should be conducted with the aim of a respectful accommodative outcome in mind.

The pluralism of conceptions of the good that have become truly transnational due to globalisation, immigration, and the media means that the law has to potentially address the issue of an increase in claims for accommodation. This is why empirical and inter-disciplinary research could assist with outlining appropriate policy solutions. Given that both Jewish and Muslim communities in Europe practice religious slaughter, there is a need for various parties to cooperate in order to uphold both religious freedom and animal welfare. With regards to religious slaughter, the practices of Muslim communities are sometimes in conflict with classic Islamic legal norms because interpretations vary between different religious bodies. Ihsan Yilmaz states that "unofficial Muslim law can exist where the state provides a parallel rule or has developed no rule concerning it" (2002: 343). Religious groups themselves shape the norms of their religious practices. In his discussion of humane slaughter legislation in the US, Constantinos Hotis submits that "the most pertinent and effective solutions can only be derived from an analysis of contemporary society and laws rather than those of the ancient and modern past" (2006: 531). However, contemporary laws, which are part and parcel of a particular social context, must also engage with the past to the extent that religious groups maintain a link with the past through their practice of religious laws. Understanding how religious laws are interpreted and transformed is important to formulating legal and policy solutions on religious accommodation. No one single method or approach to religious slaughter will satisfy all groups – but this is to be expected in pluralistic liberal states. One such example of the conflicting interests raised by accommodating religiously slaughtered meat is when the Dutch supermarket chain Albert Heijn began to sell *halal* meat in 2006 and faced backlash from different groups. Specifically, the supermarket initially faced criticism for selling non-stunned *halal* meat, and when it subsequently changed this and adopted another *halal* certification process (one which allowed some form of stunning), it faced criticism from some Muslim customers (Havinga 2010: 241). However, this does not mean that relevant parties cannot come to some agreement.

As I have argued in this paper, accommodation is possible even though no solution will satisfy all parties. There are common interests and goals that could mean that some of the differences could be mitigated or negotiated. In sum, there are a number of potential solutions to the issues discussed above. I outline four of tentative suggestions here:

(i) Arguments against religious slaughter should be clearer about *what exactly* they oppose given that some religious groups permit stunning methods. Arguments against religious slaughter could detail the specific dimensions of the practice they oppose – because some groups might not oppose the whole practice of religious slaughter but only aspects of it.

(ii) Stunning methods should be made more accurate and effective in order to reduce the unnecessary pain inflicted on animals and to ensure that the goals of legislation that mandates the use of stunning are realised in practice. This in turn could require more regulatory compliance and checks.

(iii) Religious slaughter methods could also be improved by ensuring that knives are sharp enough to ensure a speedier death of the slaughtered animals. Once again, this would require monitoring of religious slaughter, but perhaps religious organisations that provide certification could bear some of the cost of ensuring compliance. It might also mean that some religious groups would be open to discussing whether new methods or variations of religious slaughter are possible. It might be that *some* religious groups are open to changing practices if there is evidence that points in the direction of beneficial change. Either way, a form of dialogue would be beneficial for different stake holders.

(iv) Detailed ethical guidelines on animal slaughter could be developed in a joint effort of different groups to reconcile some of the differences and to provide further guidance or clarification of issues that need to be addressed. These solutions can only be achieved if different groups take each other's concerns seriously and with sincerity.

The suggestions outlined above could be achieved in practice by setting up interest groups that take up the various positions and by setting up a process of negotiation at both national and European supra-national levels. Using negotiation as a method for achieving the legal accommodation of religious slaughter could enable the development of devising strategies for protecting animal welfare. Negotiation could also be enriched by drawing on materials beyond legal discourse, which provide a rich resource for understanding the practice of religious slaughter.

5. Conclusion

This paper has outlined the arguments for and against religious slaughter and has drawn on key examples from the UK and Germany in order to highlight the complexities of accommodating religious slaughter by means of legal exemptions to generally applicable laws. Both the UK and Germany provide for legal exemptions for religious slaughter and face the challenge of regulating increased pluralism. This paper critically engaged with the various issues raised by religious slaughter by discussing the arguments employed by different stakeholders. The aim of the paper was part educative and it sought to dissect the different arguments made about religious slaughter. The paper highlighted that a wide range of views on animal slaughter exist: some believe that the slaughter of animals is categorically wrong; others think that stunning methods are necessary and still others think that religious slaughter is necessary. These differences of opinions are a reality of pluralistic liberal states. However, the three key arguments that were assessed in this paper demonstrated that sometimes arguments against religious slaughter can have both discriminatory and exclusionary effects. Moreover, the argument of choice has limitations once we consider the argument of discrimination and consumer choice. Ultimately, a balancing of interests is necessary and this can be achieved through adopting several pragmatic approaches. This article argued that religious slaughter is an aspect of the right to religious freedom and should be accommodated. It proposes a shift away from the polarised positions adopted by some parties and instead advocates for dialogue between different groups. Whilst there is no single answer that will satisfy all parties, there is room for parties to cooperate in the interests of animal and environmental welfare. Thus,

whilst religious freedom is an important constitutional right, it should not automatically trump animal welfare interests; instead interested groups should engage in negotiation to collectively address the pressing concerns of animal welfare. This could be achieved by drawing on a range of non-legal sources that could enrich discussions and through the use of negotiation as a technique to devise better and more consistent policies on religious slaughter.

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