

THE “STUNNING” REALITY BEHIND HALAL MEAT PRODUCTION

“A good deed done to an animal is as meritorious as a good deed done to a human being, while an act of cruelty to an animal is as bad as an act of cruelty to a human being.”

— The Prophet Muhammad: Hadith

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I. INTRODUCTION

Two thousand years ago, Islamic slaughter would have been considered humane in comparison to common slaughter practices at that time.² Today in the United States, many young Muslims are still taught that Halal meat is produced using much kinder and more humane methods compared to conventional slaughter practices.³ Unfortunately, in the United States, Islamic slaughter, as practiced under the ritual exception to the Humane Methods of Slaughter Act (“HMSA”), is often anything but humane. The HMSA provides for two acceptable methods of slaughter: (1) conventional slaughter, whereby the animal is rendered insensible to pain before death;⁴ and (2) ritual slaughter, where the animal loses consciousness from hypoxia brought on by loss of blood.⁵ Because of the clash between religious freedom and animal welfare concerns, the United States Department of Agriculture (“USDA”) has chosen to interpret the HMSA in a way that creates what some meat industry scientist and legal

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² Bruce Friedrich, *Ritual slaughter in the Ritual Bubble: Restoring the Wall of Separation Between Church and State*, 17 VT. J. ENVTL. L. 222, 253 (2015).

³ *Id.* at 223.

⁴ Humane Methods of Slaughter Act (HMSA), 7 U.S.C. § 1902 (2012).

⁵ 7 U.S.C. § 1906.

scholars have dubbed the “ritual bubble.”⁶ This “ritual bubble” is completely unregulated, which leaves ritually slaughtered animals without protection. The atrocities that occur within this bubble are unreported, non-sanctionable, and therefore, predominantly unseen by the public.⁷

Animal welfare activists have focused on “stunning” as the end-all-be-all of humane slaughter. However, as Dr. Temple Grandin, the leading expert on slaughter and livestock welfare, has argued, properly executed ritual slaughter can be performed humanely.⁸ Moreover, many Muslims in the U.S. and other countries are supportive of pre- and post-slaughter stunning as long as it is not the cause of death and the stun is reversible.⁹

This Note argues that stunning is not the primary concern animal welfare activists should be focusing on with regards to Islamic slaughter; they should instead direct their concerns at the complete lack of regulatory oversight and sanctions currently available regarding ritual slaughter. Properly administered Halal slaughter paired with or without a non-lethal stun can prove to be a humane method of slaughter if: (1) the proper regulations are instituted, and (2) the current interpretation of the ritual slaughter exception is abolished and replaced with a system where both secular and religious regulations work in tandem to ensure humane treatment of animals.

II. BACKGROUND

A. Islamic Law

Islamic law is derived from various sources. The two primary sources are the Holy Koran and the *Sunnah*.^{*10} The *Sunnah* is the verbally

⁶ See Friedrich, *supra* note 2, at 223 discussing the “ritual bubble” as a creation of the United States Department of Agriculture’s refusal to regulate ritual slaughter or ensure that animals are treated humanely.

⁷ Friedrich, *supra* note 2, at 228-232.

⁸ Temple Grandin, *Observations of Cattle Restraint Devices for Stunning and Slaughter*, 1 ANIMAL WELFARE 85, 91 (1992).

⁹ *Id.*

¹⁰ Haluk Anil, et al, *Religious Rules and Requirements- Halal slaughter*. DIAREL, <https://perma.cc/MY4T-QK7M> (last visited May 15, 2019) (The *Sunnah* are the traditions and examples set by the Prophet that serve as models for Islamic life and practice) (discussing terms relevant to Islamic law).

transmitted teachings derived from the life of the Prophet Muhammad.¹¹ Additionally, Islamic law relies on *Hadith*,* which are the written stories and traditions of the Prophet Muhammad, and the consensus of religious scholars called *ijma*.¹² When the primary sources are silent on a specific subject, they are supplemented with analogical reasoning, known as *qiyas* and *ijma*, in order to derive a definitive answer to a question.¹³ The corpus of jurisprudence has come down through different schools of thought within Islam, and each has its own specific nuances.¹⁴

Islamic law dictates how to treat animals that are halal; meaning, fit-to eat. This includes how these animals are to be cared for and slaughtered.¹⁵ Each school of thought has a slightly different view on slaughtering animals, and on which slaughter practices are Halal.¹⁶ Furthermore, individual Muslims may choose from any of the recognized schools of thought, which creates differences in practice among Muslim communities.¹⁷

Religious dicta concerning dietary intake are not unique to the Islamic faith—many other religions prescribe a dietary outline for its adherents.¹⁸ Islam, Christianity, Judaism, Hinduism, and Buddhism all have detailed dicta regarding food consumption.¹⁹ This is primarily a function of public health. At the time these religious texts were written, food preservation techniques and sanitation practices were primitive, and people were often made ill (sometimes even fatally) from ingestion of spoiled meats and perishable foods. Islamic law regarding ritual slaughter developed to address both public health concerns associated with the spread of disease from contaminated meat, and to limit the suffering of livestock animals. The animal welfare policy concerns behind the HMSA

¹¹ Haluk Anil, et al., *supra* note 10 (discussing the *Hadith*, which are the written stories and traditions of the Prophet Muhammed).

¹² *Id.*

¹³ KNUT S. VIKOR, BETWEEN GOD AND THE SULTAN: A HISTORY OF ISLAMIC LAW 31, 53-58 (2005) (stating *Qiyas* is a method of analogical deduction that links legal rules to the text of the Revelation); *See also Id.* at 31. (discussing *Ijma* as the law accepted by consensus of practicing Muslims).

¹⁴ *Id.*

¹⁵ MUFTI MUHAMMAD TAQ USMANI, THE ISLAMIC LAWS OF ANIMAL SLAUGHTER 21-24 (Amir A. Toft 1st ed. 2006).

¹⁶ RICHARD FOLTZ, ANIMALS IN ISLAMIC TRADITIONS AND MUSLIM CULTURES, Ch. 2 (2006).

¹⁷ *Id.*

¹⁸ Tetty Havinga, *Regulating Halal and Kosher Foods: Different Arrangements Between State, Industry and Religious Actors*, 3 ERASMUS L. REV. 241, 256 n. 242 (2010).

¹⁹ *Id.*

are similar to the concerns of Islamic law. And, like Islamic ritual slaughter, the HMSA is not solely concerned with the wellbeing of the animals, but also with the well-being of slaughtermen, public health, and the spread of disease through contaminated meat.²⁰

B. Why Halal?

It was common practice at the time the Koran and many of the Islamic dictum regarding Halal slaughter were developed, to slaughter animals one limb at a time, thereby keeping the animal alive as long as possible to preserve the meat and prevent disease and spoilage.²¹ This was a barbaric and extremely painful method of slaughter. Viewed in that spatial and temporal context, Islamic slaughter would have been considered an extremely humane and progressive method of slaughter, because it requires the animal be dispatched of quickly with a single cut to the neck, rather than by hacking away at the poor being one limb at a time.²² The extra time and care required for ritual slaughter shows an explicit concern for the suffering of animals, and illustrates the intent of Islamic ritual slaughter laws to offer a more humane and compassionate method of slaughter. Islamic slaughter was also more pleasant to the slaughterer, who often also raised the animal. Studies have shown that slaughtering as a sacred ritual reduces feelings of guilt when killing an animal.²³ Most importantly, the tenants of Islamic slaughter brought a new awareness about the relationship between living beings and the welfare of the animals we eat.

The recognition of *al-ijtihad* makes Islamic law adaptable and able to change according to time, place, and circumstance.²⁴ This capacity for change is clearly embodied in the Halal meat production industry:²⁵ not

²⁰ Havinga, *supra* note 18.

²¹ Temple Grandin & Joe M. Regenstein, *Religious Slaughter and Animal Welfare: A Discussion for Meat Scientists*, MEAT FOCUS INT'L 115, 115-23 (1994).

²² *Id.*

²³ Germana Salamano, et al., *Acceptability of Electrical Stunning and Post-Cut Stunning Among Muslim Communities: A Possible Dialogue*, 21 SOCIETY & ANIMALS 443, 446 (2013).

²⁴ Suhaimi Ab Rahmana, et al., 3 *Development of Islamic Law: The Application of 'Urf in Halal Animal Slaughtering Practices*, 1 SAINS HUMANIKA 11, 17 n. 12 (2014) (*Al-ijtihad* is the concept of human interpretation that requires human and intellectual effort); see also KNUT S. VIKOR, BETWEEN GOD AND THE SULTAN, *supra* note 13, at 31.

²⁵ *Id.*

only have methods of production changed to meet this demand, but so has the reasoning, and therefore the law itself, regarding Halal slaughter.²⁶ Today, pre-slaughter stunning is practiced in the majority of U.S. slaughterhouses producing Halal meat.²⁷ This is a practice that some schools of thought strictly forbid, and others allow, but there is no doubt that it is common practice in the U.S. and many other countries with sizeable Islamic populations. There is also no uncertainty that Koranic verses explicitly forbid consumption of animals that are beaten, abused, or mistreated before slaughter. When the primary sources of Islamic law are silent or unclear on a matter, *urf* may be used in its stead to provide a ruling or clarify a generally established rule.²⁸ The question then becomes whether stunning, and the various forms and methods used to administer the stun, constitute beating, abusing, and/or mistreating an animal.

C. *The Scientific and Animal Welfare View on Halal Slaughter*

The science on Halal slaughter is split. Some animal science experts, like Dr. Grandin, believe that properly administered Halal slaughter can be a humane method of slaughter.²⁹ Other researchers opine that is impossible that ritual slaughter, even if executed perfectly, could be as humane as well-conducted conventional slaughter. Conventional slaughter requires that “all animals are rendered insensible to pain by a single blow . . . that is rapid and effective, before being shackled, hoisted, thrown, cast, or cut.”³⁰ The numerous studies produced on the subject can confuse the sharpest of minds, and when considering the various industries funding the research, the situation becomes even more unclear. The focus on stunning as the defining characteristic of humane slaughter has detracted from the more concerning issue—the fact that there is no regulation within the “ritual bubble.”

Dr. Grandin believes that ritual slaughter can be humane if proper training methods are implemented for the slaughterer and appropriate

²⁶ *Id.*

²⁷ Grandin, *supra* note 8.

²⁸ Rahmana, *supra* note 25.

²⁹ Grandin, *supra* note 8.

³⁰ 7 U.S.C. § 1602(a).

equipment is used.³¹ According to Dr. Grandin, a properly administered ritual cut can render the cattle insensible within 10 seconds.³²

Through her research at Kosher slaughterhouses, Dr. Grandin observed the following:

I have observed kosher slaughter of thousands of cattle and calves. Some shochets are much more effective than other shochets. The best shochets are able to cause over 90% of the cattle to collapse within 10 seconds. It is my opinion that shochets should be evaluated on the ability to perform both ritually correct cuts and biologically effective cuts. This could be done by scoring them on the percentage of cattle that collapse within 10 seconds.³³

The issue of consistency is even more pronounced in Islamic slaughter, because unlike Kosher slaughterers, Halal slaughtermen receive little or no formal training. Kosher law has lengthy and explicit dictates about who can slaughter and how to train *shochets*.³⁴ This lack of training should be as important of an issue in the animal welfare discussion as the presence or absence of pre-slaughter stunning.

To find an equitable resolution, the issue of stunning should be tabled until we have a method for effectively regulating ritual slaughter. Instead of focusing on the differences of opinion, we should focus on the similarities between what the scientists, animal welfare groups, and Muslims' believe to be true and allow a healthier more inclusive conversation to take place. For the scientific approach to animal welfare, the most accepted representation rests on the Five Freedoms that have grown out of the Brambell Committee Report, which are freedom from: (1) thirst and hunger; (2) discomfort; (3) pain, injury, and disease; (4) restriction to express most normal behavior; and (5) fear and distress.³⁵ These scientific concerns are almost identical to the concerns addressed by Islamic law.

³¹ Grandin, Shackling, *Hoisting Live Animals Is Cruel*, MEAT & POULTRY, 142, 142-43 (1987).

³² *Id.*

³³ *Id.*

³⁴ Menacham Posner, *What is a Shochet*, CHABAD, <https://perma.cc/6SWS-MT8H> (A *Shochet* is a trained ritual slaughterer who skillfully practices *shechitah*—slitting the throat of the animal as per Torah tradition—using an extremely sharp and smooth knife called a *chalef*) (last visited Apr. 25, 2019).

³⁵ M.M. Farouk, et al., *Industrial halal meat production and animal welfare: A review*, 120 MEAT SCIENCE 60, 70 n. 61 (2016).

In order to reorient the discussion, I believe it is necessary to recognize that many of the objectives of animal welfare advocacy groups and Islamic laws are one and the same.³⁶ Many *fatwas** have been issued by Islamic leaders approving of pre- and post-stunning of animals.³⁷ Common practice also supports stunning, as most Muslims in the U.S. are consuming meat that was stunned prior to slaughter. As was previously outlined, Islamic law is dynamic and does not occur in a vacuum. In fact, over the past thirty years, Islamic dictates regarding stunning practices have evolved more than the HMSA ritual exception. The primary goal of the HMSA, as stated in the Act, is to lessen the suffering of animals,³⁸ which is in line with the purpose and intention of Halal slaughter. The two are not as far apart as one might initially think, this paper argues that instead of focusing on the differences, it would be more beneficial to reform and encourage new legislation or rule promulgation through administrative channels to ensure enforcement within the ritual bubble.

D. *Setting the Scene: Social Issues with Halal in the U.S.*

The debate within Islam about eating the meat of the *Ahl-al-kitab* or “people of the Book,” has been more salient among Muslims living in the U.S. than any other place in the world.³⁹ “Some consider Halal meat to be the result of a precise technical ritual described in the Islamic texts. Others, quoting a verse of the Koran, consider that meat is lawful as long as the animal has been killed by someone considered to belong to the ‘people of the Book.’”⁴⁰ The reason the debate is so contentious in the U.S. is likely because the U.S. is a majority Christian nation, and for many years, Halal food products were not readily available. If neither source of Halal food is available, the Koran allows consumption of what is Haram, or prohibited, if it is necessary for survival.⁴¹ When the Muslim

³⁶ *Id.*

³⁷ KNUT S. VIKOR, BETWEEN GOD AND THE SULTAN, SUPRA NOTE 13 AT 141-143 (defining *fatwas* as a legal opinion from a jurist or scholar. Knut further breaks this definition down into three types of *fatwa*: 1. private *fatwas*; 2. political *fatwas*; and 3. judicial *fatwas*); RAHMANA, supra note 25, at 448 (discussing *fatwas* related to stunning of animals pre- and post-slaughter).

³⁸ 7 U.S.C. § 1901.

³⁹ Mufti Abdur-Rahman Iban Yusuf, *Essay on Zabihah-Meat Madness*, in THE ISLAMIC LAWS OF ANIMAL SLAUGHTER 117,129 (Amir A. Toft 1st ed. 2006).

⁴⁰ Regenstein, et al., *Kosher and Halal Food Laws*, 2 COMPREHENSIVE REV. IN FOOD SCIENCE & FOOD SAFETY 111, 121 (2003).

⁴¹ *Id.*

population in the U.S. was young and developing, most Imams advised their congregations that it was permissible to eat the meat obtained at the local supermarket. Their reasoning was that the U.S. was a Christian nation, and that meat slaughtered by Christians was allowed. However, over the last thirty years, the Muslim population has grown, and many ethnic stores have sprung up. Even large grocery chains now offer an array of Halal products, including meat.⁴² With this change in the marketplace, many Imams are now advising that their congregants only buy Halal meat and poultry.

Another distinction that is very prevalent in the U.S. is the difference between *Zabiha** meat and Halal meat.⁴³ The word *Zabiha* is an Arabic term that means "slaughtered," however, to Muslims in the U.S. it has come to represent a label that provides more quality assurance than Halal.⁴⁴ This distinction primarily concerns who slaughtered the animal. In the U.S., the term *Zabiha* has come to mean that the slaughter was carried out by a Muslim, whereas the term Halal only means that the meat is permitted and could have been slaughtered by a Muslim, a Christian, or a Jew.⁴⁵ Unfortunately, even meat bearing the *Zabiha* label does not provide sound assurance that it is permitted to eat because the USDA does nothing to ensure the slaughter is in accord with Islamic law.

In the United States and abroad, supervisory agencies have been developed to provide brand and labeling assurances. These agencies provide inspections at a defined interval (sometimes twice a year to as frequently as once a day) and charge a fee for permission to use their trademark symbol on Halal products.⁴⁶ Because there are numerous agencies all employing different standards, some following strict traditions and others that are more lenient, issues with quality assurance are created for the consumer. Other countries such as Malaysia, Indonesia, and Singapore have been successful in creating centralized Halal-control bodies that certify products and use a trademarked symbol to signify the product's authenticity.⁴⁷ In the United States, there are no centralized certifying bodies. Instead, there are a multitude of smaller, local agencies

⁴² *Id.* at 111.

⁴³ Mufti Abdur-Rahman Iban Yusuf, *supra* note 40 (discussing *Zabiha* meat) (There is a lot of confusion surrounding the definition of *Zabiha* meat, especially in the U.S., however, it generally indicates that the meat has been slaughtered by a Muslim).

⁴⁴ *Id.*

⁴⁵ Mufti Abdur-Rahman Iban Yusuf, *supra* note 40.

⁴⁶ Regenstein, *supra* note 41, at 124.

⁴⁷ *Id.*

that provide this service for a fee, and all use different signifying symbols. As a result, this creates an unreliable, and often very confusing, system for consumers. These types of agencies have proven insufficient at regulating the animal welfare atrocities that occur within the ritual bubble.⁴⁸ With both governmental (namely the USDA) and private agencies failing to ensure proper treatment of animals and product reliability, the situation for both animals and consumers of Halal meat products in the United States is grim and in need of reformation and change.

III. THE ISSUES

A. *Halal Slaughter in the U.S.*

Muslims and non-Muslims in the United States are often under the impression that the meat that they are eating is healthier, and the production process is less cruel to animals.⁴⁹ In reality, the animals killed for Kosher and Halal meat have significantly less protection than animals that are killed conventionally.⁵⁰ The lack of protections for ritually slaughtered animals is directly related to the way the HMSA is written and implemented.

The HMSA states that “[n]o method of slaughtering or handling in connection with slaughtering shall be deemed to comply with the public policy of the United States unless it is humane.” However, the way the Act defines “humane” is questionable. Several drafts of the HMSA were submitted to Congress between 1955-1958 and each was subsequently rejected.⁵¹ It was not until the Act was modified to include ritual slaughter as a humane method that it passed the Senate.⁵² The Act permits two acceptable slaughter methods, which are defined as humane.⁵³

⁴⁸ Melissa Lewis, *The Regulation of Kosher Slaughter in the United States: How to Supplement Religious Law So as to Ensure the Humane Treatment of Animals*, 16 ANIMAL L. 259, 286 (2010).

⁴⁹ Friedrich, *supra* note 2, at 223.

⁵⁰ *Id.*

⁵¹ Nicole Fox, Note and Comment, *The Inadequate Protection of Animals Against Cruel Animal Husbandry Practices Under United States Law*, 17 WHITTIER L. REV. 145, 162 (1995).

⁵² *Id.* at 163.

⁵³ Michelle Hodkin, *When Ritual Slaughter Isn't Kosher: An Examination of Shechita and the Humane Methods of Slaughter Act*, 1 J. ANIMAL L. 129, 150 n. 135 (2005).

(a) in the case of cattle, calves, horses, mules, sheep, swine, and other livestock, all animals are rendered insensible to pain by a single blow or gunshot or an electrical, chemical or other means that is rapid and effective, before being shackled, hoisted, thrown, cast, or cut; or

(b) by slaughtering in accordance with the ritual requirements of the Jewish faith or any other religious faith that prescribes a method of slaughter whereby the animal suffers loss of consciousness by anemia of the brain caused by the simultaneous and instantaneous severance of the carotid arteries with a sharp instrument and handling in connection with such slaughtering.⁵⁴

The plain meaning of the text reveals that, according to the HMSA, both ritual slaughter and conventional slaughter (where the animal is rendered insensible before being shackled, hoisted, thrown, cast, or cut) are equally humane.⁵⁵ The Jewish lobby fought hard to get part (b) into the HMSA.⁵⁶ They provided experts on Kosher slaughter and convinced Congress that it was a humane method of slaughter on par with stunning.⁵⁷ Many animal rights activists have scoffed at the idea that ritual slaughter could ever be as humane as the method prescribed in part (a) of the Act, but as Dr. Grandin has observed, properly administered ritual slaughter can be as humane as conventional slaughter.⁵⁸ Arguably, the most problematic portion of the HMSA is actually § 1906, which states that:

Nothing in this chapter shall be construed to prohibit, abridge, or in any way hinder the religious freedom of any person or group. Notwithstanding any other provision of this chapter, in order to protect freedom of religion, ritual slaughter and the handling or other preparation of livestock for ritual slaughter are exempted from the terms of this chapter.⁵⁹

The 1958 version of the HMSA did not provide for USDA inspection of slaughterhouses or any enforcement mechanisms. The only recourse the federal government had against slaughterhouses that violated humane slaughter requirements was its refusal to purchase meat from

⁵⁴ 7 U.S.C § 1902.

⁵⁵ *Id.*

⁵⁶ Tali H. Shadow, *Religious Ritual Exemptions: Sacrificing Animal Rights for Ideology*, 24 LOY. L. A. L. REV. 1367, 1396 n. 1373 (1991).

⁵⁷ *Id.*

⁵⁸ Grandin, *supra* note 8.

⁵⁹ *Id.*

noncompliant abattoirs.⁶⁰ The 1958 version of the HMSA was toothless, and only provided information about acceptable methods of slaughter.⁶¹ It was not until Congress passed the 1978 version of the bill that the HMSA provided for administrative and criminal sanctions for inhumane slaughter.⁶²

The USDA was empowered and directed to develop specific regulations that would enforce the HMSA.⁶³ However, the regulations did not include anything on ritual slaughter.⁶⁴ The USDA said this was because under the HMSA, ritual slaughter was exempt, and that any regulations promulgated by them are inapplicable to ritual slaughter.⁶⁵

This exception has created the “ritual bubble,” whereby the USDA inspectors charged with ensuring the HMSA protections and standards are enforced, are unable to do so because of the exception.⁶⁶ The treatment of animals within the “bubble” is completely unregulated, which leaves animals open to terrible abuses, and the inspectors with little or no recourse.⁶⁷

The Food Safety Inspection Service (“FSIS”) produced a directive in 2003 to clarify the USDA’s role in overseeing establishments performing ritual slaughter.⁶⁸ The FSIS’s initial version of the directive included language that would allow for some oversight of the ritual slaughter process. However, FSIS changed the directive and affirmed the existence of the ritual bubble.⁶⁹ The new, weaker directive stated only that USDA inspectors must be notified of the type of ritual slaughter that is to occur, who is performing it, and when it is to be done.⁷⁰ This directive provides absolutely no oversight of the ritual slaughter process other than

⁶⁰ Humane Methods of Slaughter Act of 1958, Pub. L. No. 85-765, § 3, 62 Stat. 698, 862-63 (1958) (repealed by Humane Slaughter Act of 1978, Pub. L. No. 95-445, § 5(b), 92 Stat. 1069, 1069 (1978) (codified as 7 U.S.C. § 1904)).

⁶¹ Humane Slaughter of Livestock; Designation of Methods, 24 Fed. Reg. 1549, 1549-53 (Mar. 3, 1959).

⁶² 7 U.S.C. § 1906.

⁶³ Food Safety and Quality Service Humane Slaughter Regulations, 44 Fed. Reg. 68,809 (Nov. 30, 1979).

⁶⁴ Friedrich, *supra* note 2, at 226.

⁶⁵ *Id.*

⁶⁶ *Id.* at 223.

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.* at 227.

⁷⁰ Humane Handling and Slaughter of Livestock, FSIS Directive 6900.2 Rev. 2 (USDA Aug. 15, 2011) (available at <https://perma.cc/PQ3N-R3YT> (last accessed Nov. 13, 2017)).

providing the basic information of what type of ritual slaughter is going to occur, when it is happening, and who is performing it.

The FSIS doubled down on their policy of giving deference to the ritual bubble interpretation in 2014 when it released a training manual stating that USDA inspectors are not to interfere with the ritual slaughter in any manner, even if they have immediate concerns about the treatment of livestock. They are instead directed to call the FSIS District Office through supervisory channels⁷¹ and consult the District Veterinary Medical Specialist ("DVMS") for guidance on what kind of action can be taken.⁷² The FSIS training manual is unclear on what exactly the DVMS can or cannot do. But another FSIS document, the DVSM Work Methods Directive, states clearly that: "[i]f the establishment conducts ritual slaughter, the DVMS is to assess the establishment procedures to determine whether they are in conformance with the appropriate dietary laws and the Humane Methods of Slaughter Act."⁷³ When unpacking this statement, it becomes clear that because the HMSA applies an exception to ritual slaughter, the only power the DVSM has is to ensure that slaughterhouses are following their own self-imposed rules.

The United States has chosen to make an exception instead of empowering the USDA to regulate ritual slaughter. European countries address ritual slaughters very differently. In Europe, slaughterhouses are required to ensure the humane treatment of animals passing through their production lines.⁷⁴ Instead of following some of the more progressive European countries, the United State has decided to hand all power to regulate ritual slaughter to religious authorities.⁷⁵ This lack of oversight, paired with nonexistent training programs for the Halal slaughtermen, creates a dangerous situation where animals are mistreated and suffer painful deaths.

⁷¹ Lewis, *supra* note 49, at 265.

⁷² Friedrich, *supra* note 2, at 229.

⁷³ U.S. DEP'T OF AGRIC., FOOD SAFETY & INSPECTION SERV., FSIS DIRECTIVE 6910.1 REVISION 1, DISTRICT VETERINARY MEDICAL SPECIALIST-WORK METHODS 8 (REV.1 2009).

⁷⁴ Lewis, *supra* note 49, at 273.

⁷⁵ Lewis, *supra* note 49, at 273.

B. Constitutional Challenges: Establishment Clause and Free Exercise of Religion

1. Establishment Challenges

In Bruce Friedrich's article, *Ritual Slaughter in the Ritual Bubble: Restoring the Wall of Separation Between Church and State*, he argues that both the construction of the HMSA and the USDA's implementation of the HMSA are unconstitutional because they violate the Establishment Clause.⁷⁶ In *Lemon v. Kurtzman*, the Supreme Court held that to avoid violating the Establishment Clause a law must: (1) have a secular purpose; (2) neither advance nor inhibit religion in its principal or primary effect; and (3) not foster an excessive entanglement with religion.⁷⁷ Friedrich argues that the FSIS's enforcement of the HMSA ritual exception fails the *Lemon* test because it promotes two religions while inhibiting others, and that the HMSA excessively entangles government and religion.⁷⁸

This interpretation of the HMSA could be the basis for a successful argument to burst the ritual bubble, and force the USDA to promulgate a new rule that will better serve both the Muslim communities that consume Halal meat and the animals that constitute it. Interestingly enough, in the United States, much of the meat slaughtered in Kosher and Halal slaughterhouses ends up being sold conventionally. According to Friedrich, this creates a situation where everyone who eats meat is unwittingly supporting and participating in ritual slaughter, which could be seen as promotion of religion and therefore a violation of the Establishment Clause of the United States Constitution.⁷⁹

However, the Court answered this question over forty years ago in *Jones v. Butz*. Despite the fact that this case was decided before the 1978 amendments to the HMSA, it is still the controlling legal precedent on the constitutionality of the ritual slaughter exception.⁸⁰ The central focus in *Jones* is on the sale of Kosher meat to unwitting customers. In accordance with Jewish law, for meat to be considered Kosher, the animal must have its sciatic nerve removed. This is a very painful process requiring significant labor.⁸¹ Because of the added cost, it is more economical to

⁷⁶ Friedrich, *supra* note 2, at 234.

⁷⁷ *Lemon v. Kurtzman*, 403 U.S. 602 (1971).

⁷⁸ Friedrich, *supra* note 2, at 234.

⁷⁹ Friedrich, *supra* note 2, at 239.

⁸⁰ *Shadow*, *supra* note 57, at 1377.

⁸¹ *Humane Slaughtering of Livestock and Poultry: Hearings on S.1636 Before a Subcomm. of the Comm. on Agriculture and Forestry*, 84th Cong., 2d Sess. 138 (1956).

sell the hindquarter of a ritually slaughtered animal to the general market than it is to remove the sciatic nerve and market it as Kosher.⁸² Because of this practice, meat slaughtered under the ritual exception was being sold to unwitting customers who would otherwise be unwilling to purchase ritually slaughtered meat.⁸³

The Plaintiffs in *Jones* were the first to bring a constitutional challenge to the ritual slaughter exception. They claimed that the HMSA exemption and industry practices of selling ritually slaughtered meat as conventionally slaughtered meat made it impossible to determine whether the meat they were buying was slaughtered by humane methods, and caused an injury to their "moral principles" and aesthetic sensibilities.⁸⁴ The Plaintiffs requested that the Court declare the ritual slaughter exception unconstitutional under the Establishment and Free Exercise Clause of the Constitution.⁸⁵ The Court found that the plaintiffs had legitimate concerns, but ultimately held that the ritual slaughter exception did not violate the First Amendment of the Constitution because there were no regulations present in the act for conventionally slaughtered meat either. The Court further noted that the proper avenue for relief was Congress and not the courts.⁸⁶

Before the 1978 amendments, the HMSA was essentially impotent because there were no provisions for enforcement, nor regulation of conventional or ritual slaughter.⁸⁷ Today, there are enforcement mechanisms present in the HMSA, but they do not apply to ritual slaughter.⁸⁸ This preferential treatment of religious slaughter could be considered a violation of the second and third prong of the *Lemon* test.⁸⁹ However, the Supreme Court has considered other elements such as custom and history when deciding First Amendment issues. For instance, in the *Town of Van Orden v. Perry*, the Court considered other factors,

⁸² *Id.*

⁸³ PETER SINGER, ANIMAL LIBERATION 153 (2nd ed. 1990).

⁸⁴ *See* Shadow, *supra* note 57, at 1377 (citing *Jones v. Butz*, 374 F. Supp. 1284, 1294 (2nd Cir. 1974)).

⁸⁵ *Jones v. Butz*, 374 F. Supp. 1284, 1285.

⁸⁶ *Id.*

⁸⁷ *See* Jeff Welty, *Humane Slaughter Laws*, 70 L. & CONTEMP. PROBS. 175, 187 (2007) (noting that federal meat inspection did not begin until 1978 and *Jones v. Butz* was decided in 1974).

⁸⁸ 7 U.S.C § 1902 (2012).

⁸⁹ Friedrich, *supra* note 2, at 249.

such as our nation's history.⁹⁰ Court precedent demonstrates that when an issue is directly related to our nation's founding, it usually chooses to take into account factors, such as norms and practices, or historical significance. Although Muslims have been in America since colonial times, it is unlikely that ritual slaughter would be considered an enshrined part of American culture.⁹¹

2. Free Exercise Clause

The Free Exercise Clause of the First Amendment to the United States Constitution states that, "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof,"⁹² meaning that Congress cannot create laws that promote or inhibit religion or that substantially affect the establishment of religion. In *Reynolds v. U.S.*, the Supreme Court held that it was not a violation of the First Amendment to make laws prohibiting polygamy.⁹³ The reasoning was that the First Amendment protected religious opinion but not religious actions that were a violation of social duties, and that polygamy was an offense against society.⁹⁴ The Court decided that the Constitution did not require an exemption for laws that were of general applicability.⁹⁵ This case is important because it sets the precedent that the First Amendment is not an absolute right.⁹⁶

This precedent is applicable to ritual slaughter because the government can choose to impose regulations on the ritual process rather than instituting a blanket exception. The holding in *Reynolds* proves the government has the authority to balance and weigh its interest in animal welfare with the interest of Muslims and Jews in ritual slaughter.⁹⁷ Moreover, the purposes of the HMSA and Islamic slaughter laws are convergent: to provide a humane, safe, and healthy method of slaughter. However, because of the ritual exception, there is no legal or economic incentive for ritual slaughter to improve or change.⁹⁸

⁹⁰ *Van Orden v. Perry*, 545 U.S. 677, 700 (2005).

⁹¹ Friedrich, *supra* note 2, at 244.

⁹² U.S. CONST. amend. I.

⁹³ *Reynolds v. U.S.*, 98 U.S. 145 (1878).

⁹⁴ *Reynolds*, 98 U.S. at 164.

⁹⁵ *Id.* at 161-162.

⁹⁶ *Id.* at 161.

⁹⁷ Shadow, *supra* note 57, at 1380.

⁹⁸ *Id.*

In *Church of the Lukumi Babalu Aye v. City of Hialeah*, the Court analyzed whether city ordinances aimed at ending the animal sacrifice practices in the city of Hialeah were unconstitutional.⁹⁹ The congregants of the Church of the Lukumi Babalu Aye (“the church”) practiced Santeria, and part of their religion involved ritual animal sacrifice. The City Council passed four ordinances. The first ordinance was a criminal statute adopting a Florida state anti-cruelty statute.¹⁰⁰ The second explicitly prohibited the possession of animals for sacrifice,¹⁰¹ and the remaining two ordinances expressly prohibited animal sacrifice and allowed humane societies to investigate violations.¹⁰² The church brought an action claiming that the ordinances regulating ritual animal sacrifice violated their First Amendment rights.¹⁰³

The Court notes that usually, a neutral and generally applicable law does not need to be justified by a compelling governmental interest even if it has the incidental effect of burdening a particular religious practice. However, in *Hialeah*, the Court found that the ordinances did violate the plaintiffs First Amendment rights because they were not neutral and therefore invalid.¹⁰⁴ Additionally, the Court noted that even if the ordinances passed muster on neutrality, they would still violate the First Amendment because they sought to suppress a central religious tenant of Santeria worship and there was no overriding government interest.¹⁰⁵ The ordinances are also not generally applicable because they only prohibit the slaughtering of animals for ritualistic or sacrificial purposes, a practice that only adherents of the church engaged in.¹⁰⁶

As the HMSA is currently written and interpreted, an exception is applied to ritual slaughter that is not facially neutral because it promotes two religions while unfairly inhibiting others.¹⁰⁷ The Act, as it currently stands, could be in violation of the First Amendment. In order to ensure that the Act does not violate the First Amendment, a new rule that abolishes the HMSA exception and establishes the same regulations and sanctions on ritual slaughter as conventional slaughter should be

⁹⁹ Hialeah, Fla., Ordinance No. 87-40 (June 9, 1987).

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² Hialeah, Fla., Ordinance No. 87-40 (June 9, 1987).

¹⁰³ *Id.* at 1469.

¹⁰⁴ *Church of Lukumi Babalu Aye v. City of Hialeah*, 508 U.S. 520, 535 (1993).

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ Friedrich, *supra* note 2, at 237.

promulgated. Despite the fact that there might be objections from Jewish and Muslim groups, as long as the rule is facially neutral and generally applicable, it is considered constitutional even if it incidentally burdens a particular religious practice.¹⁰⁸

3. Concerns and Solutions

One major concern about bringing a constitutional claim to the court over the HMSA exception is the apprehension that the Court would choose to abolish the HMSA as a whole.¹⁰⁹ Finding a solution that does not abolish ritual slaughter or the HMSA while remaining constitutional is a challenging task. However, a viable solution could be to follow the lead of European countries and regulate the methods of ritual slaughter instead of providing a *carte blanche* exception.¹¹⁰ If the focus shifted from stunning practices to pushing Congress to regulate the slaughter process every step of the way in harmony with Islamic law, the free exercise of religion would remain intact, and animal welfare concerns would be better served than they are currently.¹¹¹ This path could also solve the Establishment Clause dilemma by creating secular regulations that are solely for the purpose of promoting humane handling of livestock.¹¹² There is no doubt that religious groups would be opposed to abolishing the ritual slaughter exception. It is also undeniable that balancing the interests of religious groups and animal welfare concerns is an arduous task. However, public opinion has changed rapidly over the years concerning animal welfare and animal rights. This is evidenced by overwhelming support for recent legislation concerning animals in general. If proposed regulations are moderate and do not impose extra sanctions or more stringent rules for ritual slaughter, a mutually beneficial outcome is possible.

C. Case Studies

In 2004, People for the Ethical Treatment of Animals (“PETA”) conducted an investigation into AgriProcessors, Inc., one of the largest Kosher slaughter operations in the United States (and the only one certified to export to Israel) lifting the iron veil on ritual slaughter in the

¹⁰⁸ *The Church of Lukumi Babalu Aye*, 508 U.S. 520 at 531.

¹⁰⁹ Friedrich, *supra* note 2, at 249.

¹¹⁰ Lewis, *supra* note 49, at 279.

¹¹¹ *Id.*

¹¹² *Id.*

U.S.¹¹³ The PETA investigation unearthed a wealth of abuses committed by AgriProcessors. Among the almost three hundred documented instances of inhumane slaughter were: cows being shocked in their faces; cattle having their trachea and esophagi ripped out from their throats while conscious; and chickens getting their limbs caught in machinery.¹¹⁴ The *New York Times* brought the story to the public and outcry ensued. However, even with a wealth of evidence and shocking undercover footage, all the abuses occurred within the scope of the ritual bubble and as such, were deemed not to violate the HMSA as it is interpreted by the USDA.¹¹⁵ In fact, there were up to ten USDA inspectors at the AgriProcessor plant at any given time, but the plant was never cited for inhumane treatment because there was no path to justice. Jewish community leaders spoke out and said that despite the cruelty they observed in the videos it did not violate the Kosher status of the meat.¹¹⁶ The United States Attorney for the Northern District of Iowa declined to prosecute the plant, citing that there were no violations of the HMSA as it is currently interpreted.¹¹⁷

Four years later, in 2008, PETA launched another investigation into AgriProcessor and found similar abuses taking place.¹¹⁸ Again, despite public outcry, no consequences came from this action. These examples of a lack of accountability illustrate that the slaughter industry, whether religious or not, is ultimately ruled by profits.

In February 2017, Compassion Over Killing ("COK") released the findings of the first investigation into a Halal lamb slaughterhouse in the U.S.¹¹⁹ COK set out to investigate the halal slaughter methods that were being used at Superior Farmhouse, the largest lamb producer and supplier in the United States, supplying lamb nationwide to some of the largest chains, like Walmart and Kroger.¹²⁰ Their investigation revealed the same animal welfare atrocities as the AgriProcessor footage, proving that nothing had changed since 2004. In addition to capturing egregious acts

¹¹³ Hodkin, *supra* note 54, at 134.

¹¹⁴ PEOPLE FOR THE ETHICAL TREATMENT OF ANIMALS, WHAT THE INVESTIGATOR SAW, <https://perma.cc/3BJ6-BSUG> (last visited May 15, 2019).

¹¹⁵ Friedrich, *supra* note 2, at 234.

¹¹⁶ *Id.* at 234.

¹¹⁷ *Id.*

¹¹⁸ Lewis, *supra* note 49, at 274.

¹¹⁹ Compassion Over Killing, *Sheer Horror at Superior Farms-Lamb Slaughter Exposed*, <https://perma.cc/4H8D-SXYV> (last visited May 15, 2019).

¹²⁰ *Id.*

of animal cruelty, such as electrical prodding, kicking, beating, and removal of tails from the animals before death, the videos depict numerous and repeated violations of Islamic ritual slaughter and the HMSA.¹²¹ Kristen Stilt, the Director of Islamic Legal Studies and the Animal Law and Policy Program at Harvard, stated: “I have seen many examples of halal slaughter that do not actually meet the expectations and requirements of halal, but I have never seen an example in which the wrongful acts are perpetrated with the degree of intentionality and uniformity as seen here . . . [t]he practices also violate the HMSA.”¹²²

Abattoirs working under the ritual slaughter exception repeatedly get away with insufficiently handling and dispatching their livestock. The video footage of Superior Farms shows numerous instances where the animal’s neck is cut over and over with a dull knife. There are also instances of sheep’s tails being removed before they are dead.¹²³ These are just a couple of the many acts that occur on a daily basis in the ritual bubble that violate Islamic law.

Many scholars and animal welfare activists were outraged by the footage collected at the Superior Farms slaughterhouse, but it has not received the level of attention from the general public that the 2004 PETA investigation garnered. If history repeats itself, as it so often does, it is likely that this investigation will also result in little change for the animals suffering at Superior Farms or the industry at large. Investigations, such as those at AgriProcessor and Superior Farms, provide fodder for arguments against the cruel treatment of animals. However, a successful case to alter the HMSA would likely come in the form of a constitutional argument against the construction and implementation of the HMSA. Many animal welfare activist and animal law scholars view this as a risky move because it might result in a complete repeal of the HMSA, which could leave ritually and conventionally slaughtered animals with no protection.¹²⁴

D. Comparison of Halal Slaughter in the U.S. and Abroad

The options are limited for improving the current situation regarding ritual slaughter. Other countries have instituted remedies to varying degrees of success and can be looked to for solutions. In the United States,

¹²¹ *Id.*

¹²² *Id.*

¹²³ Compassion Over Killing, *supra* note 120.

¹²⁴ Friedrich, *supra* note 2, at 249.

the HMSA is the only source of law that governs the treatment and welfare of animals at the time of slaughter. Its exception for ritual slaughter has resulted in a situation where Halal slaughter is only regulated by religious authorities.¹²⁵ Unfortunately, no training or standards are currently enforced by the USDA, and any able-bodied Muslim can perform the slaughter. Instead of creating far-reaching exceptions, many countries in the European Union (E.U.) have used secular laws to regulate the ritual slaughter process.¹²⁶ The U.S. could benefit from following suit.

There is spirited debate in the E.U. over how to best regulate ritual slaughter. Individual states within the Union have taken a variety of stances on the issue. Some have decided to regulate and monitor the process for ritual slaughter and others require mandatory pre- or post-slaughter stunning.¹²⁷ Despite the fact that some countries in the E.U. institute an exception for ritual slaughter, the vast majority of countries, including Denmark and Britain, heavily regulate the whole ritual slaughter process.¹²⁸ The Danish rules regarding ritual slaughter require that cattle be restrained in an upright holding pen equipped with pressure-limiting devices.¹²⁹ The throat cut is to occur as soon as the animal is restrained, and a post-cut stun is to be applied immediately after the ritual cut.¹³⁰ The entire process occurs under veterinary supervision.¹³¹

British law dictates a similar level of regulation throughout the process for cattle. The law also provides that smaller animals such as sheep, goats, and veal calves must not be shackled and hoisted before they are completely unconscious,¹³² a practice that is commonly seen during ritual slaughter in the United States, especially with Kosher slaughter. British law also regulates how long an animal must be bled after the throat cut before it can be moved. Britain does not require pre- or post-cut stunning. The slaughterer is obligated to keep a captive bolt stunner on hand because the law requires that an animal be stunned immediately if it is exhibiting signs of avoidable pain.¹³³ British law also requires the

¹²⁵ Lewis, *supra* note 49, at 275.

¹²⁶ *Id.*

¹²⁷ *Id.* at 261.

¹²⁸ *Id.* at 270.

¹²⁹ *Id.*

¹³⁰ *Id.*

¹³¹ *Id.*

¹³² *Id.*

¹³³ *Id.* at 271.

inspection of knives used for the ritual cut, and oversight to ensure that both carotid arteries are severed simultaneously in one uninterrupted motion.¹³⁴ This is a prime example of a state regulation falling harmoniously in line with the law of Islamic slaughter.

In the United States, “shackle and hoist” is banned in non-ritual slaughter, but is common everyday practice in slaughterhouses operating under the ritual exception. Additionally, there is no regulation that ensuring knives are properly sharpened, or that the ritual cut is properly performed in one motion, severing both carotid arteries and ensuring the animal dies swiftly.¹³⁵ This is because instead of regulating the various processes and acts involved in ritual slaughter, like the aforementioned countries in the E.U., the United States has instead instituted an exception to ritual slaughter that puts an impenetrable bubble around the whole process.¹³⁶

IV. CONCLUSION

Islamic ritual slaughter is the original HMSA. The Islamic method of ritual slaughter represented a vast improvement over the common methods of slaughter used at the time.¹³⁷ The primary purpose of halal slaughter is to lessen the suffering of livestock, and to prevent disease and injury. The HMSA was also developed as a means to reduce suffering of sentient animals at the abattoirs, and at the same time, ensure safe and sanitary handling of meat products. When viewed side by side, the HMSA and Islamic ritual slaughter appear to be in vigorous agreement. However, it is the construction and implementation of the HMSA that has led to the creation of the ritual bubble where animal welfare atrocities and abuses go unpunished and unnoticed.

Instead of focusing on the common objectives, animal welfare activists, religious leaders, and slaughter industry lobbyists have the tendency to focus on the differences. Many animal welfare groups have focused their time and efforts arguing for stunning to be applied to all livestock slaughtered in the U.S., this obsessive focus on stunning as the *sine qua non* of animal welfare has left much common ground untouched.

I disagree that stunning practices must be imposed equally on groups whose cultural and religious norms and values prohibit it. Instead of

¹³⁴ Friedrich, *supra* note 2, at 249.

¹³⁵ *Id.* at 250.

¹³⁶ *Id.*

¹³⁷ *Id.*

focusing on mandatory stunning and the two-method system set up by the language in § 1902 of the HMSA, what needs to be amended and changed is the *carte blanche* exception set up in § 1906 of the Act. If we can regulate every step of the ritual slaughter process, as we do with conventional slaughter, we can gain important protections for ritually slaughtered animals. If at some point in time, the scientific community definitively proves that ritual slaughter without stunning is inhumane, § 1902 of the act can be revisited.

There are many ways to go about improving the HMSA, but I believe a moderate approach is the most efficacious and practical. Bringing a First Amendment claim to the courts could result in a complete repeal of the Act. If either § 1902 or § 1906 are challenged, due to issues of severability. If those sections are severed from the Act, the congressional intent of the Act as a whole will be brought into question.¹³⁸ In my opinion, there are two courses of action. Either Congress could require more oversight, which is unlikely because the meat industry has a powerful lobby, or a petition for rulemaking could be made to require the HMSA to promulgate rules similar to those currently in place in Britain and various countries in the E.U.

By regulating each step in the ritual slaughter process and allowing for sanctions when the process is violated, the humaneness of ritual slaughter could be greatly improved. This would also help resolve some of the constitutional issues created by allowing certain religions an exception that advantages them over other groups. By creating rules and sanctions of general applicability, we can burst the ritual bubble and ensure better treatment for animals at the abattoirs. In addition to promulgating rules to effectively manage ritual slaughter, there are a variety of other measures that can be used to improve humane slaughter, including extensive training for Halal and Kosher slaughtermen, implementing CCTV cameras onsite, and providing mosque-based education about Halal slaughter in the United States.

Public sentiment has changed drastically over the last century regarding animals of all sorts, and people are no longer comfortable using blanket First Amendment arguments to justify animal abuse.¹³⁹ It is our moral imperative as a technologically advanced society to ensure the best possible treatment of all sentient beings, and to minimize suffering wherever possible. Balancing this interest with religious freedom is

¹³⁸ Friedrich, *supra* note 2, at 250.

¹³⁹ Shadow, *supra* note 57, at 1395.

complicated and challenging, but the mark of a great society is the ability to engage in complex discussions in a meaningful way.