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SYMPOSIUM ON GLOBAL ANIMAL LAW, PART II: THE CASE FOR GLOBAL LEGAL ANIMAL STUDIES

TRADING IN SACRIFICE

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The international trade of live animals, especially animals sold for slaughter, creates significant challenges for international law. Nonhuman animals do not fit neatly into the legal world created by humans. In nearly every jurisdiction, animals are property, but they are not like all other property. The sentience of animals has been widely recognized and it forms the basis of anticruelty laws where they exist. You may destroy your toaster any way you like, but the laws of most jurisdictions protect how you treat your dog. This fractured point in the law, animals as property and yet not exactly property, is the source of confusion in national laws, leading to unsatisfactory answers to questions such as what damages should be paid when a companion animal is negligently killed[1] or whether individuals should own wildlife as "pets."

The live animal trade for slaughter adds additional complexities. One of the most pressing issues is how to provide animals an adequate standard of welfare, from the point of entering the ships in the country of origin to the moment of slaughter in the importing country. This is a particularly difficult issue when, as is often the case, the animals are shipped across boundaries of religion, culture, and norms of animal welfare. The typical rules of international trade in goods cannot be sufficient, because animals are simply not like the containers of toasters in international shipping channels. Exporters of toasters do not have expectations for how their products will be treated by purchasers, and when shipments are destroyed in transit, the loss is merely one for insurers to assess.

This essay asserts that current international law is insufficient to provide animals adequate standards of welfare in live export contexts, and it also offers suggestions for improvements. The essay focuses on one of the most significant exporters of live animals for slaughter, Australia, and the Muslim-majority countries that constitute the vast majority of Australia's customers. First, it introduces basic issues in the live export trade, including the concept of *halal* slaughter, which is the means of slaughter in these importing countries. Second, the essay focuses on particular religious reasons for the demand for live animals in Muslim-majority countries, using Saudi Arabia as an example. Third, the essay briefly surveys the current legal regime governing live exports, identifies its flaws, and makes recommendations. Understanding religious beliefs and motivations is essential because devising an international legal regime that adequately protects the welfare of animals must take into account the fact that the animals are crossing boundaries of religion, culture, and tradition, and in particular conceptually crossing from "West" to "East," which brings its own additional sensitivities and challenges.

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[1] Strickland v. Medlen, 397 S.W.3d 184 (Tex. 2013).

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The Live Export Trade

The requirements for meat to be considered *halal* are relatively few, and slaughterhouses around the world have been certified as *halal* by many different Muslim organizations. For most farmed animals, the method typically involves cutting the animal's carotid arteries, jugular veins, trachea, and esophagus with a sharp instrument such that the animal dies of blood loss, or exsanguination. The name of God must be mentioned at the time of slaughter, and the slaughterer should be a Muslim, Christian, or a Jew.[2]

As one of the world's largest producers of farmed animals, Australia is home to many *halal* slaughterhouses, and the country ships frozen *halal* meat globally. Yet millions of animals each year also are shipped, for *halal* slaughter, from Australia to Middle Eastern and Asian countries that cannot provide enough domestic supply to meet consumption demands. The reasons for a preference for locally slaughtered meat in these importing countries are complex, and include differing views on *halal* standards, and in particular a rejection of the preslaughter stunning that is required in *halal* slaughterhouses in Australia; support for the local feedlot and meat processing industry; and the lack of refrigerated facilities in some areas. The reasons also include the desire by some Muslims to slaughter an animal on certain occasions and on Eid al-Adha in particular, the holiday commemorating Abraham's willingness to sacrifice his son. Before Abraham could do so, God sent an animal as a substitute sacrifice.

Cattle, sheep, and goats raised in Australian pastures, grazing freely, do not always transition well to transport ships in which tens of thousands of animals are housed in small spaces for journeys up to one month. The animals do not always manage to eat the pelleted feed on the ships, even after a transitional period in a feedlot, and they are often travelling from the Australian winter to the Middle Eastern summer, which can lead to heat stroke. Mortality rates of 2 percent for sheep and 1 percent for cattle are considered normal. Higher death rates require the exporter to notify the Australian authorities, who may, but are not required, to conduct an investigation. This means that of seventy thousand sheep, the death of less than 1,400 is considered an acceptable loss of inventory. When a problem in transport arises, the results can be catastrophic. The Australian authorities can prevent a shipment from returning to Australia due to biosecurity reasons. In September 2012, for example, twenty thousand Australian sheep were sent to Bahrain, but were rejected prior to unloading on allegations of suspected disease. Eventually, Pakistan accepted the shipment. But when it learned about the Bahraini rejection, the Pakistani authorities killed the sheep in brutal ways.[3]

Other challenges to animal welfare occur upon arrival at the destination country. The animals are subject to local policies and laws, which most likely do not include an animal welfare law. It is also unlikely that preslaughter stunning is practiced in the receiving country. The issue of stunning is a key area of contention in the world of international *halal*, creating two camps: those who believe that preslaughter stunning reduces an animal's pain and suffering and does not jeopardize the *halal* status of the meat because the stunning does not cause the animal's death, and those who argue that stunning was never a part of traditional Islamic slaughter and causes harm to the animal. Those in the latter group also express concern that stunning could kill the animal, even though it is not the intent, thus running the risk that the meat is *haram*, or impermissible for human consumption, because the animal did not die from exsanguination.

Religious Motivations for the Importation of Live Animals

Saudi Arabia provides an example of the demand for live animals for *halal* slaughter and in particular for sacrifice during the annual pilgrimage, or *hajj*. Saudi Arabia has not imported Australian sheep since 2012 when it rejected

[2] Muhammad Taqi Usmani, The Islamic Laws of Animal Slaughter 25–50 (2006).

[3] *See* Four Corners, *Another Bloody Business*, ABC (Nov. 5, 2012).

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Australia's new regulations, as discussed below, but talks are underway in an effort to resume the trade and in the meantime Saudi Arabia is sourcing its animals from other countries. The *hajj* example is also particularly revealing because it allows for a glimpse at how customary practices and beliefs surrounding *halal* slaughter can change.

The situation with the sacrifice of animals during the pilgrimage, as explained by the Saudi Project for the Utilization of Sacrificial Animals, a state agency, begins with the pilgrimage's obligations:

> Hajj (Pilgrimage) involves certain religious rites that should be performed at particular times and at certain places. Among these rites is the sacrifice of whatever cattle or sheep the pilgrim can easily afford. Pilgrims of diverse races, customs and social levels are anxious to follow the Sunnah of the Prophet (peace be upon him) by slaughtering the sacrificial animals by themselves.[4]

The practice of pilgrims purchasing and sacrificing their own animals became problematic with the increase in the numbers of people making the pilgrimage and with the availability of air transportation in particular. Larger numbers of pilgrims could arrive and could also depart soon after the pilgrimage ended. During their short time in Saudi, they could consume or distribute to others only a limited amount of meat from the animals slaughtered as part of the pilgrimage. The increase in humans making the pilgrimage resulted in an increase in demand for animals for slaughter, leading to even greater excesses of meat. The Saudi Project noted that some pilgrims purchase animals who are not fit for use in sacrifice, while "the majority of pilgrims leave the slaughtered animals at their place of slaughter, not making use of their meat because of overcrowding and the extremely hot weather."[5]

In the early 1980's, the problem of rotting carcasses reached proportions that the Kingdom deemed unacceptable, and so it initiated the Saudi Project for the Utilization of Sacrificial Animals. Managed by the Islamic Development Bank, the Saudi Project "acts as an agent to pilgrims in carrying out on their behalf the slaughtering of all types of offerings they make and the transport and distribution of the meat, all in accordance with the principles of Sharia."[6] Pilgrims may purchase a coupon that authorizes the Saudi Project to slaughter an animal on behalf of the purchaser, or pilgrims may form a group of thirty or more and one person among them will receive a permit granting access to the slaughterhouse as the group's representative. The slaughterhouses are now equipped with high-tech slaughter equipment and operate continuously for four days during the pilgrimage, slaughtering up to a million animals.[7] The animals' throats are cut, per the *halal* slaughter practiced in Saudi Arabia, while they are fully conscious—there is no preslaughter stunning. These slaughterhouses then preserve the expected excess, which is exported to destinations throughout the Muslim world.[8]

The Saudi Project has attempted to convince pilgrims to utilize the coupon system, rather than slaughtering their own animals as has been the tradition, through a variety of means. The Project provides a *fatwa*, or legal opinion, addressing the issue of the timing of the slaughter. This issue arises because when a pilgrim purchases a coupon, the Project is not able to tell the pilgrim exactly when the animal will be slaughtered, and activities performed during the *hajj* are expected to take place in a particular order. The Saudi Project cites a *hadith*, or a saying of the Prophet, in which the Prophet is asked about the permissibility of shaving one's head prior to the sacrifice of an animal and of sacrificing an animal prior to the throwing of stones. To these and other questions about the

[4] *See* About the ADAHI Project, The Saudi Project for the Utilization of Sacrificial Animals.

[5] *Id.*

[6] *Id.*

[7] In 2010, al-Jazeera produced a short report on the infrastructural challenges of the slaughter during the hajj. *See Hajj Streamlines Ritual Slaughter (Mirror)*, Youtube. In 2014, Saudi imported over one million animals and a total of 2.5 million were sold throughout the country for Eid al-Adha. *See* Syeda Amtul, *2.5m Animals Sold in Saudi Arabia During Hajj*, Alarabiya (Oct. 12, 2014).

[8] *See* About the ADAHI Project, The Saudi Project for the Utilization of Sacrificial Animals. In recent years, outside of Saudi Arabia, Bangladesh has received the largest amount of frozen meat.

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appropriate sequence of events the Prophet expresses no concern: "no harm, just go and do what is required to be done."[9]

The coupon system, the permissibility of which does not seem to be questioned by the Muslims participating in it, may have solved the problem of rotting carcasses, but it both enables and ignores another. Newer and faster slaughterhouses, and greater numbers of butchers brought to Saudi Arabia from around the Muslim world, now result in the slaughter of nearly a million animals during the pilgrimage alone. In addition to the sacrifice of these animals in Saudi Arabia during the *hajj*, Muslims around the world also commemorate the occasion with the same practice; estimates of the number of animals slaughtered worldwide on Eid al-Adha are impossible to make. Beyond Eid al-Adha, of course, is the need for animals for daily consumption, all of which contributes to the demand for live exports.

The Legal Regime Governing Live Exports

Turning to the legal regime that governs Australia's exports, prior to 2011, the system was relatively simple. Australian law regulates exports and requires the exporter to hold a livestock export license and permit and provide a Notice of Intention for Export. Exporters must comply with the Australian Standards for the Exports of Livestock, which provide animal health and welfare requirements, such as stocking density, during transportation and up to the point of disembarkation. The exported livestock must also meet importing country requirements. In 2011, an exposé changed Australia's live export industry. Investigations conducted in Indonesia by the NGO Animals Australia led to Australia's leading investigative news program, Four Corners, producing an hour-long investigative segment about the Indonesian slaughterhouses that received Australian cattle.[10]

The Four Corners program was the most significant media coverage that the live export issue had received, and it shocked the Australian public. Four Corners investigators revealed images from Indonesian slaughterhouses showing workers kicking and beating the cattle, breaking their tails, and using abusive tactics to bring the massive animals to the ground for slaughter. The throats of fully conscious cattle were cut, in one case up to thirty-three times. Farmed animal expert Temple Grandin commented that "the conditions are absolutely terrible." Based on public outrage, the Australian government suspended cattle exports to Indonesia for a month.

A new scheme was quickly implemented that requires exporters to have an approved Exporter Supply Chain Assurance System (ESCAS) before receiving an export permit. ESCAS requires the exporter to control the animals' care and handling all the way to the point of slaughter and ensure that the handling at all stages complies with the OIE (which is also known as the World Organisation for Animal Health) Terrestrial Animal Health Code. This system is intended to extend protection over the animal throughout the entire "supply chain." Importantly, this is not Australian law that travels with the animals but rather the much weaker OIE standards. The OIE has historically focused on animal diseases, and has only recently included animal welfare, as relates to farmed animals, in its scope of concern.[11] The Code provides very minimal recommendations that all 181 countries that have joined the OIE are expected to be able to meet, although the standards are nonbinding unless the member country adopts them through national legislation. For example, Article 7.5.2 includes the provision that "Animals for slaughter should not be forced to walk over the top of other animals." Australian law requires preslaughter stunning while

[9] *Id.*

[10] The Four Corners program on Australian exports to Indonesia aired on May 30, 2011 and can be seen at Four Corners, *A Bloody Business—2011*, ABC (Aug. 8, 2011).

[11] Shortcomings of the OIE and the Codes that it has produced are discussed in Anne Peters, *Global Animal Law: What It Is and Why We Need It*, 5 Transnat'l Envtl. L. 9 (2016).

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the OIE Code does not. Further, as a practical matter, the exporter cannot always control what happens to the animals once they arrive in their destination countries even though they are required to do so by ESCAS.

The Indonesian exposé and the resulting reaction in Australia shows that Australians want better treatment for the animals they send for slaughter, and recipient countries' animal advocates, small in number in comparison to the Australian animal protection movement but vocal and growing, also want better treatment.[12] In the absence of a meaningful international framework, Australia, as with other live exporting countries, has the discretion to determine what standards it imposes on its exporters. The Australian industry, and government, is concerned that it will lose access to markets to other exporters, such as Brazil, if its demands are too high, and especially if stunning is required, and so it has not imposed it as a condition. In the absence of adequate international standards, Australia's incentive is to keep its regulations at a minimal level—a level that is acceptable to its export industry while at the same time one that will minimize the risk of another exposé that could threaten the trade.

A successful international legal system that provides meaningful protections to animals in the live export trade must do more than just impose new standards, especially when religious beliefs stand behind not only the demand for live animals but also, in some cases, the kind of *halal* slaughter in the recipient country. The Saudi *hajj* example is instructive. Despite a longstanding tradition, and indeed a religious belief on the part of pilgrims that the individuals needed to slaughter their own animals, Saudi Arabia changed the process and backed it with religious arguments. The new system probably results in the slaughter of more animals overall, under governmental control, but the point remains that religious beliefs can change and credible religious authorities can accelerate that change. Many Muslim religious leaders worldwide have approved the use of preslaughter stunning and it is now widely used in Jordan and Indonesia. Involving these actors as allies can help to generate norms that are "particularly sensitive to problems of Eurocentrism, of legal imperialism, and of a North-South divide."[13] More generally, there is a deep tradition of animal welfare in Islamic law, which animal advocates in the Muslim world are working hard to revive.[14] It is also important to note that there are Muslim advocates in the importing countries who question whether live exports can ever comply with Islamic notions of animal welfare,[15] which echoes the same question asked by Australian animal advocates from a secular perspective. The ongoing efforts by scholars and advocates to recover the strong tradition of animal welfare in Islamic law and interpret it in light of contemporary circumstances show that more effective and widely accepted international standards are politically and practically feasible.

[12] *See* Kristen Stilt, *Constitutional Innovation and Animal Protection in Egypt*, Law & Soc. Inquiry (forthcoming 2017).

[13] Peters, *supra* note 11, at 22.

[14] Kristen Stilt, *Animals*, *in* The Oxford Handbook of Islamic Law (Anver Emon & Rumee Ahmed eds. 2017); Stilt, *supra* note 12.

[15] In 2006, the Egyptian animal advocates sought a legal opinion, or *fatwa*, on the issue of live exports from Muhammad Tantawy, who at that time was the Shaikh of al-Azhar, one of the two highest religious positions in the country. Ahmed Sherbiny, President of the Egyptian Society of Animal Friends, submitted the question, which described the conditions during long distance transport from Australia to Egypt and asked for the Islamic legal status of such transport. In his reply, Sheikh Tantawy stated, "Causing pain to the animal during transport as described in the letter is considered an action prohibited and forbidden in Islamic law, assuming, of course, that the situation is as described in the letter." Fatwa on file with author.

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