

ANIMAL WELFARE UNDER THE *SHARI'A*

ASMI WOOD*

This paper examines the law related to the specific issue of animals ritually slaughtered by the Muslim halal method for food in Australia. Currently, the main contentious religio-legal issue for Muslims is that some Muslim leaders have resisted the general use of stunning of animals before slaughter on religious grounds, and have reacted negatively to the RSPCA's recommendation that stunning is made mandatory in Australia. The validity or otherwise of this opposition is examined by interrogating the primary sources of Islamic law (the shari'a), and by examining the use of halal certification in the Australian food industry context. Particular attention will be given to how Australian law and practice relates to the broader law on what is lawful under the shari'a. The paper then examines possibilities of using this broader understanding of Muslim law to promote animal welfare, and concludes that the shari'a is a greatly underutilised means of protecting animal welfare, not only in Australia, but also among Australia's trading partners with Muslim majorities.¹

I INTRODUCTION

This paper will examine the treatment of domesticated animals as mandated under Islamic law (the *shari'a*).² Australian practice with respect to '*halal*' animal slaughter will be compared to the requirements of 'classical' *shari'a*, defined below. The terms 'Islamic law' and the *shari'a* are used synonymously.

* Asmi John Wood (BE LLB (Hons) PhD) is a senior research fellow at the Australian National University's National Centre for Indigenous Studies (NCIS). He is also a teaching staff member at the ANU law school. He is a member of the Australian Research Council-funded National Indigenous Research and Knowledges Network (NIRAKN).

¹ The author would like to thank the blind referees for their very extensive and constructive comments on this paper. Any omissions or errors remain the author's responsibility.

² E W Lane, *Arabic English Lexicon Volume 2* (Cambridge Islamic Texts Society, 1863, 1984 ed) 1534. The root of the word *shari'a* is شَرَعَ. Lane's lexicon states that the word *shari'a*, among other things, means 'a path to water' (a source of something good), or something that God made apparent or plain. It is a place where one leads an animal or person to water; actual following or drinking is something that cannot be compelled. The word *shari'a* also has the sense of being 'in' (في) the drinking place, ie one is immersed in it in order to drink, which gives the impression that the *shari'a* is primarily applicable to those 'in' Islam. It is also important that the metaphor is viewed in its desert origins and setting. Therefore, one may imagine that one has seen water in the form of a mirage, been fooled by it, and been led to destruction by the mirage. Thus the 'right path' must be followed if one is to be led to sweet water, and not to the mirage. One must use one's 'inner sight', ie insight and wisdom coupled with right knowledge, to prevent one from being fooled by one's own senses and desires.

The structure of the paper is as follows. Part II briefly explores some fundamental concepts of Islam and Islamic law, with a view to contextualising the broader discussion and scope of *halal* (a term which includes all that is lawful under the *shari'a*). The scope of *halal* in the Australian context (that is, as used in the food and food preparation industries — a significantly narrowed conception of *halal*) is then examined within this broader context of *shari'a* lawfulness. The key issue here is an identification of the breadth and scope of 'lawfulness' in Islam, with *halal* slaughter identified as a small subset of this broader 'lawfulness'. It is argued, therefore, that limiting animal welfare discussions of *halal* to Australian ovine and bovine welfare is too restrictive, and does little to promote animal welfare generally. The paper goes on to examine how this broader context of *halal* (lawfulness) can be used to promote and enhance animal welfare. Part III relates to the conditions under, and the purposes for, which animals may be used in both Islamic and Australian law. Specifically, Australian law and the *shari'a* are compared on the issues of the slaughter of food animals and the *halal* certification process. The fourth part then examines how the *shari'a* can help to improve animal welfare generally, and posits that *halal* in its broader Islamic sense is a powerful and effective tool for improving animal welfare, not only in Australia but also among Islamic nations with which Australia trades in animal products. The paper concludes on balance that this broader use of the *shari'a* can result in a better outcome from an animal rights perspective.

'Classical' Islamic law, for the purposes of this paper, is law that is founded in both primary (independent) sources and secondary (or dependent) sources, terms that are defined below. There is no uniform or universal acceptance of what specifically constitutes the *shari'a*. Classical Islamic law has dealt with this potential source of uncertainty by dividing the *shari'a* into two broad areas. Firstly, there are laws on which there is almost universal consensus (*usul*) and, secondly, there are all other laws (*furu'*). However, an examination of *usul* and *furu'* is well outside the scope of this paper.³ A law is treated as *usul* only when it is accepted as such by the vast majority of Muslims. For example, belief in one God, belief in the prophethood of Mohammed, Jesus, Moses and Abraham, and the prohibitions on the consumption of pork and alcoholic drinks are all held to be *usul*.⁴

While the issue of interpretation under the Qur'an and *shari'a* is a subject in its own right, the methodology used in this paper is briefly noted here. A crucial *shari'a* requirement is that legitimate development of the *shari'a* must fall within the scope or 'aims' of the *shari'a*, referred to as the *maqasid al-shari'a* (or the object and purpose of the law).⁵ The Qur'an states that, when read in its own context, the Qur'an is 'its own best commentary',⁶ in that it

³ There are several texts in English on this subject. See, eg, Wael B Hallaq, *The Origins and Evolution of Islamic Law* (Cambridge University Press, 2005).

⁴ Yusuf al-Qaradawi, *The Lawful and the Prohibited in Islam (Al-Halal Wal-Haram Fil-Islam)* (American Trust Press, 1980).

⁵ See Ahmad al-Raysuni, *Imam al-Shatibi's Theory of the Higher Objectives and Intents of Islamic Law* (International Institute of Islamic Thought, 2005); Wan Azhar Wan Ahmad, *Public Interests (Al-Masalih Al-Mursalah) In Islamic Jurisprudence: An Analysis of the Concept in the Shafi'i School* (International Islamic University, 2003) 9. The concept of '*maqasid al-shari'a*' now appears to be accepted and settled. It is noted, however, that the concept itself has evolved, and its development occurred (in both *Shi'i* and *Sunni* schools) about 300 years after the death of the Prophet: Jasser Auda, *Maqasid al-Shariah as Philosophy of Islamic Law: A Systems Approach* (International Institute of Islamic Thought, 2008) 16.

⁶ *The Holy Qur'an: Translation and Commentary* (Abdullah Yusuf Ali trans, Dar ul Qibla, 1980) 25:33, 6:115, 10:37, 75:17–19. Please note that in various translations of the Qur'an, the numbering of the verses can vary, depending on the grammatical constructs that the translator has used to indicate the 'end' of a verse.

will make *all* things clear,⁷ and arguably provides some authority for a textual approach to interpretation. There is consensus among Muslims that the best juristic practice within Islamic jurisprudence is the normative practice of the Prophet.⁸ The *shari'a* concept of the *maqasid*, on the other hand, favours a purposive approach to its interpretation. The juristic nature of Islamic law has, over time, resulted in a broad range of interpretations of the same text.⁹ The Prophet encouraged diversity by stating that 'difference of opinions is a boon to my community.'¹⁰ On the other hand, El-Fadl opines reasonably that classical Muslim jurists created doctrines such as *idjma'* and the concepts of *usul* and *furu'* to limit the indeterminacy that emerges from this juristic concept of authority.¹¹ Generally, Muslim jurists recommend taking the most obvious meaning of the text as the best meaning,¹² and avoiding convoluted interpretations that stretch the ordinary meanings of words. The form of words that best describes this recommended mode of Qur'anic interpretation, and which is used as the starting point with respect to interpretation in this paper, is called *khobar*, or giving the text 'the apparent meaning according to contemporary usage'.¹³ This ordinary meaning is then examined in the context of the *hadith* of the Prophet on the issue. This paper refers to the classical methodology of al-Shatibi,¹⁴ but for the contemporary 'ordinary meaning' of the text it relies on *shari'a* scholars based predominantly in common law states. It is noted that there is very little written on the subject of *halal* in Australia from a perspective that compares the common law and the *shari'a*.

Clearly, regulation of evolving aspects of human activity requires law that will change with time. However, the proposition that *shari'a* can be adapted with changing circumstances is somewhat theoretically contentious (even though it seems to be almost universally practised).¹⁵ A number of moribund laws and practices that have crystallised into custom are considered by some to be binding forever,¹⁶ a position that is rejected in this paper. Some of these customs (of particular interest here are food laws) have evolved in different Muslim states and are thus particular to those states. In some cases they may then have been carried to Australia by immigrants. While cultural practices of immigrant groups that are not outside Australian law are protected as 'culture' (for instance, under Australia's multiculturalism policies), some of these cultural practices can at times create tension, among them animal slaughter and sacrifice, as discussed below. This paper examines the legal grounds for

⁷ Ibid 43:2.

⁸ Ahmad Hasan, *The Early Development of Islamic Jurisprudence* (Islamic Research Institute, 1970) 1; Chibli Mallat, 'From Islamic to Middle Eastern Law: A Restatement of the Field' (2003) 51 *American Journal of Comparative Law* 699, 735.

⁹ Khaled Abou El-Fadl, *Speaking in God's Name: Islamic Law, Authority and Women* (Oneworld, 2001) 64.

¹⁰ Ahmad Hassan, *The Doctrine of Ijma' in Islam: A Study of the Juridical Principle of Consensus* (Islamic Research Institute, 2002) 18.

¹¹ Khaled Abou El-Fadl, above n 9, 64.

¹² Ahmad Hassan, above n 10, 4.

¹³ Ayatollah M B al-Sadr, *Principles of Islamic Jurisprudence According to Shi'i Law* (Islamic College for Advanced Studies Press, 2003) 30.

¹⁴ Ahmad al-Raysuni, *Imam al-Shatibi's Theory of the Higher Objectives and Intents of Islamic Law* (International Institute of Islamic Thought, 2005).

¹⁵ For a fuller *Sunni* perspective and discussion of this issue, see, Wael B Hallaq, 'Was the Gate of *Ijtihad* Closed?' (1984) 16 *International Journal of Middle Eastern Studies* 3. For a summary *Shi'i* perspective, see, Sayed Hassan Amin, *Islamic Law in the Contemporary World* (Vahid Publications, 1985) 20.

¹⁶ Fatmagül Berktaş, 'Looking From The 'Other' Side: Is Cultural Relativism A Way Out?' in J Degroot and M Maynard (eds), *Women's Studies in the 1990s: Doing Things Differently?* (Macmillan, 1993) 120.

adapting these customs (specifically the *shari'a* as applied to *halal* meats) to contemporary Australian circumstances. To achieve the broadest acceptance by Muslims, such legal development must be based on, developed in concert with, and remain within the legal power of the *usul*.

This paper employs the ordinary meaning of 'domestic animal', but a broad statutory definition, such as the one used in Australian Capital Territory animal welfare legislation, would also suffice.¹⁷

Discussions on the *shari'a* are sometimes confused because of the non-specific conflation of a broad range of issues, resulting in a lack of precision and clarity. For example, Muslim nations at times make broad reservations to international instruments on unspecified *shari'a* grounds,¹⁸ regarding matters on which there is no general consensus among Muslims.¹⁹

Halal slaughter in Australia, for the purposes of this paper, means slaughter that is eligible for certification as defined in the Australian Government Supervised Muslim Slaughter program (AGSMS).²⁰ In Australia, *halal* slaughter laws are sometimes problematically conflated with general issues of *shari'a* 'lawfulness'. *Halal* slaughter of animals for food only forms a small subset of the broader issue of 'lawfulness' in Islam. This paper examines the term *halal* in both the narrow and broad sense, which will allow the narrow conception of *halal* (as related to meats in Australia) to be located within the broader context of general lawfulness under the *shari'a*.

As examined below, there is *not* a general consensus that the various *halal* means of animal slaughter for food fall into the category of *usul*. There are minor differences between the various Islamic schools of law, but these are not examined in this paper, as they do not influence, nor is any particular school favoured in, the Australian *halal* certification process.²¹ As a result, there is no bar to *halal* slaughter regulations being developed to suit Australian conditions, provided again that such development is also within the bounds of Australian law. The principled use of the *shari'a* for a general animal protection regime is discussed as a broad policy objective. While Australians (including Muslims in Australia) use animals for a range of human purposes, this paper only discusses in detail the welfare of

¹⁷ *Animal Welfare Act 1992* (ACT) s 2. Specifically, it holds that: "animal" means: (a) a live member of a vertebrate species, including (i) an amphibian; and (ii) a bird; and (iii) a fish; and (iv) a mammal (other than a human being); and (v) a reptile; or (b) a live cephalopod; or (c) a live crustacean intended for human consumption.'

¹⁸ Nisrine Abiad, *Sharia, Muslim States and International Human Rights Treaty Obligations: A Comparative Study* (British Institute of International and Comparative Law, 2008) 68; D W Greig, 'Reservations: Equity as a Balancing Factor?' (1995) 16 *Australian Year Book of International Law* 21, 65; see especially footnote 172.

¹⁹ See for examples the reservations of some Muslim majority countries (including Bahrain and Bangladesh, among others) to multilateral UN-sponsored conventions such as The Convention to Eliminate All Forms of Discrimination Against Women (CEDAW): United Nations Entity for Gender Equality and the Empowerment of Women, *Declarations, Reservations and Objections to CEDAW* (2009) UN Women <<http://www.un.org/womenwatch/daw/cedaw/reservations-country.htm>>.

²⁰ Department of Agriculture, Forestry and Fisheries, *Australian Government Supervised Muslim Slaughter program (AGSMS)* (25 September 2002) AQIS Notice Number MEAT 2002/16 <<http://www.daff.gov.au/aqis/export/meat/elmer-3/notices/2009/mn09-08>>.

²¹ Royal Society for the Prevention of Cruelty to Animals, *What is halal slaughter in Australia?* (16 August 2013) RSPCA Australia Knowledgebase <http://kb.rspca.org.au/What-is-halal-slaughter-in-Australia_116.html>.

animals used for human consumption, which is the key issue from a 'halal' branding perspective.

Thus, the broader aim of this paper is to examine ways in which Islamic law might be developed and employed in Australia to improve the conditions under which animals are raised, traded and used for human purposes. A major issue with respect to all slaughter at present is whether the stunning²² of animals prior to slaughter should be made mandatory.²³ The Royal Society for the Prevention of Cruelty to Animals (RSPCA) advocates a ban on the slaughter of animals while they are still conscious.²⁴ This could affect *halal* branding because some Muslims, including religious leaders, believe that some forms of stunning might not be lawful.²⁵ The legal question here is whether Muslim opposition to stunning is valid and supportable under the *shari'a*. The question of whether stunning (in its various forms) is *objectively better* for animal welfare is a separate issue,²⁶ and this paper examines the *shari'a* sources on both these questions. Here, the discussion of animal slaughter under the *shari'a* includes the treatment of domestic animals and wild animals that are hunted for food. It is noted in passing that hunting purely for sport appears to be prohibited under Islamic law, though this is a matter that does not appear to be settled among Muslims,²⁷ and is nevertheless outside the scope of this paper.²⁸

II WHAT IS ISLAM?

A General Overview

The word 'Islam' derives from the Arabic root سلم ('peace') and means 'to submit'.²⁹ The Qur'an, which Weeramantry describes as the bedrock of the faith,³⁰ states that 'human beings

²² Stunning can be briefly described as follows: 'A captive bolt gun has a steel bolt that is powered by either compressed air or a blank cartridge. The bolt is driven into the animal's brain. It has the same effect on the animal as a firearm with a live bullet. After the animal is shot, the bolt retracts and is reset for the next animal. A captive bolt gun is safer than a firearm... Practical experience in slaughter plants indicates that cattle shot correctly with a penetrating captive bolt have irreversible damage to their brain and they will not revive. If a non-penetrating captive bolt is used, the animal may revive unless it is bled promptly.' Temple Grandin, *Recommended Captive Bolt Stunning Techniques for Cattle* (February 2012) Dr Temple Grandin's web page <<http://www.grandin.com/humane/cap.bolt.tips.html>>.

²³ Islamic Council of Victoria, *What is Halal? A guide for non-Muslims* (2010) Muslims Australia AFIC <<http://www.icv.org.au/icvdocs/whatishalal.pdf>>.

²⁴ ABC Radio National, 'RSPCA moves to ban Halal slaughter in Australia', *AM*, 18 June 2011 (Jason Om).

²⁵ Islamic Council of Victoria, above n 22.

²⁶ See, eg, W Schulze et al, 'Summary report: Experiments for the objectification of pain and consciousness during conventional (captive bolt stunning) and religiously mandated ('ritual cutting') slaughter procedures for sheep and calves' (1978) 85 *Deutsche Tierärztliche Wochenschrift* 62, 62–66. A translation is available at <<http://www.mustaqim.co.uk/printhalalstudy.htm>>.

²⁷ al-Qaradawi, above n 4.

²⁸ Although speaking broadly of beings with souls (as opposed to free-willed beings such as humans), the relevant verse (Qur'an 17:33) could reasonably be read as prohibiting the taking of (any) life/soul (*nafsan*) without just cause.

²⁹ In a Qur'anic context, 'to submit' is to submit to the will of the one true God. There is a distinction between a Muslim (one who merely submits to God's will) and a *mu'min* (one who truly believes): Rodolphe J A De Seife, *The Shar'ia: An Introduction to the Law of Islam* (Austin & Winfield, 1994) 50.

³⁰ C G Weeramantry, *Islamic Jurisprudence: An International Perspective* (Other Press, 1988) 7.

were created for worship.’³¹ In Islam, worship is a very broad concept, and a detailed discussion of it is outside the scope of this work.

To perform acts of worship in practice, the Qur’an invites humanity to ‘freely’³² and ‘wholeheartedly’³³ enter into ‘a binding Covenant with God.’³⁴ The Covenant includes the so-called ‘pillars of Islam’, including ritual prayer, fasting, and giving alms to the poor.³⁵ Performing these obligations lawfully and with the right intention ‘discharges a person’s covenantal obligations’.³⁶ In its broader sense, the *shari’a* ‘guides and aids’ Muslims to this end.³⁷ The Qur’an and the *sunna* (which are made up of *hadith*,³⁸ and, in context, are often used synonymously)³⁹ are the *primary* (or independent) sources of the *shari’a*.⁴⁰ The main *secondary* (or dependent) sources include reasoning by analogy (*qiyas*), consensus of the interpretative community (*idjma’*), and just custom (*urf*).⁴¹ English translations of primary and secondary sources are used throughout this paper; these translations are also treated as primary and secondary sources respectively. Legal scholars discover the particular laws of the *shari’a* through legal methodologies which are widely discussed in the relevant literature.⁴² The broader Covenant, central to this paper, requires Muslims to act lawfully while abstaining from what is clearly prohibited,⁴³ and is discussed below. Doctrinally, however, only God may legitimately declare something *halal* (permitted) or *haram* (prohibited).⁴⁴ The Covenant commands Muslims to abstain from that which is clearly proscribed.

³¹ Yusuf Ali trans, above n 6, 51:56; 2:30 also states that human beings are created and that they will be (future tense) God’s representatives (*khalifa*) on earth.

³² Ibid 2:286.

³³ Ibid 2:208.

³⁴ Ibid 16:91.

³⁵ That is, acts that can be observed by others. This is contrasted with ‘having faith’, a primary covenantal obligation, but one which is not directly discernible by observation. See A Wood, ‘The position of the Niqab (Face Veil) in Australia under Australian and Islamic Laws’ (2012) 29.3 *American Journal of Islamic Social Sciences* 106, 117.

³⁶ Yusuf Ali trans, above n 6, 36:61.

³⁷ Ibid 1:1–7.

³⁸ *Hadith* are collections of sayings of the Prophet and his early companions. They have been collected and published in compendiums.

³⁹ In addition to individual translations of *hadith* (which are identified when cited), this paper uses two of the main *Sunni* collections of the *sunna*: Muhammad Al-Mughirah al-Bukhari, *The Translations of the Meaning of Sahih al-Bukhari* (Kazi Publications, 1976); Abu’l Hussain Muslim, *Al Jami’us Sahih* (Dar al Arabia, 1972).

⁴⁰ Wael B Hallaq, *Law and Legal Theory in Classical and Medieval Islam* (Ashgate, 1994); Wael B Hallaq, *A History of Islamic Legal Theories* (Cambridge University Press, 1997); Wael B Hallaq, *The Origins and Evolution of Islamic Law* (Cambridge University Press, 2005); Nadirsyah Hosen, *Shari’a & Constitutional Reform in Indonesia* (Institute of Southeast Asian Studies, 2007); Cherif Bassiouni (ed) *The Islamic Criminal Justice System* (OCEANA, 1982); Cherif Bassiouni and Gamal M Badr, ‘The Shari’ah: Sources, Interpretation, and Rule-Making’ (2002) 1 *UCLA Journal of Islamic and Near Eastern Law* 135; Khaled Abou El-Fadl, *Rebellion & Violence in Islamic Law* (Cambridge University Press, 2001); Rudolph Peters, *Crime and Punishment in Islamic Law: Theory and Practice from the Sixteenth to the Twenty-first Century* (Cambridge University Press, 2005); A Wood, ‘The position of the Niqab (Face Veil) in Australia under Australian and Islamic Laws’ (2012) 29.3 *American Journal of Islamic Social Sciences* 106, 110.

⁴¹ Wael B Hallaq, *Law and Legal Theory in Classical and Medieval Islam* (Ashgate, 1994), 111.

⁴² Above n 40.

⁴³ Yusuf Ali trans, above n 6, 43:2, 44:2.

⁴⁴ Ibid 5:87, 6:114, 10:59; see also 6:148, 7:32, 16:35.

However, the Qur'an also commands Muslims to 'not deprive yourself the good things that God has made lawful for you',⁴⁵ indicating that Muslims should not 'create' prohibitions through construction. This construction may arise through a narrow interpretation of broad and general prohibitions, and may occur for cultural, as opposed to law-based, reasons. The Qur'an reminds Muslims that Islam was not meant to make things difficult for them, and that the Prophet was sent as a mercy to all creation.⁴⁶ It follows by implication that Muslim scholars may be complicating things beyond what is necessary through broadly constructed prohibitions and for no good or useful practical outcome.⁴⁷

In addition to stunning, the important and broader issue in this context is whether the industrial scale of contemporary Australian abattoirs meets the animal welfare requirements mandated by the Prophet and highlighted below. Further, the Qur'an also reiterates that excess is generally prohibited.⁴⁸ This prohibition must surely apply to the excessive consumption of food, including meat. The spiritual values promoted by Islam and supported by the primary sources do not exclude sentient animals.⁴⁹ The authority for this proposition of kindness comes from a *hadith* (paraphrased below):

It was narrated from the Prophet that a prostitute [in one version, a male] came upon a well [on the edge of an oasis] to have a drink. She saw a dog licking the mud to quench its excessive thirst. After she had her drink, she thought, 'this dog is suffering as much as I did', so she went down into the well again, filled her shoe with water, and gave the dog a drink. God Most Merciful thanked the prostitute and forgave her all her previous sins. So the people asked the Prophet: 'O God's Apostle, is there a reward for us for serving the animals? The Prophet replied '(Yes.) There is a reward [from God] for serving any animate being [living thing].'⁵⁰

The prohibition on animal cruelty is further developed in another *hadith* of the Prophet that relates the example of a person who had discharged all their externally observable aspects (or the pillars) of the Covenant, but was punished in hell because the family cat was not fed at home and was also locked up, preventing her from foraging for herself.⁵¹ There appears to be reliable scientific authority that larger animals will suffer slaughter more than smaller creatures, and that different animals have varying levels of consciousness; that a mouse has a different and lower level of consciousness when compared to that of a cat, which is again different and lower than that of a cow.⁵² This consideration seems to be relevant, although *shari'a* food laws do not appear to address it explicitly (and it is suggested that perhaps they should). Thus, Muslims can be urged to reduce their consumption of the meat of larger, more sentient animals, and instead to consume smaller animals such as poultry, fish and insects as sources of animal protein in preference to the larger bovines. This approach would also help to ease some of the tension surrounding the stunning issue, as stunning is more frequently used in bovine slaughter. Such an application of *shari'a* principles may be one legitimate way

⁴⁵ Ibid 5:90.

⁴⁶ Ibid 22:78.

⁴⁷ Hallaq, above n 15, 3; Muneer Goolam Fareed, *Legal Reform in the Muslim World: The anatomy of a scholarly dispute in the 19th and the early 20th centuries on the usage of ijtihad as a legal tool* (Ananola, 1996); C G Weeramantry, *Islamic Jurisprudence: An International Perspective* (Other Press, 1988) 41.

⁴⁸ Yusuf Ali trans, above n 6, 5:90.

⁴⁹ Muhammad Asad, *The Message of the Qur'an: Translated and Explained* (Dar al-Andalus, 1984) 190.

⁵⁰ Muhammad Al-Mughirah al-Bukhari, *The Translations of the Meaning of Sahih al-Bukhari* (Kazi Publications, 1976) vol 8, 25.

⁵¹ Abu'l Hussain Muslim, *Al Jami'us Sahih* (Dar al Arabia, 1972) vol 4, 1381.

⁵² ABC TV News 24, 'The Neuroscience of Consciousness', *Big Ideas*, 18 February 2013 (Susan Greenfield).

of using the *shari'a* to encourage a reduction in the consumption of bovines, possibly triggering further animal welfare (and even some environmental) benefits.

B *The General Concept and Scope of Halal under Islamic Law*

The Qur'an states that under the Covenant, what is lawful (*halal*) and what is unlawful (*haram*) is clear.⁵³ The concept of *halal*, used in food labelling, derives from the Arabic word *halal* which literally means 'lawful'.⁵⁴ All foods that are *halal* and good are permitted.⁵⁵ While this section deals with the broader concept of *halal*, it will draw out aspects of the *shari'a* that can reasonably be developed with respect to domesticated animals raised and slaughtered for food.

In case there may be doubt on the issue, the Qur'an also explicitly permits Muslims to eat the food of the 'people of the Book' (Jews, Christians, Sabians, and so on): 'This day are [all] things good and made lawful unto you. The food of the People of the Book is lawful unto you and yours is lawful unto them...' ⁵⁶ This permission clearly makes lawful for Muslims the meat slaughtered by both the Jewish *shechita* method (making it *kosher*) and the less prescriptive Christian methods, each according to their own religious standards. Although the Qur'an is unambiguous, this is clearly not a settled view among Australian Muslims, reflected both in practice and in the lack of documented consensus. On the other hand, anecdotally, many Muslims living in minority situations do appear to adopt this broader interpretation of the Qur'an.

Muslims are instructed not to be fastidious over food. They are commanded to eschew excess and to minimise consumption. Currently, there are strong commercial pressures in Australia to increase consumption of meat. In this context, a religiously mandated command to minimise Muslims' consumption of animal products — to the benefit of animal welfare — has to date been underutilised: 'O you who believe, make not unlawful the good things which God hath made lawful, but commit no excess, for God loveth not those given to excess.'⁵⁷

Further difficulties may arise through construction. For example, Yusuf Ali translates Qur'an 6:118, a 'food' verse, as follows: 'So eat [meat] over which God's name hath been pronounced...' ⁵⁸ Although the word 'meat' appears in this translation, the word is not present in the original, but is an interpolation on the part of the translator. A general translation of these words holds that God's name should be recited over all food being consumed by Muslims, a broadly accepted practice.⁵⁹ Its application is not restricted to the slaughtering of food animals, which is merely a specific instance of a general command. Muhammad Asad translates the same verse as: 'Eat then of that over which God's name has been pronounced...' ⁶⁰

⁵³ Yusuf Ali trans, above n 6, 43:2, 44:2.

⁵⁴ Beyond the food context, the term *halal* (هلال) is also employed in Arabic to describe what is lawful: J Milton Cowan (ed) *The Hans Wehr Dictionary of Modern Written Arabic* (Macdonald & Evan, 1980) 1030.

⁵⁵ Yusuf Ali trans, above n 6, 2:168.

⁵⁶ *Ibid* 5:6.

⁵⁷ *Ibid* 5: 90.

⁵⁸ *Ibid* 6:118.

⁵⁹ Muhammad Al-Mughirah al-Bukhari, *The Translations of the Meaning of Sahih al-Bukhari* (Kazi Publications, 1976) vol 7, 221.

⁶⁰ Asad, above n 49, 190.

The two interpretations of the verse can give rise to a spectrum of meanings. Cognisant of the first translation, Asad goes on to explain in a footnote to that verse that:

[t]he purpose [of this and the following verse] is not, as might appear at first glance, a repetition of already promulgated food laws, but rather a reminder that an observance of such laws must not be made an end in itself and an object of ritual... [T]he errant values spoken of in verse 119 are such as lay stress on artificial rituals and taboos *rather than on spiritual values*.⁶¹

Meat killed by hunting animals (such as falcons and dogs) is lawful for Muslims, but God's name must be pronounced over it.⁶² The custom is to pronounce God's name before the hunting animal is released.⁶³ The prey is still lawful even if it dies before the hunter reaches it for slaughter.⁶⁴ The Prophet identifies an exception when the hunting animal has started to eat the prey, in which case it must be presumed that the hunting animal killed the prey for itself. The prey is consequently not lawful for the hunter.⁶⁵ While there are several possible interpretations here, it is reasonable to conclude that the prey is not required to be conscious when slaughtered, as it is clearly possible that the animal could die before the hunter reaches it. Killing must be quick and certain, so the Prophet permitted killing with arrows, but not with stones, which he forbade because '[they] did not kill the game but may break its tooth or gouge its eye.'⁶⁶

Generally, domesticated animals at Muslim slaughter were both alive and conscious.⁶⁷ The development of technology, when appropriately used, makes it possible to render animals unconscious before slaughter. An important *shari'a* issue is to identify forms of stunning that can be shown to be lawful, reliable and less painful. The underlying *shari'a* legal question is whether the animal *must* remain conscious to make the flesh lawful. Further, aquatic animals are lawful for Muslims as food,⁶⁸ but in this case slaughter is not required. The Qur'an refers to the flesh of fish as 'meat' that is lawful without slaughter.⁶⁹ Muslims at the time of the Prophet and since have customarily treated all sea creatures, even large fish or mammals, as though they had been lawfully slaughtered.⁷⁰ Pronouncing God's name before eating aquatic animals and all other food (animal or vegetable) is the customary universal Muslim norm.⁷¹ While this argument is not conclusive, it is posited that it can raise sufficient doubt over the custom of refusing to stun animals prior to slaughter. A deeper, more detailed discussion and debate that uses the broader range of *hadith* and draws from the various schools and sects is not possible here, but would be useful in developing new custom.

Arguably, the intent behind ritual slaughter is to 'take life' in God's name alone, acknowledging the sacredness of life. Land animals such as locusts are also lawful,⁷² but clearly for practical reasons do not need to be slaughtered. Further, if one forgets to mention

⁶¹ Ibid (emphasis added).

⁶² Yusuf Ali trans, above n 6, 5:4.

⁶³ Ibid 241, particularly at footnote 698. Importantly, the translator notes here that life must not be taken wantonly and that Muslims may take a life for food, but must do so solemnly.

⁶⁴ al-Bukhari, above n 59, 285.

⁶⁵ Ibid 281.

⁶⁶ Ibid 231.

⁶⁷ See discussion on hunting at the text accompanying n 50 above.

⁶⁸ Yusuf Ali trans, above n 6, 5:96.

⁶⁹ Ibid 35:12. The word used is لحمًا, which is the same collective noun as is used for the flesh of land animals.

⁷⁰ al-Bukhari, above n 59, 293.

⁷¹ Ibid 221.

⁷² Ibid 294.

God's name during slaughter (but did not avoid it through disobedience or ingratitude, or by mentioning a name other than of God), then that meat is still lawful.⁷³

Finally, Muslims are warned not to make unlawful what is lawful, and vice versa, or worse still, to attribute '[their] guesswork to God.'⁷⁴ That is, Muslim jurists and lawyers should not be given to excessive legalism and should not let ritual override spiritual values.⁷⁵ In this case, the value at stake is that of reducing harm to a sentient being. On the other hand, the law must be interpreted correctly,⁷⁶ and Qur'anic verses should not be taken out of context so as to produce instrumental or prejudiced results. The position of the sects and schools of contemporary Islam on *halal* certification have not been considered in this discussion, for the sake of brevity. Anecdotally, however, Australian Muslims purchase *halal* meats from butchers who are not of their own sect or school, and will often dine in each other's homes.

These examples indicate that, for the vast majority of Muslims in Australia, differences between sects and schools are not considered to be significant, at least as far as *halal* food is concerned.

C *Shari'a Elements of Animal Slaughter*

The principal religiously mandated issues for *halal* slaughter will now be identified from the primary sources. The Prophet said, 'when you slaughter, kill in a good way ... so every one of you should sharpen their blades and let the slaughtered animal die comfortably.'⁷⁷ Further conditions specified in the *hadith* and pertaining to *halal* slaughter are:

The knife should be well sharpened so that the throat is cut immediately without causing much pain; secondly, the knife should not be sharpened before the eyes of the animal; thirdly, the animal should be killed in a place where there is no other animal present and so that the other animal will not see this painful sight; fourthly, the animal must not be brutally dragged to the slaughtering place, but should be driven there with ease; and finally, the animal should be left free after slaughter so its body might move freely while it is bleeding [and until it stops moving].⁷⁸

Thus, while the killing of animals for food is clearly permitted in Islam, the rules that must be observed appear to be quite strict and prescriptive. These mandatory religious commands appear to have an important goal of minimising the distress and pain of the animal. Arguably, then, these commands from a merciful God should lawfully take precedence over economic and cultural considerations.

D *Prohibitions with Respect to Food*

Foods which are explicitly prohibited in the Qur'an are described as follows:

⁷³ Ibid 297.

⁷⁴ Yusuf Ali, above n 6, 10:59.

⁷⁵ Ibid 5:87.

⁷⁶ Ibid 5:41.

⁷⁷ Abu'l Hussain Muslim, *Al Jami'us Sahih* (Dar al Arabia, 1972) vol 3, 1076.

⁷⁸ Ibid. The Islamic Council of Victoria website reflects many of these conditions, and also certifies *halal*, which reasonably means that it certifies at a higher threshold: Islamic Council of Victoria, above n 12. However, the RSPCA, which monitors animal welfare, appears to reflect a different threshold (see below, n 112).

[God hath only forbidden you] dead meat [carrion, (land) animals that have died naturally] and blood [of all species], the flesh of swine, and that on which a name other than of God has been invoked... [goes on to make exceptions for necessity and acts not amounting to wilful disobedience].⁷⁹

This is later reiterated as:

Forbidden for you [for food] are: dead meat, blood, flesh of swine and that on which hath been invoked the name of other than God, that which hath been killed by strangling or by *a violent blow*, or by a headlong fall, or gored to death, that which hath been (partly) eaten by wild animals (unless its slaughter in due form is possible) and that which is sacrificed on stone altars. Also prohibited for you is the division of meat by raffling [i.e. gambling of all forms] ... but if any of you is forced by hunger [the exception for necessity], with no inclination to transgress, then God is indeed oft-forgiving, most merciful.⁸⁰

A 'violent blow' refers to animals killed with a blunt object,⁸¹ and arguably forms the legal grounds for a prohibition against stunning with a blunt bolt;⁸² the analogy of the prohibition of the stoning of animals to death might be apt.⁸³ As killing by sharp weapons such as knives or arrows is permitted,⁸⁴ it appears that causing unconsciousness with a *sharp* object prior to slaughter is not *prima facie* unlawful. However, much deeper and broader analysis is required before this point becomes settled.

Stunning animals for slaughter can include a range of processes, and is not entirely free of pain.⁸⁵ Without more information, directly substituting the pain of a bolt in the head for the pain of a slitting of the throat is not an obvious step. To simply reduce the debate to whether stunning (in whatever form) may or may not be used is unhelpful. The onus of proving that general commercial Australian methods of slaughter (including the use of large-scale abattoirs) are more humane than *halal* slaughter as identified in the primary Islamic sources perhaps rightfully rests with its proponents. The continuing evolution of stunning technology is an indication that this is not a settled or perfected area. Nevertheless, proven 'improvements' in pain reduction should generally be supported by the vast majority who are agnostic as to the issues of ritual, as this would further the cause of making animal slaughter as humane as possible.

Lawfulness is contingent. For example, meat or food that would otherwise be lawful can become unlawful if it is distributed by a game of chance (which is prohibited in Islam).⁸⁶ Similarly, animals that are stolen or purchased with the proceeds of usurious transactions — both theft⁸⁷ and usury⁸⁸ being prohibited in Islam — are not made lawful by subsequent *halal* slaughter. Further, eating from utensils made of silver or gold is prohibited,⁸⁹ notwithstanding

⁷⁹ Yusuf Ali, above n 6, 2:173.

⁸⁰ Ibid 5:4; 16:114–115 repeats the prohibition (emphasis added).

⁸¹ al-Bukhari, above n 59, 310–313.

⁸² Captive bolt stunning causes an animal to lose consciousness and is non-reversible, while electrical stunning is reversible: Royal Society for the Prevention of Cruelty to Animals, *Slaughter Factfile* (2013) RSPCA: All About Animals <<http://www.rspca.org.uk/allaboutanimals/farm/slaughter/factfile>>. Shackling an animal prior to stunning might be problematic under the *shari'a*, as discussed below. The Islamic Council of Victoria claims that captive bolt stunning is more painful and cites an authority for this proposition: Islamic Council of Victoria, above n 12.

⁸³ See text accompanying n 66.

⁸⁴ al-Bukhari, above n 59, 304.

⁸⁵ Islamic Council of Victoria, above n 12, particularly at footnote 3.

⁸⁶ Yusuf Ali trans, above n 6, 5:93.

⁸⁷ Ibid 60:12.

⁸⁸ Ibid 2:275.

⁸⁹ al-Bukhari, above n 59, 249.

that *halal* is otherwise observed. The *sunna* also holds that the consumption of the flesh of donkeys and the flesh of animals with fangs is prohibited.⁹⁰

The spirit of the *shari'a* therefore requires general observance, not punctilious or ostentatious attention to public aspects of the *shari'a* that convey 'piety', while eschewing the more private and charitable aspects of the law. That is, '*halal* meat' might in some cases still be unlawful, notwithstanding that the packaging bears the *halal* certification insignia.

The submission here is that *halal* extends well beyond the merely ritual slaughtering practices. That is, the *shari'a* arguably requires Muslims to take a much broader range of considerations into account, rather than *halal* certification alone, in making a final determination of what is actually *halal* in its wider religious (as opposed to its commercial) context. Therefore, *halal* certification in the context of this paper is only one of many relevant *shari'a* considerations.

E *The Use of Food Laws in the Australian Context*

Australian Muslims, in the main, consider the issue of *halal* meat to be a ritual aspect of their faith, and arguably tend to maintain it as a cultural practice. This generally, but not always, reflects the practices from their ancestral homelands and fits in with the schools of thought followed in those homelands.⁹¹ Many Muslims appear to purchase their meat at general stores or supermarkets, while others may purchase meat only from a '*halal* butcher'. What subjectively constitutes a 'proper *halal* butcher' may vary according to individuals and can depend on factors such as the individual's language group, country of origin, sect, or school of law. There may also be a difference between the sect or school followed by the butcher or shop owner and that followed by their customers.⁹² Those Muslims who strictly adhere to the subjective limits of their schools appear to constitute a relatively small minority of Australian Muslims.⁹³

While a detailed discussion of section 116 of the Constitution is far more complex than is indicated here, Australia is what is broadly represented as a secular state and the federal government is constitutionally prohibited from favouring or funding any religion or, arguably, expressions of religion.⁹⁴ Thus, the practical demand for a *halal* practice is arguably accommodated and supported as a cultural practice. In the broader economic context, maintaining such culture or custom is in many cases permitted in Australia and is promoted as a 'distinct competitive advantage in the global economy',⁹⁵ demonstrated here by the significant '*halal* certified' meat export market.⁹⁶

⁹⁰ Ibid 310–313.

⁹¹ N Zouiten, *Muslim Social Life and Local Meats* (MN & MT Zouiten, 1985).

⁹² Ibid.

⁹³ Ibid.

⁹⁴ *Australian Constitution* s 116.

⁹⁵ Department of Immigration, *The People of Australia: Australia's Multicultural Policy* (2013) Departmental Publications <http://www.immi.gov.au/media/publications/multicultural/pdf_doc/people-of-australia-multicultural-policy-booklet.pdf>.

⁹⁶ Department of Agriculture, Forestry and Fisheries, *Food Exporter's Guide to Indonesia* (2004) Agriculture and Food Publications <http://www.daff.gov.au/__data/assets/pdf_file/0006/183570/indo_chapter6.pdf>.

Custom is recognised as a valid source of Islamic law.⁹⁷ What is posited here is that custom is not immutable,⁹⁸ and that it could and should be lawfully adapted for contemporary conditions in accordance with both the letter and the spirit of the *shari'a*. For example, in the sixth century AD, animals were sometimes slaughtered with a sharp stone.⁹⁹ Notwithstanding the disputes as to whether the *shari'a* was immutable, as technology improved steel knives became available. When sharp, they caused less pain and suffering at slaughter. This technology was in time rightly adopted without dispute.

III THE PLACE OF ANIMALS IN THE MUSLIM WORLDVIEW

There are no prescribed limits on the use of animals in the Qur'an. This does not mean, however, that humanity is unrestrained. Everything and everyone must be treated in a fair and just manner,¹⁰⁰ as mentioned above with reference to the treatment of the family cat.¹⁰¹

Relevant in Australia, including among Muslims, is that animals may be used firstly for general human purposes, including, but not restricted to: seeing eye and hearing dogs; monkeys that assist the disabled; racing animals; circus animals; hunting animals; companionship animals; test animals; laboratory animals; and children's pets. They may also of course be used for food, the major focus of this paper. The third major category for animal use is sacrifice, which is involved in the Muslim celebration of the 'Day of Sacrifice',¹⁰² or at the birth of a child (*aqiqa*).¹⁰³ In the past, animals were more frequently used for transporting people and goods. These uses are regulated by the national law and the *shari'a*, and therefore are not discussed in any detail. Unfortunately, discussion of the *shari'a* is largely omitted from these issues.

A *The Legal Regime and the Use of Animals in Australia*

Animals in the wild and on Crown land are considered the personal property of the Crown.¹⁰⁴ Domesticated animals are considered personal property at common law.¹⁰⁵ The common law definition of domesticated animals ('animals as are commonly kept and cared for in or about human habitations')¹⁰⁶ falls within the ordinary meaning of the term, and therefore the use of the term for a discussion of the *shari'a* should not be problematic. Australian law and the *shari'a* are not dissimilar, in that animals can be used for a variety of purposes under both laws. However, while Australia has developed its animal law to cater for a range of human uses, the *shari'a* as practised in Australia does not appear to have been developed in step.

Slaughtering domestic animals for food or sacrifice is permitted under Australian law. Australian society has continued to adopt new technologies for reducing suffering to

⁹⁷ Sami Zubaida, *Law and Power in the Islamic World* (IB Tauris, 2003) 220; Noel J Coulson, *Conflicts and Tensions in Islamic Jurisprudence* (Edinburgh University Press, 1969) 4.

⁹⁸ Hallaq, above n 15.

⁹⁹ al-Bukhari, above n 59, 294.

¹⁰⁰ Yusuf Ali trans, above n 6, 4:135.

¹⁰¹ See text accompanying n 51.

¹⁰² al-Bukhari, above n 59, 322–334.

¹⁰³ Ibid 272–276.

¹⁰⁴ Alex Bruce, *Animal Law in Australia: An Integrated Approach* (Lexis Nexis, 2012) 76.

¹⁰⁵ Ibid.

¹⁰⁶ *Attorney-General (SA) v Bray* (1964) 111 CLR 402, 411.

individual animals at the time of slaughter. On the other hand, cost pressures have led to industrial-scale abattoirs where animals are not isolated at the time of slaughter, as required under the *shari'a*,¹⁰⁷ and as would have been the case in previous times — when meat was produced on small farms, was slaughtered locally, and was not consumed in the vast quantities that it is today.

B *Halal Branding in Australia*

If a practising or observant Australian Muslim was asked the question: ‘Should you only eat *halal* meat?’, the answer *must* be ‘yes’. This is because the question can alternatively and more accurately be phrased: ‘Should you eat only that which is *lawful* under the *shari'a*?’ The answer must once again be ‘yes’, because the Qur’an requires Muslims to eat only lawful food and to eschew what is unlawful.¹⁰⁸

On the other hand, consider if the same Muslim was to be asked the following question:

‘Should you only eat meat that is branded or certified *halal*, which in Australia means that it was killed by a Muslim butcher who faced Mecca and invoked God’s name while killing the animal, but also means that he did so under industrial conditions where a key criterion is that the slaughterman must work to kill as many animals as was practical, which could mean that the animals were within sight of each other when being killed, that the blades were not sharpened for each separate animal, and, for expediency and efficiency, that the animals might have been handled roughly or prodded to hasten the animals for maximum throughput?’

The answer to *this* question is likely to be less unequivocal. In Australia, the term *halal*, as broadly used with respect to food, is almost synonymous with the ritual killing of ovines, bovines and poultry described by the RSPCA:

Halal describes what is lawful for Muslims to eat. It gives a range of beverages and foods (including meat) that are acceptable. Halal food laws are based on interpretation of the Quran, the Muslim scripture. Before halal slaughter, the invocation of Allah’s name over the animal is required. Halal slaughter in Australia may differ from halal slaughter overseas because of the differing interpretations of the Quran ... The only difference between this halal slaughter method is that it uses a reversible stunning method, while conventional humane slaughter uses an irreversible stunning method. Halal slaughter overseas may not permit stunning of the animal, and *this is the key difference* between halal slaughter in Australia and halal slaughter in some other countries.¹⁰⁹

The elements that must be satisfied for receiving certification are as follows:

Only authorised Muslim slaughtermen can perform the halal slaughtering procedure for halal products.¹¹⁰ It is the competent slaughterman’s responsibility for identifying halal or non-halal carcasses in accordance with the procedures that are approved within the arrangement.¹¹¹

Halal certification does not appear to satisfy all the elements of *halal* slaughter as derived from *shari'a* law, discussed above. Nonetheless, meat slaughtered in accordance with standards set by the Department of Agriculture is eligible to receive *halal* certification or

¹⁰⁷ See text accompanying n 78, above.

¹⁰⁸ Yusuf Ali trans, above n 6, 2:173.

¹⁰⁹ Royal Society for the Prevention of Cruelty to Animals, above n 21 (emphasis added).

¹¹⁰ *Halal* slaughter done by men is a lawful Australian custom. Under the broader *shari'a*, however, both men and women may slaughter an animal. See al-Bukhari, above n 59, 300–301.

¹¹¹ Royal Society for the Prevention of Cruelty to Animals, above n 21.

'*halel* stamps' (sic).¹¹² Further, abattoirs in Australia that produce *halal* meats are not permitted to kill *haram* (prohibited) animals,¹¹³ which is consistent with universal Muslim practice.

C *The Limits of Large Abattoirs with Respect to Halal*

Islamic prescriptions for slaughter, as mentioned, envision a labour-intensive process that is costly and difficult to replicate in contemporary industrial abattoirs. Traditional, small-scale *halal* abattoirs in Muslim states, however, may be required to pay attention to the broader range of Islamic laws, beyond merely invoking God's name at slaughter. If the RSPCA is correct, large-scale abattoirs in Muslim states are not significantly different to those found within our major trading partners.¹¹⁴ In such cases, animal rights issues may in fact be significantly worse, despite the broader *halal* requirements.¹¹⁵

The Prophet said, 'hurry up in (the killing process of) slaughtering',¹¹⁶ a condition that might not be practical in large abattoirs where animals may have to spend considerable amounts of time waiting for slaughter. Further, automated killing of fowl, for example, means that it is not always possible to ensure that the animal's throat is cut first. The Prophet cursed the one who cut the limb (or some other part) of an animal while it was still alive,¹¹⁷ which effectively constitutes a prohibition.

IV USING *HALAL* TO PROMOTE HUMANE TREATMENT

Australian Muslims may plead ignorance of the deeper issues of '*halal*'. This is not unreasonable, as it appears large numbers of Muslim adults in Australia were born overseas,¹¹⁸ and knowledge of Islam or Islamic law is not a criterion for migration to Australia. Many observant Muslims would, however, have a country-specific or confessional-specific knowledge of religious custom, characterised by Woodcock as 'the strong ethnic identification of [Australian] mosques'.¹¹⁹ Notwithstanding this, the gap in religious knowledge should be overcome by education and discussion, particularly if Muslims would

¹¹² Department of Agriculture, Forestry and Fisheries, *Australian Government Authorised Halal Program: Guidelines for the preparation, identification, storage and certification for export of halal red meat and red meat products* (2009) Exporting From Australia: Export Meat Program <<http://www.daff.gov.au/aqis/export/meat/elmer-3/notices/2009/mn09-08>>.

¹¹³ Ibid.

¹¹⁴ Royal Society for the Prevention of Cruelty to Animals, above n 21.

¹¹⁵ Tafile Laylin, *Egyptian Activists Claim Eid Animal Slaughter Is Haram* (15 November 2010) Green Prophet <<http://www.greenprophet.com/2010/11/animal-slaughter-egypt/>>; Meris Lutz, 'Eid al Adha animal slaughter sparks debate in Muslim world', *Los Angeles Times* (online), 17 November 2010 <<http://latimesblogs.latimes.com/babylonbeyond/2010/11/muslim-world-eid-adha-animal-rights-islam.html>>; Tafile Laylin, *Jordan's Princess Alia Calls for Humane Animal Slaughter Ahead of Eid al-Adha* (19 October 2011) Green Prophet <<http://www.greenprophet.com/2011/10/princess-alia-animal-slaughter/>>.

¹¹⁶ al-Bukhari, above n 59, 304.

¹¹⁷ Ibid 307.

¹¹⁸ Annie Guest, *Guarded Muslims 'halve census figures'* (18 July 2011) ABC Online <<http://www.abc.net.au/news/2011-07-18/muslim-population-census-fears/2798462>>. The author cites census figures from the ABS and Muslim community leaders in Brisbane.

¹¹⁹ Rachel Woodlock, 'Praying Where They Don't Belong: Female Muslim Converts and Mosques in Melbourne, Australia' (2010) 30.2 *Journal of Muslim Minority Affairs* 265, 265.

like the broader community to adopt the more humane aspects of *halal* for the improvement of animal welfare.

El-Fadl notes that many Muslim leaders in the USA (Australia is not likely to be any different) politically exploit Islamic symbols for pragmatic purposes,¹²⁰ and 'halal' certification is one such issue. On the other hand, it is not uncommon for non-Muslims in the West to exploit broader concerns about Islam (such as the 'Muslims are dangerous' rhetoric) for political purposes.¹²¹ For example, the *Four Corners* exposé of horrific abattoir scenes in Indonesia was effective in raising awareness of animal welfare concerns among Australians.¹²² However, it also tapped into a deeper xenophobic vein. The subtext of such programmes is that there is an implicit notion of Australian superiority over Indonesians (or the 'poorer' Asians generally) in both technology and general animal welfare issues.

After the *Four Corners* report, the Australian government temporarily suspended live animal exports to Indonesia. This was perhaps not entirely unpredictable, given that a significant percentage of *Four Corners* viewers were appalled at the footage. The temporary ban was lifted after the immediate furore had died down.¹²³ What the programme did effectively, however, was raise the level of general awareness of animal cruelty, particularly among a previously unsympathetic segment of the Australian population.

On the other hand, the reaction to the programme damaged the Australian meat industry (perhaps temporarily), causing some human pain and suffering to exporters. On one estimate, the cost was \$320 million; the effect of such 'shock campaigns' should not be discounted.¹²⁴ The unspoken, more insidious assumption is that slaughter in Australia is more humane, which, although possibly true, is far from being an absolute 'fact'.¹²⁵ In this context, comedian Dave Hughes commented on 'how he used to work in a slaughterhouse and that he felt the footage from the Indonesian abattoir wasn't that much different to what was happening here.'¹²⁶

Thus, it is not the nationality or the colour of the skin of the slaughterman that leads to cruelty, but the relentless pressure to improve productivity. Animals that do not 'cooperate' are beaten and prodded cruelly, a merciless system that desensitises humans. To attribute animal cruelty to industrial pressures is not to condone what is happening either here or overseas. Muslims, who are the majority in Indonesia, are bound by their Covenant to minimise the pain and suffering caused to animals. If they honour their Covenant, they should not bow to the pressures of the industry.

¹²⁰ Khaled Abou El Fadl, *The Place of Tolerance in Islam* (Beacon Press, 2002) viii.

¹²¹ Ibid vii.

¹²² Sarah Ferguson, *A Bloody Business: An explosive exposé of the cruelty inflicted on Australian cattle exported to the slaughterhouses of Indonesia* (30 May 2011) ABC Online <<http://www.abc.net.au/4corners/content/2011/s3228880.htm>>.

¹²³ Australian Broadcasting Corporation, *Government lifts live cattle export ban* (6 July 2011) ABC News 24 <<http://www.abc.net.au/news/2011-07-06/government-lifts-live-cattle-export-ban/2784790>>.

¹²⁴ Ferguson, above n 123.

¹²⁵ Peter Mickelborough, 'Gippsland abattoir shut amid animal cruelty claims', *Australian Herald* (online), 25 November 2011. <<http://www.news.com.au/national-news/abattoir-shut-amid-animal-cruelty-claims/story-e6frfkvr-1226206429654#sthash.LZNLpYTJ.dpuf>>.

¹²⁶ Suzanne Devonshire, *Cruelty closes Australian abattoir* (20 February 2012) Our World Today <<http://www.ourworldtoday.com.au/news/article/cruelty-closes-australian-abattoir>>.

While human beings should not ignore the pain they cause to other sentient species, they must also consider the pain they may cause to the poorest workers of other countries. When some segments of the Australian community campaign to keep abattoir jobs local, they risk depriving underpaid workers in poorer countries of their jobs, food and income.

Perhaps a more constructive role that Australia can play is to help develop standards from within the *shari'a* traditions in a way that engages Muslim nations and Muslim scholars. Animal activists can find a wealth of useful precedent and argument in the *shari'a*, and are quite negligent insofar as they only superficially explore these avenues of animal welfare.

This paper, however, does not seek to depict Australian practice as some form of global exemplar that can be used to teach our 'less civilised' neighbours. There is no basis or authority for such a proposition. These are matters of importance to the domestic and export industries of both Australia and many of our Muslim neighbours. They call for open and robust discussions in a collaborative manner, which would greatly advance Australian interests and animal welfare. Finding a way to achieve this without causing detrimental effects on our trading partners should be a priority. What is posited here is that, if it is legally and ethically possible to reduce harm to a sentient animal, then every lawful *shari'a* means to do so must be explored and put into practice. Such a sentiment is clearly within the legal power of the Qur'an and the broader *shari'a*.

V CONCLUSION

Muslims are instructed to be kind to all living things, including animals. The *shari'a* does not distinguish between the slaughter of large and small animals, and this issue arguably requires some examination. The Qur'an commands Muslims to walk gently on the earth, an allusion to humility that also invites a literal interpretation: one should not step on even an ant thoughtlessly, as is evident in the Qur'an's story of King Solomon.¹²⁷

The Prophet reminded Muslims that an act of kindness towards an animal could 'clean their slate' in God's eyes. In any event, Muslims are commanded to eschew excess. Observant Muslims in Australia should be reminded to consume much less meat. As the world's population grows beyond seven billion people, a fifth of these being Muslims, a concerted effort among *shari'a* scholars to encourage the reduction of meat consumption among the wealthy would surely reduce the number of animals that have to be killed for meat. While each killing should be done with care, an overall reduction in consumption, at least in terms of raw numbers, would greatly help animal welfare, as well as producing various health and environmental benefits.

For the meat that they do consume, observant Muslims should look beyond simple *halal* certification. It was argued in this article that certification sometimes satisfies some, but generally not all, of the strict commands of the Prophet. This is because large industrial abattoirs do not seem to be structured to satisfy animal welfare requirements, as commanded by the Prophet.

Programmes such as the *Four Corners* exposé on the problems of 'halal' slaughter in Indonesia may be well-intentioned, but the 'take home' message to the Australian public was

¹²⁷ Yusuf Ali trans, above n 6, 27: 18. King Solomon sought God's forgiveness after he rode into a valley inhabited by ants, and overheard one ant warning the others of the thoughtless horse riders who were destroying their nests.

one that struck a 'superior' chord, and appeared to play on an innate feeling of Australian racial superiority over Indonesia. Harmonious relations in Australia are endangered by racist or anti-religious jingoism.¹²⁸ While freedom of speech is something that Australia values greatly, this 'race tap', once opened, is not so easily turned off.

Indonesia is a nation of about 220 million people and the consumption of animals for food will be correspondingly high. Encouraging Indonesians to follow the dictates of the *shari'a* with respect to animal slaughter, which many Indonesians will consider binding, is more likely to improve animal welfare than hypocritical 'shaming' by Australians. Pointing a 'superior finger' at Indonesians also takes the pressure off Australians to address the animal cruelty that accompanies mass-produced meat in their own country. Animal cruelty, as discussed, is driven by significant cost pressures, and the Australian meat industry is therefore likely to find an implementation of *halal* prescriptions to be significantly more expensive.

On the other hand, if Australian animal welfare advocates engaged positively with Islamic scholars and animal rights activists in Muslim nations, animal welfare could be improved significantly. Muslims have the dictates of their faith as a strong motivation to obey the *shari'a*. Surely it must be appealing to every believing Muslim man or woman that saving an animal from hell on earth can result in their own salvation from hell.

For the broader Australian community, it seems that prejudice from both the left and the right have clouded the ability to use, and encourage the use of, the humane aspects of the *shari'a*. In turn, it has been too easy for Muslims to become wilfully blind, and to avoid the development of humane practices.

¹²⁸ Such attitudes may be observed in the discourses of visitors to Australia such as David Irving or Geert Wilders.