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# Equality among Animals and Religious Slaughter

Federico Zuolo\*

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**Abstract:** »Gleichberechtigung unter Tieren und religiöse Schlachtung«. Current laws on the treatment of animals in all liberal countries demand that animals be stunned before being slaughtered in order to prevent their suffering. This is derived from a widely-shared concern for animal welfare. However, in many Western countries, exemptions from this legal requirement have been granted to Jewish and Muslim communities so that they can continue to perform ritual slaughter. Hence, there seems to be a clash between the right to religious freedom and the duty to minimize animal suffering during slaughter. In this paper, I want to propose a solution to this seemingly irreconcilable clash. To understand whether these two principles are really incompatible, we need to establish exactly what they demand of us. I argue that there is no convincing reason to take the suffering involved in the killing of animals more seriously than the suffering experienced by animals during their lives (on farms). If so, we might demand that ritually slaughtered animals be "compensated" for their experiencing a more painful death by raising these animals in better conditions than others.

**Keywords:** Animal welfare, freedom of religion, non-discrimination, ritual slaughter.

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## 1. Introduction<sup>1</sup>

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Current laws on the treatment of animals in all liberal countries demand that animals be stunned before being slaughtered in order to prevent their suffering. In many Western countries, exemptions from this legal requirement have been granted to Jewish and Muslim communities (Haupt 2007).<sup>2</sup> But Muslim and

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\* Federico Zuolo, Department of Political and Social Sciences, Free University of Berlin, Ihnestr. 22, 14195 Berlin, Germany; federico.zuolo@unipv.it.

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<sup>2</sup> This provision is accepted by many European countries, the US, and Canada. See for instance the Council Regulation (EC) No 1099/2009 of 24 September 2009 on the protection of animals at the time of killing, art. 3.4; Council Directive 93/119/EC of 22 December 1993 on the protection of animals at the time of slaughter or killing, art. 5.2. Switzerland, Norway, Sweden, and Latvia have not admitted such exemptions, thus affirming the priority of animal welfare over the right to freedom of religion. The Polish constitutional court recently overturned a ban on ritual slaughter. For a general discussion see Ferrari and Bottoni (2013).

Jewish ritual methods of slaughter are considered unacceptable by a number of groups concerned with the suffering of animals. Indeed, ritual methods of slaughtering require that animals be slaughtered without having been stunned, thus causing significant pain during their slaughter.<sup>3</sup>

On the one hand, ritual slaughter seems to be unacceptable not only to those concerned with animal rights, who reject any kind of killing of animals, but also to those with more moderate worries for the welfare of animals, who might allow the killing of animals but are concerned with their suffering. On the other hand, ritual slaughter seems to be justified insofar as it is an expression of the right to freedom of religion. Hence, there seems to be a clash between the right to religious freedom and the widespread concern for animal welfare.

In this paper I propose a conditional solution to this clash between values. Before presenting my argument, I want to emphasize that I will not argue for the overall admissibility of ritual slaughter. My claim will be more limited: I will try to see whether ritual slaughter can be made compatible with a general concern for animal welfare. In a sense my claim will rest within the boundaries of non-ideal theory, because I will accept most of the current rules and practices surrounding the relation between humans and animals. In other words, I will propose an improvement of the current system of raising animals that does not challenge its justification.

To do this, I will start from the uncontroversial assumption that qua general principles both the right to freedom of religion and the concern for animal welfare are sound and justified. I will also assume that neither animal welfare nor religious freedom have priority; rather, I will assume that they are on an equal footing. This does not mean that I am subscribing to a form of metaethical pluralism. I will simply take their clash at face value. To argue for the priority of one over the other we would need a complete and substantive theory of justice. In this paper my aim is obviously much more modest. Indeed I will only discuss whether they can be made compatible without arguing for the priority of one over the other.

To understand whether they can be made compatible in the case of ritual slaughter we need to establish what exactly they demand of us. In the light of this, I will argue that there is no convincing reason to consider the suffering involved in the killing of animals more important than other types of suffering they face during their lives (on farms). If so, to make ritual slaughter compatible, at least in principle, with concerns for animal welfare, I will argue that we might demand that ritually slaughtered animals be “compensated” for their

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<sup>3</sup> Although some people claim that, if the slaughter is performed appropriately, the suffering of ritually slaughtered animals is not significantly greater than that suffered by animals facing standard slaughter methods, for the sake of simplicity I will not call into question the standard assumption that ritual slaughter involves some significant amount of pain which is greater than the pain involved in non-ritual slaughter.

more painful death. Such compensation might be made by raising these animals in better conditions than those who will be stunned before slaughter. I will conclude by defending this proposal against some standard objections and argue it is only convincing if ritual slaughter is really essential to the maintenance of religious tradition.

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## 2. A Clash of Values?

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The case of ritual slaughter seems to involve a clash between concerns about animal welfare and those about religious freedom. The right to freedom of religion is undoubtedly one of the fundamental liberal rights. Respecting this right does not consist of the mere protection of a person's inner sphere of belief and faith. Rather, it includes a number of more specific rights, such as the right to gather and pray in public. Among these rights we can include the right to eat and follow the dietary prescriptions of one's religion. Accordingly, ritual slaughter is an expression of this general right. But there seems to be a case for its limitation. Religious freedom is thought to be inviolable to the extent that its exercise does not infringe upon other rights and the fundamental interests of others. One might say that ritual slaughter is wrong precisely because it infringes upon the rights of animals. However, it is not clear whether animals hold rights. The least we can say is that this is a controversial claim and there is a deep disagreement about this issue.<sup>4</sup> Irrespective of whether animals hold rights, however, most Western legislation displays a concern for animal welfare that seems to be related to duties on the part of human beings. However, it is not clear what justification might ground such a concern. Is it couched on a rights-based view or on utilitarian grounds?

On the one hand, it certainly cannot be defended on a standard rights-based view, because current rights-based views do not only demand that we take animal welfare and suffering into account; they also argue that animals have an inviolable right to life. On the other hand, one might think that an interest in animal welfare and suffering is typically utilitarian. However, we might ask whether such a utilitarian view should be applied only to animals or also in other domains. But, since utilitarianism is an all-encompassing and monist theory, it cannot only be applied to one domain (viz. animals) and not to other relevantly similar domains (namely all sentient beings including human beings). In a word, the principle that Nozick (1974, 41) called "utilitarianism for animals, Kantianism for people" cannot be squared with utilitarian monism. Justifying this discrimination is not only at odds with utilitarian monism but also with the commit-

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<sup>4</sup> The importance of and the commitment to realizable institutional principles in a political theory of human-animal relations is stressed also in Ahlhaus and Niesen (2015, in this HSR Forum).

ment to anti-speciesism held by many utilitarians. Thus, if we want a utilitarian justification of the treatment of animals, we must also be prepared to accept a utilitarian justification in other fields of public ethics. But this would be quite unpalatable for many of us. Thus, although certain types of utilitarianism could endorse the idea that we have duties towards animals, this would be at the price of an endorsement of overall utilitarian principles, which would also require significant changes to current laws and principles. Given the non-ideal premises of this paper, the thorough utilitarian option seems unfeasible.

There may be other contending moral theories, but it is not clear which grounds the current protection of animal welfare. In general, approaches to the protection of animal welfare can be indirect and direct. An indirect approach would justify concern for animal welfare through a duty to respect human attitudes, beliefs, or commitment towards animals. In indirect approaches animals are beneficiaries of certain kinds of treatment, but human beings are the addressees of the direct obligations as well as the bearers of moral status. For instance, some Italian laws concerning the prohibition of killing of and cruelty to animals (articles 544-bis to 544-sexies of the Penal Code) are grouped in a chapter devoted to the “offences against human sensitivity towards animals.”<sup>5</sup>

Direct approaches to the protection of animals, by contrast, ground duties towards animals in the interests that animals have autonomously and independently of human attitudes towards them. An example of this direct approach can be found in the European Council Regulation on the protection of animals at the time of killing (1099/2009 of 24 September 2009), which asserts that “animal welfare is a Community value” (preamble 4). The scope of its application is based not on our relation to animals but on “scientific evidence” demonstrating that “vertebrate animals are sentient beings” (preamble 19).<sup>6</sup>

However, it must be emphasized that there seems to be an ambiguity in many current legal systems regarding whether the protection of animals is grounded in direct or indirect duties towards animals.<sup>7</sup> Diverse pieces of legis-

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<sup>5</sup> However, there is no coherent application of the indirect approach because such articles, as well as article 727, which prohibits keeping animals in conditions that are incompatible with their nature and that cause great suffering, point also at a direct approach. The reference to animals’ ethological nature and specific needs is interpreted in the jurisprudence as a clear recognition of animals’ subjective interest and humans’ corresponding direct duties.

<sup>6</sup> An even clearer example of the direct approach is the Swiss Federal Law (455, 16 December 2005). In art. 1 the law states that the safeguarding of animal dignity is the overall aim of the law.

<sup>7</sup> One prominent case is the German Basic Law (*Grundgesetz*), which demands that animals be protected, as should nature, in virtue of the responsibility we have towards future generations (article 20a). Despite the prominence given to animals in legislation at the constitutional level, this seems to be an indirect approach in virtue of its being grounded in the well-being of future generations of human beings. On the contrary, the law on animal protection (*Tierschutzgesetz*, § 1) demands that human beings should be responsible for ani-

lation take different approaches or can be interpreted in both ways. Such an ambiguity may be a legacy of past views that have not been amended, since a full recognition of human direct duties towards animals would demand more extensive (and unwanted) legal protection of animals. Hence, we cannot say that all the relevant laws on animal welfare are based on a direct approach. On the other hand, if we take the indirect approach seriously, it is difficult to understand what good is protected by laws aiming at animal welfare. Is it *only* human sensitivity towards animal suffering that is protected? That is possible. However, this would make it difficult to argue that the suffering of animals should be prevented even when no human being would be offended. After all, our sensitivity is not likely to be affected by hidden slaughter houses that do not expose animal suffering to the public.

These are very intricate questions that cannot be settled here. In what follows I will discuss only direct approaches toward the protection of animal welfare.<sup>8</sup> This does not mean that we should disregard the indirect elements, and nor does it mean that the conclusion I will draw is not valid for an indirect approach. It means, rather, that the kinds of reasons we will consider, unless otherwise specified, will regard the duties – if any exist – that we have directly towards animals, not the duties we have towards the attitudes and beliefs of other human beings towards animals. After all, although legal systems and cultural practices are not immune to inconsistencies and ambiguities, a direct approach towards animal welfare seems capable of capturing the widespread idea that causing unnecessary suffering to a sentient being is intrinsically wrong. This is why adopting a perspective based on direct duties seems a worthwhile enterprise. One may object that such a direct approach is too minimal if it can permit the killing of animals. That may be true. However, as I have said, here my aim is not to ask whether the principles underlying current legislation on animals are the most convincing. I simply start there in order to ask whether and how we may reconcile the duty to care for animals and the right to religious freedom that allows ritual slaughter.

As a preliminary remark, we should bear in mind that ritual slaughter was originally intended to cause the quickest and least painful death to animals, according to Jewish and Muslim traditions (Lerner and Rabello 2006/7). Such a belief should not be discarded as mere self-deceit, because this might have been the case at the time of its origination, according to the scientific

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mals qua “fellow creatures” (*Mitgeschöpf*). And this seems to point at a direct concern for animals.

<sup>8</sup> I have provided an alternative account based on an indirect view on the protection of animals in Zuolo (2014). Although I think the indirect approach has the advantage of being more clearly compatible with a number of admitted practices and with ritual slaughter in particular, in this paper I assume that the account underlying current laws may be justified as a set of direct duties. I cannot establish here which account is more convincing all things considered.

knowledge and the tools available. The religious grounds of the practice may have been that pain minimization was a way to respect the sacred nature of the divine gift of creation.

Hence, we may say that Jewish and Muslim religious traditions have also been committed to the minimization of animal suffering, despite the fact that their understanding of this requirement is based upon religious rather than contemporary scientific ideas. This means that if we take this idea at face value, as the grounding principle of the practice of ritual slaughter, there would, strictly speaking, be no contradiction between religious freedom and animal welfare – only a clash between two different understandings of the same principle regarding animal welfare when it is applied to slaughter: one informed by contemporary practices and science, and the other informed by traditional religious techniques.<sup>9</sup> This picture, which reinterprets a clash of values as a clash of methods for reducing animal suffering, seems plausible. However, in the end, the reason to consider the traditional practice of ritual slaughter so important is that it seems to be at the core of Jewish and Muslim communities, touching upon a fundamental part of these religions, namely eating<sup>10</sup> in a way that is consistent with one's most important beliefs. Hence, the clash of values resurfaces again. This qualification is important in order to prevent a further objection. If Jews and Muslims should in principle eat only kosher and halal meat, whose production seems to be at odds with other legal and moral requirements, why cannot we say that Jews and Muslims ought to forsake meat eating and become vegetarian? After all, this same choice is made by many people on moral grounds. If the reasons for forbidding non-halal and non-kosher meat are so important, why shouldn't believers be willing and committed not to eating meat at all where it does not comply with their religious requirements? This is a serious question because we cannot take it for granted that any kind of practice that is typical of a certain cultural and religious tradition is worthy, per se, of defense and special treatment. I shall leave discussion of this issue to the final section. Here it suffices to say that, whatever our response to the question of whether ritual slaughter is fundamental to Jewish and Muslim traditions, we have another reason for taking the practice of religious slaughter seriously. This is the reasonable presumption that prohibiting halal and kosher meat would cause further disadvantage to Muslims and Jews – two communities that have already suffered extensive discrimination. Hence, we might say that whatever our position

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<sup>9</sup> This is at least partially shown by the fact that some Jewish and Muslim theorists claim that ritual killing is still the least painful way of slaughtering because, if the method is properly performed, the animal loses consciousness immediately. However, the factual validity of this claim is at least doubtful and discussing it would lead us astray.

<sup>10</sup> I focus only on meat eating, thus leaving aside the problem of the use of leather because Muslim and Jewish communities seem to have divergent prescriptions on this, and because wearing leather clothes does not seem to be an uncontroversially fundamental human need.

on ritual slaughter is, banning it would create further disadvantage (whether justified or not) for two communities that already face discrimination.

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### 3. What Does a Concern for Animal Welfare Require of Us?

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This paper, in short, confronts the following question: What is so special about slaughter? If we are really concerned with animal welfare, while still admitting the permissibility of raising and killing animals for the sake of human nourishment, why is the way in which they are killed so important? This is not to underestimate the suffering involved in ritual slaughter. My point, rather, is to argue that there seems to be a sort of hypocrisy or incoherent attitude regarding animal suffering. If a concern for animal welfare requires the minimization of suffering, why should this minimization of suffering specifically target the killing of animals, rather than being more extensively applied to the whole life of the raised animal? Anticipating a possible objection, one might say that concern with animal suffering during slaughter is more feasible and realistic because the alternative, namely providing better care during animals' lives, would be too costly. Cost is certainly a problem, in that more extensive care for animals during their lives is certainly more costly than simply being concerned about their suffering at the very end of their lives. The former would require us to ban industrial farming, or at least to raise animals using different methods, leaving them with more space to move, more possibilities for interaction with other animals, more time to spend with their offspring, and so on. It seems clear that much more can be done to promote the welfare of farmed animals. A number of recent studies show that farmed animals suffer even when there is no direct evidence of this suffering (as there is during slaughter) (Aaltola 2012, 1-67). However, if we focus on the suffering involved in slaughter rather than in an animal's life simply on the basis of cost, the normative grounding of our argument is both weak and unclear. The only plausible way to defend the current focus on animal suffering during slaughter is to claim that suffering during slaughter is different from – and/or not reducible to – other types of suffering. Such a difference would justify giving priority to suffering during slaughter, rather than other forms of suffering, and would ground the legal and moral obligation to stun animals. Let us see what theories in animal ethics have to say about this issue.

We could give priority to the suffering caused by slaughter either because we consider it to be of greater magnitude or because we have independent reasons to prevent this type of suffering. The former holds true only if we subscribe to a position that explains why suffering during slaughter is more weighty than countless other minor types of suffering. If we look at this from a broadly consequentialist perspective, it seems difficult to justify, because it either underestimates how much animals can suffer in industrial farming or overestimates how seriously we ought to take the pain experienced by animals during the final

moments of their lives. Even if we do not subscribe to a thoroughly utilitarian position, we can nevertheless frame the issue in terms of a measure of badness. All sufferings derive from an aversive state or stimulus (pain, fear, anxiety, discomfort) that should be assessed with respect to two fundamental dimensions: *intensity* and *duration*.<sup>11</sup> We may think that the suffering caused by slaughter is far more intense than other kinds of suffering, but its duration is certainly shorter than others, which are typically repeated many times. Unless we take intensity more seriously than duration, which we have no obvious reason to do, the two dimensions seem to be equally important in a determination of the respective amount of suffering. Hence, the suffering involved in slaughter should be weighted through these two dimensions in the same way as other types of suffering. And if so, it seems hard to justify the idea that the suffering involved in slaughter has any kind of priority over that involved in other parts of an animal's life.

The alternative to placing more importance on the suffering caused by slaughter is to see the types of activities involved in ritual slaughter (and in other types of slaughter without stunning) as wrong in themselves, irrespective of whether the suffering involved during slaughter is quantitatively greater than that experienced in industrial farming. On this view, it is the very mode of killing without stunning that gives us a reason to forbid such an action. This can be done either by adopting a virtue-based account or a Kantian view. First, on a virtue-based account, it is intrinsically wrong to kill an animal without stunning it insofar as this is a form of cruelty, which is *per se* intrinsically wrong. But this claim seems to bear the burden of proof in showing why ritual slaughter is intrinsically wrong while standard slaughter is not. To prove that it is intrinsically wrong, we should consider only the intrinsic features of the act of killing irrespective of the type of consequences it involves. To do this, we have to show that ritual killing is necessarily motivated by a vicious intention and/or that it necessarily fosters vicious traits of character. But this seems particularly difficult to show if we consider, as seen above, that ritual slaughter was introduced in the beginning as a way of minimizing animal suffering. This means that the standard religious motivation for ritual slaughter may not stem from a desire to be cruel but rather from a desire to minimize animal suffering. Hence, there seems to be no cruel motivation involved in, and a virtue-based account would have no reason to reject the practice.

The second way in which this perspective may be justified is the Kantian view. As we know, according to Kant (1997), causing unnecessary pain to animals is wrong, not in virtue of their direct interest in not suffering, but because cruel actions disrespect our humanity and are conducive to the development of a cruel attitude towards other human beings. To assess this alternative,

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<sup>11</sup> As is well-known, the origin of this approach to measuring value (and disvalue) dates back to Bentham (1996, ch. 4). For a more recent version see Rowan (2012, 210).



let us put aside the fact that we are considering only justifications for animal welfare based on direct duties towards animals, and that this concern for the development of wrongful and vicious attitudes seems at odds with the overall legal principle that laws should be concerned with behaviors, not intentions. First, the idea that (ritual) slaughtering is more conducive to developing vicious attitudes and behaviors is factually dubious. If this were the case, one might also argue that people who perform slaughter according to the ritual method or witness such slaughter are more likely to be cruel towards other human beings. But there does not seem to be any evidence supporting this claim. And the burden of proof is borne by those who make it. Moreover, besides the dubious factual reliability of this statement, it also has an unpalatable moral implication. Indeed, it would amount to saying that in Jewish and Muslim communities people are more likely to have cruel attitudes than in other religious communities. But this claim is disrespectful, to say the least.

There are other possible reasons for giving more weight to the suffering involved in the killing of an animal rather than that experienced in the animal's life. Let us review them in brief. First, recall that in general animal rights views cannot uphold this point because they wholeheartedly reject the idea that the life of an animal is at human disposal (Regan 1983; Francione 2008; Donaldson and Kymlicka 2011). An animal's right to life forbids the kind of principle we are discussing here.<sup>12</sup>

A further possibility is to take a relational approach. Under the umbrella of "relational approaches" I include diverse theories: feminist care-based approaches (Noddings 1984; Donovan 1999), associative accounts (Valentini 2014), and pluralist positions (Anderson 2004; Scruton 2000). Needless to say this is a very sketchy categorization. These theories differ in many relevant respects, but for the purposes of this paper they can safely be discussed together. Indeed, all these theories share the idea that, unlike utilitarianism and animal rights theories, the moral treatment we owe to animals cannot be established a priori only on the basis of a natural property that animals have (mere sentience in utilitarianism, or the capacity of being the subject-of-a-life for Regan). Indeed, the treatment we owe to animals depends on the type of relations we have with them.

These approaches do not provide a univocal normative response to our problem. Some do not accept the killing of animals at all. Others hold that it is not in principle wrong to kill animals provided that it is done in the proper way.<sup>13</sup> However, it would seem odd to include among admissible methods, that is,

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<sup>12</sup> Perhaps it is not in principle impossible to outline a rights-based approach that does not necessarily include a right to life. However, this possibility is not considered by current proponents of standard rights-based views.

<sup>13</sup> On this remark see Donovan (1999), who supports feminist vegetarianism, and Paxton George (1994), who argues against this duty, also on feminist grounds.

among those that are more respectful of animal nature and the expression of care towards them, those that involve more suffering. Moreover, caring more for an animal's death than for an animal's life would be utterly inconsistent with the ideas grounding care-based theories.

Hence, upon reviewing consequentialist, virtue-based, Kantian, rights-based, and care-based views, there seems to be no defensible argument for giving priority to the suffering involved in slaughter rather than in the life of a raised animal. The only remaining view that could justify giving priority to the suffering involved in slaughter would have to prioritize the final condition of an individual's life, giving it a special if not fundamental significance, perhaps because the very final moments in an individual life constitute the truth of one's life. However, this view is deeply suspicious because it seems to depend on religious and theological presuppositions that are controversial in themselves, and even more dubious when applied to animals. It seems more plausible, in sum, to suppose that if we are concerned with the suffering of animals, we ought to estimate their suffering based on magnitude and frequency through the whole of a life, without giving priority to its end. After all, giving priority to the moment of death seems unwarranted and even based upon an anthropocentric bias. Accordingly, if we were to calculate the pains and sufferings in the life of an animal that had been raised using standard methods on a typical industrial farm, it would almost certainly turn out that the suffering and pain induced would outweigh the pain and suffering caused by ritual slaughter.

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#### 4. Suffering, Stunning, and Non-Discrimination

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Building on this, I want to argue that there is a flaw both in legislation prohibiting ritual slaughter and in that allowing it. First, prohibiting ritual slaughter does not seem fully justified because, as seen, there is nothing special about the pain inflicted during death in relation to the pain experienced by an animal during its life. Second, allowing ritual slaughter might discriminate against ritually slaughtered animals. This is so because both ritually slaughtered and non-ritually slaughtered animals are raised in the same conditions (typically on industrial farms), but the former experience the pain of ritual slaughter. While, as seen, there is nothing special about this pain, the amount of suffering involved tilts the balance of suffering in a way that is, quantitatively, unfair to ritually slaughtered animals. Indeed, it seems fair to say that, whatever the assessment of death to which one subscribes, ritually slaughtered animals suffer more than non-ritually slaughtered animals. Hence, we seem to discriminate against ritually slaughtered animals. And, if we ought to be concerned with the suffering of animals because suffering is intrinsically wrong, and in virtue of the fact that we have some direct duties to animals, this discriminatory treatment is unjustified.

At this point, we may wonder why we should be concerned with the principle of non-discrimination between types of animals if we are ready to kill them.<sup>14</sup> After all, non-discrimination might derive from the principle of equal treatment, and theories that invoke the principle of equal treatment of animals, whether in the form of equal status for individuals or the principle of equal consideration of interests, would not allow the killing and exploitation of animals for the purpose of human nourishment.<sup>15</sup> Put this way, the idea of equality or non-discrimination seems to be either misplaced or the kind of concern that should be taken into account only after considering a more fundamental normative principle, that is, respect for animal life and the minimization of animal suffering. Furthermore, one may think that the broad welfarist position discussed here resembles utilitarianism in certain respects. And, as we have seen, utilitarianism is not committed to non-discrimination per se, unless it can be demonstrated to be conducive to a greater aggregate well-being. Indeed, one may say that in a version of act utilitarianism that is not committed to Singer's inter-specific egalitarianism of interests, my worry regarding non-discrimination would not be warranted. After all, on such a view, discriminating against the interests of a class of human or non-human individuals might in principle be justified if such discrimination would bring about a better aggregate outcome for all.<sup>16</sup> In sum, it is not clear that we can justify the duty not to discriminate between types of animals if we do not accept a proper form of egalitarianism for animals.

While these objections are interesting, I submit that there are reasons for taking the non-discrimination of animals seriously even from the welfarist perspective discussed here. This can be proved without making reference to the egalitarian principles embraced by some rights-based theories. The advantage of this strategy is that the resulting argument will be more acceptable from a number of perspectives, including those that are at odds with inter-specific egalitarianism. To prove this, I will proceed, first, by advancing a positive argument in favor of my proposal and, second, by calling the tenability of the alternative view into question. In other words, I will first sketch the idea that a direct-duty perspective implicitly commits us to the principle of non-discrimination. Second, I will argue that the alternative, namely of discriminating between ritually and non-ritually slaughtered animals, has a bigger burden of proof and that the reasons available to ground such a discrimination are unconvincing.

<sup>14</sup> I am grateful to Peter Niesen and Svenja Ahlhaus for pressing me to respond to this question.

<sup>15</sup> For the former category, see Regan (1983) and Francione (2008), for the latter, see Singer (1993).

<sup>16</sup> If so, however, it is not clear how such a non-egalitarian act utilitarianism could justify the discriminatory treatment of ritually slaughtered animals with respect to non-ritually slaughtered ones. Certainly, this measure is more beneficial to the non-ritually slaughtered animals, but it would be preferable to benefit both categories provided that such equal treatment is not disadvantageous in other respects. In sum, this discrimination is sub-optimal on utilitarian grounds.

We should recall that here I am discussing views endorsing a direct obligation toward animal welfare. There are diverse ways to ground an obligation towards animal welfare. Whatever we think regarding the alleged animal right to life, respect for animal welfare might be grounded in the idea that we ought to respect animals' sentience and natural dispositions. This holds true in general, irrespective of whether we subscribe to a rights-based approach, utilitarianism, feminism, or welfarism. As I stated at the beginning of this paper, I do not defend any of these views. Instead, I am interested in understanding the implications of a direct approach towards animal welfare for the issue of ritual slaughter. I simply assume that any of these views could reasonably be defended. What all of these views, and others, have in common is the idea that if we owe a direct duty to an individual, that individual is supposed to have a feature justifying our direct duties. In other words, the individual is recognized as having an autonomous interest in not being harmed or in being benefited. This obviously puts direct views in opposition to indirect views, according to which – for instance, in the Kantian version – we ought not to cause unnecessary suffering to a being because we ought to respect humanity (not “animality”). This is to say that whatever theory we adopt in support of direct duties to animals, by adopting a direct view we implicitly assume that the individuals to whom we owe such duties have subjective interests that merit consideration in their own right and not (only) in virtue of other kinds of considerations, whether indirect or instrumental. In virtue of this feature of owing something to a being that subjectively merits such a duty, it would be strange to assume that other typical general meta-normative principles do not apply. If we assume, as we do here, that we have direct duties towards animals and a responsibility to maintain animal welfare, it would seem odd if we did not apply the principle of non-discrimination toward the beings meriting our direct duties. The opposite claim would certainly bear a bigger burden of proof. The burden is to explain why we should treat some categories of animals differently.

To justify such a discrimination, it is worth remarking that in direct views a being is entitled to certain treatment in virtue of its intrinsic features, not in virtue of the dispositions regarding animals that the person who is under that duty possesses. As such, we must ask what distinguishes ritually slaughtered animals from non-ritually slaughtered animals, and whether such a difference is sufficient to justify this discrimination. The only reason for this discrimination is that animals are slaughtered ritually to respect the religious identity of Muslims and Jews. However, there are two considerations that weaken this point in normative terms. First, we may say that what distinguishes ritually slaughtered animals from non-ritually slaughtered animals is not an intrinsic feature of those animals, because they are ritually slaughtered only in virtue of the independent choice of a human being. There is no intrinsic and specific feature of animals that individually or collectively determines the fact that they merit such slaughter and that might provide a reason for grounding this discrimina-

tion. Second, the normative reason for this discrimination is respect for the right to religious freedom of Jews and Muslims. However, what this right demands of us is not to discriminate a category of animals with respect to another category; rather, it simply demands that such a right be respected. That certain animals are discriminated against because of this religious need is an unfortunate, but by no means necessary, consequence of the fact that there are different religious doctrines and techniques for slaughtering animals. This means that the religious difference is not a reason to discriminate against a category of animals when there are alternatives available (and we will see in the next section what the alternative is), because Jewish and Muslim practices do not demand that ritually slaughtered animals suffer more than other animals. On the contrary, as we have seen, ritual slaughter was probably devised as a practice for minimizing animal suffering according to the technological knowledge of the age in which the practice was adopted.<sup>17</sup>

Now we can respond to the non-egalitarian utilitarian objection raised above. Although it is true that the welfarist approach I propose here would not be vindicated by this form of utilitarianism, it is not clear in our case how such a non-egalitarian act utilitarianism could justify the unequal treatment of ritually slaughtered animals with respect to non-ritually slaughtered ones. Certainly, this measure is more beneficial to the non-ritually slaughtered animals, but it would be preferable to benefit both categories provided that the equal treatment is not disadvantageous in other respects. And the only way to argue against this non-discrimination would be to point at the major costs incurred in granting better treatment to ritually slaughtered animals. Although this is certainly a serious argument, it is doubtful that even from this perspective the mere matter of costs would outweigh the interests of ritually slaughtered animals in suffering less.

Hence, in virtue of the implicit commitment to non-discrimination of the direct view and the lack of justification for discrimination, there seems no reason not to uphold the principle of non-discrimination when it comes to animals, at least with respect to their overall welfare and suffering.

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## 5. A Possible Solution and a Modest, Though Provocative, Proposal

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To remedy the discrimination suffered by ritually slaughtered animals, one may argue that we ought to abandon ritual slaughter altogether. This is one plausible solution. But the more radical solution of banning the raising and killing of

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<sup>17</sup> The same holds true at the legal level. In other words, even if the argument I propose here was not a morally conclusive argument, it would be strange in a legal sense to treat ritually- and non-ritually slaughtered animals differently.

animals seems to result from the same premises. However, if we want to make sense of current legislation and if we take the right to freedom of religious expression seriously, perhaps we can devise another way out of this unsettling situation.

If we are concerned with animal welfare, but consider the killing of animals acceptable, and if we want to respect the right to religious freedom, but are worried about discriminating between ritually slaughtered and non-ritually slaughtered animals, perhaps we could demand that the two categories of animal are given equal prospects of sufficiently high well-being in terms of the amount of pain suffered throughout their whole lives. This means that we either forbid ritual slaughter – but hold independent reasons for admitting it –, or we demand that ritually slaughtered animals be treated better during their lives than those that are not ritually slaughtered, so as to compensate for the pain they suffer at the point of death. How this compensation should be realized depends on some technical issues and on the relative costs, which I cannot discuss here. Moreover, it depends on an estimation of an animal's prospects of suffering, which seem very difficult to calculate individually and comparatively.<sup>18</sup> Despite problems with putting this idea into practice, doing so would certainly be feasible with relatively minor changes to current methods of animal farming. To give an example and a thumbnail criterion, it might be that ritually slaughtered animals ought to be raised in larger pens or enjoy more freedom to roam.

Needless to say, the justification of this proposal depends on the supposition that ritual slaughter is a necessary component of religious freedom and that we cannot simply tell Muslims and Jews not to eat meat. In other words, this solution is acceptable only if ritual slaughter is necessary for the religious identity of Jews and Muslims and if we are committed to an equal recognition of religious identities. If this condition does not obtain, we may simply require Muslims and Jews to abandon the practice of ritual slaughter.

To meet this condition, it must be shown that religious identity and the integrity of believers would be violated if ritual slaughter were banned. But this claim has to be justified, because religiously informed practices, as well as other cultural practices, can change, and it is notoriously difficult and controversial to distinguish between features of a cultural tradition that are essential to it and other features whose suppression or change would not endanger its continuation. Here I cannot discuss whether ritual slaughter is necessary for the integrity and existence of Jewish and Muslim communities. Suffice it to say that Muslim and Jewish communities bear at least a minimal burden of proof to demonstrate this, in virtue of the fact that some Muslim communities seem to

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<sup>18</sup> Although they concern the case of research on animals, the considerations provided by Bass (2012, 93–6), pointing out the structural indeterminacy of such comparisons of utility functions between humans and animals and among animals themselves, seem applicable here and very convincing.

accept the religious validity of the requirement to stun animals before slaughter.<sup>19</sup> This means that the overall permissibility of religious slaughter is subject to an important condition, irrespective of whether we approve the idea of compensating ritually slaughtered animals that I put forward. This conditional qualification is important because it shows that the expression of religious freedom needs to be balanced with other values too.

If we apply the principle of non-discrimination to animals and we overcome the unjustified assumption that the method of killing is more important than the method of raising animals, many objections to ritual slaughter may be lessened or put aside. This is particularly the case for Paula Casal's argument rejecting the admissibility of exemptions from the ban on cruelty to animals on the grounds of cultural and religious practices. Casal's starting assumption is as follows:

I shall avoid reliance on any extravagant assumptions concerning the moral status of animals, nor shall I argue that animals have rights or that their suffering is of equal moral importance to ours. [...] I merely rely upon the modest assumption, widely accepted by Western governments and citizens, that the existence of anti-cruelty legislation is desirable. Such laws are not based on sectarian views, but on the reasonable grounds that it is wrong to kill animals in painful ways when alternative less painful methods are available, and that there are sound moral reasons to enforce such a prohibition (Casal 2003, 2).

In general, Casal contends that there is no sufficiently weighty or important interest that is capable of justifying cruelty to animals, even a need to protect certain cultural practices. I do not want to reject her substantive claim, which might of course be true. In general, however, it seems to me that her argument would be at least displaced, if not rebutted, if ritually slaughtered animals were treated better than non-ritually slaughtered animals, thus being compensated for the extra suffering involved during their slaughter. In this way, a standard critique leveled against claims for cultural accommodation and differential treatment would be neutralized. Indeed, one of the most troubling objections to culturally-based differential treatment is that the beneficiaries of an exemption or a special treatment seem to be advantaged with respect to those who are compelled to abide by standard legal requirements.<sup>20</sup> But, if animals suffering more during slaughter are compensated, and no overall deviation from the general concern for animal suffering is involved, the idea that ritual slaughter entails a *special treatment* disappears. Thus, if ritually slaughtered animals are

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<sup>19</sup> This is the case in Malaysia. See Department of Islamic Development Malaysia. 2011. *Malaysian Protocol for the Halal Meat and Poultry Productions*, Section 4.5.1 'Stunning', 7-8, April 1.

<sup>20</sup> The most forceful critique of culturally-based exemptions from the law and differential treatment is outlined by Barry (2001). For a defense of a qualified and conditional account of exemptions from the law on the basis of conscience see Ceva (2010). For a case-based survey of the rule and exemption approach see Zuolo (2010).

not disadvantaged with respect to non-ritually slaughtered ones, there seems to be no need for a special justification of ritual slaughtering, because allowing it would not be an expression of cruelty.<sup>21</sup>

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## 6. Conclusion

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To conclude, it is worth emphasizing that in this paper I have not defended ritual slaughter in general. Its justification is deeply conditional on its necessity for religious identities and on our commitment to the protection of religious freedom. My aim in this paper, rather, was to show that it is possible to reconcile a concern for animal welfare and the right to freedom of religious expression by compensating the pain caused to ritually slaughtered animals with better conditions during their lives. The advantage of this solution is that it employs a principle of fairness towards animals as well as towards human beings. It applies a principle of fairness to animals themselves because it compensates the discrimination imposed by ritual slaughter. And it is also fair with respect to human beings because it does not simply concede an exemption from a general principle to two religious communities, but it also demands that they treat the ritually slaughtered animals better, without asking them to change their religious practice. Hence, such a solution seems to address the problems faced by contemporary societies regarding the difficult accommodation of minority claims in an environment of pluralistic values. This solution may seem too biased, to some people, towards the status quo regarding the overall treatment of animals, but it has the advantage of proposing a very feasible improvement of the life of many animals.

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<sup>21</sup> Claiming this, however, does not imply that we should also accept other cultural practices such as Santeria rituals or bullfights, which Casal mentions.



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