

WE SHOULD MEAT: A REPLY TO PROFESSOR SIDDHANTH PRASAD

*Jeremy Rovinsky**

On December 17, 2020, the Court of Justice of the European Union decided *Centraal Israëlitisch Consistorie van België and Others v. Vlaamse Regering*, upholding the Flemish bans on Jewish and Muslim ritual slaughter and requiring animals reared or kept for meat production to be stunned with an electric stun gun before being slaughtered.¹ I criticized this opinion,² and Professor Siddhanth Prasad published a response to my criticisms.³

I first want to thank Professor Prasad for providing me the opportunity to think through his arguments and reconsider my perspectives. I was pleased to accidentally stumble across his publication in late February 2023. A civil and logic-based dialectic taking place between different continents and cultures is an amazing way for me to re-engage this judicial decision and refine or attempt to better articulate my own position.

Professor Prasad's response presents three arguments: first, that the Court's balancing was appropriate; second, that the Court did not act morally inconsistently; and third, that the labeling alternative is not a viable substitute to a ban on non-stunned ritual slaughter.⁴ I consider each in turn.⁵

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¹ Case C-336/19, *Centraal Israëlitisch Consistorie van België v. Vlaamse Regering*, ECLI:EU:C:2020:1031, holding ¶ 1 (Dec. 17, 2020).

² See Jeremy A. Rovinsky, *A Stunning Decision: How the E.C.J. Butchered Both Religious Freedom and Animal Welfare*, 29 TUL. J. INT'L & COMPAR. L. 273 (2021).

³ Siddhanth Prasad, *Did the E.C.J. Butcher Religious Freedom and Animal Welfare? A Response to Rovinsky*, 10 GLOB. J. ANIMAL L. no. 1, 2022, at 1 (available at: <https://ojs.abo.fi/ojs/index.php/gjal/article/view/1774>).

⁴ See generally *id.*

⁵ Professor Prasad does not provide a background section in his article, writing that the facts "have already been adequately explained by Rovinsky." *Id.* at 2. For extensive background, please see Rovinsky, *supra* note 2; Jeremy A. Rovinsky, *Don't Have a Cow, Flanders: Guidance for the European Court of Justice as It Considers the Flemish Parliament's Ban on Ritual Slaughter*, 97 U. DET. MERCY L. REV. 353 (2020) [hereinafter Rovinsky, *Don't Have a Cow*]; Jeremy A. Rovinsky, *The Cutting Edge: The Debate over Regulation of Ritual Slaughter in the Western World*, 45 CAL. W. INT'L L.J. 79 (2014) [hereinafter Rovinsky, *The Cutting Edge*]; and Jeremy A. Rovinsky & Hal S. Cohen, *The*

I. THE COURT'S BALANCING EXERCISE

Professor Prasad presents the fundamental “pertinent issue” underlying the Court’s balancing of the requirement to stun animals prior to ritual slaughter against the resulting limitations to Jewish and Muslim believers to freely practice their religions: “What is the appropriate relationship between freedom of religion and animal welfare?”⁶ Although he answers this question by justifying the Court’s ultimate holding, I believe the selective focus on evidence favorable to justifying this decision prevents a fairer and broader evaluation of all the important issues.

Prasad notes, for example, that the Court “takes note of the strong scientific evidence supporting the use of stunning prior to slaughter.”⁷ Prasad later writes that he believes “there is a sufficient body of evidence in support of the view that religious slaughter methods cause more pain” than stunning.⁸

David Rosengard serves as Managing Attorney of the Animal Legal Defense Fund (ALDF). The mission of the ALDF “is to protect the lives and advance the interests of animals through the legal system.”⁹ The organization prides itself on playing an active role, since 1979, in “blaz[ing] the trail for stronger enforcement of anti-cruelty laws and more humane treatment of animals in every corner of American life.”¹⁰ David recently wrote me an email in which he explained how:

people tend to interpret “stunning before slaughter” to mean that the animal is painlessly rendered unconscious before being killed . . . [but] in almost any other context the prospect of having a bullet or bolt fired into one’s brain is not something we generally think of as painless or would describe as “stunning.”¹¹

He went on to exclaim: “While I cannot speak to Belgian slaughter, my impression from State-side work is that stunning fails at rates that would shock the public.”¹²

Standard Procedures for Animal Slaughtering in the Industry, in PREPARATION AND PROCESSING OF RELIGIOUS AND CULTURAL FOODS 325 (Eaqub Ali & Nina Naquiah Ahmad Nizar eds., 2018).

⁶ Prasad, *supra* note 3, at 4.

⁷ *Id.*

⁸ *Id.* at 10.

⁹ *About Us*, ANIMAL LEGAL DEF. FUND, <https://aldf.org/about-us/> (last visited Aug. 27, 2023).

¹⁰ *Id.*

¹¹ E-mail from David Rosengard, Managing Att’y, Animal Legal Def. Fund, to Jeremy Rovinsky (May 10, 2023, 5:01 PM) (on file with author) [hereinafter Email from David Rosengard].

¹² *Id.*

Unacknowledged by Prasad or the Court was a debate in the British House of Lords in 2014 regarding the science of slaughter.¹³ Evidence was presented from the European Food Safety Authority that “[p]re-stunning by captive bolt . . . often fails at the first attempt . . . causing the animal grave distress,”¹⁴ “the failure of penetrating and non-penetrating captive bolts affects around 10 million animals,”¹⁵ and “[i]n Britain, some 3 million cows annually are affected by these failures.”¹⁶

Furthermore, “[t]he Chair of the Rabbinical Commission for the Licensing of *Shochetim*, the body responsible for the supervision of every act of animal killing done in [Britain] under Jewish law,”¹⁷ addressed the House of Lords during this debate, drawing upon his twenty-two years in this position.¹⁸ He stated, “we insist on long years of training, spiritual as well as practical, before anyone can be qualified to kill animals. In Britain, every *shochet* is licensed, every licence needs annual renewal, and their work is regularly supervised and reviewed.”¹⁹ The religious regulations and Commission’s policies are, in his words, “designed to minimise animal pain”²⁰ and “ensure . . . the highest standards of concern for the welfare of animals.”²¹

The Chair concluded by asserting: “The failure rates of pre-stunning, and the inconclusive and highly challenged nature of some of the experimental studies done in this field, should give us pause.”²² This approach—one of care but also humility—makes more sense to me than the absolutist claims made by Professor Prasad, which ignore the evidence that does not support his policy positions.

Professor Prasad also takes issue with the sentiments of the leading religious authorities in Europe who argue that the ban on ritually

¹³ See generally HL Deb (16 Jan. 2014) (751) cols. 193–207.

¹⁴ *Id.* col. 204; see generally Eur. Food & Safety Auth., *Opinion of the Scientific Panel on Animal Health and Welfare (AHAW) on a Request from the Commission Related to Welfare Aspects of the Main Systems of Stunning and Killing the Main Commercial Species of Animals*, 2 EFSA J. 45, 1, 9 (2004) [hereinafter *Opinion of the Scientific Panel*] (noting that cattle stunning methods risk a return to consciousness and sensitivity prior to death); Eur. Food & Safety Auth., *Scientific Report of the Scientific Panel for Animal Health and Welfare on a Request from the Commission Related to Welfare Aspects of Animal Stunning and Killing Methods*, 2 EFSA J. 45, 62 (2004) [hereinafter *Scientific Report of the Scientific Panel*] (finding that the methods required for captive bolts are stressful to the animal even when done effectively, and that captive bolts are prone to failure).

¹⁵ HL Deb (16 Jan. 2014) (751) col. 204.

¹⁶ *Id.*; see also *Animal Welfare & Shechita*, RABBI SACKS (Jan. 17, 2014), <https://www.rabbisacks.org/archive/animal-welfare-shechita>; *Opinion of the Scientific Panel*, *supra* note 14, at 9–10; *Scientific Report of the Scientific Panel*, *supra* note 14, at 62, 64.

¹⁷ HL Deb (16 Jan. 2014) (751) col. 204.

¹⁸ *Id.*

¹⁹ *Id.* (italics added).

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

slaughtered meat: (1) may have been promulgated with the intention to target religious minorities; and (2) would cause supply shortages of kosher meat.²³ Prasad claims that both of these allegations are patently “unsubstantiated.”²⁴ I believe he is mistaken.

The Flemish law banning the slaughter of animals without prior stunning was “introduced by the far-right nationalist party *Vlaams Belang* (Flemish Importance), which opposes multiculturalism and has espoused anti-Muslim views.”²⁵ The ban did not arise out of a vacuum.²⁶ An article published in July 2021 entitled *How It Became Normal to Be Islamophobic in Belgium: The Joint Rise of Anti-Muslim Sentiment and the Far Right in Flanders Undermines Minorities’ Freedom of Speech* referenced “a poll indicat[ing] that 74% of Belgians viewed Islam as an intolerant religion [and] 60% saw it as a threat.”²⁷ It also illustrated how “[t]he religion of Islam and Muslims themselves are regularly assigned negative cultural values (oppressive, barbarian, violent, illiberal etc.)”²⁸ in Belgium and are treated as “opposed to a naturally tolerant ‘Belgian’ identity.”²⁹

Similarly, the European Union Agency for Fundamental Rights conducted a survey on discrimination and hate crime in Belgium in 2019, finding that “86% of the respondents in Belgium considered antisemitism to be a very big or a fairly big problem in their country.”³⁰ Additionally, “[o]ne third of the respondents . . . worry about becoming a victim of an antisemitic verbal insult or harassment in the next 12 months . . . one

²³ Prasad, *supra* note 3, at 3.

²⁴ *Id.* at 3–5.

²⁵ See Mareike Riedel, “*They Are from Mars*”: *The Othering of Jews and Muslims in European Legal Debates*, in RELIGIOUS OTHERING: GLOBAL DIMENSIONS 77, 85–86 (Mark Juergensmeyer et al. eds., 2022).

²⁶ See Corinne Torrekens, *How It Became Normal to Be Islamophobic in Belgium*, OPENDEMOCRACY (July 5, 2021, 8:30 AM), <https://www.opendemocracy.net/en/global-extremes/how-it-became-normal-be-islamophobic-belgium/> (describing how the Belgian ban on ritual slaughter arose from the cultural conflict between the “naturally tolerant ‘Belgian’ identity” and traditional Muslim values, which Belgians negatively viewed as “oppressive, barbarian, violent, illiberal, etc.”).

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Experiences and Perceptions of Antisemitism: Second Survey on Discrimination and Hate Crime Against Jews in the EU (Factsheet—Belgium)*, EUR. UNION AGENCY FOR FUNDAMENTAL RTS., https://fra.europa.eu/sites/default/files/fra_uploads/fra-2019-2nd-survey-on-discrimination-and-hate-crime-against-jews-in-eu-ms-country-sheet-belgium_en.pdf (last visited Oct. 2, 2023) [hereinafter *Factsheet—Belgium*]; see also EUROPEAN UNION AGENCY FOR FUNDAMENTAL RTS., EXPERIENCES AND PERCEPTIONS OF ANTISEMITISM: SECOND SURVEY ON DISCRIMINATION AND HATE CRIME AGAINST JEWS IN THE EU 1, 16, 34, 47, 50 (2018), https://fra.europa.eu/sites/default/files/fra_uploads/fra-2018-experiences-and-perceptions-of-antisemitism-survey_en.pdf.

fourth . . . worry about being physically attacked in that same period”³¹ and “[n]early one third of the respondents have considered emigrating (42%) in the past five years because they did not feel safe as a Jew in Belgium.”³²

Similarly, regarding the so-called “equally unsubstantiated”³³ claim that the Flemish ban would cause supply shortages of kosher meat,³⁴ Prasad seems to assert that any alleged impacts on the Jewish community are too unsubstantiated to be taken seriously.³⁵ However, already in 2019, MSNBC reported that, as a result of the “new law in the Flanders region of Belgium [that] bans the practices required for both halal and kosher meat. . . . [S]uch products have become harder to find and more expensive.”³⁶ In 2021, *Politico Europe* reported that merchants in the Jewish community were already facing supply problems and other obstacles to providing kosher meat to their customers,³⁷ and “Jews in the country are struggling to get hold of kosher meat because of the ban.”³⁸ Another article similarly noted that, “as a result of the ban, all kosher meat must now be imported into Belgium, which raises prices and degrades quality.”³⁹ Professor Prasad unfairly brushes off the legitimate concerns of those who predicted such supply shortages.

Additionally, according to the Court and to Prasad, part of the “fair balance . . . struck between the importance attached to animal welfare and the freedom of Jewish and Muslim believers to manifest their religion”⁴⁰ was the fact that, even though the ritual slaughter of meat was forbidden, religious communities in Belgium could continue to import meat from

³¹ *Factsheet—Belgium*, *supra* note 30.

³² *Id.*; see also Rovinsky, *Don't Have a Cow*, *supra* note 5, at 358–59 (providing an overview of recent antisemitism and Islamophobia in Flanders). It is hard to understand how Professor Prasad looks at this evidence and asserts “it is nothing more than an unsubstantiated allegation,” in that these sentiments likely played a role in the passage of this ban, as they have in other European nations. Prasad, *supra* note 3, at 3.

³³ See Prasad, *supra* note 3, at 3–4.

³⁴ See Rovinsky, *supra* note 2, at 278.

³⁵ See Prasad, *supra* note 3, at 3–5.

³⁶ Rachel Elbaum, *Ritual Animal Slaughter Law Leaves Belgium's Muslims and Jews Facing Shortages, Price Hikes*, NBC NEWS (Mar. 10, 2019, 7:04 AM), <https://www.nbcnews.com/news/world/ritual-animal-slaughter-law-leaves-belgium-muslims-jews-facing-n975566>.

³⁷ Benjamin Kerstein, *Belgian Jews Feeling Effects of Ban on Kosher Slaughter: 'If You Want to Say Jewish People Are Not Welcome Here, Just Say It'*, THE ALGEMEINER (Oct. 11, 2021, 2:10 PM), <https://www.algemeiner.com/2021/10/11/belgian-jews-feeling-effects-of-ban-on-kosher-slaughter-if-you-want-to-say-jewish-people-are-not-welcome-here-just-say-it/>.

³⁸ Helen Lyons, *Belgium's Jews Lament Ban on Ritual Slaughter*, POLITICO (Oct. 10, 2021, 11:28 AM), <https://www.politico.eu/article/belgium-jewish-community-ritual-slaughter-ban-antwerp/>.

³⁹ Kerstein, *supra* note 37.

⁴⁰ Case C-336/19, *Centraal Israëlitisch Consistorie van België v. Vlaamse Regering*, ECLI:EU:C:2020:1031, ¶ 80 (Dec. 17, 2020).

abroad.⁴¹ However, the Advocate General preempted this claim by noting, even before the Court published its decision, that reliance on imports would be “precarious,”⁴² as other nations “have imposed export bans in respect of such meat products,”⁴³ and “it could hardly be satisfactory if this approach were to be adopted by every Member State.”⁴⁴ Similarly, an article from 2019 already noted that “more and more European governments restrict kosher slaughter”⁴⁵ and “Europe is seeing a domino effect where Jewish customs are collateral damage.”⁴⁶ As a result of the Court’s decision, every EU Member State may now ban the ritual slaughter of animals,⁴⁷ and, given this green light, there is no legitimate protection or assurance for the remaining religious minority populations that they may at least import their meat from neighboring countries.⁴⁸

II. MORALITY

As a foundational moral issue, I believe Professor Prasad fails to appreciate the broader picture of animal welfare within the Jewish religious/legal framework, a necessary context to fully understand *shkita*.⁴⁹ Jewish law teaches that causing unnecessary suffering to animals is a Torah prohibition⁵⁰ so powerful in the hierarchy of laws that

⁴¹ *Id.* at ¶¶ 78–81; see Prasad, *supra* note 3, at 5.

⁴² Case C-336/19, *Centraal Israëlitisch Consistorie van België v. Vlaamse Regering*, ECLI:EU:C:2020:695, ¶ 79 (Sept. 10, 2020).

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ Nnaan Lipshiz, *Belgian Ban on Kosher Slaughter Has Jews Worried About What Comes Next*, JEWISH TELEGRAPHIC AGENCY (Jan. 4, 2019, 11:52 AM), <https://www.jta.org/2019/01/04/global/in-belgiums-ritual-slaughter-ban-some-jews-see-sign-theyre-unwelcome>.

⁴⁶ *Id.*

⁴⁷ Case C-336/19, *Centraal Israëlitisch Consistorie van België v. Vlaamse Regering*, ECLI:EU:C:2020:1031, ¶¶ 26, 79–80 (Dec. 17, 2020); see also Claudia Vinci et al., Eur. Parliamentary Rsch. Serv., *Religious Slaughter: Reconciling Animal Welfare with Freedom of Religion or Belief*, at 1, 20–22, PE 751.418 (2023), [https://www.europarl.europa.eu/RegData/etudes/IDAN/2023/751418/EPRS_IDA\(2023\)751418_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/IDAN/2023/751418/EPRS_IDA(2023)751418_EN.pdf); Rovinsky, *supra* note 2, at 277–78.

⁴⁸ Case C-336/19, *Centraal Israëlitisch Consistorie van België v. Vlaamse Regering*, ECLI:EU:C:2020:1031, ¶ 28 (Dec. 17, 2020) (explaining that the possibility for religious communities to import meat into Flanders supported its decision to uphold Belgium’s prohibition and that “such a ban on imports would be contrary to Article 26(4) of Regulation No 1099/2009”); see also Claudia Vinci et al., *supra* note 47, at 27–31 (noting that presently only four Member States—Denmark, Sweden, Norway, and Switzerland—allow for the import of kosher meat under certain conditions).

⁴⁹ See generally Ari Fingerote, *Animal Cruelty (Tzaar Baalei Chayim) and Compassion*, SEFARIA, <https://www.sefaria.org/sheets/33236?lang=en> (last visited Oct. 2, 2023). *Skita* and *shechita* are two different English spellings of the term for Jewish ritual slaughter. See *A Guide to Shechita*, SHECHITA U.K. 1, 3–6 (2009), https://www.shechitauk.org/wp-content/uploads/2016/02/A_Guide_to_Shechita_2009_01.pdf.

⁵⁰ Babylonian Talmud, Shabbat 128b.

it can push off a lower-level Rabbinical prohibition when in conflict,⁵¹ and that compassion to animals is mandated even when killing animals.⁵² Rabbi Eliezer Melamed, who publishes extensively in areas of Jewish law, wrote in an article intended to be read by Jews, entitled *The Significance of Eating Meat*: “Indeed, if it becomes clear that in a certain location animals are treated with immense cruelty, it is proper to instruct people not to purchase the meat. However, this matter must be clarified by Torah scholars who are knowledgeable and familiar with raising animals and the laws of *shechita*.”⁵³ Prasad’s argument that the conflict between the Jewish Rabbinical authorities and the animal rights activists boils down to “differing first principles” is misguided.⁵⁴

Professor Prasad next argues that the Court was justified in distinguishing between “the slaughter of animals that are reared commercially and those killed in the context of hunting or other sporting activities.”⁵⁵ Prasad asserts that “requiring pre-stunning during hunting or recreational fishing would be tantamount to banning the activity”⁵⁶ and the ban on only commercially reared meat should not be deemed discriminatory because “different situations [need] not . . . be treated alike.”⁵⁷ Regarding cultural and sporting activities, he claims that, unlike ritual slaughter, “the essence of the activity is not to produce meat”⁵⁸ and therefore, “it would be imprudent to apply a regulation designed to improve the welfare standards of animals . . . for meat production”⁵⁹ to these scenarios.

⁵¹ *Id.*

⁵² For example, Jewish philosopher Moses Maimonides issued the following guidance:

It is also prohibited to kill an animal with its young on the same day . . . in order that people should be restrained and prevented from killing the two together in such a manner that the young is slain in the sight of the mother; for the pain of the animals under such circumstances is very great. There is no difference in this case between the pain of man and the pain of other living beings

Moses Maimonides, *THE GUIDE FOR THE PERPLEXED* 371 (M. Friedlander trans., 2d ed. 1904).

⁵³ Eliezer Melamed, *The Significance of Eating Meat*, *TIMES OF ISRAEL: THE BLOGS* (June 8, 2014, 3:25 PM), <https://blogs.timesofisrael.com/the-significance-of-eating-meat/>.

⁵⁴ Compare Prasad, *supra* note 3, at 6, 10, with Danny Chambers, *It’s Time to Label All Meat as Stunned or Unstunned at Slaughter*, *NEWSCIENTIST* (Feb. 1, 2018), <https://www.newscientist.com/article/2160049-its-time-to-label-all-meat-as-stunned-or-unstunned-at-slaughter/> (“[T]he continual focus on the religious element of slaughter is getting in the way. It simply heightens emotions and diverts attention from the key concern, which is animal welfare. It is the distinction between stunned and non-stunned slaughter, not religious vs non-religious, which should be front and centre.”).

⁵⁵ Prasad, *supra* note 3, at 6–7.

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.* at 7–8.

⁵⁹ *Id.* at 8.

I find Professor Prasad’s argument confusing for a few reasons. First, as I explained in a previous publication, “[t]o the majority of observant Jews, eating meat is central to living a fully Jewish lifestyle.”⁶⁰ Thus, the ritual slaughter of animals for consumption is not merely a commercial endeavor, but a religious ritual, a procedure with everlasting spiritual significance,⁶¹ not simply an “activity . . . to produce meat.”⁶² At the very least, the practice of *shkita* should be afforded at least as much reverence as recreational hunting or fishing,⁶³ especially given the evidence presented above that the prolonged acceptance in Europe of such bans may “be tantamount to banning the activity”⁶⁴ not just for recreational sport, but also for religious practice.

Furthermore, although the environments are different, the animals are the same.⁶⁵ While I agree that “[a] person acting morally is not required to treat different situations the same way,”⁶⁶ the difference between slaughter for consumption and hunting or fishing for consumption is a difference of environment and not of the essence of the thing itself. In other words, the animal is the same; one is being slaughtered in a commercial slaughterhouse and one is being hunted.⁶⁷ My argument was not “that recreational fishers should stun their fish before they catch them . . . [to] improve the welfare of an animal,”⁶⁸ but rather that “if a person believes that slaughtering animals for consumption purposes without pre-stunning is cruel, logic dictates that every such act is cruel,”⁶⁹ regardless of whether the person is in a slaughterhouse or a national park—that the discrimination specifically against ritual slaughter as opposed to recreational slaughter, besides creating a clear disparate impact against observant Jews and Muslims, is morally unsubstantiated.⁷⁰

⁶⁰ Rovinsky, *The Cutting Edge*, *supra* note 5, at 84–85.

⁶¹ *See id.*

⁶² *See* Prasad, *supra* note 3, at 7–8.

⁶³ *See* Rovinsky, *supra* note 2, at 279–83; Case C-336/19, *Centraal Israëlitisch Consistorie van België v. Vlaamse Regering*, ECLI:EU:C:2020:1031, ¶¶ 84–95 (Dec. 17, 2020) (“[T]he EU legislature did not disregard the prohibition on discrimination, in not treating cultural or sporting events in the same way as slaughtering . . .”).

⁶⁴ Prasad, *supra* note 3, at 7; *see also* Kerstein, *supra* note 37 (describing how Belgium’s pre-stunning slaughter requirement “effectively” makes Jewish and Muslim ritual slaughter “illegal”); Vinci et al., *supra* note 47, at i (explaining that “stunning has been established as the dominant and humane way of obtaining meat for human consumption” in the modern era, exemplified by a 2009 EU law that “enshrined” the principle of pre-stun slaughter and allowed for a religious exception).

⁶⁵ *See* Rovinsky, *supra* note 2, at 279–83.

⁶⁶ Prasad, *supra* note 3, at 8.

⁶⁷ *See* Rovinsky, *supra* note 2, at 279–80.

⁶⁸ Prasad, *supra* note 3, at 10–11.

⁶⁹ Rovinsky, *supra* note 2, at 280.

⁷⁰ *See id.* at 278–80.

In fact, the same article cited above outlining *How It Became Normal to Be Islamophobic in Belgium* noted that the “main argument mobiliz[ed] during th[e] debate” over the legislation banning ritual slaughter “was that of animal wellbeing,”⁷¹ with activists claiming “that ritual slaughter is more painful than non-ritual,” “despite ritual slaughtering only representing around 20% of all slaughtering and despite the many videos filmed by animal activists showing the hardship of animals in non-ritual slaughterhouses.”⁷²

Prasad also suggests that a “more principled opposition”⁷³ would “have taken issue with the wide margin of appreciation,”⁷⁴ looking to how more states in the European Union allow exceptions to slaughter rules than deny them.⁷⁵ I disagree with this approach. Courts should not position themselves as mere mirrors, reflecting popular opinions and cultural trends.⁷⁶ The judiciary is tasked with the unique and sacred task of protecting minority rights against the political arms of government, “which are designed to respond to the popular will” so that “the majority cannot vote away fundamental minority rights.”⁷⁷

The Court of Justice of the European Union is no exception. One of its key functions is to “be used by individuals, companies or organisations to take action against an EU institution, if they feel it has somehow infringed their rights”⁷⁸ – specifically: “if an EU act is believed to violate EU treaties or fundamental rights, the Court can be asked to annul it.”⁷⁹ If the Court wants to be taken seriously, it must adhere to its mission.

III. LABELING

Finally, Professor Prasad takes issue with my proposed solution, which was suggested by the Court’s Advocate General, but Prasad also misconstrues this argument. He writes: “Effectively, the argument is that the suffering of an animal will be reduced at the time of killing by putting a label on its corpse.”⁸⁰ Certainly the argument in favor of labeling is not

⁷¹ Torrekens, *supra* note 26.

⁷² *Id.*

⁷³ Prasad, *supra* note 3, at 4–5.

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ See Barbara Hood, *Courts Protect Fundamental Rights from Tyranny of Majority*, ANCHORAGE DAILY NEWS (June 29, 2016), <https://www.adn.com/commentary/article/fundamental-rights-dont-depend-approval-majority/2014/11/14/>.

⁷⁷ *Id.*

⁷⁸ *Court of Justice of the European Union*, EUR. UNION, https://european-union.europa.eu/institutions-law-budget/institutions-and-bodies/search-all-eu-institutions-and-bodies/court-justice-european-union-cjeu_en (last visited Oct. 22, 2023).

⁷⁹ *Id.*

⁸⁰ Prasad, *supra* note 3, at 9.

that placing a label on a dead animal will retroactively reduce the pain of its method of slaughter.⁸¹ Rather, as the Advocate General explained, labeling should be the preferred method used by the Court to balance the competing interests of the parties, because labeling “is neutral and non-discriminatory”⁸²—“providing additional information to all consumers through the traceability and labelling of products derived from animals will allow them to make free and informed choices in relation to the consumption of such products.”⁸³ This approach “advance[s] the case of animal welfare by reducing the suffering of animals at the time of killing”⁸⁴ because the added transparency required to be disclosed regarding the history of the treatment of the animal will serve as a deterrent to the concerned consumer, “while at the same time also protecting freedom of religion”⁸⁵ – “Of *both* those whose religion requires ritual slaughter and of those who have religious, conscientious or moral objections to the slaughter of animals without stunning.”⁸⁶

Instead of asserting with bloated certainty that the science favors one method of slaughter over all others, the labeling approach leaves appropriate space for much needed humility and respect for the balance between majority rule and individual liberty – acknowledging the different scientific, moral, and ethical perspectives and leaving the ultimate decision to the individual consumer as to how he or she chooses to vote using the power of the purse.⁸⁷ The Chairman of The Conservative Animal Welfare Foundation in Great Britain recently lamented that “there are currently no legal requirements to label products with information on how the animal was reared and slaughtered”⁸⁸ (except for whole eggs)⁸⁹ and asserted that: “Where labelling does currently exist, consumers have been able to identify higher welfare products and

⁸¹ See Rovinsky, *supra* note 2, at 283–84 (explaining that the purpose of labeling is to provide consumers with an informed choice and that the kosher label informs them that the animals were slaughtered without pre-stunning).

⁸² Case C-336/19, *Centraal Israëlitisch Consistorie van België and Others v. Vlaamse Regering*, ECLI:EU:C:2020:695, ¶ 81 (Sept. 10, 2020) (italicization omitted).

⁸³ *Id.* (italicization omitted).

⁸⁴ Case C-336/19, *Centraal Israëlitisch Consistorie van België v. Vlaamse Regering*, ECLI:EU:C:2020:695, ¶ 81 (Sept. 10, 2020).

⁸⁵ *Id.* ¶ 81.

⁸⁶ *Id.* ¶ 81 n.39.

⁸⁷ *Id.* ¶ 81; see also Liz Newmark, *Clear Halal and Stunning Labelling Needed to Help Consumers Choose Meat, Say Animal Rights and Halal Groups*, SALAAM GATEWAY (July 4, 2022), <https://salaamgateway.com/story/clear-halal-and-stunning-labelling-needed-to-help-consumers-choose-meat-say-animal-rights-and-halal->.

⁸⁸ Helena Horton, *Welfare Labels on Meat to Say How Animal Was Killed: New Law Is in Pipeline After Campaign on Halal and Kosher Livestock That Isn't Stunned Before Slaughter*, DAILY MAIL (Sept. 13, 2023, 7:27 PM), <https://www.dailymail.co.uk/news/article-9987621/Welfare-labels-meat-say-animal-killed.html>.

⁸⁹ *Id.*

subsequently many farmers have been rewarded with increased demand.”⁹⁰ A British Member of Parliament also stated that the greater transparency that labeling provides “can empower consumers to make informed decisions about which farm[ing] systems they want to support – or avoid supporting.”⁹¹

Prasad lastly assumes that I would be in favor of a policy “to permit ritual slaughter but to increase scrutiny on the methods used,”⁹² rather than the Spanish practice “to allow . . . ritual slaughter in select cases where equivalence of suffering with a method that involves stunning can be proved.”⁹³ He is, of course, correct. The Spanish approach puts an unfair burden on the minority communities looking to freely practice their religions, using a scientific assumption to disparately discriminate against their religious liberties.⁹⁴ As I explicitly assert in *Don't Have A Cow, Flanders*, I prefer the approach of the *Safe Food for Canadians Regulations*, which “allows for ritual slaughter without stunning as long as it is ‘done in a manner to prevent unnecessary pain and distress to the food animal during ritual slaughter’ [in order] ‘for the food animal to achieve unconsciousness as rapidly as possible.’”⁹⁵ With this approach, “the Canadian Food Inspection Agency provides much more extensive guidance regarding best practices at every stage of the proceedings, in order to minimize animal welfare risks.”⁹⁶ As David Rosengard of the Animal Legal Defense Fund put it to me recently, “if the goal is really to reduce animal suffering, it seems like focusing on improved procedures and conditions, along with consistent monitoring / enforcement would be a more effective use of public resources than banning kosher/halal slaughter.”⁹⁷ Especially in the face of possible “differing first principles,”⁹⁸ the more appropriate legal approach in a liberal democracy would be to focus on transparency and wellbeing without infringing upon minority religious ritual.⁹⁹

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² Prasad, *supra* note 3, at 10.

⁹³ *Id.*

⁹⁴ *See id.* (noting that the Spanish approach shifts the burden of proof to religious groups to prove that their non-stunning religious slaughter method causes lower or equivalent amounts of pain to stunning).

⁹⁵ Rovinsky, *Don't Have a Cow*, *supra* note 5, at 368.

⁹⁶ *Id.*

⁹⁷ E-mail from David Rosengard, *supra* note 11.

⁹⁸ Prasad, *supra* note 3, at 10.

⁹⁹ *See* Case C-336/19, *Centraal Israëlitisch Consistorie van België and Others v. Vlaamse Regering*, ECLI:EU:C:2020:695, ¶ 81 (Sept. 10, 2020).

IV. CONCLUSION

I was pleased to stumble across Professor Prasad's article in the *Global Journal of Animal Law*. It was astonishing to see that my article, written in Phoenix, Arizona, was being read in Chennai, India. I thank him for the dialectic and the opportunity to think through his challenges and refine my positions. I have no hard feelings and hope we can continue the conversation. I have never been to India and have wanted to travel there for many years. I hope the future affords us the ability to meet in person. Perhaps we could agree to avoid a meat meal and instead settle on a coffee date.¹⁰⁰

¹⁰⁰ I refrain from suggesting meeting for alcoholic drinks, as kosher wine also requires adherence to a corpus of unique Jewish laws. See Kenneth Friedman, *What is Kosher Wine?*, KOSHERWINE.COM (July 20, 2021), <https://www.kosherwine.com/discover/what-is-kosher-wine#:~:text=In%20short%2C%20for%20wine%20to,let's%20go%20into%20greater%20detail> (listing several Jewish agricultural laws relevant to Kosher wine production). Interestingly, new scientific research seems to suggest that plant life may also feel pain, which may expand the discussion of non-human rights to a new dimension. See, e.g., Sieeka Khan, *A Group of Scientists Suggest that Plants Feel Pain*, SCI. TIMES (Dec. 18, 2019, 8:10 AM), <https://www.sciencetimes.com/articles/24473/20191218/a-group-of-scientists-suggest-that-plants-feel-pain.htm>; Nicoletta Lanese, *Plants 'Scream' in the Face of Stress*, LIVE SCI. (Dec. 6, 2019), <https://www.livescience.com/plants-squeal-when-stressed.html>; Peter Wohlleben, *Plants Feel Pain and Might Even See*, NAUTILUS (July 21, 2021), <https://nautil.us/plants-feel-pain-and-might-even-see-238257/>; *Do Plants Feel Pain? Things To Consider*, PETA, <https://www.peta.org/features/do-plants-feel-pain/> (last visited Oct. 30, 2023) (“[N]o one is sure whether plants can feel pain. We do know that they can feel sensations.”).