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Stone 1
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Winter Term 1998
Prof Hutt

A Contextual Introduction to Islamic Food Restrictions

0 mankind! Eat of that which is lawful and whoksome in the earth and follow not the footsteps of the devil. Lo! he is an open enemy for you.

–Qur'an 2: 1681

I. iNTRODUCTION

As in many other religions, food plays an important role in Islam. Indeed, when Muhammad was asked by a follower to define faith, he responded: To offer food and give the greeting of peace.[2] While the dietary practices of Judaism and Christianity are familiar to most in this country, the implications of Islamic law are less well known.[3] A basic understanding of the religion and its requirements will become increasingly important in the making and enforcing of laws, as Islam is one of the fastest growing religions in America.[4] This paper seeks to explain the dietary regulations that govern Muslims, introduce various theories that may explain the development of these restrictions, and finally, to introduce various food issues concerning the contemporary Muslim community in America.

The rapid expansion of Islam in America brings issues of religiously prohibited food to the fore. The expanding market for food that conforms to the Islamic law and the need to set policies for food labeling and animal slaughter that protect religious minorities become increasingly important as the number of Muslim consumers and constituents

'MOHAMMED MARMADUKE PICKTHALL, THE MEANING OF THE GLORIOUS KORAN: AN
EXPLANATORY TRANSLATION, 47.

[2]Giflian Feeley-Hamik, *Religion and Food.' An Anthropological Perspective,* 63 J. AM. ACAD.
RELIGION *565, 567* (1995).

[3]Diane P. Packard & Margaret McWilliams, Cultural Foods Heritage of Middle Eastern Immigrants,
NUTRITION TODAY. May-June 1993, at 6,10.

[4]Linda Castrone, *Brothers and S'isters in Faith,* ROCKY MOUNTAIN NEWS, Sept. 26, 1994, at 3D;
John Dart, *A Closer Look at Islam in the West,* LOS ANGELES TIMES, Dcc. 10, 1994 at 4; Julie Irwin,
Muslim Influence Rises, THE CINCINNATI ENQUIRER, May 30, 1995, at Al.

Stone 2

increases. Currently, there are an estimated five million Muslims in the United States and Canada.[5] Through immigration, conversion and birth, the number of Muslims in America is growing at a minimum of 125,000 per year.[6] If the population continues to grow at its present rate, Islam will be the second largest religion by 20l5.˜

While the Islamic population has mushroomed, the public's knowledge of Islamic faith and custom has not. Many (including policy makers) know little about what foods are restricted to Muslims or the requirements of the ritual slaughter. As understanding is essential to accommodation, the following section attempts to set out the major sources and facets of the Islamic dietary law.

II. HALAL WA HARAM (LEGAL AND FORBIDDEN)[8]

The two main sources of law for Muslims are the Qur'an and the Hadith. The Qur'an is the supreme authority of Islam. It is believed to be the direct word of God as dictated to Muhammed, the last prophet.[9] The Qur'an was revealed to an illiterate Muhanimed not far from Mecca around 611 AD.[10] It is widely accepted that the true Arabic text, its beauty and meaning, cannot be adequately translated.[11] For this reason especially, it is important to note that the texts used for this paper are all translations.

The Qur'an is supplemented by the Hadith, a collection of stories regarding the life of the Prophet. The Hadith has been described as c(the record of how the Prophet and the Muslims of the golden age of early Islam, the period when the pristine virtues flourished

[5]These numbers do not include the followers of the Nation of Islam, headed by Louis Farrakhan. For the sake of comparison, there are six million Jews. Dart, *supra* note 4.

[6] *Id*

kastrone, *supra* note 4.

paper will focus on the religious laws that are likely to impact the food industry or its regulation,

although Islam also provides rules for conducting oneself while eating, such as prohibiting the use of gold
and silver utensils. *See,* for example, ABDUL REHMAD SHAD, DOS AND DO NOTS IN ISLAM, 119

˜ 1983).

- Other prophets recognized in Islam include Moses and Jesus,

[10]PICKTHALL, *supra* note 1, at x.

[11] *1d* at vii.

and when schism and tyranny had not yet reared their heads, had behaved 12 As the Qur'an did not give exhaustive detail regarding the more banal points of existence, the reports on the sayings and actions of Muhanimed serve as a guide to holiness. Muslims believe that through learning about and imitating the Prophet's life, they adhere to the will of God. The Hadith report on all aspects of life, from marriage to tooth brushing, and are especially instructive because they expand upon the dietary law revealed in the Qur'an.[13]

In addition to the Qur'an and Hadith, there was considerable jurisprudence on the part of early followers that lead to the development of different sects of Islam, not unlike the different sects of Christianity, and the Reform, Conservative, and Orthodox movements in Judaism. The three main divisions in Islam are Sunni, Shi'ite, and Sufi. Sufism is a mystical and ascetic branch of Islam, and accounts for a small group of Muslims.[14] After Muhammed's death, four successors (caliphs) lead the religion. When the fourth died, there was a divide between those that wanted the sons of Ali (who was the son-in-law of Muhammed) to succeed, and those that wanted Muawiya, the governor of Syria.[15] Those who follow the descendants of Ali are known as the Shi'ite. They account for about ten percent of the Muslim followers and are concentrated in Iran, and have their own Hadith.[16] The majority of Muslims, and the traditions focused on herein, are Sunni.[17] Within the Sunni tradition, there are four schools that follow and are named for early Islamic jurists. These are the Hanafites, Shaflites, Malikites, and Hanbalitites.[18] While there are more similarities than differences within the four branches, there is some variance in the details of the dietary restrictions, such as the method of slaughter, which

[12]MAULANA MUHAMMAD All, A MANUAL OF HADITH, vi (2d ed. 1978).

'[3]Valerie J. Hoffman, *Eating and Fasting for God in Sufi Tradition,* 63 J. AM. ACAD. RELIGION 465, 467 *(1995).*

'[4]Hoffinan, *supra* note 13 at 469.

[15]DON PERETZ, RICHARD U. MOENCH, & SAFIA K. MOHSEN, ISLAM: LEGACY OF THE PAST. CHALLENGE OF THE FUTURE. 14(1984).

[16] *Id*

[17]PERETZ, supra note 14 at 11.

[18] *1d.* at 13.

may have implications for regulating the food industry (and will be discussed in more detail in part IV, below).

The Qur'an is the primary source for instruction on what is halal (legal) and haram (forbidden), as it is for all matters in Islam. Surra (chapter) five, verse three of the Qur'an outlines most of the limitations on what animals can be eaten and the ways of death that render an animal improper as food:

Forbidden unto you (for food) are carrion and blood and swine-flesh, and that which hath been dedicated unto any other than Allah, and the strangled, and the dead through beating, and the dead through falling from a height, and that which hath been killed by (the goring of) horns, and the devoured of wild beasts, saving that which ye make lawful (by the deathstroke), and that which hath been immolated unto idols...Whoso is forced by hunger, not by will, to sin: (for him) lo! Allah is Forgiving, Merciful 19

Like the Judaic religion, Islam outlaws the consumption of pork and blood. Carrion and food that has not been dedicated to God are the other two things explicitly prohibited[20]

Other passages expand upon these basic tenets Several other verses repeat the requirement of pronouncing the name of God over the slaughtering[21] The beast of cattle is specifically mentioned as lawful, while what is meant by cattle is a subject covered in the Hadith.[22] Yet another passage that opened the door to interpretation is the instruction (in 2:57) to [elat the lawful and good things wherewith we have provided you. If what is lawful is what is not prohibited, the word good adds another element, subject to interpretation and development in the Hadith.[23] Finally, Muslims are explicitly allowed to eat the food of the people of the Scriptures (the Jews and the Christians).[24]

[19]PICKTHALL. *supra* note 1, at 96.

supra note 8, at 11.

[21]Verses 6:118, 119 and 121, as compiled in MUHAMMAD VALTBHAI MERCHANT, A BOOK OF Q_2URANIC LAWS, 118-119 (1981).

PICKTHALL, *supra* note 1 at 96.

supra note 8. at 115.

supra note 21, at 117.

[25]SHAD *supra* note 8, at 126.

[26] *1d*

[27]AL1 supra note 12, at 349.

Stone *5*

The other dietary law about which the Qur'an is explicit is the prohibition against intoxicating beverages. The first mention is in 2:2 19:

They ask thee (0' Prophet) about intoxicants and games of chance. Say: In both of them there is great sin, and some utility for men, but the sin of them is greater than their usefulness.[25]

The second mention, in 4:43, forbids one to pray while intoxicated, and finally, in 5:90-91, the prohibition is unequivocal:

0' you who believe! Intoxicating drinks.., are only the devil's work an abomination. Therefore give it up that you may be successful. The devil seeketh only to cast among you enmity and hatred by means of intoxicants and games of chance and to keep you off from the remembrance of Allah and from His worship. Will you then desist?[26]

The Hadith is useful in explaining what substances are considered intoxicating, and stressing the zero tolerance policy.

The Qur'an, being a relatively short work (only about 500 pages in translation), left some gray areas. The definition of cattle and good alluded to above were examples. The Hadith sets out more detailed information regarding these matters, as well as others (such as slaughter) in which the example of the Prophet Muhammed is believed to be illuminating. Hadith passages relevant to which foods are haram and which are halal will be discussed, followed by the proper method of slaughter, and the parameters of the prohibition of intoxicants.

A passage in the Hadith that exemplifies the supplemental nature is one description of prohibited meat, Abu Tha'labah said, the Messenger of Allah, peace and blessings of Allah be on him, forbade all beasts of prey with canine teeth and birds of prey with claw.[27] The passages record what a follower reported Muhammed did or said, Through

these various reports, the dietary laws become clearer. Because of this specific passage, Muslims abstain from animals with canine teeth and birds with talons.

The cattle species mentioned in the Qur'an 5:1 are outlined in the Hadith as being quadrupeds that graze on land and eat vegetation. Forbidden are the unclean animals (which may be seen as not being good or wholesome), including dogs, cats, mules, horses, swine, jackals, lions, elephants, pelicans, kites, crows, crocodile, weasels, wasps, insects, ravens and leopards.[28] Except for the Shafei school, hyenas and foxes are also prohibited 29

In the Hadith, two types of blood are considered lawful, the blood of the liver and of the spleen. In addition, two types of creatures do not need to be slaughtered. These are locusts and fish.[30] Reportedly, when Muhammed was asked about the lawfulness of eating locusts, he replied: **CCI** neither eat it nor I make unlawful many of the hosts (locusts) of Allah.[31] Interestingly, locusts are also considered edible in the Old Testament of the Bible (Lev. ll:2O˜23).32

Seafood is a more complex subject than locusts. According to Ibn Majah (as recorded in the Hadith), Muhammad said, [e]at what the sea throws up and what is left by the tide; but do not eat what dies therein and floats.[33] There seems to be general agreement that fish that die of themselves are unclean and unlawful.[34] Apparently, however, there is disagreement as to what types of seafood can be eaten. According to the Malikites, all seafood is legal, but according to some of the other schools, no aquatic animals other than fish are legal.[35]

[28]SHAD *supra* note 8, at 114.

[29]CH˜ES HAMILTON (trans.), THE HEDAYA: COMMENTARY ON THE ISLAMIC LAWS, *591*

S2ded. 1870, reprinted 1994).

SI-LAD, *supra* note 8, at 113.

[31] *1d.*

[32]Gordon J. Wenham. *The Theology of Unclean Food, 53* EVANGELICAL Q., 6, 10 (1981).

[33]SHAD, *.suprc˜* note 8, at 113.

[34]1d. and HAMILTON, *supro* note 29, at *592.*

[35]HAMILTON, *id,*

Stone 7

The Hadith also adds a substantial amount of information regarding the slaughtering of animals. Zabbab is the act of killing the animal appropriately. There are two kinds of zabbab. The first, ikhtiaree, is done by choice, such as slaughtering domesticated animals. The second is iztiraree, which is done of necessity when the first method is not practical, and usually involves hunting and inflicting a wound on any part of the animal's body with an arrow, bullet, or hound. This second method is not the preferred method because it is less effective in draining the blood. The name of God must be said over the arrow, bullet, or hound for the meat to be lawful.[36] The method most likely to be used by a food industry, involving a captive animal rather than a hunted one, involves a more elaborate ritual

There are two main components to the killing, the invocation of God's name, and the actual cutting. In one collection of Hadith, it is reported that:

Anas said, The Prophet, peace and blessings of Allah be on him, sacrificed two rams of a white colour mixed with black; I saw him with his foot placed on one side of their face, uttering *Bismillah, Allah-u-Akbar,* and he slaughtered them with his own hand.[37]

The Arabic phrase means in the name of God, God is the greatest. This is just but one of the acceptable invocations. Others include bismillah (in the name of God), Alhumdolillah (praise God), and subhanillah (God is purest).[38] Any invocation which asks God's mercy is not permissible, nor is it permissible to say anything more than the invocation of God's name. The invocation must be made while the throat of the animal is being cut.[39]

If the name of God is not invoked, whether or not the meat is considered lawfi.il may depend on the intention of the slayer. If one willfully omits the invocation, the meat is unlawful. However, some schools hold that if the name is forgotten, the meat is still

[36]HAMWTON *supra* note 29, 587.

[37]AL1, *supra* note 12, 344

[38]HAMWTON *supra* note 29, 589.

[39] *1d.*

lawful. One scholar maintains that he that forgets acts under necessity, and the [Muslim] faith is admitted as a substitute in his behalf[40] The Malikites and Shaflites make no such exception for forgetfulness.[4'] In the event that one is not sure if the name of God has been invoked during the slaughter, one may say the name of God over one's own portion.

The proper method of slaughter allows the blood, which is believed to contain poisons, to drain out so as not to form part of the food, and is designed to cause the animal as little pain as possible. To limit the amount of pain to the animal, the knife must be sharpened before the animal is thrown down, and the animal must not be dragged to the place of the slaughter. If a knife is not available, the slaughter can be performed by any sharp instrument except nails, horns or teeth still in their native place. These implements were thought to strangle the animal if used while still connected to their original source because of the weight of the source animal.[42]

If the animal is small, such as a goat or lamb, the method is called dhabh.'[43] The animal is made to lie down under the foot of the slayer, and the cut is made where the throat meets the breast bones. In the case of a larger animal, such as a camel or a cow, the method is nahr.[44] The animal is stabbed where the windpipe meets the breast while in a standing position. These sites were chosen as the most efficient in terms of blood loss. The goal of the slayer is to cut four primary structures: the windpipe, esophagus, and the two jugular veins.[45] A clean cut through all four is ideal because it provides the swiftest blood loss and death. The schools differ here as to whether all four must be successfully severed. The Shaflites require at least the windpipe and the esophagus to be cut, the

[40] *1d* at 588.

[4] *'ld.*

[42] *Id* at 590.

[43] AL1. supra note 12, at 346.

Id.

[45] HAMTLTON, *supra* note 29, at 589.

Stone 9

Hanatites require any three out of four of the vessels, and for Malikites, the animal is not properly slain unless all four have been severed.[46]

In addition to ensuring that the proper vessels are cut, the slayer must also be careful not to cut off the head of the animal or cut into its spinal marrow. According to the Hadith, this is first because Muhammed forbids it, and second because it causes unnecessary pain to the animal.[47] The ritual is designed to minimize the suffering of the animal as much as possible. In cases where the spinal column is cut, or the head is cut off, the animal may still be eaten, but the act is abominable.[48]

In addition to discussing which foods are lawful and the proper method of slaughter, the Hadith also discusses the prohibition of alcohol. The Arabic word for wine is khamr, derived from the word khamara, meaning he covered or veiled.[49] Wine and intoxicants are seen as veiling the intellect. The Hadith explains that not only is wine forbidden, but also any other intoxicating juice, no matter what its source. The fresh juice of dates and grapes are allowed, as is vinegar.[50]

Fermented and intoxicating drinks are condemned with strong language. One passage says, [kihanir is filth in an extreme degree, in the same manner as urine; for the illegality of it is indisputably proved.[51] The prohibition is absolute, whatever intoxicates in quantity is wholly forbidden. The Hadith reports an exchange between Muhammad and a follower where Muhammad was asked about wine: He prohibited it and the man said again: Verily, I prepare and use it as medicine. He (the Holy Prophet) remarked: It is no medicine but disease.[52] It is forbidden, then to use wine as a medicine, and also to buy,

[46] *1d.*

[47] *1d.*

[48] 1n addition to halal (lawful) and haram (forbidden), food can be considered mobah (indifferent or

most likely lawful), or makrooh (abominable). Muslims strive to stay away from the makrooh as much as possible. *Id.*

[49] ALI, *supra* note 12, at 350.

Id.

[51] pp˜i˜,ToN *supra* note 29, at 619.

supra note 8, at 128.

sell, give or receive any alcohol. Wine in the Islamic tradition is filth of the highest degree, dangerous to one's health, and perhaps worst of all, creates an inattention to God.[53]

As discussed, Islamic law has a well defined prohibition on certain foods. The Qur'an is the basis of these prohibitions, and the Hadith fills in the details through providing reports of how the Prophet Muhanimed behaved. Many religions, including Judaism and Hinduism, have similar or distinct food laws that govern what foods can be eaten, and the methods of their preparation. In describing these laws, one comes a long way toward understanding the religion and the eating habits of its adherents. However, even the most pious may wonder why certain foods are banned and others lawful.

III. HOLINESS, ORDER, AN]) ECONOMICS[54]

There are a variety of theories regarding the purposes religion serves in a society. The least cynical is that religion serves as a conduit to perfection. The most cynical is that it is a method of subduing the masses. In between, there are anthropological reasons why certain practices benefited the people of a region, and psychological reasons why many people search to act on behalf of a higher power. Theories that apply to religions as a whole also apply to their component laws.

Rituals and rules adopted by a religion could be the result of divine direction, economic forces, superstition, or any combination thereof This section discusses the various explanations found for food laws. The most obvious origin of a food law is the surrounding or precursor religions. The new religion adopts the customs of the old because they are familiar, may be widely believed, and ease the conversion. However, this explanation is not the most satisfying because one is left with the question, why did the original religion have such food restrictions? Although there are compelling similarities

[53]HAMILTON, supra note 29, at 619.

[54]iudaism, Christianity, and Islam were born of the same cradle. In fact, many see the Islamic dietary
law (halal) as a subset of the Judaic (kosher). Given these similarities, and the lack of English text on

Islam, this section will apply some Judeo-Christian theories to the Islamic dietary law by analogy.

between Islam and other religions, this section attempts to introduce a broader context of theones.

The first of these theories are the holy, the reasons given that ascribe the laws to a higher power. The second explanation is the theory of order, which explains the prohibition of certain animals as a result of the fact that they do not fit into their assigned category. The third theory discussed is the possible economic reasons why establishing certain food laws would be beneficial to a community. Not all of the reasons serve to explain all of the phenomena found within the dietary laws.

Proponents of the holy theories believe that to behave according to the will of God is reason enough to follow the dietary restrictions embraced by their religion. There does not need to be a logical reason apparent to man. According to one Islamic scholar, the principles prohibiting some food and drink is not their material disadvantages as being injurious to one's health, but of how they affect the building up of his character, moulding his temperament and advancement of spiritual faculties.[55] This sentiment is echoed by Don Isaac Abravanel, a biblical scholar, who commented, God forbid one should believe.. the Book of God's Law would be on the same level as a minor medical book. the Divine Torah did not come to heal bodies and seek their physical health, but to seek the health of the soul and to heal its diseases.[56] According to holy theories, the only reason to follow the law is the all important reason that it is the will of God, and doing so will develop one spiritually.

This explanation serves especially well for requirements whose effects cannot be observed from the outside, such as prayer or the invocation of the name of God while slaughtering. It is difficult to make an argument that such religious requirements are in themselves economically beneficial. The scholar Maulana M. Ali explains the condition

[55]SHAD, *supra* note 8, at 108.

[56]lsaac Abravanel, Vayikra, ch. 11 at 65 *in* Mark A. Berman, *Ko.%'her Fraud Statutes and the*

Fstablishment Clause: Are They Kosher?, 26 Colum. J.L. & Soc. Probs. 1,5 (1992).

that God's name must be mentioned as laid down to make man realize that the taking of a life, even though it be an animal, is a serious matter, and that it is by Divine permission that man does it, not by his superior might ˜ Thus, by remembering this fact when one kills his food. God and His divinity are remembered. The incorporation of the idea of God into a ceremony that affects daily life helps worshippers feel that they are aware of God's presence often.

The traditional Judeo-Christian view is that the regulations, including the list of animals prohibited, is the arbitrary, inscrutable will of God.[58] The Islamic food taboos may be seen in the same way. The animals may have been forbidden because of their inherent unholiness and potential to corrupt the human spirit. Islamic scholar Abdul Rehmad Shad prefaces the list of forbidden animals (dogs, cats, horses, swine, etc.) by saying that all unclean things which have a pernicious effect on the intellectual, physical and moral systems are not permissible to eat ˜ The Hadith reasons that because humankind is particularly dear to God, he forbade these animals to protect the human disposition from their undesirable qualities 60 The idea seems to be that these animals are unclean, and that ingesting them would corrupt the spirit of the eater. They should be avoided to protect one's spiritual integrity, not just health or bodily integrity.

Perhaps the prohibition on animals with canine teeth and birds with talons can be seen in the holy theories as an extension of the blood taboo. The only universal law of the Bible is the prohibition against blood.[61] Kosher food laws involve draining as much blood out of the meat as possible before consuming. Judeo-Christian scholars have understood blood to be the symbol of life which must be drained and returned to God,

[57]ALI, *supra* note 12, 344

[58]Jacob Milgrom, Ethics and Ritual: The Foundations of Biblical Dietary Laws, *in* RELIGION AND LAW: BIBLICAL-JUDAIC AND ISLAMIC PERSPECTIVES, (1990) at *159,* 161 (Edwin B. Firmage, Bernard G. Weiss, & John W. Welch eds.).

˜'SHAD, *supra* note 8, at 114.

[6]OIJAJ˜mTON *supra* note 29. at 591.

[61]Milgrom, *supra* note 56, at 161.

[62] *1d* at 169.
[63]Milgrom, *supra* note *56,* at 177.
[64]Wenham, *supra* note 32, at 10.
Stone 13
symbolic of our understanding of the inviolability of life.[62] Similar reasoning may account for Islam's blood taboo, perhaps it accounts for the list of prohibited animals as well.

Many of the animals on the prohibited list consume blood. Animals with canine teeth for tearing eat blood, as do birds with talons. The list of acceptable animals is basically restricted to animals that eat vegetation, such as cows, camels, goats, and lambs. If eating blood makes one less holy by showing a lack of respect for life, then many of the prohibited animals could be considered less holy, and may have been prohibited for this reason.

Others have attempted to explain the prohibitions by noting that the prohibited animals may offend a sense of order. Humans have an innate need to classify things and make order from them so as to more fully understand the world around them. When things are out of place, people feel uncomfortable. An example of this maybe the annoyance expressed by a person when another leaves a bowl in the living room. Our notion of the black sheep may also be an appropriate case.

In the context of animals, there are generally three habitats: water, air, and land. We associate certain types of locomotion with each habitat. Animals that do not have all of the characteristics of one habitat or that combine characteristics of both are out of order. For example, insects are out of order because they have too many legs (if you are used to seeing just four), and sometimes they even have too many legs coupled with wings. Locusts, on the other hand, have wings but only two legs, like birds. Thus locusts fit more naturally into the scheme than insects, and are not forbidden.[63]

Admittedly, this theory works better for Biblical religions, which prohibit land animals based that do not chew cud or have cloven feet.M In Islam, the operative body

Stone 14

part is canine teeth Many land animals have canine teeth, including humans. These teeth would not seem to be an anomaly. Perhaps the possession of canine teeth was seen as giving those animals enough in common with humans to require their categorization in our class. This is highly unlikely, as the forbidden animals are referred to as unclean, possessing undesirable traits and not in more brotherly terms.

Neither holiness nor a sense of order may fully be able to explain why certain foods are taboo. A third potential reason for at least some of the dietary restrictions are the economic constraints of the culture where the religion originated. There are two ways in which it may have been too expensive to allow the forbidden meat, the first is the hygienic hypothesis,[65] the second was presented by anthropologist Marvin Harris.[66]

The hygienic hypothesis reasons that meats which are costly to humans, either because they make one sick or because acquiring them involves danger is probably one of the most popular explanations of food laws.[67] The idea that meat can make a person sick probably followed closely on the heels of the first person eating meat. Between then and the revelation of the holy guides, it was trial and error. The idea that the holy books can serve as guides to healthy eating is at least as old as twelfth century Egypt, when Rabbi Moses Maimonides, court physician to Islamic emperor said, I maintain that food forbidden by the Law is unwholesome.[68] The link between trichinosis and undercooked pork, clinically observed in *1859.* seemed to be scientific evidence to back up the old theory.[69] The rationale extends to a variety of other animals. The flesh of wild animals is too difficult to digest, and the bloodstream is a perfect vector for microbes.[70]

[65] *1d* at 6; Milgrom, supra note 56, at 175.

[66] j˜,jj1j˜VlN HARRIS, THE SACRED COW AND THE ABOMINABLE PIG: RIDDLES OF FOOD
AND CULTURE, (1985)

[67] Wenham, *supra* note 32, at 6. *supra* note 63, at 69.

[69] *1d.*

[70] *Id*

Stone 15

Although the hygienic hypothesis still has its advocates, it does not offer a complete explanation. For example, poisonous plants are not forbidden in the Qur'an or the Bible.[71] In addition, all animal meat is potentially infected Cattle, in addition to carrying parasites such as tapeworms, can carry diseases such as anthrax and brucellosis.[72] Further, if ancient people had realized that pork caused illness, they may have also realized that it was only undercooked pork. It would have left more types of food available if the holy books forbade only undercooked pork ˜

Under Harris' theory, those animals whose costs of production outweigh the benefit derived by the community become religiously tabooed. The example of the pig is useful.[74] The pig converts raw food to energy faster than cattle, goats or sheep. However, the other animals eat grass, which cannot be digested by humans. Pigs thrive on food sources they share in common with humans such as maize, potatoes, wheat, and soybean.[75] When these foods are scarce, pigs and humans are in direct competition. This is one of the costs of pig raising.

Being descended from forest dwellers, pigs are also ill suited to the desert. They cannot sweat, and what little hair they have does not protect them from the sun. In order to cool off, pigs wallow in the mud 76 With the scarcity of water in the desert, this strategy of maintaining body temperature is impractical. A pig fanner might have to use his meager water supplies for his pigs, another significant cost of raising pigs.

Not much besides meat counterbalances the costs of raising pigs. Their hair cannot be made into textiles, they are not suited for milking, and they cannot pull plows or serve as pack animals.[77] Thus, the expense involved in raising pigs makes them an

[71]Milgrom, supra note 56, at 175.

[72]Harris, supra note 63, at 70.

[73] *1d.*

[74] *Id.* at 68-80.

[75] *Id.* at 72.

[76] *1d.* at 73.

[77] *Id.*

economic liability in the desert, and it may be for this reason that they were forbidden. Harris notes that [wiherever Islam has penetrated to regions in which pig raising was a mainstay of the traditional fanning system, it has failed to win over substantial portions of the population 78

Unlike pigs, camels were not forbidden in Islam. The desert dwelling nomads of the region relied on camels for transportation, to carry goods, and to provide milk and meat. In Harris' view, [am Islam that banned camel flesh would never have become a great world religion ˜ The fact that camels are banned in Judaism, which originated in the same region, is not directly addressed by Harris. However, perhaps the culture had changed sufficiently in the intervening years to account for the difference in restrictions.

In the case of pigs, the theory makes sense. Pigs are too costly for the community to raise. The camel as beneficial, edible and allowable also makes sense. The theory may also explain the prohibition of insects and the exception of locusts.[80] Insects may be carriers of bacteria and disease, but like meat, most can be killed by cooking. As insects offer small amounts of nutrients in each, the cost of raising or capturing them may not be worth the benefit. The locust is one notable exception. Locusts can measure three inches in length and the desert locust travels in swarms, allowing them to be collected by the hundreds.[81] The locust is a more efficient food source than other insects, and escaped prohibition in Islam as it did in Judaism.

But even this theory cannot account for everything. For example, blood used to be mixed with flour to make cakes in the desert before the spread of Islam. If the collection of blood takes no more effort than is already going into the slaughter of the animal, and the blood is cooked to free it from disease, it seems that blood would be a useful supply of

[78] *1d* at 80.

[79] *Id.*

[80] *1d* at 171.

[81] *Id*

nutrients and moisture. However, blood was forbidden. Neither can the theory account for the more subtle requirements, such as mentioning God's name during the slaughter.

The development of food restrictions in Islam could have been due to any one of these theories or a combination thereof Whatever the cause, the result is a list of forbidden foods, including some animals and intoxicants, and a ritual method of slaughter spelled out in the Qur'an and the Hadith. While the origins may be remote, the Islamic law today holds sway over approximately one billion people world-wide, and a growing population of American citizens.[82]

IV. WHAT HALAL MEANS IN AMERICA TODAY

One thing the increased Muslim population means to Americans is more choices for eating halal. In areas where there is a large Muslim community, halal butcher shops and restaurants are springing up. They are finding ways to identify themselves among the melange of food stores that line city streets. In many New York City neighborhoods, for example, the word halal appears in the grocery store window.[83] There are even halal Chinese restaurants 84

The growing desire for halal products may have other results as well. If the frequency of halal slaughter increases without public knowledge about the ritual increasing, fearful neighbors and animal rights activists might get into the picture, testing the tolerance of the First Amendment. In addition, wherever there is an increase in market size, there is an increased risk of fraud. Consumers interested in eating halal are willing to pay a premium, and unscrupulous vendors may sell products that do not conform to the more burdensome standard. This section aims to put the Islamic dietary restrictions in the context of contemporary American society, and forecast where troubled waters may lie ahead.

[82]lrwin, *supra* note 4, at Al.

[83]The New York Times, April 23. 1995.

[84]Jane H Lii *Vew Yorkers and ('a; Where ·- the Pork? Not Here,* N.Y. TIMES, Sept. 7, 1997 at 4,

While the number of halal slaughterhouses is on the rise, some Muslims still perform the ritual in their own backyards. This may shock the conscience of their neighbors, who are used to seeing only meat encased in plastic and styrofoam. Ten years ago in Los Angeles, city officials considered an ordinance that would outlaw the sacrificing or maiming of animals for religious purposes.[85] The Humane Society of the United States and other animal rights activists campaigned to outlaw religious animal sacrifices. Although that movement was primarily aimed at people practicing Santeria,[86] the activists' argument that the First Amendment can hardly be interpreted as a justification for the suffering of animals[87] would seem to apply to Islam as well. Indeed, in Britain, similar arguments lead to a report by the Agricultural Ministry recommending that both Jewish and Islamic animal slaughter procedures be outlawed as unduly stressful and painful.[88]

Although the slaughter is designed to be as humane as possible, using a sharp knife and cutting where the blood loss is fast, it does not conform to the modem techniques of the industry. Most developed countries, including the United States, have laws aimed at humane methods of slaughter that include stunning the animal before the cut is made. 89 The US law, as well as those in Canada and the European Community, have exemptions for religious slaughter methods.[90]

[85]5cofl Harris, Religious Groups Fear Animal Protection Law Would Stifle Rituals, L.A. TiMES, Aug. 8,

1988, at I.

[86]Santeria is a religion rooted in Nigeria, described as a mixture of voodoo and Catholicism. *Id.*

[87] *Id*

[88]Karen DeYoung, *Ritual Slaughter Sparks Debate, Jews, Moslems Join Forces to Defend Practice in Britain,* WASH. POST. Dec. 27, 1985, at A19.

[89] *1d* See footnote 83 for the full text of the US law.

907 USCA s1902:

s1902. Humane Methods

No method of slaughtering or handling in connection with slaughtering shall be deemed to comply with the public policy of the United States unless it is humane. Either of the following tivo methods of slaughtering and handling are hereby found to be humane:

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

Stone 19

Current US law (such as the religious slaughter exception), the First Amendment, and America's psychic commitment to freedom of religion should afford Muslims the protection they need in order to observe their religion. The method of slaughter is similar to that practiced in Judaism, which has survived for decades in this country. One potential difference in the manner in which Muslim and Jewish slaughter is treated may stem from the relative lack of familiarity with the Islamic traditions in our country. While the humane slaughter laws specifically exempt the Jewish ritual, no other faith is mentioned by name. The exception was clearly formulated with the Jewish ritual in mind. It refers to the simultaneous severance of the carotid arteries, while in some Islamic sects, only the esophagus and windpipe, or esophagus, windpipe and one carotid artery must be severed.

Another, more obvious example of the legislature thinking in terms of primarily the Jewish religious minority can be found in the Code of Federal Regulations governing post-mortem meat inspection by the US Department of Agriculture (USDA). The regulation states (emphasis added):

When a carcass is to be dressed with the skin or hide left on, the skin or hide shall be thoroughly washed and cleaned before any incision is made for the purpose of removing any part thereof or evisceration, *except that where calves are slaughtered by the kosher method,* the heads shall be removed from the carcasses, before washing of the carcasses.. 91

While it is laudable that the kosher method is excepted, it would be beneficial to the halal butcher to be able to leave the heads on as well. As noted earlier in the description of the slaughtering methods, it is considered an abomination to cut through the spinal cord or decapitate the animal while performing the slaughter.

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

919 C.F.R. s3 10. 10

The rapid expansion of the Muslim population is likely to lead to some growing pains. As the practice of Islamic ritual slaughter becomes more prevalent and more visible in our community, the sizable animal rights movement in our country may sometimes be at loggerheads with the First Amendment freedom to practice religion. Policy makers can best address this potential problem by remaining sensitive to the needs of the growing Muslim minority, and ensuring that laws that can make exceptions for halal practices (often the same as those that make exceptions for kosher practices) are constructed carefully in order to respect their rights.

Another growing problem likely to face those seeking halal products is consumer fraud. Muslim food consumption is estimated to generate over $10 billion in sales in the US annually.[92] The attention to detail necessary to make a product halal involves more expense than traditional methods of slaughter and production. In the end, it is difficult for a consumer to know if the product is truly halal. As a premium can be charged for halal products, it is a situation ripe for fraud.

Currently, the halal designation is regulated privately. Over fifty groups currently certify food as halal, including the Islamic Food and Nutrition Council of America (IFANCA), and local mosques.[93] IFANCA uses an M in a crescent to designate food that is halal, and other symbols abound.[94] While these measures have offered some protection against mislabeling and fraud, they are not a perfect solution. With the proliferation of symbols, it may be difficult to tell which symbols are meant to indicate that the product is halal, and which certifying agencies are legitimate. Islamic leaders have contemplated lobbying for state halal fraud statutes similar to the ones in place for the kosher industry.[95]

[92]Beatrice Trum Hunter, *More Consumers Ask: A it Kosher?,* 80 CONSUMERS' RESEARCH

MAGAZINE, April 1997, at 10

[93]Mike Dunne, *What the 'Halal' means: Meat ˜ Cruaranteed to Meet Muslim Dietary Laws,*

SACRAMENTO BEE. Jan. 28. 1998, at Gi.

[94] *1d.*

[95]Jon Kalish, *A Thriving Moslem Meat Industry Hopes State Certification is Next,* N.Y. NEWSDAY.

Sept. 4, 1989, at 2.

Stone 21

The Kosher industry in America is currently worth $30 billion[96], although only 1.5 million of the 6 million who buy kosher products are Jewish.[97] Twenty-one states have laws against the mislabeling of kosher foods.[98] Some cities and counties also have such legislation. New York's kosher fraud statute, enacted in 1915, has served as a model.[99] The law makes it a misdemeanor to sell or expose for sale food products falsely represented as kosher with the intent to defraud. l˜

Necessarily, all of the states define kosher in terms of the Jewish religion. 101 For example, Maryland defines cckosher˜˜ as ˜'prepared under and consisting of products

sanctioned by the Code of Jewish Laws.[102] Under Michigan's law, kosher means 'c

prepared or processed in accordance with orthodox Hebrew religious requirements by a

recognized orthodox rabbinical council.[103] Given the First Amendment, this intimate association has brought the legitimacy of the laws into question,

In 1992, in Ran Day's County Kosher, Inc. v. New Jersey,[104] the New Jersey Supreme Court held the language of New Jersey's kosher fraud statute to violate the First Amendment. The statute established a Bureau of Kosher Enforcement, composed solely of rabbis, to monitor compliance with the law. It was found to impose substantive religious standards on the kosher industry.[105] The court applied the three pronged test established in Lemon v. Kurtzman which requires a secular legislative purpose, that the primary effect must be neither one that advances nor inhibits religion, and that the statute

A. Berman, *Kosher Fraud Statutes and the Establishment Clause: Are They Kosher?,* 26

COLTJM. J. L. & SOC. PROBS. 1, 11(1992).

[97]Kosher products are also popular with Muslims, Seventh Day Adventists, and those who believe kosher means a higher quality product. Stephen F. Rosenthal, *Food For Thought: Kosher Fraud Laws and the Religion Clause of the First Amendment,* 65 GEO.WASH. L. REV, 951, 955 (1997).

[98]Sandra Fleishnian, *Kosher Laws in Crisis After Court Ruling,* WASH. POST, Jan. 10, 1996. at El.

[99]Rosenthal, *.supra* note 90, at *956.* *'00 1d.*

'01Berman, *supra* note 89, at 17.

[102]Md. Corn. Law II Code Ann. s 14-901(1990) in *id.*

[103]Mich. Comp. Laws s 750.297e (1991) *in*

104579 A. 2d 316 (N.J. Super. Ct. App. Div, 1990), rev'd, 608 A. 2d 1353 (N.J. 1992).

[105] 1d. at 146.

not foster excessive entanglement between government and religion. ˜ The kosher fraud statute was held to cause excessive governmental entanglement with religion because it authorized the state to monitor adherence to religious standards, and police the (creligious purity of the food. 107

Recently, the Fourth US Circuit Court of Appeals declared Baltimore's kosher fraud statute unconstitutional and enjoined its enforcement under similar reasoning in Barghout v. Bureau of Kosher Meat and Food Control.[108] Baltimore, too, had an enforcement agency. The Bureau of Kosher Meat and Food Control was composed of three rabbis and three laymen, and was entrusted with inspecting butcher shops and food stores.'[09] The court held that the statute caused excessive entanglement, in that it delegated governmental authority to individuals based on their membership in a specific religious group.[110]

With the current trend, it is questionable whether a halal fraud statute would withstand judicial scrutiny. Because of the complexities involved in labeling something halal, a board similar to the ones involved in the stricken statutes may be needed. If no such board was implemented, the secular officials would be left to their own devices to decide what is halal and what is not, which still entangles the government, and would not be likely to satisfy many Muslim consumers.

Whether or not a labeling regime would be legal, it may not have a net benefit to the community. The benefits of the statute would be less fraud and fairer enforcement mechanisms. However, as will be discussed, the different sects of Islam may make the statutes difficult to apply, and the market may be a more efficient regulator.

[106] Lemonv. Kurtzman, 403 U.S. 602, 612 (1971).

[107] *Supra,* note 98.

10866 F.3d 1337.

at 1338.

[110] *1d.* at 1343.

Of course the most obvious benefit expected from the fraud statutes is a reduction in fraud. If there were state regulation of labeling, the proliferation of symbols may be stemmed. Consumers would know that certain labels assured that the manufacturer conformed to halal standards. Manufacturers may be less likely to defraud consumers if the power of the state was behind the enforcement of labeling requirements. This would result not only in less consumers being cheated out of money, but in the psychic benefits associated with being confident that one is following one's religion.

In addition, fraud statutes might result in fairer proceedings for those who are suspected of having violated the halal requirements. The courts have heard many slander cases brought by kosher dealers who claim they suffered financial harm as a result of being wrongly accused of violating the kosher laws.[111] Religious communities tend to be insular, and word that someone has broken the law can travel quickly. While this may serve to effectively police fraud, it may not be as fair as a court proceeding, especially when a food dealer is not a member of the community. Courts have evidentiary rules and allow both sides to be heard. Such safeguards are generally lacking in situations where allegations of wrong-doing are spread by word of mouth. If there were halal fraud laws in place, more people may rely on the slower, but perhaps fairer, governmental wheels of justice to police the industry.

In spite of these benefits, establishing halal fraud statutes would have its drawbacks. With the different sects each having variations on the main food requirements, it may be impossible for the government to choose which sect to base the halal requirements on. In the case of the kosher laws, the Orthodox sect's dietary restrictions serve as the basis for the fraud statutes. The less strict Conservative dietary restrictions are not taken into account. A Conservative Jew may view a food as kosher, but the food

[111]Berman, *supra* note 89 at 12.

cannot be labeled as kosher if it falls short of the Orthodox standard.[112] In the case of Islam, the government would have no way of choosing which sect's laws to follow. Choosing one over the others would elevate that sect, which by definition puts the others at a disadvantage, and is a clear violation of the second prong of the Lemon test.'[13]

Perhaps the market is a more efficient regulator of the industry. The government would have to spend resources creating the halal standards, and enforcing the laws. Enforcement (in the Baltimore and New Jersey statutes) involves paying at least some officials to inspect various butcher shops and grocery stores. The time and money involved in checking each shop adequately may be costly, and the process of appealing the decisions or arguing about the correct standards would be inefficient.

If the market were allowed to regulate itself, those producers that were found to violate halal standards would go out of business. As noted earlier, many religious communities are insular and word of mouth is an effective means of advertisement. Each community would be able to choose which school to follow. Each of the four Sunni schools is found predominantly in one geographic area in the world. Hanaiites are from Muslim India and regions of the former Ottoman Empire. Shafiltes are from Southern Arabia, the East Indies, Lower Egypt, Palestine, and East Africa. Malikites are concentrated in North Africa, and Hanbalitites in Saudi Arabia.[114] As groups migrate to the US, they tend to settle in neighborhoods that retl.ect their origin.[115] If communities or mosques decided halal standards for themselves, each shopkeeper would conform his or her products to the schools represented in the neighborhood communities. People interested in eating halal food might be able to purchase products that met their standards more closely than governmental regulation would provide, and without the added costs.

at 47.

[3] *Supra,* note 99.

[114] PEP˜ETZ *supra* note *15,* at 13.

[115] Boston's Little Italy in the North End is one example.

Stone *25*

There is a possibility that the debate over the legitimacy and usefulness of fraudulent labeling laws may fall by the wayside if international standards for halal become widely accepted. The worldwide trade of halal products is a booming business. Five billion dollars worth of agricultural products are imported annually into the collective region of Bahrain, Kuwait, Oman, Qatar, and the United Arab Emirates.[116] There are also large markets in Malaysia, India, and various other countries.[117]

The Codex Committee on Food Labeling, part of the Codex Alimentarius Commission (a joint Commission of the Food and Agriculture Organization and the World Health Organization) recently adopted guidelines for the use of the term Halal.[118] The United States spoke against the draft guidelines, criticizing them as being outside the realm of expertise of Codex.[119] Additionally, the US position was that Codex should not have requirements for a single group of consumers, and that compliance with the guidelines would be difficult to verify in international trade.[120] In order to accommodate the differences in interpretation of the different Islamic schools of thought, the guidelines that passed are of a general nature.[121] They discuss criteria for the use of halal, allowable sources of food, and general requirements for slaughtering, processing, and packaging of halal foods. 122

The Codex guidelines are not binding on US manufacturers. However, in order to take advantage of the export market, producers may begin following the guidelines. This may set an industry standard regarding the use of the term halal. Alternatively, it may be

S. Department of Agriculture, 8 AgExporter, at 4.

[117] *Foodlndust,y to be Educated on International Standards,* NEW STRAITS TIMES, June 20, 1996 at

16.

[118]Repon of the 22nd Session of the Codex Alimentarius Commission, Geneva, June 23-28, 1997.

[119]U5 *Supports Efforts for International Organics Definition,* FOOD LABELING NEWS, Oct. 13,

1994, Vol. 3, No. 2.

and Agriculture Organization of the United Nations, *Codex Commission Makes Major Decisions on Food Claims, hygiene, Labeling at Geneva Meeting,* NEWS HIGHLIGHTS, July 17, 1997, at 2.

possible for either state or federal government to incorporate the halal standards established by Codex into domestic mislabeling or fraud statutes. This alternative seems unlikely, given the US position on the regulations as they were being discussed in the international forum.

V. CONCLUSION

Islam impacts the daily life of its followers in many fundamental ways, including the regulation of food and drink. While many are unfamiliar with the nature of the dietary laws, the growing population of Muslims in America will bring this issue to the fore. Whether it is by invoking the name of God in a New York City slaughterhouse, or weeding through forbidden items in the grocery store, halal laws govern the daily living of observant Muslims. These laws may be divine, or the result of economic factors at play in the Middle East during the formative years of Islam. Whatever their origin, the growing number of adherents face being a minority in our society. Contemporary public policy and food law should be sensitive to the concerns of the community, whether those concerns are best served by making exceptions to laws or by creating new ones.