

# Freedom of Religion v. Animal Welfare

University of Cambridge, 31 January 2019

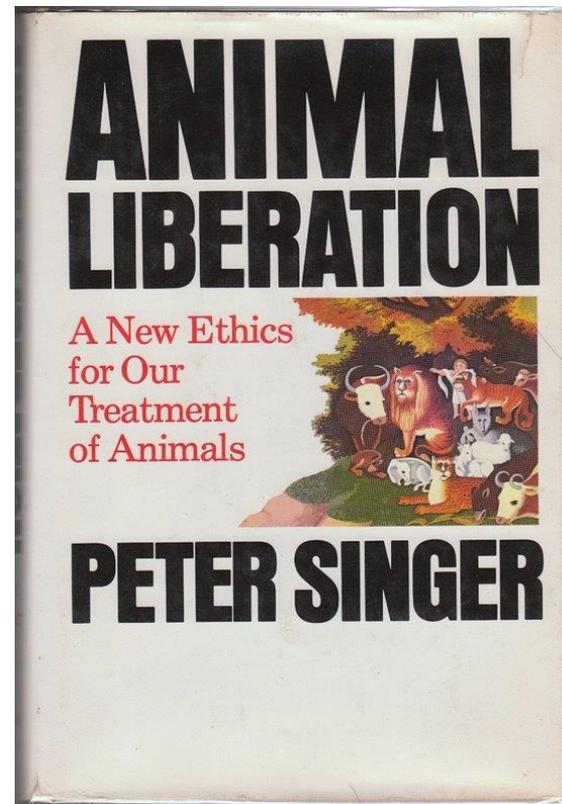
The Case of Unstunned Ritual Slaughter

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# The case for animal welfare, animal liberation ...

... has been made  
conclusively

It's a matter of time but  
ultimately the case will  
be won



# Jeremy Bentham (1789)

- “The question is not can they reason, nor can they talk, but can they suffer”
- *An Introduction to the principles of morals and legislation* (1789)



# Unknown advocate: Arthur Schopenhauer (1788-1860)

- Kant: “Human dignity”
- Excludes animals
- Schopenhauer is critic
- Animals are equal to humans in relevant aspects



# The actual condition

- Yet, it will take a long time to deal with all the opposition
- To get rid of the ingrained discrimination of nonhuman animals we need to think about the law (Bentham)
- The case of unstunned ritual slaughter is only one example, but important from the perspective of legal philosophy and jurisprudence

# Basic facts

1. We eat animals
2. We want to give their lives a “humane ending” by certain laws protecting their welfare
3. We make exceptions on 2 for religious reasons

# Religious objections to stunning

Exceptions are made to stunning when religious groups indicate that the animal may not be stunned (i.e. made unconscious for a short time)



# **Main rule in Dutch law: stunning legally prescribed**

*Exception:* art. 44, sub 3 Gezondheids- en  
welzijnswet voor dieren:

“The slaughter of animals according to the  
Israelite or Islamic rites is allowed without prior  
stunning.”

# The Party of the Animals

Change of art. 44, sub 3 GWWD:

“The slaughter of animals according to the Israelite or Islamic rites is only allowed when the animals are stunned prior to the slaughter.”

# Protests from religious lobby groups

1. Unstunned ritual slaughter is not necessarily more unfriendly to animals
2. Prohibiting unstunned slaughter violates freedom of religion

# **Ad 1 Discussion for physiologists, biologists, anesthetists**

This discussion is philosophically and legally less interesting

But the second point is: do humans have religious privileges to make animals suffer?

# Ad 2 Discussion about the status of religion

What can legal scholars (judges) accept as legally protected religion?

Do they have to take religion as it is presented by the religious people themselves? Or do they have their own “concept of religion”?

# When is freedom of religion applicable?

- *European Convention on Human Rights* art. 9
  - *International Covenant on Civil and Political Rights* art. 18
- (a) There has to be a religion
- (b) There should not be an exception

# The essence of religion

Who decides what is religion?

- a. The majority of believers?
- b. A religious leader?
- c. A holy book?

Or does the legal scholar (judge) also have a say?

# There are no criteria: religion is in the eye of the believer

- Missionary Church of Kopimism in Sweden (2012)
- Their religion: share information. CTRL+C and CTRL+V (copy and paste) is “religious”
- Church acknowledged in Sweden

# Advantages and disadvantages

Advantage: government does not meddle into religious affairs

*But:*

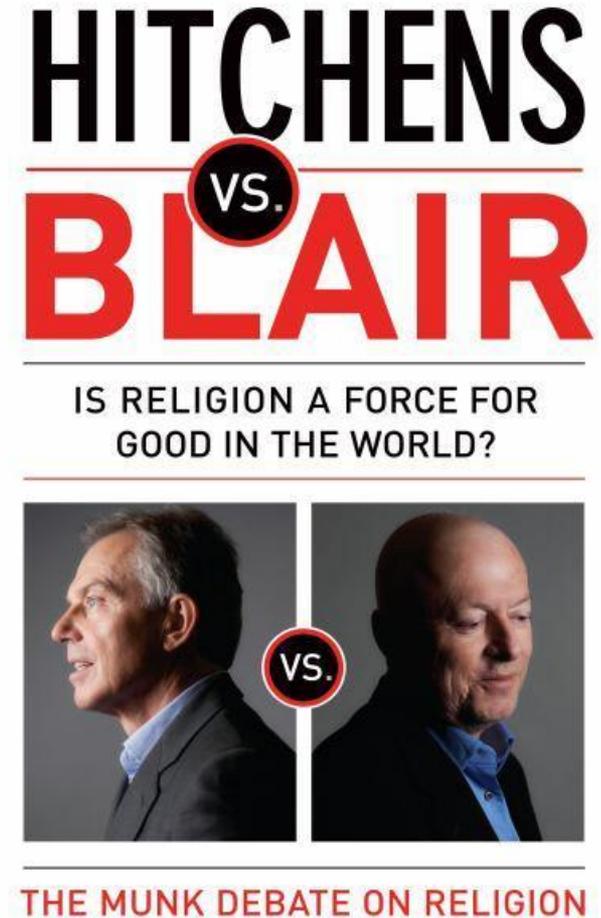
1. In case of conflict, the judge has to decide
2. The “eye of the believer doctrine” trivializes religion

# The concept “religion”

Debate, Toronto, 26  
November 2010

Total confusion about  
what is “religion”

What Hitchens criticizes  
as “religion” Blair sees as  
non-religious



# Herbert Spencer (1820–1903)

“The truly religious element of Religion has always been good; that which has proved untenable in doctrine and vicious in practice, has been its irreligious element; and from this it has been undergoing purification”.

A very *religious* concept of the concept of religion

# Sometimes immoral religious practices

- Genesis 22 Abraham gets the divine command to sacrifice his son
- Is this command “religious”?

*Answer:*

- a. Yes, coming from God himself
- b. No, too immoral (Spencer, Blair)

# Spencerian/Blairian attitude

- Can we say “unstunned ritual slaughter is too immoral to be considered religious”?
- If so, then we have solved the legally perplexing question whether it can be *protected* by the freedom of religion. Answer “no”, because it is not religious after all
- New challenge: what are the criteria to decide whether something is “religion” in the legal sense

# Accepting the new challenge: the legal concept of religion

- Sources of inspiration Blair and Spencer (not Hitchens)
- “If 50 million people say something foolish, it is still foolish” (W. Somerset Maugham)
- 4 elements (provisional)

# First Principle: no cruelty or violence (Bentham principle)

*Example:*

burning of witches

Religious?

Exodus 22:18: “Thou shalt not suffer a witch to live.”

Blair/Spencer: this is too cruel, immoral, and therefore fails the legal test voor “religion”

# Second Principle: No harm to others (Mill principle)

The “harm principle” (*On Liberty*, 1859)

Fundamentalist protestants in the Netherlands do not want to have their *children* vaccinated

Religion?

No, because of harm *to others*

# Third Principle: equality principle (Dworkin)

- “I permit no woman to teach or to have authority over man; she is to keep silent” (1 Timothy 2:12-15)
- Religion? Freedom of religion?
- The precept is irreligious because “that which has proved untenable in doctrine and vicious in practice, has been its irreligious element” (Spencer)

# Fourth Principle: reasonableness (Clifford)

- William Kingdon  
Clifford (1845-1879)



# Clifford's principle

“It is wrong, always, everywhere and for anyone, to believe anything upon insufficient evidence. If a man, holding a belief which he was taught in childhood or persuaded afterwards, keeps down and pushes away doubts which arise about it in his mind, purposively avoids the reading of books and the company of man that call in question or discuss it (...) the life of that man is one long sin against mankind”. Uit: *The Ethics of Belief* (1876).

# Four principles in combination...

... make it possible to exclude

- Crusades
- Prohibition of vaccination
- Discrimination of women etc. etc.
- But also Unstunned Ritual Slaughter

From the concept of religion,

And therefore from the protection of the *freedom* of religion

# Hurrah for the Rector of Al Ahzar University

Rector of Al-Azhar Universiteit (Cairo) in 1982:

“Stunning would not make the practice unislamic”.

Source: Lerner, Pablo, & Mordechai Rabello, Alfredo, “The Prohibition of Ritual Slaughtering (Kosher Schechita and Halal) and Freedom of Religion of Minorities”, in: *Journal of Law and Religion*, Vol. 22, No. 1, (2006/2007), pp. 1-62, p. 12.

# Treaty of Lisbon

- (...) States shall, since animals are sentient beings, pay full regard to the welfare requirements of animals (...)
- Sentient beings ....