

SHAI LAVI  
(TEL AVIV)

## Unequal Rites – Jews, Muslims and the History of Ritual Slaughter in Germany

Are Muslims in Germany today facing the same challenges that Jews as a religious minority confronted a century ago?<sup>1</sup> Current debates on the building of mosques, Muslim education in public schools, the wearing of head scarves by public teachers and exemption from sports education for girls seem to have their counterparts in nineteenth-century debates concerning the building of synagogues, Jewish education in public schools, the wearing of the yarmulke in courts of law and exemption from sports education for both boys and girls on the Sabbath.<sup>2</sup> More generally, anxieties concerning the Muslim »parallel society« bring to mind the old accusation against the Jewish »state within a state.«<sup>3</sup> But how far do such analogies go, once one scratches beneath the surface of apparent similarities? Have the Muslims today replaced the Jews of the nineteenth century as a religious minority whose traditional practices are culturally suspect, and whose ability to integrate into German society is politically contested?<sup>4</sup>

- 1 The following contribution is part of a book project on the history of Jewish and Muslim slaughter in Germany from the eighteenth century to the present, and was presented at the conference »Jews and Muslims in Germany: Culture, Law and Politics from the Age of Emancipation to the Time of Multiculturalism,« Tel Aviv University, April 2008. I would like to thank participants of the conference for their helpful remarks and suggestions. I owe further gratitude to Aischa Ahmed, Yishai Blank, Amnon Raz-Krakotzkin, Roy Kreitner and Hamutal Tsamir for their comments. Special thanks go to Nikola Tietze for her generous help in putting me in contact with Muslim interviewees.
- 2 On the Jewish conflicts of law and state, see Mordechai Breuer, *Modernity within Tradition: The Social History of Orthodox Jewry in Imperial Germany*, New York 1992; Jacob Katz, *Divine Law in Human Hands: Case Studies in Halakhic Flexibility*, Jerusalem 1998; Robert Liberles, *Religious Conflict in Social Context: The Resurgence of Orthodox Judaism in Frankfurt am Main, 1838-1877*, Westport, CT 1985. On the Muslims in Germany, see, for example, Heiner Bielefeldt, *Muslime im säkularen Rechtsstaat Integrationschancen durch Religionsfreiheit*, Bielefeld 2003; Mathias Rohe, *The Legal Treatment of Muslims in Germany*, in: Robert Aluffi B.-P./Giovanna Zincone (eds.), *The Legal Treatment of Muslims in Europe*, Leuven 2004. For the broader European context, see Silvio Ferrari/Anthony Bradney, *Islam and European Legal Systems*, Aldershot 2000.
- 3 On the former, see Wolf-Dietrich Bukow et al., *Was heißt hier Parallelgesellschaft? Zum Umgang mit Differenzen*, Wiesbaden 2007; and on the latter, Jacob Katz, *Emancipation and Assimilation: Studies in Modern Jewish History*, Farnborough, UK 1972.
- 4 Much of the current volume is dedicated to addressing this question. See, in addition, Sander L. Gilman, *The Parallels of Islam and Judaism in Diaspora*, in: *Chron-*

The history of the ritual slaughter debate offers a particularly apt opportunity for examining these questions.<sup>5</sup> The Jewish and Muslim traditions of slaughter are similar, and the accusations they faced for being cruel, unhygienic and non-German, virtually the same.<sup>6</sup> In both cases, the battle between opponents of the practice and its defenders took place in parliament, administration offices, courts of law and the court of public opinion. The history of the *Schächtfrage* is an example of how German law and the German public have dealt with religious minorities, perceiving Jews and Muslims simultaneously as a threat to and as a necessary condition for Germany's cultural cohesion. Opponents of traditional slaughter saw it as a sign of the inability of Jews and Muslims in general to become full citizens in Bismarck's united Reich and Kohl's reunited Republic, while its proponents viewed the opposition to the ritual as a mark of intolerance and as a token of anti-Semitism and xenophobia.

Religion played a central role in the discussion of integration, despite the fact that both communities were probably more secular than their parallels in other European countries – the Jews, due to their high level of acculturation and the prevalence of religious reform, and the Muslims, mostly of Turkish origin, due to the effects of Kemalist secularism.<sup>7</sup> Ritual slaughter became a litmus test for integration, even though the majority of Jews and

*icle of Higher Education* 51/31 (2005), 4; Gokce Yurdakul/Y. Michal Bodeman, »We Don't Want to Be the Jews of Tomorrow:« Jews and Turks in Germany after 9/11, in: *German Politics and Society* 24/2 (2006), 44-67; Kai Hafez/Udo Steinbach, Juden und Muslime in Deutschland: Minderheitendialog als Zukunftsaufgabe, Hamburg 1999; Jeffrey M. Peck, *Being Jewish in the New Germany*, New Brunswick, NJ 2006; William Safran, *Islamization in Western Europe: Political Consequences and Historical Parallels*, in: *The Annals of the American Academy of Political and Social Science* 485 (1986), 98-112.

- 5 There is no comprehensive study comparing Jewish and Muslim ritual slaughter in Germany. For a brief overview, see Norbert Müller, *Tierschutz oder Kulturrassismus? Das Schächten bei Muslimen und Juden und die deutsche Gesellschaft*, in: *Die Brücke* 114/4 (2000), 78-82. For a thorough account of the history of the Jewish slaughter debate in nineteenth- and early-twentieth-century Germany, see Robin Judd, *Contested Rituals: Circumcision, Kosher Butchering, and Jewish Political Life in Germany, 1843-1933*, Ithaca, NY 2007, as well as John M. Efron, *The Most Cruel Cut of All? The Campaign against Jewish Ritual Slaughter in Fin-de-Siècle Switzerland and Germany*, in: *Leo Baeck Institute Yearbook* 52/1 (2007), 167-184.
- 6 Richard Potz/Brigitte Schinkele/Wolfgang Wieshaider (eds.), *Schächten. Religionsfreiheit und Tierschutz (= Religionsrechtliche Studien 2)*, Freistadt 2001.
- 7 General statements, of this sort, concerning Muslims in Germany should be taken with a grain of salt. While it is true that approximately 70% of Muslims in Germany are Turks, the latter are a highly diversified group and can be divided according to place of origin (village, town or large city) and religious affiliation. To the best of my knowledge, there is no comparative study of levels of observance among European Jews of the nineteenth century or among Muslims today.

Muslims did not adhere to the prohibition on prior stunning of the animal. Still, the official organizations of both communities publicly supported the religious custom, interpreting the critique as an affront against the community as a whole. The centrality of religion to the discussion of integration was also a consequence of the growing identification of both Jews and Muslims as religious communities. This is especially evident in the case of Turks, who since the 1980s gradually began to identify themselves and to be identified by others as Muslims,<sup>8</sup> and in a more subtle though not less decisive way, in the case of the Jews, who in the course of the nineteenth century transformed from a people into a community of faith (or into communities of faith, after several Orthodox groups separated from the larger Jewish community).<sup>9</sup>

The relationship of mainstream German society to Jews and Muslims as religious minorities has been well documented, but scholars have usually examined the two communities separately. The following study seeks to contribute to the gradually growing interest in an integrative and comparative account.<sup>10</sup> The comparison of German Jews to current-day Muslims may seem questionable, if not patently inconceivable, given the fate of German Jewry under National Socialism. Admittedly, the horrors of the Third Reich mark the outer limit of the present comparison, and are thus intentionally omitted. Such omission, however, does not necessarily distort the historical perspective, but quite to the contrary, may allow us to examine the history of Jews at the turn of the twentieth century without being prejudiced by the unfolding of future events.<sup>11</sup>

The following study is limited to the comparison of Jews in the *Kaiserreich* with Muslims after 1960 and will focus on the perception of these groups by German law and public opinion.<sup>12</sup> Without denying the presence of Muslims in prewar Germany and without ignoring the revival of the Jewish community in Germany today, the proper comparison both in demographic terms and in terms of public attention is between present-day Muslims and Jews of the past. Even within this more limited framework, however,

- 8 The »Islamization« of Turks in Germany, which is commonly associated with the aftermath of »9/11«, was publicly discussed in Germany already in the 1980s. It would be a mistake to reduce this multifaceted phenomenon combining religion and culture to its most visible political dimension.
- 9 On a parallel argument concerning the »ethnicization« of Judaism, see Shulamit Volkov, Talking of Jews, Thinking of Germans: The Ethnic Discourse in 19th Century Germany, in: *Tel Aviver Jahrbuch für deutsche Geschichte* 30 (2002), 37-49.
- 10 See above note 4. Many of the earlier discussions compared Jews with Turks rather than with Muslims. See, for example, Peck, Being Jewish in the New Germany (fn. 4), chap. 5; and Peter O'Brien, Continuity and Change in Germany's Treatment of Non-Germans, in: *International Migration Review* 22/3 (1988), 109-134.
- 11 On the importance of such a perspective, see Boaz Neumann, Being in the Weimar Republic, Tel Aviv 2007, 11-15 [Heb.].
- 12 The perception of ritual slaughter by Jews and Muslims, though highly interesting in itself, will not be discussed here and will serve as the focus of a future study.

the similarities between the two minorities can tell, at best, only half of the story. The other, more revealing half, concerns the differences between the Jews in the *Kaiserreich* and the status of Muslims in Germany today.<sup>13</sup> Though the traditions and religious rituals of both Jews and Muslims were portrayed as alien to German society, the two groups and their »religiosity« posed different challenges to German cohesion. The relationship of Jews and Muslims to Christian Germany was framed differently, but not independently, for each group.

One way to conceptualize the difference between Jews and Muslims in Europe is by identifying the former as strangers from within and the latter as strangers from without. The spacial markers, »inside« and »outside,« allude not only to geographical differences between Jews and Muslims but to cultural, political and theological discrepancies as well.<sup>14</sup> Perhaps most strikingly, this distinction captures the contrasting ways in which Judaism and Islam respond to modernity. Whereas Muslim religiosity challenges Western processes of modernization from without, Jewish acculturation and assimilation are commonly depicted as responding to modernity from within.<sup>15</sup>

As we shall see, the differentiation between Jews as an internal minority and Muslims as an external one has a certain footing in German history. It is, perhaps, especially noticeable in the slaughter debate which emerged in the 1890s when Jews had already secured their formal right as citizens, and again in the 1980s when the belonging of Muslims, mostly of Turkish origins, to German society was challenged even on the formal level of citizenship. And yet, the history of animal slaughter in Germany cannot be reduced to this simple formula. Inclusion and exclusion are not stable markers and have a more complex syntax and internal dynamics. At times, the very fact that Jews integrated into German society gave rise to anxieties leading to their exclusion, and similarly, the fact that Muslims were conceived as »external others« created a strong political drive to integrate them into German society. In what follows, we shall see how the images of Jews and Muslims were employed at different times in contradictory ways to create a self-image of Ger-

13 For a very different take on why the relationship of German society to these two minorities cannot and should not be compared, see Bassam Tibi, *Deutsche Ausländerfeindlichkeit – ethnisch-religiöser Rechtsradikalismus der Ausländer. Zwei Gefahren für die Demokratie in: Gewerkschaftliche Monatshefte* 8 (1993), Forum: Deutschland nach Solingen, 493–502, online: [http://library.fes.de/gmh/main/jahresin/1993/jahres\\_9308.html](http://library.fes.de/gmh/main/jahresin/1993/jahres_9308.html).

14 See, for example, in this volume S. N. Eisenstadt, *Minorities, the Formation and Transformation of Nation-States, and Intercivilizational Relations – Jewish and Christian Minorities in Germany*, 23–31; and Aisha Ahmed, »Die Sichtbarkeit ist eine Falle« – Arabische Präsenzen, Völkerschauen und die Frage der gesellschaftlich Anderen in Deutschland (1896/1927), 81–102.

15 See, for example, in this volume Eisenstadt (fn. 14). For a more sophisticated argument, see Gil Anidjar, *Semites: Race, Religion, Literature*, Palo Alto, CA 2007, and later discussion in fn. 76 below.

man society as modern and progressive and to include within German society, as much as to exclude from it, Jews and Muslims, or certain Jewish and Muslim groups.

*Kosher and Halal Slaughter: Some Common Grounds*

The modern critique of traditional methods of slaughter was born in the nineteenth century with the growing sensitivity to the suffering of animals and the concurring industrialization of the production of meat across Europe. To a large extent the same sensitivities are still present in the current debate concerning Muslim slaughter. Animal welfare advocates, along with veterinarians and public health officials, have lobbied for the mandatory stunning of animals prior to their slaughter. A sharp blow to the head of an ox or a cow, or electrocution in the case of poultry and smaller animals, would guarantee the immediate loss of consciousness, sparing the animal the agony of death, and allowing the butcher to carve the animal more safely and swiftly.<sup>16</sup>

These new technologies of stunning were at odds with traditional Jewish *shehitah*, and later on with Muslims *dhabh*, which despite some notable differences, share basic elements in common and have been usually referred to in German as *Schächten*, or ritual slaughter.<sup>17</sup> First and foremost, both require that the animal be killed with a sharp cut to the throat that will sever the trachea and the esophagus along with the main blood vessels. If the animal is killed or dies before it is properly slaughtered, for instance through stunning, its meat is declared *nevelah* or *haram* and is prohibited for consumption. Furthermore, some scholars within both traditions oppose the electric stunning of animals, even if it does not bring about the death of the animal, because it may hinder the outflow of blood or cause internal lesions that would disqualify the animal.<sup>18</sup>

From its inception, in the late nineteenth century, the ritual slaughter debate was concerned with the question of modernization, and though the ritual, as we shall see, was defended by liberal-minded Germans, who upheld

16 Dorothee Brantz, *Stunning Bodies: Animal Slaughter, Judaism, and the Meaning of Humanity in Imperial Germany*, in: *Central European History* 35/2 (2002), 167-194.

17 The use of the term »ritual« to describe the religious obligations of Jews and Muslims should not be taken for granted, but nevertheless was commonly employed both by Jews and Muslims at the time. For a discussion of the different traditions, see Roni Ozari, *Rituellen Schlachten bei Juden (Shechita), Muslimen (Dhabh) und Sikhs (Jhatka)*, München 1984.

18 For general references, see Israel M. Levinger, *Shechita in the Light of the Year 2000: Critical Review of the Scientific Aspects of Methods of Slaughter and Shechita*, Jerusalem 1995; Muhammad Taqi Usmani, *The Islamic Laws of Animal Slaughter*, Santa Barbara, CA 2006, 69-85.

toleration and freedom of religion as a fundamental right of religious minorities, it was heavily criticized by many others.

One motivation underlying the slaughter reform stemmed from a humanitarian concern with the suffering of animals and was linked to a progressive political stand. In Germany, as in other European countries, anxieties developed regarding the possibility of falling behind other civilized nations (*Kulturstaaten*). But in Germany, the ambition to become a leader among the European nations was particularly pronounced after unification (1869-1871). Indeed, during the 1887 deliberation at the Reichstag, the head of the commission of petitions, Silvius Goldfus, compared the situation in Germany to that of other cultured nations such as Great Britain, Switzerland, and the U.S., and found Germany lagging behind.<sup>19</sup>

Jewish dietary laws became a central indicator of the ability of Jews to integrate into modern German society ever since Christian Wilhelm von Dohm's famous 1781 treatise, *Über die bürgerliche Verbesserung der Juden*.<sup>20</sup> Dohm's proposals were echoed a century later by the National Association of Animal Protection Societies, which called for a nationwide law that would make stunning mandatory. Being well aware of the religious obligation of Jews to slaughter without stunning, the National Association justified its demand arguing that »even religious views are not unchangeable, but must confirm to the progressing standards of humanity and education.«<sup>21</sup>

More recently, but in a similar way, German Muslims have been called to make their religion fit modern German norms and habits. The recent campaign for reelection by Roland Koch, the Premier of the German State of Hessen, is a good case in point. Koch stirred public controversy when he demanded that immigrants accept »the rules of the game« and claimed that if they had done so, »the Germans would have accepted the immigrants with open hands [...]. The integration of foreigners, however,« he continued, »will only work if there are clear rules for living together. Whoever breaks these rules of the game must reckon with the consequences.«<sup>22</sup> Using as one of his prime examples ritual slaughter, he criticized Muslims for slaughtering animals in their private homes. »In residential areas with a high number of immigrants there must be clear rules [...] it must be clear that the slaughtering [of animals] in the kitchen or unusual ideas about waste-disposal run counter to our principles.«<sup>23</sup>

19 Quoted in Brantz, *Stunning Bodies* (fn. 16), 184 f.

20 Christian Wilhelm von Dohm, *Concerning the Amelioration of the Civil Status of the Jews*, Readings in Modern Jewish History, Cincinnati, OH 1957.

21 Brantz, *Stunning Bodies* (fn. 16), 30.

22 *Spiegel online*, January 3, 2008, <<http://www.spiegel.de/politik/deutschland/0,1518,526512,00.html>>.

23 *Ibid.*, January 4, 2008, <<http://www.spiegel.de/international/germany/0,1518,526724,00.html>>.

Koch's reproach to Muslim practice was not limited to the cruelty imposed on the animal and evoked concerns with hygiene and environmental protection. Indeed, already in the nineteenth century, the objection to traditional slaughter was not solely motivated by a growing concern with suffering of animals. One should remain suspicious of the self-produced image of Germany as a liberal state and bear in mind that the »German modern« was a far more complex and multifaceted phenomenon than that which the notions of progress and enlightenment suggest. Along with hygienic anxieties and concerns with the pollution of the environment, one may detect in the opposition to Jewish and Muslim slaughter a concern with the »moral contamination« of German society by foreigners.<sup>24</sup>

Indeed, side-by-side with progressive and humane concerns, one finds a very different sentiment, which combined counter-modernistic and hyper-modernistic ideologies.<sup>25</sup> Since the mid-nineteenth century, and in the wake of the *Lebensreform* movement, a growing critique of industrialization developed in Germany calling for a return to nature.<sup>26</sup> The desire to return to nature was not merely a nostalgic mourning for days long past, but an attempt to reform urban life and refashion body and soul, along with the improvement of the natural environment. At the turn of the twentieth century, *shehitah* was condemned not only for being cruel but also for endangering public health because the gush of blood from the animal could be contaminated and because the meat, when drained of blood, would allegedly rot faster than the meat produced by the stunning method.<sup>27</sup> Similar allegations were leveled against *dhabb*.

While the amalgamation of multiple accusations was equally present in the case of both minorities, it is against the background of these apparent similarities that we may appreciate the striking differences in the way in which German law and public have treated Jewish and Muslim practices.

24 See Robin Judd, *The Politics of Beef: Animal Advocacy and the Kosher Butchering Debates in Germany*, in: *Jewish Social Studies* 10/1 (2003); Shai Lavi, *Animal Laws and the Politics of Life: Slaughterhouse Regulation in Germany, 1870-1917*, *Theoretical Inquiries in Law* 8/1 (2006), 229-258.

25 Judd, *Contested Rituals* (fn. 5).

26 Chad Ross, *Naked Germany: Health, Race and the Nation*, Oxford 2005; Bernd Wedemeyer-Kolwe, »Der neue Mensch«. Körperkultur im Kaiserreich und in der Weimarer Republik, Würzburg 2004.

27 In 1894 the Jewish-Russian veterinarian, Isaak Dembo, published in Germany a lengthy and well-documented scientific report which sought to refute these allegations. See J. A. (Isaak A.) Dembo, *The Jewish Method of Slaughter Compared with Other Methods from the Humanitarian, Hygienic, and Economic Points of View*, London 1894.

*The Judeo-Christian Bond and  
the Setting Apart of Jews and Muslims*

During the second half of the nineteenth century, kosher butchering came under attack in many European countries. Whereas in Switzerland opponents of the ritual gained an early victory and secured a lasting ban on ritual slaughter, Austria arrived at the opposite resolution when the courts recognized Jewish slaughter as a constitutional right. In Germany, however, in counter-distinction to both, neither parliament nor courts reached a clear conclusion, and the issue remained unresolved throughout the Wilhelminian period.<sup>28</sup>

Animal rights societies petitioned the Reichstag in 1887 and again in 1899 and 1910 but failed to ban the ritual. The first line of defense taken by proponents of kosher slaughter was that traditional slaughter was as humane as the new practices of stunning and in most cases inflicted less pain on the animal, since the massive loss of blood led to an immediate loss of consciousness. Jewish individuals and organizations submitted dozens of scientific opinions to the Reichstag in support of this claim and recruited some of the leading physiologists and veterinarians, including Rudolf Virchow, »the father of pathology,« who at the time was also a highly respected member of parliament. The Jews did not need to abandon their traditional practices, but they were expected to justify them in the language of modern science and humaneness.

The second line of defense was religious freedom, and it is in this context that the late-nineteenth-century debate took place at a convenient timing for the Jews. The divisive and bitter war that Bismarck initiated against the Catholic Church, and to which Virchow himself gave the name *Kulturkampf*, had come to an end with the understanding that freedom of religion must be respected in Germany. Therefore, there should be little surprise that in the early debates at the Reichstag the strongest support for the Jewish ritual came from the Catholic-based Central Party.<sup>29</sup> During the discussion in parliament, its leader, Dr. Windthorst, the main rival of Bismarck during the *Kulturkampf*, strongly advocated religious tolerance and, alluding to this recent episode in German history, added, »I am in general of the opinion that the State should not interfere in such customs [as the ritual slaughter] and that it should treat with great delicacy the conscience of its subjects. What it means, when this does not occur, we have experienced enough in old times as well as in new times.«<sup>30</sup>

28 Pascal Krauthammer, *Das Schächtverbot in der Schweiz 1854-2000. Die Schächtfrage zwischen Tierschutz, Politik und Fremdenfeindlichkeit* (= Zürcher Studien zur Rechtsgeschichte 42), Zürich 2000; Potz/Schinkele/Wieshaider (eds.), *Schächten* (fn. 6).

29 The relationship between the Catholics in general and the Central Party in particular was more ambivalent than that described here. See Uriel Tal, *Christians and Jews in Germany: Religion, Politics, and Ideology in the Second Reich, 1870-1914*, Ithaca, NY 1975.

30 Reichstag proceedings, vol. 106, May 18, 1887, 632, online: <<http://mdz1.bib-bvb.de/cocoon/reichstag/start.html>>.



The support of Jewish slaughter in the name of tolerance was an important, if quite foreseeable, contribution from the leader of the Catholic party. Perhaps less expected is Windthorst's additional argument:

»I have looked into the matter and I am convinced that the Orthodox Jews will take a great offence at this proposal and so they must do [...] because the proposal stands in conflict with the views, which they have had since youth, views which originate out of Mosaic times, which we too have experienced in the first days of Christianity; since we can indeed be confident, that the early Christians still observed the aforementioned command (*Gebot*).«<sup>31</sup>

What Virchow, the devout liberal, accomplished when he supported the Jewish butchering on scientific grounds, his archrivals from the Catholic party achieved by defending the practice on religious grounds. The Jewish ritual was defended not by an appeal to an abstract freedom of religion but on the basis of an affinity between Jews and Christians. Judaism was no longer viewed as the theological rival of Christianity but was rather imagined in a decisively modern way as sharing with Christianity a common tradition and common values, which should be respected by all Christians.<sup>32</sup>

Comparisons of Jews and Catholics, though present in other publications from the time, were not always taken for granted. A critical stance appeared in a Berliner magazine for the slaughterhouse professions. The author rejected the comparison of Jewish ritual to Catholic profession of faith, due to the inhumaneness of the former. The Jewish custom should rather be equated with that of Muslims, who were known for their cruelty to animals. »Supporters of the ritual,« the author concluded, »occupy the same cultural level as adherents of the Koran.«<sup>33</sup>

The status of the Jews as a religious minority in Germany during the second half of the nineteenth century, even after emancipation, remained highly contested. Judaism was as easily associated with religious reform and Protestantism as with traditionalism and Catholicism, and with Western progress as much as with Oriental backwardness.

31 Ibid.

32 On the history of the related concept »Judeo-Christian values« and its emergence in America during the Second World War to create solidarity between Jewish and Christian soldiers, see Deborah Dash Moore, Jewish GIs and the Creation of the Judeo-Christian Tradition, in: *Religion and American Culture* 8/1 (1998), 31-53. For a recent study of the emergence of this bond in the early modern period, see Amnon Raz-Krakotzkin, *The Censor, the Editor, and the Text: The Catholic Church and the Shaping of the Jewish Canon in the Sixteenth Century* (= Jewish Culture and Contexts Series), Philadelphia, PA 2007.

33 Mackel N. Grevenmacher, Referat, in: *Rundschau auf dem Gebiete der gesamten Fleischbeschau und Trichinenschau* 10/7 (1909), 104f.

In the early decades of the twentieth century, the Jewish ritual was tolerated in most places, and in 1917, during the war, when a general prohibition against the throat-cut was enacted across Germany in order to save the nutritious blood of the animal, the Jewish community enjoyed the protection of the Kaiser himself. The political climate in Germany was beginning to change in the early 1930s, even before the Nazis seized power, and the Jewish ritual was restricted in a growing number of states (Bavaria in 1930, Braunschweig in 1931, Oldenburg and Thüringen in 1932).<sup>34</sup> Eventually, in April 1933, Jewish slaughter was prohibited throughout Germany, but these developments, due to their exceptional political context, lie outside of the scope of this comparative study.<sup>35</sup>

Soon after the war ended, in 1946, some German states, which were still under military occupation, revised their laws to allow ritual slaughter (Bayern, Hamburg, Hessen, all in 1946).<sup>36</sup> In states where the law was not changed, Jewish slaughter was quietly tolerated. The practice was re-legitimized with a clear awareness of the National Socialist context in which it had been prohibited.<sup>37</sup> From that point on, it became clear that the religious freedom of Jews to practice ritual slaughter would no longer be restricted in Germany. But the 1933 slaughter law remained in the books and there was no historical irony in the fact that it would soon be used to ban Muslim ritual.

The path to prohibiting Muslim ritual slaughtering was laid some time before the actual prohibition took effect by a 1960 case, in which a Jewish butcher demanded monetary compensation for loss of employment under National Socialism. The court declared that the 1933 prohibition was indeed unconstitutional, but only because it was targeted against Jews, and that a similar prohibition that would be based on the prevention of cruelty to animals would not necessarily violate basic rights (referring to Switzerland, Norway and Sweden as cases in point).<sup>38</sup>

The controversy concerning Muslim slaughter began with the immigration of a large number of Turks to West Germany in the 1960s, or to be more precise, some years later in the 1970s and 80s when these so-called *Gastarbeiter* began to settle in with their families. At first, Muslims seemed to enjoy the same privileges that Jews had been granted in postwar West Ger-

34 A fair number of smaller localities, including Jena, Weimar and Passau, had already denied the exemption for Jews in 1929. For a detailed account, see Rupert Jentzsch, *Das rituelle Schlachten von Haustieren in Deutschland ab 1933. Recht und Rechtsprechung*, Dissertation, Tierärztliche Hochschule Hannover, 1998, 59 f.

35 Not much has been written on the prohibition on *shehitah* during Nazi times. See, however, Yfaat Weiss, *Ethnicity and Citizenship: German and Polish Jews between 1933-1940*, Jerusalem 2000 [Heb.].

36 For a striking story about ritual slaughter in occupied Germany immediately after the Second World War, see Alex Grobman, *Battling for Souls: The Vaad Hatzala Rescue Committee in Post-Holocaust Europe*, Jersey City, NJ 2004, 171-186.

37 Jentzsch, *Das rituelle Schlachten* (fn. 34), 87-97.

38 Bundesgerichtshof 1960 [AZ: IV ZR 305/59].

many. An early decision from Berlin's Administrative Court from 1979 went as far as recognizing the constitutional right of Muslims to conduct their own slaughter.<sup>39</sup> This case, and a few others that followed,<sup>40</sup> are revealing because they show that the antagonism toward the Muslim ritual did not begin immediately but evolved gradually.

The constitutional change of heart took place in the early 1980s. In 1982, a German meat-producing company applied to the local authorities of North Rhine-Westphalia for an exemption from stunning animals prior to slaughter. The law made the stunning of warm-blooded animals mandatory, as part of a general concern with the prevention of cruelty to animals. The company based its claim on freedom of religion, arguing that some of its clients were Muslim Turks, who were prohibited to eat the meat of animals that were pre-stunned. The company further argued that denying such a right would be in violation of equal treatment (*Gleichbehandlungsgebot*), since Jews in North Rhine-Westphalia had long been granted such an exemption.

In its decision from October 5, 1983, the Administrative Court at Gelsenkirchen denied the appeal. The court rejected the allegation of unequal treatment, basing its decision on the following grounds:

»The permission for Jews to slaughter represents an act of political, cultural and humanitarian compensation to the Jews who are still alive (*den noch lebenden Juden*). The Jewish religion has in Germany a greater historical tradition than the Muslims. Jews have integrated more or less into the German people (*Volk*) as Germans with essentially the same rights and duties. There exists no violation against the principle of equal treatment with respect to the Muslims.«<sup>41</sup>

With few exceptions, courts began to deny the constitutional right of Muslims to perform ritual slaughter.<sup>42</sup> The unequivocal language, which served the courts to dismiss such requests in the early 1980s, was later replaced by a more subtle line of argumentation, but the underlying principle remained the same. Courts have maintained the position that the Jewish and Muslim communities in Germany do not stand on equal grounds. Since the Second World War the Jews have been perceived by the West German courts as an integral

39 Verwaltungsgericht Berlin 1979 [AZ: VG 14 A 224/77].

40 Amtsgericht Balingen 1981 [AZ: 1 Owi 291/80] and Bayer. Verwaltungsgericht Würzburg 1981, both discussed in Jentzsch, *Das rituelle Schlachten* (fn. 34), 212-216.

41 Verwaltungsgericht Gelsenkirchen 1983 [AZ: 7 K 5459/82] quoted in Oberverwaltungsgericht Nordrhein-Westfalen 1986 [AZ: 20 A 3287/83].

42 An interesting exception comes from a decision of the Higher Regional Court of Hamm in 1992. A non-Muslim butcher allowed Muslims to slaughter a bull on his premises on Eid al-Adha (the Feast of Sacrifice), despite the fact that he knew they would do so without prior stunning of the animal. He was fined and appealed on the basis of freedom of religion. The appeal was accepted and the case was returned to the lower court, Oberlandesgericht Hamm 1992 [AZ: 1Ss Owi 652/91].

part of society, not only in the formal sense as citizens of the Federal Republic, but in a deeper historical, cultural and legal sense of belonging.<sup>43</sup> The Muslims, at least those who insist on maintaining the traditional practices of slaughter, are perceived in contradistinction as outsiders who do not share the German historical heritage and reject the prevailing cultural norms of German society. Such Muslims are dubbed extremists and their practices remain outside the orbit of legal protection and public tolerance.

Whether the courts were responding to growing public resentment toward the Muslim ritual should remain, in lack of clear evidence, an open question. What is clear, however, is that from the late 1970s the state administration in different German provinces was attempting to find a way to limit the Muslim ritual. Their success depended on a favorable court, but the political motivation was already present. It is important, however, to remember that the growing restrictions on ritual slaughter were not only aimed against the Muslims but may have also been a consequence of the rise of animal rights, as part of a broader concern with care for the environment, eventually leading to the legislation of a national animal protection act in 1986.<sup>44</sup>

### *Telling Muslims Apart: The Rise of German Islam*

The differentiation between Jews and Muslims on the basis of a shared Judeo-Christian bond, from which Muslims were excluded, was one way in which courts justified their position on halal slaughter. Following the enactment of the new animal protection law, courts developed a different line of argumentation, which led, however, to a similar outcome. The federal act required the stunning of warm-blooded animals prior to their slaughter but recognized several exceptions, including one on religious grounds for members of religious communities »whose mandatory rules [...] prohibit the consumption of meat from animals not slaughtered according to the traditional method.«<sup>45</sup> In a series of cases, which made their way from local administrative courts in the late 1980s to the Federal Administrative Court in 1995, courts gave a narrow interpretation to the religious exemption clause, denying Muslims the right to practice traditional slaughter.<sup>46</sup> The common ground for these decisions was a distinction between local and foreign Islam, namely

43 Of course, the experience of Jews in Germany after the war was much more ambivalent. See Ruth Gay, *Safe among the Germans: Liberated Jews after World War II*, New Haven, CT 2002.

44 Julius Ludwig Pfeiffer, *Das Tierschutzgesetz vom 24. Juli 1972. Die Geschichte des deutschen Tierschutzrechts von 1950 bis 1972*, Frankfurt a.M. 2004.

45 Animal Protection Act, Sect. 4a.2(2), translated in *The Constitutional Court's »Traditional Slaughter« Decision: The Muslims' Freedom of Faith and Germany's Freedom of Conscience*, in: *German Law Journal* 3/2 (2002), online: <<http://www.germanlawjournal.com>>.

46 See Jentzsch, *Das rituelle Schlachten* (fn. 34), 216-230.

between the Islamic law that is religiously obligatory in Germany and Islamic law practiced (whether obligatory or not) in Muslim countries. Only customs identified with the former would be granted constitutional protection, but ritual slaughter, which was identified with the latter, would not be sanctioned by the state.

The first move that the courts took in this direction was to argue that for Muslims as opposed to Jews, ritual slaughter was not binding. While the courts did not deny that Muslims were accustomed to practice the ritual in their countries of origin, they viewed such practices as *merely* a custom with no binding force. Courts could make this argument in good conscience both because the exact procedures of ritual slaughter are not explicated in the Koran and because the prohibition on the stunning of animals prior to their slaughter is disputed among Muslim scholars.<sup>47</sup>

Thus, for example, the Appellate Court of North Rhine-Westphalia argued in a 1993 case that, unlike Jews, observant Muslims may in fact use electric stunning prior to slaughter. The court based its decision on a variety of Muslim sources and experts, from both foreign and local authorities (including Cairo, Ankara, Jeddah and Hamburg). The court, however, refused to recognize the fact that this was a matter of internal controversy within Islam and rejected a statement to that effect by a professor of Muslim studies and Turkology at the University of Köln.<sup>48</sup>

It is perhaps important to recall that the obligatory nature of Jewish slaughter was similarly questioned in the nineteenth century. For example, in the 1893 discussion in the Reichstag, Viehlhaben, an anti-Semitic member of parliament, attempted to undermine the legitimacy of the Jewish practice, claiming that since the specific method employed did not appear in biblical sources it was not divinely ordained.<sup>49</sup> But this objection was not taken seriously, and the position of Orthodox Judaism was accepted by state officials as representative of authentic Judaism, despite the fact that most Jews in Germany at the time did not adhere to Orthodox law. The unwillingness of legal authorities to similarly view the Muslim ritual as obligatory was perhaps discriminatory but not arbitrary, and had its own logic. Whereas state authorities in the nineteenth century identified the strictest interpretation of Jewish law promulgated by the Jewish Orthodox minority as unquestionably traditional, a similar position taken by Muslims a century later was interpreted as culturally foreign and legally and politically suspect, leading to its rejection as binding on Muslims.

This point became more explicit in a further line of reasoning advanced by the courts. In some cases, the courts did not deny the prohibition on stunning

47 Cases which ruled along these lines include Verwaltungsgericht Koblenz 1993 [AZ: 2 K 1874/92.K.G], Oberverwaltungsgericht Nordrhein-Westfalen 1993 [AZ: 20 A 3287/92].

48 Ibid. See also Jentzsch, *Das rituelle Schlachten* (fn. 34), 227-230.

49 Brantz, *Stunning Bodies* (fn. 16), 346. While Viehlhaben's inference is questionable, it is true that the details of Jewish slaughter do not appear in the Bible.

for Muslims in general, but made a more limited claim that the practice was not binding for Muslims living in Germany, precisely because they lived in a non-Muslim state.<sup>50</sup> Here too the court grounded its decision on the basis of highly respected Muslim authorities and on the local practices of some German communities, and decided to downplay the fact that certain Muslims living in Germany rejected this position and wished to fulfill the entire scope of their religious duties in what they were gradually beginning to see as their home.<sup>51</sup>

A third line of reasoning, which was eventually endorsed by the Federal Administrative Court, was that the religious freedom of Muslims to avoid pre-stunning depended not on individual freedom of religion but on the legal recognition of the Muslim community as an »objective community«, for example, as a *Körperschaft des öffentlichen Rechts* (corporate body under public law).<sup>52</sup> Only when the Muslim community is recognized by the state will it be able to claim that traditional slaughter is obligatory for its members. In the short run, the decision implied that Muslims were prohibited from performing their ritual, since Muslims in contrast to a variety of Christian and Jewish groups have not been publicly recognized. Muslims have been denied public recognition for numerous reasons, including the Muslim's late arrival in the country, prejudices still prevailing in the larger society against Islam, and internal diversity and strife within the Muslim community. In the long run, the decision left the possibility open for Muslims to form a roof organization, which would be recognized by the state. While initial steps have been taken to create such an organization, and the Federal government has expressed a strong interest in being involved in its formation, the resolution of the ritual slaughter debate developed in quite a different direction.

### *The Subtle Distinctions of Law in Action*

A shift in the legal regulation of ritual slaughter took place in a path-breaking decision by the Federal Constitutional Court in 2002, which reversed the previous ruling by the Federal Administrative Court and recognized the constitutional right of individual Muslims to practice ritual slaughter, independent of public recognition of Muslim institutions. The court recounted the history of ritual slaughter in Germany and created an implicit analogy between the Jewish past and the Muslim present. In its attempt to emphasize the racist context of the prohibitions against Jewish slaughter, the court cited

<sup>50</sup> See, for example, Verwaltungsgericht Gelsenkirchen 1992b [AZ: 7 K 5738/91].

<sup>51</sup> Based on interviews conducted with representatives of a Muslim community in north Germany, June 4-6, 2008. The transcripts are in the possession of the author.

<sup>52</sup> Bundesverwaltungsgericht 1995a [AZ: BVerwG 3 C 31.93].

only the Nazi prohibition, thus downplaying similar restrictions imposed on the Jews already during the *Kaiserreich*.<sup>53</sup>

Religious freedom to slaughter no longer required public recognition of institutional affiliation and could be granted on the basis of individual belief. This transformation could have changed the status quo, leading to the equal treatment of Jews and Muslims. But the favorable decision by the Constitutional Court created a backlash. Several months after the court's decision a constitutional amendment was passed and animal protection was added as a *Staatsziel* (national goal) elevating their protection to the constitutional level.<sup>54</sup> It is clear that this move was directed against the Muslim ritual, because of its timing. Similar attempts by the animal welfare lobby to include animals in the constitution had been blocked by the conservative CDU party, which after the Constitutional Court's decision was ready to change its vote.<sup>55</sup>

For a while, it seemed as if freedom of religion would nevertheless prevail. The Federal Administrative Court (following several previous decisions by local administrative courts) ruled in 2006 that despite the constitutional amendment, freedom of religion would take priority over animal welfare, and Muslims would be allowed to practice ritual slaughter at least as long as the legislator did not revise the statutory regulations to explicitly restrict freedom of religion.<sup>56</sup> But this became a Pyrrhic victory for the Muslims, as the triumph in court turned out to be more symbolic than real. In what has been described by advocates of the Muslim cause as a further backlash, the local administrations used whatever legal means they had at their disposal to effectively deny the Muslim community the right to slaughter.<sup>57</sup>

The District Administration in Hamburg, to give one example, interpreted the court rulings in a way that made halal slaughter all but impossible. The administration compiled a list of dozens of conditions that had to be met before ritual slaughter would be authorized, requiring, for example, Muslim butchers to prove that only observant Muslims would consume the ritually slaughtered meat.<sup>58</sup> The administration further insisted that butchers provide documentation of individual consumers and the quantity of meat consumed, and was unwilling to accept statistical data or simple averages as indicators. The hardship of fulfilling this and other conditions led to a de facto ban on

53 Bundesverfassungsgericht 1 BvR 1783/99, January 15, 2002, paragraph 1.

54 The revised article read »The state protects, in the interest of future generations, the natural basis of life *and the animals* within the framework of constitutional laws and through the making of laws, and in accordance with ordinances and through judicial decision.« Art. 20a Grundgesetz (emphasis added).

55 For the politics underlying the change, see Kate M. Natrass, »... Und die Tiere«: Constitutional Protection for Germany's Animals, in: *Animal Law* 10 (2004), 283-312.

56 Bundesverwaltungsgericht, November 23, 2006, 3 C 30.05.

57 Interviews with Muslim representatives (fn. 51).

58 Ibid.

ritual slaughter. In the final analysis, the victory in court made matters more difficult for the Muslims, who prior to the Constitutional Court's decision had been able to negotiate matters with the administration on more amicable terms. The hard line taken by state officials has led advocates of Muslim ritual slaughter to abandon the legal strategy, at least for the time being.<sup>59</sup>

And yet, the discrepancy between law in the books and law in action has not always worked to the disadvantage of Muslims. It has often been the case that local authorities and even veterinarians have turned a blind eye, effectively allowing butchers to apply the traditional neck-cut without prior stunning. In some cases, authorities have not only been reluctant to enforce the law, but have even provided containers for the disposal of carcasses.<sup>60</sup> The figures combining legal and illegal slaughter speak of 500,000 sheep that are slaughtered annually in this way.<sup>61</sup>

Here too a comparison with Jewish history of the nineteenth century may be revealing. For the Jews, as for the Muslims, a tension existed between a generally liberal position on the national level and the day-to-day practice on the municipal level. At the turn of the twentieth century, local municipalities were – just as they are today – the prime regulators of animal slaughter as part of their jurisdiction over matters of public morality and public health.<sup>62</sup> When local authorities made stunning mandatory, they occasionally offered an official exemption to the Jewish community.<sup>63</sup> At other times, however, opponents of ritual slaughter were more successful, such as in Saxony, where kosher slaughter was banned from 1882 to 1910. More commonly, however, the traditional practice was not banned but rather restricted in a variety of ways. Local municipalities imposed higher taxes on ritual slaughter and restricted the hours allotted for Jewish slaughter in the local slaughterhouses.<sup>64</sup>

In the final analysis, however, the Jewish ritual at the turn of the twentieth century was somewhat less restricted than its Muslim counterpart at the turn of the twenty-first century. But perhaps what is more interesting is not the scope of the restrictions themselves but rather their justifications and the different images of Jews and Muslims they invoked. On the local level, the opposition to the Jewish slaughter was driven by economic interests at least as much as by a concern with cruelty to animals. In the economic field, no less than in the religious sphere, the Jewish-Christian rivalry had deep historical roots. For centuries, prior to emancipation, Jews, who were prohib-

59 No further requests seem to have been filed, *ibid.*

60 Interview with a private veterinarian in north Germany, June 6, 2008.

61 <http://www.dw-world.de/dw/article/0,,3474409,00.html?maca=en-rss-en-all-1573-rdf>.

62 For a general history of police power, with an emphasis on its German origins, see Markus Dirk Dubber, *The Police Power: Patriarchy and the Foundations of American Government*, New York 2005.

63 Jentzsch, *Das rituelle Schlachten* (fn. 34), 197f.

64 *Ibid.*, 52–62.



ited from entering many professions, were allowed to slaughter and sell meat to non-Jews.<sup>65</sup>

Even after Jews were granted freedom of trade in the second half of the nineteenth century, they continued their old vocations and became even stronger competitors. Thus, for example, a slaughterhouse publication complained about the situation in Cologne where non-Jewish butchers were suffering from increased taxation, while taxes on Jewish slaughter had not been increased. The article claimed that Jewish butchers slaughtered significantly greater quantities than what the Jewish community required for its own consumption and sold the meat to non-Jews.<sup>66</sup> Indeed, the Christian butchers, who were no longer protected by the guilds, sought new ways to restrict Jewish competition, and used the slaughter debate as a pretext either to ban Jewish slaughter or heavily tax it. It was precisely because the Jews had been part of German society for centuries that they were perceived as a threat, and at least in small towns and villages the old rivalry was pursued under modern conditions.

With Muslims the local restrictions on ritual slaughter had a different purpose. Muslims were viewed more as an external cultural threat than as an internal economic rivalry. Whereas in the Jewish case economic considerations were often disguised in the language of animal protection, in the Muslim case, although the discussion was often framed in the language of economic concerns and freedom of occupation, the real concern was with cultural difference. Muslim ritual slaughter was perceived as a new political threat coming from outside, whereas Jewish slaughter was viewed as an old economic threat coming from the inside.<sup>67</sup>

### *Violent Distinctions of Jews and Muslims*

The most common accusations leveled against Jewish and Muslim slaughter concerned, as we have seen, its inherently cruel and unhygienic character. While the accusations were usually limited to the ritual itself, a more radical strand of allegations used the traditional slaughter to create and disseminate broader images of Jewish and Muslim violence. Anti-Semitic and Islamophobic publications associated the practice of slaughter with existing stereotypes of Jewish and Muslim violence, implying that adherents to a religion

65 On the general history of the sale of kosher meat by Jewish butchers, see Jeremiah Joseph Berman, *Shehitah; a Study in the Cultural and Social Life of the Jewish People*, New York 1941. On the history of Jewish and Christian butchers in Frankfurt, see Franz Lerner, *Geschichte des Frankfurter Metzger-Handwerks*, Frankfurt a. M. 1959.

66 Editorial, in: *Rundschau auf dem Gebiete der gesamten Fleischbeschau und Trichinenschau* 7/3 (1906), 45.

67 This is not to suggest that Jews were not also perceived as a political rival. I will return to this point in the next section.

that commands the cruel slaughter of animals are prone to even more extreme and deliberate brutality.

A relatively mild instance of such allegations appeared in a 1896 article titled »Meat for the Goyim,« in the anti-Semitic newspaper *Generalanzeiger*.<sup>68</sup> The article related two instances in which Jewish butchers defiled meat sold to Christians, one by spitting on the meat, the other by infecting it with lice. The article, which built on familiar accusations concerning the unhygienic character of Jewish slaughter, took the charges one step further by claiming that the Jews purposefully sought to harm their patrons. The article introduced into the modern anti-Semitic discourse anti-Jewish libels that had been common in the Middle Ages and could still be found in the Hebraistic literature of the early modern period. Though anti-Semitic defamation is characteristically distinguished from traditional Jewish hatred by its pseudo-scientific basis, anti-Semites did not hesitate to turn to old libels when they wished to attack Judaism as a religion.<sup>69</sup>

The venomous article would have soon been forgotten were it not for a law suit initiated against its author and the journal editor by the Jewish Centralverein as part of the latter's new strategy against anti-Semitism. They were charged with creating a public nuisance (*groben Unfug*) by their unfounded and indiscriminate condemnation of the Jewish community as a whole. To the great disappointment of the Centralverein, the courts acquitted both defendants, claiming first that since the publications were targeted at an anti-Semitic audience they did not affect the public at large, and second, even more damagingly, that it was not unreasonable to suggest that Jewish law encouraged the defilement of meat.<sup>70</sup>

More extreme was the link that anti-Semites created between Jewish ritual slaughter and the blood libel. Here too we face the reemergence of a medieval European slander in fin-de-siècle Germany. The blood libels, which accused Jews of killing Christian children and using their blood for ritual, were commonly directed at the Jewish slaughterer, who according to the allegation had both the thirst for blood as well as the technical knowledge of cutting meat.

68 The content as well as the episode were reported in Editorial, *Fleischbesudelungs-Prozesse*, in: *Im Deutschen Reich* 2/10 (1896), 465-495.

69 These accusations were based on another legal case. On May 10, 1894, two Jewish butchers, the Bonn brothers from Burgwaldniel in the Lower Rhine, were accused of defiling the meat they sold to Christians by urinating on it, and one of them was found guilty. The efforts of the Jewish lawyer to prove that the allegations were pure figments of the local villagers' imagination provoked by preceding lectures against Jewish butchers remained unheard. *Ibid.*

70 The court based its decision on a highly questionable reading of a passage from the *Shulhan Arukh* concerning the inspection of slaughtered meat, which does not distinguish between Jewish and non-Jewish consumers. The provision directs the Jewish butcher to examine the lungs of the slaughtered animal by using saliva, and has nothing to do with the intentional defilement of meat, and in any event would be equally applicable to meat consumed by Jews and Muslims.

Indeed the Jews who were accused in two of the most renowned cases of blood libel, in Xanten in 1891 and in Konitz in 1900, were slaughters.<sup>71</sup>

The violence attributed to individual Jews stigmatized the community as a whole by vilifying its traditional customs. It is characteristic of the stereotypical image of the Jews that the danger they bring about takes place behind closed doors. The depiction of Jewish violence as sinister and uncanny played a special role in the late nineteenth century, when many Jews no longer appeared outwardly different from Christians and, like the violence associated with them, were hard to detect. The Jew posed a threat from within, which could easily be disguised and precisely for that reason was so dangerous.

The images of violence associated with the Muslim ritual have been quite different. While Jewish violence was depicted as a hidden betrayal, the violence currently associated with Islam is characterized as an open war. Muslim ritual slaughter has been commonly linked with the threat of political violence and terror. Implicit associations can be found even in the mainstream *Der Spiegel*, which in a special edition entitled *Allah and the Occident: Islam and the Germans* reported: »In the autumn of 2004 Mohamed Bouyeri, the son of Moroccan immigrants who was born in Amsterdam and attended school there, slit [filmmaker Theo] van Gogh's throat as if he were slaughtering an animal on an Amsterdam street.« A few lines later, the journal added:

»In a number of cases dealing with halal butchering, German courts were forced to grant exceptions to Muslim butchers similar to those applied to butchers who adhere to Jewish kosher butchering rituals. In 2002, the Federal Constitutional Court issued a landmark decision allowing butchering according to Muslim ritual, after Rüstem Altinküpe, a butcher in the eastern city of Wetzlar, had filed a lawsuit.«<sup>72</sup>

The *Bild* published a characteristically more polemical report about a series of court decisions favoring Muslims, including the infamous case of a family judge who refused to grant the request of a 26-year-old German woman of Moroccan origin seeking to divorce her violent Moroccan husband after he had beaten her and allegedly claimed to kill her. The *Bild* accompanied the report of this decision with a picture depicting the ritual slaughter of animals, leaving its readers to draw their own conclusions.<sup>73</sup>

71 On the blood libel in Xanten, see Marjorie Lamberti, *Jewish Activism in Imperial Germany: The Struggle for Civil Equality*, New Haven, CT 1978, 7f. On the Konitz affair and many others, see Helmut W. Smith, *The Butcher's Tale: Murder and Anti-Semitism in a German Town*, New York 2002.

72 *Spiegel online*, March 29, 2007, <<http://www.spiegel.de/international/germany/0,1518,474629-3,00.html>>.

73 *Bild online*, March 22, 2007, <<http://www.bild.de/BTO/news/2007/03/23/koran-urteil-empoeerung/islam-justiz-einknicken.html>>. Koch's attack on the daily habits of immigrants was also triggered by violence against elderly people in Hesse by those to whom the media continuously referred as »young foreigners.«

In the case of the Muslims too, the association of animal slaughter and political violence has gone beyond public stereotypes and media representations. As mentioned above, local municipalities have required Muslims butchers to submit detailed lists of clientele as part of their wish to minimize ritual slaughter. Some Muslim butchers have found it difficult to find clients who would be willing to submit their names to the authorities. Representatives of Muslim organizations have claimed that community members fear that their names will be passed on to public officials, who would use them for surveillance purposes in the so-called war against terror. This has been especially true for members of the Milli Görüş, a religious group that has been placed under the surveillance of the German secret services (the Verfassungsschutz) due to its »undemocratic« agenda, and whose members are often more strict in their observance of Islamic law in general, and dietary laws in particular.<sup>74</sup> If the anxieties of members of these Islamist groups have any truth in them, then the consumption of traditionally slaughtered meat has become an indicator for criminal risk.<sup>75</sup>

Muslim violence, unlike that of Jews, is associated with the public spectacle of political violence. Muslims are not perceived as more violent than Jews, but only as exhibiting different forms of violence. The violence associated with Jews operates in the shadows, whereas the violence associated with Muslims seeks to appear in daylight as a clear threat.

*Beyond Inclusion and Exclusion:  
Peoples, Religious Communities and Ethnic Groups*

Comparing the treatment of Jewish and Muslim ritual slaughter under German law reveals a much richer dynamics than the common depiction of Jews and Muslims as internal and external others would suggest. In the observed periods, Jews and Muslims have occupied different positions in relation to the German-Christian majority. At times, German courts have contrasted Muslim and Jewish rituals, rejecting the former as foreign, while recognizing the latter as belonging to the dominant culture (*Leitkultur*). But in other contexts and on different occasions the reverse has been equally true. German society has strived to welcome Muslims precisely because they were understood as foreigners, whereas Jews were persecuted because they were feared as an internal threat.

In the final analysis, however, inclusion and exclusion may be unsatisfactory categories for capturing the complex historical reality, not only because they have been applied to Jews and Muslims in a variety of contradictory

74 For more on the Milli Görüş, see Werner Schiffauer, *Enemies within the Gates: The Debate about the Citizenship of Muslims in Germany*, in: Tariq Modood/Anna Triandafyllidou/Ricard Zapata-Barrero (eds.), *Multiculturalism, Muslims and Citizenship*, London 2006.

75 Interviews with Muslim representatives (fn. 51).

ways, but also because these binarisms of »identity politics,« whether constructed or deconstructed, fail to capture the nuanced history of the formation of »identity« itself.

The above discussion of the status of Jews and Muslims has taken for granted their existence as religious minorities and mostly focused on the way these minorities have been treated under German law. The very understanding of Jews and Muslims as religious minorities has not been explicitly questioned. And yet, historically, as is well known but seldom fully accounted for, neither German Jews nor Muslims were »religious minorities« in the strict sense of the term. Prior to the rise of the modern centralist state and the political emancipation of the Jews, Jews were a people whose legal autonomy and community life could not be limited to the confinements of a religious confession. It was only in the course of the nineteenth century that Jews became a religion, a fact that was openly acknowledged by liberal Jews, who identified themselves as German citizens of the Mosaic faith, as much as by Orthodox Jews, who broke off from the larger Jewish community and sought political recognition as an independent community of faith. Some of the historical developments that we have come across, especially the emergence of the Jewish-Christian bond, can only be understood in light of the transformation of both Judaism and Christianity into »religions« in the modern sense of the word.

Similar observations, albeit in a very different historical and political context, can be made with respect to Muslims in Germany. The Turks who arrived in West Germany in the 1960s were not viewed as a religious community, nor did they identify themselves as such, but were rather an ethnic group. It was only in the 1980s, and in a more pronounced way in the 1990s, that Turks in Germany gradually became known to themselves and others as »Muslims.« Here, too, the anxieties created around Muslim slaughter and the importance attributed to court decisions on these matters can only be fully appreciated in light of this transformation.

This line of inquiry, which has been hinted at throughout this article and explicated only by way of conclusion, should be the point of departure for further research of the topic. Similar questions have already been raised by scholars interested in the encounter of Jews and Muslims with modern Europe,<sup>76</sup> and a more detailed account of the history of animal slaughter that would trace its origins back to the eighteenth century and forward into the twenty-first may offer further insight into these broader issues.

76 Thus, for example, Gil Anidjar has claimed in his important contribution to the understanding of the triangular relationship between Jews, Muslims and Christian Europe that »The Jew is the theological (and internal) enemy, whereas the Muslim is the political (and external) enemy.« Anidjar's claim is, in fact, more radical. For him the distinction between Jew and Muslim is correlational to the distinction between the political and theological. See Gil Anidjar, *The Jew, the Arab: A History of the Enemy*, Cultural Memory in the Present, Palo Alto, CA 2003, 38.