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BETWEEN RITUAL SLAUGHTER AND A SACRED COW

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This article deals with relations between the established law and ethical values resulting from tradition in a culturally changing reality. In a world where more and more people are living in multicultural environments, the key element of social consensus is the relationship between values that are important for particular ethnic and religious groups and the law established in public society. Culture is a factor shaping the legal system as well as controlling behaviors assessed normatively and often diversely in different religious or ethnic groups. This text presents some theoretical approaches to the concept of law and the culture that builds it. The author indicates which of them are the closest to reaching a social consensus. The analyzed issue in this article is illustrated through the problem of differing approaches to animals and their slaughter and through the statements of both rabbi and imam religious leaders of communities engaged in ritual slaughter, living in Poland.

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Artykuł dotyczy relacji zachodzących między ustanawianym prawem a wartościami etycznymi wynikającymi z tradycji w zmieniającej się kulturowo rzeczywistości. W świecie, w którym coraz więcej ludzi żyje w środowiskach multikulturowych, kluczowym elementem społecznego konsensusu jest relacja między wartościami istotnymi dla poszczególnych grup etnicznych i religijnych a prawem ustanawianym w społeczeństwem obywatelskim. Kultura jest tutaj czynnikiem zarówno kształtującym system prawny, jak i kontrolującym zachowania oceniane normatywnie, często odmiennie w różnych grupach religijnych czy etnicznych. W tekście prezentowane są różne podejścia teoretyczne do koncepcji prawa i budującej go kultury. Autorka wskazuje, które z nich najbardziej zbliżają do osiągnięcia konsensusu społecznego. Ilustracją analizowanego zagadnienia w niniejszym artykule jest problem podejścia do zwierząt i ich uboju oraz wypowiedzi liderów społeczności religijnych stosujących ubój rytualny – rabina i imama, mieszkających w Polsce.

K e y w o r d s: animal well-being, ritual slaughter, legal system, normative values, normative consensus / conflict, culture.

In the present day, clashes and conflicts between varying legal norms reflecting distinct systems of values are of increasing significance and frequency. Examples of these are the cultural norms governing pro-animal welfare organizations which demand the prohibition of the ritual slaughter of animals, and the rules of certain religious

minorities insistent on their right to such slaughter who base their argument along the lines of religious freedom. Another example is groups demanding that freedom of speech be accepted as the highest guiding principle in a democratic society, while some minorities perceive this as a threat to their most fundamental values.

These types of conflicts will occur with increasing frequency in multicultural societies, in which each group argues that the specific aspects of their individual identities should be widely respected and accepted. However, these same aspects can be perceived – with regards to other cultural or minority groups – as a threat.

When there is no possibility of achieving an understanding concerning the precedence of specific norms and values, it seems that the law is becoming the arena for negotiation, allowing for the determination of certain rules acceptable to all parties. In order for the postulated dialogue concerning cultural laws which does not simultaneously recognize any "meta-language" concerning norms and values to come into being and make sense, an appropriate way of perceiving both law and culture must be found. Such a perception assumes, amongst other, that a local law or a set of legal standards is a part of culture and that it shapes culture to a significant degree.

Among a number of competing theories (functioning in the realm of Western thought) which would explain the formation of a legal system are the natural theories of law, based on the claim that human laws work until they do not come into conflict with superior laws of the divine variety. The role of the legislator is only to use them (Sarkowicz and Stelmach 1996, 18). The next theory is clearly linked to the concept of instrumental rationality, which began to function in the 19th century. It also assumed that the order presented in the world which surrounds us is brought to light through law, but the order is that of nature. In this approach, rationality is a value in and of itself, while the legislator "usually by himself/ herself, without the participation of society, implements the particular stages of the legislative process and 'authoritatively' steers society" (Sarkowicz and Stelmach 1996, 120, my translation). In the contemporarily dominant concepts of the theory of law, instrumental perception of rationality is being ousted by, among others, the idea of argumentative or consensual rationality. The former – based on the conviction that the most important task within social life is achieving social acceptance for particular laws and rules – signifies that a rational legislator is not necessarily one who presents the truth of the knowledge on which a normative agreement is based, or one who proves its effectiveness in achieving the objective, but rather one whose argumentation effectively shapes the attitudes of the norms' addressees. Consensual rationality, on the other hand, is based on the Habermasian communicative vision of society. In accordance with this concept, the most significant human actions are those which are aimed at achieving social consensus. The necessary condition for this to be achieved is action based on intersubjective acceptance of social norms (Sarkowicz and Stelmach 1996, 120; also see: Krysińska-Kałużna 1999). It is precisely this last concept, based on consensual rationality which provides hope

of an understanding being reached in regard to laws resulting from cultural differences and in situations in which the laws are mutually exclusive.

As already mentioned, in order for dialogue to occur, not only must the law but also the culture be perceived in the appropriate way. Certain aspects of this very complex and ambiguously definable phenomenon must be emphasized. These can be accepted as analytical assumptions which enable culture to be perceived as a type of process which is linked to constant change, but also – in its manifestations – culture is sometimes threatened with annihilation.

As Fredrik Barth points out, in order to understand "how the complex category of culture is in fact used as an analytical concept", one should search for "a prototype or central member within the category" (Barth 2002, 26), and thus find a pattern according to which culture (for example: "culture is custom")[1]. Care should also be taken to not commit the mistake of reducing "culture" to some of its aspects or features (Barth 2002, 27). "It is extremely common for people to take one well-understood or easy-to-perceive aspect of something and use it to stand for the thing as a whole or for some other aspect or part of it" (Lakoff 1989, 77). Cultures could be assumed to possess certain features or elements which are common to all of them and of which radical change could cause their decline. These could be such elements as: language, the system of beliefs/myths or the social system. However, this type of thinking would draw people into the trap of essentialism[2]. This can be avoided through using Ludwig Wittgenstein's concept of "family resemblance" (Wittgenstein 2000, 51). In accordance with this theory, there does not have to be a single common defining quality for all of the categories designated by one term, but a "network of similarities overlapping and criss-crossing" (quoted after: Glock 2001, 251). This means that for the designation of the meaning of a name, the condition that "the designates of this term have a set of common essential features" (Woleński 1983, 15, my translation) is not necessary. In this same way, for designating the meaning of "the core of culture" which is the part that decides its essence, it is not indispensable for it to always consist of the same elements. The concept of "family resemblance" can be applied here – features such as language, religion, the social system, mythology, customs and rites may belong to what can be called "the core of a given culture", but not all of these features must necessarily be included into it (also see: Wittgenstein 2000, 50–51; Fox 1987). In other words, one cannot assume that in

[1] As an example of the analysis of changes taking place in culture on the basis of research of the decline of select elements (or their duration) in technical and practically useable fields or in the sphere of values, see (respectively): Smith 1955 and Van der Kroef 1959.

[2] This is a view which claims that "all cases which fall under a given term must have something in common, something which explains why they are subject to this term, and that the only suitable or correct explanation of the word is an analytical definition, which establishes the necessary and sufficient conditions of its usage; as a result, explanations which refer to examples are not enough" (Glock 2001, 250, my translation).

order to introduce radical cultural change or the decline of a culture or its annihilation, it is always necessary to modify the same set of cultural elements[3]. In other words, if it is assumed that each culture has its own "set" of elements which are part of its "core", then it can also be assumed that not all of these cultural elements are equally important for its survival. If this situation is looked at from the perspective of the legislator who uses consensual rationality, it could be hoped that this possibility of acknowledging that some elements of culture are less important than others would create an opportunity for reaching an understanding in the case of cultural laws which are mutually exclusive. The conflict between certain cultural customs and human rights, seen as a significant element of another culture, may serve as an example of such a situation.

This suggests the increasing relevance of the role of legal anthropology, which analyses individual cases of enforcing the law, especially with regards to traditional laws, and studies conflicts between distinct cultural legal systems, as well as participating in the debate regarding the possibility of the coexistence of various legal norms, based on distinct culturally-determined legal traditions, within the same society.

The anthropological debate between the relativism and universalism of human rights has helped form a third approach – a pluralistic one. On a certain level, this is also a relativistic approach which does not accept that the 'Western' universalist concept of human rights. This approach focuses solely on individual rights and claims that they are supra-cultural and the only 'correct' concept. However, this approach is not a research concept – as in the case of cultural relativism in the field of anthropology – but a concept regarding the formation of a specific legal system, such as human rights. It is therefore a "lawmakers' approach", utilizing – in my opinion – methods and means suggested by consensual rationality, the starting point of which remains the 'Western' concept of human rights.

In accordance with the pluralistic approach, the sources of human rights which were formulated in the past – and continue to be formulated now – should be searched for in different cultures and traditions, including the socialist tradition. This approach supports assumptions concerning the interdependency of economic, social and cultural laws as well as civil and political laws, attempting to merge the traditions of the 'East' with the 'West'. A similar interdependency exists between the rights of individuals and collective rights, such as the rights of cultural groups. Many group demands may be in conflict with the rights of individuals guaranteed by the Universal Declaration of Human Rights. The decision concerning which of these rights has precedence should be – in accordance with a pluralistic approach – considered case by case. Through such

3 This issue is discussed by, for example, Iwona Stoińska-Kairska: "It is obvious that one of the elements of the culture or every group is its language (...). It should be mentioned that there are cases in which the culture of a given group ceased to function while its language still exists, and vice versa, though much less frequent, in which the element which ceased to function was the language, while the culture managed to survive" (Stoińska-Kairska 2002, 31, my translation).

means, it has been, for example, stated – on the basis of ethnohistoric research – that female genital mutilation in African societies and the unequal access to land or food are not significant for the survival of a cultural community (Messer 1997; Krysinska-Kałużna 1999). In a text, considered by some researchers to be the manifesto of the new approach taken by anthropologists towards human rights issues and seen as being historically significant (Goodale 2006, 488), Ellen Messer writes:

> "Indianist researchers examining the sources and consequences of women's lower food intakes relative to males, recommend the following analytic approach when cultural ideologies about women produce abuses of basic rights as seen from a Western perspective. The first step is to identify the actual behaviors by which women get less of available resources and to evaluate the material consequences (undernutrition, ill health, excess deaths, and skewed survivorship) that results of such conditions of discrimination. The next step is to examine the ideas behind such behaviors – whether expressed in terms of unequal or lower relative value of women or in terms of the resources somehow being 'bad' for women or that they can tolerate and thrive on less. These steps allow measurement in both local cultural and scientific terms of whether a basic right is being fulfilled and of the possible multiple layers of causation. The same analytic approach can be used to describe deprivation of other groups such as refugees or very young children" (Messer 1993, 233).

She makes similar claims concerning the custom of female genital modification (FGM) among the Kikuyu people and her claims are supported by ethnohistoric research. Susan Pedersen, in a text about the relations between British colonial politics and the approach of the colonial authorities towards sexuality, shows that it was the actions of the colonial authorities aimed at subordinating the Kikuyu which strengthened the position of the FGM custom in terms of being an expression of identification with tribal culture and opposition to the colonial authorities.

> "But if the missionaries were quite wrong in their contention that, prior to 1929, clitoridectomy was an atavistic custom in terminal decline, several careful historical studies have substantiated their claim that the proto-nationalists of the Kikuyu Central Association (KCA) found the missionaries' censure of the practice a useful catalyst for organization and resistance. The intervention of the KCA catapulted the controversy into the category of a full-scale political revolt and endowed the practice itself with new meaning" (Pedersen 1991, 651).

Such a pragmatic approach which investigates whether a given feature is significant for cultural identity or whether it lies in the interests of some faction of a given community, elicits the criticism of anti-relativists and opponents of collective rights. The latter believe that cultural identity should be protected through the strengthening of civil and political laws, and not through the difficult to define "rights to cultural identity". The fear that the "multiplication of human rights" (for the needs of this article defined as rights which are part of a particular culture) may lead to the weakening of these rights seems justified, as many groups may declare themselves to be "peoples" which in turn may lead to them putting forward their demands. There are also obvious

doubts arising from questions who is to decide which customs are important for the survival of a given culture and how this decision is to be reached. Collective rights may be widely accepted, but they also "remain open to wide interpretation of measures of fulfillment and who qualifies as a 'person' eligible for protection" (Messer 1997, 305).

This last issue, is connected to who is 'entitled' to protection in particular cultures and is one of the most significant problems which needs to be solved in terms of the pluralistic approach (Messer 1993; Messer 1997). The role of an anthropologist who studies, compares and analyzes specific cultural concepts should be the enabling of a 'multicultural perspective', which would contribute to achieving an understanding of who in different cultures is deprived of privileges (rights) and why. The anthropologist's work would serve not so much as theoretical considerations, but rather instead aim at the enactment of specific actions, such as deciding on the division of food, as well as the creation of 'effective educational material' concerning human rights – as in the case described by Ellen Messer. A pluralistic approach assumes that only the acceptance and achievement of an understanding of these rights by all layers of society can guarantee their effectiveness. It can be stated that the pluralistic approach serves more the aim of establishing effective tools for the protection of human rights than that of providing philosophic and legal answers as to whether (universal) laws exist. It recognizes that these rights are not only part of Western heritage, and thus should be formulated with the participation of other cultures, simultaneously endeavoring to achieve the aim of guaranteeing that they will be accepted by all of them. Sally Engle Merry is of a similar opinion, claiming that the emerging regime of globally functioning human rights is not simply an imposition of Western forms of culture. "Instead, human rights is an open text, capable of appropriation and redefinition by groups who are players in the global legal arena" (Engle Merry 1997, 30).

The three-step analysis proposed by Ellen Messer: 1) to identify the actual behaviors; 2) to evaluate the material consequences and 3) to examine the ideas behind such behaviors is in my opinion a good starting point for a dialogue about the merit of specific customs and practices. Undoubtedly, each of the three aspects should be carefully analyzed, in particular the third which demands a depth of ethnohistorical knowledge.

Not only may the pluralistic approach be applied for the construction of bridges between human rights and cultural laws which stand in opposition to them but it seems that this method can also be used in the case of opposing cultural norms held by communities living within one country or for some other reason remaining in close contact with each other. An example of such diverse norms is the ritual slaughter of animals in accordance with the rites of Islam and Judaism and the norm which is applied by animal rights activists, who believe that this kind of slaughter – due to its cruelty – stands in contradiction with the values of the humanitarian treatment of animals.

For the purposes of this article, I conducted two interviews in Poland, namely with Imam Yosef Chadid and Rabbi Symcha Keller. The claims made by these two religious

authorities should not be treated as the claims of all Muslims and Jews in Poland, but I am of the opinion that they deserve attention and may indicate the direction in which the discussion between the these two minority-camps and that of the representatives of animal rights organizations should move.

Rabbi Keller told me that in accordance with tradition, the *shochet* (the person who performs the ritual slaughter) must have a high level of anatomical knowledge as well as knowledge of religious laws, possess an unblemished moral 'record' and – most importantly – feel love and empathy towards animals. The Rabbi said that he had heard from his grandfather and also from other people that they had sometimes met *shochets* to whom animals would come, placing their heads on their knees. The *shochet* did not slaughter the animals only for their meat, but also out of love, allowing the souls of the animals to rise to a higher level. According to the Rabbi, current slaughtering methods are "hopelessly primitive and brutal" (this statement refers to all kinds of commercial slaughtering of animals, including the ones which are deemed as being ritual slaughters).

> "For me the most important thing is lack of suffering – to not harm others, including animals. The Tzadik from Mszczonów stated: «Do not hurt others. Animals should be slaughtered by a spiritual master, one who will do it in such a way as to avoid inflicting suffering and allowing their souls rise to a higher level». He also said: «Ritual slaughter in its pure form is something completely different to 'ritual' slaughter on an industrial scale for export» (conversation with Rabbi Symcha Keller, Łódź, May, 2013).

The Imam whom I quizzed about the issue of ritual slaughter in Poland stated:

> "The Prophet said in the *hadiths* that other animals should not see the killing, and also that the tools should not be sharpened in front of them. (...) When commercial slaughter is performed, people forget the norms in place in Islam, such as sparing the animals suffering".

The Imam also stated that the problem of ritual slaughter is not of utmost importance for him, as there are many more significant problems faced in Poland by the Muslim minority. "A human being can eat only fish, vegetables and fruit and still live" – he added. He did however admit that 80% of Muslim communities do not want to buy meat in Poland, but that

> "there is a verse in the Quran stating that 'the food of the people of the Book is lawful onto you'. According to what the Prophet said, everything is *halal*, except for pork and carrion" (conversation with Imam Yosef Chadid, Poznań, May, 2013).

I do not claim to be a specialist on Islam or Judaism and freely admit that the selection of my informants was absolutely random – I had no idea beforehand how 'orthodox' their views would be or what conclusions which would be reached on the basis of their statements. Even though the two examples of the views cited above would unlikely be considered representative for the whole Muslim and Jewish communities in

Poland, I think they can be considered as starting points for conversations concerning the essence and sense of the ritual slaughter of animals. It might then turn out that after eliminating the economic context (the profit made from slaughter which has nothing to do with the traditions of either of these religious minorities), Jews and Muslims could become the allies and not opponents of people demanding the humanitarian treatment of animals, including butchered animals.

My idea here is not an effort to prove that the modern religious practice of the mass animal ritual slaughter, does not fit or indeed stands in contradiction to the assumptions of Islam and Judaism. According to the method proposed by Ellen Messer, such attempts to prove would require a comprehensive ethnhistorical analysis that I did not carry out.

If the views of Rabbi Keller and Imam Chadid expressed in their conversations with me were representative, they could lead to the extinguishing of the conflict surrounding ritual slaughter in Poland. The main deficiency of the pluralistic approach is that the decision-making process as to who is entitled to make representations on behalf of any given culture and who should be listened to in this respect will always be arbitrary and subjective, at least to a certain extent. This will particularly hold true in certain cultures where only designated groups (such as mature males) are entitled to speak on behalf of all members of the group. It is also important to remember the economic aspects behind the practicing or abandoning of certain customs and to remember that certain groups may stand to lose or gain financially from such changes.

Despite the obvious doubts raised by the necessity to give an arbitrary response under the pluralistic approach to the question as to who should decide which customs are important for the survival of any given culture, it should also be remembered that this reply will always be arbitrary. Every person participating in the culture may understand it in his/her own specific way while simultaneously being a member of a privileged or discriminated group.

Ellen Messer says that the choice between conflicting cultural standards should not be subjected to the final decision of dominant culture, but should – at least within certain limits – be negotiated. If the tools proposed by the researcher are accepted they can be used to see how the meaning of a particular cultural practice corresponds to its implementation. Consent for its adoption seems to complete a minimum consensus on what different cultures must agree, if they want to co-exist with each other.

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