

REGULATING HALAL AND KOSHER FOODS: DIFFERENT ARRANGEMENTS BETWEEN STATE, INDUSTRY AND RELIGIOUS ACTORS

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Abstract

The Netherlands, like other Western countries, is a growing market for halal food products, that is, food products that comply with Islamic food laws. Halal food is becoming more visible as Dutch supermarkets, hospitals and schools decide to include halal food in their supply. This development has been criticised by animal protectionists and people who fear the 'Islamisation' of Dutch society. In this article, the regulation of halal food in the Netherlands is compared to the regulation of kosher food in the Netherlands and the United States. I will analyse the division of roles between state actors, the food industry, certification agencies and religious authorities in these regulatory arrangements. Contrary to expectation, the regulatory arrangements are rather state-centred in several US states (liberal market economy), whereas the Dutch corporatist welfare state plays a limited role by allowing religious slaughter and leaving the issue of halal and kosher certification entirely to commercial and religious organisations.

1 The Developing Supply of Halal Foods

In 2006, the Dutch supermarket chain Albert Heijn introduced halal meat products in some of its shops to better serve Muslim customers. Immediately, animal rights organisations protested strongly against the selling of meat from animals that had been slaughtered without being stunned first. They also pointed out that non-Muslim customers might unknowingly buy this meat and launched a campaign to remove it from the supermarket.¹ In response, Albert Heijn switched to another halal certification scheme that allows reversible electrical stunning prior to the killing of the animal.² This resulted in protests and warnings from Muslims not to eat this halal meat because it was not really halal.³ On the other hand, a complaint was filed with the Dutch Advertising Standards Authority against Albert Heijn for making an unjust claim that its halal meat was kind to animals.⁴

The above case shows that halal food, and religious slaughter in particular, is a contentious subject in the Netherlands that involves complicated issues such as the substance of the religious requirements for halal food, the reliability of halal certificates, animal welfare in religious slaughter and the role of public authorities in relation to halal food.

Within the wider subject of food regulation, the regulation of halal food – food that is permitted for faithful Muslims because it is in accordance with Islamic dietary laws – is particularly interesting. Because of the obvious parallels, this article compares the regulation of halal food to the regulation of kosher food. The objective of this article

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¹ 'Duizenden tegen halal vlees AH', *de Volkskrant*, 25 October 2006; 'Radar en Albert Heijn ruziën over halal-vlees', available at: <<http://www.nu.nl/economie/860223>> (last visited 25 October 2006); 'Haal halalvlees uit de schappen', *de Volkskrant*, 26 October 2006.

² See: <<http://www.ah.nl/halal>> (last visited 10 December 2007); <<http://www.evmi.nl/nieuws>>, reports of 16, 24 and 31 October and 3 November 2006; 'AH: halalvlees toch van verdoofde dieren', *de Volkskrant*, 31 October 2006; 'AH stopt verkoop halal-vlees', *AD*, 30 October 2006.

³ 'Moslims: Halal vlees Albert Heijn is niet halal', *Elsevier*, 3 November 2006.

⁴ 'Albert Heijn claimt ten onrechte diervriendelijk halal', available at: <<http://www.wakkerdier.nl/persbericht/447>> (last visited 8 December 2008); 'Albert Heijn trekt halal-claim in', *DistriFood*, 10 December 2008; 'AH trekt claim "diervriendelijk halal" in', available at: <<http://www.maghreb.nl/2008/12/12>>.

is to analyse the division of roles between state actors, the food industry, certification agencies and religious authorities in regulatory arrangements connected with halal and kosher food in the Netherlands and the United States.

The article starts with a brief introduction to the issue of halal and kosher food and its regulation. Both the Netherlands and the United States have special arrangements for religious slaughter and the labelling of halal and kosher food. The next sections deal with the regulation of halal and kosher food in the Netherlands and the United States, relying on a review of literature and internet sources. The subsequent sections describe the system of kosher certification in the Netherlands, halal certification in the Netherlands, the regulation of religious slaughter in the Netherlands, the regulation of kosher food in the United States and the regulation of religious slaughter in the United States. The next section compares the regulation in the Netherlands with the regulation in the United States. The final section searches for an explanation for the different position of the Dutch and US public authorities on the regulation of halal and kosher food.

2 Regulating Halal and Kosher Food

In addition to Islam, many other religions also forbid certain foods or have specific requirements related to food. There are Jewish, Islamic, Hindu and Buddha dietary laws. Food has always been the subject of taboos and obligations. Which food we prefer and what we consider fit for (human) consumption differs depending on the place and time we live and the faith we adhere to. Religious dietary laws are important to observant Jewish and Muslim populations, although not all the faithful comply with the religious dietary laws.

Islamic dietary laws determine which foods are permitted for Muslims. *Halal* means permitted, whereas *haram* means prohibited. Several foods are considered harmful for humans to consume and are forbidden. This is expressed by the prohibition of the consumption of pork, blood, alcohol, carrion and meat that has not been slaughtered according to Islamic prescriptions. Meat is the most strictly regulated food. The animal (of a permitted species) must be slaughtered by a sane adult Muslim by cutting the throat quickly with a sharp knife. The name of Allah must be invoked while cutting. The question whether stunning is allowed remains an issue of debate, both within and beyond the Muslim community. The rules for foods that are not explicitly prohibited by the *Quran* may be interpreted differently by various scholars.⁵

Jewish dietary laws (*kashrut*) determine which foods are fit for consumption by observant Jews (*kosher*). It is a complex and extensive system with many detailed prescriptions concerning the production, preparation and consumption of food. The prescriptions are laid down in Jewish biblical and rabbinical sources. Kosher laws deal predominantly with three issues: prohibited foods (e.g. pork, shellfish and rabbit), prescriptions for religious slaughter (*shechita*) and the prohibition on preparing and consuming dairy products and meat together. In addition, there are numerous prescriptions dealing with special issues such as wine and grape juice, cooking equipment and Passover. Ruminants and fowl must be slaughtered by a specially trained religious slaughterer (*shochet*) using a special knife. Prior to the slaughter, the *shochet* makes a blessing. The animal is not stunned. Slaughtered animals are inspected for visible defects by rabbinically trained inspectors, particularly the lungs. Red meat and poultry have to be soaked and salted to remove all the blood. Any ingredients derived from animal sources are generally prohibited because of the difficulty of obtaining them from kosher animals. The prohibition of mixing milk and meat requires that the processing and handling of all materials and products fall into one of three categories: meat, dairy

⁵ See J.M. Regenstein, M.M. Chaudry and C.E. Regenstein, 'The Kosher and Halal Food Laws' (2003) 2(3) *Comprehensive Reviews in Food Science and Food Safety* 111-127; K. Bonne and W. Verbeke, 'Religious Values Informing Halal Meat Production and the Control and Delivery of Halal Credence Quality' (2008) 25(1) *Agriculture and Human Values* 35-47; and E.L. Milne, 'Protecting Islam's Garden from the Wilderness: Halal Fraud Statutes and the First Amendment' (2007) 2 *Journal of Food Law and Policy* 61-83; for an overview of Islamic dietary laws and their interpretations.

or neutral (*pareve*). To assure the complete separation of milk and meat, all equipment must belong to a specific category. After eating meat, one has to wait 3 to 6 hours before eating dairy. There is some disagreement over what constitutes kosher between the Orthodox, Conservative and Reform Jewish schools of thought.⁶

It cannot be visibly determined whether food is halal or kosher (as with other credence quality attributes relating to organic food and fair-trade products). So, how does a consumer know which food is halal or kosher? There are basically three options:

- buying from someone of known reputation (e.g. an Islamic butcher);
- asking a religious leader which foods are permitted; or
- buying foods with a halal or kosher label.

In traditional societies, a combination of the first two options is often applied. People living in a religious community that runs all political, economic and communal matters internally rely on religious leaders and food suppliers of known reputation. In bygone days, this applied to many European Jewish communities, for whom the chief rabbi was often the final authority in *kashrut* supervision.⁷ In the 1930s in the Netherlands, only a few food manufacturers were under rabbinical supervision as most foods were prepared in the home.⁸

Due to the increase in industrially manufactured foods and the growing geographical distance between production and consumption (internationalisation of the food market), reliance on local suppliers and religious leaders is often no longer sufficient. Traditional local arrangements are also disrupted by migration. Nowadays, consumers who seek kosher or halal foods are dependent on a label or trademark that identifies a product as kosher or halal. The consumer has to trust the source and message of the communication. These developments have resulted in a large number of kosher certified products in US supermarkets and a growing number of halal labelled or certified products in Western European supermarkets.

The growth of halal certification in the Netherlands fits into a general pattern of growing third-party certification and other regulatory arrangements involving a mix of private and public actors. Food safety regulation currently involves a large number of public and private organisations with complementary, overlapping or competing roles.⁹ The relations between public and private actors in food regulation are varied and complex and form an interesting field of study. In some cases, private regulation is largely independent from public regulation (such as the Marine Stewardship Council label for sustainable fish); in other cases, private regulation is encouraged or enforced by governmental actors (such as many industrial hygiene codes).¹⁰

⁶ See Regenstein, Chaudry & Regenstein, above n. 5; S.F. Rosenthal, 'Food for Thought: Kosher Fraud Laws and the Religious Clauses of the First Amendment' (1997) 65 *George Washington Law Review* 951-1013; S.M. Sigman, 'Kosher Without Law: The Role of Nonlegal Sanctions in Overcoming Fraud Within the Kosher Food Industry' (2004) 31 *Florida State University Law Review* 509-601; M. Hodkin, 'When Ritual Slaughter Isn't Kosher: An Examination of Shechita and the Humane Methods of Slaughter Act' (2005) 1(1) *Journal of Animal Law* 129-150; and Milne above n. 5; for an overview of Jewish dietary laws and their interpretations.

⁷ G.S. Epstein and I. N. Gang, *The Political Economy of Kosher Wars*, Departmental Working Papers 200227, Rutgers University, Department of Economics (2002), available at: <<http://ideas.repec.org/e/pep1.html>> (last visited 27 July 2010); Sigman, above n. 6, at 523.

⁸ Information from the Chief Rabbinate of Holland provided to the author (9 July 2010).

⁹ D. Fuchs, A. Kalfagianni and T. Havinga, 'Actors in Private Food Governance: The Legitimacy of Retail Standards and Multistakeholder Initiatives with Civil Society Participation' (2009) *Agriculture and Human Values* (DOI 10.1007/s10460-009-9236-3); T. Havinga, 'Private Regulation of Food Safety by Supermarkets' (2006) 28(4) *Law and Policy* 515-533; D. Levi-Faur, 'Regulation and Regulatory Governance', Jerusalem Papers on Regulation and Governance No. 1 (2010), available at: <<http://regulation.huji.ac.il/>>; T. Marsden, A. Flynn and M. Harrison, *The New Regulation and Governance of Food: Beyond the Food Crisis?* (2010); and F. Van Waarden, 'Taste, Tradition, Transactions, and Trust: The Public and Private Regulation of Food' in C. Ansell and D. Vogel (eds.), *What's the Beef? The Contested Governance of European Food Safety* (2006) 35-59.

¹⁰ Havinga, above n. 9.

Most private regulatory arrangements are nonetheless deeply intertwined with governmental and intergovernmental regulatory structures.¹¹ Food products and producers are subject to multiple regulatory arrangements. At least some of them will be public in most cases. In this respect, the halal/kosher certification system in the Netherlands appears to be rather exceptional, since governmental and intergovernmental regulators are largely absent. Governmental regulation does not encompass kosher and halal labelling and certification. It only includes prescriptions for and oversight of (religious) slaughter and general food regulations. To the general issues involved in the relation between private and public actors, the case of halal and kosher food regulation adds freedom of religion and the responsibilities of the state vis-à-vis the autonomy of religious communities.

Comparison with the United States is particularly interesting. Like the Netherlands, the United States is not an Islamic or Jewish country. Unlike the Netherlands, however, the United States is characterised by an extensive kosher certification industry and an important role for legislators, governmental enforcement agencies and courts in kosher labelling.

In this article, I will analyse the division of roles between state actors, the food industry, certification agencies and religious authorities in regulatory arrangements connected with halal and kosher foods in the Netherlands and the United States.

3 Kosher Certification in the Netherlands

The Second World War decimated the Jewish community in the Netherlands. A large proportion of the current community are non-observant or observe *kashrut* partially by abstaining from pork and shellfish or not drinking milk with a meat meal. According to a rough estimate of the Chief Rabbinate of Holland, only 300-400 households keep a kosher kitchen nowadays.¹² Kosher food has not been the subject of public debate in recent years. However, slaughter without prior stunning, including slaughter in accordance with Jewish dietary laws, has come up for discussion.

Since 1945, the Chief Rabbinate of Holland has been the Dutch kosher certifying agency for ingredients, semi-finished products and end products.¹³ Kosher shops and restaurants are under the supervision of local rabbinates such as the Rabbinate of Amsterdam or the Rabbinate of The Hague.

Kosher certification is particularly important for exporting foods and ingredients to Israel and the United States (as the local Dutch need for kosher products is too small to legitimise certification). The Chief Rabbinate of Holland issues kosher certificates for a single product or several products or a certificate for the whole production process. The procedure starts with a food producer applying for kosher certification. After receiving the application a supervisor visits the location to judge whether the plant or production can be certified kosher.

The Jewish dietary norms and requirements for certification do not appear in a written document of the Chief Rabbinate of Holland. The Chief Rabbinate applies Jewish laws as laid down in the Old Testament (notably Leviticus and Deuteronomy) and rabbinical directives and interpretations. After rabbinical approval of the ingredients and the equipment, the Chief Rabbinate regularly supervises the production site. Products and plants under the supervision of the Chief Rabbinate of Holland may use a seal of approval (*hechsher*) stating ‘onder toezicht van het Opperrabbinaat voor Nederland’ (‘under supervision of the Chief Rabbinate of Holland’) around Hebrew text. This seal is a protected hallmark. The producer pays an hourly rate for the supervision and a fee for the certificates. The frequency of supervision visits depends on the hazards involved in the particular product and plant. Thus, a Jewish butcher is supervised on a daily basis,

¹¹ E. Meidinger, ‘Private Import Safety Regulation and Transnational New Governance’ in C. Coglianese et al. (eds.), *Import Safety: Regulatory Governance in the Global Economy* (2009) 233-253, at 234.

¹² Information from the Chief Rabbinate of Holland provided to the author (9 July 2010).

¹³ See: <<http://www.kosherholland.nl>> (last visited 12 July 2010).

while a kosher plant that only produces kosher foods receives a year letter. Most plants produce both kosher and non-kosher foods; these plants are visited more frequently (e.g. monthly) and every product needs a kosher certificate.

Every year, the Chief Rabbinate publishes a *kashrut* list containing products generally available in Dutch supermarkets that are permitted for Jews to eat. The listed products are not produced under the supervision of the Chief Rabbinate and do not have a kosher certificate. Instead, the Chief Rabbinate investigated the product and decided that it is permitted for Jews (though with a lower kosher standard).¹⁴ A list of forbidden E-numbers for food additives is also included. The list is published to assist Jews living far from kosher shops. In the Netherlands and other European countries, the principal method of rabbinical approval is via a kosher list published by local or national Jewish authorities, and Jewish consumers rely heavily on these authorities, such as the Chief Rabbinate.¹⁵

4 Halal Certification in the Netherlands¹⁶

The domestic market for halal foods in the Netherlands is more sizeable than the kosher market. In the Netherlands, the influx of migrants has resulted in a growing number of Muslims. It is estimated that in 2006 about 5% of the population in the Netherlands was Muslim (837,000 persons).¹⁷ This has only recently become visible in supermarkets, shops, hospital and corporate cafeterias, where halal products are being introduced. In the media and in the Dutch parliament, some persons and organisations have objected to this development as unwelcome Islamisation.¹⁸ Religious slaughter has also been criticised from the perspective of animal welfare.¹⁹

Van Waarden and Van Dalen distinguish between the ‘official’ and ‘international’ halal market and the local ‘uncle and auntie’ market. The official market includes large-scale exporting companies, large supermarket chains and certification agencies. The ‘uncle and auntie’ market is a local market based on trust in the local butcher and grocery store of the same social and ethnic group. The domestic halal market in the Netherlands is still dominated by this local market.²⁰

Unlike kosher certification, there is not one single halal certifier in the Netherlands. There are about 30-40 different halal certificates. These include larger, official certifying bodies (such as the Halal Feed and Food Inspection Authority, Halal Quality Control, Halal Correct and the Halal Audit Company), small – often individual – certifiers (imams), self-certifiers (businesses that label their brand or shop as halal, such as Mekkafoods) and the international certification bodies (such as JAKIM, IFANCA and IHI Alliance). This article does not consider the international certification bodies. Many certifiers operate under the supervision of or are recognised by an Islamic authority such as Majlis Al Ifta, the Association of Dutch imams, JAKIM Jabatan Kemajuan Islam

¹⁴ Information from the Chief Rabbinate of Holland provided to the author (9 July 2010).

¹⁵ F. Bergeaud-Blackler, A. Evans and A. Zivotofsky, *Final report – Consumer and Consumption Issues – Halal and Kosher Focus Groups Results* (2010), at 27, available at: <<http://www.dialrel.eu/publications>> (last visited 14 July 2010).

¹⁶ The information on halal certification in the Netherlands is based mainly on F. Van Waarden and R. van Dalen, *Hallmarking Halal. The Market for Halal Certificates: Competitive Private Regulation*, Paper presented at the Third Biennial Conference of the ECPR Standing Group on Regulation and Governance, Dublin 17-19 June, 2010.

¹⁷ M. van Herten and F. Otten, ‘Naar een nieuwe schatting van het aantal islamieten in Nederland’ (2007) 3 *Bevolkingstrends* (Centraal Bureau voor de Statistiek), available at: <<http://www.cbs.nl/NR/rdonlyres/ACE89EBE-0785-4664-9973-A6A00A457A55/0/2007k3b15p48art.pdf>> (last visited 24 September 2010).

¹⁸ E.g. Handelingen TK 17 (1013) of 29 October 2003. See also: <<http://scepticisme.prikpagina.nl/read.php?f=1056&i=241469>>; <http://www.elsevier.nl/opinie/reacties_op_commentaar> (last visited 25 October 2006).

¹⁹ See: <http://www.dierenbescherming.nl/downloads/docs/offerfeest_2006.doc> (last visited 14 December 2007).

²⁰ Van Waarden and Van Dalen, above n. 16, Bonne and Verbeke, above n. 5.

Malaysia (Department of Islamic Development Malaysia),²¹ Majelis Ulama Indonesia MUI (Indonesia Council of Ulama), the Islamic Board for Fatwa and Research of the Islamic University of Rotterdam, the Al Azhar University of Cairo or an imam. In the case of some certifiers, it is unclear whether they are under religious supervision or recognised by an Islamic authority.

Dutch halal certifying bodies are not recognised by the Dutch Council of Accreditation and most of them would not qualify for accreditation because a written document containing all requirements for certification is not available. Some halal hallmarks are legally protected by civil law, as is unauthorised use of the Halal Feed and Food Inspection Authority logo, which is protected by international copyright law.²²

5 Religious Slaughter in the Netherlands

Specific requirements for religious slaughter are included in both Jewish and Islamic dietary law. Orthodox Jewish communities and some Islamic communities do not accept that animals are stunned before slaughtering. In the Netherlands, slaughtering animals without prior stunning is prohibited, as in all European Union countries.²³ Since the adoption of the first Dutch laws prohibiting slaughtering without prior stunning in 1922, an exception has been made for Jewish slaughter. Since 1996, a similar exception has been made for Islamic slaughter.²⁴ Religious slaughter is legally defined as slaughter of animals without prior stunning taking place according to Jewish or Islamic rite. Slaughter according to Islamic or Jewish rite can only take place in authorised slaughterhouses after notifying the Dutch Food and Consumer Product Safety Authority (VWA) in advance.²⁵ More detailed requirements are laid down in a special Regulation on Religious Slaughter. These requirements include the avoidance of suffering, instructions for the handling and restraining of animals and slaughter techniques.²⁶ Veterinarians of the VWA supervise religious slaughter, and non-compliance with the above-mentioned requirements may result in a warning, a fine or the stoppage of slaughtering. This supervision does not include compliance with religious laws.

With its specific provisions for religious slaughter, Dutch law implicitly assumes that religious slaughter equals slaughter without prior stunning. In the Netherlands, religious slaughter is disputed. The current wave of criticism comes from three sides. First of all, animal rights organisations object to the inhumane and painful treatment of

²¹ There are two Dutch bodies on the list of approved foreign halal certification bodies of MUI: Halal Feed and Food Inspection Authority and Total Quality Halal Correct, see: <<http://www.mui.or.id>> (last visited 13 July 2010). These halal certifiers are also on the list of JAKIM. The Control Office of Halal Slaughtering also appears on the JAKIM list. See: <<http://www.jurnalhalal.com/2010/04/halal-bodies-recognized-by-jakim.html>> (last visited 13 July 2010).

²² See: <<http://www.halal.nl>> (last visited 14 July 2010).

²³ H.G.M. Oosterwijk, *Beleidsimplementatie tussen regels en religie. De Rijksdienst voor de keuring van Vee en Vlees en het toezicht op ritueel slachten tijdens het offerfeest. Regulering en markten* (1999); T. Havinga, 'Ritueel Slachten. Spanning tussen Religieuze Tolerantie en Dierenbescherming' in A. Böcker et al. (eds.), *Migratierecht en rechtssociologie, gebundeld in Kees' studies* (2008) 211-220; A. Kijlstra and B. Lambooj, 'Ritueel slachten en het welzijn van dieren. Een literatuurstudie', Animal Science Group Wageningen UR rapport 161 (2008); S. Ferrari and R. Bottoni, *Legislation Regarding Religious Slaughter in the EU, Candidate and Associated Countries* (2010), available at: <<http://www.dialrel.eu>> (last visited 14 July 2010). Council Directive 93/119/EC of 22 December 1993 on the protection of animals at the time of slaughter and killing, replaced by Council Regulation (EC) No. 1099/2009 of 24 September 2009 on the protection of animals at the time of killing, which will enter into force in 2013.

²⁴ Gezondheids- en welzijnswet voor dieren III-44 (Animal Health and Welfare Act of 24 September 1992). Many other EU countries also allow slaughter without prior stunning for religious reasons (e.g. Germany, UK, Italy and Belgium). However, some countries do not allow slaughter without prior stunning (e.g. Sweden, Norway and New Zealand). Denmark, Finland and Austria do allow the killing of unstunned animals but require immediate post-cut stunning (Kijlstra and Lambooj, above n. 23, at 5-6; Ferrari and Bottoni, above n. 23, at 10). Until 1975, the Dutch government was not prepared to make an exception for Islamic slaughter, as an explicit prohibition on stunning is not found in the *Quran* (Oosterwijk, above n. 23, at 111-112).

²⁵ Until 2006, a declaration by the religious authority regarding the number of animals was required.

²⁶ Besluit Ritueel Slachten 1996.

animals. Some of these organisations want an official ban on religious slaughter, while others are trying to convince Islamic and Jewish organisations to accept some form of reversible stunning. Secondly, some right wing politicians and political organisations object to the growing Islamisation of Dutch society. These Islamophobic critics perceive religious slaughter as a clear sign of the intrusion of Islamic norms and the unwanted permissiveness of the left-wing elite. Finally, veterinarian organisations in the Netherlands and Europe advocate obligatory stunning prior to slaughter. They argue that scientists agree that slaughter without prior stunning causes unnecessary pain and suffering for the animals. The Federation of Veterinarians of Europe is of the opinion that the practice of slaughtering animals without prior stunning is unacceptable under any circumstances.²⁷ Dutch veterinarians point to an ethical dilemma for veterinarians who have to supervise religious slaughter. They see religious beliefs as dynamic and as allowing change in order to improve animal welfare.²⁸ As long as slaughter without prior stunning is allowed under national or European legislation, the veterinarians recommend stipulating specific minimum requirements.

At the end of 2007, a motion in favour of a prohibition on slaughter without prior stunning was rejected by the Dutch parliament. Almost half the votes (68 of the 150 votes) were in favour of such a prohibition. Freedom of religion was the most common reason for opposing the motion.

The pending proposal for a regulation of the European Parliament and of the Council on the provision of food information to consumers includes a provision that meat and meat products derived from animals that have not been stunned prior to slaughter (i.e. have been ritually slaughtered) should be labelled as such ('Meat from slaughter without stunning'). This amendment was adopted by the European Parliament at first reading on 16 June 2010 (326 votes in favour, 270 against and 68 abstentions).²⁹ The objective of the provision of food information is to provide a basis for informed choices and safe use of food. The position of the Council on this draft regulation is planned for December 2010. No quick agreement is expected within the Council, so the draft legislation is likely to return to the European Parliament for a second reading.³⁰ Once the legislation is adopted, food businesses will have three to five years to comply with this regulation.

6 Regulation of Kosher Food in the United States

In the United States, kosher certification and supervision is quite different from the situation in the Netherlands. The domestic kosher market is extensive. In the Northeast of the United States, nearly half of the products on supermarket shelves are certified kosher. In the United States, kosher food is also bought by many non-Jewish consumers, because they believe it to be healthier, natural and higher-quality food.³¹

The process of kosher supervision is very similar to kosher certification in the Netherlands. A food manufacturer initiates the supervision and certification process (mostly in response to an appeal from consumers or a buyer). The certifier investigates the product, the production process and location based on a contract between certifier and manufacturer. The kosher supervision agency (KSA) will pay a qualified inspector to make continual visits. Sometimes a representative of the KSA is required to be present to monitor during production (e.g. in the case of matzo for Passover).

Unlike in the Netherlands, there are many competing KSAs in the United States. Four KSAs are estimated to certify 90% of kosher products. The largest KSAs are often

²⁷ Federation of Veterinarians in Europe, 'Slaughtering of animals without prior stunning', FVE position paper FVE/02/104 (2002), available at: <<http://www.fve.org>>.

²⁸ 'KNMvD-standpunt over het onbedwelmd slachten van dieren', 15 March 2008.

²⁹ See: <<http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P7-TA-2010-0222&language=EN&ring=A7-2010-0109>> (last visited 27 September 2010).

³⁰ European Parliament, 'MEPs Set Out Clearer and More Consistent Food Labelling Rules', Press release, 16 June 2010, available at: <<http://www.europarl.europa.eu/en/pressroom/content/20100615IPR76127>> (last visited 27 September 2010).

³¹ C.B. Sullivan, 'Are Kosher Food Laws Constitutionally Kosher?' (1993-1994) 21 *B.C. Envtl. Aff. L. Rev.* 201, at 201; Sigman, above n. 6, at 537, 544-545.

non-profit organisations, such as the Kashruth Division of the Union of Orthodox Jewish Congregations of America (OU). The organisations and individuals who supervise and certify kosher food are all Jewish.³² There are over 300 registered kosher symbols used by KSAs in the United States.³³ The legal status of these certification marks is that of a protected trademark. Kosher supervision agencies can be divided into three broad categories: the large organisations that dominate supervision of larger food companies, individual rabbis with standards beyond the normative Orthodox standard and individual rabbis who are more 'lenient' (e.g. Conservative rabbis).³⁴ Most KSAs do not work with a written document defining general standards for kosher certification.³⁵

An even more important difference with the Netherlands is the involvement of state law and state enforcement in the United States. Many states have specific laws governing kosher food. Kosher food is a very attractive market, which creates a strong temptation to pass off non-kosher food as kosher. Federal and state governments have enacted laws to protect consumers from this fraud. In 1922, the state of New York passed the first state-wide kosher fraud law to protect consumers from non-kosher food sold as kosher. Many other states followed and issued a kosher fraud statute.³⁶ The Orthodox Union was the main force behind the campaign to enact kosher fraud statutes.³⁷ Most kosher fraud statutes operate in a similar fashion. They generally prohibit the advertisement or sale of food labelled 'kosher' unless it conforms to state-defined food preparation and handling requirements. In these laws, kosher is defined as 'prepared or processed in accordance with orthodox Hebrew religious requirements' or similar.³⁸ Some of these statutes are part of the state criminal code, while others are part of state codes on public health, food regulation or commerce and trade. The penalty for violating these laws can be fines or even imprisonment.³⁹ Some statutes vest the power to inspect compliance with the law in the attorney general, a commission or a special agency. States such as New York and New Jersey established a Bureau of Kosher Enforcement and employed rabbis to enforce compliance.⁴⁰ In 2002, the Kosher Law Enforcement Division of the New York Department of Agriculture and Markets conducted 7,500 inspections in New York State to assure consumers that food products offered for sale as Kosher were indeed Kosher.⁴¹ The situation may be quite different now, as the division is facing cuts of more than 95% to its current budget for staff and kosher food inspections.⁴²

Based on his analysis of reputation-based non-legal sanctions, private law remedies and consumer protection laws, Sigman concludes: 'There is no evidence that state kosher fraud enforcement plays a significant role in preventing willful kosher fraud.'⁴³

Kosher fraud statutes have been challenged in court for being unconstitutional. At first, the courts upheld the kosher statutes. But from 1992 onwards several courts invalidated kosher statutes for creating excessive state entanglement between church and state and advancing and inhibiting religion.⁴⁴ Most of these court cases are initiated

³² Sigman, above n. 6, at 536.

³³ Id. at 525. Some of the most important KSAs are: the Union of Orthodox Jewish Congregations of America (OU, est. 1924), the Organized Kashrus Laboratories (OK, est. 1935), the Star-K Kosher Certification (est. 1947) and the KOF-K Kosher supervision (est. 1968).

³⁴ Regenstein, Chaudry and Regenstein, above n. 5, at 125.

³⁵ Sigman, above n. 6, at 531-532.

³⁶ Rosenthal, above n. 6, at 951, note 1 lists 23 kosher fraud statutes.

³⁷ This was before the OU entered the kosher supervision and certification business. Sigman, above n. 6, at 552.

³⁸ B.N. Gutman, 'Ethical Eating: Applying the Kosher Food Regulatory Regime to Organic Food' (1999) 108 *Yale Law Journal* 2351-2384, at 2369; Sigman, above n. 6, at 553.

³⁹ Sigman, above n. 6, at 554; Gutman, above n. 38, at 2369, note 144.

⁴⁰ Sigman, above n. 6, at 554. Division of Kosher Law Enforcement, New York State Department of Agriculture and Markets, see: <<http://www.agmkt.state.ny.us/kosher>> (last visited 6 June 2010).

⁴¹ See: <<http://www.agmkt.state.ny.us/KO/KOHome.html>> (last visited 30 September 2010).

⁴² See: <<http://www.theyeshivaworld.com/news/General+News/65637/Do-Not-Cripple-NYS-Kosher-Law-Enforcement.html>> (15 July 2010; last visited 30 September 2010).

⁴³ Sigman, above n. 6, at 601.

⁴⁴ *Ran Dav's County Kosher Inc v. State*, 608 A.2d 1353 (N.J. 1992), *Barghout v. Mayor of Baltimore*, 66 F.3d 1337, 1342-46 (4th Cir. 1995), *Commack Self-Service Kosher Meats, Inc. v. Weiss*, 2002 U.S. App. LEXIS 9576 (2nd Cir. June 21, 2002), M. Ciesla, *New York Kosher Food Labeling Laws Violate the Establishment Clause*, available at: <http://org.law.rutgers.edu/publications/law-religion/new_devs/RJLR_

by kosher establishments or kosher certifiers, often after a state inspector had found violations whereas a supervising rabbi or kosher certifier claims that everything is in compliance with the Jewish laws of *kashrut*. Two elements have led the courts to decide that kosher fraud statutes are unconstitutional under the First Amendment: kosher is defined according to Orthodox standards and the relevant state or local governments employed a rabbi as state-appointed official. The court found that the statute required the state to take an official position on the interpretation of Jewish dietary laws and advance the Orthodox definition of kosher. In response to this decision, several states changed their laws into a kosher disclosure statute (e.g. New Jersey, New York and Georgia). For example, the new 2010 Georgia Kosher Food Consumer Protection Act requires that ‘a person who makes a representation regarding kosher food shall prominently and conspicuously display on the premises on which the food is sold, in a location readily visible to the consumer, a completed kosher food disclosure statement...’.⁴⁵ A kosher food disclosure statement shall state in the affirmative or negative whether the person operates under rabbinical or other kosher supervision, the name and address of the supervising rabbi, agency or other person and the frequency with which the supervising person visits the establishment. The statement shall state whether the person sells or serves only food represented as kosher, or both kosher and non-kosher food, and whether meat, dairy and *pareve* food is sold or served. The Georgia law covers many other issues on which information has to be disclosed, such as rabbinical or kosher supervision in the slaughterhouse, glatt kosher meat and the use of separate work areas and utensils for kosher and non-kosher food and for kosher meat, kosher dairy and kosher *pareve* food. In the case of violation of this law, the administrator or the court may issue a cease and desist order or a civil penalty.

New York State’s Kosher Law Protection Act 2004 requires producers and distributors of kosher food to ‘have registered with the department the name, current address and telephone number of the person certifying the food as kosher’.⁴⁶ Special requirements are included for disclosure of information on the soaking and salting of kosher meat.

Only recently, some states also enacted a similar law for halal food.⁴⁷ These laws often define halal as ‘prepared under and maintained in strict compliance with the laws and customs of the Islamic religion’ or ‘in accordance with Islamic religious requirements’.⁴⁸ ‘Despite the widespread disagreement among and within Islamic “schools of thought” over halal food, various individual states in the United States have attempted to define, by legislative edict, this inherently religious term. The stated purpose behind such legislative definitions of *halal* is to prevent the fraudulent representation of food as being *halal*. The constitutionality of these government-enacted definitions of *halal* is uncertain.’⁴⁹

7 Religious Slaughter in the United States

Religious slaughter is an important part of kosher and halal requirements and needs permanent supervision by certifying agencies or religious authorities. The Humane Methods of Slaughter Act (HMSA) stipulates that the slaughter of animals should be humane. In the Act, two methods are found to be humane:

- 1) when the animal is rendered insensible to pain by a gunshot or electrical, chemical or other means; or

ND_61.pdf> (last visited 2 February 2010); B.M. Levenson, ‘Not so Strictly Kosher’ in B.M. Levenson, *Habeas Codfish: Reflections on Food and the Law* (2001) 184-198; Milne, above n. 5; Rosenthal, above n. 6.

⁴⁵ See: <http://www.legis.ga.gov/legis/2009_10/pdf/hb1345.pdf>.

⁴⁶ See: <<http://public.leginfo.state.ny.us>> (last visited 23 June 2010).

⁴⁷ E.g. the Halal Food Consumer Protection Act New Jersey (2000), available at: <http://www.njleg.state.nj.us/2000/Bills/a2000/1919_i1.htm>. Also California (2005), Illinois (2005), Michigan (2005), Minnesota (2005) and Texas (2005). See Milne, above n. 5, Regenstein, Chaudry and Regenstein, above n. 5, at 127.

⁴⁸ Milne, above n. 5, at 71.

⁴⁹ Id., at 63.

- 2) when the slaughter takes place in accordance with the ritual requirements of the Jewish faith or any other religious faith.

Furthermore, the US Code contains the following clause: ‘nothing in this chapter shall be construed to prohibit, abridge, or in any way hinder the religious freedom of any person or group ...’.⁵⁰ The inspectorate of the Department of Agriculture (USDA) has only a minimal role in monitoring ritual slaughter. It is required to request written verification of slaughter methods from the religious official who has the authority over the enforcement of religious dietary requirements and to verify that animals are handled in a humane manner prior to the slaughter.⁵¹

Hodkin argues that if an animal is not stunned prior to slaughter and the kosher slaughter fails, the Humane Methods of Slaughter Act is violated. Hodkin advocates that USDA inspection personnel are well versed in the requirements of Jewish law to guarantee compliance with Humane Methods of Slaughter Act. She reached this conclusion after analysing a scandal about animals treated cruelly in a kosher slaughterhouse (video clips on YouTube and elsewhere generated protest).⁵²

8 Comparative Conclusions

In both the Netherlands and the United States, slaughter without prior stunning in accordance with religious requirements is permitted. The US regulations exclude religious slaughter from legal requirements by including a provision in the Humane Methods of Slaughter Act stating that slaughter in accordance with ritual requirements of a religious faith is humane. In the Netherlands, religious slaughter is subjected to more legal requirements, and compliance with these requirements is monitored and enforced by the Dutch Food and Consumer Product Safety Authority. These requirements do not extend to halal or kosher claims.

In the Netherlands, the certification of halal and kosher foods is left entirely to private actors. Halal and kosher certification is not regulated by public law, and governmental agencies are not involved in monitoring and enforcing halal and kosher regulations. Halal certification in the Netherlands is dominated by commercial actors, verified by religious authorities. Kosher certification is executed mainly by the Chief Rabbinate of Holland, a religious actor.

In the United States, religious authorities dominate the kosher and halal certification industry. State laws and state enforcement agencies are in place to protect consumers of kosher or halal foods from misrepresentation. The current laws focus on public disclosure of information and trademark protection. Relics of the previous legitimation of Orthodox Jewish standards by state law and institutions can still be found. It is not clear how the new kosher disclosure acts are being enforced. The enforcement of these acts is the subject of new law suits.⁵³

⁵⁰ See: <http://assembler.law.cornell.edu/uscode/html/uscode07/usc_sec_07_00001902----000-.html> (last visited 2 May 2008). See also Milne, above n. 47.

⁵¹ Hodkin, above n. 6, at 146.

⁵² The animal rights group PETA (People for the Ethical Treatment of Animals) has filed a complaint against Agriprocessors (one of the largest kosher slaughterhouses in the world) for abusing animals. See: <<http://www.peta.org/Automation/AlertItem.asp?id=1192>>; <<http://www.goveg.com/kosher.asp>> (last visited 21 July 2010). ‘PETA Complaint Against Kosher Slaughterhouse’, available at: <<http://www.jewfaq.org/peta.htm>> (last visited 2 May 2008); ‘Statement of Rabbis and Certifying Agencies on Recent Publicity on Kosher Slaughter’, available at: <<http://www.ou.org/other/5765/shichita2-65.htm>> (last visited 2 May 2008). Agriprocessors is certified as kosher by the Orthodox Union. See also A. Gross, ‘When Kosher Isn’t Kosher’ (2005) 20(2) *Tikkun Magazine* 52-55.

⁵³ ‘Butchers File Another Lawsuit Challenging NY State’s Kosher Certification Authority’, *Long Island Business News*, 4 March 2005, available at: <<http://www.allbusiness.com/legal/1027321-1.html>> (last visited 23 June 2010). ‘New York – Conservative Rabbis Fight Orthodox Kosher State Laws’, 30 July 2008, available at: <<http://www.vosizneias.com/post/read/18724/2008/07/30/new-york-conservative-rabbis-fight-orthodox-kosher-state-laws/print/with-images>> (last visited 21 July 2010).

In the United States, which is a liberal market economy, one would expect to find minimal governmental interference in the kosher and halal industry. In the Netherlands, which is a corporatist welfare state, one would expect to find a high level of state involvement in the regulation of the kosher and halal industry.

The regulation of religious slaughter is in line with these expectations. In the United States, one finds loose regulation with only minimal requirements providing freedom for (religious) variation. In the Netherlands, one finds more detailed regulations with state inspectors and state veterinarians controlling compliance in slaughterhouses.

However, a comparison of halal and kosher certification in the two countries reveals a different pattern. Contrary to expectations, the regulation of kosher certification is more state-centred in the United States than in the Netherlands. Even after the constitutional challenges to the former kosher fraud statutes, many US states have laws to protect the halal or kosher logo. Several states also have a special kosher enforcement agency to inspect compliance with legal requirements. Conflicts over the interpretation and enforcement of kosher laws have resulted in a substantial amount of case law. Although the role of governmental institutions in regulating the kosher industry has been limited in the past decades, governmental agencies still play a significant role.

By contrast, halal and kosher certification has been left entirely to commercial and religious organisations in the Dutch corporatist welfare state. 'Halal' and 'kosher' are not legally defined and protected designations. State authorities in the Netherlands do not regard this as their task and avoid getting mixed up in religious matters.

This comparative conclusion raises questions concerning the protection of consumers in the Netherlands and the relationship between state and religion in the United States.

In the Netherlands, public law does not protect consumers from misrepresentation or fraud involving food sold as kosher or halal. Does this result in many stories of deception of Islamic and Jewish consumers? How do kosher and halal certificates succeed in establishing credibility without involvement of the state?

Focus groups of Jewish consumers in Amsterdam and five other European cities revealed that Jewish consumers rely on rabbinical supervision. Most participants said they themselves trusted all kosher certificates, but others only trust known stringent supervisors.⁵⁴ However, halal consumers in Amsterdam and five other cities questioned the reliability of halal food labels and certificates. They believed that halal labels should be authenticated by trustworthy religious institutions and preferred more traditional and personal networks of supply such as butcher shops. The focus group participants in the Netherlands believed that their food supply chain was trustworthy.⁵⁵

In 1999, a Muslim woman (of Pakistani origin) bought and consumed a halal veal snack (croquette) in Amsterdam. After she found out that the meat was from animals that had not been religiously slaughtered, she claimed damages against the manager of the snack bar. The manager, a Muslim woman of Moroccan origin, claimed the snack was halal, because it contained no pork. She had put stickers with the word 'halal' in Arabic on products not containing pork at the request of some Moroccan youths. The judge in the summary proceedings declined to decide what 'halal' meat is. The chain of snack bars did order the manager to remove the 'halal' stickers.⁵⁶ This case illustrates the different interpretations of the concept of 'halal' ranging from 'contains no pork' to 'contains no pork and animals are religiously slaughtered without prior stunning and citing the name of Allah'. It also illustrates that it can be hard for an observant Muslim consumer to know what food is allowed and what is not.

⁵⁴ Bergeaud-Blackler, Evans and Zivotofsky, above n. 15, at 26-28.

⁵⁵ Id., at 46-48. Similar observations in B. Bock and J. Wiersum, *Trust in Food and the Need for More Information. The Relationship Between Food Attitude, Trust in Food Safety and Consumption Behaviour: Reports on the Dutch Focus-groups Held in Wageningen* (2003), at 22; *Bijzondere ontmoetingen over vlees. Impressies consumentenpanels* (2002), at 7-9 available at: <http://www.minlnv.nl/portal/page?_pageid=116,1640321&_dad=portal&_schema=PORTAL&p_file_id=13830> (last visited 29 June 2010); and K. Bonne, and W. Verbeke, 'Muslim Consumer's Motivations Towards Meat Consumption in Belgium: Qualitative Exploratory Insights from Means-end Chain Analysis' (2006) *Anthropology of Food* 5.

⁵⁶ 'Rechter buigt zich over religieus gehalte van kroket', *Het Parool*, 1 September 1999; 'Geen straf voor foute kroketten', *Het Parool*, 11 September 1999; 'Halal-producenten wensen kermerk voor rein voedsel', *Trouw*, 29 April 2000.

Recently, complaints have been reported about ‘unauthorised’ halal certificates and about organisations in the Netherlands and Germany issuing ‘fake halal certificates’.⁵⁷ Van Waarden and Van Dalen found that all but one of their respondents from halal certifiers in the Netherlands agreed that the Dutch government should play a key role in the development of a national halal certificate in the Netherlands.⁵⁸ Only the largest halal certifier did not agree, as they already regard themselves as the supreme Dutch halal authority. The Islamic community in the Netherlands is said to have a need for a general halal hallmark, among other things because many products sold as halal are suspected of not really being halal.⁵⁹

The Dutch Food and Consumer Product Safety Authority (VWA) is reluctant to become involved in religious matters. They are not involved in controlling whether foods are halal (or kosher) but only monitor and enforce legal requirements (hygiene, mandatory labelling and food safety). The Dutch Ministry of Agriculture has adopted the recommendation of a consumer platform to strive for a single halal certificate in the Netherlands and to define ‘halal’ in law.⁶⁰

The newly established European Association of Halal Certifiers (AHC-Europe) aims to bring order and unity to the halal food sector in Europe. One of the founders has stated that governments should take the necessary measures to force certifiers to operate in line with the rules defined by AHC-Europe.⁶¹

Van Waarden and Van Dalen conclude that governmental cooperation seems to be unavoidable and that a formal registration of the term ‘halal’ is required.⁶²

The *kashrut* expert rabbi of the Chief Rabbinate of Holland recalls two cases of fraud in which a *hechsher* (seal of approval) was used without the product being supervised. The first case, involving canned mushrooms that carried the rabbinical hallmark but were produced without rabbinical supervision, was detected by the Israeli authorities. The Chief Rabbinate initiated summary proceedings before a civil court which found it in favour, while the manufacturer had to pay compensation. In the other case, which was settled, a pastry manufacturer agreed to pay the amount claimed by the lawyer. The Chief Rabbinate spokesman noted that it would have been impossible to take legal action against a person who wrongfully describes his product or site as kosher: ‘In the United States, when I say my product or premises are kosher, this should be on solid grounds: which rabbi declared it kosher, is this rabbi recognised and so on. The United States has a high penalty in such cases. Not in the Netherlands. Even calling a ham sandwich kosher is not an offence under Dutch law.’⁶³

The involvement of state law, state enforcement officers and the court system in halal and kosher certification of food is a delicate issue, since it relates to the separation of state and religion and freedom of religion. The principle of the separation of state and religion implies that government should be neutral towards religious matters and not biased in favour of or against a particular faith. Derogating from a general legal provision implies that the situations and actions to which this exemption applies or does not apply need to be defined. Does the exemption only apply to religious slaughter according to Jewish rites or also to slaughter in accordance with Islamic law or other religions? An exemption is based on particular religious requirements. Does it allow slaughter without prior stunning in recognised slaughterhouses or are all Muslims allowed to slaughter an animal for the Feast of the Sacrifice? Dutch law implicitly assumes religious slaughter

⁵⁷ *de Volkskrant*, 27 November 2009; see: <<http://halalfocus.net/2009/10/04/new-organization-to-sort-out-rotten-apples-in-european-halal-food-market>> (last visited 13 July 2010); Seada Nourhussen, ‘Halal-label kan ook op “onrein” toetje zitten’, *de Volkskrant*, October 6 2003; ‘Halal vlees blijkt vaak “onrein”’, *Het Parool*, 16 February 2005; ‘Vlees van varkens in kosjere en halal kip’, *Het Parool*, 15 June 2003; J. Siebelink, ‘Herrie om halal. Reportage moslims weten niet wat ze eten’ (2007). See: <<http://www.halalpagina.nl/index.php?pagina=halal2>> (last visited 26 January 2010).

⁵⁸ Van Waarden and Van Dalen, above n. 16.

⁵⁹ M.J.W. Smits and J. van den Berg, *Diversiteitsbeleid: (h)erkennen van meerstemmigheid* (2003), at 32.

⁶⁰ *Id.*, confirmed by telephone on 19 July 2010. No concrete measures have been taken so far. The Ministry of Agriculture expects European regulation on halal certification (or on certification more generally).

⁶¹ See: <<http://halalfocus.net/2009/10/04/new-organization-to-sort-out-rotten-apples-in-european-halal-food-market>> (last visited 13 July 2010).

⁶² Van Waarden and Van Dalen, above n. 16.

⁶³ Information from the Chief Rabbinate of Holland provided to the author (9 July 2010).

to be slaughtered without prior stunning. In the United States, as Hodkin points out, state inspectors even have to decide whether slaughter is in compliance with detailed religious requirements when they want to enforce humane slaughter methods in a kosher slaughterhouse.⁶⁴ This type of decision is difficult for governments, because it means that they have to intervene in religious matters or to rely on some religious authority to make the decision. This is particularly hard when there is no consensus within the religious community or when it generates resistance in the rest of the society. There is no univocal interpretation of 'kosher' within the Jewish community in the United States, and there is no univocal interpretation of 'halal' in the Islamic community in either the Netherlands or the United States. So far, Dutch law does not lay down what constitutes 'halal' or 'kosher' food. Many US states used to have laws that define kosher food according to Orthodox Jewish standards. This has resulted in entanglement between state and religion.

9 Explaining the Different Position of the Government

How to explain the more state-centred regulation in the US compared to the Netherlands? Our findings resemble the findings of Boström and Klintman, who compare standardisation of organic food in the United States and Sweden.⁶⁵ The organic food scene in the United States is characterised by many different regulatory schemes, which poses problems for consumers, producers, retailers and importers. The federal US government controls organic food standardisation, framing organic food as a marketing label. In Sweden, a well-reputed non-governmental organisation (KRAV) is allowed to audit organic production and ensure that EU regulations are being followed. Organic food is framed as an eco-label in Sweden. For Boström and Klintman, these different patterns of standardisation reflect traditional political, organisational and regulatory characteristics in the two countries. The open, consensus-building political culture in Sweden makes state and non-state actors willing to communicate, negotiate and search for pragmatic solutions. The political culture in the United States is more polarised, political authorities and organic actors are antagonistic, the general level of trust in the federal government is low and the government is willing to regulate (regulatory culture). In addition, the national organisational structure influences practices and debates. In Sweden, KRAV has an inclusive form of organisation that brings together all interest groups (with members from environmental NGOs, organic farmers' organisations and organic food manufacturers). Such an inclusive organisational platform is lacking in the United States, which leads to polarised debates. Finally, the regulatory arrangement itself triggers conflict in the US case. The centralisation of the standardisation process leaves no space for an organic movement to set stricter standards of its own, because the federal government sets minimum and maximum requirements. In contrast, KRAV has gained legitimate status within the EU regulatory framework but at the same time also has its own stricter rules.

Can these factors also explain the different patterns in kosher and halal certification in the Netherlands and the United States?

First of all, political culture seems to be important. The debates and law suits on kosher laws and kosher certification in the US case show antagonistic relations between state, religious and commercial actors and also within the Jewish community. As in the case of organic food, governments are also willing to regulate kosher food. Even after the kosher fraud laws were found to be unconstitutional, the existing laws were replaced by new laws and enforcement agencies stayed in place. Consumer rights are particularly important in US political culture, and framing the issue as consumer protection has contributed to successful lobbying for kosher laws.

⁶⁴ Hodkin, above n. 6.

⁶⁵ M. Boström and M. Klintman, 'State-centered Versus Nonstate-driven Organic Food Standardization: A Comparison of the US and Sweden' (2006) 23 *Agriculture and Human Values* 163-180.

The traditional consensual political culture in the Netherlands makes the Dutch government reluctant to regulate an industry without consensus among all interested parties, as in the case of halal certification.

Comparative studies on environmental regulation show that the US government and the US public do not trust industry to comply with regulations without strict enforcement, whereas in the Netherlands and other European countries the government and the public do generally trust industry to comply with regulations and act responsibly.⁶⁶ In this context, industrial self-regulation is supported widely in the Netherlands. However, this does not imply that government takes no part in the regulation of industry. Thus, the Dutch government and the European Union are involved in the certification of organic food, with EU law defining what may be labelled as 'organic'. In addition, the Dutch Food and Consumer Product Safety Authority (VWA) inspects fast food outlets that claim to use healthy frying fat, although this is not a legal requirement but just a voluntary private regulation.⁶⁷ At the same time, however, the VWA does not inspect the deception of consumers by means of fake-halal certificates due to the lack of a legal requirement to do so. The difference between these two cases is that the use of liquid frying fat is framed as a health issue, whereas halal is framed as a religious issue.

Secondly, national organisational structure also seems to be important in the case of halal and kosher certification. Kosher certification in the Netherlands is dominated by the Chief Rabbinate, which apparently manages to unite all Jewish voices (possible differences of opinion are not voiced externally). The situation in the Netherlands after the Second World War probably facilitated this (only a small Jewish population was left, united against a hostile environment). However, this is not the inclusive form of organisation of KRAV. In the United States, which has experienced Jewish immigration from different countries and lacks the centuries of rabbinical tradition found in Europe, the battles over supervision of Jewish dietary practice and over what is and is not kosher were particularly intense.⁶⁸

In the world of halal certification in the Netherlands, a dominant or central organisation is lacking and many competing organisations strive for a share of the market. This is indicative of a situation in which migrants from many different countries with different food and religious traditions are not united in a single association. Initiatives to establish a national halal hallmark have failed so far.

In the United States, Orthodox Jewish organisations have lobbied strongly for the establishment of kosher fraud laws. These laws and their public enforcement are particularly strong in US states with a large and powerful Jewish community (e.g. New Jersey and New York). Only recently, Muslim organisations have also lobbied for halal laws in the United States. To the best of my knowledge, the Jewish community in the Netherlands has not campaigned strongly for state regulation. Muslims in the Netherlands are not a powerful political group, being new migrants with internally mixed opinions. It is only recently that some Muslim organisations have advocated a leading role for the government in halal certification. Kosher food was never perceived as a social problem, and no claims were made on the government to take action. In contrast, halal food is currently associated with several 'problems', such as illegal slaughter, animal welfare in religious slaughter and unreliable halal certificates. Religious slaughter has successfully been framed as an animal welfare issue. At the same time, the political climate in the Netherlands is not in favour of Muslim immigrants, and animal rights groups have gained a strong position.

⁶⁶ D. Vogel, *National Styles of Regulation: Environmental Policy in Great Britain and the United States* (1986); R.A. Kagan, 'How Much Does Law Matter? Labor Law, Competition, and Waterfront Labor Relations in Rotterdam and U.S. Ports' (1990) 24(1) *Law and Society Review* 35-69; M. Verweij, 'Why is the River Rhine Cleaner than the Great Lakes (Despite Looser Regulation)?' (2000) 34(4) *Law and Society Review* 1007-1054.

⁶⁷ The 'Verantwoord Frituren' (Responsible Frying) campaign of the Dutch Catering Industry Association and the Public Information Office for Margarine, Fat and Oil. The VWA controls the use of liquid frying fat to protect consumers from deception. See: <<http://www.vwa.nl/onderwerpen/levensmiddelen-food/dossier/frituurvet/wat-is-er-geregeld>> (last visited 20 July 2010).

⁶⁸ Epstein and Gang, above n. 7.

The position of religious groups and authorities in the state may also be important. Kosher certification arrangements fit into this pattern. The United States is a more religious country, while the Netherlands is more secular. The traditional system of pillarisation in the Netherlands (which has declined in recent years) implied that every faith had its own service organisations (with public funding) in such fields as broadcasting, hospitals and schools. These pillars were semi-autonomous, and the government was reluctant to interfere in their activities.

Goldstein concludes that a general principle that applied for centuries in the United States was that courts should avoid deciding religious questions. Since 1944, however, this principle has expanded into a seemingly absolute prohibition.⁶⁹ This shift may have contributed to the court decisions disabling kosher fraud laws as unconstitutional.

Thirdly, the regulatory arrangements around kosher food in the United States have reinforced the powerful position of Orthodox rabbis, excluding rabbis of non-orthodox groups from rabbinical supervision.

In conclusion, the different patterns in the regulation of kosher and halal foods in the United States and the Netherlands can be partly explained by a different division between the state and religion, the powerful Jewish political lobby in the United States in favour of state regulation, framing kosher and halal labelling as a consumer rights issue in the US and as a religious issue in the Netherlands, and the high level of trust in industry and self-regulation in the Netherlands.

⁶⁹ J.A. Goldstein, 'Is There a Religious Question Doctrine? Judicial Authority to Examine Religious Practices and Beliefs' (2004) *bepress Legal Series Working Paper 316*, available at: <<http://law.bepress.com/expresso/eps/316>> (last visited 30 September 2010).

