

The Orion Cold Storage Saga: Debating ‘Halaal’ in South Africa

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Abstract

In November 2011, Cape Town meat importers Orion Cold Storage was accused, principally by the South African National Halaal Authority (SANHA) - a major halaal certifying body in the country- of deliberately mislabelling certain non-halaal meat products and then selling these off as halaal to its customers. Some of these products included pork which was then relabelled as sheep or veal. Since Orion had a large Muslim customer base, and because some of its products had been certified halaal by the another major halaal certifying body, namely the Muslim Judicial Council (MJC), there was a considerable public outcry amongst Muslims, which was exacerbated by national television coverage of the issue and social media. The issue rapidly extended beyond the initial court case against Orion and became a public debate about halaal procedures and standards in general and the legitimacy of the MJC as a halaal certifying body.

This article analyses reasons for why the saga unfolded in the way it did. Utilising an analytical framework developed by Shaheed Tayob in a seminal work on the halaal in South Africa, it argues that the positioning and public engagement of protagonists during the saga was importantly shaped by market considerations in a competitive halaal industry. But the article also argues an analysis of the relevant players’ actions primarily in terms of such considerations does not take into account the theological dimension to this saga and so it seeks to illuminate this dimension by relating halaal to legal and methodological discourses within Islamic tradition.

Keywords: Halaal, S.A. National Halaal Agency, Muslim Judicial Council, Orion Cold Storage, Shaheed Tayob, halaal market, halaal discourses

Introduction

In November 2011, Cape Town meat importer Orion Cold Storage was publicly accused, most prominently by the South African National Halaal Authority (SANHA) - a major halaal certifying body in South Africa- of deliberately branding its non-halaal products as halaal¹ (or permitted to consume according to Islamic law). The specific accusations were as follows:

1. Importation of Irish and Belgian pork products and re-labelling them as Halaal sheep/veal products.
2. Importation of Australian Kangaroo meat and re-labelling it as Halaal beef trimmings.
3. Importation of Canadian dairy powder for animal feed and re-labelling it as Halaal skim milk powder.
4. Importation of 'non Halaal' Spanish poultry products and re-labelling them as Halaal (South African National Halaal Authority 2011).

For its part, Orion denied knowingly branding the products as halaal, denied some of the specific accusations, and claimed that it was a victim of an elaborate sabotage perpetrated by a former business associate (Gaertner, Press Releases 2011). Significantly, the accusations against Orion had implications for the Muslim Judicial Council (MJC), another major South Africa halaal certifying authority in South Africa, who were responsible for ensuring that the company met the requisite halaal standards.

The accusations gathered momentum through regular printed media coverage and exploded dramatically onto the national scene when Deborah Patta of Et-TV's 'Third Degree' witheringly took certain key players in the drama to task. The ensuing publicity put the entire halaal industry under the spotlight, causing widespread outrage and distrust among the Muslim public and eventually lead the MJC to submit its halaal certification processes to independent review. The fracas threw into sharp focus the theological

¹ Given the context of the discussion, the idiomatic South African spelling of 'halaal' is used instead of the more formal *ḥalāl*. In South Africa 'halaal' is also frequently spelt as 'halal'.

cleavages around halaal certifying procedures in South Africa, as well as the accompanying organizational rivalry, in a highly competitive industry.

How did a case of alleged sabotage or fraud at a specific company become a national debate about the halaal industry in general and the MJC in particular? And what analytical framework can help explain why the saga unfolded? These are the questions that addressed by this essay.

An analytical framework for the study of the halaal industry in South Africa has already been developed by Shaheed Tayob in his seminal research in this area.

Tayob has argued that the South African halaal authorities have used their position to both *service* consumer demand for halaal products as well as *create* that demand itself. They have produced a consumer that has become ‘fearful of the possibility of consuming impermissible products, and demands halal certification (Tayob 2012: 49). In addition, these authorities have tended to pursue rigid Islamic interpretations of what constitutes ‘halaal’, further embedding their role as indispensable functionaries for Muslims amidst the contemporary, technologically complex food industry. In turn, because in late modernity, consumption and identity go hand in hand, Muslim consumers desire the public consumption of certified products as a means by which they approach others and present themselves to the world (Tayob 2012: 49).

In creating that demand, halaal authorities act as ‘cultural intermediaries’ - a term that Tayob takes from the work of Pierre Bourdieu. ‘Cultural intermediaries’ refer to occupations that are involved in symbolic presentation and representation of goods such as marketing, advertising, public relations, fashion and the like. The South African halaal authorities similarly provide symbolic goods to the halaal-conscious consumer while cultivating such consciousness through gazettes, road shows and radio media. They warn against the danger of involuntary non-halaal consumption, emphasize restraint and caution² and in the process create a consumer ‘eager to assert his identity through the purchase of halal-certified products’ (Tayob 2012: 49-50).

² ‘When in doubt, leave it out’ is a well-known slogan employed by SANHA (South African National Halaal Authority) (Tayob 2012, 51)

The halaal authorities have leveraged the complexity of contemporary food production to project themselves as indispensable information allies for halaal conscious consumers. The widespread use of chemical additives (emulsifiers, preservatives, enzymes) in all sorts of foods has raised the question as to their source of origin, which may be animal as well. In addition, the actual manufacturing process also needs to be overseen. These considerations have been a major factor in the rise of halaal certification (Tayob 2012: 50). The increasing opacity of halaal has been effectively utilized by authorities such as SANHA to create a consumer who needs to be wary of potential dangers and so becomes reliant on halaal certification: 'This process of compelling people to rely on halal authorities, due to the opaque nature of halal was part of the demand creation that halal authorities have been engaged in' (Tayob 2012: 51).

Yet, Tayob suggests, a more liberal reading of Islamic law would undermine a number of the positions taken by the halaal authorities and would appear to render their functions largely superfluous. As such, in their role as cultural intermediaries, these authorities tend to converge on more rigid interpretations of Islamic law (or, at times, more liberal interpretations if it similarly consolidates this role as intermediary). It is this general rigidity of interpretation that reinforces 'the identity of the Muslim consumer while generating potential revenue for the halal certification industry' (Tayob 2012: 56).

Yet can this rigidity be explained purely or even mostly in terms of a market model? I would hesitate to agree at this point. Certainly, in looking at the unfolding of the saga, intense organizational rivalry in a very competitive industry was clearly evident and Tayob's analysis does shed considerable light on why the sequence of events took place in the way they did. But I would also like to argue that the mutation of the saga into one that ultimately focused on halaal standards underscores the continuing centrality of particular discursive attitudes to halaal in the Muslim community. Specifically, I would like to suggest that the various halaal organizations, while playing the role of cultural intermediaries, also represent certain competitive authorizing discourses within tradition that cultivate specific outlooks on halaal. For such discourses, not all readings of halaal in Islamic law are equal. It is within the internal logic of an authorizing discourse that

we need to locate some of the other underlying factors that drive these organizations' approaches to matters halaal.

The Unfolding of the Saga

Orion claims that on the 24th October 2011, a former business associate attempted to extort 1.2 million rands from the company. He demanded the amount in return for 'silence' on Orion's alleged fraudulent mislabelling of certain meat or meat-derived products (Gaertner n.d.).

On the 9th of November, a court application by the South African Meat Industry Company (SAMIC), the Red Meat Industry Forum South Africa and a halaal certification body, the South African National Halaal Authority (SANHA), resulted in a search and seizure order against Orion, with computer files and documents being seized from its premises (Gaertner, Press Releases n.d.) (Lockhat 2011). The involvement of SANHA in bringing the matter to light was significant since it was the MCJ, specifically its halaal certifying arm, the Muslim Judicial Council Halaal Trust (MJCHT), that was responsible for overseeing Orion's halaal meat products. SANHA, in other words, muscled in on MJC territory.

The search and seizure order was granted after videotape evidence was presented showing irregularities and apparent fraud in the labelling processes at the company's plant.

On the 10th November, SANHA, SAMIC, the Red Meat Industry Forum and 14 others (including members of the '*ulamā*' associated with SANHA) applied for an interdict against Orion in the Cape High Court. Their Notice of Motion sought to prevent Orion from:

- altering any information on products regarding its origin, nature or substance;
- relabelling its imported products as halal;
- relabelling non-food grade dairy products for animal feed as skimmed milk powder fit for human consumption;
- selling pig hearts as sheep/lamp hearts;
- relabelling and selling pig hearts as halal beef/veal hearts;
- relabelling and selling kangaroo meat as halal beef cuts (chuck and blade);

- relabelling and selling water buffalo meat (from India) as beef;
- and removing expiry dates from any products (Karaan, Halal talks underway 2011).

In an answering affidavit, the company objected to the 'oppressive nature' of the search and seizure operation, undertook not to carry out any of the actions sought by the interdict, and re-iterated that it has not acted wrongfully in the manner described by the application. It asserted that the applicants' case was based on hearsay and hence inadmissible and that the allegations of fraud were orchestrated by former associates and was defamatory. In a letter to the applicants, the legal counsel for Orion called upon the applicants to offer a public apology to the company and to refrain from making further 'defamatory statements', failing which Orion would consider its legal options (Karaan, Orion denies allegations 2011).

It specifically denied that the skimmed milk powder was unfit for human consumption (Gaertner Group 2011) and its CEO Gaertner contested that the kangaroo meat was not relabelled and was sold as precisely that. In addition, buffalo was sold as beef that because it was also bovine (Karaan, Orion certification suspended 2011).

By this time, the story merited national coverage and came under intensive discussion in Muslim media. SANHA played a major role in bringing this issue under the media spotlight, frequently appearing on community Muslim radio stations to discuss the matter as well as actively writing on the issue. The primary issue of concern to the Muslim community was whether the MJCHT had been slack in its supervisory procedures at the company and how this affected the status of its halaal endorsements overall (see for example Karaan 2011).

Patrick Gaertner, Chief Executive Officer of Orion, speaking to local Muslim radio station, the Voice and of the Cape, sought to limit the damage to the company's reputation reminding consumers of its endorsement by the MJCHT:

Most of our sales are to the Muslim community in Cape Town and all products sold to them are imported with strict certification from overseas halal suppliers. This is presented to the MJC who inspects and recertifies it. So we are deeply troubled by the offence that is

being caused to all our Muslim clients who are our major client base and it has floundered us in a terrible way (Karaan, Ask the MJC: Orion 2011).

But the MJC was already seeking the salvage its own image amidst the saga and on the 11th November, 2011 it suspended its involvement with the company pending the outcome of the allegations. Meanwhile, the court battle and trading of accusations between Orion and its opponents continued with no clear victory for either side (Group 2011) (Karaan, Halaal Ruling welcomed 2011) (Bawa 2011) (Schroeder 2011).

Given the nature of the accusations, the focus of further public discussion had moved on to procedures for halaal certification, particularly with regard to imported meat. The MJC's Deputy President, Shaykh Ahmed Sedick, sought to assure the Muslim community that the MJCHT followed a tight system of checks and balances to ensure that the meat imported was halaal. These included flying their inspectors to abattoirs in Brazil, Denmark, China and elsewhere to ensure Muslim supervision was in place in these locations, as well as adhering to a process of double certification: a halaal certificate from the country of origin as well as re-certification of the consignments by the MJCHT once it is assured that relevant documents are in order. The consignments would then be sealed in the presence of MJCHT inspectors before being taken to cold storage. However, the MJCHT was aware that loopholes may have snuck into the system and would not clear any further consignments until the investigation had been completed (Karaan 2011).

Subsequently, various other organisations forayed into the dispute. The National Independent Halaal Trust (NIHT), another important halaal certifying body, called for a Meat Trader's Summit as a step towards finding common ground on halaal standards, especially with regard to imported meat.(M. Karaan, NIHT urges meat summit 2011). A consumer lobby group, the National Consumer Forum, supported a call for a 'Halal Bill' to regulate and standardise the industry.(M. Karaan, Call for a Halal Bill 2011)The Muslim political party, Al-Jama'ah, said it would lobby for an end to imported halaal meat products (Karaan, 'Halal monitoring inadequate' 2011). Another, hitherto little known organization, Darul Iftaa Western Cape,

advertised an alternative halaal service that would ensure more 'stringent criteria' are met before certification is given (Kenny 2012)³.

In the midst of such pressure, and the seemingly ineffective responses by Orion to the allegations made against it, the MJCHT formally withdrew its halaal certification of the company on the 20th December 2011 (Karaan, MJC pulls Orion certification 2011).

But the intense community discussion around the issue brought it to the broader public focus. On the 18th January 2012 the saga became the subject matter on the nationally televised programme, '3rd Degree', aired on the channel ETv, and hosted by investigative journalist Deborah Patta.

The programme showed, amongst other things, video footage of how pork had been relabeled as sheep and veal products. It threw Orion's Patrick Gaertner's credibility into question and he came across as (or was portrayed) as fumbling on details and uninformed of what was taking place at his company. In contrast, those associates who had initially informed on Orion appeared on the programme as credible sources (3rd degree 2012). In the eyes of the public at least, this may have set the seal on Orion's alleged guilt. Patta also attempted to interview MJC representatives at their offices with regard to the issue. The MJC refused to grant such, but its representatives apparent dissembling with regard to who was at the offices at that time and its 'ducking and diving' caused a major furor (Nkomo 2012). They appeared to be evading the issue and as they were the certifying body for Orion, were guilty by association. There was a massive public outcry after the programme was broadcast and there were even calls to boycott the MJC as a halaal certifying authority.

Seasoned journalists commented that they have hardly ever experienced such an outburst of public anger directed against a specific organization – not doubt indicating the sensitivity around halaal, and pork in

³ Of course, the motivations behind these various groupings have historical roots. The Al-Jama'ah leader, Ganief Hendricks, was previously associated with the Islamic Unity Convention, an organization that had set itself up as a rival to the MJC's dominance in the Cape. The head of Darul Iftaa Western Cape is Mufti Ebrahim Smith who has strong affiliations with conservative Deobandi 'ulamā (and so generally SANHA sympathetic) in the north of the country, particularly Kwazulu Natal.

particular, in the Muslim public consciousness (Morton, MJC-Orion fraud halal crisis - 'a real disgrace' 2012) (Karaan, When anger goes blind 2012).

Despite the MJC's insistence that it was Orion, and not they, who was the guilty party, the furor undoubtedly dented the credibility of the organization and led to further calls for regulation of the industry and of halaal standards ('Excess' anger over 'PR mess', 2012) (Muslim Judicial Council (MJC) versus honesty and integrity, 2012).

In response to the outcry, the MJC launched a social media offensive in which it undertook to better communicate with the public on halaal and other matters (MJC South Africa launches its social media campaign, 2012). On the 25th January 2012, they also launched a series of weekly public information campaigns, called 'Halal Caravans' in the Western Cape, which went from mosque to mosque to explain their position and talk about halaal in general (Voice of the Cape 2012). These initiatives were a clear acknowledgment that it had lost the media battle to date.

They also pledged to do another interview with 3rd Degree's Patta, which aimed at giving their side of the case. On the 31st January 2012, the programme allowed the Muslim Judicial Council to present its case to the viewing public. However, the interrogative nature of the interviews proved daunting and they were deemed again to have performed poorly (Bawa, 'Answers not good enough' 2012).

On the 6th February 2012, amidst a continuing public outcry, the MJC agreed that an 'Independent Halal Review Panel' (IHRP) monitor its processes and procedures. The review panel consisted of 'Shariah law experts, business leaders and professionals' and undertook to examine and appraise MJCHT's oversight of 'the halaal supply chain', its processes of inspection and certification, and the cost structures associated with these processes (Voice of the Cape 2012).

What began as a local case of fraud (or sabotage), mutated into one of halaal standards, leading to a very public interrogation of a major halaal certifier.

Analysing the Saga

In the foregoing description, three factors stand out in shaping the unfolding of events: the wide media coverage; organizational rivalry in a highly

competitive industry; and the public outcry. All these factors, we argue, resonate with Tayob's market model analysis of the halaal industry in South Africa. But while these factors are important, they are not sufficient. We also need to seriously take into consideration the theological reasons offered by halaal organizations for their involvement in the industry. Viewing halaal as a theological discourse, I believe, would help cultivate a more rounded and, possibly, more fundamental understanding of the saga.

(1) Engaging the media

A noteworthy feature of the saga was SANHA's deft handling of the media and, inversely, the MJC's apparent ineffectiveness in this sphere. Moulana Nakhilavi of SANHA appeared frequently on community radio stations to give voice to the argument against Orion, and implicitly to the MJC's halaal procedures. It also preferred to deal with the media directly rather than consulting directly with the MJC on its halaal certification procedures. In an interview, MJC media liaison, Nabeweyah Malick, said the organization felt disappointed by SANHA when it launched the initial court action against Orion (despite the MJC being the latter's certifying authority) - an action that was quickly highlighted in the media. The MJC was only given the alleged videotape evidence of the company's fraud less than 24 hours before the court application and so had insufficient time to formulate an appropriate response (Malick 2012). SANHA, though, denies that it attempted to bypass the MJC and claims that it tried to contact the organization a number of times before proceeding to court and even offered to pay for the latter's legal costs if they joined the action against Orion (Lockhat 2012). Whatever the truth, it is clear that SANHA preferred to deal with the issue in a very public manner.

For journalist, Shafiq Morton- who has written extensively about the halaal industry in South Africa- their publically prominent role in the saga was to be expected: the halaal industry is a highly competitive one and the action of SANHA was meant to show up the MJC as 'shoddy' and unprofessional, and incapable of dealing adequately with halaal issues (Morton 2012).

Crucially, though, it was the *image* of being shoddy and unprofessional that was being conveyed to the public, irrespective of the

substance of the allegations. And so for MJC spokesperson, Malick, the main problem for the MJC was the need to counter that image. In her opinion, a random crime that could have taken place ‘anywhere’ was now portrayed (in the media) as a ‘failure’ by the MJCHT to properly monitor its halaal certifying processes. In the ensuing public outcry, the MJC’s case and explanation of its certifying procedures was not sufficiently heard (Malick 2012).

Of course, being sufficiently heard in the media is dependent upon a pre-existing media relations network and in this regard it appears that SANHA was better drilled than the MJC. Its ‘Halaal Gazette’, for example, has a national outreach while the MJCHT does not have any comparable publications of its own. Elsewhere Tayob makes the sustained argument that ‘the [media] communications of SANHA have significantly contributed to the development of the halal industry in general’ (Tayob 2012:107) and points out that ‘these SANHA communications have not been contested or matched by any of the competing halal authorities’ (Tayob 2012: 107). In contrast, Morton observes that the MJC demonstrated a lack of competency in dealing with the media and with ‘public space’. Its inadequate public comment and responses allowed the organization to be outflanked by SANHA in relations with the media (Morton 2012).

SANHA was clearly better poised, media-wise, to take advantage of the saga. As per Tayob’s framework, the situation presented them with an opportunity to increase their market share at the expense of an important rival.⁴ And this they could do by presenting themselves as engaged and conscientious and, by implication, their rivals as less than that. And they were presenting to a public who were, in part, schooled by them to be ‘wary of dangers’ in regards to what constitutes halaal (Tayob 2012: 51).

(2) The Roots of a Rivalry

⁴ It appears that the MJCHT initially at least were fearful that was SANHA’s agenda behind raising the issue and that by using it they sought to encroach on the MJC’s territory. (M. Karaan, Interview with Munadia Karaan 2012)

The tensions between SANHA and the MJC are at least partially rooted in the lucrative nature of the halaal industry, estimated globally at \$650 billion a year (Charles Rarick 2011).

The MJCHT is technically a division of the MJC, but is a legal entity in itself. The decision to legally separate it from its mother body took place in 1986 when the MJC was confronted by court action brought against it by the Ahmediyyah sect. The MJCHT, being the MJC's primary income generator, needed protection against any legal damages inflicted by the organisation (Morton 2012) (Muslim Judicial Council 2012). The official line on its founding is given as:

The Muslim Judicial Council (M.J.C.) is a recognized non-governmental, Islamic Religious Authority and Judiciary based in Southern Africa and represents over 140 Mosques within the Western Cape region.

The MJC, a body of Islamic Theological scholars, established in 1945, has been in the field of Halaal certification for over 50 years and was the first such authority in all Africa.

The MJC is divided into various divisions and departments, namely, Administration, Arbitration/Mediation, Da'wah, Education, Fataawa, Finance, Halaal Certification & Monitoring, Muslim Personal Law, Presidency, Secretariat and Social Services.

The Division responsible for Halaal Certification & Monitoring (MJC HALAAL TRUST) is registered as a Trust with the South African Government since 1986 (Registration No. T.975/92). ...The affairs of the MJC Halaal Trust is conducted by a Board of Trustees who are all members of the Muslim Judicial Council and are guided by the Fataawa department for religious criteria. The Trust is also supported by a group of Hygiene Specialists and Food Technologists...' (Muslim Judicial Council 2012).

It lists its functions as, amongst other things:

- catering for the dietary needs of Muslims both locally and internationally

- serving as the ‘Halaal Conscience’ of the Muslim Community by supervising & ensuring that all meat, poultry, etc. conforms to Halaal standards.
- monitoring abattoirs (focusing on Muslim slaughtermen, stunner voltages, line speeds, etc.) and food outlets (cafes, supermarkets, etc.), ensuring that edible consumer goods are prepared from slaughtering to consumption according to strict Halaal Standards (Muslim Judicial Council n.d.).

Up until the saga, the MJCHT notoriously did not issue public financial statements. It was, though, keen to emphasize that as a non-profit organization it is required to distribute 75% of its proceeds to charitable, religious and educational institutes (Muslim Judicial Council n.d.). However, as the saga unfolded and the public pressure mounted (particularly after the issue came into the national spotlight) the MJC was compelled to make its financial statements public. These showed its gross income for 2011 to be R8 078 893 while its expenditure was R7 647 383. Of the latter, R 4 306 191 was documented as ‘Grants and donations’ (Council, 2011).

SANHA was officially established in 1996. It claims that the rationale behind its founding was the following:

Previously a number of small and largely regional organisations purported to certify products as Halaal. Many of these organisations had neither the resources nor the management capacity to adequately address the issue. They were, however, established with the sole object of generating income from the so-called Halaal certification process.

Many products that bear Halaal certification marks have been discovered by the Muslim community to be deceptive in that the prescribed supervision and certification procedures have not been adhered to. This led to widespread confusion, suspicion and dissatisfaction at both industry and consumer level.

Prior to the formation of SANHA, Halaal certification was a fragmented approach in which differences of policy between the certifying bodies were exploited, This led to the word ‘Halaal’ being abused at the expense of the Halaal-conscious consumer.

As a result of the problems set out above, the only solution was to bring about an amalgamation of all role players in the monitoring and certification of Halaal. This arduous and momentous task reached fruition after almost two years of vigorous consultation and negotiation. 95% of stake holders embraced this noble national initiative and against all odds SANHA was finally launched on 20th October 1996 (South African National Halaal Authority n.d.).

While not entirely successful in amalgamating all players, it has established itself as the pre-eminent halaal powerhouse in the Gauteng and Kwazulu Natal provinces.

Unlike the MJCHT, SANHA's abridged financial statements are in the public domain- a fact it makes sure is not lost on the public (Lockhat, SANHA Financial Statements 2011). Their income as at the 28th February 2011 stood at approximately R11.4 million rand and their income at approximately R10.4 million. Their surplus for the year was R842 020 and their equity stood at R1 370 095 (Nknonki KZN 2011).

As is evident from these descriptions, the MJCHT locates itself in history, as the natural point of reference for Muslims of the Western Cape in relation to all halaal matters. SANHA also has a considerable pedigree, being in effect the halaal certifying body of the Jamiatul Ulama South Africa- an ulama body that holds considerable sway over the Muslims of Gauteng and Kwazulu Natal. However, it is not content with containing itself to its organic constituency but expressly makes its goal the bringing 'about an amalgamation of all role players in the monitoring and certification of Halaal'. It appears intent on colonizing the halaal industry in South Africa. To this end, it has repeatedly and aggressively expressed itself on halaal controversies through the intervening years.⁵ Organizationally, it makes a play at being the transparent halaal certifying authority, whose procedures, costs and financial statements are standardized and open to public scrutiny. It also actively seeks to portray itself as the more conscientious of the two organizations.

⁵ See various issues of the South African National Halaal gazette produced by SANHA and available at (South African National Halaal Authority n.d.).

(3) *Public Sensitivity*

We have already noted the enormous public outcry at the alleged conduct of Orion and the MJC. We have also noted Tayob's argument that that the public's sensitivity to halaal matters is itself, in part at least, a product of the symbolic goods produced by halaal bodies acting as cultural intermediaries. And such public pressure in turn has significantly shaped the development of the saga.

But even if it is granted that such heightened public sensitivity regarding halaal has been cultivated by halaal bodies themselves, this does not adequately explain *why* the consumer may buy into the argument of a particular halaal body. To address such an issue, we need to take seriously the outward motivations provided by halaal bodies for their involvement in the industry since these are the ones used to appeal to the consumer. As we have seen, such motivations are inevitably centred on seeing themselves as guardians of halaal for South African Muslims. As such, they present *arguments* for their particular attitudes and views on halaal. These arguments stem from the legal discourse of Islam. But these arguments are also tied, in turn, to methodological discourses of halaal within the Islamic tradition since these bodies are not isolated entities but are tied to broader discursive formations within that tradition. While a particular legal argument may appeal to a narrow base of scholars, it is the broader discursive formations in which they take place that helps steer the public adopt particular attitudes to halaal.

My view of the relationship between tradition and discourse (and hence argument) has been significantly informed by the work of Talal Asad. Asad defines the relationship as follows:

A tradition consists essentially of discourses that seek to instruct practitioners regarding the correct form and purpose of a given practice that, precisely because it is established, has a history. These discourses relate conceptually to a past (when the practice was instituted, and from which the knowledge of its point and proper performance has been transmitted) and a future (how the point of that practice can best be secured in the short or long term, or why it should be modified or abandoned), through a present (how it is

linked to other practices, institutions, and social conditions) (Asad 1986: 14).

Similarly, in South Africa we find a variety of discourses, located in particular histories as we have already seen, that outwardly at least see their primary function as providing proper guidance on halaal to the consumer. What constitutes proper or correct guidance may vary from organization to organization precisely because their methodological approaches to halaal are rooted in specific interpretations offered by these historical discourses. And these organizations seek to secure the ethos of such interpretations in their ongoing formulations of halaal.

(4) Halaal as a Discourse

Tayob has investigated some of the arguments presented by halaal authorities for their positions on various issues such as the pronouncement of God's name (*tasmiyah*) when slaughtering an animal, the use of pig bristles, gelatine and shellac, the food-especially the meat- of Jews and Christians, and the issue of contamination. While there are a variety of traditional and modern Islamic opinions on these matters, halaal authorities in South Africa have tended towards the more conservative ones in seeking 'to define halal as a separately identifiable commodity' and hence create a demand for their services. And so, for example, all halaal authorities agree that the meat slaughtered by seeming Jews or Christians are not acceptable since their true beliefs cannot be ascertained. However, in certain cases the practical realities of modern food manufacture meant that liberal interpretations were also adopted in order to obtain certification contracts and promote Muslim consumption. And so for example, the MJC, ICSA and the NIHT were in favor of allowing gelatine from non-halaal sources since it enabled them to do precisely that. On the contrary, SANHA chose an opposing view on this issue but by doing so raised consumer awareness on the matter as well as further demand for halaal certification:

On this issue, all of the authorities were therefore considering the revenue-generating and competitive implications of the certification

industry when making their decisions (Tayob 2012: 66; see also pp. 52-72).

But can we reduce such interpretations to the laws of the market? I do not think so. The evidence simply does not bear this out. There is no causal relationship shown between market positioning and the formulation of a fatwa (legal opinion) on halaal. And neither is it clearly shown why an organization should be flexible in the face of practical constraints and adopt a more liberal position as opposed to it opting to demand halaal certification for a more conservative position. But, mostly, the fatwa itself is constructed according to certain internal criteria that have little to do with marketability. For example, Nasim Mitha, has made a fairly detailed study of how, in the 1990's, individual halaal organizations in South Africa approached the issue of gelatine from non-halaal sources. The central issue was whether these sources transform sufficiently in their becoming gelatine and thus acceptable under Islamic law. He summarized their procedures as follows:

The general methodology of all the scholars in adducing the law was initially to go to the primary sources of Shari'ah [namely, the Quran and Hadith]. Since no direct *nass* [textual evidence] is found either in the Quran or hadith, recourse is taken to the works of *fiqh* in which a principle can be identified. The first step is to ascertain the nature of the raw materials, i.e. whether the raw material is *halal* or *haram* (permissible or prohibited) or *tahir* or *najis* ([ritually] clean or unclean). The second step would be to identify a juristic principle, which could be used in the particular case. In the case of gelatine it is the principle of *istihalah* or *tabdil al-mahiyah* or *inqilab al-mahhiyah* [all these terms denote the transformation of an original substance]. The next step is to elucidate the principle and check its compatibility with the problem. This is done by a thorough examination and understanding of the processes involved. Is it one of extraction or transformation? Then the utility of the product is examined. Is it one of operation essentiality or is it readily

replaceable by other agents? Finally the verdict is issued (Mitha n.d, 296)⁶.

Here there is a particular legal discourse that the 'ulama of the various groups need to follow, one that assesses the matter at hand in the light of the primary and secondary sources contained in the tradition. This assessment takes place in a manner organized by the internal structure of that discourse. For these jurists, this legal discourse forms an objective benchmark for the assessment of their views- and it is a benchmark that may allow more than one view on an issue, that is, a more 'liberal' or a more 'conservative' opinion as the case may be. Within the internal structure of these discourses, though, the term 'liberal' and 'conservative' do not feature: whether a view happens to be liberal or conservative depends on the internal argument generated by the discourse.

Yet there is another discourse that overlays this one- it is a discourse that informs an organization's *approach* to the legal discourse. This discourse is determined by an organization's historical trajectory and it is this discourse that may more properly determine whether an organization is liberal or conservative in its approach. It is in these methodological discourses where the theological differences between the MJC and SANHA mostly reside.

Traditionally, most Muslims in the Western Cape have followed the *Shafi'i* legal school. However, the '*ulamā*' of the Western Cape, as represented in the MJC, have been rather eclectic in their approach to the issue of halaal, and have freely adopted from the *Hanafi* or other schools where they feel that such would be in the greater public interest. This eclecticism is, in a large measure, the product of a modern Middle Eastern approach to Islamic law since it is there that many of the MJC 'ulama have trained. This attitude has led to a greater leeway in matters halaal, with the more lenient opinion adopted for public consumption- in line with the legal maxim that 'there is no difficulty in religion'. And so, the Muslim Judicial Council adopts the *Hanafi* concept of *istihālah* in its approach to the use of gelatine. *Istihālah*, as indicated above, is the process whereby an originally legally impure substance (non-halaal) is made legally pure (halaal)

⁶ I have marginally adjusted some of the original transliteration in my quote.

due to a metamorphosis which renders it different from its original nature. And because the transformation undergone by the original substance is irreversible, the Muslim Judicial Council has declared the end product, gelatine, permitted to consume (Views on Gelatine 2006).

In contradistinction, the traditional constituency of SANHA are *Hanafi* Muslims, and its 'ulama' appear keen to maintain its fidelity to that *madhhab* (school of law) as opposed to the more eclectic approach of the MJC. But they also emphasise significantly more caution in determining what constitutes halaal. 'When in doubt leave it out' is a motto that SANHA proclaims- in line with the Prophetic advice to avoid that which is doubtful (South African National Halaal Authority 2002). And so, even though *istihālah* is a concept found in their *madhhab*, they do not believe that the processes involved in producing gelatine from non-halaal sources constitute metamorphosis. And so they continue to view such gelatine forbidden to consume. Additionally, they view the employment of the concept of *istihālah* amidst the abundance of 'Halaal raw material' equivalent to using a 'technical loophole' and should best be avoided (South African National Halaal Authority n.d.).

What explains these differing approaches to halaal? I believe that a fruitful way in exploring this issue is to explore the relationship between *fatwā*, the purely legal opinion on an issue, and *taqwā*, the more cautious course of action that may be dictated by an individual's conscience. The primary reason for the MJC's establishment in 1945 was as a body that would bring together the 'ulama of Cape Town as they went about addressing issues of mutual concern and seeing to the religious needs of their community. In fact, the MJC still sees itself as a 'bay-tul 'ulama'- a home for all 'ulama (Council, About us n.d.). As such, the MJC is not tied –or cannot tie itself- to specific ideological currents in the Islamic legal tradition. Given its broad based 'ulama constituency, the MJC tends to veer towards the purely legal discourse of the issue at hand- a discourse that would be commonly agreed upon by its 'ulamā. Yet this veering towards the purely legal discourse is itself a methodological stance: a methodology that self-consciously separates the legal from the ideological. *Fatwā* must be clearly separated from *taqwā*, a cautiousness that may be demanded by particular ideological currents in the construction of their Islamic discourse.

Such ideological cautiousness, we believe, is evident in SANHA's approach to halaal. Unlike the MJC, SANHA is tied- via the Jamiat Ulama South Africa- to such a specific current, namely, the Deobandi school. The prominence given to hadīth (Prophetic teaching) is a characteristic of this school (Tareen n.d.). It is no accident that SANHA that SANHA's motto 'when in doubt leave it out' is based on a hadith prominently quoted in issues of their gazette. As quoted by SANHA, the full hadith runs:

The Halaal is clear and the Haraam [i.e. non-halaal] is clear; in between these two there are doubtful matters concerning which people do not know (whether they are Halaal or Haraam). One who avoids them, in order to safeguard his religion and his honour, is safe. Anyone who gets involved in any one of these doubtful items, may fall into the Haraam... (SANHA 2002).

Another Prophetic saying quoted by SANHA further cements a cautious approach to halaal matters:

There will come a time upon my Ummah [Muslim nation] when people will not be concerned about what they consume. It will not matter to them whether it is Haraam or Halaal.

It is further reported,

When such time appears, none of their du'aas [supplications] will be accepted (SANHA, The need to heed! Halaal certification 2001).

There are other disadvantages as well. The Deobandi scholar, Shaykh Ahmed Abdul Mujeeb Qasmi Nadvi mentions them as follows, and I quote:

1. Haraam food extinguishes the light of Iman [faith], and the heart become dark.
2. It makes man dull, lethargic, and inactive.
3. It causes [him] to commit *Haraam* deeds and corrupts thoughts and action.
4. It kills conscience and puts a barrier between man and virtue.

Nadvi (n.d.) states:.

The essence is that *Haraam* creates a distance between man and *Deen* [religion], ruins the Hereafter, the door of virtues is closed on him, and that of temptations and sin is flung wide open.

Sanha's views on halaal cannot be delinked from this wider discourse on the concept put forward by the Deobandi school. As a very self-conscious part of this school, they naturally integrate its concern with hadith and its particular spirituality into its approach to halaal. Halaal is not simply a matter of Islamic legal judgment but has to be linked to other elements of an integrated Deobandi discourse. Caution with regard to halaal is an inevitable consequence of this discourse. Such caution also informed its refusal to certify imported meat and its castigation of members (such as the MJC) which did do so since for SANHA the halaal status of such meat cannot be effectively monitored. The safeguards put into place by the MJC for such monitoring (discussed earlier) was clearly not sufficient by SANHA's standards (Navlakhi 2011). For SANHA, *taqwā* and *fatwā* are perhaps more closely linked than it is in the case of the MJC.

It is important to view these different emphases on the relationship between *fatwā* and *taqwā*, not as opposing viewpoints, but as locations on a spectrum⁷ of differing approaches to this relationship. SANHA certainly still

⁷ There are other positions on this spectrum as well. A third major Halaal certifying authority, the National Independent Halaal Trust (NIHT), is also predominantly Hanafi in orientation, but finds its constituency among those following the Barelwi ('Sunnī') school of thought, as distinct from SANHA's Deobandi adherence. The Barelwi/Deobandi debate is primarily a theological one and hardly features in the discussions relating to halaal issues. In fact, the NIHT also references Deobandi affiliated ulama in support of its positions. (National Independent Halaal Trust n.d.) In turn SANHA recognizes the NIHT as a legitimate role player on the South African Halaal scene. The NIHT agrees with the MJC with regard to the issue of gelatine, having conducted its own investigation in this regard. (Trust n.d.) However, with regard to the issue of imported meat it shares the same position as SANHA: 'As a policy, the NIHT does not accept any halal certificate from a

seeks to separate *fatwā* from *taqwā* and the MJC certainly does not believe that all Islamic legal opinions equally valid- some are closer to *taqwā* than others. But there is little doubt that the dynamics of the *fatwā-taqwā* relationship are shaped differently in each of these discourses.

There has historically been an attempt to get the four major certifying organizations, namely the MJC, SANHA, NIHT and ICSA (the Islamic Council of South Africa - who have been relatively quiet throughout the saga) to agree to a common set of halaal standards. In 2005, the National Halaal Forum (NHF), under the auspices Consumer Goods Council of South Africa, managed to get these parties to sign to a National Halaal Accord (NHA) in this regard. However, the differences on these standards proved telling and SANHA subsequently withdrew from the NHF and the accord ground to a halt in 2006. And in the wake of the saga such a call was revived (Karaan, Why no uniform halal standards? 2011). But in the light of such methodological differences, it is difficult to envisage such common halaal standards being agreed upon in a sustained fashion.

Conclusion

It was barely two decades that South African Muslims of an earlier generation used to rely on individual Muslims, Imams and disparate Islamic organizations to certify their consumables as halaal (Vahed 2000).

But the demands of globalization, the further freeing of markets in a postapartheid South Africa and the increasing complexity of food manufacture has necessitated a greater centralization and rationalization of the halaal industry worldwide, with countries like Indonesia taking the lead in this regard (Linzag 2010). It is under this broader impetus that South African Muslims too attempted to gain common accord and greater control in this area.

To an extent this has been successful. The MJC and Sanha (together with the NIHT and the Islamic Council of South Africa) are generally seen as

foreign country “on face-value”; neither does it accept any halal standard less than what is implemented in South Africa. As such, it has strictly forbidden the usage of dubious imports by its members and certified outlets’ (Karaan, NIHT urges meat summit 2011).

the authorized halaal certifying bodies in South Africa and have developed fairly sophisticated mechanisms for determining halaal. It is simply not possible any longer for an unaffiliated Imam or religious scholar to certify products as halaal. For various historical and theological reasons these organizations can claim particular constituencies but at the same time exist in mainly economic rivalry with one another. The rivalry between two of these organizations was sharply brought to the surface during the Orion saga.

A hermeneutic of suspicion, as employed by Tayob, is important on shedding light on the politics (media engagement, organizational positioning) of the saga's unfolding. These politics, as we have seen, are intimately tied to the competitive business aspect of halaal organizations, where they, like any other business, seek to increase their individual market share. Yet 'business' is not the outward purpose of halaal authorizing bodies. They see themselves as guardians of halaal in an increasing complex food manufacturing environment. We have suggested that these theological purposes need to be taken seriously by locating halaal as part of specific discourses within the Islamic tradition. As such, these organizations do not only relate halaal to elements which are 'outside' in the market but- and perhaps more fundamentally- to those that are 'inside' within the tradition. Most obviously, their formulation of halaal is inevitably bound by the legal discourse of the Islamic tradition. But their approach to halaal is also largely shaped and driven by the manner in which their methodological discourses organize halaal amidst other categories.

Yet the politics of the 'outside' can substantially affect takes place within that tradition. Quite clearly, the public pressure and the media spotlight prompted the MJC to take a more cautionary attitude to the issue of imported meat as well as inviting an inspection of its halaal procedures- in other words, a forced reconsideration of its internal halaal discourse. But the Independent Halaal Review Panel has largely vindicated the MJC's halaal procedures and so, for the current at least, a major review of that discourse has been staved off (Karaan, *Voice of the Cape* 2012).

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