

## Article

# Industry or Holy Vocation? When Shehitah and Kashrut Entered the Public Sphere in the United States during the Age of Reform

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**Abstract:** Long before the Agriprocessors scandal, the question of whether secular law and social concerns should shape the halakhah surrounding kosher meat production has been a live issue in the United States. In the 1890s, a critical mass of Orthodox Jewish immigrants gave rise to a more commercialized kosher meat industry, which raised the question of how much rabbinic legislation concerning kashrut could stay untouched by civil or union regulation. Although there has been plenty written about the regulatory roles of unions and government regulation in the kosher meat industry from the Progressive Era to the New Deal, the purpose of this essay will be to examine the responses of Orthodox rabbinic leaders in America to these developments. It will also focus on the role of non-Jewish legislation in creating greater uniformity of kashrut standards, as well as, ironically a more insular focus on the letter of the law, sometimes at the expense of civil legal concerns. Finally, it will examine how separation of religion and state created the system of kosher certification that emerged during the early twentieth century.

**Keywords:** kashrut; halakhah kosher slaughter; regulation; Judaism; kosher

## 1. Introduction

The role of non-Jewish legal regulation of kashrut in modern Jewish history has in recent decades, become a topic of increased scholarly interest, especially as the kosher food industry has grown in size and scope to serve consumer populations that go far beyond Orthodox Jews. This new scholarly interest reflects widespread popular discussion among Jews across the religious spectrum on the meaning of kashrut that resulted in a mini-revival of locally sourced and slaughtered kosher meat and efforts primarily among the Conservative and Open Orthodox<sup>1</sup> movements towards address the ethical issues inherent in kashrut (Goldberg 2013). Significantly, though, there was no agreement on what place issues such as environmental, labor, or (somewhat disturbingly) animal welfare regulation should have in the shaping of the halakhah of kashrut. Therefore, when considering the scholarly and practical issues regarding what role seemingly extra-religious considerations should play in the production of kosher food, it is important to remember 1. Kosher meat scandals are not new in American history, and if anything were a lot more common earlier, 2. Efforts to address them historically *did* involve some incorporation of civil and even union regulation into halachic decision-making, and 3. The reforms created an essentially privatized system of kosher regulation, which while successful in ensuring kashrut, may have also contributed to the creation of conditions that made the Agriprocessors scandal possible. (Lytton 2013b, pp. 3–5, 164–65).

<sup>1</sup> The increasingly accepted moniker of a progressive movement within Orthodoxy in response to the increasing rightward shift of Modern Orthodoxy, among whose adherents, the term “Centrist Orthodoxy” has become increasingly preferred. See (Weiss 2015).

The purpose of this essay therefore, is to extend the already excellent scholarship on the history of America's kosher certification system to shift the focus from what was accomplished to the limitations of self-policing. In addition, the paper will shift the emphasis from civil regulation of religious matters to rabbinic and Jewish organizational responses to civil, and when applicable, union regulation, highlighting successes and failures. Above all, it will seek to demonstrate that a successful system of private certification was not only not the end of the story but signaled major changes in the way that kosher certifiers not only worked with civil and union authorities, but reshaped halakhah (or not) in response to their regulations. Finally, it will look at the ways in which civil and religious concerns became almost unavoidable entangled, ironically because the end of semi-autonomous Jewish communities brought kashrut into the public sphere, during the very period in history that the extent of civil regulation of business was itself being renegotiated.

The question of whether kashrut should incorporate civil legal (or ethical) concerns into the halachah has long predated the Agriprocessors scandal. Corruption in the kosher food, and in particular, the kosher meat industry goes deeply back into American Jewish history, even before the "third wave" of Jewish immigration in the post-Civil War decades. However, the civil legal and ethical problems of kashrut in America would reach a peak during the decades of the late nineteenth through the mid-twentieth century, as the commercialization of kosher meat processing added on to the existing problems of the breakdown of communal control over kosher certification. The first issues to incite public opprobrium and highlight the regulatory shortfalls of halakhah were price gouging and selling *treif*<sup>2</sup> meat as kosher (and pocketing the price difference) (Gastwirt 1974, pp. 44–47). Citizen activism played a major role in addressing the first issue, and the multiple kosher meat boycotts, beginning with the famous Kosher Meat Strike of 1902 illustrated the gendered nature of this activism in defense of the "kitchen religion," as Jewish women used their power as consumers to withhold support from an industry that attempted to take advantage of their fidelity to kashrut (Breitzer 2014; Newberry). The problem of misrepresentation of *treif* as kosher, by contrast, would prove less amenable to communal activism, and unprecedentedly inspire Jewish religious leaders to seek the assistance of the state in enforcing halakhah, an effort that would reshape halakhah in the process. The relationship between shul and state became the more complex in the succeeding decades of the twentieth century, as the kosher meat industry became an increasingly secularized business.

The rabbinic responses to these issues and others took place against a backdrop of not only Constitutional separation of religion and state, but the awareness of less favorable government involvement in kashrut in the old country, whether through the *korobka* (kosher meat tax) in Russia, or the increasing restrictions on *shehitah* in Germany; (Diner 2000, pp. 164–65; Judd 2007, pp. 5–11) The result was a carefully choreographed dance between rabbinic and governmental authorities—accepting and even incorporating civil regulation when it did not interfere with the practices of kosher food production and preserved Orthodox Jewish prerogatives in defining what was kosher, while rejecting any regulation that threatened to interfere with *shehitah* or lead to it being banned altogether. But for much of the history of kosher slaughter in America, civil government involvement was sought by rabbinic authorities, and the resulting civil regulation was not only accepted but incorporated into Jewish law, all as a response to the breakdown traditional communal control, and as part of a search for a system to replace it.

## 2. Jews, Kashrut, and the Public Sphere

The entry of kashrut into the public sphere was a product of the modern era, and the effects of Jewish emancipation and de-ghettoization. Although there had long been degrees of coordination between Jewish communal leaders and non-Jewish governments, the flip side of emancipation and

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<sup>2</sup> Literally meaning "torn," but in common usage, referring to food that is unkosher for any reason. There are varied spellings of the transliteration, but for consistency's sake, I will be using the spelling "treif" throughout.

civil equality was the end of semi-autonomous communities. This resulted in the increased possibility of governmental involvement and interference of the state in multiple aspects of Jewish life that had once been the province of Jewish communal and religious leaders, ranging from marriage and divorce to the regulation of food production (Gastwirt 1974, pp. 22–23). A number of conditions, however, made America different even from post-emancipation Europe, beyond the official separation of church and state. These included the essentially voluntary nature of religion in America, and the diversity, mobility, and lack of centralization among American Jewish communities, even within Orthodoxy (Sarna 2004, pp. 4–6, 51). All of these factors made it difficult to impossible to replicate the communal control of kashrut, including the ability to enforce limitations on who could enter into the shehitah trade. This in turn, unprecedentedly enabled less than pious practitioners to enter the field and dominate the trade, creating conditions of corruption and chaos by the early decades of the twentieth century (Gastwirt 1974, pp. 22–23).

Although these problems first emerged in the early nineteenth century, they rapidly increased by the 1880s, with the arrival of the “Third Wave” of Jewish immigration from Eastern Europe, who soon constituted largest group of (nominally to devoutly) Orthodox Jews in the history of Jewish immigration to America. Their arrival coincided with the rise of the American processed food industry, which created additional complications for kosher-keeping Jews. At a time when immigrant Jewish homemakers prepared most food for their households from scratch, winning consumer trust became important to food manufacturers. Commercial kosher certification, therefore, began partly in response to the attractiveness of packaged food to immigrant Jewish wives, for whom spending less time in the kitchen became part and parcel of Americanization (Diner 2000, pp. 180–81, 206–7). Rabbinic responses to the challenges of keeping kosher in Progressive-era America were therefore also shaped by the necessities of responding to the realities of Jewish life in an unprecedentedly open society, in which even the majority of the faithful minority of Orthodox Jews struggled to maintain observance amid the pulls of Americanization and modernization. This situation itself required reshaping the Orthodox rabbinate at a time when sermons in English rather than Yiddish were considered shockingly modern. But many Orthodox rabbis from this period considered selective modernization necessary to get most Jews to continue keeping kosher at all (Gurock 2009, pp. 125–26, 133–34).

Aside from the special seasonal requirements for Passover, the kashrut of meat has always involved the most challenging and complex set of regulations that go way beyond the familiar limitations regarding permitted species and the avoidance of mixing meat and milk. Rather, the process of making meat kosher hinges on factors ranging from the method of slaughter, known as shehitah, which requires a single cut the throat of a conscious animal, to the salting of meat to remove all traces of blood, to the requirement to check the internal organs of the animal (especially the lungs) for signs of injury or disease that would render even a properly slaughtered animal unkosher (Levin and Boyden 1940, pp. xi–xiii). The complexity and exacting requirements of this process has historically necessitated higher prices for kosher meat, and the comparatively thin profit margins involved has created, in more loosely controlled settings, numerous opportunities and temptations for fraud. In addition, for the consumer, the cost of kosher meat has framed many of the struggles over kashrut that were shaped by the industrialization and commercialization of kosher meat production, and brought Jews firmly into the American food trades, as well as their underworld (Cohen 2004, p. 198).

Well before the turn of the twentieth century, American civil regulation would shape the contours of shehitah, and not always for the better. An early New York City prohibition on slaughter in the city center, for example, had serious disruptive effects on the rhythm of work and to-order customer service, creating Thursday and Friday rushes to obtain meat before the Sabbath, which led to speed-ups that resulted in increased shohet errors that more often than not were overlooked by the customer (Bernstein 1997, pp. 22–30). But as disruptive as civil regulation could sometimes be to the process of shechita, lack of any recognized regulation proved be even worse—most significantly when there was no system for vetting or certifying shohets, creating unprecedented opportunities for the poorly trained, the rejects from Europe, and even the outright fraudsters to hang out their shingles as kosher

butchers. So, as a result of the breakdown of a system that had largely worked in the old country, it was understandable that American Jewish leaders would have sought help from comparatively friendly civil authorities in seeking to replace it.

### 3. Coming to America and the End of Communal Control

From the beginning of Jewish settlement in America, there was communal concern about the availability and verifiability of kosher meat. During the Colonial period, the first Jewish communities replicated the European systems of communal control of certification of shohets and distribution of meat, which were initially effective, most significantly in that miscreant shohets were identified and immediately removed from service. But the combination of the growth and diversification of post-Revolutionary American Jewry, the official separation of church and state and equal citizenship that negated the traditional communal semi-autonomy, the essentially voluntary nature of religion in America, and unprecedented individual freedom of movement, made this model increasingly unsustainable (Daily Jewish Courier 1923; Sarna 2004, pp. 41–46, 61). These changes resulted in the emergence of the “independent” shohets, who were neither supported by nor answerable to communal authorities, with multiple ill effects for the regulation of kosher meat in America, as well as for many of the shohets. Between the 1840s and 1880s, Jewish communities mounted multiple attempts to organize new communal regulatory bodies, none of which lasted more than a few years at a time, and the regulatory situation would become worse before it became better (Gastwirt 1974, pp. 24–25).

One of the most significant complicating factors in the development of rabbinic control, and for the purposes of this paper, rabbinic responses to civil regulation of kosher meat in America, was the comparatively late arrival of formally ordained rabbis to America’s shores. Prior to arrival of Rabbis Abraham Rice and Bernard Illowy in the 1840s, most day to day religious ritual functions were conducted by *chazzanim*<sup>3</sup> and lay leaders. Religious authority, furthermore, rested not in professional religious functionaries, but in the lay *parnassim*<sup>4</sup>—the most respected men in the community who enforced communal observance and discipline. As a result, when formally ordained rabbis first migrated to America, they enjoyed less authority over kashrut (and in general) than they had been accustomed to in the old country (Gurock 2009, pp. 54–56).

But even amid the gradual breakdown of communal control, from the Early Republic until the post-Civil war era, kashrut remained an essentially localized affair, in which Jewish families trusted the authorities and the butchers they knew. For most Jewish wives of this period, the comparatively late appearance of any pre-made kosher foods necessitated preparing most food for their household from scratch. Kosher meat and poultry therefore stood out for special concern as some of the few food items for which the housewife was generally dependent on someone else for processing (Diner 2000, pp. 152–53, 166, 180–82). Yet the consumer traditionally maintained some agency, from the right to choose her own chickens for slaughter (a right whose contestation would form the nub of the 1937 *Schechter* case), to the necessity of salting meat post-slaughter, and in the case of fowl, dressing and plucking (Grunfeld 1972, p. 98; Shlaes 2007, pp. 239–41). The industrialization of kosher food, therefore, would unprecedentedly complicate the American kosher landscape and would bring civil law to bear as never before in the enforcement (as opposed to restriction or prohibition) of kosher slaughter. Therefore, there has historically been (and continues to be) a surprising amount of civil legal involvement in the enforcement of kashrut in America, in spite of official separation of religion and state. (Havinga 2010, pp. 244, 248–51) One question this paper raises therefore then, is how did rabbinic leaders take advantage of this civil partnership to not only improve the enforcement of kashrut within the Jewish community, but to make its standards more stringent and (ironically) strictly focused on ritual technicalities?

<sup>3</sup> Cantors.

<sup>4</sup> Defined in the singular by the *Jewish Encyclopedia* as a president or trustee of a congregation (Adler and Deutsch 1906).

Jewish responses to civil regulation of kashrut were nothing new in American history. Initially, however, they were scarcely different from efforts to push back against civil restrictions on kashrut in Europe, that put less emphasis on the enforcement of shehitah within the community in favor of guarding the right to practice shehitah. The first shohet in America to deal with this issue was none other than Asser Levy in New Amsterdam, who following his successful fight for equal citizenship for Jewish men in the colony, gained the right to practice his trade as a shohet and to be exempt from the public requirement to slaughter hogs (Gurock 2009, p. 22; Sarna 2004, p. 9). But in the post-revolutionary era, changing conditions demanded new Jewish religious responses. The first successful challenge to the dominance of communal certification was launched in 1813 by Avraham Jacobs over the communal revocation of his right to slaughter and sell kosher meat. The leadership of Congregation Shearith Israel, at the time the only synagogue in New York City appealed to the city's Common Council to forbid the sale of any kosher meat by non-authorized shohets. The Common Council first changed the law to support Shearith Israel's monopoly, only to reverse itself when Jacobs protested the infringement of his religious freedom. Although this reversal immediately paved the way for newer synagogues to employ shohets, it also facilitated the emergence of the so-called "independent shohet" who, while no longer answerable to the Jewish communal leadership, was now subject to the power of secular bosses, in the process losing (ironically) the status and dignity of an independent professional and being reduced to mere workers status. By the late 1880s, the "third wave" of Jewish immigrants from Russia and Poland added additional linguistic-ethnic dimensions to the increasing labor-management issues that increasingly beset the kosher meat trades, resulting in a Jewish labor movement that began as much with shohets as with clothing workers (Bernstein 1997, p. 24; Gastwirt 1974, pp. 44–53)!

Even before the erosion of communal control, the comparative openness of American society created additional complications that resulted from never before possible Jewish-Christian economic cooperation, including the previously unheard-of situation of kosher meat being sold in Christian butcher shops alongside non-kosher meat. This situation created the unprecedented necessity of requiring a special marker to distinguish kosher meat from non-kosher meat in situations in which consumers could not necessarily rely on the honesty and probity of the merchants. This situation, therefore, necessitated the introduction of the *plumba*,<sup>5</sup> a metal seal attached to the slaughtered bird or animal offered up for sale as kosher. Interestingly, the *plumba*, which would become the recognized standard for a guarantee of kosher slaughter was introduced as neither a matter of *halakhah* or civil regulation, but as a recognized practical necessity, that was only subsequently legislated in by rabbis and civil regulators. And it was possibly for that reason that from the beginning, the *plumba* was controversial for reasons ranging from objections from shohets, to awareness of its own potential for fraudulent use, similar to that of (with no irony) the union label. In fact, during this early period, labor organization was one of many accepted avenues towards the regulation of kosher meat, beginning with the formation of Melech HaKodesh, the shohets' union in 1897, and only the later secularization and incursion of gangsterism into the kosher meat trades would generate the earliest rabbinic opposition to unionization (Bernstein 1997, pp. 49–53; Gastwirt 1974, pp. 44–53).

#### 4. The Kashrut Crisis and New Forms of Regulation

Although there were a few areas in which civil and Jewish law dovetailed when it came to the relationship of animal slaughter, the issue where it did so the most, beyond fraudulent representation, was health and safety. Although kashrut has never been first and foremost a health measure, its ancillary health benefits have been promoted throughout modern history. This, along with

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<sup>5</sup> Named for the Latin term for lead, from which the *plumba* was originally made. There have historically been multiple spellings of the term, but for consistency's sake, I will be using "plumba" throughout this paper, except in direct quotations as appropriate.



appeals to the humaneness of shehitah were seen as necessary not only to convince Jews to continue to keep kosher in the modern era, but to respond to non-Jewish legal challenges to kashrut, as emancipation brought shehitah increasingly into the public sphere. This situation, in turn necessitated occasional incorporation of secular legal requirements into kashrut requirements. The most famous example is none other than the now controversial shackle-and-hoist method of pre-shehitah restraint, which was possibly incorporated into kosher slaughter in response to the 1906 Pure Food and Drug Act requirement that animals be raised off of the killing floor prior to killing to prevent them from being immersed in dirt, blood, and due to “casting” onto the killing floor, although food historian Roger Horowitz has recently disputed this in his recently published *Kosher USA* (Bernstein 1997, pp. 49–53; Gastwirt 1974, pp. 44–53; Horowitz 2016, p. 217). Nonetheless, shackling and hoisting at the time was considered an improvement over other methods of restraint that included the use of cattle prods (Freedman 1970, pp. 32–34, 43–45; Grandin 1990, pp. 436–37; Gross 2015, p. 34). This example demonstrated the ways in which the laws of kashrut had to become a living system in response to modern civil regulation. Sometimes however, even in America, these competing law systems became irreconcilable, and the kashrut industry chose to preserve religious law even at the expense of *dina d’malchuta dina*. And the Schechter “sick chicken case” was neither the first example of the state stepping in in response nor the first case of its kind to be brought before the Supreme Court.

Legislation regarding the ethical issues of fraud and price gouging proved easier to square with Jewish law and traditional ideas of Jewish morality. The price of kosher meat became the near breaking point of Jewish life in late nineteenth and early twentieth century America, and the 1902 Kosher Meat Strike in New York is merely the most famous of many protests, some of which became violent (Diner 2000, pp. 181–83; Kosak 2000, pp. 143–44). As if price-gouging wasn’t enough, the early decade of the twentieth century also became the leaded age of kosher meat scandals, in which treif meat was sold as kosher, and self-proclaimed shohets of dubious qualifications plied their trades to a public who had few ways of verifying their legitimacy. It should be noted the motives were as varied as the participants and ranged from genuine criminality simple desperation, but all were blamed for a serious crisis of confidence in American kashrut in the early twentieth century (Freedman 1970, pp. 52–53; Weinberger 1982, pp. 46–49).

This rampant fraud furthermore happened at a critical point in American Jewish history when it came to maintaining traditional observance, when declining religiosity among immigrant Jews amid the dominance of the Reform movement provided less motivation to keep kosher out of simple religious conviction than in the old country. Yet, paradoxically, the “third wave” of Jewish immigration to America provided, which resulted in rising numbers of practicing Orthodox Jews provided a significant pushback against the dominant Reform movement’s official rejection of kashrut (and other traditional Jewish observances) as “entirely foreign to our present mental and spiritual state.”<sup>6</sup> In particular, the third wave created a critical uptick in the population who cared enough about kosher slaughter to both support it and make its reliability a public issue. But the organized effort to develop a new system of regulation from within the American Orthodox Jewish community began in the late nineteenth century with the first attempt at the formation of a Union of Orthodox Jewish Congregations (Bernstein 1997, p. 43; Gurock 2009, pp. 122–23).

According to Timothy Lytton in his groundbreaking history of American kashrut, Jewish leaders tried multiple avenues tried towards organizing kosher supervision in early twentieth century America, nearly all of which had significant problems that hindered their success and made some short-lived at the most. But what they all had in common was the recognition that the rabbis who interpreted and enforced the rules of kashrut were doing so against the sometimes-competing sets of labor and civil regulation. These efforts therefore ended up involving varying degrees of theoretical and practical cooperation with civil authorities as well as organized labor (Lytton 2013b, pp. 2–5, 20–21).

<sup>6</sup> Quoted from The Pittsburgh Platform, 1885 (Sarna 2004, p. 149).

The struggle to establish a reliable system of American kashrut supervision, therefore, required new ways of interaction between the rabbinate and the state. Whereas in the old country, European governments could appoint a chief rabbi, this was not possible under American church-state separation. On the other hand, for the period under study, there was comparatively little demand in America for legislation that restricted kosher slaughter. As a result, when Orthodox Jewish leaders in America did interact with the government, they did so not as a rearguard effort against anti-shehitah legislation, but in order to make use of Progressive era anti-fraud laws to not only make misrepresentation of kashrut a crime subject to civil penalty, but to establish kashrut as civil legally defined according to “the standards of the Orthodox Hebrew faith.” (New York State 1915; Horowitz 2016, p. 174; Stern 1990) In nearly all instances, these public-private partnerships pushed the boundaries of separation between church and state and made rabbinic engagement with the state over kashrut acceptable when it involved strengthening kashrut, but not when even potentially compromising it.

That said, the earliest attempts from this period to regulate kashrut were instructive regarding what forms and degrees of privatized regulation would or wouldn’t work. The most famous example is none other than the story of Rabbi Jacob Joseph, the only recognized Chief Rabbi of any American locality in history. During the last decades of the nineteenth century, the Association of Orthodox Hebrew Congregations, then the latest effort to unite New York’s “uptown” and “downtown” Orthodox *kehillot*, sought to appoint a suitable European-trained rabbi to serve as Chief Rabbi of New York City, an effort that even more than about creating Orthodox Jewish unity, was about creating a kosher certifying system that would enjoy widespread recognition. But from the beginning, Joseph encountered significant opposition from rival Orthodox organizations and would be Chief Rabbis (including one who titled himself Chief Rabbi of America), the latter predominantly Chassidic. What in some ways undermined the whole system, however, was the initial decision to subsidize the Chief Rabbi’s post with a one-cent tax on kosher meat that for the Russian majority was reminiscent enough of the hated *korobka* in the old country to arouse widespread public ire. The tax also reminded kosher consumers of the very price-gouging and price-fixing that had also become endemic to American kosher meat production, winning it no public support, and inspiring rival rabbi and rabbinical organizations to declare meat that bore Rabbi Joseph’s *plumba* as unkosher, partially in response to Joseph’s effort to require said *plumba* as proof of kashrut. Although alternative methods of financing this system were tried, none proved sustainable, and the rancor of the controversy over the Chief Rabbinate eventually took its toll on Joseph, who suffered an immobilizing stroke in 1895, and died in 1902, at the age of 62 (Bernstein 1997, pp. 33–34; Gurock 2009, pp. 113–14; Karp 1954).

In the years following Joseph’s death, the kosher meat riots became an increasingly troubling issue in the American Jewish community. In many ways it was the threat of social disorder within the Jewish community that they portended (as well as the specter of the abandonment of kashrut), more than the issue that prompted the outrage, that prompted American Orthodox rabbis of this period to try other methods of regaining control over kosher food production. Their efforts ranged from an unprecedented public-private partnership with the civil authorities to new attempts to create a comprehensive national Jewish organization to that would supervise kashrut as well as unite all streams of American Jewry, with the founding of the New York Kehillah in 1914. The latter, a broad-based communal organization sought to fulfill multiple functions that ranged from the supervision of kashrut to the organization of a communal system of youth education. As with the institution of the Chief Rabbinate, however, the Kehillah’s organizers may have made a mistake in making kosher certification a priority, an effort that was compromised by shared leadership with non-Orthodox movements (Gurock 2009, pp. 129–32; Sarna 2004, pp. 200–1) Meanwhile, the UOJC (later the Orthodox Union) emerged from the wreckage of the Chief Rabbinate and created a viable system of private kosher certification essentially by working backwards—cultivating customers in processed foods that were a lot less labor intensive than meat and poultry and building their base by building their reputation for professionalism and reliability. The OU would go on to be the first of the “Big Five” kosher certifying organizations who established the system of reliable third-party supervision, in part as a result of willingness to work with the new

industrial reality of food production, and eventually developed a system of relying on the certification of easy-to-certify products to subsidize the supervision of more labor-intensive ones (Lytton 2013b, pp. 35–51).

## 5. Industrialization and the Laboring of Shehitah

The industrialization of food production in America, itself an increasingly regulated process by the Progressive era, further complicated the efforts of rabbis to respond to the effects of civil law on kashrut. Unionization and the changing labor laws of the Progressive era would create additional layers of regulation that would affect criteria for kashrut, and the rabbinic responses in turn would shape business practices. One particularly pertinent example was the rabbinical pushback against the rise of the shipment of dressed beef made possible by the invention of the refrigerator car. The ban on beef shipped from out of town was only partially protectionist. Rather, the kashrut requirement that meat be soaked and salted within seventy-two hours was too exacting for the fastest rail transportation of the day, necessitating the continuation of shipping beef “on the hoof” and preserving the local, metropolitan nature of kosher meatpacking industries, whether in New York, Chicago, or other major Jewish centers from this period. On the other hand, the rise of industrial-scale food production made the traditional modes of community-based kosher certification harder to enforce and contributed to the shift in consumer trust away from local food producers and supervisors to larger organizations (AJHS; Gastwirt 1974, pp. 29–32).

The mechanization of food production, especially in meat and poultry, also complicated the mashgiach’s job, and made the requirements of supervision more exacting, with more to supervise and more that could go wrong. While in the long term, this resulted in the reshaping of kosher supervision to a full-time profession rather than a source of additional income for indigent rabbis, more immediately, the situation led to potential (and actual) corruption and racketeering that was as much a product of rivalry as of secularization. These conditions in turn led to greater civil government involvement within which the American rabbinate would further legislate kashrut (Lytton 2013b, pp. 9–11, 20–29, 62–65). Finally, as local butcher shops were increasingly undercut by kosher divisions of large meatpackers who retained their own shohets and supervisors, the working and sanitary conditions so famously exposed in Upton Sinclair’s *The Jungle* became the problems of kosher meat production as well. But the post-*Jungle* reforms that included the Pure Food and Drug Act and the Meat Inspection Act in 1906 also raised questions about how this greater government supervision, more suited to large corporations with economies of scale than the small metropolitan economies of which the kosher food trades were traditionally part, would affect standards of kashrut (Cohen 2004).

Initially, secular legislation appeared most effective when it came to addressing the problems of conflict of interest created by the retaining of in-house kosher supervisors, and even the profit motive the affected the work of “independent” kosher supervisors who was now beholden not to rabbis and communities but to abattoirs and butcher shops. Far more than the kosher beef industry, the early twentieth century poultry industry was highly competitive, and in this environment, religious excommunication and the declaration of meat supervised by competitors as treif became forms of rabbinical racketeering, along with strong-arm tactics that rivaled those of both the unions and the gangs that wielded increasing influence in the kosher meat industry by the 1920s. And even absent rivalries, during this period, “kashrut rabbis” could be just as venal and/or have credentials just as dubious as the “Prohibition rabbis” who certified kosher wine for what was left of the wine industry during Prohibition (Funderberg 2014, p. 24; Weinberger 1982, pp. 16–27).

Beyond the stereotyped images of criminality, the relationship between the rabbinical organizations and organized labor in the kosher meat industries were historically a lot more complex than generally realized from our contemporary standpoint. Though labor and state both challenged and shaped rabbinical authority over kashrut, early on the shohets’ unions enjoyed at least qualified rabbinic support, contingent upon (as with civil regulation) whether it supported and increased kosher standards or threatened to do the opposite. The reality was that in Gilded Age and Progressive Era



America, shohets and mashgichim alike were very exploited, and early on sought relief through organizations and strikes, the latter that frequently received rabbinic support in the form of declaring scab-slaughtered meat treif. (Gastwirt 1974, pp. 31–34, 71–82). One of the earliest points of contention between shohets and rabbinical supervisors was the requirement of the plumba. In addition to the controversy the plumba had generated since its introduction, ranging from who was in charge of enforcing its use to whether it was even necessary, requiring the plumba was increasingly regarded as a slight to the knowledge and integrity of the shohet, and hence a threat to his independence and authority. This in turn, brought out the question of whether matters of halachah could be subjects of collective bargaining, a question that was further complicated by the reality that most shohets were not the stereotypically unlearned workers, given the intense education required in the halachah as well as the mechanics of shehitah traditionally required to enter the trade. In fact, many of the shohets during this period were themselves rabbis, and some were equal to or even superior to their bosses in learning (Breitzer 2014; Freedman 1970, pp. 52–54).

As Jewish communal leaders began to push back against the specter of standards of kashrut being decided by collective bargaining, shohets themselves at times displayed ambivalence about unionization as they recognized the potential ill effects of taking on the “worker” identity that clashed with their established identities as religious professionals. Yet these identities ended up merging, as shohets organized and bargained over subjects ranging from hours to whether poultry shohets should be additionally required to pluck the chickens they killed. Some controversy ensued when shohets organized with non-Jewish Amalgamated Meatcutters and Butchery Workers, but the union generally did not interfere with religious concerns, such as the halachic requirements of knives (Freedman 1970, pp. 455–56). But the unionized shohets in some instances forced the rabbis to honor the halachah of *hazakah*—the right to one’s livelihood and “territory” within the trade. *Hazakah*, literally “acquired right,” in this instance was transformed into a halachic support for seniority that severely limited the rights of newcomers to take the place of established shohets, in circumstances ranging from illness to company merger. By the 1930s, with the declining demand for kosher meat, *hazakah* was more frequently invoked, and when disputes could not be settled by contract, rabbis played a role in arbitrating what had become ostensibly secular regulations, and their decisions were respected by labor and management (Gastwirt 1974, pp. 34–35, 53). All of these examples demonstrate the ways in which the halachah of shehitah was indeed shaped by American civil law and even union regulation—decades before the response to Postville was that neither was permissible.

## 6. The Beginning of State “Kosher Laws”

In addition, for most kosher-keeping Jews and Jewish leaders, preventing kosher fraud was simply the most pressing issue, in a period when there was plenty of economic incentive to deceive, and literal surface appearances could be deceptive. During 1925 alone, according to one report, forty percent of meat sold as kosher in the United States wasn’t, and there is additional evidence that the actual percentage of non-kosher meat being sold as kosher was even as high as sixty-five percent. And secularization increased the trend of separating kosher meat production from communal control, leaving rabbis and organizations struggling to keep up. The increased complexity and chaos of the kosher situation in America by the early decades of the twentieth century, coinciding with the rise of the American regulatory state contributed to the move towards treating the veracity of kashrut as a matter of public interest, and therefore worthy of regulation, even with the risks this posed to church-state separation. The first state “kosher law” in the United States emerged, not surprisingly, in New York State in 1915. The law made it a misdemeanor to sell non-kosher food as kosher, and for a time required stores who sold both to display signs clearly indicating that they did so. The second state to pass such legislation was Illinois in 1923, and by the 1930s, kosher regulatory laws had spread across the United States (HWLC; Fishkoff 2010, pp. 254–55; Lytton 2013a). These laws unprecedentedly took on the enforcement of kashrut, making fraud a punishable offense in civil law that in many ways it had ceased to be within the Jewish communal sphere. The enforcement of these laws, however,

would from the beginning prove the more challenging, for reasons that included the problems of non-Jewish officials enforcing the rules of Orthodox Judaism, and in particular, making decisions regarding what was (literally) kosher or not. And more significantly for the issue of the intermingling of shul and state, it for the first time in American history, these kosher laws established Orthodoxy as the normative form of Judaism in its legislation of the standard of kashrut as being according to “the Orthodox Hebrew” rules. This situation may have simply reflected the reality that the Orthodox standard of kashrut was the one that was recognized by the most people to whom kashrut mattered. Nonetheless, from the beginning, these kosher laws raised numerous Constitutional issues, and as a result, numerous lawsuits, not all of which were about government endorsement of religion, as many of these laws also ran afoul of antitrust legislation. The New York State Kosher Law and most others have only recently been challenged, and in some cases have been changed to legislate “full disclosure” of a manufacturer or proprietor’s definition of kashrut (Fishkoff 2010, pp. 254–56). But at the time, the increasing secularization of the kosher food industry may have made it possible for these laws to withstand legal scrutiny, when the focus shifted from religious standards to fraud prevention, even as it occasionally emboldened rabbis to declare an *issur*<sup>7</sup> against kosher meat offered for sale without the locality’s authorized *plumba*. (Stern 1990) Instead, the interaction of civil law and religious practice would prove the more challenging, when various regulations necessitated changes in the practice of *shehitah*, making the principle of *dina d’malchuta dina* sometimes impossible to square with halachah. It was this impasse, in many ways, that was at the heart of the Schechter case of 1935, and the troubles of the state laws would in many ways prefigure the case that undid the National Industrial Recovery Act.

The onset of the Great Depression made the intervention of the civil government in matters of kashrut unprecedentedly welcome and in turn contributed to the further centralization of kosher supervision. With massive shohet unemployment in the 1930s, the organized shohets sought assistance from then New York mayor Fiorello LaGuardia that resulted in new civil intervention in the kosher meat trades, ranging from the setting of new wage and hours system to the de facto legislation of the *plumba* as proof of kosher status for meat. This unprecedented civil endorsement in turn emboldened rabbis to compel communal compliance with the *plumba*, making it the new standard for kashrut, even against resistance from the shohets, who were kept in line by the rabbinic decision that meat that didn’t display it would be considered treif. This resulted in strikes by the shohets over the rabbinic impugning of their kashrut that they argued had no basis in Torah. In this case, the acceptance of the *plumba* was settled by union negotiation, but the rabbinic legislation of the *plumba* as the standard remained (Freedman 1970, pp. 59–62).

## 7. The Schechter Poultry Case and the Limits of *Dina d'Malchuta Dina*

However, the willingness of the rabbinical establishment to partner with the American state would still be limited when it came to practices that threatened to needlessly conflict with those legislated by halachah. It was never as if Jewish practice was unresponsive to concerns for public health. Rather, in the “sick chicken case,” the perceived benefits of civil legislation did not appear to have marked superiority over long-established Jewish practices, in this instance, the NIRA poultry regulation prohibition “straight killing” versus long-established practices of poultry selection. While Jewish housewives had historically been dependent on butchers to put kosher meat on their family tables, as the kosher meat riots of this period indicated, they were hardly passive consumers. Rather, their visits to their local poultry butcher in particular routinely involved the right to select and inspect their own chickens to be slaughtered to order, a measure that may have had salutary public health effects, in allowing consumers to use their own judgment regarding which chickens appeared unhealthy as well as unsuitable for food. But by the New Deal Era, this long-established practice

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<sup>7</sup> Prohibition.

ran a fowl (as it were) against the new civil public health regulations regarding meat slaughter and distribution that made this practice illegal (Freedman 1970, pp. 59–62).

One may ask whether the *Schechter* case need even have been, as well as how the Roosevelt administration made the method of selecting chickens for slaughter part of the NIRA codes of conduct that were voluntary on paper, but in practice, enforced through the use of the Interstate Commerce Clause, which affirmed federal governmental authority over interstate trade. It was on this basis that during the first New Deal, the Federal Government tried to even more directly regulate kosher slaughter through the Kosher Poultry Code of 1934, whose short-lived National Kashruth Administration foundered over what Harold Gastwirt has described as “the lack of a unified interpretation of the laws of kashrut,” not to mention lack of agreement regarding rabbis could be appointed to interpret said laws. The replacement of this effort by the Live Poultry Code, however, led to the unprecedented case of civil health regulations conflicting with a kashrut (and especially glatt kosher) requirement—specifically for the butcher or consumer—to make a post-killing inspection of the animal’s lungs for signs of disease, that had in themselves an implicit if not always acknowledged, health benefit. While the nub of this case was the law’s making a long-established Jewish practice illegal, the *Schechter* company and its proprietors, as well as American antisemitism added additional dimensions to the case (Gastwirt 1974, pp. 148–56; Shlaes 2007, pp. 214–15).

The *Schechter Poultry Corporation* was in many ways emblematic what had gone wrong with American kosher meat processing and its oversight or lack thereof. As a result, during the first New Deal, the *Schechter* company became subject to increased government oversight, and what government inspectors found was not pretty. But the question of blame would become the linchpin of the *Schechter* case. In essence, the “sick chicken” case that brought down the NIRA (for which it was both hailed and blamed) had only tangentially to do with government versus religious regulation of the kosher food industries. The case earned its popular name because the *Schechter* brothers were charged with (and publicly upbraided) for knowingly selling sick chickens to customers—in violation of their own religion’s laws, in addition to civil law—on top of more garden-variety charges of fraud and racketeering. The *Schechters* lost their case in the lower courts and even did time in jail, but they continued their legal battle all the way to the Supreme Court.

The 1935 case therefore, was not (contrary to later accounts) really about *shehitah per se*. Rather, the principal arguments centered on 1. whether the *Schechters*’ business was covered under the Interstate Commerce Clause, which would have made it subject to federal regulation, and 2. whether the *Schechters* had even accepted what were supposed to be the voluntary regulations of the NIRA. And when the Supreme Court returned a unanimous decision in favor of the *Schechters*, thus invalidating a key provision of the NIRA, it was hailed as a triumph over excessive government interference, eliding over the fact that the NIRA measures had always been intended to be temporary. Indeed, from the perspective of the courts, the *Schechter* case was not even, first and foremost about freedom of religious practice (though later conservatives would cite it as just that). But the handling, as well as the reportage of the case at the time did raise questions of antisemitism and whether the *Schechters* were being made an example of (Shlaes 2007, pp. 214–15).

## 8. Conclusions

But because the *Schechter* case would be later be presented as a test case for religious freedom and could therefore be viewed as test case for how much halachah had to bend to *dina d’malchuta dina* when it entered the public sphere. In any case, when it came to the regulation of kashrut, the *Schechter* case would signal the limit of civil involvement right around the time that the Orthodox Union established their new system for private third-party kashrut regulation. The key features of the modern system of industrial kashrut that has emerged range from interdependence between agencies to a consumer-enforced emphasis on reputation that made this self-policing system actually *work*. So, in some ways, the modern industrial system could indeed be promoted as a triumph of private regulation—scandals regarding mislabeling or contamination are rare enough to be

newsworthy, and the once-rampant deliberate misrepresentation is almost unheard of. If anything, this system has benefited from a variety of post-World War II factors in American Jewish life, including post-Holocaust migration, to create an unprecedentedly (and in some ways increasingly) stringent “American Standard” of kashrut, that all certifying agencies must follow to at least some degree, if they are to stay in business (Blech 2008, pp. xxiii–xxiv, 1–5, 89; Freedman 1970, p. 72; Lytton 2013b, pp. 114–20). And the regulation of kosher meat, still in some ways the most difficult, has become more reliable than even before, with glatt kosher in recent decades having gone from a stringency to a standard expectation. In the process, the Chassidic practices and standards of shehitah, once controversial for its greater stringency, has become incorporated into mainstream expectations of kashrut (Fishkoff 2010, pp. 154–64). On the other hand, the increased halachic stringencies concerning kosher meat have also affected and been affected by economic considerations, leading to the decline of the local kosher butcher and the increased centralization and mechanization of kosher meat production, leading to the rise of Agriprocessors and a few similar companies as the main providers of kosher meat. A mix of economic and halachic considerations also led to these companies’ resistance to employing the alternatives to shackle-and-hoist promoted (and even designed) by the non-Jewish animal biologist Temple Grandin, even with the endorsement of these alternatives by the Orthodox Union. And it was not until the summer of 2018 that the OU, under pressure from Israel (which had banned shackle-and-hoist slaughtered meat the previous year), informed its South American purveyors that it must shift to the use of the rotating pen. And it was not until the summer of 2018 that the OU, under pressure from Israel (which had banned shackle-and-hoist slaughtered meat the previous year), informed its South American purveyors that it must shift to the use of the rotating pen (Dolsten 2018; Horowitz 2016, pp. 220–33, 241–43).

The recentness of this turnabout illustrates the flip side of the new reliability and stringency when it comes to the technicalities of kashrut therefore, at least when it comes to kosher meat production. In essence, the more stringent (and hence more widely trusted) kosher meat producers hail from the same American Jewish movements who are most likely make firm distinctions between Jewish and secular concerns. Which means that while in some areas, kosher meat producers can claim greater stringency on not strictly “Jewish” concerns (e.g., insect infestation), in most, in other instances, kosher regulators have largely maintained a bright line between the religious and civil spheres. This is not only a function of ideology but also reflective of how, in the postwar decades, public regulation of kashrut and enforcement of kosher laws didn’t totally disappear, but was folded into a larger food inspection system, that freed kosher supervisors to focus on the ritual and increasingly complex technical aspects of kashrut (Blech 2008, pp. xxiii–xxiv, 1–5, 8–9; Lytton 2013b, pp. 116–20). That said, the American system of kosher certification still relies to a surprising degree on civil regulation as a guarantee against fraud, compared to places such as the Netherlands (Havinga 2010, pp. 251–53, 255). Furthermore, in the case of milk, civil regulation still effectively stands in for certification, following the 1954 ruling of Rav Moshe Feinstein concerning the acceptability of commercially produced milk in the United States. Feinstein’s ruling has furthermore largely stood in subsequent decades, the increasing popularity of Cholov Yisrael among some sectors of Orthodoxy notwithstanding (Feinstein 1954; Gordimer 2015). And while this system of third-party private certification backed by civil anti-fraud law has mostly worked, it has also made it possible for a new type of kosher scandal to arise regarding supposed “secular” concerns, ranging from animal welfare to labor issues, with the Agriprocessors scandal being merely the most famous example.

The response of American Orthodox Jewry to this new kashrut crisis, having long negotiated these distinctions between matters of halakchah and matters of civil law, has been mixed at best. Responses have ranged from condemnation of the Conservative Movement’s ethically focused Magen Tzedek as a backdoor incursion into kosher certification to the insistence that such issues as labor practices are best regulated by secular authorities. Even from the far left edge of Orthodoxy, Rabbi Shmuly Yanklowitz, the founder of Uri L’Tzedek, a Torah-based social just organization whose programs include the Tav HaYosher ethical seal for kosher restaurants, has defined the regulation

of labor and environment concerns the kosher food trades as a moral issue, rather than one of halakhah (Fishkoff 2008; Berkman 2013). Yet as this essay shows, historically, this “bright line” between kashrut and secular concerns has not always so strictly maintained, when the rampant fraud and corruption within the kosher food industry threatened to taint the very reputation of kashrut and drive already assimilating immigrant Jews and Jewish Americans from its observance. If anything, there appeared to be a greater willingness to incorporate civil legal and other seemingly extra-halachic concerns in times past, in part because the issues of the day put kashrut’s very credibility on the line. Among the comparatively few recent examples of this phenomenon, during the 1970 California farmworker’s strike, amid secular calls for boycotts on lettuce, and grapes, Rabbi Haskel Lookstein, the longtime spiritual leader of Kehilath Jeshurun and grandson of the renowned Rabbi Moses Zevulun Margolies (the Ramaz) was willing to declare the lettuce harvested during farmworkers’ strike unkosher, based on the conditions under which it was picked, which involved *oshek*, the abuse of workers (Yanklowitz 2015). Most recently, Yanklowitz, in his promotion of veganism as the highest form of kashrut, questioned whether most milk and dairy products should be considered kosher, based on increasingly apparent violations of *tsar baalei chaim* (avoiding causing animals needless suffering) at commercial dairy farms, citing the ruling of no less of a respected Centrist Orthodox authority than Rabbi Herschel Schachter (Yanklowitz 2012).

As kosher certification has, over the decades, gained an unprecedented popularity, including among non-Jewish consumers, the Agriprocessors scandal, in which a kosher meat manufacturer was found to have committed numerous civil legal violations regarding labor, immigration, and the treatment of animals, should serve as a caution against dismissing the importance of the assumption that kosher means (or should mean) better or more ethical. This history, rather, demonstrates the wisdom of reopening a dialogue that appears to have been largely closed since the 1930s, not necessarily to reintroduce greater civil regulation of kashrut, but to recognize the reality that when Jews live in an open society, observance is a matter of individual freedom—until it enters the public sphere. And the more open and egalitarian the society, the less it is possible to shape Jewish law in a vacuum (Horowitz 2016, p. 254). A successful resolution to the tensions between religious observance and recognition of *dina d’malchuta dina*, can furthermore provide a model for other religious groups to balance fidelity to the demands of faith and the challenges of living in a religiously pluralistic society.

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