

# WHEN RITUAL SLAUGHTER ISN'T KOSHER: AN EXAMINATION OF SHECHITA AND THE HUMANE METHODS OF SLAUGHTER ACT

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## I. INTRODUCTION

“The righteous person regards the life of his beast.”<sup>1</sup> I have always felt honored to be part of a heritage that is known to be the first in recorded history that ascribes such benevolent and compassionate treatment towards animals. Judaism’s plethora of laws relating to the treatment of animals delineates the extensive and unique quality of the religion that mandates the utmost compassion of human beings to be extended towards the creatures with which we share this earth. Though the religion permits the slaughter and consumption of animals for food, that permission goes hand and hand with extensive, detailed requirements for the slaughtering process that help ensure that the animal dies as humanely as possible.

It is from this perspective that I viewed and read a *New York Times* article published on December 1, 2004, entitled *Videos Cited in Calling Kosher Slaughterhouse Inhumane*.<sup>2</sup> The article’s gripping first sentence read, “An animal rights group released grisly undercover videotapes yesterday showing steers in a major kosher slaughterhouse in Iowa staggering and bellowing long after their throats were cut.”<sup>3</sup> With shock and disappointment, I read on and learned that the steak I enjoyed just two nights previous likely came from a cow who suffered from the same treatment as the several cows documented in the videotape released by the People for the Ethical Treatment of Animals (PETA).

Kosher slaughter, or shechita as it is called in biblical Hebrew, is so humane that when performed as intended by Jewish law, the animals don’t even feel the cut before dying. Even in modern times and by modern standards, experts have agreed that the shechita method as outlined in Jewish law is humane, and unconsciousness normally follows within seconds of the throat cutting. So how does one reconcile these truths with the video released by PETA of the practices occurring at the AgriProcessors plant in Postville, Iowa? What follows are my own conclusions to that troubling question, and my recommendations to improve the lives and deaths of cows at kosher slaughterhouses.

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<sup>1</sup> *Proverbs* 12:10.

<sup>2</sup> Donald G. McNeil Jr., *Videos Cited in Calling Kosher Slaughterhouse Inhumane*, N.Y. TIMES, Dec. 1, 2004, available at LEXIS, Nexis Library, N.Y. TIMES File.

<sup>3</sup> *Id.*

## II. BACKGROUND

### A. *The Basics: History, Religion & Culture*

To understand the legal issues that are presented with the treatment of cattle at AgriProcessors, it is first necessary to understand the Jewish dietary laws and where they come from. One of the principles of Judaism is that the Jewish people received both the Written *Torah* (*Torah*), commonly known as the five books of Moses, and the Oral Torah at Mount Sinai, the Oral Torah being an explanation of how the written laws should be executed and followed.<sup>4</sup> The Oral Torah passed from generation to generation without ever being written down; the application of the principles it espoused was meant to be adapted to new circumstances as they arose.<sup>5</sup> Up until the destruction of the Temple in 70 CE,<sup>6</sup> the chain of transmission was virtually uninterrupted, allowing the accurate transmission of the Oral Torah.<sup>7</sup> However, after the destruction, Rabbi Yehudah HaNasi, a great Jewish sage, undertook the massive task of writing down the Oral Torah, which was completed in 219 C.E and is now known as the *Mishna*.<sup>8</sup> Afterwards, other rabbis realized that because the *Mishna* was written in shorthand fashion and was esoteric in parts, there was a need to document the various discussions about the application of the *Torah* and the *Mishna*, as well as stories meant to illustrate certain points in Judaism.<sup>9</sup> That need gave way to the creation of the *Talmud*, which serves as an encyclopedia of Jewish existence.<sup>10</sup> It is in the *Talmud* that specifications and explanations of the basic Jewish dietary laws called kashrut<sup>11</sup> are found, and the body of law that is comprised of the *Torah*, *Mishna*, and *Talmud* is called halacha.

Not all Jewish people subscribe to the same beliefs outlined above, however. There are three principle movements within the Jewish faith: Orthodox, Conservative, and Reform. Reform Judaism does not accept the view that Jewish law is binding, and instead focuses on the moral autonomy of individuals to decide which laws are religiously meaningful for them.<sup>12</sup> The Conservative movement accepts the notion that halacha is binding upon Jews, but it also believes that Jewish law, by its very nature, is capable of evolution as humans learn more about

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<sup>4</sup> Rabbi Ken Spiro, *In a Time of Chaos, the Rabbis Decide That They Must Do the Unprecedented – Write Down the Oral Law*, AISH, at [http://www.aish.com/literacy/jewishhistory/Crash\\_Course\\_in\\_Jewish\\_History\\_Part\\_39\\_-\\_Talmud.asp](http://www.aish.com/literacy/jewishhistory/Crash_Course_in_Jewish_History_Part_39_-_Talmud.asp).

<sup>5</sup> *Id.*

<sup>6</sup> Rabbi Ken Spiro, *On the Saddest Day in the Jewish Calendar, the 9th of Av, the Temple Burns to the Ground*, AISH, at [http://www.aish.com/literacy/jewishhistory/Crash\\_Course\\_in\\_Jewish\\_History\\_Part\\_35\\_-\\_Destruction\\_of\\_the\\_Temple.asp](http://www.aish.com/literacy/jewishhistory/Crash_Course_in_Jewish_History_Part_35_-_Destruction_of_the_Temple.asp).

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> From the Hebrew word “kasher,” which means “fit” or “proper.”

<sup>12</sup> *The Movements in Judaism*, CONVERSION TO JUDAISM, at [www.convert.org/movement.htm](http://www.convert.org/movement.htm) (last viewed Sept. 25, 2005).

interpreting the *Torah*.<sup>13</sup> The Orthodox movement accepts the idea that halacha is binding on all Jews, and that halacha itself cannot evolve.<sup>14</sup> It is to this last movement that the Hasidim, an ultra-orthodox sect within Judaism, belong, and to this sect that the founders and leadership of AgriProcessors subscribe. Thus, the following analysis will address Orthodox interpretations of Jewish laws and halacha.

As Orthodox Judaism maintains that halacha is binding upon Jews and that it does not evolve, as time passes, the laws of kashrut are thought to be equally applicable today as they were for Jewish people thousands of years ago. The laws of kashrut are highly complex; the main principles are that certain food items listed in the *Torah* are unacceptable for consumption, including but not limited to pigs, rabbits, eagles, owls, catfish, shellfish, insects, and reptiles.<sup>15</sup> In addition, meat and dairy products may not be manufactured or consumed together, and kosher species of meat and fowl must be slaughtered in a prescribed manner.<sup>16</sup>

Shechita is the only method of producing kosher meat and poultry allowed by Jewish law, as interpreted by the Orthodox movement.<sup>17</sup> According to Chabad-Lubavitch, a movement within Orthodox Judaism that seeks to educate less observant Jewish people about halacha, the rules governing kosher slaughter “ensure a swift and painless dispatch of the animal.” Furthermore, Chabad states:

The rules governing shechita are codified and defined and are as binding and valued today as ever and they ensure a swift and painless dispatch of the animal. Infringing the laws of shechita renders the meat unconditionally forbidden as food to Jews. The time hallowed practice of shechita, marked as it is by compassion and consideration for the welfare of the animal, has been a central pillar in the sustaining of Jewish life for millennia.<sup>18</sup>

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<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> The *Torah* in *Lev.* 11:3 and *Deut.* 14:6 states that of the “beasts of the earth,” you may eat any animal that has cloven hooves and chews its cud. According to *Lev.* 11:9 and *Deut.* 14:9, you may eat any water creature that has fins and scales. The *Torah* lists forbidden birds in *Lev.* 11:13-19 and in *Deut.* 14:11-18 but does not specify why they are forbidden; the forbidden birds all have the common quality of being birds of prey, however. *Lev.* 11:29-30, 42-43 states that rodents, reptiles, amphibians, and insects (with the exception of a select few that are unidentifiable in modern times) are all forbidden.

<sup>16</sup> These are the laws of shechita, kosher slaughter; *Lev.* 12:21, states “you need only slaughter your cattle and small animals that God will have given you in the manner that I have prescribed.” Rabbi Aryeh Kaplan in *THE LIVING TORAH* stated that this alludes to the many rules of ritual slaughter detailed in the *Mishna* tractate of *Chullin*, 28a.

<sup>17</sup> *What is Shechita?*, CHABAD, at <http://www.chabad.org/library/article.asp?AID=222240> (last viewed Sept. 25, 2005).

<sup>18</sup> *Id.*

### *B. The PETA Pleadings*

AgriProcessors, Inc., (AgriProcessors) is a meat processing and packing plant based in Postville, Iowa, population 1,478.<sup>19</sup> In 1988, the local Hygrade meat processing plant went out of business and threatened the small town with economic decline.<sup>20</sup> It was at that point that a Hasidic butcher from Brooklyn, Sholom Rubashkin, bought the plant and converted it into a glatt kosher slaughterhouse.<sup>21</sup> The business was officially founded in 1989, and in just sixteen years it became one of the undisputed giants of the kosher meat industry, generating approximately 84.9 million in annual sales.<sup>22</sup> Moreover, it was and is the only kosher slaughtering plant permitted to export its meat to Israel.<sup>23</sup> AgriProcessors processes and packages both poultry and beef under the “Rubashkin’s” and “Aaron’s Best” brands, which can be found in non-specialty grocery stores nationwide. In fact, my own search for kosher beef in Michigan revealed that those two brands are the only ones available in both Southeast Michigan non-specialty grocery stores and kosher butchers alike.

Prior to filing suit, PETA initiated contact with AgriProcessors to inform them of reports it received regarding the inhumane treatment of cattle and poultry at the Postville plant. These letters between PETA and AgriProcessors’ counsel, Nathan Lewin, help provide the appropriate context for understanding the events that led up to the publicity surrounding the inhumane treatment of cattle at the Postville, Iowa plant.

On June 18, 2003, PETA faxed a letter to Donald Hunt, the operations Manager of AgriProcessors,<sup>24</sup> stating that it received vague “reports” from the plant that “Jewish law is being violated.”<sup>25</sup> In that letter, Steven Jay Gross, Ph.D., states, “To keep this matter entirely confidential, it would be necessary for you to agree to hire Temple Grandin to help you improve handling and slaughter practices at your plant.”<sup>26</sup> Dr. Grandin, a professor at Colorado State University, is best known for her work to improve animal welfare and conditions at slaughtering and processing facilities, and is often hired by meat processing plants and slaughterhouses to help facilities develop transporting, holding, and slaughtering methods that alleviate some of the animals’ trauma.<sup>27</sup> She has also done extensive research in the area of ritual slaughter, and is intimately familiar with both kosher requirements as well as halal requirements.<sup>28</sup> The letter

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<sup>19</sup> *Company Profile of Agriprocessors*, GOLIATH, at <http://goliath.ecnext.com/coms2/product-compint-0000547823-page.html> (last visited May 5, 2005).

<sup>20</sup> *Editorial Review: Postville: A Clash of Cultures in Heartland America*, AMAZON, at <http://www.amazon.com/exec/obidos/tg/detail/-/0156013363/102-2525244-0853750?v=glance> (last viewed May 5, 2005)

<sup>21</sup> *Id.*

<sup>22</sup> *Company Profile of Agriprocessors*, *supra* note 19.

<sup>23</sup> McNeil, *supra* note 2.

<sup>24</sup> See *Local News and Announcements*, CHABAD IOWA, at <http://www.chabadiowa.org/localnews.html> (last viewed May 5, 2005).

<sup>25</sup> Letter from Steven Jay Gross, Ph.D., spokesman for PETA, to Donald Hunt, Operations Manager, AgriProcessors, Inc. (June 18, 2003), at <http://www.goveg.com/feat/agriprocessors/pdfs/Huntpdf.pdf> (last viewed May 5, 2005).

<sup>26</sup> *Id.*

<sup>27</sup> Temple Grandin, PhD, *Special Report: Maintenance of Good Animal Welfare Standards in Beef Slaughter Plants By Use of Auditing Programs*, 226 J. AM. VET. MED. ASS’N 370 (2005).

<sup>28</sup> Temple Grandin and Joe M. Regenstein, *Religious Slaughter and Animal Welfare: a Discussion for Meat Scientists*, MEAT FOCUS INT’L, Mar. 1994, at 115-123.

requests that Dr. Grandin be given full access to the plant “so that she could quickly assist AgriProcessors in instituting humane improvements consistent with kashrut,” and it also asks that Mr. Hunt contact Dr. Grandin within a week.

Nathan Lewin, counsel for AgriProcessors, responded to PETA’s letter on August 26, 2003.<sup>29</sup> He states that “neither Jewish law nor ‘common decency’ is being violated in the AgriProcessors plant,” and denies that the slaughter occurring there violates the “letter and spirit of Jewish law, which prescribes the most humane treatment of animals that has been known throughout human history.”<sup>30</sup> He further states that if PETA wants AgriProcessors to take its letter seriously, PETA should provide “detailed descriptions of specific conduct” to support its conclusions.<sup>31</sup> As to PETA’s request that AgriProcessors hire Dr. Grandin, Mr. Lewin states, “If this is meant as a constructive suggestion regarding possible employment, AgriProcessors would have to know the details of Dr. Grandin’s ‘long history of working with plants engaged in kosher slaughter,’ and would have to have references from those whom she has, as you indicate, ‘guided’ in this regard.”<sup>32</sup> Furthermore, the letter states:

If, on the other hand, your letter is to be intended to be a demand that Dr. Grandin be hired, as you specify, “within two months of receipt of this letter” or your organization will take steps to “share” information you allegedly have “with anyone else,” it appears to be an extortionate blackmail demand that violates the criminal laws of Iowa, Virginia, and federal criminal law.<sup>33</sup>

In PETA’s response to the letter from Nathan Lewin, as addressed to Gary Norris at AgriProcessors, they state yet again that they are “not trying to change the precepts of kosher law or discourage AgriProcessors from performing ritual slaughter.”<sup>34</sup> They state instead that they are only recommending that improvements be made at the plant in order to “alleviate some of the suffering [they] are told is occurring there.” The following recommendations were outlined in the letter:

1. Repair [AgriProcessors] unloading ramps. Some floors are slippery and poorly maintained, causing animals to balk. No more than 1 percent of animals should slip on unloading ramps and floors.
2. Restrict the use of electric prods to within the guidelines set down by the American Meat Institute (AMI). No more than 5 percent of animals should be subjected to electric prodding.
3. Ensure that no more than 5 percent of cows vocalize within the restrainer.
4. Ensure that each chicken is held one at a time, by one person, for slaughter.
5. Provide fresh, clean water for all animals at unloading.
6. Ensure that all animals are calm at all stages of processing.
7. Engage in self-audits on a regular basis.<sup>35</sup>

<sup>29</sup> Letter from Nathan Lewin, Esq., Lewin & Lewin, to Steven Jay Gross, PhD, spokesman for PETA (Aug. 26, 2003), at <http://www.goveg.com/feat/agriprocessors/pdfs/Lewin-letter.pdf> (last visited May 5, 2005).

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> Letter from Steven Jay Gross, Ph.D., spokesman for PETA, to Gary Norris (Nov. 3, 2003), available at <http://www.goveg.com/feat/agriprocessors/pdfs/Norrispdf.pdf> [hereinafter Gross].

<sup>35</sup> *Id.*

Needless to say, PETA's suggestions went unheeded, and the organization states on its website that "subsequent phone calls from PETA to AgriProcessors were not returned."<sup>36</sup>

As such, in the summer of 2004, PETA sent an investigator to the Postville, Iowa facility, who documented the slaughtering scenes at AgriProcessors with shocking clarity. The video footage that was taken between July 22, 2004, and September 12, 2004, was obtained by the investigator during five days in which he was able to be absent from his assigned location and to instead enter and watch the procedures in the kill room.<sup>37</sup> The video documents each cow as it is restrained in the facioma pen, a device that rotates the cow so that it is completely upside down when the knife is applied to its neck.<sup>38</sup> Then, it shows the shochet, a specially trained slaughterer familiar with the Jewish laws of shechita, as he slits the animal's throat. Immediately afterwards, a second employee immediately uses a knife to enlarge the cut and uses a hook to reach inside and ensnare the esophagus and trachea.<sup>39</sup> The esophagus and trachea are left to dangle from the cow's body, while the animal in the facioma pen is rotated upright once more, only to be dumped on to the cement floor.<sup>40</sup> Finally, one of the cow's rear legs is shackled, and he is then hoisted to the "bleed rail" and conveyed to another room, where he will be decapitated and skinned.<sup>41</sup> Horrifyingly, the video depicts cows that are clearly still conscious after the initial throat cut and during the trachea-tearing procedure, in one case depicting a cow struggling furiously and walking around before he finally bled to death after three minutes.<sup>42</sup>

PETA alleged in its complaint to the United States Department of Agriculture (USDA) that the second throat cut and subsequent tearing out of the trachea and esophagus violated the Humane Methods of Slaughter Act (HMSA), since it is not required by Jewish teachings. Furthermore, it alleged that the "unacceptable number of animals who remain conscious for minutes after shechitah is performed at Agriprocessors indicates that the cut itself is performed improperly in many instances."<sup>43</sup> It cites a study performed by Dr. Grandin and Joe M. Regenstein of the Department of Food Science at Cornell University, in which they determined that calm cattle will collapse within 10 to 15 seconds when shechita is performed properly.<sup>44</sup> In order to determine whether PETA's accusations are accurate, it is necessary to examine both the HMSA and the extensive laws of shechita, and other laws relating to the treatment of animals enumerated in the *Torah* and the *Talmud*.

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<sup>36</sup> *Important Correspondence*, PETA, at <http://www.goveg.com/feat/agriprocessors/letters.asp> (last viewed May 9, 2005).

<sup>37</sup> Letter from Lori E. Keller, Counsel for PETA, Research & Investigations Department, to Dr. Elsa A. Murano, Under Secretary for Food Safety, United States Department of Agriculture, 4 (Nov. 29, 2004).

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> *Id.* at 5.

<sup>43</sup> *Id.* at 6.

<sup>44</sup> Temple Grandin and Joe M. Regenstein, *Religious Slaughter: A Discussion for Meat Scientists*, 3 MEAT FOCUS 115 (1994).

### III. CURRENT LEGAL CONTEXT FOR THE PROBLEM

#### A. *The Humane Methods of Slaughter Act*

The Humane Methods of Slaughter Act (HMSA) was enacted in 1958 to promote four main objectives, most of which evince a primary concern for the human being, not farm animals.<sup>45</sup> Congress was concerned about the working conditions for the employees of the slaughterhouses, the improvement of slaughterhouse products, and with setting up a smooth flowing livestock products system because this would maximize the producer's profits and decrease consumer costs.<sup>46</sup> The HMSA was also intended "to bring about the use of humane methods in all livestock and poultry slaughter operations in the United States."<sup>47</sup>

Several drafts of the HMSA were submitted to Congress between 1955 and 1958, all of which were rejected.<sup>48</sup> Finally after a modification in the HMSA that permitted the kosher slaughter of animals, the bill passed the senate by a 72 to 9 vote.<sup>49</sup> The law was enacted on June 30th, 1960, after it was signed by President Eisenhower. The statute permits two acceptable slaughter methods, which are defined as humane:

- (a) in the case of cattle, calves, horses, mules, sheep, swine, and other livestock, all animals are rendered insensible to pain by a single blow or gunshot or an electrical, chemical or other means that is rapid and effective, before being shackled, hoisted, thrown, cast, or cut; or
- (b) by slaughtering in accordance with the ritual requirements of the Jewish faith or any other religious faith that prescribes a method of slaughter whereby the animal suffers loss of consciousness by anemia of the brain caused by the simultaneous and instantaneous severance of the carotid arteries with a sharp instrument and handling in connection with such slaughtering.<sup>50</sup>

The text of the latter provision is the exemption by which shechita<sup>51</sup> is permitted, but the language of the statute does more than simply permit it. In effect, the HMSA requires one who does not render an animal insensible to pain by the methods described in provision (a) to adhere to "ritual requirements of the Jewish faith," unless one adheres to the guidelines of another religious faith that prescribes a method of slaughter in which the animal suffers loss of consciousness from the simultaneous and instantaneous severance of the carotid arteries. This puts compliance with the HMSA in the hands of those who are knowledgeable regarding the vast and various provisions of Biblical and Talmudic law that enumerate the many laws and opinions regarding shechita. Furthermore, by implication, it means that an animal that is not slaughtered

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<sup>45</sup> Nicole Fox, Note and Comment, *The Inadequate Protection of Animals Against Cruel Animal Husbandry Practices Under United States Law*, 17 WHITTIER L. REV. 145, 162 (1995).

<sup>46</sup> *Id.* at 163.

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> 7 U.S.C. §1902 (1978).

<sup>51</sup> The only method of slaughter that is permitted by Biblical and Talmudic authorities.

by the method outlined in provision (b) is not kosher, rendering any mistakes in the kosher slaughtering process in violation of the HMSA.

## *B. Jewish Law*

### *(1) General Principles of Animal Welfare*

To understand the laws of shechita, it is helpful to first understand the Jewish legal context that surrounds those specific laws. The *Torah* prescribes many requirements in order to ensure that animals are treated with kindness and compassion. The Talmudic phrase “tza’ar ba’alei chayim” means that it is prohibited to cause pain to animals.<sup>52</sup> There are many examples throughout the *Torah* that illustrate the humanity and compassion the Jewish people are required to exhibit towards animals. To illustrate, there is a requirement that a person must feed his animals before himself,<sup>53</sup> as well as a statement that animals are to rest on the Sabbath since work is forbidden on the Sabbath.<sup>54</sup> It is also prohibited by the *Torah* to sever a limb from a live animal and eat it,<sup>55</sup> and to kill a cow and her calf on the same day.<sup>56</sup> In Moses Maimonides’ *Guide to the Perplexed*, he explains this prohibition, writing:

[T]his being a precautionary measure in order to avoid slaughtering the young animal in front of its mother. For in these cases animals feel very great pain, there being no difference regarding this pain between man and the other animals. . . .

This law applies in particular to ox and lamb, because these are the domestic animals that we are allowed to eat and that in most cases it is usual to eat . . . .<sup>57</sup>

Jewish law further obligates<sup>58</sup> one to relieve an animal’s suffering,<sup>59</sup> and forbids the harnessing of an ox and donkey together. An animal threshing corn must not be muzzled, either, for that would prevent it from being able to eat freely while it is working in the field.<sup>60</sup> It is clear when reading the numerous Biblical and Talmudic provisions that provide guidelines on man’s dealings and interactions with animals that the authors of those texts have the utmost concern for kindness and compassion to animals. In modern times, when animal experimentation is more prevalent and accessible, there have been additional commentaries that addressed the subject. Authorities point out that “the fundamental criterion in animal experimentation, establishing a line of demarcation between the permissible and the forbidden, is the relationship of the act to a legitimate human need.”<sup>61</sup> In the 19th century, Jacob Ettlinger expressed the view that the prohibition of cruelty to animals is waived for any medical or useful purpose is limited to medical needs but not for financial gain.<sup>62</sup>

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<sup>52</sup> *Talmud B.M.* 32a.

<sup>53</sup> *Deuteronomy* 11:15.

<sup>54</sup> *Exodus* 20:10, and *Deuteronomy* 5:14.

<sup>55</sup> *Genesis* 9:4.

<sup>56</sup> *Leviticus* 22:2.

<sup>57</sup> MAIMONIDES, *GUIDE FOR THE PERPLEXED*, 3:48.

<sup>58</sup> *Deuteronomy* 22:10.

<sup>59</sup> *Deuteronomy* 22:4.

<sup>60</sup> *Deuteronomy* 25:4.

<sup>61</sup> FRED ROSNER, *MODERN MEDICINE AND JEWISH ETHICS* 331 (1986).

<sup>62</sup> *Id.* (referring to Jacob Ettlinger, *Responsa Binyan Zion*, no. 108).



Ultimately, Maimonides states that it is paramount to avoid causing suffering to animals, and that “we should intend to be kind and merciful even with a chance animal individual, except in case of need – ‘Because thy soul desireth to eat flesh,’ for we must not kill out of cruelty or sport.” Not only did Maimonides clearly prohibit hunting for sport here, but he also introduced the concept of consuming meat to satisfy one’s hunger.<sup>63</sup> Many Jewish sects were strictly vegetarian, and prior to the biblical flood in which Noah gathered species of animals onto his ark to preserve them from the coming storm, meat consumption was prohibited.<sup>64</sup> In *Genesis*, Adam and Eve were told by God, “Be fruitful and multiply, and replenish the earth and subdue it; and have dominion over the fish of the sea, and over the fowl of the air, and over every living thing that creepeth on the earth.”<sup>65</sup> The phrase “to have dominion over” does not mean to eat, but rather to use for work purposes,<sup>66</sup> since God also told Adam and Eve:

Behold, I have given you every herb yielding seed, which is upon the face of all the earth, and every tree . . . to you shall it be for food; and to every beast of the earth, and to every fowl of the air and to every thing that creepeth upon the earth, wherein there is a living soul [I have given] every green herb for food.<sup>67</sup>

From this, we derive that both man and animals were originally vegetarians, notwithstanding the sacrificing of animals to God.<sup>68</sup> After the flood, since Noah and his family saved the animals from extinction, God made a concession to man by giving him the right to consume meat, provided the animals are humanely slaughtered.<sup>69</sup> However, the only method by which it was, and is, permitted to kill an animal is shechita, the details of which are enumerated in the *Talmud*.

## (2) *The Laws of Shechita*

Shechita must be performed by a highly trained slaughterer, called a shochet. The shochet is required to study for a number of years and undergoes an examination in theory and practice of the laws of shechita, animal anatomy, and pathology.<sup>70</sup> A shochet is apprenticed to an experienced shochet before he may become fully qualified.<sup>71</sup> In addition, it is clearly enumerated in the *Talmud* that the shochet must be a god-fearing man of integrity.<sup>72</sup>

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<sup>63</sup> *Id.* at 325.

<sup>64</sup> *Id.*

<sup>65</sup> *Genesis* 1:28.

<sup>66</sup> *Psalms* 8:7-9.

<sup>67</sup> *Genesis* 1:29-30.

<sup>68</sup> ROSNER *supra* note 61, at 325 (citing *Sanhedrin* 59b).

<sup>69</sup> *Id.* (citing *Genesis* 9:3).

<sup>70</sup> *Can Anyone Perform Shechita?*, CHABAD, at <http://www.chabad.org/library/article.asp?AID=222243> (last viewed May 5, 2005).

<sup>71</sup> *Id.*

<sup>72</sup> The *Shulchan Oruch* (meaning “Set Table”), a compendium of Jewish laws that are applicable today, outlines the requirements of a shochet in *Yoreh De’ah*; “It is customary not to allow a person to slaughter unless he is an observant Jew [*see* 2:1-2ff] and a qualified scholar has certified that he knows the relevant laws [*see* 18:17; 23:1; 25:1], and it is customary that women not be slaughterers [*see* 1:1-2].”

According to Shechita UK,<sup>73</sup> the shechita procedure consists of a rapid, expert transverse incision with an instrument of surgical sharpness, called a chalaf, which severs the major structures and vessels at the neck.<sup>74</sup> The chalaf must be perfectly smooth without the minutest notch or irregularity, and the shochet must constantly examine it to ensure that this is the case.<sup>75</sup> Shechita UK states in its *Guide to Shechita* that the stroke must sever the frontal structures of the animal's neck, namely the trachea, esophagus, the carotid arteries and jugular veins.<sup>76</sup> The aforementioned procedure "causes an instant drop in blood pressure in the brain and immediately results in the irreversible cessation of consciousness. Thus, shechita renders an animal insensitive to pain, dispatches and exsanguinates<sup>77</sup> in a swift action, and fulfills all the requirements of humaneness and compassion."<sup>78</sup>

There are five halachic requirements<sup>79</sup> the shochet must ensure in order to correctly perform shechita. They are:

- a. There should be no interruption of the incision;<sup>80</sup>
- b. There should be no pressing of the chalaf against the neck, this would exclude use of a guillotine;
- c. The chalaf should not be covered by the hide of cattle, wool of sheep or feathers of birds, and therefore the chalaf has to be of adequate length;
- d. The incision must be at the appropriate site to sever the major structures and vessels at the neck;
- e. There must be no tearing of the vessels before or during the shechita process.<sup>81</sup>

After the severance of the structures and vessels at the neck, the shochet must examine the organs and vessels immediately after severance by the shechita incision, to ascertain that the shechita was properly performed.<sup>82</sup> This examination is visual and tactile, and is required by halacha.<sup>83</sup> The shochet also examines the internal organs and lungs of an animal in order to determine whether there are any defects or abnormalities in the animal that otherwise would

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<sup>73</sup> An organization that unites representatives from the Deputies of British Jews, the National Council of Shechita Boards, the Union of Orthodox Hebrew Congregations and the Campaign for the Protection of Shechita. It incorporates representatives from all the Kashrut Authorities of the United Kingdom. It was established to promote awareness and education about the Jewish religious method of dispatching animals for food.

<sup>74</sup> *Guide to Shechita*, SHECHITA UK, at [http://www.shechitauk.org/downloads/A\\_Guide\\_to%20Shechita\\_July\\_2004.pdf](http://www.shechitauk.org/downloads/A_Guide_to%20Shechita_July_2004.pdf).

<sup>75</sup> *Shulchan Oruch, Yoreh De'ah*, 6:1: "The instrument must be free of blemishes on or close to its cutting edges that can "catch" even an object as thin as a hair [see 18:2, and 18:4-6,10]. It should be checked (by touch) for such blemishes both before and after slaughtering with it [18:3, 9, 11-12]; this checking must be done very carefully by a qualified expert [18:17]. If a blemish is found after slaughter the slaughter is invalid even though no blemish was present before slaughter [18:1; see also 18:11, 13,15-16]."

<sup>76</sup> *Id.*

<sup>77</sup> Exsanguination is the bleed-out of the carcass.

<sup>78</sup> *Guide to Shechita*, *supra* note 74.

<sup>79</sup> According to the *Shulchan Oruch* (meaning "Set Table"), a compendium of Jewish laws that are applicable today. It was compiled by Rabbi Yosef Karo in the 1560's; they can be found in the section of *Yoreh De'ah* ("It Teaches Knowledge") in 23.

<sup>80</sup> Even a momentary pause will render the shechita invalid; *Shulchan Oruch, Yoreh De'ah*, 3:23:2.

<sup>81</sup> *Guide to Shechita*, *supra* note 72.

<sup>82</sup> *Id.*

<sup>83</sup> *Shulchan Oruch, Yoreh De'ah* 25:1.

disqualify it from being kosher.<sup>84</sup> In shechita, stunning the animal prior to slaughter is not permitted; in fact, it renders the animal non-kosher, since an animal intended for food must be healthy and uninjured at the time of slaughter.<sup>85</sup> Furthermore, if the stunning kills the animal, the animal is also rendered non-kosher, and it is forbidden as food to Jewish people.<sup>86</sup>

### (3) *Shechita in Modern Times*

Over the years, shechita has come under attack from several fronts. On April 20, 1933, one of the first anti-Jewish measures in Nazi Germany was to ban shechita, in the name of kindness to animals. In Switzerland, a law that was enacted in 1893 which banned ritual slaughter (defined as the “bleeding to death of animals which have not been stunned first”), was upheld on December 9, 2002 in a draft sent to Parliament.<sup>87</sup> The Swiss Government considered an earlier draft of the animal right rights bill, which would have lifted the ban on shechita and halal methods of slaughtering, considering it an infringement of religious freedom.<sup>88</sup> The Swiss Government backed down, however, when it came under fire from animal rights groups, consumer groups, farmers and veterinary surgeons, who all contended that the practice inflicted unnecessary suffering on animals.<sup>89</sup> Attempts at rendering shechita illegal have been made in various countries in the 20th and 21st centuries, the most recent of which was in Great Britain. In 2003, the Farm Animal Welfare Council (FAWC) recommended that killing animals without stunning them first caused severe suffering.<sup>90</sup> The organization Shechita UK was organized primarily in response to efforts in the United Kingdom to attempt to ban shechita, the earliest of which occurred in 1985. Ultimately, however, the latest attempt of shechita detractors failed, as the British government rejected a call to ban the practice in March 2004.

Considering the numerous attempts to ban shechita in various countries throughout the world over the course of the last two centuries, the responsive sentiment among observant Jews is to interpret those attempts as acts of hostility against members of the religion and the Jewish religion itself. As Dayan<sup>91</sup> Dr. Isador Grunfeld stated:

The anti-*Shechitah* campaigns which recur from time to time are not merely attacks on a particular Jewish religious observance. As *Shechitah* has always been described by those who attack it as an act of cruelty, and as believing Jews maintain that it is a Biblical commandment and, as such, of divine origin, any anti-*Shechitah* campaign tends to become, therefore, in its nature an attack either on the morality or on the divine origin of the *Torah*, and at the same time against the moral character of the Jewish people. For to say that the Jewish method of slaughter is a great cruelty means to brand the Jews as a cruel people.<sup>92</sup>

<sup>84</sup> *Shulchan Oruch, Yoreh De'ah 29-60*, and *Guide to Shechita*, *supra* note 72.

<sup>85</sup> *Guide to Shechita*, *supra* note 72.

<sup>86</sup> *Id.*

<sup>87</sup> *Switzerland: International Religious Freedom Report 2003*, BUREAU OF DEMOCRACY, HUMAN RIGHTS AND LABOR, at <http://www.state.gov/g/drl/rls/irf/2003/24436.htm>.

<sup>88</sup> *Id.*

<sup>89</sup> *Id.*

<sup>90</sup> Paula Dear, *Animal Welfare Takes on Religion*, BBC NEWS, Apr. 1, 2004, at <http://news.bbc.co.uk/1/hi/uk/3590731.stm>.

<sup>91</sup> Meaning “judge.”

<sup>92</sup> DAYAN DR. ISIDORE GRUNFELD, *THE JEWISH DIETARY LAWS* 56 (1972).

Consequently, PETA's attack on AgriProcessors was viewed in much the same light, despite repeated assertions by the organization that it was not condemning the practice of shechita, merely the practice of the employees at AgriProcessors whose actions resulted in the apparent suffering of animals.

To counter those who would contend that the practice of shechita is cruel, Shechita UK has devoted the last section of its *Guide to Shechita* to quoting several sources who have determined the process to be humane.<sup>93</sup> It states that "there is a significant body of scientific opinion which concludes that shechita causes no suffering, pain or distress for the animal."<sup>94</sup> It cites a series of experiments conducted in 1994 by Dr. Temple Grandin, stating:

Dr. Grandin set out to determine whether cattle feel the shechita incision. In one case, the device used to restrain an animal's head during shechita was deliberately applied so lightly that during the incision it could pull its head away from the chalaf. None of the ten animals in the experiment reacted or attempted to pull their heads away leading Dr. Grandin to conclude: "*it appears the animal is not aware that its throat has been cut.*"<sup>95</sup>

Shechita UK further states that Dr. Fleming Bager, Head of the Danish Veterinary Laboratory, conducted a similar experiment two years earlier on twenty bulls subjected to the shechita incision.<sup>96</sup> Shechita UK states, "The research indicated that they too did not react to the shechita incision: '*the bulls were held in a comfortable head restraint with all body restraints released. They stood still during the cut and did not resist the head restraint.*'"<sup>97</sup> Moreover, the guide quotes Professor Harold Burrow, a former Professor of Veterinary Medicine at the Royal Veterinary College in London, who stated:

*Having witnessed the Jewish method carried out on many thousands of animals, I am unable to persuade myself that there is any cruelty attached to it. As a lover of animals, an owner of cattle and a veterinary Surgeon I would raise no objection to any animal bred, reared or owned by me being subjected to this method of slaughter.*<sup>98</sup>

Lastly, Shechita UK cites a paper entitled *Physiological Insights Into Shechita*, published in The Veterinary Record and authored by Dr. Stuart Rosen of the Faculty of Medicine, Imperial College, London.<sup>99</sup> It states that "the paper discusses the behavioural responses of animals to shechita and the neurophysiological studies relevant to the assessment of pain, and concludes that: '*shechita is a painless and humane method of animal slaughter.*'"<sup>100</sup>

However, viewing the video and concluding that there is in fact a problem with AgriProcessors is not the same as viewing the video and concluding there is a problem with shechita. As Rabbi Yisrael Belsky states in an article regarding shechita, in former generations

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<sup>93</sup> *Guide to Shechita*, *supra* note 72.

<sup>94</sup> *Id.*

<sup>95</sup> *Id.* (emphasis in original).

<sup>96</sup> *Guide to Shechita*, *supra* note 72.

<sup>97</sup> *Id.* (emphasis in original)

<sup>98</sup> *Id.*

<sup>99</sup> *Id.*

<sup>100</sup> *Id.*

the procedure was performed on animals and fowl on a local basis.<sup>101</sup> He writes, “Every town had its own *shochtim*<sup>102</sup> who were under the personal supervision of the local Rav. Chazal<sup>103</sup> took great pains to assure that the authority of the Rav<sup>104</sup> in the slaughterhouse was supreme.”<sup>105</sup> Furthermore, he emphasizes the utmost importance of honoring the *Torah* with regard to shechita, and particularly the requirement of the review of the shochet's knife by the Rabbi.<sup>106</sup> He states, “One who was lax in this practice would be removed from his post, excommunicated and publicly denounced. The rules for penitence were quite severe. Even in the times of the holy Tanaim<sup>107</sup> and Amoraim<sup>108</sup> there was often trouble in the slaughterhouse.”<sup>109</sup>

This is in direct contrast with the environment shechita is performed in today, with mechanized conveyor belts transporting cattle to mechanical restraining devices, like the rotating facioma pen used at AgriProcessors. Furthermore, economic necessity has displaced local operations and replaced them with huge, centralized slaughterhouses; Rabbi Belsky states that anywhere from 500-1200 herds are slaughtered daily in over twenty-five facilities across America in assembly line fashion.<sup>110</sup> Thus, supervision is divided among the slaughterhouse distributor, processor, and butcher.<sup>111</sup> The result of producing hundreds of thousands of pounds of meat on such a massive scale can lead to carelessness and error in the interest of expediency, which in turn leads to increased animal suffering. This is the context in which the video of the practices at AgriProcessors must be viewed: as the product of a system in which expediency is paramount to ensure cost effectiveness, and the Jewish laws promoting kindness and compassion to animals takes a backseat. The following section highlights the various problems and inconsistencies between the practices at AgriProcessors and both Jewish and American law, and recommends methods to address them to ensure that high standards of animal welfare are achieved.

#### IV. RECOMMENDATIONS

One of the most glaring problems that can be observed even by the untrained eye in the PETA video is that some of the animals in the video are conscious after both the cutting of the throat, and the tearing out of the trachea and esophagus. Animals struggle wildly after procedures occur, some for periods lasting as long as three minutes. Even a spokesman for Shechita UK who watched the tape with a rabbi and a British shochet was quoted in the *New*

<sup>101</sup> Rabbi Yisrael Belsky, *Learn About Kosher, Shechita*, ORTHODOX UNION KOSHER, available at <http://oukosher.org/index.php/articles/single/18/> (last viewed September 25, 2005).

<sup>102</sup> Plural of “shochet”

<sup>103</sup> An acronym where “CH” stands for “Chachameinu,” “Our Sages,” and the “Z” and “L” correspond to the expression “Zichronam Livrocho,” which means “of blessed memory.” This is used to refer to the authoritative opinions of the *Talmud*.

<sup>104</sup> The Hebrew translation of the word “Rav” is “Rabbi” in English.

<sup>105</sup> Rabbi Yisrael Belsky, *supra* note 101.

<sup>106</sup> *Id.*

<sup>107</sup> Jewish sages of the period from Hillel to the compilation of the *Mishna*; their opinions are found either in the *Mishna* or as collected in the *Tosefta*, a collection of Jewish teachings supplementing the *Mishna*.

<sup>108</sup> Scholars predominantly at Ceasarea and Tiberias in Palestine (C.E. 220-C.E. 375) and in Babylonia (C.E. 200-C.E. 500) who interpreted the *Mishna* and other *Tannaitic* collections.

<sup>109</sup> Rabbi Yisrael Belsky, *supra* note 101.

<sup>110</sup> *Id.*

<sup>111</sup> *Id.*

*York Times* as saying he “felt queasy,” and added, “I don’t know what that is, but it’s not shechita.”<sup>112</sup>

Despite the blatancy of the conclusion that the animals are not still conscious after watching them walk around with their tracheas and esophagi dangling from their necks, Rabbi Chaim Kohn of the AgriProcessors plant “says the animals feel nothing, even as they struggle on the floor and slam their heads into walls. ‘Unconsciousness and the external behavior of the animal have nothing to do with shechita,’” he argued.<sup>113</sup> Rabbi Menachem Genack also stated in the *New York Times* article, “Scientific studies . . . found that an animal whose brain had lost blood pressure when its throat was slit felt nothing, and that any motions it made were involuntary. ‘The perfect model is the headless chicken running around.’”<sup>114</sup>

While we can assume both rabbis are knowledgeable about halacha and Jewish law, none claims to have any specialized knowledge of animal science, veterinary medicine, or even human medicine. The Orthodox Union, the largest kosher certifying organization responsible for maintaining the kosher integrity of various food products, came out swinging with a ringing endorsement of both shechita, which is deserving, and AgriProcessors, which is not. In a statement made shortly after the release of the PETA video and the *New York Times* article, it stated that:

After the animal has been rendered insensible, it is entirely possible that it may still display certain reflexive actions, including those shown in images portrayed in the video. These reflexive actions should not be mistaken for signs of consciousness or pain, and they do not affect the kosher status of the slaughtered animal's meat. There may be exceptional circumstances when, due to the closing of jugular veins or a carotid artery after the shechita cut, or due to the non-complete severance of an artery or vein, the animal may rise up on its legs and walk around. Cases when animals show such signs of life after the slaughter process are extremely rare, and even such an event would not invalidate the shechita if the trachea and esophagus were severed in the shechita cut.<sup>115</sup>

While it must be understood that these rabbis are no animal science experts, it is incomprehensible to understand the OU’s repeated assertion that the walking animals in the video were dead, in defiance of the physiological reality that dead animals do not walk.<sup>116</sup> A true expert in the animal science field, Dr. Grandin, has analyzed the video extensively, coming to vastly different conclusions regarding the consciousness of the animals in the PETA video. In answering the question of whether the animal walking around with its throat cut was still conscious, Dr. Grandin explained:

The walking animal was definitely fully conscious and ripping of the trachea would have caused great pain. Any animal that walks, lifts its head, or attempts to get up after slaughter is still aware and conscious. Cattle on the floor that

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<sup>112</sup> McNeil, *supra* note 2.

<sup>113</sup> *Id.*

<sup>114</sup> *Id.*

<sup>115</sup> *Statement of Rabbis and Certifying Agencies on Recent Publicity on Kosher Slaughter*, ORTHODOX UNION, at <http://ou.org/other/5765/shechita2-65.htm>.

<sup>116</sup> “*Statement of Rabbis and Certifying Agencies on Recent Publicity on Kosher Slaughter*”: PETA’s Response PETA, at <http://www.goveg.com/feat/agriprocessors/pdfs/ReplyToOUstatement.pdf> (last viewed May 9, 2005) [hereinafter *PETA’s Response*].

thrashed and kicked but made no attempt to raise their head were unconscious and insensible. Leg kicking is just reflexes, but raising of the head would be an indication of sensibility.<sup>117</sup>

Dr. Grandin also addresses the question of whether unconsciousness is instantaneous after the shechita cut. She states that while “[m]ost cattle will become insensible within 5 to 10 seconds after a biologically effective cut,” many scientific studies have shown that “insensibility after the throat cut is not instantaneous.”<sup>118</sup> As to the instances at AgriProcessors in which shechita failed to produce rapid unconsciousness in some of the cows that were slaughtered, Dr. Grandin opined that the efficacy of the shochet in producing a biologically effective cut is the paramount issue.

She states:

I have observed kosher slaughter of thousands of cattle and calves. Some shochets are much more effective than other shochets. The cuts from all the shochets were proper and acceptable from a religious standpoint but some shochets performed cuts that were biologically more effective. Shochets who performed a fast knife stroke at the moment the carotid arteries were cut induced rapid unconsciousness more reliably than shochets who used a slower stroke. A slower stroke may cause the blood vessels to seal off. I have observed that cattle are more likely to attempt to get up when a slow stroke is used. Other variables include the angle and the exact position of the cut. The best shochets are able to cause over 90% of the cattle to collapse within 10 seconds. It is my opinion that shochets should be evaluated on the ability to perform both ritually correct cuts and biologically effective cuts. This could be done by scoring them on the percentage of cattle that collapse within 10 seconds.<sup>119</sup>

Finally, Dr. Grandin analyzes the procedure in which a second AgriProcessors employee (not the shochet) tears one end of the trachea and esophagus free from the surrounding tissue in the cow's neck. The Orthodox Union has stated that though the practice is not common, “nothing in any such post-shechita ‘second cut’ or excision in any way undermines the validity of the shechita itself or the kosher status of the slaughtered animal's meat.”<sup>120</sup> Oddly, Rabbi Dr. Tzvi Hersh Weinreb, the Executive Vice President of the Orthodox Union, was quoted in the *New York Times* as saying he found the procedure “especially inhumane” and “generally unacceptable.”<sup>121</sup> The Orthodox Union further stated that this second cut “is both approved and encouraged by the USDA.”<sup>122</sup> While the USDA Food Safety and Inspection Service (FSIS) has stated in its directive that a second cut to facilitate bleeding is permitted, nowhere could any seeming encouragement of this practice be found in any of its directives. Moreover, the procedure at AgriProcessors was not merely a second cut that would enlarge the initial cut and

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<sup>117</sup> Dr. Temple Grandin, *Answers to Questions About Cattle Insensibility and Pain During Kosher Slaughter and Analysis of the AgriProcessors Video*, at <http://www.grandin.com/ritual/qa.cattle.insensibility.html> (last viewed May 9, 2005).

<sup>118</sup> *Id.*

<sup>119</sup> *Id.*

<sup>120</sup> *Message from Rabbi Dr. Tzvi Hersh Weinreb, OU Executive Vice President, and Rabbi Menachem Genack, OU Kashrut Administrator, ORTHODOX UNION*, available at <http://ou.org/other/5765/shechita65.htm> [hereinafter *Weinreb*].

<sup>121</sup> Donald G. McNeil, Jr. *Kosher Authority Seeks Change in Steer Killings*, N.Y. TIMES, Dec. 3, 2004, available at LEXIS, Nexis Library, N.Y. TIMES File.

<sup>122</sup> *Id.*

facilitate bleeding. It consisted of the digging into the neck of the cow with a hook and removing one end of the trachea and esophagus. Of this process, Dr. Grandin states unequivocally that “removal of the trachea and other parts before the animal has become insensible would cause great suffering and pain.”<sup>123</sup> Moreover, she states, “Many of the cattle on this tape had the procedure performed when they were still fully sensible. . . . Several cattle were walking around with the trachea and other parts hanging out of them.”<sup>124</sup> She also stated that she had never seen this procedure performed in any other kosher slaughter facility in which trachea pulling occurs.<sup>125</sup>

Embarrassingly, the Orthodox Union also seemed to forgive acts of cruelty to small numbers of individual animals, so long as the vast majority are slaughtered appropriately. In its *Message from Rabbi Dr. Tzvi Hersh Weinreb, OU Executive Vice President, and Rabbi Menachem Genack, OU Kashrut Rabbinic Administrator*, the OU states:

While unnecessary cruelty to even one animal is intolerable, one has to look at the total picture before judging the matter . . . it must be realized that during the six or seven weeks during which the video was taken, approximately 18,000 animals were slaughtered by the plant in question. With such numbers, it is inevitable that aberrations do sometimes occur, and those shown in the video represent only a tiny percentage of the total number processed in that time span.<sup>126</sup>

Even if that assertion is taken to be true regarding the numbers, a contention PETA disputes,<sup>127</sup> it is largely irrelevant. It does not matter whether the USDA considers a slaughterhouse acceptable if less than 5% of animals killed by any method, including shechita, survive the first shot or cut. AgriProcessors is not the average slaughterhouse; instead, it is one of the largest suppliers of kosher meat to the public. Most, if not all, kosher consumers are concerned with the welfare of “even one animal,” as that that is precisely what halacha is concerned with. One of the main concerns with this statement is that looking at the “total picture” is not required by halacha. Jewish law is concerned with acts of unnecessary pain and suffering inflicted on any individual animal; as Jacob Ettinger stated, while the prohibition of cruelty to animals is waived for any medical or useful purpose, that purpose is limited to medical needs but not for financial gain.<sup>128</sup> Consequently, it would seem that even a single instance of unnecessary pain or cruelty inflicted on an animal is enough to violate the principle of tza’ar ba’alei chayim, even if the animal is still technically kosher.

In addition, *Deuteronomy* very clearly states that if one observes an animal to be suffering, one is obligated to alleviate that suffering. Instead, AgriProcessors employees sit idly by while the cattle in some instances struggled to stand on the slippery, blood drenched cement floor, and clearly exhibited consciousness for minutes. In two egregious cases that were filmed,

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<sup>123</sup> *Id.*

<sup>124</sup> *Id.*

<sup>125</sup> *Id.*

<sup>126</sup> *Weinreb, supra* note 120.

<sup>127</sup> PETA says in its Response to the Orthodox Union that the organization made its entire video available to the USDA, and that the video should be extrapolated as a representative sample. If this is the case, the video indicates that of the 18,000 animals slaughtered, more than 4,000 were still conscious when they hit the concrete floor, more than thirty seconds after shechita, and thousands struggled to stand. Also, PETA claims that it has documented that it has been going on for a minimum of nine years, representing hundreds of thousands of cattle who remained conscious for extended periods after the initial throat cut. (*PETA Response, supra* note 116).

<sup>128</sup> Rosner, *supra* note 61 (referring to Jacob Ettinger, *Responsa Binyan Zion*, no. 108).



an AgriProcessors employee even kicked blood into the faces of the dying cows. The PETA video states that he is a slaughterer. If this is the case, then not only does it evince a profound lack of concern on the part of AgriProcessors about welfare of its animals and integrity of its employees, but it arguably violates the halachic precept that a shochet must be a god-fearing man of integrity. What god-fearing person of integrity would kick blood into the face of a dying animal?

There are other halachic violations that are apparent from observing the PETA video as well. In two instances, the cows are shocked with electric prods to force them into the restraining device that holds them upside down, the facioma pen. Jewish authorities have contended that the prodding is necessary in order to achieve shechita; i.e. the animals will not enter the pen unless they are shocked, and so it is necessary to shock them to perform shechita. However, Rabbi Moshe Feinstein<sup>129</sup> commented on the limitations of the “legitimate human need” exemption by which one may inflict cruelty to animals. He limits human need to something that is a general need for people, such as food, health, and work.<sup>130</sup> The permit applies only where the suffering caused is merely a means for obtaining a product or a benefit, and even then, only where there is no possibility of obtaining these without causing the suffering.<sup>131</sup> However, where the product or the benefit is the actual suffering of the animal, inflicting cruelty is clearly forbidden, even when one benefits financially as a result.<sup>132</sup>

This commentary has far-reaching implications for the practices occurring at AgriProcessors. Essentially, where an avenue exists that will minimize the suffering of an animal that is killed for food consumption purposes, one is obligated to pursue that avenue which will cause less or no suffering. There are objective ways to evaluate the suffering of cattle; Dr. Grandin states that in response to distress, cows will moo and bellow.<sup>133</sup> She states that some of the methods that induce vocalization in cattle are “slipping on the floor, excessive pressure from the restraining equipment, sharp edges, electric prod use, or abuse by people such as hitting or tail twisting.”<sup>134</sup> In *Maintaining Acceptable Animal Welfare During Shechita and Halal Slaughter* she maintains that 95% of the cows should be silent.<sup>135</sup> Furthermore, when alternatives exist to shocking cows with electric prods in order to urge them to enter the restraining device, they must be utilized according to Rabbi Feinstein. In the interest of achieving Judaism's highest standards of animal welfare, the several methods Dr. Grandin recommends to minimize animal suffering prior to and during shechita should be implemented.

Regarding the electric prodding issue, if an animal refuses to enter the restraining device, it is not necessary to shock it with an electric prod; rather, barriers can be installed so that neither people nor moving equipment can be visible to the approaching animals.<sup>136</sup> The American Meat Institute (AMI) has several guidelines to decrease use of cattle prods and to decrease vocalization of cattle. The AMI recommends that adequate lighting is provided that does not shine directly

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<sup>129</sup> The lead halachasist for the past generation and recognized leader of Orthodox Judaism.

<sup>130</sup> Rabbi Moshe Feinstein, *Commentary*, 8.4 HALACHA BERURA (the email newsletter of the Congregation Halacha Berura) (on file with author).

<sup>131</sup> *Id.*

<sup>132</sup> *Id.*

<sup>133</sup> Temple Grandin, *Maintaining Acceptable Animal Welfare During Kosher or Halal Slaughter*, at <http://www.grandin.com/ritual/maintain.welfare.during.slaughter.html> (last viewed on May 9, 2005).

<sup>134</sup> *Id.*

<sup>135</sup> *Id.*

<sup>136</sup> *Id.*

into the animals' eyes, since animals may refuse to enter a dark space. The AMI also recommends that noise be reduced, and that "[r]educing high pitched motor and hydraulic system noise can improve animal noise which can improve animal movement. Clanging and banging metal should be reduced and hissing air should be muffled. Yelling and whistling is stressful to cattle."<sup>137</sup> The AMI also adds, "Cattle and pigs can often be moved along a chute when the handler walks back by them in the opposite direction of desired movement, taking advantage of the point of balance at the animal's shoulder."

In order to assure animal welfare at the AgriProcessors plant, the plant should be redesigned in order to minimize the suffering that is apparent in the PETA video. Rabbis do not routinely receive training in animal science, and therefore they cannot be expected to know that cows will move more seamlessly if a handler walks by them in the opposite direction. However, this does not mean they can maintain ignorance on these and other points, continuing to state that cattle prodding is necessary to perform shechita. Unfortunately, AgriProcessor's continued refusal to acknowledge PETA's concerns and allow Dr. Grandin (or another qualified expert) to enter the facility to objectively observe the conditions and recommend improvements is indicative of its denial to address the animal welfare of the cows it slaughters, and that should be a profound concern of rabbinic authorities, kosher consumers, and the federal government.

This leads to one of the most major issues that the controversy has brought to light; the HMSA gives what amounts to free reign to individuals who have a financial incentive, and therefore a conflict of interest, in finding that the procedures at AgriProcessors and other slaughterhouses are in compliance with halacha and are humane. The HMSA in section 1906 states:

Nothing in this chapter shall be construed to prohibit, abridge, or in any way hinder the religious freedom of any person or group. Notwithstanding any other provision of this chapter, in order to protect freedom of religion, ritual slaughter and the handling or other preparation of livestock for ritual slaughter are exempted from the terms of this chapter.<sup>138</sup>

A Food Safety and Inspection Service (FSIS) Directive issued on October 7, 2003, clarified the minimal USDA role in monitoring ritual slaughter. The agency states that before the slaughter occurs the personnel request that the plant manager inform the agency what method of ritual slaughter will be used, in addition to who will be performing the slaughter.<sup>139</sup> The HMSA states that inspection personnel should request that the establishment provide written verification of slaughter methods from the religious official who has authority over the enforcement of religious dietary laws.<sup>140</sup> Lastly, it requires that inspection personnel verify that the animals are handled humanely prior to the "preparation for slaughter," and that they verify that "no dressing procedure . . . is performed until the animal is insensible."<sup>141</sup>

Unfortunately, it is not even evident that AgriProcessors met even these minimal guidelines. In its statement defending AgriProcessors, the Orthodox Union contends that the

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<sup>137</sup> Temple Grandin, *Good Management Practices for Animal Handling and Stunning*, AMERICAN MEAT INSTITUTE FOUNDATION (2d ed. 2003).

<sup>138</sup> 7 U.S.C. §1906 (1978).

<sup>139</sup> USDA FSIS Directive 6900.2, FSIS, at <http://www.fsis.usda.gov/OPPDE/rdad/FSISDirectives/6900.2Rev1.pdf>.

<sup>140</sup> Sharon D. Brooks, *FSIS Issues Humane Handling, Slaughter Directive*, SOUTHWEST INFO MEAT, Oct. 13, 2003, at <http://www.southwestmeat.org/sma/Oct1303InfoMeat.PDF>.

<sup>141</sup> *Id.*

USDA has found nothing amiss in its observation of the plant, but this assertion is misleading. Though the OU states that Dr. Henry Lawson opined that the procedures at AgriProcessors are humane, the USDA dispatched five investigators to address the allegations of cruelty at AgriProcessors, and the investigation is still active.<sup>142</sup>

Many of the mischaracterizations and problems that have arose during this controversy could be more easily addressed if the language of the HMSA were changed to specify exactly which “ritual requirements of the Jewish faith” must be met, and how often they must be met, in order to fall under the exemption of subsection § 1902(b). The current language of the HMSA, which exempts procedures that conform to the Jewish faith from the stunning requirements determined to be violative of the shechita laws is unfortunately inadequate to assure that the minimum standards for animal welfare are met. The issue is not with exemption of § 1902(b) itself; no one contends that it would violate religious freedom for the HMSA to prohibit shechita, and PETA was not advocating for that solution. Rather, the concern is that there are no objective standards enumerated in the HMSA that satisfy the laws of shechita.

Instead, the HMSA requires that one adhere to the “ritual requirements of the Jewish faith,” but as evinced by the laws detailed in the previous section, those requirements are many and they are complex. It leaves the interpretation of American law dependent on the interpretation of Jewish law, which is in turn dependent on layers of interpretation of ancient texts by rabbis. It also does not provide for the “aberrations” in the system that Rabbis Weinreb and Genack acknowledge are “inevitable” occurrences in a processing facility of AgriProcessors’ magnitude. For the animals in which shechita fails for whatever reason (the cut was made too slowly, the carotid arteries were not severed simultaneously as required by shechita and the HMSA), they are doomed to slowly bleed to death, often after having their trachea ripped out, while still fully conscious. This practice is not permitted under the § 1902(b) exemption of the HMSA, which requires that the slaughter conform to shechita. If the animal is not stunned prior to slaughter, and shechita fails, the HMSA is violated.

This state of affairs begs for an objective evaluation of the goals that shechita seeks to achieve, and the creation of language to be added to the HMSA that achieves all of those goals and permits shechita itself, while allowing for no ambiguity in the standards required for maintaining humane slaughter. The details should not be left to those who have every incentive to promote expediency and cost efficiency at the expense of animal welfare, namely those at slaughtering facilities that are paid more for every animal that is deemed kosher, and the certifying organization that profits from the plant’s use of its label. When there is no mandate for either rabbis or shochtim to become familiar with principles of animal science, such as insensibility and signs of distress in animals, the federal government must step up to the plate and issue its own specific guidelines to ensure that animal welfare remains a principal concern and that religious freedom remains unimpeded.

To this same effect, periodic, unannounced, external audits should be implemented to ensure that AgriProcessors and other kosher slaughter plants violate neither the laws of shechita, halachic prohibitions on cruelty to animals, nor the HMSA. An exemplary model provided by the Sarbanes-Oxley Act of 2002 (SOA) would help ensure that the numerous, complex laws of shechita and halacha are met, and that slaughter facilities are also in compliance with the HMSA. The SOA establishes a Public Company Accounting Oversight Board, composed of five

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<sup>142</sup> PETA Response, *supra* note 116.

financially-literate members appointed for five year terms; it requires that two members must be or have been certified public accountants, and that the remaining three must not be and cannot have been CPAs.<sup>143</sup> No member of the board may share in any profits or receive payments from a public accounting firm, which ensures that there is no conflict of interest.<sup>144</sup> In effect, the SOA sets high standards for public accounting firms, which are subject to inspection and must produce detailed reports.<sup>145</sup> The SOA requires that annual inspections occur of firms that audit more than 100 issues, while others are inspected every three years.<sup>146</sup> Also, the SOA gives control to the Public Accounting Oversight Board to enforce compliance with the SOA, professional standards, and the securities laws relating to the preparation and issuance of audit reports and the obligations and liabilities of accountants.<sup>147</sup>

The USDA would do well to mimic the creation and structure of a special board that dealt solely with ensuring that inspection personnel are well versed in the requirements of Jewish law to guarantee compliance with the HMSA. Ideally, such a board would also consist of five members; two Orthodox rabbis, two veterinarians, and one animal science expert familiar with the general concepts and guidelines to assure acceptable animal welfare in kosher slaughterhouses. This would ensure that experts on animal science, physiology, and welfare are collaborating with knowledgeable halachic experts to ensure not only that the letter of the shechita laws are being followed, but that the spirit of the Jewish laws mandating kindness and compassion to animals are followed in slaughterhouses as well. The members of the board should neither be employed by any other governmental agency, nor should they be currently employed by any private kosher-certifying organization (such as the Orthodox Union) or slaughterhouse at the time of appointment and for the duration of their three-year tenure. This would help avert any likely possibility of conflict of interest. The board should be responsible for training inspectors in both principles of animal science and Jewish law; unlike the current USDA inspectors, the ideal inspection personnel would be well versed in signs that indicate shechita is not being performed correctly, thus enabling them to alert the board as to the occurrence of improper procedures. If a kosher slaughterhouse is found to be non-compliant with the HMSA, the board would also be responsible for issuing mandatory requirements in order for the slaughterhouse to retain its USDA certification.

## V. CONCLUSION

Even if these animals are still considered to be kosher by the letter of the law (those specific laws addressing shechita), there is still the prohibition against Chillul Hashem, “desecrating God’s name.” As Rabbi Dovid Rosenfeld states, “In the vernacular, the term ‘Chillul Hashem’ is understood to refer to public or conspicuous misbehavior on the part of Jews. When a Jew, especially a visibly Orthodox one, publicly sins or otherwise creates a scene, the image of the Jew and Judaism is lowered in the eyes of the onlookers -- both Jew and

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<sup>143</sup> *Summary of Sarbanes-Oxley Act*, THE AMERICAN INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS, at [http://www.aicpa.org/info/sarbanes\\_oxley\\_summary.htm](http://www.aicpa.org/info/sarbanes_oxley_summary.htm) (last viewed on May 10, 2005).

<sup>144</sup> *Id.*

<sup>145</sup> *Id.*

<sup>146</sup> *Id.*

<sup>147</sup> *Id.*

Gentile.” The Committee on Jewish Law and Standards of the Conservative Movement in its condemnation of the practice of shackling and hoisting animals pre-shechita stated:

[W]e definitely should not do anything to suggest to non-Jews that the Jewish religion requires a lower standard of morality and humane slaughter than is now commonly accepted by the rest of society and, indeed, enacted as law. Acting in any way that suggests that we abide by lower moral standards than the rest of society is a clear violation of our duty to avoid a desecration of God's name.<sup>148</sup>

Though this addresses the shackling and hoisting method, the principle behind it applies equally to the practices occurring at AgriProcessors. The ramps could be designed with non-slip surfaces to minimize slipping and balking, as PETA urged in its second letter to AgriProcessors.<sup>149</sup> AgriProcessors failed to respond. Noise could be reduced and barriers erected to prevent cattle from seeing people as they enter the restraint system, eliminating the need for electric prods.<sup>150</sup> AgriProcessors failed to respond. Rabbi Kohn of AgriProcessors has claimed that the tapes were “testimony that this is being done right.”<sup>151</sup> The implications of that statement is that the procedures depicted in the video, namely kicking blood into the face of dying cattle, using electric cattle prods to force cattle into a restraint system when there are other less painful methods available, and tearing out of the trachea and esophagus while animals are still conscious are all acceptable, when just the opposite is true. Consequently, it would be natural for the very large audience who read the *New York Times* article to assume that the Jewish religion requires a lower standard of morality than is common in the rest of society, and is thus a Chillul Hashem.

It should be noted that after it issued its statements defending AgriProcessors, the OU asked the facility to end the procedure in which its employees tear out the trachea and esophagus from the live animals, and that is a very good start.<sup>152</sup> It also said in one of its statements that any halachically unnecessary procedures would cease, leading PETA to assume that electric prods would be prohibited, that all shochets should be trained in humane handling to create a calmer environment for cattle, and that the OU should explicitly recognize and train shochets in signs of consciousness in cattle.<sup>153</sup> This would require that the animals are held in the restraining pen until they are unconscious. These would all be appropriate remedial measures if they were to be implemented.

Ultimately, the laws of kashrut as they relate to shechita exist in a vacuum. Any unnecessary pain inflicted on animals in the name of shechita does not render the animal non-kosher, unless one of the main requirements of shechita is violated. Nevertheless, it should be noted that Nahmanides, a great Jewish sage, once said that holiness cannot simply consist in the life of the commandments, for one can follow the letter of the Law and still abuse its range of

<sup>148</sup> Rabbi Elliot N. Dorff and Rabbi Joel Roth, *Shackling and Hoisting*, at <http://www.grandin.com/ritual/conservative.jewish.law.html>.

<sup>149</sup> Gross, *supra* note 34.

<sup>150</sup> *Id.*

<sup>151</sup> McNeil, *supra* note 2.

<sup>152</sup> McNeil, *supra* note 121.

<sup>153</sup> PETA also assumed that according to the OU statement, it would require the use of the ASPCA upright pen and that use of inverted restraint systems would be eliminated. Furthermore, PETA states that all equipment must be inspected to ensure that it is not harming animals, and that the practices of the Rubashkin plant in Uruguay be subject to the same restrictions. Lastly, PETA states that Dr. Grandin be given access (paid by the OU or AgriProcessors) for periodic, unannounced audits, and that all OU-approved plants should be supplied with the regulations and that the rabbis be trained in how to implement them. See *PETA Response*, *supra* note 116.

permissible actions, acting like a “scoundrel within the Law.”<sup>154</sup> He said that the function of holiness is to correct the possibility of such abuse of the Law, to seek broader and higher standards exemplified but not explicitly legislated in the Law.<sup>155</sup> For Nahmanides, the holy life is a spiritual life in that it seeks to achieve not just the letter of the Law but its spirit as well, either through additional injunctions or by cultivating people who have holy characters and holy virtues.<sup>156</sup>

Judaism is and must always be concerned with the principles of tza’ar ba’alei chayim, and therefore our rabbinic leaders today must make it evident that they, too, are concerned with that profoundly significant halachic principle. Repeated assertions that AgriProcessors technically followed the letter of the laws regarding shechita unfortunately do nothing to address the clear violations of Jewish animal welfare standards routinely occurring there. Though implementing the aforementioned recommendations will indubitably be costly to kosher slaughter facilities, requiring that significantly more time and effort is dedicated to ensuring that no unnecessary pain during consciousness is inflicted on animals prior to, during, or after the shechita cut, it is no less than is required by the various Jewish laws mandating kindness and compassion to animals. It should always be remembered that if as humans we don’t always rise to the level we should, we should nevertheless strive to reach the spirit of benevolence and goodwill that the laws of shechita and the principles involving tz’ar ba’alei chayim necessitate.

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<sup>154</sup> Josef Stern, *Two Concepts of Holiness: Maimonides on Holiness as Law and Nahmanides on Holiness Despite Law*, at <http://www.law.upenn.edu/alumnijournal/spring2003/department1/page06.html> (last viewed on May 9, 2005).

<sup>155</sup> *Id.*

<sup>156</sup> *Id.*