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Shehitah: Jewish Ritual Slaughter

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Abstract

The laws pertaining to shehitah, Jewish ritual slaughter, are explored. The laws derive from the oral law, stemming from the prohibition to eat the flesh of live animals, in combination with the general Biblical obligation for humane treatment of animals. The first part of this paper is an exposition of the origins of shehitah, and the laws for correctly carrying out the process. The second part of this paper addresses the history of the practice of these laws in select European countries and the United States. This history includes a discussion of anti-shehitah campaigns and legislation through modern times.

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Part I: The Laws of Shehitah

Shehitah¹: The Origins

Kashruth, the Hebrew word for Jewish dietary law, pertains to all types of food and contains many intricacies, not only regarding the type of food,² but the manner in which it is prepared, by whom it is prepared, and the combinations in which it is served.³ In fact, one of the earliest commandments in the Bible, included among the Seven Noahide Laws, is the prohibition against eating the flesh of a live animal.⁴ Animals must be slaughtered before they are eaten, and the Jewish law provides for an exact method by which animals must be slaughtered.

“Thou shalt kill of thy herd and of thy flock, which the Lord hath given thee, as I have commanded thee,”⁵ is the biblical origin for Shehitah, the Jewish method of slaughtering permitted animals for food. The words “as I have commanded thee” imply a divinely ordained method of slaughter which has been passed down through the oral law. The specific laws are found in the Talmud, Tractate Chulin, chapters I and II, (compiled

¹ Alternate spellings include shechitah, shechita, shehita, shehita.

² “These are the creatures that you may eat from among all the land animals: any animal that has true hoofs, with clefts through the hoofs, and that chews (Lit. brings up.) the cud such you may eat.” Levit. 11:2-3.

³ “Thou shalt not seethe a kid in its mother’s milk.” Exod. 23:19, Exod. 34:26, Deut. 14:21. The Talmud, Tractate Chulin 115b interprets the triple repetition of the verse to teach three distinct prohibitions—cooking, eating, and deriving benefit (i.e. make money from the sale thereof, give as a gift or use as animal feed). While the text refers to a lamb and milk, rabbinic interpretation extends the meaning to all meat (animal and fowl) and all dairy products. Separate utensils must be used for meat and dairy. Additionally, tradition allows for up to six hour intervals after consuming meat before consuming dairy products.

⁴ Seymour E. Freedman, *The Book of Kashruth* 29 (1970). The seven commandments given to Noah, which non-Jews are expected to follow, include the following: (1) idolatry is forbidden; (2) incestuous and adulterous relations are forbidden; (3) murder is forbidden; (4) blaspheming the name of God is forbidden; (5) theft is forbidden; (6) eating the flesh of a living animal is forbidden; (7) mankind is commanded to establish courts of justice.

⁵ Deut., 12:21.

in 499 CE), as well as in the codifications by Maimonides (1200 CE) in Mishneh Torah-Laws of Shehitah, and by Karo (1575 CE), in Shulhan Arukh-Yoreh De'ah 1-28.⁶

The Reason: Pity for Living Creatures

Shehitah is meant to be the most humane method of slaughtering animals. According to Judaism, there are seven laws that were given to Noah's sons which apply to all mankind as ethical principles. One of these laws requires that one not eat from an animal while it is still alive.⁷ This is meant to prevent harm to the animals while they are alive. However, Jewish law recognizes the need to use animals for food, and attempts to provide a humane method of killing the animals for consumption purposes.

There are many biblical laws protecting animals. For example: an animal should also rest on the Sabbath (Exod. 20:10); a mother animal should not be slaughtered on the same day as her young (Levit. 22:28); one should not take a bird together with its young or with its eggs, but should send away the mother first (Deut. 22:6-7); it is forbidden to harness a plough to two animals of different species (Deut. 22:10); it is forbidden to bind the mouth of an ox during threshing (Deut. 25:4); it is forbidden to castrate an animal (Levit. 22:24; Karo, 1575j); one cannot eat from a live animal, (Gen. 9:4); one is obligated to help carry the load of an animal carrying too heavy a load (Deut. 22:24); one should reload an improperly loaded animal so that it does not suffer (Exod. 23:5); and it is forbidden to slaughter an animal younger than eight days old.⁸ The general principle of compassion for animals is encapsulated in the term "tsa'ar baalei chaim," having pity for the pain of living creatures.

⁶ I. M. Levinger, *Shechita in the Light of the Year 2000*, at 14 (1995).

⁷ *Id.*, at 9. (*citing* Talmud, Sanhedrin 56a).

⁸ *Id.*, at 10.

The shehitah process developed in light of this underlying principle of pity for living creatures. The intent behind the process is to cause the animals as little pain as possible.⁹ However, despite these noble intentions, there have been numerous attempts, some rather successful, at implementing anti-shehitah and humane slaughter legislation throughout Europe and the United States.

The Basic Laws

The laws of shehitah, the slaughter of animals for kosher meat, are particularly complex. They are strictly regulated by the rabbis. Special knowledge is required for the slaughtering of the animal, the examination of the lungs, and the removal of the blood and fatty tissues. Special licensing is required of the “shohet-bodek” (slaughterer and examiner).¹⁰ The certification for shehitah¹¹ is known as “kabbalah,” meaning

⁹ Shehitah, when properly carried out, does in fact comply with humane principles. Brain function is eliminated and ceases very rapidly, whereas heart function ceases later, allowing a high degree of exsanguination. *See Id.*, at 31-111 for a detailed examination of the physiological effects of the shehitah process.

¹⁰ During Talmudic times, professional slaughterers known as “tabbahim” functioned as both slaughterers and meat vendors. Because the tabbah himself determined whether meat was kosher, he had economic incentive to lie, since he was also the vendor of the meat. Because declaring unfit meat to be kosher would lead those who consumed the meat to violate a prohibition, the rabbis sought to safeguard the community against dishonest tabbahim. Initially, the rabbis reserved the right to inspect the tabbah’s knife at will, and imposed harsh punishments on tabbahim that would not comply with the inspections, excommunicating them and declaring their meat unfit for consumption. The rabbis set up standards of eligibility and qualifications for tabbahim, and rigorously prosecuted those who sold unfit meat as being kosher. However, authorities from the thirteenth century on insisted that no man engage in both the slaughter and sale of meat since the combination of tasks was too conducive to dishonesty since someone in a dual role would be tempted to rule leniently on his examination of meat that he would subsequently be selling for profit. As such, the roles were divided between a specialist known as the “shohet-bodek,” (slaughterer-examiner), and a meat dealer businessman called a “kazzab,” (cutter). Jeremiah J. Berman, *Shehitah* 12-29, 43 (1941).

¹¹ A sample certificate is as follows:

“This is to certify that Rabbi Dov Gershon has learned the holy occupation of ritual slaughter and lung examination under my guidance. After testing him I have found him to be very capable in establishing a smooth and sharp knife, has a fine perception when testing the edge of the knife, has slaughtered fowl, cattle and sheep without flaws and is experienced in both internal and external examination of the lungs. He knows very well the laws governing the kashrus of shechita and bedika. I therefore give him this certificate of recognition to notify my brethren of Israel that the above shochet is suitable to fill the position of shochet and bodek in any city of Israel beyond any question of doubt. Attested to Tamuz 1923, Reuven ben Avrohom Yitzchok, Shochet and Bodek.” Shmuel Rubenstein, *Kosher Meat* 1 (1979).

acceptance, since the shohet accepts the responsibility of reviewing the laws of shehitah every thirty days.¹² The original law had no gender specifications for shohetim, yet today they are exclusively male.¹³

There are five basic aspects of correct shehitah, which are as follows: (1)

Shehiya: The incision must be continuous until all the vital parts are severed without any pause. (2) *Derasa*: There must be no pressing upward or downward, nor any hacking. (3)

Halada: There must be no burrowing. The incision must be open and exposed so as to drain the brain quickly and render the animal unconscious immediately. (4) *Hagrama*:

The incision must be in the correct part of the neck, through the trachea, preferably below the cricoids—the complete cartilaginous ring immediately below the larynx—but not

¹² Prior to the year 1100, there was no inquiry into the capabilities of the slaughterer. Moses Maimonides, (Egypt, 1135-1204), suggested that slaughterers practice under the guidance of rabbis and attain proficiency in the laws and the process before performing shehitah. Communities throughout the world began requiring examination by rabbis prior to qualifying a slaughterer. The shohet's license, known as the "kabbalah" was introduced in the sixteenth century. In order to receive a license, the candidate had to pass a slaughtering test given by a rabbi. The licenses were originally issued by veteran shohetim or rabbis, in oral or written form. Later only written licenses conferred by rabbis were acceptable. Qualifications were not only endorsed in code books, community resolutions, and rabbinical mandates, they were enforced by Jewish courts of law. A shohet that was found deficient in knowledge, skill or piety faced possible discipline and disqualification. Berman, *supra*, at 85-86, 98-99.

¹³ The Mishnah reads, "If she had slaughtered a beast, a wild animal, or a bird." Tractate Chulin 8:2. This wording insinuates that women must have been slaughterers in Talmudic times. Rabbi Joseph Karo, in Shulhan Arukh-Yoreh De'ah 1:1, wrote, "All persons have the right to slaughter, even women." There are numerous sources referencing the existence of female shohetim in Italy, specifically slaughterers of fowl. This fact has been attributed to the fact that many Italian women and children vacationed in the country without their husbands during the hot summers. Male shohetim were not available in the remote vacation areas and so Italian rabbis permitted women to study and perfect the slaughter of fowl so that they could supply themselves and their families with poultry during their summer vacations. However, Rabbi Karo's code reflects the Sephardic (Spanish, Mediterranean) tradition. The Ashkenazic (German, Eastern European) authorities, in contrast, do not, and never did, permit women to slaughter animals. The Tosafot, a composite commentary on the Talmud produced in northern France in the thirteenth century, writes "It is written in the 'Laws of the Land of Israel' that women may not slaughter, because they are of delicate constitution." Annotation on Talmud, Chulin 2a. Rabbi Moses Isserles (Poland, 1520-1572), said, "There is an opinion that we do not permit women to slaughter, since they have been forbidden by long established usage. It is the rule that women do not slaughter." Note on Shulhan Arukh-Yoreh De'ah 1:1. Rabbi Zebi Hirsch Spira of Munkacs, Hungary, summarized the reasons of Ashkenazic authorities from excluding female slaughterers: (1) a woman cannot be sufficiently learned in Shehitah laws; (2) a woman might faint during the act of slaughtering; (3) they are careless; (4) they are lazy and so would not learn the rules properly; (5) there is some doubt in the matter of whether women are allowed, and doubt in biblical law is always decided on the stricter side. "Darke Moshe," quoted by Charles Duschinsky. Berman, *supra*, at 134-36.

through the larynx nor through the part of the neck which is close to the chest, where the muscles are very thick and the trachea is deep-seated. This is in order to avoid blunting or nicking the knife on hard surfaces which may cause delay in the slaughter and unnecessarily inflict pain on the animal. (5) *Ikkur*: There must be an incision—a clean cut—and not a laceration or tear. The knife is examined both before and after the slaughter to ensure that it is perfectly smooth, enabling a clean incision.¹⁴

The knife used for shehitah is called the “halef,” meaning “change” in Hebrew, because the animal’s status is changed from life to death. The Hebrew letters are also an acronym for “chad v’lo pagum,” meaning “sharp without notches.” This sums up the essence of the slaughter. It is meant to facilitate death to the animal as quickly and painlessly as possible, therefore requiring the smoothest and sharpest knife possible so that the animal will immediately be killed.¹⁵

The act of shehitah itself must be done in one stroke. The incision begins from the surface of the skin and goes down to, but not touching, the vertebrae. The trachea, esophagus, carotid arteries, jugular veins, vagal nerves and the main or upper cardiac branches of the sympathetic nerves are all severed. The severing of the carotid arteries causes an immediate acute anemia of the brain, followed by instantaneous unconsciousness.¹⁶ The method is meant to prevent the animal from suffering.

Before the Slaughter: Cleaning and Casting

Before the actual slaughter is performed, the neck of the animal is washed with a hose to ensure that there is no dirt or pebbles that might nick the knife and impair the

¹⁴ Levinger, *supra*, at 15e.

¹⁵ Rubenstein, *supra*, at 2.

¹⁶ Levinger, *supra*, at 16. For a synopsis of the medical aspects of the shehitah, See Levinger, at 18-20.

shehitah process by causing an interruption during the slaughter. Additionally, the knife must be exposed throughout the entire act of shehitah, and cannot be covered with mud. For the same reason, the wool of sheep is sometimes sheared before shehitah, and in the U.S. the hairs are brushed and parted so that the knife is exposed. The knife is smoothed by sharpening it on a slate stone. Prior to shehitah, and again following the shehitah, the knife is tested for any imperfections by lightly passing the edge of the index or pointer fingernail along the cutting edge of the knife or by moving the edge of the knife back and forth on the edge of the fingernail. The size of the blade varies depending on the size of the animal, and the blade of the knife may be beveled either on both sides or on just one.¹⁷

In order to ensure that the shehitah is done properly, the animal must be immobilized prior to the slaughter. There are no Jewish laws that dictate specifically how this must be done, other than the overriding principle of prevention of cruelty to animals. While small animals are usually slaughtered without casting, larger animals require this immobilization.

Traditionally, animals have been laid down prior to the shehitah, to avoid putting any pressure on the knife, in order to comply with the law of “Derasa”, which requires that there be no pressing upward or downward on the knife during the slaughter. In the past animals were slaughtered while lying on the floor with their heads upward. The animal was thrown down by tying its feet. This method was eventually replaced by the Hess method, where a rope would be tied around the animal’s horns and tied around its body three times, around its neck, behind the forelegs, and in front of the hind legs. When the end of the rope was pulled, the animal would voluntarily lie down, enabling the

¹⁷ Rubenstein, *supra*, at 2.

slaughterer to tie its legs. In the early 1900s this method was replaced by “shackling and hoisting,” a process whereby a girdle was placed over the animal. It was then lifted by a set of pulleys so that its legs could be bound, and then it was placed back on the ground.¹⁸

The method of “shackling and hoisting” replaced the former one in order to comply with government inspector concerns of contamination if the animal, on the floor, were to come in contact with the blood of a previously slaughtered animals. The newer method was believed to avoid the spreading of disease.¹⁹

The first rotating pen, the “Weinberg Casting Pen,” was developed in 1927. This pen eliminated the throwing of the animal and the tying of its legs. The animal was secured inside an adjustable pen, which was subsequently turned 180°. The slaughter was then performed while the animal had its legs in the air. The entire process could be performed within 30 seconds. This pen was later improved in various countries, allowing for further adjustments in the pen around the animal, and operating on electric and hydraulic power. Other models, such as the one developed in South Africa, only turns the animal 110°, and the slaughter is then done from the side.²⁰

Another development was the knocking pen, which was a modification on the shooting pen used in many non-Jewish slaughter-houses. The pen operates in two stages. First, the pen opens and the animal is raised on a line. The pen is then opened wider and the animal slips out of it. While the animal slips, the line is pulled and the hind legs of the animal are pulled up. The animal is then slaughtered. The entire process takes at most between 15 to 20 seconds from the time the animal reaches the pen.²¹

¹⁸ Levinger, *supra*, at 21-22.

¹⁹ Freedman, *supra*, at 33.

²⁰ Levinger, *supra*, at 22.

²¹ *Id.*, at 24-25.

The new “Eshet” method for casting adult bovines was developed in Israel. The animal is turned in a cage, and falls into a slip on its back. The shohet performs the slaughter while the animal’s head is in the air. This method is technically difficult and is only used in large slaughterhouses under special conditions.²²

Shehitah may also be performed on a suspended animal. One possible method involves a rotating platform, where the animal is attached by its legs to the platform. When the platform reaches its turning point, it collapses and the animal drops and remains suspended with its legs in the air. A second possible method that is sometimes used is the tying to a pulley of one of the animal’s hind legs. The animal is lifted and suspended in the air while the shehitah is performed from the side.²³

Many attempts have been made to make the casting process as harmless as possible to the animal. Some people believe that a casting process that involves lifting or flipping of the animal causes the animal fear, if not pain. Methods have been developed to allow for shehitah on a standing animal. In response to complaints that the casting process was cruel to animals, the Armour Research Foundation developed a pen to hold the standing animal during slaughter. This foundation was originally employed by the Joint advisory Committee, representing major Jewish organizations, and was later funded in part by the American Society for the Prevention of Cruelty to Animals (A.S.P.C.A.).²⁴ This pen is known as either the “Kill Pen,” the “Elizabeth Pen,” or simply the “A.S.P.C.A. Pen.” Using this method, the slaughter is performed on a 45° angle. Whether this method is permissible according to Jewish law is still a topic of debate.²⁵

²² *Id.*, at 25.

²³ *Id.*, at 26-27.

²⁴ Freedman, *supra*, at 45.

²⁵ Levinger, *supra*, at 27-28.

Every attempt has been made, and continues to be made, to improve the methods of casting so as to prevent any cruelty to animals. Many scientific and psychological experiments have been conducted to determine the effects of casting on animals. Studies have shown that animals may suffer from being placed in an abnormal position, and the animals will immediately try to correct their positions. However, other studies have shown that animals have a lesser reaction to painful stimuli while they are in an abnormal position than when they are in a normal position. Additionally, veterinarians often use casting during various medical procedures, which would imply that the method is not particularly inhumane.²⁶

Abnormal positioning of animals causes them to experience a shock-like effect. In studying animal pathology in 1955, Frei showed that there are two stages of shock, the initial shock stage and the following stage of recovery and adaptation. The animal must be slaughtered within the initial shock stage, which lasts several seconds. The quicker the casting, the longer the first stage shock reaction tends to last. With the new techniques available for casting, the shehitah can take place within 10 to 15 seconds, well within the time of the first stage of shock.²⁷ Quicker casting with shehitah following soon thereafter is best for the animal, with respect to it possibly feeling any pain.

After the Slaughter: B'dikah²⁸ and Nikur²⁹

Meat that is “nebelah,” improperly slaughtered, is not kosher for consumption. Additionally, meat that is “treifah” may not be eaten. This word is commonly translated as “not kosher,” but literally means “torn.” The origin of the term’s use stems from the

²⁶ *Id.*, at 109.

²⁷ *Id.*

²⁸ The laws of “b’dikah” are discussed in Shulhan Arukh-Yoreh De’ah, 29-60.

²⁹ The laws of “nikur” are discussed in Shulhan Arukh-Yoreh De’ah, 65.

passage, “And you shall be a sanctified people to me. And the flesh that has been torn (“treifah”) in the field may not be eaten, and should be cast to the dogs.” (Exodus 22:30). The phrase implies two types of “treifah,” (1) flesh torn from a live animal, and (2) the flesh of animals whose organs have been damaged by being torn. Both such defects would render the animal un-kosher.

With regard to the latter definition of “treifah,” the types of injuries and diseases that render an animal un-kosher are defects that affect the major organs.³⁰ If there is reason to suspect that an animal might be “treifah,” an examination must be performed. Under normal conditions, most animals do not suffer from disease or injury and need not be examined. Whether certain animals must be examined, and which organs need be examined, depends on the country and the tendency toward certain diseases in those countries. For example, in the United States it is customary to examine the intestines of fowl, since many have been found to have abscesses in that area.³¹ It is almost always necessary to examine the lungs of all animals since they are often defected so as to render the animal unfit for consumption.³² This examination of the lungs is called the “b’dikah” (lit. examination).

The b’dikah process is very methodical, requiring both an internal and external examination. First the lungs are examined before they are removed from the chest cavity. The examiner (“bodek”) opens the diaphragm and reaches his hand inside the chest cavity. He passes his hand over the lobes of the lungs, thereby determining whether there

³⁰ An animal is unfit if one of its major organs is defective such that it is missing, perforated, torn, poisoned, broken or injured in a fall. Major organs include the brain, heart, spinal column, jaw, esophagus, crop (in fowl), lungs, trachea, liver, gall bladder, spleen, kidney, womb, intestines, omasum, abomasum, rumen, reticulum, legs, ribs, and hide. Rabbi Yacov Lipschutz, *Kashruth 23* (Rabbi Nosson Scherman and Rabbi Meir Zlotowitz eds., The Artscroll Series) (1988).

³¹ *Id.*

³² An exception would be the lungs of fowl in the United States, which are not prone to defects and therefore do not require examination. *Id.*, at 24.

are adhesions on the lungs and whether or not the lungs are properly formed. The examiner then removes the lungs from the chest and examines them externally to make sure there are no visible defects. If the lungs are found to have no defect, they are described as “glatt” kosher.³³ Kosher meat need not be “glatt.” If adhesions are found on the lungs, as long as they can be peeled off³⁴ without perforating the lungs, the animal is still considered kosher. After the adhesion is peeled from the lung, the lung is inflated and the peeled area is placed in water so that the examiner can determine whether there has been a perforation.

The next step in the process of making meat kosher for consumption is known as “nikur” in Hebrew, and “traboring” in Yiddish (porging, de-veining, lit. to dig out). The veins, arteries and forbidden fats are removed from the animal.

In order for an animal to be kosher, all of the blood must be removed. In order to enable this, during nikur all major arteries are severed and exposed before “koshering” to permit the free flow of blood during the koshering process that follows. Often these arteries are removed altogether from certain parts of the body, including the neck through the fore-shoulder and foreleg, the ribs, the brisket, the navel area and the tongue. The heart is opened to allow excess blood to flow out, and the brain membrane and neck glands are removed because the brain membrane consists of many blood vessels and the glands are saturated with the blood from the slaughter. All clotted blood is either scraped or washed away before koshering. Blood blotches on meat or poultry are cut open to

³³ The terms “glatt” in Yiddish, and “hallak” in Hebrew mean “smooth.”

³⁴ This process of peeling adhesions off of the lungs is referred to as “klipat hasirchot” in Hebrew. This process is acceptable according to the Ashkenazic (Eastern European) tradition, but is impermissible according to the Sephardic (Spanish) tradition that requires only glatt meat. For this reason, glatt meat is always preferred, even in the Ashkenazic tradition. Even the Ashkenazic tradition only allows for the peeling of adhesions on fully grown cattle. For this reason, veal and lamb must always be glatt. Lipschutz, *supra*, at 25.

allow for the blood to flow out during the koshering. Other than the blood vessel in the neck which must either be severed or removed, blood vessels in poultry need not be removed. Often the wing tips are clipped and the legs are cut at the knee joints to allow for free flow of the blood during the koshering process.³⁵

Jewish law prohibits the eating of the “hailev,” the restricted fats of animals that are eligible for sacrifice at the Temple, which include cattle, sheep and goats.³⁶ Ruminants have four stomachs, and the forbidden fats are enumerated in the Talmud as the fat of three of those stomachs—the omasum, abomasum, and rumen. The peritoneum, a fatty watery membrane around the stomachs, is also prohibited, as well as the fat covering the kidneys and body cavity over the hind legs or the loins, and the diaphragm upon which the liver rests. Traditionally, kosher meat is limited to those parts of the animal that are in the respiratory area, or front quarter of the animal, which extends to the twelfth rib. Those organs that are used from the intestinal area of the animal require the removal of fats.³⁷ The meat of the hindquarter is not sold as kosher in the United States, and so practically speaking, there is typically no need for the removal of the fats in the hindquarter or removal of the “gid hanashe”—the sciatic nerve—which is also forbidden for consumption by Jewish law.³⁸

³⁵ *Id.*, at 26-27.

³⁶ “You shall not eat from the fats of the ox, sheep, or goat.” Lev. 7:23.

³⁷ Lipschutz, *supra*, at 27-30; Levinger, *supra*, at 144-45.

³⁸ The sciatic nerve comes from the rear of the spinal column and branches down through the entire hind leg. The prohibition of eating the sciatic nerve comes from Genesis, 32:25-33, where Jacob wrestles with an angel until dawn. Jacob refuses to release the angel, and so the angel wrenches Jacob’s hip at the socket, asking to be let go. Jacob agrees to release the angel only if the angel agrees to give him a blessing. Verse 33 reads, “That is why the children of Israel to this day do not eat the thigh muscle that is on the socket of the hip, since Jacob’s hip socket was wrenched at the thigh muscle.”

After the Slaughter: Koshering³⁹ and Washing

Jewish law prohibits the consumption of the blood of all animals and fowl.⁴⁰ The original spurt of blood during the shehitah is referred to as “dam hanefesh,” the blood of life.⁴¹ Because the blood of the animal is seen as its life-source, the prohibition against eating it is extremely severe. In biblical times, any violator of the prohibition was excommunicated. Ezekiel categorized the eating of blood in the same class of sins as idolatry and murder, warning Israel that they would be exiled from their land for such transgressions.⁴²

There is no similar prohibition against eating the blood of fish and insects, as long as the species themselves are kosher. The blood of flesh, bone, and muscle is forbidden once it flows from the tissue. As such, raw meat in its original state, that has been slaughtered properly, may be eaten after it has been rinsed to remove surface blood. Veins and arteries must be removed because the blood found within these vessels is forbidden even in the original, raw state.

The blood must be removed from the meat prior to cooking, in a process known as “koshering.” When meat is cooked, placed in hot water, soaked for twenty-four hours, or ground before koshering, while the blood may flow from the meat, it is reabsorbed into the meat and cannot be removed. This renders the meat permanently un-kosher. There are two acceptable methods for koshering meat, salting and broiling, which make the

³⁹ The laws of “koshering” are discussed in Shulhan Arukh-Yoreh De’ah, 67-69.

⁴⁰ “And you must not consume any blood, whether it be fowl or beast.” Lev. 7: 26. The prohibition is also stated in six other places, Gen. 9:4, Lev. 3:16, 17: 14, 19:26, and Deut. 12:23, 15:23.

⁴¹ Rubenstein, *supra*, at 7.

⁴² Berman, *supra*, at 12.

meat available for consumption. Once the meat is properly koshered, any remaining juices that flow from the meat are permissible to eat.⁴³

The following is a quick summary of the salting process.⁴⁴ First, the meat is rinsed of all surface blood. Extra attention must be paid to the meat from the neck area where the shehitah was performed, since blood tends to gather and congeal there after the slaughter. This blood must be scraped away before rinsing. After rinsing all exposed surfaces of the meat, the meat must be soaked in warm water⁴⁵ for one half hour, in order to soften the meat before the blood is extracted. After the soaking, the meat is then rinsed a second time to wash off the bloody water from the soaking. The meat is then laid out to allow excess water to drip off of it, so that when it is salted the water does not dissolve the salt. The meat must not be too dry, however, because this will make the salting process ineffective. The meat is then completely covered in coarse salt, commonly called “kosher salt.” Any exposed surface of meat must be covered in salt. The meat is then placed on a grate or an inclined smooth surface so as to allow the blood to drain freely. It is left salted for one hour. After this time, the meat is rinsed of the salt either by harsh rinsing three times or by three thorough soakings, each time in clean water. This process makes the meat kosher and ready for consumption.⁴⁶

An alternate method for extracting the blood from the meat, is broiling⁴⁷ it. In some instances, such as with koshering liver, only the broiling method is acceptable. The intensity of the heat extracts the blood from the meat. First, the meat is rinsed with cold

⁴³ Lipschutz, *supra*, at 30-31.

⁴⁴ The laws of “salting” are discussed in Shulhan Arukh-Yoreh De’ah, 69. See Lipschutz, *supra*, at 31-34 for an in-depth analysis of the salting process.

⁴⁵ The water must be between 50° F and 80° F because cold water stiffens the meat and hot water causes the blood to be reabsorbed into the meat.

⁴⁶ Lipschutz, *supra*, at 30-34.

⁴⁷ The laws of “broiling” are found in Shulhan Arukh-Yoreh De’ah, 73, 76.

water. Several grains of salt are then sprinkled over the meat to aid in the koshering process. The rinsing and salting, however, are only added precautions and are not required. If the meat is properly broiled without the rinsing and salt, the meat is still kosher. The meat may be broiled using any heat source, either from above or below it. The meat is placed on a rack or a spit, since it may not lie in the extracted blood. It must be broiled until the entire piece is half-broiled and the blood has been extracted. The meat may occasionally be turned over during broiling to ensure that it is evenly broiled, though it should not be constantly turning. It may momentarily be removed from the heat when necessary during broiling. After the meat is broiled, it is usually rinsed with cool water to wash off any bloody residue that may remain on it. However, if the meat is not rinsed, it is still considered kosher.⁴⁸

During the post-Talmudic Gaonic period, 589 C.E. to 1038 C.E., the Gaonic sages determined that the soaking and salting process must be done within the first 72 hours after the animal is slaughtered. After that, the blood has congealed in the capillaries to a point where it can no longer be presumed that the salting will extract it. After 72 hours, the meat may only be koshered using the broiling method. This ruling led to the development of the “washing”⁴⁹ process, in which the meat is soaked in water for approximately one half hour during the first 72 hour period, in order to prevent the blood from congealing. This soaking softens the capillaries to the same condition they are in during the first 72 hour period, so that the meat may be koshered by salting within the

⁴⁸ Lipschutz, *supra*, at 35-38.

⁴⁹ The laws of “washing” are found in Shulhan Arukh-Yoreh De’ah, 69.

next seventy-two hour period instead. This process may be repeated again, if necessary, to extend the available period for koshering the meat another 72 hours.⁵⁰

Some rabbinic authorities maintain that a thorough rinsing is sufficient to extend the time-period for koshering meat, though this is not universally accepted. When the rinsing method is used to extend the koshering period, the meat is referred to as “washed meat,” distinguishable from meat designated as “soaked and salted within 72 hours.” Issues arise as to the status of frozen meat, and whether the 72 hour window applies to frozen meat as well, or whether the time begins to toll only after the meat is thawed. Additionally, if the 72 hour period has elapsed, and the meat is koshered via broiling, the meat should not undergo further processing, such as cooking, frying, etc. However, if it is cooked after broiling by accident, it is still considered kosher. Some authorities maintain that this restriction does not apply to liver that is broiled, since liver must always be broiled. Meat that has not yet been koshered should not be stored, since it may accidentally be koshered using the soaking and salting process instead of broiling. Liver, again, is excepted from this rule, since it will never accidentally be soaked and salted, as it must always be broiled, even within the first 72 hour period.⁵¹

Contrast to Non-Kosher Slaughter

The shehitah process greatly contrasts to the slaughter of animals for non-kosher meat. In many slaughterhouses where non-kosher meat is processed, the animal is first stunned by either a blow to the head with a sledge hammer or a shot with a bullet. This would automatically render the animal unfit as kosher meat. Unfortunately, as will be

⁵⁰ Lipschutz, *supra*, at 38-39.

⁵¹ *Id.*

discussed below, this method has been required in several countries at various times, making kosher slaughtering impossible in those places.

Today, there are two categories of methods used in slaughter, (1) methods in which the brain tissue is destroyed; and (2) methods in which the brain function is stopped but the brain tissue is not directly destroyed.⁵²

One method where the brain function is stopped but the brain tissue is not destroyed, is stunning the animal before bleeding. While there is no direct prohibition against this in Judaism, most Jewish authorities do not accept this method. This is most likely because most of the stunning is done in such a way that it actually kills the animals in many instances. There are various modes of stunning. Electric shock is commonly used in slaughtering pigs and poultry. Jewish authorities have disapproved of this method for several reasons. First, clinical results differ on whether this process is painful to animals, some finding it painless, others finding it extremely painful. Second, it is impractical since individual attention may not be available in large slaughterhouses to ensure that the electro-shock does not kill the animal before shehitah, and using high voltage electricity in a slaughterhouse where there is a lot of water may be dangerous for the workers. Anesthesia using chemical agents has been proposed as an alternative, but this process would leave harmful drugs in the carcasses, and may be unsafe for human consumption. Gas stunning, using CO₂, causes the animal to lose consciousness prior to the slaughter. However, physiological observations have shown greater muscular activity during these periods of unconsciousness, allowing for the possibility that the animal does suffer, even while unconscious. Additionally, if the animal is gassed for too long it may

⁵² Levinger, *supra*, at 121.

die prior to the slaughter. Jewish law requires that every animal be alive at the time of shehitah, which cannot be ensured using this process.⁵³

There are various methods of slaughter that involve damaging or destroying the brain tissue of the animal, all of which would render the animal “treifah,” torn, and unfit for kosher consumption. The most common method is the bolt shot into the brain which destroys the medulla oblongata. This shot destroys the centers for respiration, blood pressure, and the main connections of the brain with the periphery. It is unclear whether the animal feels pain from the shot. In many cases the animal does not die right away, and often the shot must be repeated if it was not aimed in the exact right spot. European regulations show the exact location in the cortex of the brain where the shot must be made. Another method is the pole axe, or shot without bolt. Using this method, a blow is given to the head, which may or may not damage the head bones and muscles. This method is not as effective as the bolt method. A third method, which is no longer used, is the pithing of the medulla oblongata. This was done by pricking the atlanto-occipital foramen, between the head and neck of the animal. This destroyed the connection between the brain and the rest of the body. Because of the difficulty in finding the exact location where the prick was to be made in order to be effective, the prick often had to be repeated several times. None of these methods are acceptable according to Jewish law.⁵⁴

If stunning is used, after the animal is stunned, it is shackled to a chain and hoisted to a trolley on an overhead rail. The animal’s neck arteries are severed and its blood flows into a tank to be used for pharmaceuticals. The animal carcass is then cut with an electric saw and washed with hot water. This would also render the animal unfit

⁵³ *Id.*, at 121-24.

⁵⁴ Levinger, *supra*, at 125-27.

for kosher meat, since the animal is in essence being cooked in its own blood. The animal is then frozen and shipped to the butcher or turned into canned meat or sausage.⁵⁵

Part II: A History of Shehitah Practice

Sale of Non-Kosher Meat to Non-Jews

Other than from non-kosher slaughterhouses, an additional source of non-kosher meat is the unfit meat from the kosher slaughterhouses. Jewish law allows kosher slaughterhouses to sell meat that is either “nebelah,” improperly slaughtered, or “treifah,” torn, to non-Jews. This allowance permits Jewish meat-dealers to cut their losses, since otherwise the business of kosher meat sales would be prohibitively costly. However, this allowance is limited to the sale of non-kosher meat that has come into the possession of the Jewish meat-dealer unintentionally. That is, the meat dealer had to have purchased the animals hoping them to be found kosher, but the shohet then ruled them unfit. Only as a default, the meat-dealer is allowed to sell the non-kosher meat; he cannot have purchased the animal knowing it would not be kosher or slaughtered improperly. Additionally, Jewish meat-dealers often sell to non-Jews the hind-portion of cattle, which is forbidden to Jews.⁵⁶

The sale of non-kosher meat to non-Jews is advantageous to both the Jewish seller, who otherwise loses out on any profit, and the gentile buyer, who can purchase high-quality meat at reduced prices. However, throughout history the meat trade between Jewish meat-dealers and their gentile neighbors has been curtailed due to various prejudices and religious restrictions. Such restrictions placed an enormous burden on

⁵⁵ Rubenstein, *supra*, at 7.

⁵⁶ Berman, *supra*, at 208-13.

Jewish meat-dealers and slaughterers, and by extension the communities in which they lived. If the slaughterer and dealer were unable to sell the non-kosher portion of animals, the entire kosher meat enterprise would be inefficient from a cost-profit analysis.

Slaughterers and sellers would have little incentive to engage in an enterprise in which they would be losing money due to loss from the inability to sell a portion of the meat. Unfortunately, such situations have arisen repeatedly for hundreds of years.

During certain periods, the Christian Church has disfavored the sale of meat to Christians by Jewish vendors. Until approximately the year 1000 C.E., the Christian Church forbade eating idolatrous meat and meat from animals whose blood had not been drained, both contemporary Roman practices. Meat from Jewish vendors did not fall into either of these categories and was readily purchased by Christians. By the year 1000 C.E., the Church no longer stressed a prohibition against eating blood. Two possible explanations are given for this: (1) the clergy realized that the majority of European Christians were accustomed to eating blood and were unwilling to comply with the prohibition, so enforcement attempts would be futile; (2) the clergy wanted to remove all Jewish influence on their Christian followers and so ended the blood prohibition which was a Jewish regulation.⁵⁷ At around the same time the Church stopped enforcing the blood prohibition, the clergy began to disfavor meat purchases from Jewish vendors. The Church did not want the business to foster further relationships between Christians and Jews, and it thought that the meat sales reflected negatively on Christian standing since the Christians would be buying meat that was not worthy enough for the Jews to eat themselves.⁵⁸ The first documented expression of condemnation for the sale of Jewish

⁵⁷ *Id.*, at 213-16.

⁵⁸ *Id.*, at 216.

meat to Christians was in an epistle entitled, “On the Insolence of the Jews,” sent to Emperor Louis the Pious by Agobard, Archbishop of Lyons in the year 829. Agobard complained that “when Jews slaughter an animal, having a defect, they sell the meat to Christians, and in their pride call the animals, meat for Christians, ‘christina pecora.’”⁵⁹ While Emperor Louis the Pious paid little attention to Agobard’s complaints, this was the beginning of an onslaught of Church and royal decrees throughout Europe for many hundreds of years forbidding the sale of Jewish meat to Christians, and in many cases forbidding the practice of Shehitah altogether. The sale of meat by Jews to Christians was prohibited in the Papal States all the way through the middle of the 19th Century. Because of these restrictions on the sale of Jewish meat, a trade pattern evolved to circumvent the edicts, where Jews became the slaughterers and Christians became the meat-dealers.⁶⁰

Islam also has several restrictions on the slaughter of animals for consumption,⁶¹ largely similar to the Jewish shehitah process. Islam requires cutting the animal’s throat with a sharp knife. Additionally, Islam formally requires that the animal’s head be pointed in the direction of the Kaaba in Mecca and that the slaughterer recite a benediction before the slaughter. Because of these additional requirements by which the Jewish shohet did not abide, many Muslims refused to buy meat from Jews. By the 16th Century, Muslims no longer insisted that animals be orientated toward Mecca at the time

⁵⁹ *Id.*, at 217. (Citing Charles J. Hefele, “Histoire des Conciles,” Vol. 4. Edited by Leclercq, Paris 1911. Quoting Migne P.L. t 104 col 69 ff).

⁶⁰ *Id.*, at 221, 223.

⁶¹ Meat of animals slaughtered according to Muslim tradition is known as “halal” meat.

of slaughter. Muslims began to purchase Jewish meat, and do so for the most part today, though not universally.⁶²

Europe: Anti-Shehitah and Humane Slaughter Legislation through World War II and its Aftermath

Throughout Europe, the shehitah process has faced vigorous opposition for hundreds of years. This opposition is based on a combination of factors, mostly the purported inhumanity of the shehitah process and underlying anti-Semitism. The accusation of inhumanity in the shehitah method stemmed from the medieval European belief that Jews were cruel and bloodthirsty. The accusation was sustained by the fact that shehitah appears to be particularly gory due to extreme exsanguination and post-mortem convulsive movements.⁶³ As a result, at different times, anti-shehitah legislation has been passed in many European countries. The history of such legislation in several of these countries will be discussed in detail below.

Switzerland

In September 1893, Switzerland became the first government to introduce humane slaughter legislation, requiring that the animal be stunned prior to slaughter, so that the animal would be insensible to pain. The original stunning method of hitting the animal over the head with a hammer was later replaced by a bolt pistol.⁶⁴ This legislation was first introduced in the Canton of Aargau (Aragon), where the Jewish community was unwilling to accept the stunning procedure since in most cases the stunning procedure broke the skull of the animal, piercing the brain's protective membrane. This would

⁶² Berman, *supra*, at 227-33.

⁶³ *Id.*, at 234-35.

⁶⁴ Freedman, *supra*, at 35.

render the animal unfit for kosher meat. While the Jewish community was willing to accept the humane intent of the legislation, they questioned whether the real motivation was anti-Semitism which was on the rise in Switzerland at that time.⁶⁵ The entire Jewish Swiss population totaled only 8,386 people, and they faced much anti-Semitism.⁶⁶

In 1867 shehitah was prohibited by law in Aargau and St. Gall. The Swiss Constitution was revised in 1874, granting civic equality to Jews, forcing the question of whether the anti-shehitah legislation was unconstitutional in that it went against Article 50:1, which granted religious liberty. Before this issue was decided, the Aargau Society for the Prevention of Cruelty to Animals petitioned the Swiss government for the passage of a humane slaughter act. The Orthodox Swiss Jews countered this proposition, as it would indirectly deny them the right to perform shehitah.⁶⁷ Making matters worse, two reform rabbis of the German Haskallah (enlightenment) movement, which rejected all Jewish dietary laws, Leopold Stein of Frankfort and J. Stern of Stuttgart, issued a statement that shehitah was not a religious precept. The Christian anti-shehitah group used this statement as a basis for its battle against shehitah, claiming that since it was not a religious precept it should not enjoy federal protection by law.⁶⁸ The Swiss government determined that while shehitah restrictions might limit freedom of religion, the cantons were free to adopt regulations for the humane treatment of animals.⁶⁹ The anti-shehitah proponents began a campaign for a national plebiscite to vote on outlawing shehitah nationally. To get this they needed 50,000 signatures. With 82,000 signatures, a national plebiscite was arranged. Eventually the national anti-shehitah law was put into effect,

⁶⁵ *Id.*

⁶⁶ Berman, *supra*, at 237.

⁶⁷ *Id.*, at 236.

⁶⁸ Freedman, *supra*, at 35-36; Berman, *supra*, at 236.

⁶⁹ Berman, *supra*, at 237.

despite vehement opposition from both Jewish and Catholic leaders, who saw this as an anti-religious attack on the Jews.⁷⁰ Based on the results of the plebiscite it is clear that the anti-shehitah proponents were mostly German Protestants. The predominantly German Catholic, French Protestant, French Catholic and Italian Catholic cantons all voted against shehitah prohibition.⁷¹ The anti-shehitah prohibition was incorporated into the Federal Constitution as Article 25b. It read, “It is expressly forbidden to bleed meat animals without preliminary stunning. This regulation applies to all methods of slaughtering and to all species of animals.”⁷² The Swiss government did not approve of this clause and did everything in its power to limit its application, including the non-issuance of regulations concerning its enforcement.⁷³

Practically speaking, this law had little effect on Swiss Jews who were still allowed to slaughter fowl,⁷⁴ and were still allowed to import kosher meat from neighboring countries.⁷⁵ During World War I, the Bundesrat, which had special powers during the war, temporarily permitted shehitah in Switzerland since kosher meat could not be obtained from the neighboring countries. During World War II, representatives of the Jewish communities and of the Rabbinical Assembly petitioned the Veterinary Department of the Swiss Government to allow shehitah, as they once again were unable

⁷⁰ Freedman, *supra*, at 35-36.

⁷¹ Rabbi Isaac Lewin, Rabbi Michael L Munk, & Rabbi Jeremiah J. Berman, *Religious Freedom: The Right to Practice Shehitah* 28-33 (1946). The Berlin correspondent of the “Frankfurter Zeitung,” commented in the August 22, 1893 issue, “When one examines the matter closely and weighs the men who promote and defend the petitions against Shehitah, one cannot avoid the conclusion that what we witness in Switzerland is anti-Semitism using the guise of humanitarianism. This anti-Semitism seeks to win for its purposes sentimental people who are innocent of the subject of animal slaughtering, but who, when once won over, are used to demonstrate the size of the opposition to Jews.” *Id.*, at 31.

⁷² Berman, *supra*, at 238.

⁷³ Lewin et al., *supra*, at 31.

⁷⁴ The Bundesrat decided, on October 24, 1907, that the restriction did not apply to slaughtering fowl. The court declared, “To impose penalty for the ritual slaughtering of fowl would be rather to violate Article 50 of the Constitution guaranteeing religious freedom.” *Id.*, at 32 (*Quoting* Walther Burckhardt, “Schweizerisches Bundesrecht,” Frauenfeld, 1931, Part VIII, page 53).

⁷⁵ Berman, *supra*, at 250.

to obtain meat from the neighboring countries. The Veterinary Department insisted that they would need to apply narcotics to render the animal unconscious prior to the slaughter. This proposal was originally rejected as tantamount to a prohibition against shehitah, as all methods of narcotics used until then had been found unacceptable according to Jewish law. However, Dr. T. Lewenstein, Chief Rabbi of the Orthodox Community of Zurich, met with the head of the Veterinary Department and arranged for experimentation of performing shehitah on animals that had been rendered unconscious and then showed signs of reawakening. This arrangement was approved by the Rabbinical Assembly after receiving approval from nine of the greatest Talmudic authorities living worldwide at that time. The following conditions were instated: (1) this method only be employed in Switzerland; (2) it would be understood that this method was instituted because of special conditions in Switzerland at that time; (3) it would be followed only as long as meat could not be imported from abroad; (4) it would be followed only as long as the present approved shohetim and the present rabbis were functioning in their present posts; and (5) it would be employed only as long as no three of these rabbis forbade it. However, because of a change in circumstances, this allowance never became effective and several days after the first shehitah was scheduled to be performed three rabbis of the Rabbinical Assembly forbid the procedure.⁷⁶

Germany

While Switzerland was the first country to pass anti-shehitah legislation in 1893,⁷⁷ the first time shehitah became an issue of parliamentary discussion was in the Landtag of

⁷⁶ *Id.*, at 251-52.

⁷⁷ It was German influence in Switzerland that is believed to have impacted on the passing of the anti-Shehitah legislation in Switzerland.

Baden, in Germany in 1864. A bill to require stunning prior to slaughter was introduced in the house, but was defeated.⁷⁸ The issue arose once again in 1887 in the German Reichstag. The German Animal Protection Societies petitioned the Reichstag regarding the treatment of animals, requesting that a law be passed requiring that animals be rendered unconscious prior to their slaughter. However, this proposal was postponed with regard to its effects on shehitah, by an almost unanimous vote.⁷⁹ The only pre-Hitler anti-shehitah regulation was a decree issued by the Minister of the Interior, Herr von Metzsch, of the Kingdom of Saxony in 1892,⁸⁰ and was finally repealed in 1910.⁸¹ This ruling required that all animals other than fowl be rendered unconscious by a slaughtering mask before being bled.⁸² This anti-shehitah legislation was interpreted as a reflection of the anti-Semitic sentiment in Saxony at that time. However, a somewhat, though not completely, different sentiment was revealed in other districts. In 1893, The Minister of the Interior of Prussia issued an order annulling all local shehitah prohibitions.⁸³ Anti-

⁷⁸ Lewin et al., *supra*, at 22. (Citing “Verhandlungen des Badischen Lantags,” March 12, 1930, page 1958).

⁷⁹ *Id.* (Citing “Stenographische Berichte ueber die Verhandlungen des Reichstags,” May 18, 1887).

⁸⁰ Berman, *supra*, at 238-39. The Minister of the Interior wrote, “There is no good reason to make an exception, as has been requested by the Jews, in case of the provision concerning the moral status of the matter, which is not all concerned with religion, but simply with the consideration of the prevention of cruelty to animals; for it is apparent that any ritual custom, of however long standing, and having its origin in variable human decrees, does not deserve any consideration if it is calculated to give moral offense, or if it is at variance with the general laws of the government. The Ministry of the Interior cannot decide to allow the petitioner exceptional treatment of Jewish slaughtering, especially since it would be considered by the great majority of the people as an unjustifiable favor to an isolated minority.” *Id.*

⁸¹ Lewin et al., *supra*, at 22, 25-26. Paragraph 6 was added to the slaughtering law which provided that paragraphs 4 and 5, which made stunning mandatory, did not apply to the “Shehitah slaughtering prescribed by the Jewish religion.” This action was taken in response the Medical Faculty of the University of Dresden’s statement that shehitah was not inhumane. Attempts were made again in 1914 to require preliminary stunning in Saxony, but this motion was defeated. *Id.*

⁸² *Id.*, at 22.

⁸³ This order annulled an act by the Magistrate and Police Director of Hamburg, Prussia, on February 24, 1893, stating that, “Slaughtering according to the Jewish ritual by means of Shehitah is forbidden.” (Par. 8) and a regulation promulgated by the President of the Royal Government in W. Prussia on June 14, 1893, requiring that, “In slaughtering any animal, it should be stunned by a blow upon its head before the blood is let. In public abattoirs Shehitah according to the Jewish ritual may be allowed exceptionally by government order. This permission is subject to withdrawal at any time.” (Par. 1) *Id.*, at 23 (Citing “Gutachten ueber das juedisch-rituelle Schlachtverfahren,” Berlin, 1894, p. III).

shehitah legislation was proposed in the Petition Commission of the Chamber of Deputies of Bavaria in February 1894, the Landtag of Schwartzburg-Sonderhausen in July 1897, the Landesversammlung of the Duchy of Brunswick in March 1898, the Landtag of Baden in April 1899, the Landtag of Mecklenburg-Schwerin in December 1899, and in the German Reichstag in February 1897, and again in January and April of 1899. All of these proposals were defeated.⁸⁴ However, the motivation behind their proposals was mostly interpreted as anti-Semitic.⁸⁵

Not all directives were proposed with anti-shehitah motivation. The Minister of the Interior of Wuerttemberg issued a slaughtering order in 1903, which both required stunning prior to slaughter and exempted shehitah from that requirement in the following paragraph. Additionally, the throat cutting method without stunning, similar to the shehitah method, was approved by the Prussian military authorities and became mandatory in factories producing preserved meats for the Prussian army, due to the humane and hygienic nature of this slaughtering method.⁸⁶ On January 12, 1911, the Reichstag adopted an amendment to Article 360 of the new criminal code, which read, “State regulations which interfere with the ritual prescriptions of any religious groups in the matter of animal slaughtering are not allowable.”⁸⁷ During World War I, the throat-cut method of slaughter was prohibited, in attempts to conserve animal blood for

⁸⁴ *Id.*, at 24.

⁸⁵ Wilhelm Liebknecht, famed liberal deputy of the Reichstag stated: “You can say what you will—I don’t want to provoke an anti-Semitic debate, but that you did not bring up this motion only out of the love for animals and to prevent their mistreatment, but much more in order to torment our fellow citizens, the Jews—this is for me, as well as for all members of this house, beyond the slightest doubt... I expect—with good reason, as the debate shows—that the house will by an overwhelming majority decide not to deal any more with this matter. You (pointing to the anti-Semites) come with these matters a little too late. Your time is past. And it is really regrettable that such a motion could be at all brought up in the German Reichstag.” *Id.* (Citing “Stenographische Berichte ueber die Verhandlungen des Reichstags,” April 25, 1899, page 1926).

⁸⁶ *Id.*, at 24-25.

⁸⁷ *Id.*, at 26. (Citing “Stenographische Berichte ueber die Verhandlungen des Reichstags,” January 12, 1911, p. 3801).

consumption. However, an exception was made for shehitah. The Bundesrat allowed the practice of shehitah throughout the war.⁸⁸

When the Nazis rose to power, shehitah became outlawed in Germany. The Nazis argued that shehitah was cruel, and used this as a tool to instill the belief that the Jews themselves were cruel.⁸⁹ The National Socialist Group proposed that the government examine the question of the humane slaughter of animals in the Landtag of Hesse in 1926, but the motion lost. Again in 1930 a bill was introduced that would require preliminary stunning of animals prior to slaughter. This bill was passed, but paragraph five, which would have outlawed shehitah, was deleted.⁹⁰ In March 1933, a few months after Hitler rose to power, a decree was issued requiring stunning prior to slaughtering cattle, and was then extended to apply to fowl as well.⁹¹ In 1926 and again in 1927, an anti-shehitah bill was proposed and passed in the Landtag of Bavaria, but the government

⁸⁸ *Id.* The motivation for the exception was explained by the Reich Chancellor: “There is no intention to prohibit Jewish Shehitah also. The preservation for human use of that blood which is now lost as a result of the Jewish ritual Shehitah-cut is not of such vital importance so as to justify ignoring the religious oppression of orthodox Jewish fellow citizens and invading the statutes of a recognized religious community in Germany with penal laws.” *Id.* (Citing Reichstags drucksachen d. 13 Legislatur Periode, 2nd Session 1914/1917, No. 1039).

⁸⁹ Theodor Fritsch’s “Handbuch der Judenfrage,” which published 39 editions and 200,000 copies by 1935, argued, “The Jew denies the existence of cruelty in Shehitah. From his point of view he is correct, for his inner feelings, being those of a different and a lower race, differ and must differ from ours. Considering that the Jew has no pity for human beings (witness the cruelty, for example, in the white slave traffic, a trade plied mostly by Jews) how can he be expected to possess pity for animals. Only out of these rave contrasts can we explain the opposite opinions concerning Shehitah held by us Germans and the Jews.” *Id.*, at 48-52. (Citing Theodor Fritsch, “Handbuch der Judenfrage,” 39th Edition, Leipzig, 1935, p. 144). In 1938, “Der Stuermer” published a brochure titled “The Poison Mushroom,” including a section called “How Jews Torture Animals.” The closing line of the book is a quotation by Julius Streicher, “Who fights against the Jew fights against the Devil.” *Id.*

⁹⁰ A stenographic record of the Landtag meeting captures the anti-Semitic sentiment of the proposal. “Dr. Werner: I say that a religious minority should conform to the cultural level of the majority (interruptions). Dr. West: A real Nazi! Dr Werner: Certainly, in such matters the moral religious viewpoint of the majority should decide.” *Id.*, at 53-54. (Citing Verhandlungen des Landtags des Volksstaates Hessen, “December 11, 1930, pp. 2413-2415).

⁹¹ *Id.*, at 54.

refused to act, finding the provisions contrary to the German Constitutional right to freedom of religion.⁹²

The Bavarian Diet finally passed an anti-shehitah law in January 1930. Two National Socialist anti-shehitah motions were raised in the Landtag of Baden in 1930, but failed. It was observed, by Socialist, Deputy Kurz, that “this motion offered by the National Socialists is motivated not by the desire to dispatch animals in humane fashion, but beyond doubt by race hatred directed at Jews....”⁹³ When the Nazis assumed control, the Reich Commissar of Baden issued a decree in April 1933 forbidding shehitah in Baden, and outlawing the importation of kosher meat to its territory. Penalties included a minimum jail time of one month, and a monetary fine from 150 to 1500 Reichsmarks.⁹⁴

In Prussia, a motion, modified by the Committee on Agriculture, was passed in 1928 that read: “Slaughter of animals according to the ritual of Shehitah may not exceed the needs of the Jewish population for kosher slaughtered meat. The ban upon ‘wild Shehitah’ (done incorrectly or by unauthorized persons) should be enforced more strictly.”⁹⁵ In 1932 the Nazis introduced a motion to require stunning, but the motion was rejected. Several Prussian localities adopted independent ordinances forbidding shehitah, but the Minister of the Interior annulled these regulations as violating the German constitutional right to freedom of religion.⁹⁶

⁹² *Id.*, at 54-55. The Bavarian Government believed that, “In view of Article 135 of the German Constitution of August 11, 1919 and of Articles 17 and 18 of the Bavarian Constitution of August 14, 1919, which guarantee full religious freedom and unhampered exercise of religion within the limits of the laws, the adoption of the motion will be offensive to the religious sentiments of Jews.” *Id.* (Citing “Verhandlungen des Bayerischen Landtags,” July 8, 1926, pages 737 and 742).

⁹³ *Id.*, at 62-63.

⁹⁴ Berman, *supra*, at 243-44.

⁹⁵ Lewin et al., *supra*, at 60. (Citing “Sitzungsberichte des Preussischen Landtags,” March 21, 1928, p. 25,905).

⁹⁶ *Id.*

The Landtag of Thuringia struck down motions for anti-shehitah legislation in 1927 and again in 1931.⁹⁷ In 1932, the Thuringian State Ministry issued a decree requiring preliminary stunning, essentially outlawing shehitah, effective April 1933. In 1931, the National Socialist group presented a motion in the Landtag of Brunswick that called for a bill to provide for humane slaughter and to forbid the shehitah method of slaughter. The State Ministry issued a decree requiring preliminary stunning, and provided that shehitah was permitted, but only when the animal was completely stunned before the slaughter, which effectively outlawed shehitah.⁹⁸

Shehitah was made illegal in Wuerttemberg by order of the Ministry of the Interior in March 1933, in Oldenburg by decree of its State Ministry in October 1932, and in Saxony by decree in March 1933. In November 1932, a motion for a preliminary stunning bill was made by the Nazi group in Mecklenburg-Schwerin and was referred to the Law Committee.⁹⁹

An anti-shehitah law was passed at a cabinet meeting on April 21, 1933, outlawing shehitah in the entire Reich as of May 1.¹⁰⁰ In order to enforce this law, throughout the summer of 1933 Nazi officials confiscated the knives of the shohetim.¹⁰¹ A kosher meat shortage began shortly after the April anti-shehitah law was passed, and an underground market developed known as “Black Shehitah.” This underground market was not widely utilized, as many orthodox Jews would not eat this meat because of its

⁹⁷ *Id.*, at 65. The 1931 vote followed months of debate. Many argued that a shehitah prohibition would hurt Thuringian tourism by keeping Jews away from its vacation spots. Deputy Sauckel, a National Socialist, argued in the Landtag, “And if the Jews will avoid the watering and vacation places in Thuringia, well, we will have accomplished our aim...” *Id.* (Citing IV. Abteilung stenog. Berichte, Band I, p. 1050). Despite National Socialist support, the proposal was defeated.

⁹⁸ *Id.*, at 67-68.

⁹⁹ *Id.*, at 70-73.

¹⁰⁰ Berman, *supra*, at 260-61; See Lewin et. al., *supra*, at 73-77, “Decree Concerning the Slaughtering of Animals of April 21, 1933.”

¹⁰¹ Berman, *supra*, at 260-61.

questionable kashruth, since there could not be adequate rabbinic supervision and because it was deemed unethical to enjoy meat that had been procured by endangering the life of the shohet. The majority of the Jewish population either resigned themselves to a meatless diet, or attempted to procure meat using methods that were acceptable by German law.¹⁰²

The German Jews attempted to find a new method of slaughter that would satisfy both Jewish law and German law. Because the German law did not forbid shehitah outright, but only required that the animal be rendered insensible prior to slaughter, the German Jews experimented with various stunning methods that would not make the animal “treifah.” They experimented with electrical shocks and nitrogen inhalation which were both found unsatisfactory by German rabbis. A method of desensitizing by an intravenous injection of eunarcon was developed by Bruno Kisch, a professor of experimental pathology and bio-chemistry at Cologne University, which both rendered the animal unconscious and caused no injury to the animal. The method underwent additional testing through 1937, and seemed to comply with all Jewish law requirements. However, before a general consensus could be had by the leading Jewish authorities at the time, a violent outbreak against the Jews occurred in November 1938, which discouraged further investigation into this method. It became clear that the Nazi authority was not going to accept any method of shehitah, even one that technically complied with the law.¹⁰³

The German Jews also began to import kosher meat from abroad in April 1933. This was difficult because the existing law prohibited importation of beef from Poland,

¹⁰² *Id.*, at 261.

¹⁰³ *Id.*, at 261-64.

Lithuania, Czechoslovakia, Hungary, Yugoslavia, or Rumania, for fear of disease. Fowl was admitted from Hungary and Yugoslavia. Because of these limitations, meat was imported mostly from Denmark and the Netherlands. In 1936-37, frozen meat was imported all the way from Uruguay and Argentina. The meat importation was also subject to the general German barter scheme, which required that imports be paid for in export credits instead of cash. Because the Nazis hoped that this meat trade would help stimulate the German export market, they were willing to allow the importation and distribution of kosher meat. The Jewish population organized the “Reichszentrale für Schachtangelegenheiten,” headed by Rabbi Ezra Munk of Berlin and his son Rabbi Michael Munk, to oversee the importation and distribution of kosher meat. This organization was recognized by the Nazi regime, and was allowed a specified number of import credits.¹⁰⁴ This importation scheme lasted through December 1935, at which point the German government eliminated the Jewish share of import credits from Denmark, the chief kosher meat supplier. The “Reichszentrale” petitioned the Ministry of Food to allow at least a small share of the barter so kosher meat could be procured for Jewish hospitals, but the request was refused, because all barter was being curtailed, and because the Ministry believed that the Jews were receiving large gifts of meat from abroad. The “Reichszentrale” unsuccessfully attempted to negotiate its own barter agreements abroad.¹⁰⁵

In 1936 a committee was sent to London to secure the first large gift of meat from abroad. The “Jewish Friends’ Food Fund” was established in London to coordinate efforts to supply kosher meat to German Jews. In 1937 the Fund shipped 600 tons of

¹⁰⁴ *Id.*, at 264-65.

¹⁰⁵ *Id.*, at 265-66.

beef to Germany, using funds collected from Jews in many countries, particularly the United States. Through the Fund, meat could be sent to specific institutions or individuals who had people donating money on their behalf. However, as of 1938, it became practically impossible to obtain kosher meat in Germany due to economic conditions and government restrictions.¹⁰⁶

Nazi influence sparked the implementation of anti-shehitah laws throughout Europe, including in Norway, Sweden, Hungary, Poland, and Italy.¹⁰⁷ In addition to acting as an outside influence, as the Nazis invaded and conquered countries in 1939 and 1940, they implemented their own anti-shehitah prohibitions, in countries including Bohemia-Moravia, Poland, Slovakia, the Netherlands, France, Belgium, and Alsace.¹⁰⁸

United Kingdom

In the United Kingdom, as in the rest of Europe, there were several attempts to outlaw shehitah, but these attempts were largely unsuccessful. In contrast to the countries controlled or influenced by the Nazi regime, during the reign of Hitler, many democratic countries, including Scotland, Belgium, England, Finland, South Africa and Eire, took steps at protecting shehitah.¹⁰⁹

Shehitah was generally received positively in the United Kingdom. In 1896, the *Liverpool Daily Post* wrote favorably regarding shehitah:

“The object of the Jewish method of slaughtering is to ensure the thorough removal of all blood from the carcass, and this cannot be done with the completeness the Jewish laws require where the animal is knocked down with a poleaxe before incision is made. So far as the element of cruelty is concerned it is

¹⁰⁶ *Id.*, at 265-69.

¹⁰⁷ For a review of the anti-shehitah legislation in these countries due to Nazi influence, *See* Lewin et al., *supra*, at 77- 90.

¹⁰⁸ *Id.*, at 90-99.

¹⁰⁹ *Id.*, at 99-100.

open to question whether poleaxing operation is not the more painful of the two, for a clumsy or excited butcher not infrequently has to deliver several strokes with this horrid instrument before the animal is struck to the ground. Bleeding is not itself a specially painful process, and it is probable the animal would equally struggle and groan if roped down without being wounded at all. It is the fixed belief of the Jews that their method of killing is not merely the most merciful to the animal, but incomparably the most wholesome for those who feed on its flesh. Under such circumstances no bench of justices could be expected to convict, and we cannot but think that those who invoke judicial intervention in such a matter might be better employed in hunting out the numerous unreported cases of gross cruelty to animals intended to live which daily pass unnoticed.”¹¹⁰

The first recorded attempt at anti-shehitah legislation in the United Kingdom was in 1904, when a British Admiralty Committee held hearings on animal slaughtering and submitted a report condemning the Jewish method of slaughter, recommending that government services not purchase meat obtained by shehitah slaughter.¹¹¹ The London Jewish Board of Deputies set out to obtain expert physiological evidence to counter the report.¹¹² Because the Admiralty report had no sound scientific basis, in 1915 the Ministry of Health published its Model By-laws with respect to slaughterhouses, and exempted shehitah from its provisions.¹¹³

In 1922, the National Veterinary Medical Association of England sent a resolution to the Minister of Health requesting a government inquiry into slaughtering methods.

¹¹⁰ Rev. Dr. Israel W. Slotki, *History of the Manchester Shechita Board: 1892-1952*, at 46 (1954).

¹¹¹ Lewin et al., *supra*, at 103.

¹¹² Slotki, *supra*, at 46-47. The Manchester Board of Shehitah contributed funding for this investigation. In 1905 the Jewish Authorities requested that T.H. Openshaw, C.M.G., M.S., F.R.C.S., Surgeon to the London Hospital and later Lecturer on Anatomy and Dr. Leonard Hill, M.B., F.R.S., Lecturer on Physiology at the London Hospital Medical College, Examiner to the Universities of Oxford and London, the Royal Colleges of Surgeons and Physicians, etc. visit any abattoir to observe the method of shehitah. Both reported that shehitah was a humane method of slaughter. *Id.*; The Liverpool Board also contributed funding for this research. The Admiralty report condemned shehitah, claiming it failed in rapidity, freedom from unnecessary pain, instantaneous loss of sensibility, and failed in comparison to the stunning method. While the Executive Committee of the Board of Shechita was investigating slaughter methods, they also investigated casting methods in Europe and the U.S. The Board proceeded to invest time and money in finding a satisfactory casting method through 1923. At this time, greater attention began to be paid to the shehitah method and its humanitarianism. Albert M. Hyamson, *The London Board of Shechita 1804-1954*, at 50 (1954).

¹¹³ Lewin et al., *supra*, at 103.

The London Shehitah Board requested to be represented if a committee were to be formed. Attacks on shehitah followed in 1923 with a series of newspaper articles disparaging the shehitah practice, Zionism, and Jews in general.¹¹⁴ The Jewish Board of Deputies in London appointed a committee, headed by the President of the Board of Shechita, to watch the progress of the Slaughtering of Animals Bill introduced into Parliament.¹¹⁵ Sir A. Shirley Benn had introduced a bill into the House of Commons empowering the Minister of Health to outlaw shehitah. In response to this proposal, a fact-finding commission was appointed to study the issue. The response was disappointing for anti-shehitah proponents. In the commission's 1925 report, it found "no cause for complaint on humanitarian grounds against the Jewish method of slaughtering, if efficiently carried out, as was usually the case." The "Veterinary Journal" wrote that shehitah was "practically and physiologically the best method," and the National Federation of Meat Traders conducted a demonstration of various slaughter methods and concluded that the Jewish method of slaughter was best. The Royal Association for the Prevention of Cruelty to Animals declared that it approved the inclusion of a provision in the pending legislation protecting the Jewish slaughter method.¹¹⁶

¹¹⁴ Berman, *supra*, at 240.

¹¹⁵ Hyamson, *supra*, at 50-52. The shehitah Board raised funding for this new committee. The growth in hostility toward shehitah prompted the Board to increase their effort to discover a new casting method, since casting was viewed as the more inhumane aspect of the process. They offered prizes for the submission of new casting models. The Weinberg Casting Pen was one of many proposed, and although largely supported by the Royal Society for the Prevention of Cruelty to Animals many authorities felt it needed additional improvements. The Board continued to test various apparatuses through 1928, at which point the Weinberg apparatus was put into use, though met with hostility by many abattoirs throughout the U.K. that were unwilling to use the method. The method did not go into widespread use until 1933, and even then the smaller slaughterhouses could not afford to install the Weinberg pens. *Id.*

¹¹⁶ Berman, *supra*, at 240.

In 1928, the Manchester City Council introduced a by-law requiring humane slaughter. After an appeal made by the Manchester Shehitah Board, a special clause was inserted into the final by-law permitting shehitah by those certified by the Chief Rabbi.¹¹⁷ In April 1928, Parliament finally voted on the issue of humane slaughter, adopting “An Act to Provide for the Humane Slaughter of Animals in Scotland,” effective January 1, 1929. The act provided that every animal either be instantaneously slaughtered or rendered insensible instantaneously by stunning prior to slaughter. Exceptions were made for slaughter done by Jews and Muslims.¹¹⁸ Shehitah was afforded similar protection under the July 1933 Act, “An Act to Provide for the Humane and Scientific Slaughter of Animals” in England proper, effective January 1, 1934.¹¹⁹

After World War II, the demand for kosher meat was greatly reduced in London, largely due to the redistribution of the Jewish population. The London Board of Shechita aided in raising money to supply kosher meat to evacuated children and German refugees. With the creation of the Ministry of Food, the Board became limited in their actions. The fees and licensing of kosher butchers, which had been left to the Board, now also required the Ministry’s approval. An agreement was reached in 1949, providing that the Ministry of Food would not authorize a butcher to receive kosher meat except upon the advice of the Adviser to the Ministry on Jewish Problems. The Adviser had to consult with the shehitah Board and Beth Din, (Jewish Court of Law), prior to giving its

¹¹⁷ Slotki, *supra*, at 47.

¹¹⁸ Berman, *supra*, at 241; Lewin et al., *supra*, at 100 (Citing “1928: The Public General Acts,” London, Chap. 29, p. 210). The Act provided: “The provisions of section one of this Act shall not apply where an animal is slaughtered for the food of Jews by a Jew duly licensed for the purpose by the Chief Rabbi and holding a license granted by the local authority or for the food of Mohammedans by a Mohammedan holding license granted by the local authority if such slaughtering is carried out according to the Jewish or the Mohammedan method of slaughter, as the case may be, and no unnecessary suffering is inflicted.” *Id.*

¹¹⁹ Berman, *supra*, at 241 (Citing “1932-33: The Public General Acts,” London, Chap. 39, p. 608); Slotki, *supra*, at 50-51. Under a schedule to the Act, a Rabbinical Commission was declared the sole authorizing body for shohetim, and so any opposition to shehitah in the future was made impossible.

opinion. The Board was required to notify the Ministry, through the adviser, regarding the granting of new licenses and the withdrawal of licenses.¹²⁰ In September 1949, a National Shechita Council was created. The Ministry of Foods was to negotiate all matters relating to kosher meat and poultry with this new Council, and local shehitah boards would concern themselves only with local, internal matters.¹²¹

In 1950, kosher slaughter of cattle was prohibited throughout the U.K. without the use of casting pens. Because the smaller communities could not afford these apparatuses, they were forced to purchase kosher beef from London and other large communities.¹²² In 1954, the Crouch Bill was introduced in the House of Commons, calling for the repeal of the provision exempting Jewish and Muslim slaughter in the Slaughter of Animals Act of 1933. In order to increase support for this bill, the Council of Justice to Animals and the Humane Slaughter Association of England distributed anti-shehitah propaganda throughout England,¹²³ and asked Urban and District Councils to pass resolutions in support of the bill. Five hundred and forty-nine councils passed resolutions in support of the Crouch Bill, only thirteen passed resolutions supporting the 1933 Act.¹²⁴

¹²⁰ Hyamson, *supra*, at 74-75.

¹²¹ *Id.*, at 79.

¹²² *Id.*, at 52.

¹²³ Isaac Lewin, Unto the Mountains, *On Humane Slaughter Legislation in America* 92-98 (1975). See examples of humane society propaganda in England.

¹²⁴ Lewin, *On Humane Slaughter Legislation in America*, *supra*, at 91-93. Parliament was dissolved in 1955. Crouch made repeated attempts to outlaw shehitah in the new House. In a speech before the House in 1956, Crouch advised the Jews to abolish the practice of shehitah, accusing shehitah of cruelty even when the Weinberg pen is used, which was generally considered the most humane method of casting. Crouch's motion was voted down in the House of Commons by a slim margin.

Europe: Recent Anti-Shehitah and Humane Slaughter Legislation

Attacks on shehitah, and its prohibition in various countries throughout Europe, did not end with the fall of the Nazi regime. To this day many European countries maintain prohibitions against shehitah. A select few will be discussed below.

Switzerland

To this day, religious slaughter on conscious animals is forbidden in Switzerland.¹²⁵ In 2002, the Swiss government attempted to revise the law requiring stunning before slaughter, but refrained from doing so after animal welfare groups protested.¹²⁶

Germany

On January 15, 2002, the German Constitutional Court ruled that Muslim butchers may obtain an exception permit to perform ritual slaughters. The slaughter practices of Jews and Muslims conflict with the German law on the protection of animals requiring stunning prior to slaughter.¹²⁷ Section 4a(2)(2) of the Tierschutzgesetz provides for an exception from this rule for religious associations that (1) require ritual slaughter, or (2) prohibit the consumption of meat that is not halal, that is, that does not come from animals slaughtered in accordance with their religious prescriptions.¹²⁸

¹²⁵ Levinger, *supra*, at 134.

¹²⁶ Beth Gardiner, *Activists Fighting Slaughter Methods*, Deseret Morning News (Salt Lake City), June 21, 2003, available at LEXIS, News Library.

¹²⁷ Christine Langenfeld, *Developments – Germany*, Int'l J. Const. L., ICon 1.1(141) (2003), available at LEXIS, News Library. (Citing Bekanntmachung der Neufassung des Tierschutzgesetzes (Tierschutzgesetz), Bundesgesetzblatt, Teil I (1998), 1105).

¹²⁸ *Id.* In 1986, the federal government integrated the rules on slaughter into the Tierschutzgesetz, in Section 4a.

In 1995, the Federal Administrative Court (FAC) refused to recognize the mandatory nature of Islamic slaughter, concluding that the second provision of the exception clause of Section 4a (2) (2) was not applicable.¹²⁹ The FAC stated that this interpretation of the Tierschutzgesetz did not violate the fundamental right of religious freedom, guaranteed in Article 4(1) and (2) of the Basic Law, since the Muslims concerned were not forced to eat meat from animals not slaughtered according to their religious prescriptions, but could switch to fish, vegetarian food, or imported halal meat.¹³⁰ The Muslim butchers unsuccessfully relied on the equal treatment clause in Article 3(1) and (3) of the Basic Law, citing that Jewish butchers were granted exception permits to perform shehitah. Due to the split among Islamic groups as to the mandatory nature of ritual slaughter, in contrast to the uniform Jewish opinion in Germany on this matter, the requirements of Section 4a were not considered fulfilled.¹³¹

In the January 2002 decision, the German Constitutional Court ruled that a Muslim butcher may obtain an exception permit under the second provision of Section 4a (2) (2) in order to slaughter according to Islamic rites, relying on the freedom of profession, Article 2(1) of the Basic Law, read together with the freedom of religion, Article 4(1) and (2) of the Basic Law,.

The decision of the Constitutional Court provoked a debate on the desirability of inserting a general animal protection clause into the Basic Law. A constitutional amendment was approved by the Federal Parliament and the Federal Council,

¹²⁹ *Id.* (Citing Decision of the Bundesverwaltungsgericht [Federal Administrative Court] of June 15, 1995, Collection of Cases 99, at 1).

¹³⁰ *Id.* (Citing Basic Law for the Federal Republic of Germany, May 23, 1949, Bundesgesetzblatt, Teil I (1949/50), 1).

¹³¹ *Id.* (See also The judgment of the FAC of November 1, 2001, 54 Neue Juristische Wochenschrift 1225, 1226 (2001)).

respectively, in May and June 2002. The amended article, Article 20a, provides, “The state, aware of its responsibility for present and future generations, shall protect the natural sources of life and animals within the framework of the constitutional order through the legislature and, in accordance with the law and the principles of justice, the executive and the judiciary.” Supporters of this amendment, including several humane societies, hope that this will promote a total ban on all ritual slaughter.¹³²

United Kingdom

In a 1985 report to the Agriculture Ministry, a government-appointed committee recommended that both shehitah and halal slaughter methods be outlawed for causing undue pain to animals. The recommendations were supported by the powerful animal rights lobby and the National Veterinary Association. The committee requested that Britain’s exemption from stunning for religious slaughter be withdrawn. The report stated that, “The up-to-date scientific evidence available and our own observations leave no doubt in our minds that religious methods of slaughter, even when carried out under ideal conditions, must result in a degree of pain, suffering and distress which does not occur in the properly stunned animal.” The committee recommended that stunning be required by 1988 for all of the estimated 91,000 cattle and 1.5 million sheep and goats slaughtered each year in halal and shehitah abattoirs.¹³³

This prompted Britain’s Muslim and Jewish communities to join together in protest against the threat to their religious freedom. While the public arguments against the ban made by both communities’ leaders were mostly limited to the conflicting

¹³² *Id.*

¹³³ Karen DeYoung, *Ritual Slaughter Sparks Debate; Jews, Moslems Join Forces to Defend Practice in Britain*, The Washington Post, December 27, 1985, available at LEXIS, News Library.

scientific evidence over animal pain, leaders of both communities believed that the issue of animal pain was not the only one at stake. Both Muslims and Jews detected overtones of racism, influenced by the National Front, a neo-fascist organization that promoted the religious slaughter ban in its literature. The real issue was believed, by both Muslim and Jewish leaders, to be religious freedom.¹³⁴

Since the enactment of The Slaughter of Animals (Humane Conditions) Regulations of 1990, re-enacted in the Welfare of Animals (Slaughter or Killing) Regulations of 1995, all shohetim are required by statute (Schedule 12 Part II, reg. 6 (b)) to comply with the definition of shehitah, to: "...ensure that each animal is slaughtered by severance, by rapid, uninterrupted movements of a sharp knife, of both its carotid arteries and both its jugular veins."¹³⁵

As recently as March 8, 2005, British Jews won an 18-month battle to gain government assurances protecting the community's right to perform shehitah, after a June 2003 report from the Farm Animal Welfare Council recommending that the government repeal the right of the Jewish community to carry out kosher slaughter. The Government's Final Response to the Farm Animal Welfare Council's Report on the Welfare of Animals at Slaughter, accepted evidence presented by Jewish lobbyists, led by Shechita UK, a British lobby group that defends the practice of shehitah, which demonstrated that ritual slaughter was a humane method of killing animals for food.¹³⁶

¹³⁴ *Id.*

¹³⁵ Chanoch Kesselman, *Shechita: Conformity & Confrontation*, at <http://www.shechitauk.org/resources.php>.

¹³⁶ *British Jews Win Right to Practice Ritual Slaughter*, The Jerusalem Post, March 10, 2005, available at LEXIS, News Library; *See Government Commitment To Continued Practice of Shechita*, March 8, 2005, at <http://www.shechitauk.org/news.php>.

Other Countries

The international laws relating to the practice of shehitah are outlined by I.M. Levinger.¹³⁷

Religious Slaughter Practices in Different Countries (Information as given by the Institute of Welfare to Animals)

Country	Legislation Provides For	Additional information
European Union		See Council Directive 93/119/EC. The preamble states “it is necessary... to take account of the particular requirement of certain religious rites.” ¹³⁸
Belgium	Total exemption from stunning.	New draft bill provides for some restrictions to total exemption.
Denmark	Exemption from stunning for Jewish Slaughter.	Only in abattoirs where there is constant veterinary supervision. Special restraining box used. Muslims have agreed to stun cattle (with a captive bolt pistol) before slaughter.
France	Exemption from stunning.	Only Rabbis who have a

¹³⁷ Unless otherwise noted, information in chart by Levinger, *supra*, at 133- 136. Info as of year published, 1995.

¹³⁸Official Journal C 277 E, 14/11/2002 P. 0197 – 0198, 2002 OJ C 277, Written Question E-1388/02 by Hiltrud Breyer (Verts/ALE) to the Commission. *Slaughtering of animals in accordance with Jewish rites without prior stunning*. 2004 Commission of the European Communities, *available at* LEXIS, News Library.

The written response by the European Parliament, states:

“Recital 6 of Council Directive 93/119/EC of 22 December 1993 on the protection of animals at the time of slaughter and killing (OJ L 340, 31.12.1993) underlines the necessity to take account of the particular requirements of certain religious rites. In consequence, Article 5(2) of the Directive states that the obligation for the Member States to ensure the stunning before slaughter shall not apply to animals subject to particular methods of slaughter required by certain religious rites.

However, having regard to the competence of the Member States for cultural matters and the principle of subsidiarity, the Member States are responsible for deciding not if, but under which conditions the ritual slaughter without stunning may be carried out on their territory. Therefore, the Commission does not intend to propose further harmonisation of this question.”

This leaves open the option for member countries to legislate individually on the legality of shehitah.

		permit can carry out Jewish slaughter. Permits renewed every six months. Suitable Muslims can carry out Muslim slaughter.
Germany	Exemption from stunning.	Cattle slaughter by Jewish method must be in box of special design in some Laender. Religious slaughter, only for the use of the communities but not for export.
Great Britain	Exemption from stunning.	Cattle slaughtered only in RSPCA box and only in one single cut.
Greece	Exemption from stunning.	Not available.
Italy	Exemption from stunning.	Must be carried out in strict accordance with established standards.
Republic of Ireland	Exemption from stunning.	Must conform to EC convention. Supervision by veterinary officers. Stunning not permitted by Muslims. Cincinnati Box and other similar types used.
Northern Ireland	Exemption from stunning.	Slaughterhouses must be licensed for religious slaughter by local authority. Veterinary presence required.
Luxembourg	Exemption from stunning.	No religious slaughter for past 10-15 years. No demand for such meat.
Netherlands	Exemption from stunning.	Jewish and Muslim slaughter carried out only in approved abattoirs and in the presence of a veterinary or meat inspector.
Other European Countries		
Switzerland	Religious slaughter on conscious animals forbidden.	
Spain	Religious slaughter permitted under veterinary	

	supervision. All animals except goats and sheep to be stunned first.	
Portugal	Religious slaughter permitted. Sold only to small local community of Jews and Muslims.	
Austria	Jewish slaughter permitted in certain Laender.	Ritual slaughter of animals under Jewish and Muslim religious rites will continue to be allowed as long as the animals are stunned immediately after their throats are cut. ¹³⁹
Scandinavian Countries		
Finland	Religious slaughter permitted on conscious animals provided they are stunned immediately after they have been cut. Veterinarian must be present.	
Norway	All animals must be stunned prior to slaughter.	
Sweden	All animals slaughtered by religious methods must be stunned. (Shehitah essentially forbidden).	
Other Countries		
America	Exemption from stunning.	No legislative restrictions on how religious slaughter is carried out.
Australia	Exemption from stunning.	Weinberg and Elizabeth (ASPCA) pens approved. Calves under 70 kilos must be stunned post-cutting for shehitah slaughter. Halal slaughter of calves not permitted.
Canada	Exemption from stunning.	Some Muslims accept stunning. Veterinary

¹³⁹ *Austrian Parties Agree On Animal Protection Law*, Deutsche Presse-Agentur, May 19, 2004, available at LEXIS, News Library.

		presence required.
New Zealand	Exemption from stunning.	Special restraining box required for cattle.

Shehitah in the United States

Legislation protecting the humane treatment of animals in the Western Hemisphere can be traced back to the Puritans of Massachusetts Bay, who borrowed this idea from the Jewish code of law. After this, not until the late nineteenth century has the issue of humane treatment of animals been addressed in the United States.¹⁴⁰ Shehitah has never been prohibited in the United States; in fact, many states actually have laws protecting shehitah, or laws protecting the integrity of kosher meat.¹⁴¹

A Brief History of Shehitah

When the first Jews arrived in “Nieuw Amsterdam” from Brazil in 1654, they were unable to obtain kosher meat because the slaughtering privileges had already been leased by the Dutch authorities to several tax farmers, under the conditions that only three named and licensed slaughterers were allowed to kill animals, and none might refuse to slaughter an animal brought to him for killing. Because of the increased need for meat in the colony, in 1600, several new butchers were sworn in, including a Jewish butcher, Asser Levy Van Swellen. He was allowed an exemption from the requirement to

¹⁴⁰ Bernard J. Meislin, *Jewish Law in American Tribunals* 177 (1976).

¹⁴¹ Lewin et al., *supra*, at 38-45.; In 1915, New York State passed the first law protecting the integrity of kosher meat, by making it a misdemeanor for a vendor to fraudulently sell non-kosher meat as kosher. Similar laws were passed in Connecticut in 1918, in New Jersey in 1920, in Maryland in 1920, in Ohio in 1921, in Illinois in 1923, in Virginia in 1924, in Missouri in 1925, in Massachusetts in 1929, in California in 1931, in Tennessee in 1932, in Wisconsin in 1935, in Rhode Island in 1937, in Michigan in 1939, and in Pennsylvania in 1939. Congress enacted a similar law for the District of Columbia in 1926. In *Hygrade Provision Co. v. Sherman*, 266 U.S. 497 (1924), the constitutionality of the New York State law was challenged and upheld. In 1934, the New York State Legislature set up the Bureau of Kosher Law Enforcement, to make the Kosher Law more effective. Berman, *supra*, at 328-38.

slaughter all animals brought before him, so that he would not have to kill pigs, which are not kosher animals. After Van Swellen, several other Jewish butchers became authorized by the colonial authorities to slaughter animals.¹⁴²

By the year 1728, the shohet in New York was an established official in the only existing synagogue, the Spanish and Portuguese Congregation Shearith Israel.¹⁴³ The shohet was given a fixed salary and was subject to examination by the minister (hazan) or his representatives. All kosher slaughter was performed by the congregational shohet. A large portion of the meat slaughtered in New York was packaged for export to Jewish communities in Curacao, Jamaica, Surinam, and Barbados, as well as to other places in America.¹⁴⁴ The meat that was not exported was sold by Christian vendors in the local markets. Since both kosher and non-kosher meat was sold there, the kosher meat bore the seal of the shohet.¹⁴⁵

As new congregations were established in New York, they established their own shohetim and meat-dealers, decentralizing the shehitah operation.¹⁴⁶ Between 1854 and 1862, the improper practice of bleeding animals prior to slaughter was practiced in New York. This was the result of a misinterpretation of the permission granted by European rabbis to perform bleeding prior to slaughter in order to relieve sick animals. This was

¹⁴² Berman, *supra*, at 274-75.

¹⁴³ Founded in 1654, the Spanish and Portuguese synagogue is the first Jewish congregation to be established in North America. Its founders were 23 Jews, mostly of Spanish and Portuguese origin who had been living in Recife, Brazil. The synagogue, located on W. 70th and Central Park West, Manhattan, New York, is still thriving today.

¹⁴⁴ Berman, *supra*, at 275-80

¹⁴⁵ *Id.*, at 284-85. On several occasions, meat vendors falsely attached the kosher seals on non-kosher meat. The municipal authorities treated the cases as acts of fraud, revoking the dealers' licenses.

¹⁴⁶ *Id.*, at 285-89.

not to be done on animals to be used for consumption. Such a practice directly contradicted Jewish law, and caused a great upheaval in the Jewish community.¹⁴⁷

The emergence of the “private shohet” for hire by slaughterhouses began in the 1850’s. In order to deal with the deteriorating standards for Kashruth resulting from the decentralization of shehitah, the Association of the United Hebrew Congregations was created, which would test all shohetim, license butchers, and label their meat with a uniform lead seal. The position of Chief Rabbi was established in 1888 to oversee operations and introduce effective controls in the production and sale of kosher meat. By 1894, the Associated Congregations began to disintegrate, as well as the position of Chief Rabbi, which ended with Chief Rabbi Jacob Joseph’s death in 1902.¹⁴⁸

The oversight of shehitah and kashruth in New York and throughout the United States has continued to evolve since then, with various oversight committees, both private and communal.

Anti-Shehitah and Humane Slaughter Legislation

The first signs of antagonism for shehitah came from various humane societies claiming that the practice was inhumane. On January 9, 1866, founder and president of the New York Society for the Prevention of Cruelty to Animals, Henry Bergh, wrote to Henry Westheimer, operator of an abattoir where shehitah was performed, stating:

“An employee in the service of this Society reports to me that the cruelty inflicted—needlessly—on dumb animals while slaughtering them at your establishment is of the most barbarous, revolting, and wicked character. This statement has before been communicated to this Society; and it is proper that I call your attention to the fact, with a view to its immediate correction. You are forbidden by the laws of this State, as well as that higher law of God, thus to mangle and torture his creatures. You should, at least, so far feel for the

¹⁴⁷ *Id.*, at 290.

¹⁴⁸ *Id.*, at 291-302.

miserable lot, of the creatures which support, and in so many ways contribute to the well being of mankind; by killing them with merciful dispatch—and in no way can this be so perfectly done as by a blow from a pointed axe upon the head. At any rate, these horrible scenes must end, and you must not suppose that the laws of this State, are to be daily violated by you, without responsibility, any more than by any other citizen. If you believe that there is a God in Heaven—tremble! for you may be certain that misfortune will overtake you sooner or later, for these infractions of his natural laws. I desire to hear from you on this subject; before addressing myself to the public authorities; which I shall do, if unheeded by you; but I trust that, this appeal will obtain a share of that mercy and pity, which you yourself will one day ask of your Maker.”¹⁴⁹

Next to cite its disapproval of shehitah was the Society for the Prevention of Cruelty to Animals of Philadelphia, in 1885. In 1903, a female preacher traveled the country speaking out against shehitah. She had a large impact in both Detroit and Denver. Shortly after her visit to Denver, Wolf Heller, a Denver shohet was arrested based on a complaint filed by Oliver E. Tuft, an officer in the State Bureau of Child and Animal Protection of Colorado, claiming that on October 5, 1903, Heller “did torture, torment, unnecessarily and cruelly beat and needlessly mutilate beef cattle....” The complaint was later withdrawn once the press exposed the false nature of the claims. The allegations were viewed as an attempt to justify the prohibition of shehitah.¹⁵⁰

Beginning in 1911, in Massachusetts, bills requiring preliminary stunning began to appear in state legislatures. Both the Massachusetts bill, “An Act Relative to Humaner Methods in the Slaughtering of Animals,” House Bill No. 738, and a similar bill proposed in Pennsylvania in 1921, were referred to committees but never became laws. In January 1929, House Bill No. 135 was introduced in Connecticut to require preliminary stunning, and passed both the House and the Senate in its amended form. This was the only time a

¹⁴⁹ *Id.*, at 407-08. Bergh received a response from Rabbi Aaron Zevi Friedman, an experienced shohet, defending shehitah using various physiological arguments. His response adequately appeased Bergh, who no longer outwardly expressed any disapproval of shehitah.

¹⁵⁰ *Id.*, at 408-09.

state legislature in the United States ever acted adversely against shehitah. However, the bill was later reconsidered and recalled from the Engrossing Clerk by Senate Joint Resolution No. 49 before the Governor had signed it, and was rejected.¹⁵¹

The first time humane slaughter legislation appeared in the United States federal arena was in 1956-57, when a federal bill was proposed, outlawing the shackling-and-hoisting preparations of conscious animals. The goal was to decrease the animal's suffering by requiring stunning prior to hoisting.¹⁵² Bill H.R. 8308, "to establish the use of humane methods of slaughter of livestock as a policy of the United States," was introduced by Congressman Poage of Texas, passed by the Committee on Agriculture and granted a rule by the House Rules Committee.¹⁵³ Senators Jacob Javits and Clifford P. Case introduced an amendment to the bill that would limit it to apply only to non-kosher slaughtering, exempting shehitah from the bill.¹⁵⁴ The Humane Slaughter Act of 1958 is the basis for the relevant law today.¹⁵⁵ It is important to note that shehitah is

¹⁵¹ Lewin et al, *supra*, at 45; Berman, *supra*, at 409-11.

¹⁵² Freedman, *supra*, at 40-41.

¹⁵³ Lewin, *On Humane Slaughter Legislation in America, supra*, at 89-90. This paper was read at a conference sponsored jointly by the Synagogue Council of America and the National Community Relations Advisory Council in New York, October 20, 1957. Lewin asserted that the effects of this bill would be a prohibition of shehitah, despite a provision providing that "within the meaning of this Act" religious slaughter is recognized as humane. Section 1 of the bill provided that "it is declared to be the policy of the United States that the slaughtering of livestock and the handling of livestock in connection with slaughter, shall be carried out only by the most humane practicable methods." Section 2 provided that "no method of slaughter or handling in connection with slaughter shall be deemed to comply with such public policy unless (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 conformity with the practices and requirements of any established religious faith which practices and requirements are hereby declared to be humane within the meaning of this Act." As written, the slaughter itself would be exempt from the stunning requirement, but the prior handling of the animal would be subject to regulations making it "insensible to pain," which would make the animal automatically unfit for kosher slaughter. The intent of the bill was expressed in the official report of the Committee on Agriculture, accompanying H.R. 8308, dated July 9, 1957, which stated, "It is to be noted that the approval given to slaughtering in connection with the practices of a religious faith does not necessarily extend to the handling of livestock in connection with such slaughter." *Id.*

¹⁵⁴ Freedman, *supra*, at 40-41.

¹⁵⁵ Levinger, *supra*, at 160-61; The current law is as follows: 7 USCS § 1902 (2005):

listed as a method of humane slaughter, and not as a permissible method of slaughter despite being inhumane.¹⁵⁶

Many state legislatures followed this trend of exempting shehitah from their humane slaughter legislation. In 1967, several bills were proposed in the New York State Legislature that affected kosher slaughter. In December 1965, the Friends of Animals, Inc., (F.O.A.), a humane-society based out of New York City, sponsored a bill introduced in both houses as Senate #2912 Adams and Senate #2333 Hudson-Adams, by Assemblyman Mason, requiring that non-kosher slaughter only be performed on animals rendered insensible to pain, because this was a humane method. While shehitah was exempted from the provisions of the bill, the wording of the bill implied that methods of slaughter performed on conscious animals, like shehitah, were inhumane. The Mason bill also required that meat packers label meats either “Kosher” or “Humane,” further implying that kosher slaughter was inhumane. The Jewish community strongly opposed this bill, which was defeated at the polls. Another bill, supported by the New York State

§ 1902. Humane methods

No method of slaughtering or handling in connection with slaughtering shall be deemed to comply with the public policy of the United States unless it is humane. Either of the following two methods of slaughtering and handling are hereby found to be 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.

§ 1906. Exemption of ritual slaughter

Nothing in this Act [7 USCS §§ 1901 et seq.] 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 Act [7 USCS §§ 1901 et seq.], 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 Act [7 USCS §§ 1901 et seq.]. For the purposes of this section the term “ritual slaughter” means slaughter in accordance with section 2(b) [7 USCS § 1902(b)].

¹⁵⁶ Senator Hubert Humphrey’s amended bill proposed to include shehitah among the recognized humane methods rather than allowing it as an exception. This was met by opposition by several humane societies. See Lewin, *On Humane Slaughter Legislation in America*, *supra*, at 101.

Humane Association and introduced by Senator Ronald B. Stafford of Peru, New York, calling for more humane methods of preparation for slaughter, was supported by the Jewish communities because it did not single out shehitah or portray it in a negative light.¹⁵⁷

Friends of Animals, Inc. continued to fight vigorously for humane slaughter legislation. The group, dedicated to rescuing animals from needless suffering prior to and during slaughter, alienated the Jewish community and most other humane groups with its militant propaganda campaign and its insistence that its program alone could resolve the problems of inhumane treatment of animals in slaughterhouses. In 1967, F.O.A. posted a full-page advertisement in *The New York Times*, declaring, “The Meat You Eat is Seared With Pain,” explaining that cruelty to animals occurs in both kosher and non-kosher slaughterhouses. The advertisement has since been printed repeatedly. The goal of the advertising campaign was to gain community support for a bill, sponsored by Assemblyman Albert J. Hausbeck, which would outlaw shackling-and-hoisting prior to slaughter.¹⁵⁸ The bill, Bill No. 160, exempted kosher livestock from its prohibition, yet it did not explicitly recognize shehitah as a humane method of slaughter, thereby implying that it was less humane than other techniques. The bill would prohibit the sale of kosher- slaughtered livestock “otherwise than as such or as kosher meat or in

¹⁵⁷ Freedman, *supra*, at 41.

¹⁵⁸ *Id.*, at 42-43. The propaganda campaign also included the publishing of pictures depicting inhumane positioning of animals for slaughter with accompanying testimony that procedures in kosher slaughterhouses were brutal and inhumane. One advertisement in *The New York Times*, read: “In a Kosher plant I recently visited, the hoist was operated until the steer was hanging suspended by the leg with its face partly on the floor. The slaughterhouse worker then turned the hose on the animal’s face and neck so that the animal got the full force of the water, and then I witnessed something I had read about as occurring in Kosher plants, that I could scarcely believe when I read it. The packing-house employee deliberately plunged both his hands into the steer’s eyes until the eyes were displaced by being pushed back into the head. He then grasped the sides of the eye sockets and held the animal that way while the *shochet*, the man who performs the Kosher slaughter, stepped forward to cut the steer’s throat.” *Id.* (Citing Friends of *Animals*, statement by president of a national humane society, February 15, 1967, name furnished by Friends of Animals, New York, New York).

kosher meat preparations therefrom and as kosher food prepared under or sanctioned by the orthodox Hebrew religious requirements.” It would require that meat be labeled “kosher” in order to distinguish it from “humane slaughtered” meat.¹⁵⁹ Many leaders of the Jewish communities responded to the attacks by F.O.A., denying the allegations of inhumane treatment in the slaughterhouses. The F.O.A. further claimed that the process of shackling-and-hoisting was inevitably inhumane in that it caused injury to the animal from fright, which is evidenced by its kicking and jerking. Rabbi Pinhas M. Teitz, chairman of the Committee for the Protection of Religious Freedom and Presidium Member of the Union of Orthodox Rabbis of the United States and Canada replied to the allegations, calling the advertisements “an unwarranted attack on Kosher slaughter, based on inaccuracies and misleading statements bordering on religious bias....”¹⁶⁰

Other activists, genuinely concerned about the inhumane treatment of animals in slaughterhouse practices, have taken practical steps towards developing a more painless method for casting the animal for slaughter. The A.S.P.C.A. pen, as discussed above, was developed in response to this investigation. The Armour Research Foundation, employed by the Joint Advisory Committee, representing major Jewish organizations, was hired to research the usefulness of this pen as it was being developed, and the A.S.P.C.A. later joined in the task. The pen was largely accepted by Jewish authorities as complying with Jewish law.¹⁶¹ It replaced the shackling-and-hoisting method with a

¹⁵⁹ Isaac Lewin, *Unto the Mountains, Humane Slaughter Legislation in the State of New York* 118-19 (1975). (Printed in “The Jewish Observer,” New York, January, 1966).

¹⁶⁰ Freedman, *supra*, at 43-44. (Citing Rabbi Pinhas Teitz, *The New York Times*, January 7, 1966). Rabbi Teitz explained that it is false that injuries which render an animal non-kosher are the inevitable result of shackling and hoisting. He also reported having consulted with every kosher slaughterhouse in New York and New Jersey, finding no record of any F.O.A. representatives having ever visited any of these locations, challenging the authenticity of their claims at witnessing inhumane treatment.

¹⁶¹ Whether this pen is acceptable according to Jewish law is still a topic of debate. See Levinger, *supra*, at 27-28.

painless method of secure the animal that both complied with legislation and was accepted by the general public as a humane procedure. With the development of this pen, despite its limited use by 1967, the Joint Advisory Council no longer saw the necessity of exemption for shehitah from humane slaughter legislation, as the two were no longer contradictory, and has since moved away from this position.¹⁶²

Another bill, Bill No. 4393, sponsored by the American Society for the Prevention of Cruelty to Animals, was introduced in the Senate in 1966 by Senator Willard. This bill prohibited “shackling and hoisting or hanging any animal while such animal is conscious, in the positioning of such animal for slaughter.” The bill provided that the prohibition would not apply, “in order to protect freedom of religion, to the operator of a commercial establishment with respect to the positioning of no more than 20 conscious beef animals per week for ritual slaughter.” The bill made no mention of the A.S.P.C.A. pre-slaughter pen. The bill also omitted reference to Section 6 of Public Law 85-765 (H.R. 8308), August 27, 1958, which states: “Notwithstanding any other provision of this Act, in order to protect freedom of religion, ritual slaughter and the handling or other preparation of livestock for ritual slaughter are exempted in terms of this Act.”¹⁶³ The majority of Orthodox Jews in America strongly opposed this bill.

The Humane Slaughter Act was passed in 1958, in its amended form. In 1974, *Jones v. Butz*¹⁶⁴ challenged the constitutionality of Section 2(b), 5, and 6 of the Act. The plaintiffs claimed:

“that in failing to require that the animal be rendered insensible to pain before the handling process, and thus before it is shackled and hoisted, the provisions permitting ritual slaughter are offensive to and inconsistent with the humane

¹⁶² Freedman, *supra*, at 44-46.

¹⁶³ Lewin, *Humane Slaughter Legislation in the State of New York, supra*, at 122-27.

¹⁶⁴ *Jones v. Butz*, 374 F. Supp. 1284 (1974), cert. denied, October 15, 1974.

purpose of the Act and have a special religious purpose in contravention of the First Amendment.”¹⁶⁵

Plaintiffs claimed that the statutory protection of a religious belief had no secular purpose, advanced a particular religion, and fostered excessive government entanglement with religion, thereby violating the Establishment Clause.¹⁶⁶ The court rejected plaintiffs’ assertions, noting that Congress had prescribed alternative methods of humane slaughter, and shehitah was historically related to considerations of humaneness. As such, the statute’s secular purpose merely coincided with the Jewish ritual slaughter; it did not exempt it. Furthermore, if shehitah is viewed as an exemption from humane slaughter requirements, it would be a constitutionally permissible exception; the courts tend to defer to clearly delineated religious practices as exemptions from general standards, especially when the exemptions are pursued by a united religious community.¹⁶⁷

Most state humane slaughter statutes followed the Federal Act of 1958. However, Illinois,¹⁶⁸ Pennsylvania,¹⁶⁹ and New Hampshire¹⁷⁰ left open the question of whether

¹⁶⁵ Meislin, *supra*, at 199 (Citing *Jones v. Butz*, 374 F. Supp. 1284 (1974) at 1289-1290).

¹⁶⁶ *Id.*, at 199-200.

¹⁶⁷ *Id.*, at 200.

¹⁶⁸ *Id.*, at 200-01 (Citing Ill. Stat. Ann., Tit. 8 §229.54). Illinois’ current statute, effective January 1, 1993, § 510 Ill. Comp. Stat. Ann. 75/4, Ritual slaughter, and § 510 Ill. Comp. Stat. Ann. 75/3, Methods prohibited, reads in relevant part:

Sec. 3. No slaughterer or packer shall bleed or slaughter any livestock except by a humane method. The following methods are in all instances prohibited:

(a) Use of a manually operated hammer, sledge or pole-ax as a means of slaughtering any animal or of rendering any animal unconscious in preparation for slaughter.
(b) Shackling and hoisting or hanging any animal while such animal is conscious, in the positioning of such animal for slaughter.

Sec. 4. In order to protect freedom of religion, paragraph (b) of Section 3 [510 Ill. Comp. Stat. Ann. 75/3] does not apply to calves and sheep and cattle where ritually acceptable and practical methods are unavailable for positioning livestock for purposes of slaughter in accordance with the requirements of any religious faith.

¹⁶⁹ *Id.*, at 201 (Citing 3 Purd. Pa. Stat. 451.52). This statute was repealed in 1996 replaced by P.L. 561, No. 100, §2. The current statute, 3 Pa. Cons. Stat. §2362 (2004), provides in relevant part:

§ 2362. Humane methods of slaughtering domestic animals
(a) HUMANE METHODS REQUIRED.--

shackling-and-hoisting of conscious animals before their slaughter could be avoided by using another ritually acceptable manner that would not be economically prohibitive. The original New Hampshire statute defined shehitah as humane, “provided that the method used in bringing the animal into position for slaughter causes no injury or pain which can be avoided without interfering with the requirements of ritualistic slaughter or without imposing unreasonable economic hardships.”¹⁷¹

Recent Anti-Shehitah Protests in the U.S.

While the Humane Slaughter Act of 1958, and its subsequent amendments, has officially declared shehitah a method of humane slaughter, this declaration has not put an end to the opposition to shehitah.

(1) Humane methods shall be used in the handling of domestic animals for slaughter and in the actual bleeding and slaughter of domestic animals.

(2) The use of a manually operated hammer, sledge or poleax by slaughterers, packers or stockyard operators during slaughtering operations is not a humane method of slaughter.

(b) RITUAL SLAUGHTER.-- Subsection (a) shall not apply to the operator of a commercial establishment with respect to the positioning and ritual slaughter of cows, poultry and sheep until one year after the department finds and notifies the operator that there is available at reasonable cost a ritually acceptable, practicable and humane method of handling or otherwise preparing conscious calves, poultry and sheep for slaughter.

¹⁷⁰ *Id.*, at 201 (Citing N.H. Rev. Stat. Ann. 575-A: 1 III [6]). This statute, as part of the Humane Slaughter Law, was later repealed. The current statute N.H. Rev. Stat. Ann. §427: 33 III, 34 (2004), effective July, 1, 1985, provides, in relevant part:

III. The term "humane method" means:

(a) Any method of slaughtering livestock which normally causes animals to be rendered insensible to pain by a single blow or shot of a mechanical instrument or by electrical, chemical or other means that is rapid and effective, before being shackled, hoisted, thrown, cast, or cut; and

(b) The method of slaughtering required by the ritual of the Jewish faith, 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, provided that the method used in bringing the animal into position for slaughter causes no injury or pain which can be avoided without interfering with the requirements of ritualistic slaughter or without imposing unreasonable economic hardship.

§ 427:34. Prohibition

On and after June 30, 1960, no slaughterer may slaughter livestock except by a humane method. No person may handle livestock in connection with slaughter, or drive or transport them to holding pens or to place of slaughter except with a minimum of excitement and discomfort. Holding pens and transportation vehicles must be free from hazards which could cause suffering or pain.

¹⁷¹ *Id.*, at 201.

P.E.T.A., People for the Ethical Treatment of Animals, initiated an attack on shehitah on November 29, 2004 when it filed a complaint with the United States Department of Agriculture based on its findings from a videotape recorded by an undercover P.E.T.A. member at a kosher slaughterhouse in Iowa.¹⁷² P.E.T.A. urged Iowa authorities to prosecute the plant's managers for animal cruelty. It followed with a release of the video on the website GoVeg.com, depicting gory, somewhat disturbing images of animals being slaughtered. This video release gained much national and international attention, because the Postville, Iowa plant is the largest glatt kosher meat producer in the United States and the only one authorized by Israel's Orthodox rabbinate to export beef to Israel.¹⁷³ P.E.T.A., as well as certain experts on both animal science and kosher slaughter, has denounced the plant run by AgriProcessors, Inc. for inhumane treatment of animals.

While P.E.T.A. advocates vegetarianism, it generally accepts shehitah as a relatively painless method of slaughter.¹⁷⁴ P.E.T.A. spokesman, Bruce Friedrich, acknowledged that “done correctly, kosher slaughter is no less humane, and probably is better, than the conventional method” in commercial slaughterhouses, which fire an air gun or metal bolt into the animal’s brain. “We're not objecting to kosher slaughter in general,” Friedrich said, “We're objecting to the sloppy, unethical methods used at this particular plant, which many experts on slaughterhouse standards say is the worst cruelty they have ever seen.”¹⁷⁵ As such, P.E.T.A.’s protests were not directly aimed at the

¹⁷² Alan Cooperman, *USDA Investigating Kosher Meat Plant*, The Washington Post, December 31, 2004, available at LEXIS, News Library.

¹⁷³ *Id.* At the time of publication Israel had stopped accepting U.S. beef because of concerns about mad cow disease.

¹⁷⁴ Donald G. McNeil, Jr., *Videotapes Show Grisly Scenes at Kosher Slaughterhouse*, The New York Times, November 30, 2004, available at LEXIS, News Library.

¹⁷⁵ Cooperman, *supra*.

practice of shehitah, but at the particular way it was being carried out at this plant, which they claim was both inhumane and contrary to accepted Jewish law. However, the plant's supervising rabbi said the tapes were "testimony that this is being done right," and representatives of the Orthodox Union, the leading organization that certifies kosher products, said that the pictures were not necessarily indicative of violations of the Jewish laws of slaughter.¹⁷⁶

An article in *The New York Times* described the video's contents as follows:

"On the 30-minute tape, each animal is placed in a rotating drum so it can be killed while upside down, as required by Orthodox rabbis in Israel. Immediately after the shochet, or ritual slaughterer, has slit the throat, another worker tears open each steer's neck with a hook and pulls out the trachea and esophagus. The drum rotates, and the steer is dumped on the floor. One after another, animals with dangling windpipes stand up or try to; in one case, death takes three minutes."¹⁷⁷

Whether this procedure is acceptable according to Jewish law has become a controversial issue among Jewish authorities. Because the shohet checked to ensure that both the trachea and esophagus had been severed, the slaughters appear to have been kosher. Rabbi Belsky, a chief expert for the Orthodox Union, said that scientific studies have found that an animal whose brain had lost blood pressure when its throat was slit felt nothing, and any motions it made were involuntary. However, Shimon Cohen, a spokesman for Shechita UK, a British lobbying group that defends ritual slaughter against the protests of animal-rights activists, told the *Times* that after watching the tape with a rabbi and a British shohet he "felt queasy," and added, "I don't know what that is, but it's not shechita." Cohen explained that in Britain an animal must be restrained for 30 seconds to bleed, and no second cut is allowed. According to Cohen, because shehitah

¹⁷⁶ McNeil, *supra*.

¹⁷⁷ *Id.*

must produce instantaneous unconsciousness, AgriProcessors' meat could not be considered kosher. Rabbi Kohn, of AgriProcessors, said the throat-tearing was done only to speed bleeding. Recent Federal rules for slaughterhouse inspectors recognize “the ritual cut and any additional cut to facilitate bleeding” as different from skinning or butchering, which is forbidden “until the animal is insensible.”¹⁷⁸

¹⁷⁸ *Id.*; The Orthodox Union posted “Message from Rabbi Dr. Tzvi Hersh Weinreb, OU Executive Vice President, and Rabbi Menachem Genack, OU Kashrut Rabbinic Administrator,” on their website, www.ou.org, in response to this incidence. The message reads as follows:

“An animal rights group known as People for the Ethical Treatment of Animals (PETA) recently released an undercover video showing scenes of cows staggering in apparent agony for several minutes after their throats were cut by the shochet. PETA focused its attention on one particular plant, AgriProcessors, Inc., but these accusations have implications for all kosher shechita, particularly because the video has received attention in the media world, beginning with an article in *The New York Times*, on Tuesday, November 30th, 2004.

“The Orthodox Union is very concerned about these accusations. We are sensitive to the inhumane treatment of animals, and empathize with those who are upset by the images of apparent cruelty recorded on this video. As is well known, Judaism abjures cruelty to animals and enjoins us to be as humane as possible in our legitimate utilization of them. That shechita is a very humane method of slaughtering animals has been substantiated over the past century by numerous scholarly articles and scientific opinions.

“After carefully studying the video, Rabbi Menachem Genack, Rabbinic Administrator of the OU Kashrut Division, and Rabbi Yisroel Belsky, one of its distinguished poskim (rabbinic decisors), traveled to Postville, Iowa, to review the procedures at the AgriProcessors plant. They found that these procedures meet all OU standards to the highest degree, and that the shochtim (rabbinic slaughterers) are all highly proficient, skilled and knowledgeable. Nevertheless, the OU and AgriProcessors, Inc. have worked together to make certain changes, namely that the trachea will no longer be removed following shechita, and that any animals that appear to have survived the procedure will be promptly stunned or shot. These changes are described more fully below.

“The following facts will help provide a perspective on this matter:

1. Slaughtering animals for human consumption is never a pretty sight. An abattoir is obviously a place where one will see living, vibrant animals transformed into meat. This is generally a bloody and unpleasant experience, but this is universal. Indeed, PETA acknowledges that the shechita process is better than most general slaughtering.

“2. While unnecessary cruelty to even one animal is intolerable, one has to look at the total picture before judging the matter. To those unfamiliar with the slaughter industry—kosher or non-kosher—scenes showing post-shechita movement of several animals, such as are shown on the video, can be very disturbing. But 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. Viewers of the video will also note that it does show regular instances of shechita where the animal expired rapidly, without the apparent suffering observed in other animals.

“It is also important to understand that such occurrences are not unique to the AgriProcessors plant, but happen in every abattoir, whether kosher or non-kosher. According to the USDA, a slaughterhouse in

P.E.T.A.'s attack on the AgriProcessors' plant has been viewed by some Jewish groups as a revival of "the Nazi libel that Jewish ritual slaughter involves torture of animals." Although P.E.T.A.'s attack was not directly aimed at the practice of shehitah, but rather at a particular instance of shehitah, since the videotaped slaughter was not directly in conflict with Jewish law, and most likely was in compliance with Jewish law, claiming this slaughter was inhumane is like saying all shehitah is inhumane. Other Jewish groups have condemned the AgriProcessors plant, saying it appears to have violated the spirit, if not the letter, of the rules for shehitah, which intends minimal animal suffering. Despite the Orthodox Union's support of AgriProcessors practices as being compliant with Jewish law, they have asked the plant to discontinue the practice of excising the trachea and esophagus immediately after the slaughter. AgriProcessors

which up to 5% of animals killed by any method—including the "humane bolt" and shechita—survive the first shot or cut, is still considered an approved plant. From now on, however, when this occurs at AgriProcessors, Inc., the animal will be promptly stunned or shot, so as not to prolong its suffering. Such animals will not be sold as kosher.

"3. The Orthodox Union is committed to maintaining the highest ritual standards of shechita without compromising the halacha one whit. In keeping with these standards, we will strive to the best of our ability to see to it that animals are treated humanely and to see that, at all the plants we supervise, any halachically unnecessary practices which may be seen to be objectionable, are ceased.

"During shechita, the carotid arteries, which are the main supplier of blood to the brain, are severed. This results in an immediate and massive drop in blood pressure, which renders the animal insensate in a matter of seconds. At AgriProcessors, Inc., as at other plants, a second cut is made in the carotid arteries to facilitate and accelerate the bleeding. This secondary cut is both approved and encouraged by the USDA. The OU and AgriProcessors, Inc. have concluded that this cut will now be made without excising the trachea.

"4. The United States Department of Agriculture, with which we have a very cooperative working relationship, supervises this slaughterhouse and has found nothing amiss in its practices. Its on-site inspector, Dr. Henry Lawson, has confirmed to us his opinion that the conditions there are humane and that the shechita method of slaughter employed there renders the animal insensate. Other USDA officials have also visited the plant subsequent to the release of the video, and will be issuing a report.

"5. We continue to vouch for the kashrut of all of the meat prepared by AgriProcessors, Inc., which was never compromised. Like all the more than 6,000 plants—producing all kinds of foodstuffs—that are certified by the OU, it has always been under our regular supervision. When this story broke, several rabbis, in Israel and Europe as well as in the United States, at first commented negatively on the kashrut of this shechita. Almost all of them, including the Israeli Chief Rabbinate, have now said that their initial statements were based on misinformation, and have retracted them."

agreed to end that practice and to stun or shoot animals which show the kind of motor coordination that's indicative of consciousness after the initial slaughter, so that the situations shown on the video will not arise in the future.¹⁷⁹

Nathan Lewin, a Washington lawyer who represents AgriProcessors, said the plant is continuously monitored by USDA inspectors and kosher certifying organizations, none of which has found anything wrong with the slaughter methods used. Lewin asserts that P.E.T.A.'s campaign "is really an attack on shehitah." Lewin went on to say, "I'm not suggesting this is part of an anti-Semitic wave. But I do I think it's an attempt to get rid of kosher slaughter, maybe as a first step to getting rid of all slaughter."¹⁸⁰ Agudath Israel of America, one Orthodox Jewish group, called P.E.T.A.'s campaign a "vicious and unethical attack" on Judaism, which "introduced human society to the concept of humane treatment of animals."¹⁸¹ However, the Rabbinical Assembly, an association of Conservative rabbis, said the P.E.T.A. video "should be regarded as a welcome, though unfortunate, service to the Jewish community." When a company "purporting to be kosher violates the prohibition against . . . causing pain to one of God's living creatures, that company must answer to the Jewish community, and ultimately, to God."¹⁸²

In response to the uproar created by the P.E.T.A. video, the U.S. Department of Agriculture has told federal meat inspectors that they should immediately shut down any slaughterhouse where they observe acts of cruelty similar to those found on the videotape.¹⁸³ The U.S.D.A.'s Food Safety Inspection Service sent a detailed advisory to federal meat inspectors on December 22, 2004. While the advisory does not mention

¹⁷⁹ McNeil, *supra*.

¹⁸⁰ *Id.*

¹⁸¹ *Id.*

¹⁸² *Id.*

¹⁸³ Cooperman, *supra*.

either P.E.T.A.'s videotape or the Postville plant by name, it describes what inspectors should do in a scenario that corresponds closely to the situation shown on the tape.

“You are the Public Health Veterinarian assigned to monitor a kosher slaughterhouse... Today the establishment is ritually slaughtering cattle. Seconds after the shochet, a rabbi trained as a kosher butcher, cuts a steer's throat, a plant employee steps forward to make a second cut and pull out the steer's trachea, or breathing tube, and its esophagus, or gullet.

“The trachea and esophagus are dangling from the neck of the animal. . . . You are concerned as to whether the animal is sensible during this process... But before you can call the District [supervisor] or adequately examine the animal . . . the steer begins to right itself, and then stands, and starts to stumble around in the bleeding area, flopping its head on adjacent equipment.’

“In such a situation, the document says, the federal inspector should immediately notify the slaughterhouse that it has a “conscious” animal “at a point in the process where it should be unconscious.” After waiting to verify that the animal has been put out of its misery, it says, the inspector should place a “U.S. Reject” tag on the device that restrains the cattle during slaughter and “inform the plant that the slaughter operation is suspended.

“You take these actions because the plant personnel performed a dressing procedure on a conscious animal, and because they failed to react appropriately to address a suffering, conscious animal. In addition, you inform establishment management that they will be receiving an NR [Non-compliance Record] for this egregious violation.”¹⁸⁴

While the U.S.D.A. has not taken direct action against the plant, or shehitah, it is clear that the issue of the humaneness of the shehitah method is still a topic of controversy today.

Conclusion

Shehitah has been practiced by Jews throughout the world for thousands of years. The complex and detailed methods required by Jewish law have been passed on through

¹⁸⁴ *Id.*

many generations, and will continue to be passed on and practiced in Jewish communities for many more generations.

While this practice continues to thrive in religious communities, it also continues to be threatened by various groups who oppose shehitah on many grounds. While some groups vehemently fight ritual slaughter for noble causes, such as the protection of animals from inhumane treatment, others merely use this cause as a means to perpetuate anti-Semitism.

The effects of the opposition to shehitah have greatly varied over the last hundred years. Different historical settings, taking into account both time and place, have had great influence over the laws regarding shehitah in countries throughout the world. While some countries have had outright prohibitions against shehitah, most have had more subtle, indirect limitations. Some countries have gone to the opposite lengths to ensure the right of religious slaughter, protecting the freedom of religion.

The laws around the world are constantly changing with regard to the practice of shehitah. It is unfortunate that despite the aligned interests of shehitah and humane slaughter legislation, the two have been at odds in the past. Perhaps one day, with new technological developments, it will be possible to develop a technique that will adequately reconcile humane practice requirements with the laws of shehitah. After all, the intent of shehitah is to protect animals from unnecessary suffering.