

# HUMANE SLAUGHTER LAWS

JEFF WELTY\*

## I

### INTRODUCTION

Much recent scholarship has focused on the conditions under which farm animals are raised.<sup>1</sup> This article examines not how such animals are kept, but how they are killed and how such killing is regulated by law. Animal slaughter is a significant issue, in part because of the numbers involved: in the United States, over nine billion chickens are killed each year for food, along with more than a hundred million pigs, and tens of millions of cattle.<sup>2</sup> According to the Food and Agriculture Organization of the United Nations, the global figures for 2005 were 48 billion chickens, 1.3 billion pigs, and 301 million cattle.<sup>3</sup>

Still, it is not because of the numbers alone that the slaughtering process is important. The potential for animals to suffer stress, pain, and fear during slaughter is unusually high. It is a critical stage in the life cycle of a farm animal and therefore calls for the highest levels of care and compassion.

This article has three purposes. First, it provides an introduction to the slaughter process and to its regulation, principally in the United States, but with occasional discussion of international practices and laws. Second, it collects a considerable amount of data and legal authority regarding animal slaughter in a single location and so may be a platform for further scholarship. And third, it contains specific suggestions for reforms that will help the United States move closer to a system of humane slaughter for farm animals.

---

Copyright © 2007 by Jeff Welty

This article is also available at <http://law.duke.edu/journals/lcp>.

\* Special Editor; Mr. Welty is a Lecturing Fellow at Duke Law School, where he founded and directs the Animal Law Clinic.

1. See, e.g., Robyn Mallon, *The Deplorable Standard of Living Faced by Farmed Animals in America's Meat Industry and How to Improve Conditions by Eliminating the Corporate Farm*, 9 MICH. ST. J. MED. & L. 389 (2005); David J. Wolfson & Mariann Sullivan, *Foxes in the Hen House: Animals, Agribusiness, and the Law: A Modern American Fable*, in ANIMAL RIGHTS: CURRENT DEBATES AND NEW DIRECTIONS 205 (Cass R. Sunstein & Martha C. Nussbaum eds., 2004); Nicole Fox, Note and Comment, *The Inadequate Protection of Animals Against Cruel Animal Husbandry Practices Under United States Law*, 17 WHITTIER L. REV. 145 (1995); Amy Mosel, Comment, *What about Wilbur? Proposing a Federal Statute to Provide Minimum Humane Living Conditions for Farm Animals Raised for Food Production*, 27 DAYTON L. REV. 133 (2001); Jimena Uralde, Comment, *Congress' Failure to Enact Animal Welfare Legislation for the Rearing of Farm Animals: What Is Truly at Stake?*, 9 U. MIAMI BUS. L. REV. 193 (2001).

2. See Food & Agric. Org. of the U.N. Statistical Databases, <http://faostat.fao.org/site/569/default.aspx> (last visited Nov. 15, 2006).

3. See *id.*

## II

## PRINCIPAL METHODS OF COMMERCIAL SLAUGHTER

In order to understand the laws that govern the slaughter of farm animals, one must understand the process that is being regulated. Therefore, what follows is a brief description of the principal methods of slaughter for four different types of animals: cattle, pigs, sheep, and chickens. For each type of animal, the principal method or methods of slaughter used in commercial slaughtering facilities in the United States are described. To the extent that ritual methods of religious slaughter—such as the methods prescribed by the Jewish and Muslim faiths—differ from the methods used in secular slaughterhouses, that variation is briefly noted. To the extent that the principal method or methods are different elsewhere in the world, those differences, too, are set forth.

## A. Cattle

Cattle generally arrive at slaughtering plants by truck, though they may be driven on foot if the feedlot from which they are coming is immediately adjacent to the plant where they are to be killed. In any event, they are driven or unloaded into a pen; if they cannot be killed immediately, they are “lairaged,” or kept penned awaiting slaughter. When the time comes for them to be killed, they are driven through chutes to a stunning (“knocking”) station. They normally arrive at the stunning station single file in a narrow chute.<sup>4</sup>

As discussed in greater detail below,<sup>5</sup> federal law requires that cattle—except those subjected to religious slaughter—be stunned before they are slaughtered. The most common method of stunning cattle is captive-bolt stunning: The slaughterer takes a hand-held device, powered by blank gunpowder cartridges or by compressed air, and places it against the forehead of the animal. He then activates the device (pulls the trigger), and the resulting explosion drives a metal bolt through the animal’s skull and into its brain. If done properly, this stuns the animal instantly and normally causes brain death. The bolt is “captive” in that the trailing end of the bolt cannot exit the barrel of the stunner; this is what differentiates it from a bullet shot from a conventional firearm. Done correctly, captive-bolt stunning is an instant and humane method of stunning. It is certainly an improvement over its predecessor, stunning cattle by hitting them with a sledge hammer or poleax.<sup>6</sup>

---

4. For general descriptions of the slaughter process, which varies slightly from slaughterhouse to slaughterhouse, see ERIC SCHLOSSER, *FAST FOOD NATION* 171–72 (2002); DONALD D. STULL & MICHAEL J. BROADWAY, *SLAUGHTERHOUSE BLUES: THE MEAT AND POULTRY INDUSTRY IN NORTH AMERICA* 68 (2004); and Michael Pollan, *Power Steer*, N.Y. TIMES MAGAZINE, Mar. 31, 2002, at 44, 71–72.

5. See *infra* Part III.

6. The sledge hammer was the generally accepted stunning method prior to the passage of the federal Humane Methods of Slaughter Act (HMSA), 7 U.S.C. §§ 1901–07 (2000). It was discussed extensively at the legislative hearings leading to the adoption of the HMSA. One witness testified that “[i]nspectors . . . have frequently seen knockers take 10 and more blows to stun an animal. The hammer

Some captive-bolt stunners are designed not to penetrate the skull. These are called mushroom-head stunners or non-penetrating captive-bolt guns,<sup>7</sup> and they are meant to knock the animal unconscious by concussive force without killing it. These devices require a higher degree of accuracy than penetrating captive-bolt stunners, and they carry a higher risk of the animal's regaining consciousness during the slaughter process.<sup>8</sup>

A few cattle are stunned using electricity.<sup>9</sup> An electric shock is administered to the animal's head, hopefully rendering it unconscious. Sometimes this is followed by the administration of a larger current to the animal's body, killing it by cardiac arrest.

Once the animal has been stunned, a worker attaches a metal shackle to the animal's left hind leg, and the animal is lifted off the floor. Another slaughterhouse worker cuts its throat ("sticks" it), severing its carotid arteries. The animal then "bleeds out," or exsanguinates. Once exsanguination is complete, it is butchered.<sup>10</sup>

Ritual slaughter is somewhat different.<sup>11</sup> Jewish dietary law requires that cattle and other animals be slaughtered in a particular way, called *shechita*. The animal must be healthy before slaughter, and it must be killed by a trained Jewish male, called a *shochet*, using a single cut of a sharp knife, called a *chalef*. The cut must sever the carotid arteries; in practice, animal anatomy dictates that the cut sever the esophagus and trachea as well. Of course, such a cut is also a part of secular commercial slaughter. The critical difference is that animals slaughtered according to Jewish law cannot be stunned before slaughter; pre-stunning is seen as inconsistent with the requirement that the animal be healthy before killing.<sup>12</sup> Therefore, historically, cows were shackled by a rear leg and

---

often knocks off a horn or smashes an eye or the nose before the knocker beats the animal into immobility. And the fact that the animal is 'immobilized' by no means guarantees that the animal is unconscious of further pain." *Proposals Relating to Humane Methods of Slaughter of Livestock: Hearings on S. 1213, S. 1497, and H. R. 8308 Before the S. Comm. on Agriculture and Forestry*, 85th Cong. 30 (1958) [hereinafter *S. Hearings*] (statement of Fred Myers, executive dir., Humane Soc'y of the United States).

7. The use of both penetrating and non-penetrating captive-bolt guns is expressly authorized by the federal regulations governing the slaughter process. See 9 C.F.R. § 313.15(b)(1)(i) (2006).

8. See Temple Grandin, Recommended Captive Bolt Stunning Techniques for Cattle, <http://www.grandin.com/humane/cap.bolt.tips.html> (last visited Nov. 15, 2006) ("If a non-penetrating captive bolt is used the animal may revive unless it is bled promptly.").

9. Again, this is expressly authorized. See 9 C.F.R. § 313.30 (2006).

10. See generally sources cited *supra* note 4.

11. For an overview of ritual slaughter, see Temple Grandin & Joe Regenstein, *Religious Slaughter and Animal Welfare: A Discussion for Meat Scientists*, MEAT FOCUS INT'L, March 1994, at 115, available at <http://www.grandin.com/ritual/kosher.slaughter.html>.

12. In recent years, some Jewish authorities have permitted stunning the animal after the cut but before the animal exsanguinates. Detailed information is available for the United Kingdom, where approximately half of the cows slaughtered for the production of kosher meat are stunned after the cut. See MEAT HYGIENE SERVICE, ANIMAL WELFARE REVIEW 2003, 13 (2004), <http://www.defra.gov.uk/animalh/welfare/farmed/slaughter/awr03.pdf>. No similar data are available for the United States, though animal welfare during religious slaughter is generally lower in the United States than elsewhere. See Joe Regenstein, *Religious Slaughter Practices*, Address at the AMI

hoisted into the air while fully conscious as a method of immobilizing them and exposing their necks for the cut. At best, this was frightening and painful for the animals, and it often resulted in broken legs or dislocated joints. Although this method is still in use in some slaughterhouses, other methods are now more common, including pens that roll the cows over onto their backs before the cut, and, better, upright restraints that allow cows to stand with their heads and necks immobilized.<sup>13</sup> Welfare concerns with Jewish ritual slaughter include the pain of the cut itself and the fact that some cows remain conscious for up to a minute after the cut,<sup>14</sup> in obvious distress as they bleed to death.

Muslim dietary law requires a similar method of slaughter, though some Muslim authorities accept pre-slaughter stunning that is temporary, such as electrical stunning.<sup>15</sup>

In other developed countries, the same methods of slaughter are used as in the United States. However, in developing countries there may be no pre-slaughter stunning, or it may be manual stunning using a sledge hammer or poleax.<sup>16</sup>

## B. Pigs

Two methods of slaughter are commonly used with pigs in the United States. The older method, decreasingly common, involves driving the pigs onto a conveyor belt that moves them through a tunnel or chamber filled with carbon dioxide. The carbon dioxide is supposed to anesthetize the animals before they are “stuck”; in some plants, it is intended to kill them by asphyxiation.

Although carbon-dioxide stunning was seen as a very humane method when it was introduced, recent studies suggest that at least some pigs experience respiratory distress—a feeling of suffocation—when exposed to the gas.<sup>17</sup> It

---

Foundation Animal Care and Handling Conference (Feb. 19, 2003), *available at* <http://www.meatami.com/Content/PressCenter/AnimalCarePresentations/Regenstein.pdf>.

13. The United States is behind other developed countries in eliminating the shackling and hoisting of conscious animals. *See* Regenstein, *supra* note 12.

14. *See, e.g.*, Temple Grandin, *Animal Welfare in Slaughter Plants*, <http://www.grandin.com/welfare/general.session.html> (last visited Feb. 19, 2007).

15. *See id.* Again, detailed information is available for the United Kingdom where 100% of cattle (and a majority of sheep, but a minority of goats) killed for *halal* meat are stunned, generally pre-cut. *See* MEAT HYGIENE SERVICE, *supra* note 12, at 13.

16. According to one report, over half of the animals killed in the developing world are not stunned prior to slaughter. *See* Neil Trent et al., *The State of Meat Production in Developing Countries: 2002*, in *THE STATE OF THE ANIMALS II 2003* 175, 175 (Andrew N. Rowan & Deborah J. Salem eds., 2003). The report further states, “In a typical developing country, few slaughter facilities have any government oversight of sanitation or veterinary care. Animals may be stunned by repeated hammer blows to the head. They may be stabbed with sharp knives until they collapse. While the animals are still conscious, their throats are cut, and they die from excessive blood loss after minutes of struggling.” *Id.* Plainly, enormous welfare gains can be made at little cost in developing countries.

17. *See, e.g.*, FARM ANIMAL WELFARE COUNCIL, *REPORT ON THE WELFARE OF FARMED ANIMALS AT SLAUGHTER OR KILLING, PART 1: RED MEAT ANIMALS 29* (2003), *available at* <http://www.fawc.org.uk/reports/pb8347.pdf> (noting varying degrees of breathlessness, hyperventilation, vocalization, and escape behaviors among pigs exposed to carbon dioxide).

appears that the use of argon rather than carbon dioxide would be superior from a welfare standpoint, though it is more expensive.<sup>18</sup>

Increasingly, pigs are slaughtered by the second method, which uses electrical current.<sup>19</sup> The current is applied using tongs or paddles on each side of the pig's head or neck. The current runs through the brain, which is supposed to stun the animal. In some cases, the electrical current is applied to one side of the head and to the body. This technique is intended to stun the animal and to cause death via cardiac arrest. After the stun is complete, the animal is "stuck" and then slaughtered.<sup>20</sup>

Some welfare concerns have been raised about electrical stunning. First, it may be painful; certainly human beings exposed to electric shock therapy find that to be painful. Second, if the tongs are not correctly placed or do not have proper contact with the skin, the stun may not be effective.<sup>21</sup> Third, if the voltage used is too low, it will not produce insensibility.<sup>22</sup> And fourth, if there is a delay of more than fifteen seconds or so between the stun and the stick, the animals may begin to regain consciousness just in time to suffer from the stick.<sup>23</sup> Studies indicate that such delays are not infrequent.<sup>24</sup>

Captive-bolt stunning of pigs is authorized under federal law<sup>25</sup> but is rarely used; physical differences between pigs and other animals make it a more-difficult and less-effective method for stunning pigs. The target area is smaller, and the brain is deeper in the head and may be protected by a ridge of bone.

---

18. *See id.* The FAWC report states, "Argon, in high concentrations, has been shown to cause anoxia with no noticeable aversive effect." *Id.* However, in part because pigs must be exposed to argon for a comparatively long time (about seven minutes) to achieve complete anesthesia, large producers have so far declined to use it. *See id.*

19. A recent audit of twenty-eight large pork plants found that twenty-four plants used electrical stunning while only four plants used carbon dioxide. *See* Temple Grandin, 2005 Restaurant Animal Welfare Audits of Federally Inspected Beef and Pork Slaughter Plants, <http://grandin.com/survey/2005.restaurant.audits.html> (last visited Nov. 15, 2006).

20. *See, e.g.,* Temple Grandin, Electric Stunning of Pigs and Sheep, <http://grandin.com/humane/elec.stun.html> (last visited Nov. 15, 2006).

21. *See* FARM ANIMAL WELFARE COUNCIL, *supra* note 17, at 30 (noting that "a successful stun is heavily dependent on the skill of the operator to position the electrodes accurately" and that surveys of slaughterhouses show improper tong positioning to be a serious problem).

22. *See* Grandin, *supra* note 20 ("Insufficient amperage or a current path that fails to go through the brain will be painful for the animal. It will feel a large electric shock or heart attack symptoms, even though it may be paralyzed and unable to move.")

23. *See* Temple Grandin, *Cardiac Arrest Stunning of Livestock and Poultry*, in *ADVANCES IN ANIMAL WELFARE SCIENCE* (1985-86) (M.W. Fox & L.D. Mickley eds., 2003), available at <http://www.grandin.com/humane/cardiac.arrest.html> ("In sheep and pigs, bleeding should take place within 10 to 17 seconds after conventional stunning to insure that the animals do not return to sensibility.")

24. *See id.* ("Too long an interval between conventional electric stunning and bleeding is, unfortunately, a common occurrence in some slaughter plants."). *See also* Rebecca Smith, Vegetarians International Voice for Animals, *Sentenced to Death, Part Six: Pig Slaughter*, <http://www.viva.org.uk/campaigns/slaughter/std6.htm> (last visited Nov. 15, 2006) (discussing objections to electrical stunning and summarizing evidence that a significant number of pigs stunned this way regain consciousness before slaughter).

25. *See* 9 C.F.R. § 313.15 (2006).

Ritual slaughter of pigs is not a significant concern for Jews or Muslims, for both avoid pork.

Internationally, the same methods are used, though slaughterhouses in developing nations rarely have the resources to use gas stunning.<sup>26</sup>

### C. Sheep

Most sheep are killed like most pigs—after an electrical “stun” administered to the head. Carbon-dioxide stunning and captive-bolt stunning are also permitted by law,<sup>27</sup> though they are less common. The welfare concerns are similar to those with pigs.

Unlike pigs, however, sheep are regularly subject to ritual slaughter. Ritual slaughter of sheep, whether according to Jewish or Muslim tradition, involves the severance of the trachea, esophagus, carotid arteries, and jugular veins with a single incision, leading to exsanguination and death. In the United States, sheep are normally not stunned prior to the incision and remain conscious for between two and fifteen seconds thereafter.<sup>28</sup> They may be held in place by hand or with one of a variety of pens and devices used for that purpose.

In other developed countries, the leading methods of slaughter are similar to those used in the United States. In the developing world, slaughter methods vary widely, and many animals are killed without stunning.<sup>29</sup>

### D. Chickens

The slaughter process for poultry is quite different from the process for livestock.<sup>30</sup> Normally, chickens are taken from the barns in which they are raised, placed in cages, and transported by truck to the plant at which they will be slaughtered. Upon arrival, they are manually removed from the cages and hung upside down by their legs from metal shackles. The shackles are part of an automated “line,” with chicken following closely upon chicken in single file.<sup>31</sup>

---

26. Gas stunning requires “sophisticated technical equipment [that] is relatively costly to install.” FOOD & AGRIC. ORG. OF THE U.N., GUIDELINES FOR HUMANE HANDLING, TRANSPORT AND SLAUGHTER OF LIVESTOCK 68 (2001), available at <ftp://ftp.fao.org/docrep/fao/003/x6909e/x6909e03.pdf> (the entire document can be found at <http://www.fao.org/docrep/003/X6909E/x6909e00.HTM>).

27. See 9 C.F.R. §§ 313.5–15 (2006).

28. See Grandin & Regenstein, *supra* note 11. Recent data for the United Kingdom indicates that lambs slaughtered for kosher meat are never stunned in that country, whereas a substantial majority of lambs slaughtered for halal meat are stunned. See MEAT HYGIENE SERVICE, *supra* note 12, at 13.

29. See Trent et al., *supra* note 16, at 175.

30. General descriptions of the poultry slaughter process can be found in several sources, such as Daniel L. Fletcher, *Slaughter Technology*, 78 POULTRY SCI. 277, 277 (1999); Julie K. Northcutt, Reference Guide for Solving Poultry Processing Problems, <http://pubs.caes.uga.edu/caespubs/pubcd/b1156-w.html> (last visited Nov. 15, 2006); and DAVIS, *infra* note 31.

31. This process is used to slaughter so-called broiler chickens, produced for their meat. Laying hens at the end of their productive lives—called “spent hens”—have no value as meat. They may be buried alive en masse, gassed using automobile exhaust, electrocuted using mobile devices of uncertain accuracy, or killed by a variety of other methods. See, e.g., KAREN DAVIS, UNITED POULTRY CONCERNS, THE NEED FOR LEGISLATION AND ELIMINATION OF ELECTRICAL IMMOBILIZATION 3–4, <http://www.upc-online.org/slaughter/slaughter3web.pdf> (last visited Nov. 15, 2006).

Depending on the speed with which the line is moving, the chickens may hang upside down for several minutes before arriving at the first station. That station consists of a shallow trough filled with salty water. The water is electrified, and the birds' heads are dragged through the trough. The shock immobilizes the birds, but is designed not to kill them; they will not "bleed out" as completely if they enter cardiac arrest at this point. The paralysis of the birds prevents them from struggling as they move down the line, and the paralysis of their feather follicles makes it easier to remove the feathers. Some scientists believe that most birds are rendered insensible (stunned) by the shock, while others believe that they remain conscious. Even assuming that the current stuns most birds, some will twist and avoid the water and therefore will not be stunned.<sup>32</sup> This is especially true of smaller birds. Others, whose wings are hanging down past their heads, may eventually be stunned, but will receive a painful electric shock first as their wings make the initial contact with the water.

After the birds come out of the water, their necks are cut. Increasingly, this is done by machine, though it is sometimes done by a human cutter. The goal is to sever both carotid arteries, which causes relatively rapid death by exsanguination. How frequently this goal is achieved is a disputed issue, though given the differences in size, shape, body composition, and feather coverage among chickens, it is certainly less than 100 percent. Birds that were not immobilized by the electrified water will remain mobile and are especially likely to be cut improperly or missed altogether.

Next, the birds hang in the "bleed-out tunnel" where most die from blood loss. If, however, both of a bird's carotids were not cut, it may not exsanguinate rapidly enough and may recover mobility (and consciousness, assuming that consciousness was lost as a result of the electrical bath) while in the bleed-out tunnel. Some birds will have twisted away from both the electrical bath and the cutting machine and will remain fully conscious throughout the process.

The line then carries the birds into the scald tank, which is a tank of hot water designed to facilitate the removal of feathers. Birds that avoided the cutting machine or that have not yet died from exsanguination are dropped in alive and conscious. United States Department of Agriculture (USDA) records from a recent year show there were at least three million of the former, called

---

32. Anecdotal reports suggest that as many as five percent of all chickens processed avoid being stunned. See Karen Davis, United Poultry Concerns, *Chicken: The Dangerous Transformation of America's Favorite Food* by Steve Striffler, Yale University Press, 2005, (book review), <http://www.upc-online.org/whatsnew/10406chickenreview.html> (last visited Nov. 15, 2006) (discussing a worker's report that five percent of all chickens remain alive and moving despite having passed through the stunner and the neck cutting machine). However, two recent audits of poultry plants suggest that the number is smaller, perhaps one percent or two percent. See Temple Grandin, *2005 Poultry Welfare Audits: National Chicken Council Animal Welfare Audit for Poultry has a Scoring System that is Too Lax and Allows Slaughter Plants with Abusive Practices to Pass*, <http://grandin.com/survey/2005.poultry.audits.html> (last visited Nov. 15, 2006) (discussing audits by the National Chicken Council and by an unidentified major institutional chicken customer).

“red skins” because they are full of blood.<sup>33</sup> After the scald tank, the birds are cooled, then processed into saleable form.

Ritual slaughter of chickens is normally done before they are shackled. They are manually positioned for the throat cut; once the cut has been performed, they are shackled and hung from the line.<sup>34</sup>

Poultry slaughter in most developed nations is done just as it is in the United States. However, a few European slaughterhouses have moved to so-called controlled atmosphere stunning (CAS) or controlled atmosphere killing (CAK). In this process, birds are stunned or killed through anoxia (lack of oxygen), which is produced by placing the birds in a gas chamber filled with carbon dioxide, argon, and/or nitrogen. It appears that, as with pigs, the use of argon is superior to the use of carbon dioxide from an animal-welfare standpoint, as it generates fewer aversive reactions from the birds and appears not to be associated with a feeling of suffocation.<sup>35</sup> Many animal-welfare groups believe that, when properly done, CAS or CAK represents the most humane method of slaughter.<sup>36</sup>

### III

#### HISTORY AND ANALYSIS OF SLAUGHTER REGULATIONS IN THE UNITED STATES

The overwhelming majority of animals killed for food in the United States are killed in federally inspected slaughterhouses, whose practices are governed by federal law. State law is important in a few special cases. Both federal and state law are discussed below.

#### A. Federal Law

##### 1. The Humane Methods of Slaughter Act

Any analysis of federal law regarding humane slaughter must start with the Humane Methods of Slaughter Act (HMSA).<sup>37</sup> It is a law of limited scope: it

---

33. See DAVIS, *supra* note 31 (referring to USDA figures obtained through the Freedom of Information Act). Interestingly, a recent audit of twenty-six poultry plants found no such “red skins.” See Grandin, *supra* note 32 (“None of the 26 plants had a serious abuse such as uncut red birds.”). Perhaps this is not surprising, given that even 3 million “red skins” represents only 1 out of every 3,000 chickens killed. Depending on how long the audits lasted, it is entirely possible that the auditors would have seen few, if any, “red skins.”

34. See, e.g., Judy Oppenheimer, *A ‘Cutthroat’ Business: Walking the Line of Halachah at Empire Kosher Poultry*, BALT. JEWISH TIMES, June 2, 1995, at 44 (describing process).

35. See, e.g., Fletcher, *supra* note 30, at 279 (“In a series of research papers from the U.K., [scientists] have shown that gas killing birds in their transport cages had both animal welfare and carcass quality benefits.”).

36. See, e.g., THE HUMANE SOC’Y OF THE UNITED STATES, AN HSUS REPORT: THE ECONOMIC CONSEQUENCES OF ADOPTING ALTERNATIVE PRODUCTION PRACTICES TO ELECTRICAL STUNNING SLAUGHTER OF POULTRY, available at [http://www.hsus.org/web-files/PDF/farm/econ\\_elecstun.pdf](http://www.hsus.org/web-files/PDF/farm/econ_elecstun.pdf) (last visited Nov. 15, 2006) (arguing that CAK is superior economically as well as with respect to animal welfare).

37. 7 U.S.C. §§ 1901–07 (2000).

covers only “livestock,” which excludes, for example, animals killed for their fur<sup>38</sup> and animals killed in scientific experiments.<sup>39</sup> It is also generally interpreted as excluding poultry, an issue that is discussed in greater detail below.<sup>40</sup>

The HMSA provides as follows:

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.<sup>41</sup>

In theory, the HMSA is enforced in two ways. First, the federal meat inspectors who are charged with enforcing it may suspend inspection if they find violations of the Act.<sup>42</sup> Because uninspected meat cannot be sold, this has the effect of stopping the slaughter line. Second, the Federal Meat Inspection Act (FMIA) provides for a criminal penalty of up to one year in prison and a \$1,000 fine.<sup>43</sup> However, there are no reported cases arising from prosecutions for inhumane slaughter, and the limited statistics that are available suggest that such prosecutions are infrequent at best.<sup>44</sup> Thus, in practice, the enforcement

---

38. Many of these animals die excruciating deaths in leghold traps (if trapped in the wild) or by asphyxiation or mouth-to-anus electrocution (if raised on fur farms). The Humane Society of the United States estimates that fifty million animals are killed for their fur each year worldwide. The Humane Society of the United States, *Fur and Trapping*, [http://www.hsus.org/wildlife/fur\\_and\\_trapping](http://www.hsus.org/wildlife/fur_and_trapping) (last visited Nov. 15, 2006). United States government data indicate that, in 2004, over 2.5 million mink were killed for their fur. See NATIONAL AGRICULTURE STATISTICS SERVICE, U.S. DEP'T. OF AGRIC., MINK 1 (2005), available at <http://usda.mannlib.cornell.edu/usda/current/Mink/Mink-07-15-2005.pdf>. As to trapping, in Wisconsin alone, nearly 600,000 animals were trapped during the 2003–04 trapping season. See BRIAN DHUEY & JOHN OLSON, FUR TRAPPER SURVEY 2003–04, 5, available at <http://prodwbin99.dnr.state.wi.us/org/land/wildlife/harvest/Reports/04furtrapsurv.pdf> (study conducted by Wis. Dep't of Natural Res.).

39. USDA data reveal that 1.1 million animals covered by the federal Animal Welfare Act (AWA), 7 U.S.C. § 2131–59 (2000), were used in experiments in 2004. See U.S. DEP'T OF AGRIC., FY2004 AWA INSPECTIONS 3 (2004), available at <http://www.aphis.usda.gov/ac/awreports/awreport2004.pdf>. Because the AWA excludes rats and mice, which constitute ninety-nine percent of the animals used in experiments, the USDA figure dramatically understates the total. Still, if 100 million animals are killed each year in biomedical research, that is only about one percent of the number of animals killed each year for food.

40. See *infra* Part IV.C.

41. 7 U.S.C. § 1902 (2000).

42. See 21 U.S.C. § 603(b) (2000).

43. See 21 U.S.C. § 676 (2000).

44. The Federal Justice Statistics Resource Center (FJSRC) provides data on how many federal criminal prosecutions are brought under each federal criminal statute each year. See generally Federal Justice Resource Center, [http://fjsrc.urban.org/analysis/t\\_sec/stat.cfm](http://fjsrc.urban.org/analysis/t_sec/stat.cfm) (last visited Nov. 15, 2006). The FJSRC reports between zero and six prosecutions for humane slaughter violations in each of the most

mechanism for the HMSA is the suspension of meat inspection, which can be problematic for reasons explained below.<sup>45</sup>

The legislative history of the HMSA is interesting, and also explains the choice of this enforcement mechanism. The HMSA was enacted in 1958, after a three-year campaign by animal-advocacy groups. Senator Hubert Humphrey (D-MN) worked tirelessly on the issue, beginning with his introduction of the first humane-slaughter bill in 1955.<sup>46</sup> It did not pass, but the Senate considered humane slaughter again in 1956,<sup>47</sup> and Senator Humphrey had a subcommittee of the agriculture committee conduct hearings on the issue.<sup>48</sup> The Senate passed a bill that year that would have required a governmental study of slaughtering techniques, but it was sent to the House late in the session, and the House took no action on it.<sup>49</sup> The issue was still alive in 1957; the House held subcommittee hearings,<sup>50</sup> but again, no legislation passed. After the hearings, however, members of the House subcommittee visited several slaughterhouses. Representative W.R. “Bob” Poage (D-TX) later commented on these visits and recounted, “I have personally used these captive bolt pistols. I personally have slaughtered with them, and other members of the committee did.”<sup>51</sup>

Events came to a head in 1958. Legislators in both houses of Congress were faced with multiple humane-slaughter bills,<sup>52</sup> including some, backed by the meat industry, that called for a study instead of mandatory rules.<sup>53</sup> Even among animal advocates, there was some disagreement about the proper scope of the bill, that is, whether it should include poultry, and about how strong the bill should be, that is, whether it should include criminal penalties.<sup>54</sup>

---

recent five years for which data are available. If the FJSRC’s data are accurate, and there have indeed been a few prosecutions, it is remarkable that they have drawn no media coverage.

45. See *infra* Part IV.B.

46. See 85 CONG. REC. S15381 (1958) (statement of Sen. Humphrey) (“[S]omewhat more than 3 years ago I introduced in the Senate the first humane slaughtering bill. I understand that it was the first ever presented to Congress.”). See also *S. Hearings, supra* note 6, at 17 (statement of Sen. Neuberger) (“Senator Humphrey [] first introduced such a bill in 1955.”).

47. See 85 CONG. REC. S15412–13 (1958) (reprinting the text of the 1956 bill).

48. See 85 CONG. REC. S15378 (1958) (statement of Sen. Humphrey) (referring to “the testimony which was taken before our subcommittee in sessions on May 9 and 10, 1956”).

49. See *S. Hearings, supra* note 6, at 10 (statement of Sen. Humphrey); see also *id.* at 274–75, 318 (statements of Sen. Ellender).

50. See 85 CONG. REC. H1654 (1958) (statement of Rep. Poage) (referring to committee hearings the previous year).

51. *S. Hearings, supra* note 6, at 268; see also *id.* at 29 (statement of Fred Myers, executive dir., Humane Soc’y of the United States). Apparently the slaughterhouse visits took place en route to the 1956 Democratic Convention in Chicago. One animal advocate stated that “[t]his trip did more than any other single thing to bring about passage of [the HMSA].” *Humane Methods of Slaughter Act of 1977: Hearing on H.R. 1464 Before the Subcomm. on Livestock and Grains of the H. Comm. on Agric., 95th Cong. 8 (2d Sess. 1978)* [hereinafter *H. Hearings*] (statement of Christine Stevens, Sec’y, Soc’y for Animal Protective Legislation).

52. See *infra* note 179 and accompanying text.

53. See *S. Hearings, supra* note 6, at 1–3 (1958) (reprinting two of the bills).

54. See *id.* at 10 (statement of Sen. Humphrey) (stating that the bill “is already a compromise”); *id.* at 321 (statement of Christine Stevens, President, Animal Welfare Inst.) (noting that the bill originally

By February, the House had acted. It passed a bill that was limited to livestock, established humane slaughtering as “the public policy of the United States,” and required the federal government to purchase meat only from processors that used humane methods. There were no other penalties. During the floor debate on the bill, the House added an amendment protecting ritual slaughter and rejected an attempt to amend the bill into a study bill.<sup>55</sup>

The meat industry, opposed to what it saw as an intrusive, mandatory bill, sought to have the Senate pass a bill requiring a governmental study of the issue, instead.<sup>56</sup> The Senate agriculture committee held extensive hearings.<sup>57</sup> The “mandatory” bill was also opposed by the USDA, which was concerned about how to enforce the bill and about the bill’s effect on certain governmental price-support programs. and by the Department of the Army, which was concerned about its ability to purchase meat both domestically and abroad.<sup>58</sup> Many Orthodox Jewish groups, concerned that any regulation of slaughter practices would eventually be used to target ritual slaughter, likewise opposed the bill.<sup>59</sup> Finally, the American Meat Institute argued that there was no perfectly humane method of slaughter and that governmental regulation thereof would be too costly, especially for smaller slaughterhouses.<sup>60</sup> The agriculture committee was divided, with a majority recommending the passage of a study bill, but a vocal minority—including Senator Humphrey—insistent that the stronger bill pass.<sup>61</sup>

The result was a lengthy and heated debate on the Senate floor in late July.<sup>62</sup> In keeping with the recommendation of the majority of the agriculture committee, the opponents of the bill asked that it be amended into a study bill.<sup>63</sup> Proponents of the original bill insisted that the issue had been debated and

---

included poultry but later was stripped of that provision); *id.* at 265 (statement of Rep. Poage) (noting that the bill originally included criminal penalties but that these were later removed).

55. See 85 CONG. REC. H1672 (1958) (rejecting study amendment; Rep. Hiestand argued that “the effect of the amendment is to kill the bill”); 85 CONG. REC. H1674 (Feb. 4, 1958) (passing bill).

56. The study bill was S. 1213. See *S. Hearings*, *supra* note 6, at 1–2 (reprinting bill).

57. See generally *S. Hearings*, *supra* note 6. The hearings spanned four days and resulted in 359 pages of testimony.

58. See *id.* at 229–44 (statement of E. L. Peterson, Assistant Sec’y of Agric.); *id.* at 246–49 (statement of Col. Alpheus Seely, Office of the Quartermaster Gen., Dep’t of the Army).

59. See, e.g., *id.* at 148–59 (statement of Rabbi Issac Lewin, Union of Orthodox Rabbis of the United States and Canada); *id.* at 159–64 (statement of Rabbi Pinchas Teitz, Union of Orthodox Rabbis of the United States and Canada); *id.* at 185–203 (statements of Moses Feuerstein, Rabbi Solomon Sharfman, and Samuel Brennglass, Rabbinical Council of Am.); see also *infra* notes 194 through 198 and accompanying text.

60. See generally *S. Hearings*, *supra* note 6, at 131–42 (statement of C. H. Esbaugh, consultant, Am. Meat Inst.); *id.* at 175 (statement of L. Blaine Lillingquist, vice president, W. States Meat Packers Ass’n, Inc.) (stating that slaughterhouses “are strongly opposed to the compulsory features of these bills”).

61. See 85 CONG. REC. S15377 (1958) (statement of Sen. Humphrey) (describing split committee vote).

62. See 85 CONG. REC. S15368–417 (1958).

63. See S. REP. NO. 1724 (1958), reprinted in 1958 U.S.C.C.A.N. 3932 (recommending study amendment); 85 CONG. REC. S15368–401 (1958) (debating the study amendment).

studied endlessly over the past three years and that it was time for action.<sup>64</sup> In the end, the proposed amendment was defeated by just three votes.<sup>65</sup> Two subsequent amendments, each intended to strengthen the protection for ritual slaughter, passed.<sup>66</sup> Then the bill itself passed easily.<sup>67</sup> It was sent back to the House, which agreed with the Senate's amendments, and it was signed into law by President Eisenhower on August 27, 1958.<sup>68</sup>

Twenty years later, humane slaughter again came before Congress. By this time, ninety percent of the nation's slaughterhouses were using methods deemed humane by the 1958 law.<sup>69</sup> These methods had proved cost-effective, and the meat industry as a whole no longer opposed legislation requiring their use.<sup>70</sup> Animal-advocacy groups wanted the final ten percent to use humane methods, but so long as those slaughterhouses did not sell meat to the federal government, they had no reason to do so.<sup>71</sup>

The 1978 amendment to the HMSA did not change the definition of humane methods, but it made the use of such methods mandatory for all federally-inspected slaughterhouses, that is, for all slaughterhouses engaged in interstate commerce.<sup>72</sup> The amendment also amended the FMIA to charge the USDA with enforcing the HMSA.<sup>73</sup> The USDA's Food Safety Inspection Service (FSIS) was already doing meat inspections in slaughterhouses, and the idea was that the meat inspectors would simply add humane-slaughter

---

64. See, e.g., 85 CONG. REC. S15381 (1958) (statement of Sen. Humphrey) ("Are we finally to take some action . . . or are we to wait and wait and wait? . . . We have been studying this proposed legislation for more than 3 years.").

65. See 85 CONG. REC. S15401 (1958) (rejecting the study amendment 43–40).

66. See generally 85 CONG. REC. S15402–16 (1958).

67. See 85 CONG. REC. S15416–17 (1958) (passing the bill 72–9).

68. See 85 CONG. REC. H19717 (1958). Some critics have suggested that the HMSA was insufficiently radical or was driven by a concern for worker safety or production efficiency rather than by a concern for animals. See generally GARY L. FRANCIONE, RAIN WITHOUT THUNDER: THE IDEOLOGY OF THE ANIMAL RIGHTS MOVEMENT 11, 95–102 (1996) (arguing, "At no point in the legislative process did anyone express concern that the use of animals as food might itself be morally objectionable" and noting evidence that implementing humane slaughtering techniques was cost-effective). At least as to the 1958 law, this claim is belied by the legislative history. Supporters of the bill time and again argued that it was critical to animal welfare. Admittedly, they sometimes engaged in a bit of salesmanship, suggesting that the economic costs of humane slaughter would not be too large. But low compliance costs were never the proponents' main selling point. Indeed, the bill passed over the vigorous objection of industry, which claimed that compliance costs would be onerous, especially for small slaughterhouses. The critics' point is closer to the mark as to the 1978 amendment to the HMSA. As discussed below, the amendment was supported by industry, which had learned by that time that compliance costs were not as large as they had feared.

69. See *H. Hearing, supra* note 51, at 2 (statement of Rep. George Brown).

70. Indeed, a representative of the American Meat Institute, the largest industry group, testified in favor of the 1978 amendment. See *id.* at 5 (statement of Dewey Bond, vice president, Am. Meat Inst.).

71. Again, the 1958 law lacked any enforcement provisions beyond withholding federal purchases.

72. See 21 U.S.C. § 603(a) (2000). The 1978 legislation included what is now 21 U.S.C. § 610, which makes it unlawful to slaughter livestock "in any manner not in accordance with" the definitions of humane slaughter contained in the 1958 law.

73. See *id.* § 603(b) (requiring the USDA to conduct humane-slaughter inspections).

inspection to their existing duties.<sup>74</sup> The incorporation of the HMSA into the FMIA rendered the FMIA's criminal penalties applicable to violations of the HMSA.

Although the 1978 amendment technically applied only to federally inspected facilities, it effectively applied to state-inspected slaughterhouses as well. To understand why, some background is necessary. All slaughterhouses that process meat for interstate sale must be federally inspected. Historically, however, federal law included no inspection requirement for the usually smaller slaughterhouses that process meat only for intrastate sale. This changed in 1967, when Congress determined that meat safety was a national concern. Since that time, federal law has required that states inspect intrastate slaughterhouses in a way that is "at least equal" to federal inspection.<sup>75</sup> If a state fails to implement an inspection program that is equivalent to federal inspection, the federal government will take over the inspection process.<sup>76</sup> Thus, in 1978, when federal meat inspection began to encompass enforcement of the HMSA, state meat inspection did as well.<sup>77</sup>

The HMSA has not been altered since 1978. However, Congress focused on the subject of humane slaughter one more time just a few years ago.<sup>78</sup> It did so as a result of a newspaper exposé in the *Washington Post* entitled *They Die Piece by Piece*.<sup>79</sup> The story chronicled horrifying violations of the HMSA in Washington State and elsewhere, including cattle being butchered while still fully conscious. It reported that the USDA rarely took significant enforcement action, even at slaughterhouses where repeated violations of the HMSA had occurred.

The public outcry that followed led Congress to act. Although the legislative history is tangled, the outcome was simple: language was inserted into the Farm Security and Rural Investment Act of 2002 expressing the "sense of Congress" that the USDA should fully enforce the HMSA (which, of course, it was already supposed to be doing) and should track violations of the HMSA and "report the results and relevant trends annually to Congress."<sup>80</sup> Senator Robert Byrd (D-WV) made a wide-ranging statement in support of the language, condemning

---

74. See, e.g., *H. Hearing, supra* note 51, at 39 (statement of Humane Info. Serv., Inc.) ("[E]xisting personnel now continuously employed as meat inspectors in all of these plants would be utilized also for the inspection of slaughtering methods."); H.R. REP. NO. 95-1336, at 4 (1978), *reprinted in* 1978 U.S.C.C.A.N. 2650, 2652 (stating that inspections "would be carried out by existing personnel").

75. 21 U.S.C. § 661(a)(1).

76. See *id.* § 661(c)(1).

77. See generally U.S. DEP'T OF AGRIC., PROCEDURES FOR EVALUATING STATE MEAT AND POULTRY INSPECTION PROGRAMS 2-3 (2002), available at <http://www.fsis.usda.gov/OPPDE/nacmpi/Nov2002/Papers/StateMPIP.pdf> (discussing so-called cooperative state inspection programs); *id.* at 10 (noting specific requirement that state programs must monitor compliance with the HMSA).

78. It has also earmarked a limited amount of funds for enforcement of the HMSA on several recent occasions. See *infra* note 153 and accompanying text.

79. See Joby Warrick, *They Die Piece by Piece*, WASH. POST, Apr. 10, 2001, at A1.

80. Farm Security and Rural Investment Act of 2002, H.R. 2646, 107th Cong. § 10305(a)(1) (2002) (enacted). The resultant reports, and the findings contained within them, are discussed later in this article. See *infra* notes 155 through 159 and accompanying text.

factory farming generally and referring specifically to the *Post* series before concluding, “[T]hese are animals, yes. But they, too, feel pain. These agencies can do a better job, and with this provision they will know that the U.S. Congress expects them to do better.”<sup>81</sup>

## 2. Agency Interpretation

Congress has addressed humane slaughter three times in nearly fifty years. The USDA, meanwhile, is supposed to address it every day. One aspect of the USDA’s work is to promulgate regulations under the HMSA.<sup>82</sup> These regulations are intended to provide guidance to plant operators and to USDA inspectors. The regulations require that livestock pens, driveways, and ramps at slaughterhouses be in good repair and free of dangerous or unsafe conditions,<sup>83</sup> and that animals be moved with minimal “discomfort.”<sup>84</sup> They also specifically authorize and regulate four methods of stunning and slaughter: carbon dioxide (for sheep, calves, and swine);<sup>85</sup> captive bolt (for all livestock);<sup>86</sup> gunshot (for all livestock);<sup>87</sup> and electrical (for swine, sheep, calves, cattle, and goats).<sup>88</sup> Finally, the regulations require inspectors to inform slaughterhouse management of any HMSA violations, and if the violations are not promptly corrected, to halt slaughter operations until the necessary changes are made.<sup>89</sup>

The regulations are relatively sparse, covering about six pages in the official *Code of Federal Regulations*. By comparison, the overall number of pages devoted to the meat and poultry inspection program approaches 350.<sup>90</sup> Seventeen pages are devoted to post-mortem meat inspection alone.<sup>91</sup> Perhaps because they are short and lacking in detail, the humane-slaughter regulations are often highly subjective. For example, they require that animals be handled with “a minimum of excitement and discomfort,” using electric prods “as little as possible.”<sup>92</sup> Likewise, the regulations require that disabled livestock be held in a covered pen “sufficient, in the opinion of the inspector,” to protect them from the elements.<sup>93</sup> The post-mortem meat-inspection regulations provide a stark contrast: they contain detailed numerical tables specifying the maximum hourly kill rate as a function of the number of available meat inspectors and the layout of the slaughter line;<sup>94</sup> they provide detailed instructions on how to

---

81. 147 CONG. REC. S7311 (2001) (statement of Sen. Byrd).

82. *See generally* 9 C.F.R. §§ 313.1–.50 (2006).

83. *See id.* § 313.1.

84. *Id.* § 313.2(a), (b).

85. *Id.* § 313.5.

86. *Id.* § 313.15.

87. *Id.* § 313.16.

88. *Id.* § 313.30.

89. *See id.* § 313.50.

90. *See id.* §§ 300.1–381.500.

91. *See id.* §§ 310.1–.25.

92. *Id.* § 313.2(a), (b).

93. *Id.* § 313.1(c).

94. *See id.* § 310.1.

dispose of each of several inedible body parts;<sup>95</sup> and they provide quantitative standards for the evaluation of E. Coli and Salmonella test results.<sup>96</sup> The sparse and subjective nature of the humane-slaughter regulations risks uneven enforcement and makes it more likely that plant operators will pressure inspectors to interpret the regulations in a way that is favorable to the operators.

### 3. Judicial Interpretation

No courts have been called upon to interpret the HMSA.<sup>97</sup> The only decision of note involving the HMSA was an Establishment Clause challenge to the ritual-slaughter exemption; the exemption was upheld.<sup>98</sup>

## B. State Law

Although no state laws regarding humane slaughter were on the books in 1958,<sup>99</sup> when the federal HMSA was enacted, a dozen or so “state HMSAs” were passed in the following decade. Others have been enacted from time to time since then, so that today, a slight majority of states have their own humane-slaughter legislation.<sup>100</sup>

---

95. *See id.* §§ 310.14–.17 (discussing disposal of bruised tissue, thyroid glands, lungs, and mammary glands).

96. *See id.* § 310.25.

97. *But see infra* note 168 and accompanying text (describing pending case regarding interpretation of the HMSA).

98. *See Jones v. Butz*, 374 F. Supp. 1284 (S.D.N.Y. 1974). The constitutional issues surrounding ritual slaughter are discussed in Part IV.D of this article, *infra*.

99. *See S. Hearings, supra* note 6, at 305 (statement of Rutherford T. Phillips, executive director, Am. Humane Ass’n); *id.* at 320 (statement of Christine Stevens, president, Animal Welfare Inst.).

100. Alabama has no HMSA (although ALA. CODE § 2-15-110 (2006), which requires humane handling of livestock in livestock markets, arguably offers some protection); Alaska has no HMSA; ARIZ. REV. STAT. ANN. § 3-2016 (2005) (similar to federal HMSA); Arkansas has no HMSA; CAL. FOOD AND AGRIC. CODE §§ 19501–19503 (2006) (includes broilers, but not spent hens); COLO. REV. STAT. §§ 35-33-203 (2005) (regulations required to conform to USDA regulations under the federal HMSA); CONN. GEN. STAT. § 22-272a (2006) (similar to federal HMSA); Delaware has no HMSA; FLA. STAT. § 828.22 (2006) (similar to federal HMSA; covers ratites but not “poultry and aquatic species”); GA. CODE ANN. § 26-2-110.1 (2006) (similar to federal HMSA; covers ratites, “nontraditional livestock” and rabbits); HAW. REV. STAT. § 159-21 (2006) (similar to federal HMSA); Idaho has no HMSA (although it did until 2006, when it repealed former Idaho Code § 37-1903; it was similar to the federal HMSA); 510 ILL. COMP. STAT. § 75/0.01–8 (2006) (similar to federal HMSA); IND. CODE §§ 15-2.1-24-1 to -33 (2006) (applies to poultry as well as livestock); IOWA CODE § 189A.18 (2005) (similar to federal HMSA; applies to “bovine, porcine, or ovine animals or farm deer”); KAN. STAT. ANN. §§ 47-1401–05 (2006) (applies to traditional livestock and to “aquatic animals, domesticated deer, all creatures of the ratite family that are not indigenous to this state . . . and any other animal which can or may be used in and for the preparation of meat”); Kentucky has no HMSA; Louisiana has no HMSA; ME. REV. STAT. ANN. tit. 22, §§ 2521–27 (similar to federal HMSA); MD. CODE ANN., AGRIC. § 4-123.1 (2006) (similar to federal HMSA; explicitly excludes poultry); MASS. GEN. LAWS ch. 94, §§ 139C–D (2006) (similar to federal HMSA; explicitly excludes poultry); MICH. COMP. LAWS §§ 287.551–56 (2006) (similar to federal HMSA); MINN. STAT. §§ 31.59–.592 (2005) (similar to federal HMSA); MISS. CODE ANN. § 75-35-7 (2006) (similar to federal HMSA); Missouri has no HMSA; Montana has no HMSA; Nebraska has no HMSA; Nevada has no HMSA; N.H. REV. STAT. ANN. §§ 427:33–:37 (2006) (similar to federal HMSA but specifically includes many nontraditional livestock species, such as llamas, ostriches, yaks, elk, and reindeer); New Jersey has no HMSA; New Mexico has no HMSA; New York has no HMSA; N.C. GEN. STAT. § 106-549.17 (2006)

Many closely track the language of the federal law,<sup>101</sup> but these are largely redundant. As noted above, the FMIA requires that all slaughterhouses operating in interstate commerce be federally inspected, and one aspect of that inspection is humane-slaughter inspection.<sup>102</sup> Furthermore, slaughterhouses operating solely in intrastate commerce must be inspected, either federally or under a state inspection process that is “at least equal to” federal inspection in all regards, including with respect to humane slaughter.<sup>103</sup>

The only respect in which state HMSAs that track the federal law have practical significance concerns so-called custom slaughterhouses, which slaughter animals for the animals’ owners. These slaughterhouses never own the animal or the meat; rather, for a fee, they kill and slaughter the animals and return the meat to the owners. Custom slaughterhouses are specifically exempt from federal meat inspection.<sup>104</sup> Because the only enforcement mechanisms for the HMSA are in the FMIA, custom slaughterhouses are effectively exempt from the federal HMSA. However, some states’ HMSAs apply to custom slaughterhouses, either by the terms of the state HMSA itself or because the state requires the inspection or licensure of custom slaughterhouses and makes compliance with the HMSA a part of the inspection or licensure process.<sup>105</sup>

Not all state HMSAs closely track the federal law. Some include additional species. For example, Florida’s includes ratites, such as ostriches, rheas, and emus.<sup>106</sup> Kansas’s includes aquatic animals and domesticated deer.<sup>107</sup> Most important, a few states’ laws include poultry. California’s<sup>108</sup> and Indiana’s<sup>109</sup> laws

---

(similar to federal HMSA); North Dakota has no HMSA; OHIO REV. CODE ANN. §§ 945.01–.03 (2006) (similar to federal HMSA); OKLA. STAT. tit. 6, § 183 (2006) (similar to federal HMSA); OR. REV. STAT. § 603.065 (2005) (similar to federal HMSA); 3 PA. CONS. STAT. ANN. §§ 2361–62 (2006) (applies to “domestic animals,” apparently including poultry); R.I. GEN. LAWS §§ 4-17-1 to -7 (2006) (similar to federal HMSA); South Carolina has no HMSA; S.D. CODIFIED LAWS § 39-5-23.2 (2006) (similar to federal HMSA); Tennessee has no HMSA; Texas has no HMSA; UTAH CODE ANN. § 4-32-6 (2006) (similar to federal HMSA; applies only to individuals who hold “a farm custom slaughter permit”); VT. STAT. ANN. tit. 6, §§ 3131–34 (2006) (similar to federal HMSA); Virginia has no HMSA; WASH. REV. CODE §§ 16.50.100–170 (2006) (similar to federal HMSA); W. VA. CODE §§ 19-2E-1 to -7 (2006) (similar to federal HMSA); WIS. STAT. § 95.80 (2006) (similar to federal HMSA); Wyoming has no HMSA. I would like to thank Ritu Pancholy for her assistance in compiling this list. Also, a useful—but not complete—chart comparing state HMSAs is available at <http://www.animallaw.info/articles/ovusstatehumaneslaughtertable.htm> (last visited Nov. 15, 2006).

101. *See, e.g.*, 510 ILL. COMP. STAT. 75/2(6) (2006) (defining humane slaughter to include “(a) a method whereby the animal is rendered insensible to pain by gunshot or by mechanical, electrical, chemical or other means that is rapid and effective, before being shackled, hoisted, thrown, cast or cut; or (b) a method in accordance with ritual requirements of the Jewish faith or any other religious 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.”).

102. *See* 21 U.S.C. § 603 (2000).

103. *See supra* notes 75 through 77 (describing federal–state cooperative inspection).

104. *See* 21 U.S.C. § 623(a) (2000).

105. For example, in Oregon, custom slaughterhouses must be licensed, and all licensees must comply with the state’s HMSA. *See* OR. REV. STAT. § 603.010, .025, .045 (2005).

106. *See* FLA. STAT. § 828.23(5) (2006).

107. *See* KAN. STAT. ANN. § 47-1402(c) (2006).

108. CAL. FOOD AND AGRIC. CODE § 19501(a) (2006).

109. IND. CODE § 15-2.1-24-1(4) (2006).

explicitly do (although California's excludes spent laying hens<sup>110</sup>). Pennsylvania's refers to all "domestic animals."<sup>111</sup> In light of the statute's reference to "cows, poultry and sheep" in its ritual-slaughter exemption,<sup>112</sup> the term "domestic animals" apparently includes poultry. And several states' laws contain general language that at least arguably includes poultry. For example, Michigan's HMSA covers "cattle, calves, sheep, swine, horses, mules, goats *and any other animal which can or may be used in and for the preparation of meat or meat products.*"<sup>113</sup> Encouraging states with broadly worded statutes similar to Michigan's to enforce their HMSAs with respect to poultry would be a worthwhile endeavor.

State HMSAs also differ somewhat in how they define humane slaughter. Kansas specifically disapproves the use of a sledge hammer or poleax.<sup>114</sup> Florida allows for the use of "a penetrating captive bolt," but not for the non-penetrating kind.<sup>115</sup>

A final dimension of variability is the enforcement provisions of the state HMSAs. In some states, there are criminal penalties for violations, as in Washington, where a violation is a misdemeanor punishable by a fine, up to ninety days in jail, or both.<sup>116</sup> Some states provide no clear enforcement mechanism or impose a nominal civil penalty, as in Ohio.<sup>117</sup> Some provide for both civil and criminal penalties, as in Colorado, where a violation is a misdemeanor<sup>118</sup> and is also subject to a discretionary civil penalty of up to \$750 per day.<sup>119</sup>

To date, animal advocates have not made use of the state HMSAs. They could do otherwise. For example, given the increasing interest in private prosecution of animal-related crimes,<sup>120</sup> it is worth considering whether state HMSAs with criminal penalties might support such actions. Or, actions might be brought to compel states to enforce their HMSAs, to interpret them to include poultry, or to challenge bad regulations promulgated under them.

---

110. CAL. FOOD AND AGRIC. CODE § 19501.

111. 3 PA. CONS. STAT. ANN. § 2362(a)(1) (2006).

112. *Id.* § 2362(b).

113. MICH. COMP. LAWS § 287.551(d) (2006) (emphasis added). A number of other states have similar provisions. *See, e.g.*, R.I. GEN. LAWS § 4-17-2(3) (2006) (defining livestock to include any animal "which can or may be used in and for the preparation of meat or meat products"); KAN. STAT. ANN. § 47-1402(c) (same).

114. *See* KAN. STAT. ANN. § 47-1404 (2006).

115. *See* FLA. STAT. § 828.23(6)(a) (2006).

116. *See* WASH. REV. CODE § 16.50.170 (2006).

117. *See, e.g.*, OHIO REV. CODE § 945.99 (2006) (providing for maximum penalty of \$100 fine).

118. *See* COLO. REV. STAT. § 35-33-406 (2005).

119. *See* COLO. REV. STAT. § 35-33-405 (2005).

120. *See, e.g.*, Jennifer H. Rackstraw, Comment, *Reaching for Justice: An Analysis of Self-Help Prosecution for Animal Crimes*, 9 ANIMAL L. J. 243, 245-48 (2003).

## IV

## PROBLEMS AND SOLUTIONS

The state and federal laws described above represent significant progress toward minimizing needless suffering in the slaughter process. Yet such suffering remains commonplace, and much more can and should be done.

## A. Operator Error

Slaughterhouses can invest in the best design and the latest equipment, but if their employees are not properly trained, supervised, and focused on the task at hand, egregious cruelty may still result.<sup>121</sup> Given the nature of the work and the speed of the slaughter line at major slaughterhouses, some problems may be inevitable. However, one study found that acts of *deliberate* cruelty were commonplace at one third of American slaughterhouses.<sup>122</sup> And inadequate training and supervision has been identified as one of five leading causes of inhumane treatment during slaughter.<sup>123</sup>

An employment discrimination case, *Garza v. IBP, Inc.*,<sup>124</sup> provides a window into the world of the slaughterhouse. The plaintiff alleged that he had been fired from his job at a slaughterhouse because of his race, while the defendant contended that the plaintiff had been fired because he had treated animals inhumanely. The plaintiff responded that he was no more inhumane than other employees. After hearing considerable evidence, the court reviewed the slaughter process for cattle at the defendant's plant, including the plaintiff's role as a "knocker" who used a captive-bolt gun to stun cows.

The court noted that "misknocks," or misplaced shots, were "a common occurrence," given the high speed of the line.<sup>125</sup> It observed that one of the guns that the plaintiff used was ultimately removed from use—after two years—because "inadequate air pressure often necessitated multiple shots to stun the animal."<sup>126</sup> The court recounted a particular incident in which the plaintiff was observed using the gun to drive a cow backwards by shooting it in the face. The result was that "the animal's right eye was missing and . . . it had also been shot below the left eye."<sup>127</sup> This incident was the defendant's claimed basis for firing the plaintiff, but the defendant's own witnesses acknowledged that "all

---

121. See, e.g., Temple Grandin, *Commentary: Behavior of Slaughter Plant and Auction Employees Toward the Animals*, 1 ANTHROZOOS 205 (1998), <http://grandin.com/references/behavior.employees.html> ("Good facilities, however, do not guarantee good handling. The two worst incidents of deliberate animal cruelty witnessed occurred in slaughter plants that had new, well-designed facilities.")

122. See *id.*

123. See Temple Grandin, *Animal Welfare in Slaughter Plants* (1996) <http://www.grandin.com/welfare/general.session.html>.

124. 1987 U.S. Dist. LEXIS 12601 (D. Kan., Dec. 15, 1987).

125. *Id.* at \*3.

126. *Id.* at \*5.

127. *Id.* at \*10–11.

knockers occasionally use the guns to move the animals back,” and that “all knockers occasionally knock an animal in the eye.”<sup>128</sup>

Knockers had no monopoly on inhumane treatment at the plant. The court recounted other incidents, such as when a worker cut an ear off of a live animal and when a worker “intentionally and repeatedly dropped a chute gate on an animal, smashing its head.”<sup>129</sup>

Some of these incidents appear to have been a result of ignorance, while others were intentionally cruel. One common thread is that the slaughterhouse “did not provide any formal instruction to its employees or supervisory personnel regarding company or government regulations concerning the inhumane treatment of animals.”<sup>130</sup>

Although the plant described in *Garza* may or may not be representative of the slaughterhouse industry as a whole, it is indisputable that being a slaughterhouse worker in the United States is a low-wage,<sup>131</sup> low-status, high-turnover profession. Employers have little economic incentive to provide training to employees who, on average, leave after about a year on the job.<sup>132</sup> Nor is any training mandated by law, as there are no governmental licensing requirements for slaughterhouse work. Compounding these problems, many slaughterhouse workers come from Latin America,<sup>133</sup> where there are few animal-welfare laws and where animal welfare is not a major public concern.<sup>134</sup>

Mandatory training and licensure would help to address this issue. Countless professions—from doctors to contractors to security guards to veterinary technicians—are already subject to such regulations at the state or federal level. Further, the idea of licensing slaughterhouse workers has been put in practice internationally. The United Kingdom requires slaughterhouse workers who

---

128. *Id.* at \*11, \*14.

129. *Id.* at \*14.

130. *Id.* at \*6.

131. According to the Bureau of Labor Statistics, the average wage for slaughterhouse workers is approximately \$10 per hour. See U.S. DEP'T OF LABOR, BUREAU OF LABOR STATISTIC, MAY 2005 NATIONAL OCCUPATIONAL EMPLOYMENT AND WAGE ESTIMATES, [http://www.bls.gov/oes/current/oes\\_nat.htm](http://www.bls.gov/oes/current/oes_nat.htm) (last visited Nov. 15, 2006) (listing a mean hourly wage of \$10.33 for job category 51-3023, “slaughterers and meat packers”).

132. “Perhaps because of the job hazards and workforce demographics, labor turnover in meatpacking is quite high, and in some establishments can reach 100% in a year.” JAMES M. MACDONALD ET AL., U.S. DEP'T OF AGRIC. AGRICULTURAL ECONOMICS REPORT NO. 785, CONSOLIDATION IN U.S. MEATPACKING 15 (1999), available at <http://www.ers.usda.gov/publications/aer785/aer785.pdf>; see also GAIL A. EISNITZ, SLAUGHTERHOUSE 62 (1997) (reporting that “the worker turnover rate in high-speed plants approached 100% per year”); SCHLOSSER, *supra* note 4, at 160 (citing turnover rates between 80 and 100 percent annually).

133. See generally SCHLOSSER, *supra* note 4, at 161–62.

134. See, e.g., Neil Trent et al., *International Animal Law, with a Concentration of Latin America, Asia, and Africa*, in THE STATE OF THE ANIMALS III 2005 65, 65, 67–68 (Andrew N. Rowan & Deborah J. Salem eds., 2005) (noting that poorer countries generally have fewer animal-protection organizations; that Latin American countries generally have comparatively low levels of animal protection; and that several countries in the region “have no animal-welfare legislation and no current plans to develop any.”).

intend to restrain, stun, kill, slaughter, hoist, or shackle animals to be licensed.<sup>135</sup> The licensing procedure is not onerous, but does require a veterinarian to certify that the applicant has the necessary skill to slaughter animals in a humane fashion and that the applicant has an appropriate familiarity with the humane laws governing slaughter.<sup>136</sup> Further, the veterinarian or the ultimate licensing authority can refuse a license if the applicant has been convicted of a crime involving animal cruelty, and a license may be suspended or revoked if appropriate.<sup>137</sup> The system is imperfect, as it lacks specific training requirements and provides little guidance for veterinarians asked to certify applicants, but it is at least a starting point.<sup>138</sup> Something similar should be implemented here.

## B. Lack of Enforcement

Inadequate enforcement of the HMSA has been a problem since it was enacted. From 1958 to 1978, the only available enforcement mechanism was the denial of federal meat contracts to slaughterhouses that used inhumane methods. The USDA maintained a list of humane and inhumane slaughterhouses, but critics alleged that “[f]rom the USDA’s own records, it is impossible to determine which methods a slaughterhouse is using,” because the records were so inconsistent.<sup>139</sup> Worse, “federal purchasing agents rely solely on certification from vendors that the meat comes from humanely slaughtered animals. But there is no reliable way to determine what is actually occurring,” that is, no coordinated effort was made to verify the claims of the slaughterhouses.<sup>140</sup>

The 1978 amendment made humane slaughter mandatory and called for inspections-based enforcement. However, Congress was concerned about the expense of enforcement and did not want to create an additional layer of federal bureaucracy. As a result, although the 1978 amendment required that the USDA “cause to be made, by inspectors appointed for that purpose, an examination and inspection” of the methods of slaughter used in federally inspected slaughterhouses,<sup>141</sup> Congress made clear that humane-slaughter inspection would be undertaken by existing meat inspectors as an additional

---

135. See generally *The Welfare of Animals (Slaughter or Killing)*, 1995, S.I. 1958/731, sch. 1 (U.K.).

136. *Id.* ¶ 4.

137. *Id.* ¶ 8.

138. An even more modest proposal would be to require training and licensure of slaughterhouse managers. At least one expert believes that “[t]he most important factor determining whether a packing plant has good or bad animal welfare practices is the attitude of management personnel.” Temple Grandin & Gary C. Smith, *Animal Welfare and Humane Slaughter*, <http://grandin.com/references/humane.slaughter.html> (last visited Nov. 15, 2006).

139. *H. Hearing*, *supra* note 51, at 28 (statement of Robert F. Welborn, Vice-Chairman of the Board of Directors, Humane Soc’y of the United States).

140. *Id.*; see also *id.* at 37 (statement of Humane Info. Serv., Inc.) (noting that any slaughterhouse seeking federal contracts “must submit a statement that it is in compliance with the law. . . . But there is no convenient way for the purchasing agency to check up on that statement.”).

141. 21 U.S.C. § 603(b) (2000).

duty. No additional inspectors, much less dedicated humane-slaughter inspectors, were to be hired.<sup>142</sup>

This inspection system has not worked well. Meat inspectors work for the FSIS, the primary purpose of which is to ensure that meat sold to consumers is safe to eat. Most inspectors, therefore, work near the end of the slaughter line, inspecting the cleanliness and appearance of carcasses and processed meat.<sup>143</sup> One USDA inspector explained,

[T]he way the plants are physically laid out, meat inspection is way down the line. A lot of times, inspectors can't even see the slaughter area from their stations. It's virtually impossible for them to monitor the slaughter area when they're trying to detect diseases and abnormalities in carcasses that are whizzing by.<sup>144</sup>

Furthermore, meat inspection is increasingly technical. Inspectors are scientists, trained to conduct chemical and bacteriological tests prior to approving meat. Conducting humane-slaughter inspections is a very different type of work, for which meat inspectors receive little training.

Finally, the inspectors are overburdened. The FSIS has 10,000 employees, 7700 of whom work in slaughterhouses and import stations.<sup>145</sup> Yet there are 6200 such facilities with FSIS inspectors,<sup>146</sup> raising the possibility that there may not be enough inspectors to address both meat safety and humane slaughter, especially at larger plants. The FSIS is unable to say how many inspectors are devoted to humane slaughter issues or how much time is spent on enforcement.<sup>147</sup>

These concerns are amplified by a study prepared in January 2005 by the Congressional Research Service. It notes that, from time to time, "FSIS has had difficulty in sufficiently staffing its service obligations."<sup>148</sup> A number of factors have contributed to this, including increasing production speeds, tight federal budgets, and the difficulty in finding people willing to do a sometimes dangerous and always unpleasant job.<sup>149</sup> In short, adding enforcement of the

---

142. See, e.g., *H. Hearing, supra* note 51, at 39 (statement of Humane Info. Serv., Inc.) ("[E]xisting personnel now continuously employed as meat inspectors in all of these plants would be utilized also for the inspection of slaughtering methods."); H.R. REP. NO. 95-1336, at 4 (1978), *as reprinted in* 1978 U.S.C.C.A.N. 2650, 2652 (stating that inspections "would be carried out by existing personnel").

143. Inspectors are also required to conduct an ante-mortem inspection of each animal to ensure that it appears healthy. See 9 C.F.R. § 309.1-18 (2006). However, this ante-mortem inspection is not normally conducted at the point of stunning and slaughter, but rather, before.

144. EISNITZ, *supra* note 132, at 189 (*quoting* USDA meat inspector Dave Carney).

145. GEOFFREY S. BECKER, CRS ISSUE BRIEF FOR CONGRESS: MEAT AND POULTRY INSPECTION ISSUES, CRS-1 (2005), *available at* <http://ncseonline.org/NLE/CRSreports/05jan/IB10082.pdf>.

146. *Cf. id.*

147. See U.S. GEN. ACCOUNTING OFFICE, HUMANE METHODS OF SLAUGHTER ACT: USDA HAS ADDRESSED SOME PROBLEMS BUT STILL FACES ENFORCEMENT CHALLENGES (2004), *available at* <http://www.gao.gov/new.items/d04247.pdf> ("FSIS does not have adequate data on the number of inspectors responsible for enforcing the HMSA or the actual time they spend on humane handling and slaughter requirements.").

148. BECKER, *supra* note 145, at CRS-7.

149. *Id.* at CRS-6. According to one recent report, "Today, the USDA's Food Safety and Inspection Service is demoralized and understaffed. In 1978, before the first known outbreak of *E. coli* O157:H7, the USDA had 12,000 meat inspectors; now it has about 7,500. The federal inspectors I interviewed felt

HMSA to the list of duties to be performed by the FSIS was a recipe for ineffective enforcement.

As a result, non-compliance with the HMSA is widespread. A veterinarian who formerly worked as a USDA inspector told the *Washington Post* that the HMSA is violated “[i]n plants all over the United States . . . on a daily basis.”<sup>150</sup> At many plants there is an institutional culture of gratuitous cruelty.<sup>151</sup> Anecdotal stories of atrocities—such as workers beating animals to death with a pipe, or torturing them before slaughter—abound.<sup>152</sup>

To its credit, Congress has made some effort to address the enforcement problem. In 2001, it earmarked additional funds for enforcement of the HMSA leading the USDA to hire a veterinarian in each of its fifteen districts to oversee the enforcement of the HMSA. And in 2002, it passed a resolution urging full enforcement and requesting a report regarding enforcement. In 2003, it again appropriated additional funds—\$5 million—earmarked for enforcement of the HMSA.<sup>153</sup>

One upshot of the 2002 resolution was the preparation of a report published in January 2004 by the General Accounting Office (GAO).<sup>154</sup> The title, *Humane Methods of Slaughter Act: the USDA Has Addressed Some Problems but Still Faces Enforcement Challenges*, sums up the findings.<sup>155</sup> The report noted that FSIS inspectors had documented 675 HMSA violations in over 200 slaughterhouses in a period of about two years.<sup>156</sup> It also found that many violations went undocumented because inspectors were unsure of whether documenting a violation was required or appropriate.<sup>157</sup>

Even when violations were documented, enforcement was inconsistent. For example, sometimes the inspector stopped the slaughter line until the violation

---

under enormous pressure from their USDA superiors not to slow down the line speeds at slaughterhouses. ‘A lot of us are feeling beaten down,’ one inspector told me. Job openings at the service are going unfilled for months.” SCHLOSSER, *supra* note 4, at 215.

150. Warrick, *supra* note 79 (quoting Lester Friedlander).

151. See Grandin, *supra* note 122 and accompanying text.

152. See, e.g., EISNITZ, *supra* note 132, at 93–95 (recounting slaughterhouse worker’s admission that he beat a hog to death, cut off another hog’s nose and salted the wound, and other atrocities).

153. See Consolidated Appropriations Resolution, 2003, Pub. L. No. 108-7, 117 Stat. 11, 22 (reflecting appropriation for “enhanced inspection activities”). The conference report states that the money was to be used “to hire no fewer than 50 [full time equivalent employees] for enforcement of the Humane Methods of Slaughter Act (HMSA) through full-time ante-mortem inspection, particularly unloading, handling, stunning, and killing of animals at slaughter plants.” H.R. Rep. No. 108-10, at 576 (2003), *reprinted in* 2003 U.S.C.C.A.N. 4, 18.

154. The same conference report that instructed the USDA to hire additional enforcement personnel also instructed the GAO to prepare a report “on the scope and frequency of HMSA violations, and provide recommendations on the extent to which additional resources for inspection personnel, training, and other agency functions are needed to properly regulate slaughter facilities in the area of HMSA enforcement.” H.R. Rep. No. 108-10, at 576 (2003), *reprinted in* 2003 U.S.C.C.A.N. 4, 18–19.

155. See U.S. GEN. ACCOUNTING OFFICE, *supra* note 147.

156. See *id.* at 17–21 (noting 675 violations contained in 553 noncompliance records issued at 272 facilities).

157. See *id.* at 17.

was corrected, sometimes not.<sup>158</sup> FSIS officials attributed the inconsistency to “inspectors’ inexperience, lack of clarity regarding their authority, or the misperception that certain violations are minor.”<sup>159</sup> The FSIS has provided some additional guidance to inspectors since the GAO report was issued, but humane slaughter remains only one among many areas of responsibility for FSIS inspectors who cannot realistically be expected to become experts in everything.

Similar enforcement difficulties, with similar causes, exist in Europe. According to a 2002 European Commission report about the welfare of farm animals, including on-farm slaughter, most member states did not maintain “a sufficient level of monitoring and enforcement.”<sup>160</sup> Part of the problem was that inspectors whose principal responsibilities involved food safety and disease control were also charged with monitoring animal welfare: “Aspects of animal welfare were not always covered in any meaningful detail[,] as the inspector was frequently focused on the main objective . . . [such as] disease eradication.”<sup>161</sup>

Thus, experience in both the United States and Europe shows the difficulty of asking inspectors to serve two masters (food safety and animal welfare). Improving enforcement of the HMSA will therefore be difficult so long as enforcement responsibility remains with the FSIS. A further problem with asking the FSIS to enforce the HMSA is that the FSIS tries to work cooperatively with industry. FSIS inspectors may be reluctant to compromise their relationships with slaughterhouse management—for example, by stopping the slaughter line, thereby costing the plant money—in order to promote humane slaughter, an issue that is peripheral to their core purpose.<sup>162</sup>

It would be better to have a different agency responsible for humane slaughter. This could be a new, stand-alone agency, or it could be the Animal and Plant Health Inspection Service (APHIS)—also a branch of the USDA. APHIS is responsible for enforcing the Animal Welfare Act and so has institutional expertise in conducting inspections centered on animal treatment. Equally important, it has no other ties to the meat industry; APHIS inspectors would be less susceptible to pressure from plant management to downplay or ignore HMSA violations.

If the responsibility for enforcing the HMSA remains with the FSIS, the FSIS could decide—or Congress could require—that a minimum number of FSIS inspectors, dedicated exclusively to enforcing the HMSA, be assigned to each federally inspected plant. The minimum number should vary with the

---

158. *See id.* at 5.

159. *Id.*

160. EC Health & Consumer Prot. Directorate-General, Directorate F, Food and Veterinary Office, *Overview of Results of a Series of Missions to Evaluate Controls of Animal Welfare on Farms in Seven Member States Carried out Between June 2001 and June 2002*, at 5 (2002), available at [http://ec.europa.eu/food/fs/inspections/special\\_reports/sr\\_rep\\_9008-2002\\_en.pdf](http://ec.europa.eu/food/fs/inspections/special_reports/sr_rep_9008-2002_en.pdf).

161. *Id.*

162. *See, e.g.,* EISNITZ, *supra* note 132, at 207–12 (discussing the relationship between USDA employees and the management of the plants in which they work).

throughput of the plant as it does for post-mortem meat inspection.<sup>163</sup> Because these inspectors would be dedicated to enforcing the HMSA, they would be able to achieve a level of expertise and confidence that is currently lacking among FSIS inspectors.

Other solutions may be possible, but it is clear that current enforcement efforts do not go far enough. Congress originally sought to legislate humane slaughter at no cost by simply adding humane-slaughter enforcement to the duties of FSIS inspectors. There is no free lunch. To have humane slaughter, rather than merely a law purporting to require it, more must be done.

### C. Exclusion of Poultry from the HMSA

Perhaps the most serious problem with the HMSA is that it does not cover poultry—at least as presently interpreted by the USDA. This is a problem not only because poultry are the overwhelming majority of animals killed each year in the United States,<sup>164</sup> but also because slaughter practices in the poultry industry are of particular concern. The high-speed assembly-line process in place at modern poultry plants, involving hanging conscious birds upside-down by metal shackles and dragging their heads through a trough of electrified water before their throats are cut by a mechanical knife is, at best, a stressful process. At worst, birds suffer broken legs while being shackled or survive the process long enough to be plunged into the scald tank alive. Moreover, as with other slaughterhouses, there are reports of egregious, gratuitous cruelty at poultry plants.<sup>165</sup>

Some advocates believe that the HMSA can and should be read to cover poultry. Certainly, the text of the HMSA is ambiguous. It covers “cattle, calves, horses, mules, sheep, swine, and other livestock.”<sup>166</sup> The term “other livestock” is not further defined and could be read to include poultry.

However, the USDA has always taken the position that it does not. Furthermore, the FMIA authorizes inspection only of plants that process “cattle, sheep, swine, goats, horses, mules, or other equines.”<sup>167</sup> Therefore, the USDA contends, even if the HMSA did cover poultry, the enforcement mechanisms for the HMSA—all of which are contained in the FMIA—do not.

The Humane Society of the United States (HSUS) has recently filed suit challenging the USDA’s position and asking that the protections of the HMSA be extended to poultry.<sup>168</sup> Some dictionary definitions of “livestock” arguably include poultry and so may support the HSUS’s position. For example, one

---

163. See 9 C.F.R. § 310.1 (2006).

164. See Food & Agric. Org. of the U.N, *supra* note 2.

165. See, e.g., Donald G. McNeil, Jr., *KFC Supplier Accused of Animal Cruelty*, N.Y. TIMES, July 20, 2004, at C2 (describing slaughterhouse workers “jumping up and down on live chickens, drop-kicking them like footballs and slamming them into walls, apparently for fun.”).

166. 7 U.S.C. § 1902(a) (2000).

167. 21 U.S.C. § 603 (2000).

168. See *Levine v. Johanns*, No. 3:05-cv-4764 (N.D. Cal. filed Nov. 21, 2005).

definition is “[d]omestic animals, such as cattle or horses, raised for home use or for profit, especially on a farm.”<sup>169</sup> Since poultry are “domestic animals . . . raised . . . for profit,” they arguably come within the definition, despite their dissimilarity with the listed examples, cattle and horses. Another dictionary definition is “the horses, cattle, sheep, and other useful animals kept or raised on a farm or ranch.”<sup>170</sup> Again, poultry can be viewed as “other useful animals,” though they are not akin to horses, cattle, or sheep.

Once one moves past dictionary definitions into field-contextual definitions used in agriculture, however, the case for poultry being livestock weakens. For example, the American Livestock Breeds Conservancy identifies “the six traditional North American livestock species” as “asses, cattle, goats, horses, pigs, and sheep.”<sup>171</sup> It draws a distinction between such species and “the four traditional North American poultry species,” namely, “chickens, ducks, geese, and turkeys.”<sup>172</sup> Likewise, the Department of Animal Science at Oklahoma State University maintains an extensive listing of breeds of livestock; the types of livestock it catalogs are cattle, goats, horses, sheep, swine, and “other,” which includes bison and llamas.<sup>173</sup> The listing explicitly excludes poultry, which is the subject of a sister project at OSU.<sup>174</sup>

The legislative history speaks even more conclusively to the issue. The relevant history begins in 1955, when Senator Humphrey introduced the first humane-slaughter bill. The very title of the bill drew a distinction between livestock and poultry, though the bill covered both: it was “[a] bill to require the use of humane methods in the slaughter of livestock and poultry in interstate and foreign commerce.”<sup>175</sup> Senator Humphrey’s remarks introducing the bill likewise drew a distinction between poultry and livestock.<sup>176</sup>

In 1956, the Senate’s Committee on Agriculture and Forestry recommended that the bill be converted into a study bill. The full Senate accepted this recommendation and passed the amended bill.<sup>177</sup> Although the House never passed the bill, it is noteworthy that it, too, drew a distinction between livestock and poultry. Its title was changed to “A bill to establish an Advisory and Research Committee on Humane Slaughter of Livestock and Poultry,” and the

---

169. AMERICAN HERITAGE DICTIONARY 801 (4th ed. 2004).

170. THE RANDOM HOUSE COLLEGE DICTIONARY 784 (revised ed. 1980).

171. American Livestock Breeds Conservancy, Livestock Breeds, <http://www.albc-usa.org/cpl/wtchlist.html#livestock> (last visited Nov. 15, 2006).

172. American Livestock Breeds Conservancy, Poultry Breeds, <http://www.albc-usa.org/cpl/wtchlist.html#poultry> (last visited Nov. 15, 2006).

173. See Department of Animal Science, Oklahoma State University, Breeds of Livestock, <http://www.ansi.okstate.edu/breeds> (last visited Nov. 15, 2006).

174. See Department of Animal Science, Oklahoma State University, Poultry Breeds, <http://www.ansi.okstate.edu/poultry/> (last visited Nov. 15, 2006).

175. 101 CONG. REC. 4184 (1955).

176. See 101 CONG. REC. 4188 (1955) (statement of Sen. Humphrey). Interestingly, he sometimes expressed the distinction as being between “animals” and poultry. *Id.*

177. 102 CONG. REC. 13904 (1956).

text of the bill required the committee to study particular methods “in the case of livestock” and other methods “in the case of poultry.”<sup>178</sup>

1957 marked the beginning of a new Congress, and a profusion of humane slaughter bills was introduced, with most again drawing the distinction between livestock and poultry but covering both.<sup>179</sup> Senator Humphrey was one of the legislators who introduced such a bill.<sup>180</sup> However, the bill that would ultimately become the HMSA covered only livestock: it was “[a] bill to establish the use of humane methods of livestock as a policy of the United States.”<sup>181</sup> The House passed that bill, and Senator Humphrey, probably hoping to avoid a situation in which the two chambers passed different bills and were unable to reconcile the differences between them,<sup>182</sup> asked the Senate to pass identical legislation.<sup>183</sup>

With the profusion of humane slaughter bills before Congress, some legislators were understandably uncertain about the scope of the proposed law. There were therefore occasional references during the committee hearings to “livestock and poultry,”<sup>184</sup> and some witnesses expressed confusion about the scope of the bill.<sup>185</sup> Even during the floor debates on the bill, there was uncertainty.<sup>186</sup>

The confusion did not extend to those most closely connected with the bill, however. They recognized the significance of the absence of the word “poultry” from the title and text of the bill: It did not cover poultry. Christine Stevens, the President of the Animal Welfare Institute and a key supporter of the bill, explained to the Senate committee that the bill “in its original form included poultry,” but that it no longer did.<sup>187</sup> Representative Poage, the author of the House bill, told the House that “[t]his bill does not apply to chickens.”<sup>188</sup> And

---

178. *Id.*

179. *See, e.g.*, 103 CONG. REC. H66 (1957) (reflecting the introduction of H.R. 176, “[a] bill to require the use of humane methods in the slaughter of livestock and poultry”); 103 CONG. REC. H637 (1957) (H.R. 3029, similar); 103 CONG. REC. H3238 (1957) (H.R. 5671, similar); 103 CONG. REC. H3411 (1957) (H.R. 5820, “[a] bill to promote the development and use of improved methods for the humane handling, transporting, and slaughtering of livestock and poultry”).

180. *See* 103 CONG. REC. S3079 (1957) (reflecting the introduction of S. 1497, “[a] bill to require the use of humane methods in the slaughter of livestock and poultry in interstate or foreign commerce”).

181. 103 CONG. REC. H10042 (1957) (reflecting the introduction of H.R. 8308).

182. This concern was raised openly by others. *See* 104 CONG. REC. S15406 (1958) (statement of Sen. Anderson) (raising the possibility that “[i]f the bill goes to conference, it will be wrangled with until too late in the session for a conference report to be agreed upon by the conferees and then to be agreed to by both Houses.”).

183. *See S. Hearings, supra* note 6, at 1 (reflecting Sen. Humphrey’s decision to substitute the text of the House bill for the text of his own bill, S. 1497).

184. *See, e.g., id.* at 20 (statement of Sen. Neuberger).

185. *See, e.g., id.* at 39 (statement of E.L. Peterson, Assistant Sec’y of Agric.) (replying, when asked whether the bill covered poultry, “I am not sure of that point. I don’t believe it would.”).

186. *See* 104 CONG. REC. H1659 (statement of Rep. Hoffman) (arguing that chickens and turkeys may be “livestock” under the dictionary definition).

187. *See S. Hearings, supra* note 6, at 321.

188. 104 CONG. REC. H1655 (1958).

Senator Humphrey responded to a question about whether the bill included poultry by telling the Senate that the bill “[does] not go that far.”<sup>189</sup>

Even if there remained some doubt about whether the HMSA should be read to include poultry, Congress’s inaction in the face of the USDA’s consistent interpretation that poultry are not covered would probably resolve it. Thus, the fix for the exclusion of poultry is legislative rather than interpretive: Congress should pass legislation requiring poultry to be slaughtered in a humane manner. Such legislation exists in several states<sup>190</sup> and foreign countries,<sup>191</sup> and has been proposed a number of times before Congress. For example, in 1993, Rep. Andy Jacobs (D-IN) and thirty-two co-sponsors proposed H.R. 649, the Humane Methods of Poultry Slaughter Act of 1993. It echoed some of the language of the HMSA, requiring that poultry be “rendered insensible to pain by electrical, chemical, or other means that is rapid and effective before or immediately after being shackled or otherwise prepared for slaughter,” or that it be slaughtered ritually.<sup>192</sup> The bill proceeded to hearings before the House Subcommittee on Livestock, but failed to pass after the National Turkey Federation, the National Broiler Council, and the American Meat Institute opposed it.<sup>193</sup> But past defeats can be a springboard for future victories. Just as the HMSA passed only after repeated attempts, so must animal advocates persist in seeking legislative progress on humane slaughter for poultry.

#### D. The Ritual-Slaughter Exemption

Jewish groups adamantly opposed the enactment of the HMSA. Early versions of the bill required humane slaughter, including stunning, then exempted ritual slaughter from the requirement. Jewish groups argued that this “might be construed as a brand of evil on a practice which [Congress] condemned but [was] willing to tolerate.”<sup>194</sup> Therefore, the bill was amended to define ritual slaughter as humane; this scheme is reflected in 7 U.S.C. § 1902, which defines “[e]ither of the following two methods,” one of which is ritual slaughter, to be humane. As extra protection, an exemption was added to the end of the bill. That section provides that

[n]othing in this Act 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

---

189. 104 CONG. REC. S15376 (1958). He also described the bill as “a mild and modest beginning in the field of humane slaughter.” *Id.* However, Senator Humphrey was clearly conflicted about this issue. In the same colloquy, he suggested that the Department of Agriculture might have the authority to regulate turkey slaughter under the bill, a position that is impossible to reconcile with the apparently purposeful exclusion of poultry. *See id.*

190. *See supra* notes 108 to 113 and accompanying text.

191. *See, e.g.,* Gaverick J. Matheny & Cheryl Leahy, *Farm-Animal Welfare, Legislation, and Trade*, 70 LAW & CONTEMP. PROBS., 325, 341 tbl.2 (Winter 2007) (summarizing European laws on poultry slaughter).

192. Humane Methods of Poultry Slaughter Act of 1993, H.R. 649, 103d Cong. §2 (1993).

193. *See* 95 CIS H 16120 (1994) (listing witnesses for and against the bill).

194. 104 CONG. REC. H1654 (1958) (statement of Rep. Poage).

Act, in order to protect the freedom of religion, ritual slaughter and the handling or other preparation of livestock for ritual slaughter are exempted from the terms of this Act. For the purposes of this section, the term “ritual slaughter” means slaughter in accordance with [the definition set forth in 7 U.S.C. § 1902].<sup>195</sup>

Despite this belt-and-suspenders protection for ritual slaughter, many Jewish groups still objected to the HMSA. At the 1958 Senate committee hearings, nine different individuals, testifying on behalf of six (mostly Orthodox) Jewish organizations, opposed the HMSA, while no Jewish organizations sent anyone to testify in favor of the bill.<sup>196</sup> Generally, the Jewish organizations feared that humane concerns could be used to mask anti-Semitism and that any regulation of slaughter methods would open the door for the eventual prohibition of *shechita*. Coming in the aftermath of World War II and the Holocaust, this testimony was very powerful. For example, one rabbi testified,

When the Germans occupied Poland during the last war, the first thing which they proclaimed was to prohibit *shehitah*. I would like to quote their regulation:

In any territory under German rule, cruelty to animals of any kind is not permissible. Effective immediately, therefore, *shehitah*, the painful slaughtering of animals by means of the gradual draining of blood for the purposes of so called kosher meat consumption, is prohibited. This is to go into effect immediately. Any person guilty of *shehitah* is punishable by an imprisonment for not less than 1 year. . . . The prison sentence may be served in concentration camps.<sup>197</sup>

Members of the committee noted that the United States was a liberal democracy, not a totalitarian state. However, the Jewish organizations cited humane slaughter regulations in the United Kingdom as further evidence that such rules could, even if not so intended, be anti-Semitic:

Though the proposed legislation is not motivated by anti-Semitic sentiments, the effect of its passage will undoubtedly be a campaign waged by the confused and overzealous against Jewish ritual slaughter. Recent developments in England prove this point.

A law adopted by the British House of Commons on July 28, 1933, provided for electric stunning of all animals before slaughter, with the clear stipulation that—“no person shall be liable for any contravention of these provisions in respect of the slaughter of any animal slaughtered without the infliction of unnecessary suffering by the Jewish method for the food of Jews and by the Mohammedan method for the food of Mohammedans.” The British humane societies, once having achieved this humane slaughter bill, began a vehement campaign for the abolition of the clause on religious slaughter . . . such a motion was defeated by only a small majority.<sup>198</sup>

After hearing this testimony as well as the opposition of the meat industry and other groups, a narrow majority of the committee recommended scrapping the HMSA and replacing it with a bill requiring a two-year study of slaughter

---

195. 7 U.S.C. § 1906 (2000).

196. See generally *S. Hearings*, *supra* note 6.

197. *Id.* at 341 (statement of Rabbi Isaac Lewin, Union of Orthodox Rabbis of the United States and Canada).

198. *Id.* at 157 (statement of Rabbi Lewin).

methods. One perceived advantage of that course of action was that it would not implicate religious concerns. On the floor of the Senate, however, the study bill was rejected. Many senators were still concerned about whether Jews had been adequately accommodated, so two amendments of the HMSA were passed. These fine-tuned the religious protections contained in the bill and made clear that it was not merely the ritual slaughter itself that was protected (the use of the throat cut as a slaughter method), but also any handling of animals in connection with ritual slaughter.<sup>199</sup>

This was a controversial point. No specific method of pre-slaughter handling is required by Jewish (or Muslim) religious law. Therefore, in a narrow sense, exempting handling in connection with religious slaughter from the HMSA was not necessary to protect the free exercise of religion. Moreover, some slaughterhouses used extremely inhumane methods of preparation for religious slaughter, such as the shackling and hoisting of fully conscious animals to immobilize them and expose their throats for cutting.<sup>200</sup> Permitting such practices to continue entailed a significant compromise of animal welfare. Nonetheless, the Senate was worried that a failure to exempt handling in connection with slaughter would render the religious slaughter exemption meaningless.<sup>201</sup> In the end, free exercise concerns trumped animal-welfare concerns, and the handling exemption became law.

At least as a constitutional matter, the Supreme Court has now held that the Free Exercise Clause of the First Amendment does not prohibit the “application of a neutral, generally applicable law to religiously motivated action.”<sup>202</sup> Thus, the special status of ritual slaughter under the HMSA is not required.

However, even if it were desirable on animal-welfare grounds to remove the ritual-slaughter exemption from the HMSA, it would not be practical politically. Recent experience in the United Kingdom proves the point. The existing United Kingdom humane-slaughter law<sup>203</sup> exempts ritual slaughter from the general rules governing humane slaughter,<sup>204</sup> though it regulates ritual slaughter much more closely than it is regulated under United States law. For example, it requires the use of approved, upright restraining pens for cattle and prohibits moving an animal after the throat cut until it is unconscious.<sup>205</sup> In 2003, these rules were reviewed by the Farm Animal Welfare Council (FAWC), an advisory body created by the British government for the purpose of evaluating

---

199. *See generally* 85 CONG. REC. S15402-15 (1958).

200. These methods were described during the debate on the Senate floor. *See id.* at S15375 (statement of Sen. Young). Some are still used today. *See Grandin, supra* note 14.

201. Senator Javits, the sponsor of the handling amendment, argued that the handling exemption was necessary to make the religious slaughter exemption “complete” and to ensure that religious slaughter was permitted. *See id.* at S15402.

202. *Employment Div. v. Smith*, 494 U.S. 872, 881 (1990).

203. *The Welfare of Animals (Slaughter or Killing)*, 1995, S.I. 1958/731 (U.K.).

204. *See id.* pt. 4, reg. 22.

205. *See id.* sch. 12.

the adequacy of protections for the welfare of farm animals. FAWC observed that the level of restraint required to immobilize animals for the throat cut was higher than the level of restraint required to stun an animal prior to conventional slaughter and that the length of time for which the restraint had to be maintained was also longer.<sup>206</sup> Furthermore, while acknowledging that some experts believe that the throat cut is not painful or is minimally painful, FAWC concluded,

When a very large transverse incision is made across the neck a number of vital tissues are transected including: skin, muscle, trachea, oesophagus, carotid arteries, jugular veins, major nerve trunks (e.g. vagus and phrenic nerves) plus numerous minor nerves. Such a drastic cut will inevitably trigger a barrage of sensory information to the brain in a sensible (conscious) animal. We are persuaded that such a massive injury would result in very significant pain and distress in the period before insensibility supervenes.<sup>207</sup>

As a result, FAWC recommended that slaughter without pre-stunning—ritual slaughter—be prohibited.<sup>208</sup> The recommendation created enormous controversy, with Jewish and Muslim groups disputing FAWC's factual conclusions and claiming that the recommendation was discriminatory and violated their human rights.<sup>209</sup> In the end, the government did not accept the recommendation.<sup>210</sup> Given that Jews and Muslims together represent only 2.76% of the population in the UK, as opposed to 3.47% in the United States,<sup>211</sup> any attempt to ban ritual slaughter here is likely to meet the same fate.

Nor is it likely that litigation will result in removal of the ritual-slaughter exemption. In *Jones v. Butz*,<sup>212</sup> several animal activists and animal advocacy organizations challenged the ritual-slaughter exemptions on constitutional grounds. Their most plausible argument was that allowing ritual slaughter without pre-stunning was not humane and that exempting ritual slaughter from the HMSA therefore favored a religious practice over non-religious practice in violation of the Establishment Clause of the First Amendment.<sup>213</sup> Based on the congressional hearings conducted prior to the enactment of the HMSA, the court declared that ritual slaughter was humane.<sup>214</sup> More importantly, it held that even if it were not humane, Congress was permitted to create an exception to permit religious practice: “The accommodations of religious practices by

---

206. See FARM ANIMAL WELFARE COUNCIL, *supra* note 17, at 33–34.

207. *Id.* at 35.

208. See *id.* at 36.

209. See, e.g., Aisha Labi, *A Stunning Debate*, TIME EUROPE, June 23, 2004, at 52; Robin Oakley, *Meat Ban Call Unites Muslims, Jews*, CNN, June 13, 2003, <http://www.cnn.com/2003/WORLD/europe/06/13/britain.meat/index.html>.

210. See FAWC REPORT ON THE WELFARE OF FARMED ANIMALS, PART 1: RED MEAT ANIMALS, DEFRA RESPONSE TO RECOMMENDATIONS 17 (2003) (Response to Recommendation 201), available at <http://www.fawc.org.uk/reports/pb8347.pdf>.

211. See generally The Association of Religion Data Archives, <http://www.thearda.com> (last visited Nov. 15, 2006).

212. 374 F. Supp. 1284 (S.D.N.Y. 1974).

213. *Id.* at 1289–90.

214. *Id.* at 1291.

granting exemptions from statutory obligations have been upheld in the Sunday closing cases and in the conscientious objector cases.”<sup>215</sup> Although some scholars have questioned whether such accommodations truly are consistent with the Establishment Clause,<sup>216</sup> a long line of Supreme Court cases have held that they are.<sup>217</sup> An Establishment Clause challenge to the ritual-slaughter exemption is therefore unlikely to prevail.

A middle ground would be to amend the HMSA to eliminate the exemption for handling in connection with religious slaughter, while retaining the exemption for religious slaughter itself. For example, 7 U.S.C. § 1902(b) could be revised as follows:

(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~~, so long as all handling in connection with such slaughtering minimizes pain and distress, and conscious livestock are neither shackled nor hoisted.

A similar revision would need to be made to 7 U.S.C. § 1906. Once done, this would permit the Department of Agriculture to promulgate regulations under the HMSA governing handling in connection with ritual slaughter.

Such a revision would be difficult to oppose. It would not infringe on the religious activity itself and would dramatically improve animal welfare for some animals. At the same time, it would not be unduly burdensome. Most kosher and halal slaughterhouses in the United States have already abandoned the shackling and hoisting of conscious animals, in part to protect the safety of workers. Those that continue the practice are unlikely to resist change very strongly, just as those non-religious slaughterers who had not already adopted humane methods prior to the 1978 revision of the HMSA did not resist that amendment.

## VI

### CONCLUSION

Much remains to be done to ensure that the billions of animals killed for food in the United States each year are slaughtered humanely. Yet there has been no federal legislative change in nearly thirty years, little recent regulatory

---

215. *Id.* at 1292.

216. *See, e.g.*, Erwin Chemerinsky, *The Parsonage Exemption Violates the Establishment Clause and Should Be Declared Unconstitutional*, 24 Whittier L. Rev. 707 (2003) (arguing that income tax exemption for ministers violates the Establishment Clause).

217. *See, e.g.*, Corp. of the Presiding Bishop of the Church of Jesus Christ of Latter-Day Saints v. Amos, 483 U.S. 327 (1987) (upholding exemption of religious organizations from federal law prohibiting discrimination in employment on the basis of religion); *Walz v. Tax Comm’r*, 397 U.S. 664 (1970) (upholding property tax exemption for religious organizations); *Zorach v. Clauson*, 343 U.S. 306 (1952) (upholding program that permitted public school students to miss class without penalty to participate in religious activities). *But see* *Texas Monthly, Inc. v. Bullock*, 489 U.S. 1 (1989) (plurality opinion) (striking down sales tax exemption that applied only to religious literature).

change, and virtually no litigation over the issue. It is time to expand the scope of the HMSA and strengthen its enforcement.