KOSHER

PRIVATE REGULATION IN THE AGE OF INDUSTRIAL FOOD

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Rivalry and Racketeering

The Failures of Kosher Meat Supervision, 1850–1940

ONE NIGHT in 1933, a delivery truck owned by Jacob Branfman & Son, one of New York City's leading kosher delicatessen manufacturers, pulled up outside of a meat-cutting establishment on Manhattan's Lower East Side. The ownership of the truck was concealed by a specially designed oilcloth flap on the side of the truck that covered the Branfman name and familiar company slogan—"The Name Deserves the Fame." A number of barrels containing nonkosher meat were loaded onto the truck, which then proceeded to the Branfman factory and retail store a short distance away, where it delivered its nonkosher cargo. During these events, an undercover investigative team, including officials from the New York City Department of Health and the U.S. Department of Agriculture, and two Orthodox rabbis, kept the truck under constant surveillance. Following delivery of the barrels, they raided the Branfman factory, where they found Ben Branfman, secretary and treasurer of the company, supervising the receipt of thirteen barrels of nonkosher beef briskets. The company and Branfman were subsequently convicted of fraud. According to one account, the rabbis in charge of kosher supervision at the company had been complicit for many years, and they attempted to cover up the problem even after the raid.[1]

Fraud was not the only source of illicit profits in the kosher meat business in the early twentieth century, nor was it the worst crime associated with the industry. In 1906, a group of New York City poultry distributors organized the Live Poultry Commission Merchants' Protective Association, which fixed wholesale prices for kosher poultry and forced poultry retailers to buy exclusively from the association. The association punished retailers who refused to cooperate by establishing competing stores that sold at lower prices. Thirteen association members were ultimately convicted of illegal price-fixing in 1911 based on the testimony of Bernard Baff, a poultry retailer. Baff's horse and chickens were subsequently poisoned, his summer cottage and one of his stores were bombed, and he was gunned down in 1914 in the Washington Market by unknown assailants, who fled in a getaway car. The Baff murder remained unsolved for several years, during which time suspicions focused on the poultry distributors. As it turned out, the murder was paid for by a group of one hundred poultry retailers who resented Baff's dominance in the retail poultry trade, which he achieved by dealing directly with poultry farmers, obtaining a fleet of trucks, and operating his own slaughtering operations—thereby cutting out middlemen and allowing him to charge lower prices than his competitors.[2]

These two notorious scandals are emblematic of the fraud and corruption that plagued the kosher meat industry in the United States, especially in New York City, from the mid-1800s to the mid-1900s. Slaughterhouse owners and butchers regularly sold nonkosher meat and poultry as kosher while supervising rabbis whom they employed turned a blind eye. Trade associations and unions engaged in illegal price-fixing schemes and extortion, enforcing their demands through intimidation, physical violence, and even murder. As early as 1887, a rabbi in New York City described the state of kosher supervision in the following terms: "So great is the scandal in this great city, that thousands of honest families who fear and tremble at the thought of straying into one tiny prohibition or sin never suspect that they are eating all kinds of unkosher meat."[3] More than fifty years later, a 1943 pamphlet calling for industry reform declared that "the kosher meat business is a gigantic fraud."[4]

During this period, Jewish communal organizations made repeated attempts to clean up the kosher meat industry, but their efforts were frustrated by rabbinic rivalry, lack of community support, and insufficient funding. Government investigations periodically documented the scope of the problem. For example, in 1925 the New York City Department of Markets estimated that 40 percent of the meat sold as kosher in the city was nonkosher. Community and industry association estimates ranged from 50 to 65 percent.[5] Yet government efforts at civil enforcement and criminal prosecutions addressed only a tiny fraction of the problem.

What distinguishes the history of kosher meat production in America is not the existence of these problems but the failure of traditional means to control them. Jewish communities throughout the world in antiquity, the Middle Ages, and the modern era developed regulations to prevent fraud and corruption in the kosher meat business. Local Jewish communal organizations enforced these regulations using a mix of moral suasion and punishment. Concern for one's reputation within a small community also motivated those in the kosher meat industry to run a clean business. Traditional means of regulating kosher slaughter relied on centralized communal authority and limited opportunities for those caught perpetrating fraud to leave one community and make a fresh start in another. These conditions were difficult to replicate in the liberal culture and free market of America. As several scholars have pointed out, efforts in the late nineteenth and early twentieth centuries to establish centralized communal control of the kosher meat industry "foundered on the American commitment to free enterprise and voluntarism."[6] Government intervention, although it addressed some of the most notorious cases, was inadequate, given the extent of fraud and corruption in the industry.

This chapter analyzes how traditional approaches and government intervention failed in regulating kosher meat production in America. In surveying the regulation of kosher meat production from ancient to modern times, the chapter aims to identify distinct regulatory strategies, describe their development over time, and explain why they were unsuccessful in America.

My account is schematic. For a more detailed history, readers should consult sources cited in the endnotes. My aim is to set the stage for the next chapter's account of the rise of a new institutional form of *kashrus* regulation shaped by America's free market liberalism—private kosher certification agencies.

A Brief Introduction to Kosher Meat Production

The kosher status of meat and poultry is a function of the species of animal, the method of slaughter, and postslaughter inspection and processing. The Torah allows Jews to consume only those terrestrial mammals that have cloven hooves and chew their cud, such as cattle, sheep, and goats. The Torah permits consumption of all fowl with the exception of twenty-four species that are specifically prohibited. Since the precise translation of the terms for prohibited fowl is unknown, subsequent rabbinic commentary has restricted the consumption of fowl to those that are, by tradition, considered kosher. Commonly consumed species of kosher fowl include chicken, turkey, duck, and goose.[7]

The Torah permits consumption of kosher meat and poultry only when an animal is properly slaughtered. The details of kosher slaughter—*shechitah* in Hebrew—were developed by rabbinic commentary and customary practice. *Shechitah* has three principle requirements. First, it must be performed by a qualified slaughterer—*shochet* (plural, *shochtim*)—who should be a pious Jew well versed in the laws of *shechitah* and possessing the skill to execute them. Second, *shechitah* must be performed with a special knife that has a long, razor-sharp blade free of any nicks or imperfections that might cause tearing in the flesh of the animal being slaughtered. This knife must be regularly inspected and sharpened to maintain a flawless cutting edge. Third, *shechitah* requires a smooth to-and-fro slicing motion with the knife across a clearly defined area on the throat of the animal. Any one of a number of proscribed mistakes in this motion—such as pressing the blade too firmly against the neck of the animal, halting during the stroke, or tearing rather than slicing—renders the animal nonkosher, or *treyf*.[8]

The Torah and rabbinic commentary prohibit consumption of any animal that has suffered from a mortal injury or illness even if properly slaughtered. After slaughter, a specially trained inspector (*bodek;* plural, *bodkim*) conducts an inspection *(bedikah)* of the carcass to check for any signs of a disqualifying illness. For cattle, this normally consists of inspection of the lungs for any lesions or perforations that indicate serious illness, which would render the animal *treyf*. The lungs are subject to inspection because they are the most commonly damaged organs. Serious illness often causes lung perforations and the subsequent formation of a mucous lesion or scab that covers the hole, allowing the lung to continue functioning. There is a presumption that this fix is only temporary and that the animal will eventually sicken and die. The presence of such a lesion or perforation therefore renders the animal *treyf*. The *shochet* is typically qualified to perform *bedikah,* which he does by first cutting open the slaughtered animal and inserting his hand into the carcass to feel the outside surface of the lungs. He then removes the lungs from the carcass for visual inspection. Poultry inspection involves inspection of the intestines for lesions, as well as checking for swelling at the juncture of the leg tendons, broken bones, discoloration, or unusual anatomy of internal organs.

The Torah prohibition against eating blood necessitates special processing of meat and poultry by butchers, also referred to as meat cutters.[9] This involves the removal or draining of large blood vessels and the extraction of blood from the flesh of the animal through a process of soaking and salting or, in some cases, broiling the meat. In the case of cattle, the Torah also prohibits consumption of the sciatic nerve and certain types of fat found around the internal organs. The removal of blood vessels and prohibited fats—a process called *nikur*—in the front half of the animal defines common kosher cuts of meat, such as brisket, shoulder, flank, and rib. Removal of the more numerous blood vessels, along with the sciatic nerve and prohibited fats, in the rear half of the animal is technically difficult and time consuming and requires extensive cutting of the meat. Where there is a ready market for nonkosher meat, the entire rear half of the animal is typically sold in the nonkosher market. The extraction of blood, known as *kashering*, must be performed within seventy-two hours of slaughter—before the blood becomes too congealed to extract. If *kashering* is not possible within this time limit, the meat may be washed or soaked to extend the period for another seventy-two hours, a process that can be repeated one additional time if necessary.

The extra effort involved in the production of kosher meat and poultry adds significantly to the cost of production and leads to higher prices.[10] Fraudulently marketing nonkosher meat as kosher allows a seller to avoid the extra cost while still receiving the premium paid for kosher products. Kosher fraud is an old problem with a long history. We turn next to the various regulatory strategies developed to address it.

Kosher Meat Regulation in the Ancient World

In discussions of kosher meat production, the Talmud frequently mentions the figure of the *tabach*—literally, "slaughterer" (plural, *tabachim*). The ancient *tabach* was slaughterer, butcher, and retail seller all in one. A conflict of interest was inherent in the *tabach*'s financial stake in the kosher status of the meat he both slaughtered and sold. The higher market value of kosher meat provided a powerful incentive for fraud, and errors in *shechitah*, defects discovered during *bedikah*, or shortcuts in *kashering* were easy to conceal as they were not perceptible in the appearance of the meat itself.[11]

In response to this situation, the ancient rabbis claimed the right to inspect the knife of any *tabach* to check for imperfections in the blade that might render animals slaughtered with it not kosher. The rabbis imposed severe punishments for refusal to allow inspection, including banning the offender from selling meat and excommunication. The rabbis also established qualifications for *tabachim*, who had to be observant Jews of sound mind, be well versed in the laws of *shechitah*, and have strong nerves. Those barred from the profession included gentiles, Jews who violated the Sabbath or ate *treyf* meat, minors, those with mental disability, and individuals prone to fainting during slaughter.

The rabbis vigorously prosecuted *tabachim* accused of selling *treyf* meat as kosher, and they banned from the trade those who were convicted.

The Babylonian Talmud relates the case of a fourth-century *tabach* suspected of fraudulently selling forbidden fat as kosher. The rabbinic sage Rav Pappa suggested that the appropriate punishment would be to forbid the offender from selling even water or salt.[12] Concern that *treyf* meat could be purposely or inadvertently substituted for kosher meat gave rise to a minority opinion in the Talmud that kosher meat must be continuously supervised from slaughter to consumption or, at least, designated clearly with a mark or seal. The majority view, however, was that meat sold by a Jew was presumptively kosher.

Special concerns about fraud arose in towns of mixed Jewish-gentile population. Provided that all slaughter in a town was conducted by *tabachim,* the rabbis permitted Jews to purchase kosher meat from both Jewish and gentile retail dealers. Sometimes the *tabachim* came into possession of nonkosher meat—for example, when postslaughter inspection revealed perforations in the lungs of an animal. All nonkosher meat was sold to gentile meat dealers, who then sold it to gentile customers. Concerned that gentile dealers might sell this nonkosher meat to Jews, the rabbis prohibited Jews from purchasing meat from gentile retail dealers on days that *treyf* meat was present in the local slaughterhouse. On such days, a public proclamation was issued declaring that *treyf* meat was present in the town and that Jews should not purchase meat from gentile dealers that day.

This brief survey of rabbinic responses to kosher fraud in the ancient world highlights six distinct regulatory techniques: (1) rabbinic supervision, (2) product labeling, (3) professional standards, (4) consumer alerts, (5) presumptions of trustworthiness based on a common religious commitment to *kashrus,* and (6) exclusion from the industry as a punishment for fraud. These ancient regulatory techniques are the foundation of kosher certification today.

The Institutionalization of Kosher Meat Regulation in the Medieval and Modern Eras

The regulatory techniques established in the ancient period were further developed and institutionalized in the medieval and modern eras. The central institution regulating kosher meat production in the medieval and modern eras was the community council—known by the Hebrew term for "community," *kehillah* (plural, *kehillot*). Civil authorities throughout the Diaspora granted Jewish communities autonomy, which was often characterized by full powers of internal legislation and governance, including civil and criminal jurisdiction as well as administration of standard municipal functions. The *kehillah*—whose members were elected or appointed—was responsible for collecting taxes to be paid to the state and for governing the internal affairs of the community. Members of the *kehillah* were often local lay leaders who deferred to the rulings of rabbinic authorities in matters concerning Jewish law. The *kehillah*'s enforcement powers included fines, corporal punishment, exclusion from the community, and, in some places, capital punishment. Appeal from *kehillah* decisions to external authorities was frequently only by permission of the *kehillah* itself. While there were significant variations across place and time, in its classical form, the *kehillah*'s legal authority within the community was comprehensive and exclusive: it covered the full range of internal administrative functions, and all the Jews of a particular locality fell under its jurisdiction. The *kehillah*'s powers were greatest between its origins in the eleventh century and the rise of the modern European state in the 1800s. With the extension of citizenship to Jews as individuals, many modern European states removed legal autonomy from the *kehillah*, leaving it to exercise mainly religious functions.[13]

In order to address persistent concerns about the conflict of interest in kosher meat production, medieval rabbinic authorities decreed that one who slaughters an animal may not have a financial interest in sale of the meat. *Kehillot* accordingly divided the job of *tabach* into two distinct professions—the *shochet*, who slaughtered and inspected animals, and the meat dealer, who sold meat. No person was permitted to serve as both *shochet* and meat dealer. To insulate the *shochet* from any pressure from the meat dealer to declare *treyf* meat kosher, the *shochet* was employed by the *kehillah*. The *shochet* thus became an appointed community official paid by the *kehillah*, and meat dealers who sought his services would make payment to the *kehillah*. Rabbinic authorities and *kehillot* in many communities required that *shochtim* receive the same compensation for slaughter regardless of whether an animal turned out to be *treyf* or kosher, and in some places the *shochet* received a fixed salary. Concern about the reliability of the *shochet*'s judgment led some *kehillot* to institute a requirement that cattle slaughter be conducted by two *shochtim* so that one *shochet* could check the other's knife and both together could inspect the lungs. Those failing to adhere to *kehillah* regulations risked having their meat declared *treyf* or, worse, being removed from office.[14]

As an appointed office, the job of *shochet* was formalized in a number of ways designed to strengthen the independence of *shochtim* and provide them added incentives to avoid mistakes and refrain from misconduct. *Kehillot* instituted fair and open selection procedures to secure appointment so that a *shochet* did not feel beholden to anyone for his position. *Shochtim* also enjoyed perpetual tenure in office in the absence of proven incompetence or misconduct. In addition, provisions were made for the maintenance of a *shochet* after retirement. Beyond pension benefits, the right of a duly appointed *shochet* to his office was, in many communities, treated as a form of property that could be transferred from one generation to the next. The restriction of *shechitah* exclusively to individuals appointed by the *kehillah* protected local *shochtim* from competition. These features of the office made it a guaranteed source of income and a valuable asset, and officeholders were eager to maintain high standards and a good reputation in order to avoid any risk of losing it.

Beginning in the Middle Ages, eligibility for appointment as a *shochet* required professional training and certification. This began with examination by a rabbi or an expert prior to granting a *shochet* permission to practice in a community. In some communities authorities instituted periodic examination of *shochtim* to ensure that they remained well versed in the laws of kosher slaughter. Eventually, there developed a more institutionalized apprenticeship process. Rabbinic authorities first inquired into each candidate's piety and moral character. Candidates then had to pass through three levels of apprenticeship and examination corresponding to the skill required for slaughtering fowl, small cattle, and large cattle. Upon successful completion of each level, candidates were awarded a license to practice the corresponding forms of kosher slaughter.

Kehillot also regulated meat dealers. The risk of fraud at the retail level was always present since Jewish butchers were regularly in possession of *treyf* meat—whole carcasses that were improperly slaughtered or that failed inspection, hinds destined for the nonkosher market, and meat that was left un*kashered* and unrinsed for more than seventy-two hours after slaughter—and the dealer could get a higher price for kosher meat than for *treyf*. *Kehillot* allowed only pious and trustworthy men to sell meat. In towns too small to support a Jewish butcher, gentile meat dealers would set up a special counter at which the *shochet* or some other Jew would sell kosher meat to Jewish customers.

With the rise of large cities, where not everyone knew the local butcher personally, communal authorities no longer relied on the personal trustworthiness of the butcher. In such communities, rabbinic authorities decreed that a kosher butcher could sell only kosher meat in his store and would have to sell nonkosher carcasses and hinds to non-Jewish butchers for retail sale elsewhere. Rabbinic authorities also instituted on-site rabbinic supervision of butcher shops by an appointed overseer—*mashgiach* (plural *mashgichim*). In the case of gentile-owned butcher shops that conducted both kosher and nonkosher trade, the rabbis appointed a constant overseer—*mashgiach temidi*—to oversee meat production from slaughter to retail sale. Eventually, a *mashgiach temidi* was required for Jewish-owned butcher shops as well. In addition, there developed the practice of marking kosher meat by affixing a lead tag stamped with the word "kosher" and the date of slaughter. This tag, know as a *plombe* (the Latin term for "lead"), was originally employed only for meat left unguarded or in the possession of a non-Jew but eventually was applied to all meat in larger communities. From this practice arose a new job, that of the *plombirer,* who affixed the seals to meat.

Much of the regulation discussed so far applied to beef and lamb. In the case of poultry, Jewish housewives purchased a live fowl at the market, brought it to the *shochet* for slaughter, and then took it home to inspect, eviscerate, and *kasher* in the kitchen. Questions about the kosher status of a fowl based on inspection were taken by the housewife directly to the local rabbi. By the nineteenth century, in response to consumer demand, butcher shops began to sell already *kashered* poultry, and *kehillot* extended the *plombe* requirement to poultry.[15]

The imposition of slaughtering fees paid to the *kehillah* was a major source of revenue used to pay *shochtim* and *mashgichim* and to support other community services, such as synagogues, rabbinic salaries, education, medical care, welfare, cemeteries, and administrative expenses. Meat taxes were also used to defray the collective tax burden owed to the civil government. In some communities, meat dealers paid the *kehillah* a fee and received a ticket that could be presented to a *shochet* in order to obtain his services. In other communities, fees were collected by *kehillah* officials at the slaughterhouse. The cost of these taxes was passed on to consumers in the retail price of meat. In order to prevent avoidance of the meat tax, *kehillot* banned importation of meat slaughtered outside the community. *Kehillot* also auctioned the right to collect meat taxes to tax farmers. The considerable money involved in the meat tax led, in some instances, to corruption. *Kehillot* misappropriated funds, tax farmers bribed local police officials to collect more than the legal rates, and civil governments took over administration of the tax and diverted funds that would otherwise have been used to support the community. While in most communities, meat taxes were essential to the financial viability of the *kehillah* system, abuses created resentment against *kehillah* officers and civil authorities.[16]

This brief survey of medieval and modern regulation of kosher meat production condenses roughly a thousand years of history and ignores local variation and changes over time. My aim has not been to provide a detailed historical account but rather a general overview of how ancient regulatory techniques were further developed and institutionalized in some communities during this period. These regulatory approaches were part of a tradition of kosher meat regulation that Jews brought to America.

The Congregational *Shochet* System in the United States from Colonial Times to the Mid-1800s

The first Jewish community in the United States was founded in 1654 by a small group of Sephardic Jews of Spanish and Portuguese origin who left Brazil and settled in the Dutch Colony of New Amsterdam, later renamed New York City under English rule. By the early 1700s, the community had established a synagogue, Congregation Shearith Israel, which, over the course of the next century, absorbed Sephardic and Ashkenazic immigrants from Holland, Portugal, England, France, Germany, Poland, and the West Indies. Until 1825, Shearith Israel was the only congregation in New York City. It was governed by a lay board composed of wealthier members of the congregation and presided over by a president. The board appointed officers, including a cantor, who led prayers, chanted the Torah reading, and assumed other ceremonial functions inside and outside of the community. Although the cantor was sometimes referred to as "minister," "pastor," "reverend," "rector," or "doctor," and non-Jews treated him with the respect generally afforded to clergy, the cantor was a religious functionary, subject entirely to the authority of the lay board. Shearith Israel was governed by a diverse group of merchants with limited knowledge of Jewish law. The congregation did not hire a rabbi until the middle of the nineteenth century.[17]

In eighteenth-century America, the synagogue dominated Jewish communal life. "Indeed," explains historian Jonathan Sarna, "the synagogue and organized Jewish community became one and the same—a synagogue-community—and as such it assumed primary responsibility . . . for all aspects of Jewish religious life: communal worship, dietary laws, life-cycle events, education, philanthropy, ties to Jews around the world, oversight of the cemetery and ritual baths." Modeled on the *kehillah,* the synagogue-community "promoted group-solidarity and discipline" and resorted to punishments such as fines, denial of synagogue honors, exclusion from the Jewish cemetery, and even excommunication, when necessary.[18]

Evidence of synagogue-community regulation of kosher meat production dates back to 1728. Shearith Israel's records note the retirement in that year of the congregational *shochet,* Benjamin Elias. Throughout the rest of the 1700s and into the early 1800s, the only kosher meat in New York City was slaughtered by Shearith Israel's congregational *shochet* and sold by gentile meat dealers approved by the congregation. The congregational *shochet* was, upon examination by the "minister or his representative," appointed by the synagogue leadership for a fixed term and paid a regular salary. The congregation provided lead seals that the *shochet* affixed to all kosher meat. *Shochtim* who were found guilty of mistakes or misconduct were dismissed from office.[19] Outside of New York City, the synagogue-community structure of Shearith Israel served as a model for smaller Jewish communities in the United States.[20]

Synagogue-community regulation of kosher meat production suffered a serious blow in 1813. In that year, the trustees of Shearith Israel refused to reappoint Jacob Abrahams as congregational *shochet*. Abrahams had served in the office for ten years, during which time there had been many complaints about him, so the trustees dismissed him and appointed another *shochet* in his place. In defiance, Abrahams continued to slaughter privately and sold his meat to butchers not approved by the congregation but who advertised it as kosher. The trustees petitioned the New York City Common Council for a declaration making it illegal to sell meat labeled kosher unless the animal was slaughtered by a *shochet* authorized by Shearith Israel and sold by a butcher approved by the congregation. Siding with the congregation, the Common Council passed an ordinance giving the congregational *shochet* an exclusive right to seal meat as kosher and giving the congregation an exclusive right to authorize the retail sale of kosher meat. In response, allies of Abrahams within the congregation petitioned the Common Council to repeal the ordinance, arguing that it violated the religious liberty of Abrahams and those who wished to purchase the meat he slaughtered. The council reversed itself and repealed the ordinance.[21]

The Abrahams affair gave rise to a uniquely American problem for communal regulation of kosher meat production: the independent *shochet*. Since the independent *shochet* was paid directly for his services by the slaughterhouse owner or meat dealer, he had a financial interest in the kosher status of the animals he slaughtered. He answered to no congregational authority that could ensure he possessed either the requisite knowledge and skill to perform valid kosher slaughter or the piety and good character to be trusted. His reputation in the community mattered little as he was beholden only to his employer, who was himself subject to no oversight. In some establishments, rabbis did provide oversight, but they were largely ineffective in preventing fraud since they, too, were paid by the slaughterhouses and butchers that they supervised.[22] By mid-century, the majority of Jews in New York City patronized butchers who employed independent *shochtim*, and individual congregations could not afford to provide supervision directly to slaughterhouses and butcher shops. By 1875, the system of synagogue control over *shechitah* had collapsed.[23]

Rabbi Moses Weinberger of the Lower East Side provided a grim portrait of the kosher meat business in 1887. "*Shochatim* and butchers, upon whose shoulders rest all responsibility for the laws of *kashrus* . . . are perfectly independent here; neither they nor their work is inspected. . . . [T]he work of *shechitah* here is thus like all other jobs: it can be undertaken by anyone who finds an opening. . . . As far as [the butchers] are concerned, any slaughtered fowl with blood removed is marketable, even if the *shochet* admits that he slaughtered totally impermissibly." Among *shochtim,* Weinberger lamented, "absolute anarchy reigns," and butchers "live in a world of lawlessness."[24]

The increasing size and diversity of New York City's Jewish population in the latter half of the nineteenth century also undermined synagogue-community regulation of kosher meat production. In 1750, the Shearith Israel synagogue-community governed a Jewish population of only sixty families, about 350 people.[25] By 1855, New York City had more than twenty synagogues—with distinct traditions and independent governance—and in 1859 the city had a Jewish population of more than forty thousand.[26] By 1880 this figure had doubled, and, with mass immigration from eastern Europe, by 1915 there were more than four hundred registered synagogues in the Lower East Side alone, and the city's Jewish population reached 1.4 million.[27] In 1918, one Jewish organization counted more than 826 Jewish congregations in the city.[28]

This growing Jewish population fueled a rapidly expanding and increasingly ungovernable market for kosher meat. Butcher shops catering to the kosher trade proliferated. In 1902, there were 1,500 butcher shops that advertised kosher meat in New York City, a figure that rose to 6,000 by 1915 and 7,500 by 1930.[29] The scale of the market simply outstripped the capacities of individual congregations to supervise the production and sale of kosher meat. Outside of New York City, the rise of the independent *shochet* and the emergence of a mass consumer market similarly undermined congregational control over kosher meat production.[30]

The Search for Institutional Alternatives

Jewish law and tradition provided a range of regulatory techniques for dealing with kosher fraud. The problem was finding an institution that could successfully implement them in America. Between 1845 and 1940, repeated attempts were made to establish new institutions capable of regulating kosher meat production. In New York City, all of these attempts were thwarted by factionalism, rabbinic rivalry, consumer apathy, corruption, and the sheer size of the problem.

One approach was to form a coalition of congregations that would support a single organization to oversee kosher meat production. For example, in 1863, representatives from a number of New York City congregations met and established the Association of the United Hebrew Congregations. The association appointed a *Shechitah* Board that examined and licensed *shochtim*. It also certified butcher shops, required placement of a uniform lead seal on kosher meat, and publicized the names of approved *shochtim* and butcher shops.[31]

The association's efforts quickly foundered for lack of community support. A Jewish weekly paper reported in 1864 "that many Israelites continue to purchase meat without investigating whether the seal of the Association is attached." By 1867, the paper reported that the *Shechitah* Board was "not in practical operation; it was not adequately sustained. People continued to buy from their favorite butchers, whether Jew or Gentile, licensed or unscrupulous; the Board examined a large number of shohetim, and declined to give some certificates, but their efforts were neutralized by the carelessness and indifference of the community."[32]

A second approach was to vest the power to regulate kosher meat production in a chief rabbi. In 1887, the lay leadership of Beth Midrash HaGadol, New York City's leading Russian American congregation, located in the Lower East Side, organized an effort to appoint a chief rabbi of New York capable of uniting Orthodox congregations with the aim of strengthening traditional religious observance. Representatives from eighteen congregations pledged funding and established the Association of American Orthodox Hebrew Congregations. A number of prominent uptown Jewish community leaders also supported the effort and joined the association. After consulting with leading Eastern European rabbis, the association hired Rabbi Jacob Joseph, a widely respected preacher and religious judge in Vilna, Lithuania.[33]

From the very beginning, *kashrus* regulation was at the top of the association's agenda. In order to shield the chief rabbi from accusations of conflict of interest, the association's constitution and the chief rabbi's contract stipulated that he was to receive no fees for licensing *shochtim* or certifying butcher shops. All fees from kosher supervision were to be paid directly to the association, which provided the chief rabbi with an annual salary and an apartment.[34]

Shortly after his arrival in July 1888, Rabbi Joseph set his sights on reforming the kosher chicken markets. He assigned *mashgichim* to supervise poultry slaughter and ordered *shochtim* to affix to all kosher chickens a *plombe* stamped with Rabbi Joseph's name and title. He also established a rabbinic court to rule on matters of Jewish law. Rabbi Joseph believed that there should be no direct charge for *kashrus* supervision and that the cost of supervision should be borne by the association, as it was by the *kehillah* in European communities. However, the trustees of the association insisted that those who benefited from supervision should pay for it. The association decided to impose a one-cent fee for each poultry *plombe* to help defray the costs of supervision. Rabbi Joseph announced the new poultry regulations in a circular distributed in downtown New York, advising the public "that if you find any butcher's chicken not so stamped . . . it was not killed under our supervision and we cannot guarantee it to be kosher."[35]

Rabbi Joseph's new poultry regulations ignited immediate opposition. The *Sun,* one of New York City's leading daily papers, published an article quoting a "leading member" of a downtown synagogue who compared the *plombe* fee to an infamous Polish kosher meat tax, the *karobka,* used by the czarist Russian authorities to fund special police units to enforce anti-Jewish laws. An uptown Anglo-Jewish weekly, the *Jewish Messenger,* complained that the chief rabbi had not consulted with uptown rabbis before instituting his reforms and asked whether "we should now placidly look on while this sacred soil of America is defiled by money making à la Russia." The Yiddish socialist weekly, *Der Volksadvokat,* called for a boycott of butchers who agreed to cooperate with the chief rabbi.[36]

A group of butchers established the Hebrew Poultry Butchers Association to protest the poultry tax. They were supported by three prominent rabbis involved in kosher supervision prior to Rabbi Joseph's arrival. The first meeting of the Butchers Association included speeches questioning the reliability of the chief rabbi's supervision and charging that the poultry tax was merely a way to fund his salary. The meeting concluded with a vote to employ only *shochtim* approved by one of the three rabbis supporting the Butchers Association. At a second meeting the following week, speakers argued that Rabbi Joseph's authority extended no further than the eighteen member congregations of the Association of American Orthodox Hebrew Congregations and that the chief rabbi himself was merely a functionary subservient to the association's lay board. At the close of the second meeting, the Butchers Association passed a resolution declaring that "at this assemblage in the presence of three rabbis, we declare as *terefah* [nonkosher] all meat sold by the butchers who have made common cause with the charlatans who impose the *karobka.*"[37]

The three rabbis established themselves as a rival rabbinic court, hired their own *shochtim* and *mashgichim,* and published warnings concerning the nonkosher status of poultry sold by butchers under the supervision of the chief rabbi. One of the rabbis was named "Chief Rabbi of Congregations of Israel of New York" by an association of twenty congregations of Galician Jews alienated by the selection of Rabbi Joseph, a Lithuanian. Other rabbis in New York also assumed the title of chief rabbi. A historian of the Jacob Joseph affair relates that "[i]n 1893, Rabbi Hayyim Jacob Vidrowitz came to New York from Moscow, gathered a few small Hasidic [congregations] under his control and hung out a shingle which bore the legend: 'Chief Rabbi of America.' When asked, 'Who made you Chief Rabbi?' he replied with a twinkle in his eye, 'The sign painter.' "[38]

During this time, Rabbi Joseph also set about reforming the fifteen small slaughterhouses that supplied the city's kosher beef. He tested cattle *shochtim* and replaced those who were unqualified. He expanded the number of *shochtim,* instituted more stringent inspection practices, and required that *plombes* be affixed to all kosher carcasses. He also promulgated new rules for butchers and issued signs to display in store windows of those who complied, charging $5.50 for each sign. By February 1889, eighty-six slaughterhouses and butchers were under the chief rabbi's supervision.[39]

During the fall and winter of 1888 and throughout 1889, critics continued to attack the chief rabbi, accusing him of providing inadequate supervision and being motivated by financial interests. The Butchers Association ran a newspaper ad claiming that it had found the chief rabbi's *plombes* on "choked and putrid" chickens. Two slaughterhouses and more than thirty butcher shops opted for the supervision of the rival rabbinic court, which opposed the chief rabbi.[40] The *Volksadvokat* referred to him as the "Chief Charlatan" and called members of the Association of American Orthodox Hebrew Congregations "robbers who live off swindle, and who make the poor penniless" by exacting certification fees.[41]

To compete with his rivals and counter the charges of financial interest, Rabbi Joseph declared in March that he would no longer charge butchers for supervision. This move exacerbated the precarious financial position of the association, whose member synagogues and individual patrons were increasingly unwilling to cover the organization's chronic deficits. Revenue was needed to cover Rabbi Joseph's salary and staff. Accordingly, on the very day that he announced his suspension of fees for supervising butchers, Rabbi Joseph announced plans to charge fees for the supervision of Passover products. At that point, even the weekly magazine *American Hebrew,* which had been supportive of the chief rabbi, accused the association of "using him as a tool for monetary ends."[42]

Unable to provide adequate funding to support Rabbi Joseph and his staff, the association worked out an arrangement whereby, in exchange for supervision, a group of butchers agreed to provide $2,500 per year to pay for the chief rabbi's salary and an additional $2,500 for each *mashgiach* working under him. The chief rabbi was now, for all practical purposes, directly in the pay of the meat industry. The association became largely inactive, and, without it, Rabbi Joseph was unable to exercise any authority over the meat industry. In 1895, the butchers obtained supervision at a lower price from Rabbi Joseph's rivals and withdrew their support. According to a contemporary, "[t]he rabbi was left without any income and is in dire straits. . . . He and his whole family are in very serious difficulties. . . ." That year, Rabbi Joseph fell ill, and he remained bedridden from paralysis until his death in 1902 at the age of fifty-nine.[43] Similar attempts to centralize kosher meat supervision in the hands of a chief rabbi in other American cities like Chicago and Boston were also brought down by rabbinic rivalry and financial interest.[44]

A third approach to regulating kosher meat production was industry self-regulation by trade associations. The motivation of the trade associations, however, was not to protect consumers but rather to protect association members from competitors who sold their services and products at lower prices by cutting corners. Moreover, these efforts were typically short lived. For example, in early 1892, several New York City butchers founded the Society for the Sale of Permitted Meat in order to combat fraud. The society's forty-six members agreed to pay for supervision by a prominent uptown rabbi, and they displayed signs in their stores bearing the name of the society and the supervising rabbi. The society also published the names of butchers who fraudulently sold *treyf* meat as kosher. These efforts incited conflict among butchers and elicited little public support, and by the end of the year they had faded away.[45]

Trade associations were behind the worst corruption in the kosher meat industry. The Live Poultry Commission Merchants' Protective Association and the murder for hire of Bernard Baff, discussed at the beginning of this chapter, are notorious examples. They are by no means unique. In 1913 a group of poultry slaughterhouse owners established the Harlem and Bronx Live Poultry Association to fix prices. Three years later, the association was indicted for antitrust violations, and its managing director pleaded guilty. A subsequent 1920 investigation revealed price-fixing among a number of retail poultry trusts. An organization called the New York Live Poultry Chamber of Commerce operating in the 1920s fixed wholesale poultry prices and forced retail dealers to buy only from designated wholesalers. The chamber imposed a one-cent tax on each pound of wholesale poultry sold, which amounted to $10,000 per week. Wholesale dealers who refused to join the chamber and retail dealers who failed to submit to its demands were subjected to supplier boycotts, *shochet* walkouts, property damage, and beatings. A wholesale dealer testified that when he sold poultry to a retail dealer not assigned to him by the chamber, his right hand had been broken. The muscle behind the chamber came from Arthur "Tootsie" Herbert and his brother Charlie, a pair of Jewish gangsters who ran powerful local unions. Tootsie was business manager for the local International Brotherhood of Chauffeurs, Teamsters, Stablemen, and Helpers of America, which controlled poultry delivery, and Charlie was director of the *shochtim*'s union, which controlled all of the *shochtim* in the poultry trade. Despite convictions in a celebrated antitrust prosecution against the chamber in 1929, Tootsie and Charlie continued to ruthlessly extort money from dealers and embezzle union funds until Tootsie was finally sentenced to twenty years in jail in 1936 and Charlie was removed from his leadership post by union officials in 1937.[46]

A fourth approach to regulating kosher meat production was the establishment of independent communal organizations whose members were laypersons, rabbis, or both. Agudath Israel, a lay organization founded in 1901 primarily as a burial society that included members from all parts of the city, attempted in 1903 to provide centralized supervision of retail butcher shops advertising kosher meat. To butchers who accepted their supervision, the organization proposed to issue signs certifying that the meat they sold was kosher. Mindful of recent history, the organization announced that it would not charge the butchers for supervision but would instead fund its efforts entirely out of its own treasury. Two prominent rabbis who controlled supervision in New York City's largest slaughterhouses immediately opposed this plan. They objected to a lay organization passing on the kosher status of meat produced under their supervision, and they asserted that signs were unnecessary and unreliable as a means of consumer protection. The organization responded that the rabbis were merely promoting the interests of the slaughterhouse owners, who paid them and who feared that greater vigilance would disrupt sales since many butchers purchased nonkosher meat from them and fraudulently sold it as kosher. The rabbis fired back allegations that, contrary to its public representations, the organization charged butchers forty cents per week for supervision. In November of 1903, at the height of its success, one hundred butchers in the Lower East Side were under

Agudath Israel's supervision, but that number steadily declined in the next few years.[47]

In 1909, three hundred delegates from 222 organizations founded a group called the *Kehillah* and elected a twenty-five-member executive board. The *Kehillah* combined the traditional European model of community governance with American-style democracy. Over the next fifteen years, the *Kehillah* played an important role in many different areas of community governance, including Jewish education, employment, welfare, labor, and crime. As one of its first orders of business, the *Kehillah* attempted to develop a program to improve kosher meat supervision. The group joined forces with the Union of Orthodox Jewish Congregations of America, popularly known as the Orthodox Union, or OU. The OU had been founded in 1898 by Rabbi Henry Pereira Mendes of Shearith Israel, who served as OU president and was a member of the *Kehillah*. The OU executive board had periodically considered getting involved in kosher supervision, but it never got past the planning stages. The *Kehillah* also established a board of rabbis to increase rabbinic involvement in the effort.[48]

With these partners, the *Kehillah* proposed a plan to appoint rabbis to supervise retail butchers. Butchers under *Kehillah* supervision would receive signs to display in their stores and would pay a monthly fee. They would be allowed to sell only meat slaughtered in the New York City area, which would protect local slaughterhouse owners from outside competition. The *Kehillah* submitted its plans to the large slaughterhouse owners, from whom it sought approval and $25,000 to underwrite the salaries of *mashgichim* for a year. The *Kehillah* argued that centralized retail supervision would restore consumer confidence in the kosher meat market and increase sales. The slaughterhouse owners approved of the plan, as did the rabbis who were supervising their operations, all of whom served on the board of rabbis. *Kehillah* supervision began in November of 1912.

Like previous efforts, the *Kehillah*'s plan to centralize kosher meat supervision failed due to rabbinic rivalry and inadequate funding. Orthodox rabbis criticized the *Kehillah*'s involvement in *kashrus* because its president, Dr. Judah Magnes, was a Reform rabbi, and the majority of *Kehillah* members were Reform Jews. According to these critics, Reform Jews, who rejected *kashrus,* should have no role in supervising it. Moreover, the slaughterhouses provided only a small fraction of the funds requested, and most of the 128 butchers who accepted the *Kehillah*'s supervision failed to pay any monthly fees. By the end of 1913, the *Kehillah* informed the board of rabbis that it would no longer pay the salaries of *mashgichim.* The board of rabbis attempted to establish a new fee structure with slaughterhouses and wholesale poultry merchants for supervision, but both groups rejected the proposal. Unable to cover its expenses, the board of rabbis ceased providing supervision.

A subsequent effort by the *Kehillah* in 1915 to establish centralized supervision in beef and poultry slaughterhouses also failed due to rabbinic rivalry and inadequate funding.[49] Revelations emerged in 1916 that the *Kehillah* had been a partner in the Harlem and Bronx Live Poultry Association. While the district attorney ultimately concluded that the *Kehillah* had been duped by the association to lend a veneer of legitimacy to its activities, the affair undermined the *Kehillah*'s credibility.[50] As the *Kehillah*'s leadership increasingly turned its attention during the First World War to issues outside of local communal services, the organization's activities gradually waned, and it finally disbanded in 1925.[51]

A fifth approach to regulating kosher meat production was government regulation. Frustrated by the failure of their efforts to establish centralized communal control over kosher meat supervision, the *Kehillah* and the OU lobbied for legislation to make kosher fraud a criminal offense. In 1915, the New York State Assembly passed the "Kosher Bill," which made it a misdemeanor to falsely represent meat for sale as kosher with intent to defraud. The New York City mayor assigned the task of enforcing the law to city agencies responsible for policing consumer fraud. In April and May of 1916, municipal authorities apprehended fifty-seven butchers selling *treyf* meat. Considering the scope of the problem, the efficacy of these efforts is doubtful. In 1915, there were 6,000 butchers in New York City who advertised kosher meat. Of these, 3,600 sold both kosher and nonkosher meat, which increased opportunities for fraud, and an estimated 1,200 advertised kosher but sold only *treyf* meat. The president of the Kosher Butchers Retail Association asserted publicly in 1910 that 65 percent of the butchers who advertised kosher meat actually sold *treyf.* Moreover, inspection of meat in retail stores by non-Jewish city inspectors who lacked expertise in *kashrus* could not uncover fraudulent practices in slaughtering, inspection, and preparation of meat and poultry. City officials appealed to Jewish community leaders for help in enforcing the law, but efforts to organize a communal enforcement agency failed. Similar laws were subsequently passed in other states, where lack of enforcement rendered them largely ineffective.[52]

The New York State Assembly amended the Kosher Law in 1922 and 1926 to strengthen its provisions. In an effort to improve enforcement, New York City mayor John Hylan in 1923 assigned enforcement to the Department of Markets, which by 1926 had established a special "kosher squad." The New York State attorney general successfully defeated a constitutional challenge to the law, and the Manhattan district attorney worked with the OU to prosecute kosher fraud. While these efforts attracted positive press coverage—one of the Yiddish papers referred to the district attorney as "The Best Chief Rabbi New York Ever Had"—the number of convictions was miniscule compared to the estimated scope of the problem, and fines were little more than a slap on the wrist. In 1925, the Commissioner of Markets estimated that 40 percent of the meat advertised as kosher in the city was *treyf.* Matters were made worse by official corruption. Investigations in the late 1920s and early 1930s uncovered widespread corruption among New York City Department of Health inspectors, who extorted money from poultry slaughterhouse owners seeking license renewals, and among Department of Markets inspectors, who demanded bribes from retail butchers.[53]

In 1931, Mayor James Walker appointed a Mayor's Committee on Kashrut to "ascertain the facts" about kosher fraud in the city and to make recommendations for more effective enforcement of the Kosher Law. The committee's report praised the Kosher Law for helping to "eliminate a large number of petty merchants who brazenly sold non-kosher stuff and nevertheless kept their windows adorned with large Hebrew letters to the effect that their product was kosher" and for making "[t]he exhortations of rabbis and other pious Jews sound now more convincing, since it is generally known that the State is ready to prosecute all offenders." Although the report praised the Kosher Law, it lamented the lack of adequate rabbinic supervision necessary to prevent fraud. "Only a comparatively small number of retail butchers are supervised by rabbis," the report stated. "Many others try to create the appearance of supervision by placing questionable signs in their windows. . . . The chicken markets as well as the retail chicken stores are virtually without any supervision. In other words, there is nothing to indicate whether any fowl was slaughtered according to ritual law. . . . Some of the chicken markets pay a nominal sum to a rabbi who strolls in occasionally to examine the knives of the slaughterers . . . [yet] [e]ven in the branches where there is supervision . . . the supervisor . . . is the employee of the one supervised." A subsequent 1934 Department of Markets annual report added to this bleak assessment, stating that the six inspectors assigned to kosher fraud were not enough to handle the job, that interagency overlap with the Department of Health, which enforced the sanitary code, resulted in inefficiencies, and that enforcement efforts were complicated by "lack of unanimity amongst the orthodox spiritual leaders." By 1939, the Department of Markets staff was responsible for inspecting eighteen thousand establishments in New York City that sold kosher food. The Commissioner of Markets had stated in 1927 that the department could be effective only if it were supported by reliable rabbinic supervision and constant consumer vigilance.[54]

In an effort to strengthen enforcement of the Kosher Law, the New York State Assembly passed a law in 1934 to establish a Kosher Law Enforcement Bureau with its own budget within the New York State Department of Agriculture. With an initial staff of two (eventually ten) that counted on a rabbinic advisory board, the bureau reported 425 arrests between 1934 and 1939, with a conviction rate of 75 percent. The bureau also issued press releases to publicize the names of dealers convicted of fraud. However, like the New York City Department of Markets, the efforts of the state's Kosher Law Enforcement Bureau were hampered by rabbinic infighting and lack of resources.[55] As Jeremiah Berman opined in his 1940 history of *shechitah,* "not even the most sanguine will claim that the Kosher Law has brought kashrut to New York. The task of observing the conduct of thousands of butcher shops and delicatessen stores, as well as numerous hotels in the mountain and seaside resorts, is too great for the number of inspectors assigned."

The situation was no better outside of New York. According to Berman, "While Kosher laws are to be found on the statute books of a number of states, these laws are practically in every instance ineffective. In almost every case, no funds are appropriated for their enforcement. It is clear that the passage of kosher laws in itself cannot bring kashrut. Only when the Jews in America develop workable communal instrumentalities for the control of kashrut will the kosher laws become truly efficacious."[56] The federal government's brief foray into kosher meat regulation—the National Kashruth Administration, established under President Roosevelt's National Industrial Recovery Act—lasted only a few months in 1935, succumbing to inadequate resources and lack of industry cooperation.[57]

A sixth approach to regulating kosher meat production was public-private partnership. In its 1931 report, the New York City Mayor's Committee on Kashrut recommended the establishment of an organization consisting of rabbis from throughout the city and lay representatives with a charter from the state to exercise "quasi-public powers in matters pertaining to *kashruth* supervision." With encouragement from the mayor, members of the committee established the Kashruth Association of Greater New York in 1932 "to aid in and encourage the observance and enforcement" of the Kosher Law. The Kashruth Association promised to provide the rabbinic support necessary to finally make enforcement of the Kosher Law effective. The bylaws stated that a rabbinical board of fifty rabbis appointed by the association would "be supreme in matters pertaining to the application and interpretation of the Jewish dietary laws and shall be the final authority in all matters within its jurisdiction." The association declared that it would issue its own kosher certification by December and that all private supervision should be abolished. Members of the Mayor's Kashruth Committee declared in their report that the time was ripe for such an effort since, unlike the *Kehillah* experiment twenty years earlier, their efforts had created a "harmonious attitude among New York orthodox rabbis on the question of an organized central body for the supervision of Kashruth."[58]

Such declarations of rabbinic unity were, however, premature. To begin with, some rabbis objected to the Mayor's Committee as an unwarranted government intrusion into the internal affairs of the Jewish community. By the middle of 1933, the association had still not begun supervision, and its president resigned "because of the jealousy and hatred which he felt were rampant among the rabbis and which prevented the association from doing an effective job." Some Orthodox rabbis refused to support the association unless Conservative rabbis were excluded from *kashrus* administration, while Conservative rabbis threatened to withdraw support if excluded. The association approached the mayor about passing a law that would require kosher food dealers to be licensed upon certification by the association, for which the association could charge fees. This effort foundered because Jewish community leaders could not agree on a proposal.[59]

Labor tensions in the poultry industry between the *shochtim*'s union and the poultry dealers in 1934 gave the Kashruth Association an opportunity to finally begin providing certification. Disagreement over a new contract involved concerns over not only pay but also working conditions—in particular, allegations by the *shochtim* that the dealers required them to slaughter at too fast a rate and to work for too many hours to ensure the kosher status of the poultry. Eager to avoid a strike by the workers or a lockout by the dealers, Mayor Fiorello La Guardia appointed Judge Otto Rosalsky to mediate. Before rendering his decision, Rosalsky turned to the rabbis of the Kashruth Association for their opinion on how much time a *shochet* should be afforded to kill a fowl in order to adhere to the laws of *kashrus*. Based on the association's response, Rosalsky issued a decision that dealt with not only wages and working conditions but also the integrity of *kashrus*. The decision stated that the kosher poultry markets should submit to rabbinic supervision provided by the Kashruth Association, that all kosher slaughtered poultry should have a Kashruth Association *plombe* affixed to it, and that all dealers should pay a fee of one cent per fowl to the Kashruth Association to defray the cost of supervision.[60]

The poultry dealers rejected Rosalsky's decision, as it imposed higher labor and supervision costs on them, and they set about securing supervision from three rabbis who declared the *plombe* unnecessary. In response, the Kashruth Association declared a ban on all poultry without its *plombe.* At a special meeting attended by three hundred rabbis and eight hundred laymen at the Beth Midrash HaGadol, where Chief Rabbi Jacob Joseph had presided forty years earlier, the association stated that any poultry not bearing a *plombe* from the association "is forbidden to be consumed by Jews" and that any *shochet* who slaughtered without the association's supervision or failed to use the *plombe* "will lose his status of reliability in regard to Kashruth, and as a violator of Jewish Law will henceforth become disqualified to act as a *Shochet.*" The ban went on to warn that if any rabbi rejected the ban, "his ruling shall become null and void."

At first, the ban was completely ineffective. The *shochtim*'s union voted to disregard the ban. Seven hundred Bronx butchers refused to handle chickens bearing the association's *plombe.* A group of rabbis in Brooklyn produced its own rival *plombe.* And many rabbis continued to provide private supervision. Even the rabbi of the Beth Midrash HaGadol—who had hosted the ceremony promulgating the ban—continued private supervision at thirty poultry markets on the Lower East Side. He accused the association of "treachery and beguilements" and insisted that he had been coerced into supporting the ban.

Finally, Rosalsky convinced the union to change its position and support the ban in exchange for promises by the association that it would grant the union representation within the association and support any future economic demands by the union. The union's subsequent threat of a strike in support of the Kashruth Association forced the poultry dealers to accept its supervision. In 1935, the association reported that it employed 175 rabbis and 221 *mashgichim* to supervise 140 poultry markets. Eighty percent of the poultry sold as kosher in New York City bore the association's *plombe,* at the rate of 400,000 per week.[61]

That same year, a Bronx poultry dealer, the S. S. and B. Live Poultry Corporation, sued the association for declaring its poultry *treyf.* The dealer had contracted with the association for supervision but then decided that the arrangement was too expensive. When the dealer backed out of the arrangement, the association declared his poultry *treyf.* The dealer's lawsuit alleged that failure to accept the association's supervision did not render its products *treyf* under Jewish law and that the ban constituted an unlawful interference with its contractual rights to conduct business with kosher consumers. The dealer sought rescission of the contract, an injunction against the association from further interference, and damages. The court rejected the dealer's claim and upheld the right of the association to pronounce religious bans on poultry not produced under its supervision.[62]

While the court in *S. S. and B. Live Poultry Corp. v. Kashruth Association* refused to interfere in communal regulation of kosher meat production, the court in a subsequent legal challenge rejected the use of state power to enforce it. In 1939, New York State inspectors arrested Joseph Gordon for violating the Kosher Law by selling a chicken as kosher that did not have affixed the Kashruth Association's *plombe.* He was convicted and sentenced to pay a fine of $500 or be committed to the city prison for thirty days; in addition, he was to serve in the workhouse for thirty days. Gordon's conviction rested on the contention that he knowingly violated "orthodox religious requirements" by selling poultry without a *plombe.* An appellate court overturned the conviction, holding that the prosecution had failed to establish that the association—which the opinion referred to as "the so-called Rabbinate"—possessed the legal authority to decree that poultry slaughtered outside of its supervision and not bearing its *plombe* were not kosher.[63] This ruling, that the state could not enforce the association's regulations through Kosher Law prosecutions, weakened the association's authority. According to one contemporary commentator, the *Gordon* decision "kicked the bottom out of this latest kashrut experiment."[64] In addition, the poultry dealers and butchers circulated stories among their customers that *plombe*s were affixed to poultry without proper supervision and that the whole system was essentially a money-making scheme to enrich the rabbis. Association oversight of New York City kosher poultry dealers soon collapsed. By 1940, according to Berman, "the Kashruth Association *plombe* is affixed to approximately 8% of the so-called kosher poultry slaughtered in New York City."[65]

Why the Old Ways Did Not Work in the New World

In the Old World, the *kehillah*—an autonomous communal organization backed by state power—effectively regulated kosher meat production. In America, this model translated into congregational oversight, which gradually deteriorated in the 1800s. Institutional alternatives—(1) congregational coalitions, (2) a chief rabbi, (3) trade associations, (4) independent communal organizations, (5) government agencies, and (6) public-private partnerships—all proved inadequate. From Rabbi Moses Weinberger, writing in 1887, to government reports in the first three decades of the twentieth century, contemporary commentators consistently alleged that kosher fraud was widespread and that attempts to regulate kosher meat production during this period all failed. As legal commentator Jonas Simon wrote in the early 1940s, "the kosher meat business is a gigantic fraud perpetrated on the well-meaning masses of people who pay a good price for kashrut but never get it, a wholesale robbery of the Jewish community."[66]

Trade associations and government agencies were unable to clean up kosher meat production. Trade associations had an inherent conflict of interest that produced more fraud and corruption than consumer protection. Industry self-regulation amounted to little more than leaving the fox to guard the kosher chicken coop. Government agencies, for all their commitment to consumer protection, simply lacked adequate resources to do more than scratch the surface. The scale of kosher fraud was simply too large for government alone to regulate.

Communal institutions were also not up to the task. According to several leading historians, the American commitment to religious voluntarism and free markets explains the persistent inability to establish centralized communal control over kosher meat production.[67] In contrast to the traditional *kehillah,* Jewish communal authorities in America were not backed by government power, nor did they have a monopoly on religious life.[68] In America, as far as the government was concerned, Jews were free to adhere to standards promulgated by communal authorities as much or as little as they wished. And with the mid-nineteenth-century proliferation of rival congregations in the same locality, synagogues lost their ability to enforce standards by the threat of expulsion since dissidents were free to join other congregations or start their own.[69] America's rapidly expanding market economy also allowed kosher meat producers, consumers, and rabbinic supervisors to conduct business in disregard of communal authorities.[70]

Several additional features of Jewish life in America help explain the failure to establish centralized communal control over the kosher meat industry. Rabbis possessed less authority in America compared to their Old World counterparts. American congregations did not begin to hire rabbis until the 1840s, and when they did, the rabbi was viewed as an employee, his authority entirely subordinate to that of the congregation's lay leadership.[71] Moreover, America's democratic culture did not promote reverence for authority based on status, and it even allowed overt displays of disrespect, such as the newspaper editorials mocking the authority of

Chief Rabbi Jacob Joseph.[72] The diversity of American Jewry, composed of Jewish immigrants with different cultures and traditions, was another barrier to centralized communal control. This was especially true in New York City, with its tensions between Orthodox, Reform, and Conservative; uptown and downtown; Sephardic and Ashkenazic; Russian, Galician, Hungarian, and Lithuanian; and Hasidic and non-Hasidic, not to mention the hostility between all of these groups and nonreligious socialists and anarchists.[73] Finally, the sheer size of New York City Jewry—with its millions of consumers, thousands of butchers, and hundreds of congregations—posed an insurmountable challenge to centralized control over the kosher meat business.

America's liberal, democratic, pluralistic, sprawling free market thus frustrated repeated efforts to establish centralized communal control over kosher meat production—especially in New York City—between 1850 and 1940. One might view this as a problem of wanting to have one's kugel and eat it too. Liberty and economic opportunity were two leading reasons why Jews immigrated to the United States, and yet they complained about the loss of centralized communal governance that accompanied these features of life in America.

For nearly a century, *kashrus* in America was plagued by anarchy that facilitated widespread fraud and corruption. That began to change only when nostalgia for centralized communal control was replaced by faith in a quintessentially American institution with the potential to provide reliable kosher certification: the private business enterprise operating in a competitive market.