

***Response to Zivotofsky et al.:
Profit Incentive is Not a Halakhic Justification to
Inflict Cruel and Unusual Pain upon Animals***

By: HESHEY ZELCER and MALKY ZELCER

We thank Prof. Zivotofsky, *et al.* (“Zivotofsky”) for reading our article (*Hakirah* vol. 24, 173–190) and for their multitude of comments.

In reading Zivotofsky’s response it appears to us that practically every paragraph in our previously printed article found disfavor in their eyes. We were criticized, for example, for the *rabbanim* we quoted: we were wrong to quote R. Yehuda He-Hasid’s *Sefer Hasidim* (p. 16). Ditto for R. Samson Raphael Hirsch (p. 27). Similarly, we were accused of misreading R. Moishe Feinstein’s *teshuvah* (p. 22-23, 27) and misrepresenting facts to R. Shmuel Kamenetsky (p. 23). And finally, we were attacked for posing a halakhic question to R. Daniel Kleinman (p. 25). What is going on here?

We believe that behind their myriad of criticisms in a very different understanding by Zivotofsky and ourselves of what goes on at factory farms, and also a very different understanding of what constitutes *tza’ar ba’alei hayyim*. It is these differences, in our humble opinion, that have caused Zivotofsky to challenge everything we wrote. Before responding to Zivotofsky’s claims we present below what we believe is a fair outline of our respective views on factory farms. We leave it to the reader to decide whose view reflects the reality of what goes on at some factory farms, and who offers the proper advice on how to proceed in the future.

According to Zivotofsky, factory farming, while not perfect, does an excellent job both in keeping down the cost of beef and poultry (pp. 18, 26), and simultaneously in treating animals humanely. Furthermore, Judaism has always been insistent on the humane treatment of animals. We can therefore rest assured that factory farms and slaughterhouses, especially Jewish ones, treat their animals humanely. Reports by authors, journalists, activists and organizations that advocate for humane treatment of animals are either “fake news” (pp. 13, 21) or not reflective of general practices. Zivotofsky therefore believes that there is no need for a Jewish

Heshey Zelcer is on the editorial board of *Hakirah* and has published books and articles on Jewish law, philosophy, history and liturgy.

Malky Zelcer has previously published in this journal and is an executive in the healthcare industry.

supervising agency that would provide the Jewish consumer with the option of buying meat and poultry from humanely raised animals. Not only, according to Zivotofsky, is such certification unnecessary it is downright insulting to the Jewish community and its historical high standards of humane slaughter (p. 25).

Our view is very different. We believe that the readily available massive tomes of photos, videos, articles and books documenting inhumane animal treatment in factory farming is too vast to be ignored. There is very little Federal oversight or regulation on raising animals for consumption. Furthermore, there is only sporadic State regulation and supervision, California being a notable exception. There is thus nothing forcing factory farms, especially those that are negligent in their animal treatment, to allow anyone onto their property to observe their farming practices, and to prove or disprove the many horrid images and videos that have been smuggled out by activists. We therefore believe that the Jewish consumer should be given the option of buying—even if it entails paying a higher price—meat and poultry of animals that were certified by our own community as having being raised humanely.

Our different understanding of what constitutes *tza'ar ba'alei hayyim* will become clear below where we discuss an important *teshuva* of R. Moshe Feinstein.

While the Federal government offers no certification for factory farms, they do, on their website, recommend a number of NGOs that certify factory farms. As mentioned in our previous article, none of these NGOs certify kosher slaughtered meat or poultry because they insist that to obtain their certification, animals need to be stunned prior to slaughter, a practice forbidden by Halakhah. We thus recommended that we Jews here in the United States—as is available in Israel—set up our own NGO that would be recognized by the Federal government, and that would grant humane certification to deserving Jewish-owned farms and kosher slaughterhouses.

We have no doubt that the three *shohatim* in the Zivotofsky group, AZZ, AG and EB, slaughter their animals humanely. What we do not understand, however, is how their limited exposure grants them the expertise to pass judgment on all of the more than one million livestock

farms in the United States¹—especially in light of massive evidence of abuse, and even more so when these farms are generally closed to public scrutiny by both the government and the public.

At the conclusion of our article we will show that there is an important precedent on how we ought to act when the public begins to take notice of what goes on at factory farms.

Following is a list of some of the main critiques of our article, presented in the order we will address them:

- We have been misled by “fake news”;
- We have misstated facts or relied on old data;
- Statements *in Sefer Hasidim* are not statements of halakhah;
- We misrepresented Rav Moshe’s *teshuva* on veal;
- We ingratiated ourselves to animal rights NGOs;
- We maligned righteous Jews who stun animals post-*shehita*.

Fake news. We agree that animal rights groups have their own agenda and their claims need to be examined carefully. We also agree that YouTube videos showing the horrors of factory farming are not representative of all animal farms.

No one, however, has ever claimed that these videos were staged. Furthermore, even more damning of factory farming is the bestselling book by Jonathan Safran Foer, *Eating Animals*, a book that has not been seriously challenged for its authenticity or accuracy. We reference this book five times in our article [pp. 175, 176 (twice), 177 (twice)] and we wonder why Zivotofsky, for the sake of honesty and completeness, never mentions it, especially as Foer’s book has recently spawned a major documentary that is sure to focus even greater attention on the abuses taking place at factory farms.²

¹ For a detailed breakdown of farms with livestock in the United States see “Profile of Farms with Livestock in the United States: A Statistical Summary” at the (USDA) *Natural Resources Conservation Service* web page:

https://www.nrcs.usda.gov/wps/portal/nrcs/detail/tn/home/?cid=nrcs143_014121

² For the *Eating Animals* official trailer see:

<https://www.youtube.com/watch?v=Y-z4Mpql6Ls>.

Misstated facts and old data. We concede, as pointed out by Zivotofsky, that we got a fact or two wrong in our article. We agree with Zivotofsky's critique that "most antibiotics are given to promote growth in animals is no longer the case" (p. 22). We concede too, that beak trimming is done for layers and not broilers (p. 21). We regret these errors, but they hardly disprove our argument or cast doubt on the main thesis of our article.

Zivotofsky writes (p. 18) that "And while it is true that it *used* to be standard to give antibiotics to speed up growth, in the US the vast majority of poultry are no longer given any antibiotics." Zivotofsky is thus implying that pressure in the past has helped curtail this abuse. Why then is he so against any further measures to curtail other abuses at factory farms? Shouldn't we, as an *ohr la-goyim*, be in the forefront of improving the treatment of farm animals?

Sefer Hasidim. Zivotofsky faults us for quoting *Sefer Hasidim*, a work he does not consider a source for Halakhah (p. 16). The reason we quoted *Sefer Hasidim*—and we spent a thick paragraph (p. 179) explaining this—is because so many observant Jews do take him seriously. We wondered why people take some of his other views so seriously (e.g., leaving a hole in the wall where a window once existed) while these same people (we?) totally disregard his views on the humane treatment of animals, which he discusses at great length and in different parts of his *sefer*.

While on the topic of *Sefer Hasidim*, we should note an additional statement of his that we neglected to include in our article. Commenting on the verse (Be-Midbar 31:8) that Balaam the son of Beor was killed in battle with a sword, *Sefer Hasidim* writes that this was measure-for-measure. Balaam threatened to kill his donkey with his sword. Consequently, he himself was slain by sword (section 666, p. 425).

Rav Moshe Feinstein's Teshuva. Zivotofsky writes that R. Moshe's reason for outlawing veal was not because of the cruelty done to the animal but rather due to the misleading business practices that misstated the benefits/quality of veal. In our humble opinion, the crucial part of R. Moshe's teshuva—which Zivotofsky fails to discuss—is the following:

R. Moshe poses a theoretical question: assuming a non-Jew were to offer a Jew a significant amount of money to allow him to beat the Jew's animal. May the Jew accept this offer? After all, it provides a financial gain to the owner. R. Moshe explains emphatically that this would not be permissible. One may earn a profit from an animal only in a way that is usual for the animal: it may be slaughtered for food, it may be used to work the field and carry a burden. In the words of R. Moshe (p. 182):

אף אם יהיה לאחד הרוחה בזה, כגון שנכרי אחד רוצה להרוג או לחבל באיזו בהמה שכעס עליה שודאי אסור אף שמשלם לו שכר בעד מעשה הרע הזה דלהרוחה שמותר הוא לאכילה אף של אחרים ואף של נכרים... אלא דוקא בדבר שדרכן דאינשי בכך.

When Zivotofsky writes (p. 15), “If there is a valid human need for using the animal, despite the animal suffering, *tẓa‘ar ba‘alei hayyim* does not apply” he is ignoring R. Moshe’s ruling which places definite limits on what may be done to an animal. Torturing animals to squeeze out additional profit is not permitted.

It is our educated guess that had R. Moshe been aware of some of the horrific details of factory farming, as documented by Foer and others, he would have been revolted by them, and he would have compared them to his theoretical case of a non-Jew offering money to a Jew for the privilege of beating his animal.

Also, in R. Shmuel Kamenetsky’s *teshuvah*, as printed in the previous *Hakirah* (pp. 189-190), he argues that R. Moshe appears to be disagreeing with *Terumat ha-Desben*.³ Many have interpreted *Terumat ha-Desben*’s permissibility to pluck feathers from a live goose, to trim the tongues of live birds, and to cut the tails of animals, as proof that torturing animals is permitted so long as there is a financial reward. R. Shmuel Kamenetsky believes that R. Moshe in this *teshuva* is disagreeing with this view, even if he was reluctant to mention *Terumat ha-Desben* by name. That is why R. Moshe’s *teshuva* is so important for the main thesis of our article. In the words of R. Shmuel Kamenetsky (p. 189):

ולכן יותר נוטה שהאג"מ לא ס"ל כדברי התה"ד וגם לא ס"ל כרמ"א שהעתיק דברי התה"ד, ואפשר שלא הביא דבריהם משום דלא נראה לו כדבריהם ולא רצה לחלוק עליהם בהדיא, וכבר מצינו אצל הבית יוסף שכשחולק לפעמים על דברי הראשונים הריהו עושה כמעלים וכמבליע ואינו כותב כן בהדיא, ונראה שגם כוונת האג"מ בכה"ג כן הוא.

To restate and emphasize the view of R. Moshe: even when there is a financial reward to the owner he may not treat his animals in a cruel and unusual manner. A person may make use of animals only in ways that are usual: to slaughter them for consumption, to work with them in the field and to carry a burden. Cruel and unusual treatment of animals to squeeze out an extra profit would be, according to R. Moshe, repugnant and forbidden.

³ See R. Shmuel Kamenetsky p. 189, s.v. ואיברא.

Zivotofsky laments (p. 24) that “In Israel organic eggs are 140% more expensive.” So what? If a kosher consumer wishes to pay a higher price for eggs from chickens that were raised humanely—and that were not raised in violation of R. Moshe’s standards—shouldn’t they have the ability to do so? Don’t we already willingly pay a premium for our ideals—for kosher certified food?

Zivotofsky’s concluding sentence in his Addendum reads: “However, to say that the way the animals are raised on these farms is *tz’a’ar ba’alei hayyim* and that they should therefore be deemed unfit for kosher consumption, is incorrect in our opinion.” We never said or implied the latter part of his sentence. We never suggested that raising an animal inhumanely causes it to be non-kosher. In fact, on p. 183 we say the opposite: “R. Kamenetsky states clearly that although the practices of Factory Farming may constitute ZBH, nevertheless, we may eat the products from such animals.”

Ingratiating ourselves to the animal rights people. Zivotofsky accuses us of ingratiating ourselves to the animal rights people (p. 25). Why should we try to gain favor in their eyes? Why should we try to gain their certification when they view Jewish slaughter as not being humane, and especially since Jewish slaughter has been generally acknowledged as a humane method of slaughter?

We argue that it would have been preferable to use existing government-recommended NGOs to monitor humane treatment at kosher animal farms and slaughterhouses. Since this is not possible, however, we concluded by recommending that we create our own monitoring organization. We recommended this for obvious reasons. If we do not police ourselves; if we do not make sure that we treat our animals humanely on our farms, our sins will catch up with us. And when they do, our opponents will likely attack not only how we raise our animals but Jewish slaughter itself. We need only look to Western Europe to see how this can change seemingly overnight.

We also heard from other experts who agreed with our analysis and our recommendation that we, the Jewish community in the United States, should set up our own humane certification organization. For example, Rabbi Yosef Wikler of *Kashrus Magazine* wrote to us in response to our article:

I think that your conclusion that we must do something is crucial...
We need grassroots pressure—not from radical left wingers who are

attacking *shechita*—but from people like you who understand that the kosher slaughterhouses and [Jewish owned farms] are not the enemy; they may very well be the solution... The ‘pressure’ has to be gentle but firm I also think that we have to present a complete [certification] program... and show that the requirements are easily doable...

We maligned the reputation of those who stun animals after *shehita*. Zivotofsky argues that by merely posing the question of whether or not, here in the United States, for general consumption, it is permissible to stun an animal post-*shehita* we are maligning the reputation of Jewish communities elsewhere who permit this (p. 25). This is nonsense. We did not deal with why any other specific community may or may not perform stunning post-*shehita*. We merely posed the question of whether this procedure could be a general solution for our needs here in the United States. Everyone, including Zivotofsky, knows that Halakhah is endlessly intricate and sophisticated, and that Halakhah takes many variables and conditions into account and can differentiate between the needs and situations in different communities. If Halakhah were black and white, strictly yes or no, we would have no need for the voluminous *Shu"t* literature produced over the ages.

Conclusion:

Part of what drove us to write our article is a sense of déjà vu. In the 1950s kosher slaughter was under attack in the United States. Specifically, Jewish slaughterhouses were accused, and rightfully so, of shackling and hoisting their animals prior to slaughter—an inhumane practice. The solution came, not by denying that there was a problem, but rather by acknowledging it and working with the ASPCA—yes the ASPCA—to design and implement a more humane process that obviated the need for shackling and hoisting.

R. J. B. Soloveitchik was one of the architects behind this innovation, and thanks to him and to those who worked with him, for 70 years here in the United States, there has not been a serious effort to challenge kosher slaughter.⁴

Recently, however, we discovered that even this practice of shackling and hoisting is not fully behind us. While in the United States, shackling

⁴ For more information on R. Soloveitchik’s role in stopping shackling and hoisting in the United States see *Community, Covenant and Commitment*, ed. Nathaniel Helfgot (Ktav, 2005) pp. 61–74.

and hoisting in kosher slaughterhouses is a thing of the past, the OU estimates that about a third of the beef certified by the OU for sale in the United States comes from South America where shackling and hoisting is still practiced.⁵

It is our hope that, in today's social climate, where there is a growing demand from the public for humane treatment of animals, we be equally wise to regulate ourselves and certify deserving Jewish-owned farms and kosher slaughterhouses as having treated their animals humanely. If we do so, we have good reason to hope that during the next 70 years too, the public will continue to view Jewish farms and kosher slaughterhouses as the gold standard of humane animal farming and slaughter.

If we fail to act, we risk seeing in the future ugly news headlines (and the concomitant *billul Ha-Shem*), and consequently the European attitude toward *shehita* transplanted to our own great country. Let us be smart and proactive and make sure this does not happen. ❧

⁵ The OU expects that all slaughterhouses it certifies in South America will have stopped this practice by September 2018. See Josefin Dolsten, "Orthodox Union to stop certifying kosher beef slaughtered using controversial method," *JTA*, 7/24/2018.