

On the Matter of Stunning (and Bolting): A Dissent

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This paper was submitted as a dissent to "A Stunning Matter" by Rabbi Mayer Rabinowitz. Dissenting and consenting opinions are not official positions of the Committee on Jewish Law and Standards.

It is axiomatic that the change in procedure in CJLS from simple oral voting to requiring written responsa was taken in order to give firm halakhic grounding to the rulings of the committee. It is in that light that I pen this dissent to a ruling that I believe is probably correct, but which has not been properly supported by this responsum.

There are several category confusions that appear in this paper and invalidate its arguments. I would point out three.

In the posing of the problem itself we are asked to consider whether it is permitted "to stun/bolt after sh'hitah", and that act is defined as one which "brings the animal to a reversible state of unconsciousness". While the responsum establishes that (p. 4) "sh'hitah does not kill the animal directly. Death occurs later," I believe it is clear that consciousness will not return after sh'hitah. Thus stunning/bolting, as defined, cannot occur after sh'hitah, and the relevant features of stunning/bolting are altogether other, to wit, whether they cause an impediment to blood flow.

From page 4 through page 9, Rabbi Rabinowitz strives mightily to prove that stunning before sh'hitah is permissible, basing himself on permissions granted explicitly due to the duress experienced by the community of pre-war Europe, despite the admission that most authorities rejected these leniencies. This forms the basis of a kal vahomer argument that if it was permissible pre-sh'hitah, it is certainly permissible post-sh'hitah. It might be argued that we, in our singularly expansive exile, ought to hesitate to utilize permissions granted as a minority position and under duress. But, more damaging to any kal vahomer, the issues dealt with in the responsa regarding pre-sh'hitah stunning are centered about the issue of treifah, that is, whether the animal was rendered mortally wounded by the stunning, which would preclude kosher slaughter. The issue of an impediment to blood flow, which is the primary issue regarding post sh'hitah stunning/bolting, is not raised (at least not in the materials here advanced) and we cannot be assured, in any case, that in the matter of whether stunning/bolting does constitute an impediment to blood flow, that it does not function differently in this regard pre-sh'hitah, when the animal has an unimpaired circulatory system, and post-sh'hitah, when, at very least, the brain that governs the autonomous nervous system has been severed. As best I can ascertain, this section of the responsum is not material to the question that is at issue.

There is also confusion, as presented, of arguments concerning stunning and bolting, which may not, after all, be identical. Rabbi Rabinowitz writes (p. 11), "The Codes permitted the use of meat cut from the slaughtered animal before the death of the animal as long as it is consumed after the animal dies. That certainly can damage the organs and yet it is permitted. Therefore, stunning, which by its very nature causes less, if any damage, should not prohibit the use of the meat..." That cutting meat damages organs is, here, an unsupported assertion. This is, it appears, a superficial function. That stunning, which is by its nature more penetrating, causes less organic damage is unclear to me and again, unsupported. But bolting, which clearly causes organic damage, would not seem to follow. Again, Rabbi Rabinowitz relies on a responsum of Rabbi Moses Feinstein

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that permits post-sh'hitah stunning, but does not comment on the explicit statement, there, (which he cites), "when there is no physical sign in the brain or in the skull there are no grounds for prohibiting". Of stunning this is true; of bolting it is manifestly not true. How, then, are we to permit bolting on this basis?

There are certain other imprecisions that also mar the logical argument. Rabbi Rabinowitz cites a book on Sh'hitah by I. M. Levinger (n. 8) to the effect (p. 6) that "The functional ability of the cortex ceases within 10 seconds after sh'hitah". He then argues that "post-sh'hitah stunning takes place approximately 5 seconds after sh'hitah," and that "the stunning takes place close to the closing down of the functional ability of the cortex". Close to, but before, appears to be a *prima facie* problem which goes unaddressed. I also note that Rabbi Feinstein is cited as permitting "hitting the head of the animal some thirty minutes after sh'hitah". The language of his responsum is "sh'loshim r'gaim," which, in the light of the above, I suspect must be translated as thirty seconds rather than thirty minutes. Still, any precedent from this to stunning or bolting a mere five seconds after slaughter is problematic.

Yet Rabbi Rabinowitz is probably correct about his conclusions. Rabbi Feinstein ultimately permits even where the brain was punctured, since, at thirty seconds, much of the blood has already drained out, and given that death was not precipitated by the stroke. If it can be determined, contrary to Rabbi Rabinowitz' affirmative claim, that death is immediate upon sh'hitah, even though some vestigial motion continues, and that blood is not impeded by the stunning/bolting — which would seem to follow from the industry's desire to bolt since they believe that it reduces "blood splash", that is precisely that it prevents havla'at dam ba'eivarim, the pooling of blood in the tissues — then it would follow that post-sh'hitah bolting should be permitted. That argument is not made here.

At the committee discussion of this responsum, the anecdotal point was made that several Orthodox agencies in other parts of the world do, in fact, permit post-sh'hitah bolting. Rabbi Rabinowitz appended mention of that as a post-script at the end of his argumentation (p. 8). It is the strongest point in favor of this conclusion. One would wish for the rationale under which they do so.