



# K O S H E R

Private Regulation in the Age of Industrial Food

TIMOTHY D. LYTTON

Kosher

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PRIVATE REGULATION  
IN THE AGE OF INDUSTRIAL FOOD

Timothy D. Lytton

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To my father and the memory of my mother

And to Rachel Anisfeld

Her mouth is full of wisdom, and lessons of kindness  
are upon her tongue.

—Proverbs 31:26



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# Introduction

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## *Why Kosher Food Certification Is Worthy of Attention*

**S**HIRLEY MAE ALMER WAS KILLED by a peanut-butter sandwich. At age seventy-two, she had survived lung cancer surgery and radiation therapy for a brain tumor. But she finally succumbed to food poisoning from peanut butter contaminated with a deadly strain of salmonella. Public-health officials attributed eight additional deaths and nearly 22,500 cases of illness in late 2008 and early 2009 to foods containing peanut butter, peanut paste, and peanut meal produced by the Peanut Corporation of America.<sup>1</sup>

Federal inspectors at the company's plants in Georgia and Texas discovered dead rodents, open holes in the roof, and pools of stagnant water. Company employees told reporters that conditions in the Georgia plant were "filthy and nasty." One worker informed CBS News that he saw a rat dry-roasting in peanut processing equipment. On *Good Morning America*, a plant manager recounted how he had informed the owner of "water leaking off of a roof and bird feces washing in" but said that the owner would not authorize money for repairs. The company's Texas plant was not licensed by the state as a food-manufacturing facility, so state inspectors never visited it until the salmonella outbreak became national news.

Among some industry insiders, problems at Peanut Corporation of America were common knowledge. One buyer for a snack company told the media that everyone knew the company was "a time bomb waiting to go off." Other insiders, like industry giant Kellogg, mistakenly relied on food-safety inspections by a private auditing firm, the American Institute of Baking, which issued a report on the Georgia facility concluding that

“[t]he overall food safety level of this facility was considered to be superior.”

This tragic episode highlights just how high the stakes are in food regulation—how lax oversight in just two industrial plants can result in a nationwide outbreak of deadly food poisoning. Peanuts processed by Peanut Corporation of America were used as ingredients in nearly four thousand products manufactured by more than 360 companies and sold to millions of consumers. Similar outbreaks of foodborne illness occur every year involving all types of foods, including meat, eggs, seafood, fruits, and vegetables.

The scale and complexity of the nation’s industrial food system present significant regulatory challenges. As the Peanut Corporation of America case illustrates, government regulation is neither as comprehensive nor as vigilant as it needs to be to prevent all-too-frequent outbreaks of foodborne illness. Knowledge within the company, and more broadly within the industry, that the company’s production facilities were unsanitary suggests that industry self-regulation is, in many cases, inadequate to protect consumers. The report by the American Institute of Baking inspires little confidence in the reliability of private food-safety auditors.

Similar regulatory challenges exist in the area of food labeling. At the supermarket, consumers are confronted by an endless parade of new food labels that misrepresent processed foods high in fat and/or sugar as “natural,” “fresh,” and “healthy.” For example, in 2007, the nonprofit Keystone Center assembled a coalition of food-industry executives and health advocates to design a new seal of approval to help consumers identify healthier foods. Two years later, the center launched its “Smart Choices” logo. But when the logo appeared on highly sweetened children’s breakfast cereals, full-fat mayonnaise, and ice cream, government regulators threatened legal action, and the project was discontinued. Officials charged with enforcing food-labeling regulations are constantly frustrated by the hydralike quality of new nutrition and health claims on food packages. As soon as government regulators put an end to one misleading labeling scheme, others emerge to take its place. And neither industry nor private alternatives to government regulation have so far satisfied demands for better consumer protection.<sup>2</sup>

Amid the frequent outbreaks of foodborne illness and the pervasiveness of misleading food labels, a little-noticed area of industrial food regulation offers a model of success: kosher food certification. A network of more than three hundred private kosher certifiers throughout the United States reliably ensures compliance with religious standards of food production and prevents deceptive marketing. The success of ko-

sher food certification holds many important lessons that can be applied to food regulation more generally—highlighting sources of regulatory failure and pointing the way toward reform.

Kosher certification, however, was not always so reliable. Fraud and corruption plagued kosher meat production in the United States from the mid-1800s to the mid-1900s. The New York City Department of Markets estimated in 1925 that 40 percent of the meat sold as kosher in the city was actually not kosher. The industry was notorious for price-fixing schemes, racketeering, and even murder for hire. These problems proved too big for government regulators. Six full-time kosher inspectors in the New York City Department of Markets and ten in the New York State Kosher Enforcement Bureau by the late 1930s were insufficient to oversee the eighteen thousand kosher food establishments in New York City.<sup>3</sup> Reform finally came to the American kosher food industry with the rise of a new regulatory institution: the private kosher certification agency.

This book tells the story of how private kosher certification agencies transformed kosher supervision in America from a tool of fraud and corruption into a model of nongovernmental industry regulation. The origins of private kosher certification agencies can be traced back to the newly emerging demand for industrially prepared foods among kosher consumers at the turn of the twentieth century. Gradual professionalization of kosher supervision raised ethical standards, and increasing bureaucratization of kosher certification agencies provided institutional checks and balances to prevent mistakes and misconduct. Today, these agencies utilize social networks based on trust and reputation to establish and enforce what many have called the American standard of kosher certification.

To be sure, problems in the kosher food industry remain. Fraud still occurs, and agencies accuse each other of unethical behavior in the fierce competition for industrial clients. But the industry no longer suffers from the type of widespread dishonesty and corruption that was rampant a century ago.

From a food-policy perspective, the successful development of the kosher food certification system is no small matter. Kosher food is big business. There are more than ten thousand kosher-producing companies in the United States alone, making more than 135,000 kosher products for over twelve million American consumers who purchase kosher food because it is kosher. Only 8 percent of kosher consumers are religious Jews—the rest choose kosher food for reasons related to health, food safety, taste, vegetarianism, and lactose intolerance or to satisfy non-Jewish religious requirements such as *halal* (dietary restrictions prescribed by Islamic law). The U.S. kosher market generates more than \$12 billion in annual retail sales,

and more products are labeled kosher than are labeled organic, natural, or premium.<sup>4</sup>

The growing popularity of kosher food in America is a response to a more general cultural anxiety about industrialization of the food supply. Like the movements to eat organic, local, or ethically produced foods, the turn toward kosher is, for many consumers, a way to personalize food production. The image of a rabbi overseeing production—motivated by a deep religious commitment to the ritual purity of food—diminishes the unease many feel about eating food manufactured in factories using industrially produced ingredients. Ironically, the demand for kosher certification among food *producers* is driven by the increasing industrialization of food production (the more ingredients and processing, the more supervision required), whereas the demand for kosher certification among food *consumers* is driven by anxiety about this very same phenomenon. The chapters that follow look beyond the public perception that kosher certification personalizes industrial food production. The aim is not to debunk but rather to explain the actual mechanics of kosher certification—its standards, administration, and self-regulation. In an age when consumers demand a lot of information about the food they eat—what’s in it, where it comes from, and how it is made—few people outside of the kosher food industry know much about how kosher certification really works.

This book does not argue either for or against eating kosher food. It takes no position on whether kosher food is safer or healthier than non-kosher food or whether kosher certification ought to include standards for animal welfare, environmental sustainability, or labor conditions. My claim is simply that today’s kosher certification system reliably ensures that food labeled kosher is kosher.

Kosher certification is a model of successful private regulation. The term “private regulation” may strike some readers as odd, especially in the context of contemporary political debate, which presents a stark choice between government regulation and unregulated private markets. For at least two decades, however, scholars within the “new governance” movement have emphasized that between these two extremes lies a spectrum of regulatory options, such as public-private partnerships, tradable permits, and private standard setting. There is a growing consciousness that economic and social regulation have never really been the exclusive domain of government authorities and that private entities can perform regulatory functions.<sup>5</sup>

The example of kosher certification highlights the advantages of private regulation over government regulation. Private certifiers have largely

overcome the problems that hamper government regulation of kosher food—problems such as inadequate inspection resources and insufficiently powerful means of enforcement. Kosher certification also offers lessons that can improve the performance of private regulation in other contexts such as food safety and labeling. In these contexts, private certifiers receive fees from the companies they certify, and this often leads them to put the interests of company clients ahead of their duty to protect consumers. The historical development of kosher certification illustrates effective strategies for managing this conflict of interest in order to make private certification more reliable.

The success of kosher certification, however, does not support a general preference for private over government regulation, nor does it suggest that the two are mutually exclusive. Each regulatory strategy has comparative strengths and weaknesses that make it well suited for some regulatory tasks and poorly suited for others. Kosher certification provides valuable insights into the relative strengths and weaknesses of private certification as a regulatory strategy that, alongside government efforts, can enhance regulatory outcomes.

Private certification is widespread in many fields, including higher education, health care, finance, and consumer product safety. Scholars have begun to explore the advantages and limitations of private certification in recent studies of fire safety, nuclear energy, securities rating, and forestry management.<sup>6</sup> Several attributes of the kosher certification system make it an especially worthy candidate for study in this emerging field—its one-hundred-year history, network of hundreds of certifying agencies, and effectiveness in regulating one of the nation's largest industries.

Chapter 1 begins with a historical analysis of the failures of kosher meat supervision in the United States from 1850 to 1940. The traditional means of regulating kosher trade in the Old World had been centralized communal control backed by government power. This approach proved impossible in America. By the mid-1800s, most Jewish communities in America contained a diverse mix of immigrants from different cultural backgrounds who founded rival synagogues within the same locality. Moreover, in America, communal authority was not an extension of civil government, so it lacked coercive power to enforce its rulings. In this context, communal control over kosher trade collapsed. The chapter chronicles the failure of successive attempts to clean up rampant fraud and corruption in the kosher meat industry through communal control, industry self-regulation, and government intervention.

Chapter 2 examines the emergence of private kosher certification agencies in the second half of the twentieth century. It shows how growing

demand for kosher certification of packaged foods gave rise to fierce competition among agencies that marketed their certification services to industrial food producers as distinct brands. Each kosher certification agency attempted to distinguish its brand by arguing that its certification was considered more reliable among kosher consumers than other certifications. To bolster their reputations for reliability, agencies developed internal systems of management oversight and instituted professional training of kosher inspectors to prevent misconduct and mistakes. Increasing management oversight and professionalization, driven by brand competition, greatly improved the reliability of kosher certification.

Chapter 3 explores how interdependence among private kosher certification agencies has led to cooperation in the development and enforcement of industry standards. The nature of industrial food supply chains makes agencies highly interdependent. An agency that certifies an ingredient can provide the manufacturer access to the kosher market only if its certification is acceptable to other agencies certifying products that include the ingredient further downstream in the production process. Thus, upstream certifiers have an incentive to satisfy the standards of downstream certifiers. In turn, the reputation of downstream certifiers depends upon the reliability of upstream ingredient certifiers. Misconduct or mistakes by an ingredient certifier renders downstream finished products nonkosher and can easily damage the reputation of the agencies that certify the finished products. The relative position of agencies in the production process varies from product to product since most agencies certify both ingredients and finished products. Moreover, fraud or corruption by any agency undermines confidence in kosher certification as a whole among food producers and consumers. This interdependence among agencies has led to the development and enforcement of industry standards, known collectively as the American standard of kosher certification, which have proven effective in maintaining the integrity of kosher certification.

Chapter 4 evaluates the performance of the kosher certification system in preventing consumer fraud and agency corruption. Available evidence suggests that kosher fraud is relatively rare. The chapter explains how private kosher certification agencies avoid problems such as inadequate inspection resources and insufficiently powerful means of enforcement that limit government regulation of kosher food. In addition to regulating food manufacturers, the kosher certification system also regulates itself. The chapter shows how bonds of trust and reputational sanctions reward those certifiers who maintain high standards and marginalize those who do not.

The Conclusion suggests that the kosher certification system offers a model of private third-party certification that can improve regulatory

outcomes in other areas of food regulation. The chapter identifies key features of kosher certification that account for its success. The chapter then shows how these features could be replicated to improve the reliability of private food-safety audits, nutrition labeling, and ecolabeling.

Before turning to the historical analysis of kosher meat supervision in Chapter 1, readers unfamiliar with kosher observance may find helpful a brief general introduction to kosher law and practice. More detailed analysis of kosher production and certification is woven into the chapters as needed. A glossary at the end of the book defines technical terms and identifies important people. The book neither assumes nor requires expertise in kosher law.

### The Sources, Laws, and Significance of Kosher Observance

The term “kosher” derives from the Hebrew word *kasher*, meaning “fit” or “proper.” The basis for kosher dietary restrictions—*kashrus*\* in Hebrew—is various passages in the Hebrew scriptures that govern food consumption and food preparation. For example, the Torah prohibits eating certain species of animals, such as pork and shellfish, and it proscribes cooking a kid in its mother’s milk.<sup>7</sup> Rabbinic law, stretching from the beginning of the Common Era to today, has developed these rudimentary biblical precepts into a system of detailed laws. For instance, the proscription of cooking a kid in its mother’s milk has developed into a more general prohibition against the mixing of meat and dairy products in the same food or even in the same meal.

Adherence to *kashrus* among Jews ranges from strict observance to complete disregard. Among those who fall between these extremes, one finds Jews who observe *kashrus* at home but eat nonkosher food at their workplaces or restaurants. In addition, there are gradations of observance among those who eat nonkosher food outside the home. Some limit themselves to eating nonkosher vegetarian foods, while others eat nonkosher meat and seafood but refrain from pork and shellfish.

Reasons for adherence to *kashrus* also vary widely. Some religious Jews believe that *kashrus* is a divine command and that eating nonkosher food is a serious sin. Others view *kashrus* as one of a number of traditional customs that, along with other practices such as daily prayer and Sabbath

\*The modern Hebrew pronunciation is *kashrut*. Throughout this book I employ the traditional Ashkenazic pronunciation *kashrus*, favored by kosher certification agency personnel and many Orthodox Jews in the United States. Some organizational names and quotations use *kashrut* or *kashruth* instead.



observance, constitute essential elements of Jewish religious life. Still others are motivated by sentimental attachment to certain foods and recipes that they grew up with or that contribute to their sense of religious or ethnic identity. These reasons are by no means mutually exclusive, nor is this list exhaustive.

Commentators throughout the centuries have offered a variety of justifications for *kashrus*. According to one view, accepting the restraints imposed by *kashrus* builds personal discipline and ethical character. Another account suggests that kosher restrictions serve to separate Jews both symbolically and socially from other groups. A third approach asserts that health concerns underlie kosher restrictions. Defenders of kosher slaughter have claimed that it minimizes the suffering of animals. Again, these are just a sampling of the competing theories concerning the justification for *kashrus*.<sup>8</sup>

When Jewish immigrants came to America, they brought *kashrus* with them. The next chapter examines the difficulties of adapting this ancient religious observance to the New World. It presents a story of chronic regulatory failure, which makes the reliability of kosher certification today all the more remarkable.