

THE SUBTLE GRAMMAR OF THE BIBLICAL DIETARY LAWS

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Except for the universal prohibition against consuming blood, the biblical dietary laws,¹ set down mainly in Leviticus 11, are seen to be directed to Israel alone. These laws belong to the category of what is called in Hebrew *hukim*; laws, such as those on sacrifice, which are not amenable to rational explanation.²

Following the school of the medieval philosopher-poet Yehuda Halevi, this aspect of Hebrew jurisprudence is supposed to provide a mysterious and utterly inexplicable pathway to the Divine. For Halevi, the revealed laws were paramount and superior to the common sense legal structures.

Correct observance of these laws will cause [you] to see the heavenly fire or discover another spirit within yourself, which you did not know beforehand, or you witness vertical dreams and miracles, you know that they are the result of all that you did before the mighty order with which you have come into contact and which you have now actually obtained.³

HUKIM

It is one of the small wonders of the world, therefore, how these "parochial" and unfathomable laws have become the object of interest and scrutiny among a wide body of non-Jewish observers and students of the Hebrew Bible. A recent survey of the Internet reveals the surprising fact that there are hundreds of sites which focus on understanding the ancient Hebrew dietary laws and taboos. The vast majority⁴ of these sites are sponsored by Christian fundamentalist groups that are apparently wrestling with "Old Testament" laws which, contrary to conventional Christian theological thinking, have not been superseded by the New Testament dispensation.

Within the Jewish expository tradition, beginning with the Talmud, these dietary laws form part of the *hukim* matrix. In the earliest strata of the rabbinic discussion on this issue, the point is made that those laws come from direct revelation. This category of laws, according to the rabbinic tradition, *Arnold Ages is a professor in the French Studies Department of the University of Waterloo, Ontario, Canada, He can be reached at sages@interlog.com.*

was instituted for Jews to purify them, and to enable Israel to acquire merit before the Lord.

The Talmud in Tractate Sanhedrin 21b, in a discussion of Solomon's disregard of Torah laws on kings who multiply horses and wives, says that it was precisely because Solomon rationalized away the Torah's objections that this greatest of men stumbled. In the Tractate Yoma 27b, on the issue of the scapegoat that is sent off into the desert to expiate the sins of the Israelites, the rabbis refer to the *hukim* as statutes which Satan especially detests: *shaatnez* (impermissible mixtures of fabrics in clothing), *halitzah* (the ceremony which undoes the obligation of levirate marriage), and the purification of the leper. "You have no right to criticize them because the Lord gave them to us," say the rabbis.⁵

It is the contact between Judaism and other civilizations that causes Jewish thinkers to begin to justify and explain the legitimacy of *hukim*.⁶ They were revealed, says Philo of Alexandria, in order to awaken holy thoughts and develop sterling character traits and were to be understood as allegories; the dietary laws in his system were intended to either promote or discourage the negative characteristics associated with certain animals. Fish with fins and scales, Philo tells us:

. . . symbolize endurance and self-control, while the forbidden ones are swept away by the current, unable to resist the force of the stream. Reptiles wriggling along by trailing their belly, signify persons who devote themselves to ever greedy desires and passions. Creeping things, however, which have legs above their feet, so that they can leap, are clean because they symbolize the success of moral efforts.⁷

Philo, like Aesop and La Fontaine, imputes human motives to animal instincts, but his imaginative interpretation does not really provide a key to unraveling the dietary code of Leviticus.

In his *Guide to the Perplexed*, (3:25-51) Maimonides does not accept Philo's allegorizing stance, but he does dismiss as nonsensical the idea that Divine legislation could be called irrational. As the greatest codifier of Jewish law in the history of Judaism and a talmudist *par excellence*, Maimonides was well aware that his approach to this question would be controversial, since many pious people believed that it was indiscreet to question the ratio-

nale behind the commandments. Such an approach, the argument went, would undermine their religious significance.⁸

Maimonides argues that recourse to irrationality is a kind of spiritual sickness and that those who espouse such an idea are of weak intellect. Why? Because that kind of thinking leads to the conclusion that God "commands us to do things that are not useful to us and forbids us to do things that are not harmful to us." Moreover, the Torah itself says in Deuteronomy 4:5-6:

'See, I have imparted to you laws and statutes, as the Lord my God commanded me, for you to abide by in the land which you are about to invade and occupy. Observe them faithfully, for that will be proof of your wisdom and discernment to other peoples, who on hearing all these laws will say, "Surely that great nation is a wise and discerning people.'"

"How would irrational laws evoke the admiration of other nations?" asks Maimonides rhetorically. With regard to the dietary laws specifically, Maimonides explains them as an Hebraic reaction and repudiation of the food habits of the pagans. The famous *Thou shalt not seethe a kid in its mother's milk* (Ex. 23:19; Deut. 14:21), Maimonides says, is the Torah's condemnation of actual food consumption patterns among the "Sabeans" (pagans) in antiquity. Jacob Levinger makes the important point that Maimonides did recognize, in his treatise on forbidden food, that certain non-kosher animals such as the biblically prohibited hare, could be eaten as a remedy or prophylactic against disease.⁹ This attitude conforms to Maimonides' rational approach to the dietary laws.

William Foxwell Albright does not quote Maimonides in his classic work *From the Stone Age to Christianity*, but his thinking on the dietary rules in Leviticus closely follows the medieval Spanish sage.¹⁰ Albright holds that their experience in Egypt taught the Israelites the dangers in ingesting certain foods because of the *madvei Mitzrayim*, – the biblical characterization of the widespread parasitic illnesses such as bilharzia that plagued all levels of Egyptian society. By carefully observing the link between certain classes of food and the resulting sicknesses, the Israelites were to configure a safe dietary package.

How does Maimonides go about explaining the *hukim* in a rational way? Well, take sacrifices. They were legislated into law in order to wean the

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Israelites away from the temptations of idolatry. Custom dictated sacrifices, and the Israelites could not so easily give up a practice which was universal at that time. Accordingly, God engages in a kind of "gracious ruse"¹¹ and ordains a sacrificial system as part of the weaning process. The Israelites simply could not have grasped a religious order in which the main expression of religion was meditation and abstract prayer.

MODERN JEWISH APPROACHES

Most of the modern Jewish approaches to the food laws, including Grunfeld's two-volume opus on the subject,¹² use a variant of Philo's allegorizing method or invoke three other modes of response. The pious assert that the dietary laws, as part of the system of *hukim*, are no more explicable than any of the other seemingly non-rational statutes and they must be observed simply because they are Divine commandments.¹³ In this context, holiness is seen as the goal attainable through eating properly sanctioned food. An offshoot of this argument maintains that the dietary laws in Leviticus are designed to prevent the Israelites from mingling with other peoples. They are thus insulating and separating mechanisms. What this theory lacks is an explanation of why these particular prohibitions and prescriptions were chosen to implement the separation.

The health factor has also been introduced to explain Leviticus' grammar of kashruth. Avoiding pork supposedly spares the observant the embarrassment of the trichinosis parasite. The interdiction of carrion meat also prevents the ingestion of harmful bacteria. The rejection of cattle with visible lesions or other diseases ensures meat free of dangerous contaminants. Finally, separating milk and meat products facilitates an easy digestion.

The hygienic explanation, while undoubtedly of value in past centuries, breaks down, however, in the face of modern food technologies which have largely eliminated trichinosis and outlawed carrion and diseased meats. Moreover, if the Torah had wished to furnish a health manual, it would have identified the difference between poisonous and non-poisonous mushrooms, preached the virtue of moderation, and highlighted the dangers of high cholesterol. Even the rationalizing Maimonides eschewed the hygienic argument, and in one of his medical treatises advertised the health benefits of certain non-kosher meats.¹⁴ It is interesting, however, that had modern cattlemen

been aware of the overriding principle behind the kashruth ordinances – which we shall outline below – the spread of mad cow disease might have been prevented.

NEW THEORIES

New theories on the biblical dietary laws, even by non-Jewish scholars, should be given a fair hearing. They are, for the most part, beautiful, consistent and, what is most important, based on the internal structure of the Torah. Maimonides would have appreciated them and would not have been embarrassed by their non-Jewish origins.

Soler¹⁵ suggests that kashruth is the third part of three "cuts" which occur in the Pentateuch. The first cut is the *brit milah* [circumcision], which links Israel to its God. The second cut is "in the regular course of days," which divides the weekdays from the Sabbath and further emphasizes the link between Israel and its Lord. The third is:

. . . the cut in the continuum of the created animals – added to the already accomplished cut, applying to every animal, between flesh and blood, and later to be strengthened by an additional cut within each species, decreed to be clean between the first-born, which are God's and the others, which are thereby made more licit.¹⁶

Soler adds that dietary laws tend also to cut people off from each other, and he refers to the episode in Egypt (Gen. 43:32) when the Egyptians, in a neat reversal of roles, find that they cannot break bread with the Hebrews for *that is an abomination to the Egyptians*.

With regard to the dietary laws, important rules are established to differentiate between clean and unclean animals, these words being used in a ritual sense not in a hygienic one. This latter distinction is important because we are dealing here with concepts of pure and impure which have no exact counterpart in our own modern vernaculars; the words *tahor* [pure] and *tamei* [impure] have resisted an adequate rendering in Western languages.

In Leviticus 11, the Torah registers the fact that cud-chewing ungulates, animals that have split hooves and chew their cud, are kosher; all others are not. Only fish with scales are permissible; others are not. No specific rules are offered for birds; they are named specifically as kosher or not. There is

one other important rule in the case of animals: the blood must be drained from the animal (Lev. 17:14) because it is the symbol *par excellence* of life.

Douglas, in her book *Purity and Danger*,¹⁷ advances a thesis based on her reading of the relevant parts of Leviticus 11 that point to a partial solution to the broad meaning of laws on kashrut. She does so by focusing on the word *kedusha* [holiness] and examines it in its various contexts in the Torah. Her conclusion, based both on the Hebrew word origin and the contextual uses, is that holiness infers separation – *havdalah* in Hebrew. The holiness of the individual and of the Israelite community is based on the idea of perfect and harmonious order, the exact opposite of *tohu vavohu* that are the first words in Genesis,¹⁸ the darkness and the void which were present at the Creation of the world. In God's universe, progress in the human sphere is understood as a necessary distancing from the primeval amorphousness and undifferentiated character of the moments before the Lord provided the ordering that gave each day its goodness.

Closely attached to the idea of holiness is the secondary concept of wholeness. That which is faulty, deficient, maimed or in other ways irregular, departs from the notion of order and wholeness. Animals with blemishes or health problems cannot be sacrificed. Human beings and priests in particular suffer exclusion from the Tabernacle or Temple service if they are similarly afflicted. In the Torah's construction of the universe, therefore, holiness has two basic components, separation and wholeness. The world itself testifies to this vision in the way the chaos of Creation gave way to an orderly physical and human structure. Every immoral act condemned in the Torah, from dishonoring parents through murder and theft, may be seen as an expression of the wholeness doctrine, since committing such acts blurs the boundaries between the holy and the profane. The whole idea of separateness and wholeness is embedded in the fabric of the Torah: The Sabbath is separated from the other days of the week, Israel is separated from other nations, and within Israel the *kohanim* [priests] and *levi'im* [Levites] are separated from the general population.

An apparently innocuous reference to bread may also provide a key to understanding the Torah's approach to the permissible food. Unleavened bread, says Soler, is clean "because the flour of which it is made, is not changed by the ferment of the leavening: it is true to its natural state."¹⁹ That is why in

Leviticus 2:11 cereal offerings may not be made with leavening or honey. Fermentation is the equivalent of a blemish; it is an altered substance, and hence no longer a pure representation of its class. Salt is acceptable because it preserves rather than alters and assists other foods in maintaining their "integrity."

Douglas says that kosher animals are herbivorous non-predators who conform to the Torah's idea of separation and wholeness. The special refinement which she adds is that kosher animals are those which use a form of locomotion native to their habitat. Any deviance from this pattern places them outside the kosher stream, so to speak. Two-legged fowl must fly with wings. Scaly fish must swim in water. On land, four-legged animals hop, jump or walk. "Any class of creature which is not equipped for the right kind of locomotion in its element is contrary to holiness."²⁰ In other words, living creatures which cross the line between species are not kosher. A student of biology would call this taxonomic purity. Creepy, crawly things cross the clearly defined borders which demarcates species and, therefore, they cannot be kosher. Any indeterminate form of propulsion – swarming, crawling, creeping, slithering – brings disqualification from the kosher category. "Eels and worms inhabit water though not as fish; reptiles go on dry land, though not as quadrupeds; some insects fly though not as birds."²¹ If there had been penguins in the Mideast, says Douglas, they probably would have been declared as non-kosher because "they swim and dive as well as fly, or in some other way are not fully bird-like."²²

A dominant strain behind the laws on kashruth is the abhorrence of the hybrid. Holiness for the Israelites implies purity, oneness and keeping distinct the categories of Creation. In the same way, incest and adultery are condemned by the Torah as a crossing of boundaries.

Soler, who anticipates many of Douglas's ideas, says, for example, that the requirement that kosher animals have a cloven hoof and chew the cud were based on observations that there is "a relationship between the foot of an animal and its feeding habits. [The ancients may have] reasoned that all hoofed animals must be herbivorous since they lack the means of seizing a prey."²³ Soler holds that the ideal in the Torah is vegetarianism and that the green plant is given as food (Gen. 1:29-30).

Carnivorous animals do not form part of this system. Consuming them would involve a kind of double sinfulness, eating an animal that has itself killed another animal. Soler goes further than Douglas in explaining why pigs do not make the kosher list: they are herbivorous but they are also carnivorous. Feeding cattle with grain mixed with animal parts, as was the case in Britain in the 1980s, would have been forbidden had cattlemen respected the herbivorous-carnivorous dichotomy. Kosher animals do not eat other animals even in an adumbrated form such as feed stock. It should be observed that the category of herbivorous is a necessary though not sufficient condition for kosher animals. The horse, ass, camel, hare and rock badger are herbivorous but they are excluded because their feet "do not conform to the foot that sets the norm: that of domestic animals. Any foot shape deviating from this model is conceived as a blemish and the animal is unclean."²⁴

Soler also anticipates Douglas's three categories of creation – sea, air, and land – and emphasizes that creatures who function normally in two of these categories cannot be kosher. Shellfish are sea creatures but some can walk and are at home on land as well. Thus, no shellfish for kosher consumers. Swans, pelicans, and herons are birds with wings but they spend most of their time in the water, thus confusing the boundaries and so are expunged from the kosher category. Reptiles in Soler's system are excluded because while they are land creatures they creep instead of the normal form of propulsion for land animals, walking on four feet "and not just any kind of feet."²⁵

The concept of kashruth applies not only to edible foods. Joining two different animals to the same yoke and planting mixed seeds together is forbidden by the Torah. It also applies to categories of human relationships. Mixed marriage is a consistent extrapolation of that prohibition. It is not a kosher union. In the same way, the Torah indicates that the product of an illicit union, a *mamzer* [bastard], may not enter the assembly of the Lord for 10 generations (Deut. 23). The same consistency, or what we have called taxonomic purity, applies similarly to the harsh view taken by the Torah towards homosexuality (Lev. 18:22): one is either a man or a woman – the Torah does not respond to the concept of "sexual preference" no matter how much the text is tortured. Even cross-dressing is consistently prohibited by Torah law.

On the question of the famous kid seethed in its mother's milk (Ex. 23:19), Soler, unlike Maimonides, sees this prohibition not as a repudiation of pagan rites but as a logical development of the separateness doctrine:

You shall not put a mother and her son in the same pot, any more than into the same bed . . . it is a matter of upholding the separation between two classes or two types of relationship. To abolish distinction by means of sexual or culinary act is to subvert the order of the world. Everyone belongs to one species only, one people, one sex, one category.²⁶

Carroll²⁷ suggests that Douglas's thesis is necessary but not sufficient because (1) it reduces five biblical categories of creatures (fish, birds, cattle, beasts of the earth, creeping things) to three (land, water and flying animals) and (2) does not take into account such anomalous things as the acceptability, according to Leviticus 11, of certain grasshoppers. Carroll proposes an important refining instrument to Douglas's analysis by importing Lévi-Strauss's idea of the nature-culture dichotomy. Animals are associated with nature, the world of humankind is culture. Swarming things such as insects and vermin blur the distinction between these two categories. Carnivorous birds in particular attack the nature-culture division because they repudiate the vegetarian ideal endorsed in the early parts of the Torah. In this context, Carroll explains why certain locusts are kosher while moths, flies, gnats and bees are not. The four last creatures blur the nature-culture concept because they bite, sting or engage in carnivorous acts. Grasshoppers, however, are true vegetarians. Moths do not eat meat but they eat human garments – they attack culture directly like *tzara'at*, the Bible's mildew infestation that infects clothes, houses, and human beings.

We cannot leave the subject of the exquisite grammar of kashruth without asking the following question: If the underlying principle behind the dietary laws is that holiness is a function of the discrete differences and separateness of specific categories, and that crossing boundaries is an insult to the glory of Creation, what does this mean in practical terms for us today? It seems especially relevant in an age of gene-splicing and cloning. Can Judaism accept the idea of cross-species genetic experimentation with all that involves in terms of hybrids? Does the talmudic concept of *pikuach nefesh* [saving life] override the biblical principle? And, finally, what of the nectarine and other fruits

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readily consumed by Jews today even though they are the products of genetic manipulation? Perhaps a revitalized approach to the relevant biblical texts is desirable.

NOTES

1. This study deals exclusively with the biblical pronouncements on the dietary laws of the Hebrew Bible and does not presuppose an analysis of the post-biblical rabbinic glosses on them such as the elaboration found in the Tractate Hulin.
2. There are, of course, food taboos in many societies. The researches of anthropologist Lévi-Strauss and others have identified complex dietary laws in various societies. See the article on dietary laws in *The Encyclopedia Britannica*.
3. David Hartman, *Israelis and the Jewish Tradition* (New Haven: Yale University Press, 2000) p. 73.
4. There are also many Internet sites sponsored by Jewish groups which explain the minutiae of the kashruth laws on the basis of traditional halakhic thinking.
5. The Hebrew reads: "*V'en lecha reshut leharher bahen.*"
6. See the article on Jewish law in *The Encyclopedia Judaica*.
7. Philo. Translated by F. H. Colson. Vol VIII, pp. 75-79. (Cambridge: Harvard University Press, 1939).
8. Jacob Levinger, "Maimonides Guide of the Perplexed on Forbidden Food in Light of His Own Medical Opinion", in *Perspectives on Maimonides: Philosophical and Historical Studies*, ed. Joel L. Kramer (London: The Littman Library of Jewish Civilization, 1996) pp. 195-208.
9. Levinger, p. 200.
10. William F. Albright, *From The Stone Age To Christianity* (New York, Doubleday: Anchor Books, 1957) pp. 1-60.
11. Hartman, p. 57.
12. Isidor Grunfeld, *The Dietary Laws*, 2 vol. (New York: Soncino, 1972).
13. The fact that they are Divine does not preclude copious discussion of the definition of what constitutes kosher and non-kosher animals; to wit, the many pages of intense commentary on the subject in the Tractate Hulin.
14. Levinger, p. 200.
15. Jean Soler, "The Dietary Prohibitions of the Hebrews," Translated by Elborg Forster in *The New York Review of Books*, June 14, 1979, pp. 14-17.
16. *Ibid.*, p. 16.
17. Mary Douglas, *Purity and Danger: An Analysis of the Concepts of Pollution and Taboo* (London: Routledge and Keegan Paul, 1984).
18. The words *tohu vavohu* have become part of the French language – not so in English.
19. Soler, p. 15.
20. Douglas, p. 50..
21. *Ibid.*, p. 51.
22. *Ibid.*, p. 51-52.
23. Soler, p. 16.

24. *Ibid.* p. 16.

25. *Ibid.* p. 16.

26. *Ibid.* p. 16.

27. John Michael P. Carrol. *Anthropological Approaches to the Old Testament*, ed. Bernhard Lang. (Philadelphia: Fortress Press, 1985) pp. 117-126.