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## THE JEWISH DIETARY LAWS AND THEIR FOUNDATION

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THE JEWISH DIETARY LAWS AND THEIR FOUNDATION

final paper

403 8983 00

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I. Introduction

While food and drug law has made its greatest contributions to the health and welfare of society over the past two centuries, it is indisputable that the history of this body of law is much older than two hundred years.<sup>1</sup> Soon after man realized he needed to eat, he recognized a need to establish rules and regulations governing the sale, preparation and handling of food. Perhaps the oldest documented set of food laws are the Jewish dietary laws, also known by the Hebrew term, *kashrut*, from which the word kosher is derived.

Unlike most laws related to food, which are enacted by society through government or other rulemaking bodies, Jewish dietary laws are believed to be conceptualizations of divine will that were expressed to Moses at Mount Sinai and transcribed in the Old Testament.<sup>2</sup> Intellectual curiosity and an interest in the evolution of food and drug law compel both Jews and Gentiles to study the Jewish dietary laws. For observant Jews, however, Jewish dietary laws possess unique significance. *Kashrut* is one of the pillars of Jewish religious life and virtually every aspect of eating and preparing food implicates some Jewish dietary law. While the First Amendment prevents any governmental enforcement of religious law, for those who are strict practitioners of the Jewish religion, the observance of Jewish dietary laws is every bit as important and compelling as is the observance of secular law. Despite the important role Jewish dietary laws play in the lives of many, few give much thought to the foundations of and rationales for *kashruz*.

After describing the Jewish dietary laws and their origin, this paper will present and analyze some Judaic and secular scholarly attempts at explaining the underpinnings of these laws. The Pentateuch does not explicitly explain the reasons for the laws, which has made this issue a popular topic for debate among Biblical scholars. While the arguments these scholars make for their positions are logical and often convincing, it is important to remember that an accepted principle of jurisprudence and legal philosophy is that unless a code of law itself states the underlying idea of a law, any theory about that idea remains conjecture. ~

For a discussion of the early regulation of food and drugs, see Peter Barton Hutt and Richard A. Merrill, Food and Drug Law (Westbury: The Foundation Press, Inc., 2d ed. 1991), 1-4.

<sup>2</sup> I will also refer to the Old Testament as the Pentateuch and the Torah.

~ Dayan Dr. I. Grunfeld, The Jewish Dietary Laws (New York: The Soncino Press, 1972), 5.

Ibid.

~ Genesis 9:4.

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11. The Religious Importance of Searching for the Bases of the Jewish Dietary Laws

Exploring the logical bases for the Jewish dietary laws is necessary to gain a complete understanding of the subject matter. However, such an investigation is important not only from an intellectual perspective but from a religious one, as well. The relationship between the laws of the Torah and their underlying ideas has always been the subject of deep reflection by scholars. They sought to understand not only laws easily accessible to human reason, but laws whose underlying purpose could not be easily comprehended, as well. The latter category of laws, known as *hukim*, include the Jewish dietary laws.<sup>4</sup>

If Orthodox Judaism wishes to maintain its loyalty to *kashrut* and to other similar spheres of practical religious life, it must introduce to young men and women the underlying ideas of these laws. They must be shown that religious commandments such as the dietary restrictions are not outmoded ceremonies but, rather, ways of life that transcend time. Habit and mechanical performance are not sufficient to help perpetuate the practices that have traditionally characterized the Jewish way of life. To insure a continuation of ritual practice such as observance of dietary laws, there must be conviction based on knowledge. By explaining not only what Jewish dietary laws require but why, Jewish youth receive a set of rules they can respect, which, for any legal system, is indispensable for survival.

III. The Jewish Dietary Laws

While most people, particularly in the United States, can identify selected elements of the Jewish dietary laws, few appreciate the scope and depth of the laws. The laws deal with virtually every aspect of food and its preparation. While the discussion to follow is not exhaustive, it highlights the major aspects of the laws of *kashrut*.

A. Eber Mm Hahai

The first dietary law in the Torah is *eber mm hahai*, which prohibits the consumption of a limb or any other part of an animal while it is still alive. After permitting man to eat meat for the first time, the Lord makes the following qualification: But flesh with the life thereof which is the blood thereof shall ye not eat.<sup>5</sup> This law is applicable to Jews and Gentiles alike, as it is one of the seven

*Noahide* laws binding on all mankind.<sup>6</sup> As eating an animal while it remains alive is morally reprehensible to most, most people practice this fundamental aspect of Jewish dietary law regardless of their region.

B. Permitted and Prohibited Animals

Perhaps the most universally publicized principle in Jewish dietary law is that man may eat only certain species of four-legged animals, birds and fish. The notion that certain animals are clean, or *tahor*, while others are unclean, or *tamei*, is first seen when God commands Noah to take animals along with him on the ark: Of every clean beast thou shalt take to thee seven and seven, each with his mate; and of the beasts that are not clean two and two, each with his mate.<sup>7</sup> Our sages interpret the words clean' and unclean as references to the animals which in the future would be labelled as [kosher and non-kosher.]<sup>2</sup>

In identifying what creatures may and may not be eaten by man, the Torah divides all beings into four groups: (1) domesticated animals and beasts; (2) birds; (3) fish and (4) insects and reptiles. Concerning domesticated animals and beasts, the book of Leviticus states, Whatsoever parteth the hoof and is wholly cloven-footed and cheweth the cud among the beasts you may eat.<sup>9</sup> These requirements are repeated again in Deuteronomy 14:6. Thus, an animal's flesh may be eaten if it is a ruminant, an animal that chews its cud, and if it has split hooves. Animals that possess only one of the required characteristics, such as the camel, which does not have split hooves, and the pig, which does not chew its cud, are forbidden. Deuteronomy 14:4-5 specifically enumerate the following animals as permissible: the ox, the sheep, the goat, the hart, the gazelle, the roebuck, the wild goat, the pygarg, the antelope and the mountain sheep.<sup>10</sup>

<sup>6</sup> The *Noahide* laws were given to the sons of Noah and since both Jews and Gentiles descended from them, the laws are binding on all mankind. The *Noahide* laws were promulgated long before the Sinaitic legislation, which is binding only on the children of Israel. For a discussion of these laws, see Grunfeld, The Jewish Dietary Laws, 41-42.

<sup>7</sup> Genesis 7:2.

Seymour E. Freedman, The Book of Kashruth (New York: Bloch Publishing Company, 1970), 103-

104.

<sup>9</sup> Leviticus 11:3.

<sup>10</sup> Encyclopedia Judaica, vol. 6 (Jerusalem: Keter Publishing House Jerusalem Ltd., 1972), 28.

With respect to birds and fowl, unlike with domesticated animals and beasts, the Pentateuch does not prescribe identifying physical characteristics. Rather, it enumerates twenty four types of unclean birds, with all others being permitted. Not only is the meat of a non-kosher animal or bird forbidden, but its milk and eggs are forbidden as well.<sup>12</sup> All birds of prey are forbidden, such as the vulture, the osprey and the raven. While the Torah theoretically permits man to eat any bird not belonging to one of the twenty four forbidden species, today, only those birds that have been identified by tradition as kosher may be eaten.

For fish to be clean and permissible as food, the Torah requires them to have both fins and scales.<sup>13</sup> All shellfish, therefore, are not kosher. Scales are the determining factor because every fish that has scales has fins also- but the reverse is not true.<sup>14</sup> Fish are permitted so long as they possess scales while in the water, even if they fall off when the fish are removed from the water.

Insects and reptiles are the final class of living things with which the Torah deals. As a general rule, the Pentateuch forbids all swarming things, calling them an abomination.<sup>15</sup> In the next verse, however, the Torah qualifies the prohibition, stating that locusts that have four leaping legs and four wings covering the greater part of the body may be eaten. However, since modern society has difficulty identifying these locusts, most modern Jewish communities refrain from eating locusts altogether. Although the bee is a forbidden insect, its honey is regarded as 'transferred nectar' and may, therefore, be eaten.

#### C. Ritual Slaughter

Even if a domesticated animal, beast or bird is permissible to eat, Jewish dietary law prohibits its consumption unless it has been slaughtered in a ritual manner known as *shehitah*.<sup>17</sup> While

The prohibited birds are listed in two places: Leviticus 11:13-19 and Deuteronomy 14: 12-18.

<sup>12</sup> Rabbi Yacov Lipschutz, Kashruth (Brooklyn: Mesorah Publications, Ltd., 1988), 19.

<sup>13</sup> See Leviticus 11:9-10 and Deuteronomy 9-10. The Hebrew term for fins is *snafir* and for scales it is *kasket*.

Isaac Klein, A Guide to Jewish Religious Practice (New York: The Jewish Theological Seminary of America, 1979), 305.

<sup>14</sup> Leviticus 11:20.

<sup>15</sup> Encyclopedia Judaica, 28.

<sup>16</sup> Ritual slaughter is not required for fish or reptiles and insects.

the Torah briefly alludes to the requirement of ritual slaughter when God commands, You shall slaughter your cattle and flock,<sup>18</sup> the details of this commandment were taught by Moses and transmitted orally until transcribed in the Talmud in great detail.<sup>19</sup>

The details of *shehitah* are so complex and minute that a carefully trained and licensed individual called a *shohet* must carry out the slaughter. Before the *shohet* slaughters the animal, he must check to make sure the animal's neck area is clean and free of any object that could impair the *shehitah* process. In domesticated animals and beasts, Jewish law requires that the *shohet* sever both the trachea and the esophagus. In birds, either one of these must be severed. The *shohet* must cut with continuous strokes and without pressure or hesitation so as to cause death as quickly and painlessly as possible. After the animal has been slaughtered, the *shohet* examines it and investigates whether it possesses any blemishes that would render it unfit for consumption in accordance with the Jewish dietary laws. While humane societies have attacked *shehitah* as a cruel form of slaughter, in fact, the source of the commandment is a desire to minimize the animal's suffering.<sup>20</sup> Furthermore, [modern science has borne out the claim that *shehitah* is the most humane method of slaughter. 21

D. Prohibited Parts of an Otherwise Permitted Animal

Even if an animal is from a permitted species and is slaughtered in a ritual manner, there are two components of the animal's body that are strictly prohibited for human consumption: a special kind of fat called *heleb* and blood. It shall be an everlasting statute throughout your generations in all your dwelling places: all *heleb* and all blood shall ye not eat. ~ Violation of these prohibitions is a serious offense and results in the most dreaded punishment in Judaism, *karet*, or excision of the soulY

The prohibition of eating *heleb* applies only to the fat of an ox, sheep or goat.<sup>21</sup>

~ Deuteronomy 12:21.

<sup>19</sup> The Talmud is the body of teaching that comprises the commentary of rabbinic scholars on the *Mishnah*, which interprets the Old Testament.

~ See Grunfeld, The Jewish Dietary Laws, 55.

<sup>21</sup> Klein, A Guide to Religious Practice, 308.

~ Leviticus 3:17.

~ See Leviticus 7:25 for *heleb* and Leviticus 7:27 for blood.

~ Leviticus 7:23.

Moreover, not all fats are prohibited. *Heleb* refers only to the kinds of fat offered for the Temple's sacrificial service. Permitted fat is called *shuman*. According to traditional interpretation, the prohibited fats are (1) the fat covering the intestines; (2) the fat that lies over certain compartments of the stomach of certain ruminants and over a part of the bowels; (3) the kidneys and the fat connected with them on the loins and (4) the diaphragm. According to the Talmud, one can distinguish *heleb* from *shuman* because only the former is not intermingled with the animal's flesh but forms a separate, solid layer.<sup>25</sup>

While the prohibition of *heleb* applies only to the fat of the ox, sheep and goat, the prohibition of blood applies to all domesticated animals, beasts and birds, but not to fish. Blood is prohibited whether it is in liquid form or if it is part of the muscle, tissue, bone or fat. Blood may be extracted from meat and poultry either by broiling or salting. This process is commonly referred as koshering the meat, since only after this procedure has the blood been removed, thereby rendering the meat permissible for eating.

#### E. Mixing Dairy and Meat

Another relatively well-known aspect of Jewish dietary law is that one may not eat meat and milk products together. The source of the prohibition is a verse repeated three times in the Torah:

Thou shalt not seethe a kid in its mother's milk. - The Talmud interpreted the triple repetition as an indication that three distinct activities are prohibited: cooking meat and milk together, eating such a mixture and deriving any benefit from such a mixture.<sup>27</sup> While the Torah speaks specifically of a lamb, rabbinic interpretation extended the prohibition to all meat and fowl, but not to fish. Milk includes all dairy products.

The commandment to keep milk and meat separate has been interpreted rather strictly. In order to make the separation as complete as possible, *kashrut* requires separate utensils, dishes and cutlery for meat and dairy foods and to wash and store them separately. Furthermore, strict observance demands that since meat is not easily digested and leaves a taste in the mouth that lingers, one must wait an interval of up to six hours after consuming meat before eating a dairy product. Since dairy products are more easily digested and their tastes do not linger in the mouth as long as meat, one must merely

<sup>25</sup> Hulin 49a.

<sup>26</sup> Exodus 23:19, Exodus 34:26 and Deuteronomy 14:21)

<sup>27</sup> See Hulin 115b.



wash out one's mouth after eating a dairy product and may immediately thereafter eat meat. With the separation of milk and meat, the family and the home become directly involved in the Jewish dietary laws.

#### IV. Suggested Rationales for the Jewish Dietary Laws

##### A. Hygiene

The motive most commonly attributed to the Jewish dietary laws is hygiene. The dietary laws are most often thought of as health measures dictated by the primitive hygienic conditions of the ancient world. According to this theory, Moses, by anticipating the findings of modern science, was history's greatest public health administrator. The hygienic theory is proposed by both ancient and contemporary Judaic and secular scholars. The theory enjoyed its greatest popularity at the beginning of this century with the great advances in medical knowledge.

While many perceive the hygienic theory as a rationale most commonly embraced by secular scholars, one of the most vocal proponents of the hygienic theory is the respected Biblical commentator and doctor, Maimonides. Arguing that forbidden foods are unwholesome, Maimonides states, All the food which the Torah has forbidden us to eat has some bad and damaging effect on the body...The principal reason why the law forbids swine's flesh is to be found in the circumstances that its habits and its food are very dirty and loathsome. Maimonides gives an explanation solely based on hygienic considerations for the prohibition against consuming the sacrificial fat, *heleb*: The fat of the intestines is prohibited because it fattens and destroys the abdomen and creates cold and clammy blood. Concerning the prohibition against mixing milk and meat, Maimonides states that meat boiled in milk is undoubtedly gross food, and makes a person feel overfull.<sup>32</sup>

Many other scholars share Maimonides' view that the Jewish dietary laws were essentially

~ Jacob Milgrom, *Food and Faith: The Ethical Foundations of the Biblical Diet Laws*, Bible Review 8 (December 1992): 5.

~ Maimonides (1135-1204) is the more common name of Moses ben Maimon, the celebrated medieval rabbi, philosopher and physician who lived in Spain.

~ Moses Maimonides, Guide of the Perplexed, trans. M. Friedlander (New York: Hebrew Publishing Co., 1978), 253.

~ Ibid.

**32** Ibid.

a hygienic code. Rabbi Samuel Meir<sup>33</sup> declared that all cattle, wild beasts, fowl, fish and various kinds of locusts and reptiles which God had forbidden to Israel are indeed loathsome and harmful to the body, and for this reason they are called unclean. Another exegete, Nachmanides,<sup>35</sup> states that it is only permissible to eat fish that have fins and scales because those without fins and scales usually live in the lower muddy strata which are exceedingly moist and where there is no heat. They breed in musty swamps and eating them can be injurious to health. Many secular scholars agree with the theory that hygienic considerations underly the Biblical dietary laws?<sup>7</sup>

While a selective examination of the various aspects of the Jewish dietary laws supports the hygienic theory, a closer, more complete analysis reveals several difficulties with this inherently intuitive theory. One objection to this theory is that the Pentateuch permits man to consume fruits and vegetables without restriction.<sup>38</sup> If the purpose of the dietary laws was to promote man's health, would not the Torah prohibit the consumption of poisonous herbs and fruits? The hygienic theory also fails to explain two of the most fundamental aspects of the Jewish dietary laws: ritual slaughter and the prohibition against consuming blood. With respect to permissible and prohibited animals, the hygienic theory is both over and under inclusive. It is unproven that all animals declared unclean by the Pentateuch are harmful to health. For example, the Arabs have long enjoyed the camel and its products. As for pork, if it is supposed that ancient Israel had discovered the risks of eating it, they could also have learnt that these risks could be avoided by cooking it thoroughly.<sup>39</sup> Conversely, animals deemed clean by the Old Testament can be injurious to health: We often forget that sheep could transmit tape worm, that

~ Rabbi Samuel Meir (1080-1174) was a Biblical and Talmudic commentator born in northern France. He was a prominent disciple of Rashi, the leading commentator on the Bible and Talmud.

~ Commentary to Leviticus 11:3.

~ Nachmanides (1194-1270) was a Biblical commentator, a historian and a pioneer of Jewish mysticism who lived in Spain.

~ Commentary to Leviticus 11:9.

~ See, e.g., W.F. Albright, Yahweh and the Gods of Canaan (New York: Doubleday Anchor, 1968), 177-180 and R.K. Harrison, Introduction to the Old Testament (Grand Rapids: Eerdmans, 1969), 390-

391.

~ See Genesis 1:29 when God tells Adam and Eve, Behold, I have given you every herb yielding seed which is upon the face of the earth.

~ Gordon J. Wenham, The Theology of Unclean Food, The Evangelical Quarterly 53 (January/March 1981): 6.

cows have liver worms and that most of the clean fish in fresh water have tape worms. Finally, if, indeed, hygiene were the motive underlying the Jewish dietary laws, why did the Church allow their abolition in the first century A.D.? These various objections place doubt on the attempt to attribute hygienic motives to the Jewish dietary laws. While observance of the dietary laws may well have a secondary effect on the health and longevity of the laws' observers, it is unlikely that hygiene is the primary motivation underlying *kashrut*.

#### B. Symbolism

The premise of the symbolic theory of the Jewish dietary laws is that abstract ideas are not always the best means of influencing human behavior. Often times, a symbol, a visible sign representing an idea, is a better way of affecting conduct than theories unreflected in any tangible form. According to this theory, the dietary laws are symbolic of proper conduct and obeying the laws condition man to act in that manner. While many adhere to this theory, they often differ on what they believe to be the underlying message of the symbols.

Mary Douglas, in her book Purity and Danger, uses the symbolic approach to explain permissible and impermissible animals.<sup>41</sup> According to Ms. Douglas, holiness is not merely defined negatively as separation from evil but positively as purity and wholeness. To arrive at holiness, God embraces purity and wholeness and abominates mixtures. Thus, Israel is prohibited from plowing a field with two different animals under a single yolk, from sowing a field or vineyard with two kinds of seed and from wearing a garment made of both wool and linen.<sup>42</sup> Holiness also means physical wholeness. The priests who served in the Temple had to be physically complete; those who were blind, lame or in any way blemished could not serve as priests.

Douglas argues that the same insistence on wholeness and purity underlies the laws regarding permissible and impermissible animals. Clean animals are those that conform to the standard pure and whole types. Animals like sheep and goats are clean because they have split hooves and chew their cud while animals lacking these characteristics are considered unclean. Fish that conform to the wholeness requirement are those with fins and scales and only those may be eaten. Insects with

~ Kim-Kwong Chan, You Shall Not Eat These Abominable Things: An Examination of Different Interpretations on Deuteronomy 14:3-20, The East Asia Journal of Theology 3 (April 1985): 99.

<sup>41</sup> Mary Douglas, Purity and Danger (London: Routledge and Kegan Paul, 1966), 41-57.

<sup>42</sup> Leviticus 19:19.

an indeterminate form of motion, which swarm, are unclean. In short, holiness requires that individuals conform to the class to which they belong. Dr. 1 Grunfeld, in The Jewish Dietary Laws, takes an approach similar to Douglas' in explaining the prohibition against mixing milk and meat: In reality, the prohibition of meat and milk belongs to the category of laws which forbid a mixture of species as contrary to God's order of creation....When God created His world, we are reminded again and again with grave solemnity, every creature was created in accordance with the law of its own species and it is intended to develop forever in the rhythm of this law.

Rabbi Samson Raphael Hirsch<sup>45</sup> sees a different message in the laws regarding clean and unclean animals. He feels that the human body is destined to be the instrument of the soul and to implement its aims of holiness and moral freedom. Hence, the more passive and submissive the body is, the more it will yield to the dictates of the soul as man's higher nature. To condition man to be passive and submissive so as to maximize his sensitivity to the impulses of moral life, the Torah imposes dietary laws which represent these ideals. Vegetables and fruits are all permissible because they are the most passive substances. With respect to animals, those creatures which are herbivorous are certainly more passive than the more aggressive carnivores. Animals that chew their cud and have split hooves, such as the sheep, the goat and the ox, are, as a rule, herbivorous and relatively docile and passive. Thus, they are permissible to eat. Carnivores, in general, do not possess the characteristics of kosher animals and may not be eaten. Likewise, birds of prey, which are aggressive and carnivorous, may not be eaten.

Philo, in De Specialibus Legibus<sup>7</sup>, embraced the symbolic approach to explaining the dietary laws, as well. He explained the requirement that permissible domesticated animals, beasts and fowl be ruminants by stating that chewing the cud symbolizes the effective learning process of repetition and memorization. With respect to the split hoof characteristic, Philo said this symbolized that the way

~ Douglas, Purity and Danger, 53.

Grunfeld, The Jewish Dietary Laws, 22.

Rabbi Samson Raphael Hirsch (1808-1888) was a rabbi and philosopher as well as a leader and foremost exponent of Orthodoxy in Germany in the 19th century.

Grunfeld, The Jewish Dietary Laws, 9.

~ Philo, De Specialibus Legibus, trans. F.H. Colson (London: William Heinemann Ltd., 1929), 8:69-73.

of life is twofold, one branch leads to vice, [the] other to virtue....

While the symbolic approach to explaining the dietary laws is intriguing, its *modus operandi* seems to be nothing more than intuitive guesswork. The symbolism discovered seems to be largely dependent on the interpreter's imagination. Unless greater discipline can be introduced into symbolist interpretation, it will always be more liable to represent the whims of the commentator than the purpose of the law.<sup>49</sup>

C. Social Association

A third theory explaining the Jewish dietary law maintains that the dietary laws were a means of both symbolizing and maintaining Israel's status as the chosen people. Gordon J. Wenham proposes this theory in his essay, *The Theology of Unclean Food*.<sup>50</sup> Symbolically, says Wenham, the divisions within the animal kingdom express in elaborate symbolism the divisions among men, the most important of these being that between Israel and the Gentiles. The laws reminded Israel what sort of behaviour was expected of her, that she had been chosen to be holy in an unclean world. <sup>51</sup> More important than the symbolic representations of the dietary restrictions was the laws' operation to effectively prevent Jews from interacting socially with Gentiles. Social interaction almost always involves food and drink and since the dietary restrictions prevented Israel from eating with her Gentile neighbors, Jews were essentially placed in social isolation. Wenham points out that dietary laws prevented Jews from hiding their Judaism, as circumcision was a private matter, but the food laws made one's Jewish faith a public affair. Observance of the food laws was one of the outward marks of a practising Jew, and this in turn enhanced Jewish attachment to them as a reminder of their special status. <sup>52</sup>

Wenham explains the abolition of the dietary laws by the Church when he states that with the arrival of Christianity, Judaism was universalized to embrace all mankind....With the incorporation

<sup>49</sup> Ibid.

<sup>50</sup> Wenham, The Evangelical Quarterly, 9.

<sup>51</sup> Gordon J. Wenham, The Theology of Unclean Food, The Evangelical Quarterly 53 (January-March 1981): 6-15.

<sup>52</sup> Ibid., 15.

<sup>52</sup> Ibid., 12-13.

of the Gentiles into the Church, Israel was no longer regarded as the unique covenant people. Thus, when Christianity broke down the wall of separation between Jews and Gentiles, it naturally had to abolish that which symbolized this separation, the dietary laws.

D. Moral Freedom

This theory of Jewish dietary law proposes that the underlying aim of *kashrut* is to teach man to master his emotions and desires, thereby leading to complete moral autonomy. This approach takes exception with the belief that men who do not obey laws are freer than law-abiding individuals because they are free to follow their own inclinations without outside restrictions. In reality, the moral freedom theory states, men who are not bound by law are not free at all. Such individuals are slaves to their own instincts, desires and impulses. Therefore, voluntary submission to the law emancipates man rather than enslaving him.

The moral freedom theory is based on the belief that the constraint of law, in general, is the beginning of human freedom. Where the laws in question regulate one of the most fundamental of human desires, eating, the freedom gained is the highest level of sovereignty. The craving for food, along with the impulse of sex, is probably the most vehement of man's instincts. If unconstrained, man's desire to eat can lead to gluttony, obesity and a general lack of self control when it comes to food. The dietary laws do not attempt to destroy man's innate desire for food. Rather, *kashrut's* goal is to transfigure the instinct for food into self-discipline and restraint.

E. Ethics

Jacob Milgrom, in his article, Food and Faith: The Ethical Foundations of the Biblical Diet Laws, states that *kashrut* is an ethical system designed to allow man to consume animal flesh without being brutalized in the process. Milgrom points out that man was created a vegetarian, with Adam and Eve never eating meat. The sons of Noah were the first humans allowed to eat meat.<sup>55</sup>

When God realized that man was carnivorous and could not resist his instinct to eat meat, the Lord implemented a system whereby man could satisfy his craving in an ethical manner.

Milgrom points to three aspects of the dietary laws that exemplify his theory. First, there

~ Ibid., 12.

~ See Jacob Milgrom, Food and Faith: The Ethical Foundations of the Biblical Diet Laws, Bible Review 8 (December 1992): 5,10.

~ See Genesis 9:2.

is the prohibition against eating blood. He states that killing animals for food could lead man to become desensitized to killing and thereby lose his reverence for life. In prohibiting blood, which God calls life, ~ God warns man not to allow this desensitization to occur. Milgrom maintains that *kashrut*'S delineation of only certain animals as permissible for food also raises man's consciousness and reverence for life. Generally, the permissible animals are domesticated mammals like sheep, goats and cows. The dietary laws, thus, permit the consumption of animals that man domesticates for all his survival needs:

milk, wool, skins and meat. Since man needs these animals for things other than meat, he will not kill them unnecessarily. The third aspect of the dietary laws Milgrom mentions is *shehitah*, or ritual slaughter. More than any other law, ritual slaughter illustrates the ethical motive of *kashrut*: God will allow us to slaughter a living being for food, but only if we do it in a manner that evokes minimal suffering. In short, according to Milgrom, by prohibiting the ingestion of life, by reducing the choice of flesh to a few animals and by limiting the slaughter of even those few to a humane method, the Torah allows humans to satiate their desires for animal flesh without being dehumanized in the process.

#### F. Mysticism

A final approach to explaining the Jewish dietary laws is the mystical approach. According to this theory, the principal purpose of divine laws like *kashrut* is not to provide a course in moral discipline. Rather, say mystics, the main importance in God's commandments lies in their effect on the universe as a whole and on man as the center of that universe. With respect to the dietary laws, mystics maintain that prohibited food has a damaging effect on man's soul.

Isaac ben Moses Arama<sup>57</sup> stated the gist of the mystical position when he said, The reason behind all the dietary prohibitions is not that any harm may be caused to the body, but that these foods defile and pollute the soul.... ~ Arama and other followers of Jewish mysticism seem to have some support from the text of Leviticus for their position: Ye shall therefore separate between the clean beast and the unclean, and between the unclean fowl and the clean; and ye shall not make your souls detestable by beast or by fowl...which I have set apart for you to hold unclean.~ From these passages,

~ See, e.g., Leviticus 17:14.

~ Isaac ben Moses Arama (1420-1494) was a Spanish rabbi and philosopher who settled in Naples after the expulsion of the Jews from Spain in 1492.

<sup>58</sup> Encyclonedia Judaica, 43.

~ Leviticus 20:25-26.

the mystics maintain that the scope of the dietary laws is not only the human body but the whole human personality, as well.

The defilement of the soul resulting from a consumption of forbidden foods is known as *tumah*, which is derived from the word *tamei*, the term God uses to characterize the prohibited animals in the Pentateuch. While *tamei* is usually translated as unclean, mystics feel the translation is entirely misleading because it suggests a physical, material quality when, in fact, *tumah* is a metaphysical state of being. The mystical theory stresses that the term *tamei* is used in the Torah not only to describe prohibited food but also to describe principal, moral and religious offences, namely, idol worship and sexual immorality, especially incest.<sup>61</sup> Thus, the mystics claim, the common language assures us that consuming food that violates the Jewish dietary laws has the same contaminating effect on the soul and moral character of man as idolatry and immoral sexual conduct.

One issue mystics must address in order to lend credence to their theory is the fundamental question of how food can influence man's spirituality; how can we explain the transition from body to soul? The thirteenth century Jewish mysticist, Menahem Recanati, in his book, Taamei Hamitzvot, analyzes the mental make-up of man and tries to show how it is influenced by food. According to him, the human body is an instrument of the soul and the means by which the soul can discharge its task in this world. Since the body is the intermediary between the soul and the world, it matters a great deal whether or not this instrument is a willing servant of the soul. Recanati wrote:

Even as a craftsman cannot do his work without proper tools, so the soul cannot fulfill its task without a cooperating body; and as it makes a great deal of difference for any precision work whether a craftsman possesses fine tools or not, so it is of great importance for the human soul whether the body consists of fine or of coarse material. Ever the light shines the brighter through a good lamp, and the same trees yield different fruit according to the soil in which they are planted.<sup>62</sup>

Recanati maintains that initially, all souls are of equal holiness. However, the degree of holiness they are able to attain in this world depends largely on the particular body the soul inhabits. Forbidden food makes the body coarse and increases the power of evil inclination, providing a very poor intermediary between the soul and the outside world. Menahem Recanati sums up the mystical position as follows:

<sup>60</sup> See, e.g., Leviticus 11:4.

<sup>61</sup> Grunfeld, The Jewish Dietary Laws, 16.

<sup>62</sup> *Ibid.*, 18



With all the dietary laws it says 'Be Holy unto Me' in order to purify the soul which draws its

sustenance from the food in accordance with its refinement and purity. <sup>7</sup>

#### V. Conclusion

The depth and complexity of the Jewish dietary laws allow them to be analyzed on many planes, which explains the many rationales attributed to them throughout history. Had the laws been intended to serve as a code of conduct for only a certain period in history, the task of concluding the underlying basis of the laws would not be very difficult. Unfortunately, Jewish tradition believes that *kashrut*, like most other laws in the Torah, is timeless and should serve as a cherished religious principle for each generation. As the Old Testament does not provide a reason for the dietary laws and there is nothing tantamount to legislative history to shed light on the issue, discovering the bases of *kashrut* will not be easy.

As an Orthodox Jew, I am able to justify the dietary rules to myself in two ways. First and foremost, this is God's commandment, and as a student of law, a fundamental rule is that the binding force of a law is always independent of its *ratio legis*. Second, regardless of what motivated the implementation of the dietary laws many centuries ago, today, they have a very positive effect on human behavior. The dietary laws allow a person to take a mundane act devoid of any holiness, eating, and make it a holy event. In short, *kashrut* turns something as simple as the daily diet into an act of reverence and an implement of worship.

Professor Hurt: Without sounding patronizing, I wanted to thank you for a wonderful experience in your class. You brought a refreshing enthusiasm everyone appreciated and taught an area of law most of us knew little about. I hope to see you back again.

Ibid., 19.

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