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The Rabbinic Rejection of Mercy as Justification for Animal Slaughter

Those who study the texts and contexts of rabbinic food laws regularly encounter a theologically, culturally, politically, and economically fraught tension: namely, the yawning gulf between perception and reality. According to popular perception, special cows are lovingly raised in special verdant fields on a special diet; they are treated uniquely and compassionately; each night, a rabbi softly reads them passages from Leviticus; and then, one day, with the utmost compassion, devotion, and divine grace, they are slaughtered in the quickest, least painful way possible. Unfortunately, when we enter the modern kosher slaughterhouse, this perception is shattered against the cold, hard wall of reality.¹ The image confronted in the modern kosher slaughterhouse is one that, save for a few variables (some of which might even result in *more* painful slaughter), looks remarkably similar to a non-kosher slaughterhouse. Despite an industry desire to market itself as a more hygienic and compassionate product, the production of kosher meat fails to live up to its public perception.²

Turning from the modern slaughterhouse to the ancient study house, we encounter an explanation for this disconnect: despite modern efforts to claim that the origin of biblical

¹ For an example of a recent controversy in Postville, Iowa in which this disconnect was brought to light, see the discussion in Aaron S. Gross, *The Question of the Animal and Religion: Theoretical Stakes, Practical Implications* (New York: Columbia University Press, 2015), esp. 26-59.

² For a popular discussion of the multi-billion dollar modern kosher food industry, see Sue Fishkoff, *Kosher Nation: Why More and More of America's Food Answers to a Higher Authority* (New York: Schocken Books, 2010). For a deeply flawed unabashed apologetic for the industry, see Timothy D. Lytton, *Kosher: Private Regulation in the Age of Industrial Food* (Cambridge: Harvard University Press, 2013).

and rabbinic slaughter rules are based on compassion,³ there is no unambiguous data to support these assertions. Further, there is strong evidence that suggests that mercy was explicitly rejected as a rationale. And it is these ancient texts that help to shape the reality of the modern kosher industry.

Before turning to a few representative ancient texts, I need to define two terms. First, the rabbinic corpus to which I will confine myself is largely composed between the first and seventh centuries CE in Palestine and Babylonia.⁴ The authors of these documents, referred to as rabbis, understood themselves to be divinely authorized interpreters of law. They believed that, during Revelation at Mount Sinai, God gave Moses (whom they called “Moses our Rabbi”) two Torahs: the Written Torah (i.e., the Hebrew Bible) and the Oral Torah (i.e., all subsequent rabbinic interpretation). Every interpretive act by an authorized rabbi is therefore an act of ongoing Revelation. Second, I use the term *kashrut* (כשרות) to refer to the rabbinic system of food regulations. While the Hebrew Bible has a few basic rules, rabbinic interpreters expand this to include a whole variety of novel concepts, from requirements to salt meat after slaughter to commensality restrictions. Though the word “kosher” (כשר; meaning “fit/appropriate”; *kashrut* is its abstract form in Hebrew) appears in the Hebrew Bible, it never refers to food; thus, when I use this term I am indicated that the system is based on rabbinic conceptions of proper food practices.⁵

³ In modernity, compassion and hygiene are two common rationales offered for the kosher laws. On the historical, political, and cultural background for offering such explanations, see e.g., Robin Judd, *Contested Rituals: Circumcision, Kosher Butchering, and Jewish Political Life in Germany, 1843-1933* (Ithaca: Cornell University Press, 2007); and Mitchell B. Hart, *The Healthy Jew: The Symbiosis of Judaism and Modern Medicine* (New York: Cambridge University Press, 2007).

⁴ For an accessible introduction, see Charlotte Elisheva Fonrobert and Martin S. Jaffee, eds., *The Cambridge Companion to the Talmud and Rabbinic Literature* (New York: Cambridge University Press, 2007).

⁵ On the development of this system, see Jordan D. Rosenblum, *Food and Identity in Early Rabbinic Judaism* (New York: Cambridge University Press, 2010); and on ancient rationalizations for biblical food laws, see Jordan D. Rosenblum, *The Jewish Dietary Laws in the Ancient World* (New York: Cambridge University Press, forthcoming). Much of my argument in this essay draws on the latter volume.

With this brief background, we are ready to turn to a few key texts. As I have already noted, despite popular perception, neither the biblical nor rabbinic evidence supports mercy as a justification for kosher animal slaughter. Rejecting mercy as a rationale (often implicitly but on a few occasions quite explicitly) is part of a larger rabbinic trend recently detected by Christine Hayes: namely, rejecting a rational basis for divine law and, instead, asserting that the Law must be followed simply because it is divine decree.⁶ Biblical laws in general, and biblical food laws in particular, must be followed not because they make logical or empirical sense, but rather because they are divine commandments.

I will start my discussion of rabbinic rejection of mercy as a justification for animal slaughter with a tradition that has received much attention. According to a rabbinic tradition that appears in multiple sources,⁷ Rabbi Judah the Patriarch (the editor of the Mishnah, popularly known simply as “Rabbi”) tells a terrified calf on its way to the slaughter, who is crying out for Rabbi to save him, that there is nothing that he can do, since this is the very reason that the calf was created. For his apparent lack of compassion, Rabbi is afflicted with painful maladies, which are only healed once he shows compassion for other animals by saving their lives.⁸ While some scholars recently have tried to read this as a key exemplar of animal ethics and to construct a larger theology based upon this tradition,⁹ I wish instead to

⁶ See Christine Hayes, *What's Divine About Divine Law?: Early Perspectives* (Princeton: Princeton University Press, 2015).

⁷ See *y. Ketubbot* 12:3, 35a; *Genesis Rabbah* 33:3; *b. Bava Metz'ia* 85a. In this paper, I will not address more technical text-critical and linguistic issues. I treat some of them in my forthcoming book, *The Jewish Dietary Laws in the Ancient World*. For further discussion, also see Gross, *Question of the Animal*, 5, 164-171; and Shamma Friedman, “Literary Development and Historicity in the Aggadic Narrative of the Babylonian Talmud: A Study Based Upon B.M. 83b-86a,” in *Community and Culture: Essays in Jewish Studies in Honor of the Ninetieth Anniversary of the Founding of Gratz College, 1895-1985* (Ardmore, PA: Seth Press, 1987), 67-80.

⁸ Both the maladies and the acts of compassion that heal him vary depending on the variant text. Also see *b. Berakbot* 17a, which (explicitly modeling the mood of the book of Job) states that the fate of a human is death, and the fate of an animal is slaughter. For a medieval text that asserts that animals chose this fate, see the discussion in Joel Hecker, *Mystical Bodies, Mystical Meals: Eating and Embodiment in Medieval Kabbalah* (Detroit: Wayne State University Press, 2005), 95-97.

⁹ See especially Gross, *Question of the Animal*, 5, 164-171. Gross cites an unpublished paper by Julia Watts Belser, which she kindly shared with me as I prepared this essay.

highlight what this tradition lacks: namely, it does not state that kosher animal slaughter is itself an action justified on the grounds of mercy.

If kosher animal slaughter is not based on mercy, then why does Rabbi suffer? Rabbi suffers because his words, while consistent with rabbinic thought, were deemed unnecessary to utter to an animal literally being led to the slaughter. Just because the actual act of slaughter is not an act of mercy, does not mean that one should act thusly. In this way, Rabbi did not act mercifully.¹⁰ But Rabbi's act was not part of the rabbinic slaughtering procedure, which is why it *could* be judged on ethical grounds. Slaughter, on the other hand, is not based on reason; hence, according to the rabbis, it *cannot* be subjected to such ethical criteria.

If not based on compassion, then why do such rules exist? One rationale for the entire rabbinic system of animal slaughter is its effect on humanity. According to *Genesis Rabbah* 44:1, an exegetical commentary on the book of Genesis:

[A] Rav said: The commandments were only given in order to refine humanity by them.

[B] For what does the Holy One, Blessed be He, care whether one slaughters [an animal by cutting] at the throat or whether one slaughters [an animal by cutting] at the back of the neck?

[C] [Rather,] it is intended to refine humanity.¹¹

This argument occurs in the midst of an exegesis on a biblical verse in which God's word is described as refined (צְרוּפָה).¹² Thus, as the refining process purifies metals, God's commandments serve to refine (לְצַרוּף) humanity. Moving from the more general to the particular, the text here then singles out a specific set of commandments: the proper manner in which to slaughter an animal. Intriguingly, this text asserts that God really does not care

¹⁰ As is explicit in the wording of the version on *b. Bava Metz'ia* 85a. Unless otherwise mentioned, all translations are my own.

¹¹ Text based on the critical edition of Theodor and Albeck, pp. 424-425. (The section headings are not in the text but are provided in my translation for ease of reference and to aid in reading the text by breaking into smaller units.) I discuss relevant textual issues in *Jewish Dietary Laws*. On how this text is deployed in later discussions of Jewish ethics, see Gross, *Question of the Animal*, 215 n. 2.

¹² The verse is 2 Sam 22:31.

about the proper method, but that the required actions function as a means of refinement for the human agents who perform these practices.¹³ Here, it is worth quoting Christine Hayes' argument in regard to this text:

The commandment [of animal slaughter] is chosen precisely because of its arbitrary nature.... If the commandment itself is devoid of meaningful content, then it cannot be the *substance* of the commandment that refines the human. Rather, it is the very act of performing the commandment in obedience to God's will that refines the human actor. In other words, while the law is said to have a general rationale (refinement of Israel), that rationale is not intrinsic. It does not flow from the specific substance and content of the law; it is a purely extrinsic utility.... Indeed, it is precisely *because* these prescriptive divine commands *lack* intrinsic reason and intrinsic utility that they generate an obedience that refines humans and conduces to virtue.¹⁴

Kosher animal slaughter does have an ethical impact, but not in regard to the animal.

Rabbinic animal slaughter therefore is not concerned with the one *slaughtered*, but rather with the one *slaughtering*.¹⁵

Thus far, I have argued that rabbinic animal slaughter regulations are not justified on the grounds of mercy. I now turn to traditions that make this assertion quite explicit. For example, according to Deuteronomy 22:6-7:

If you encounter a bird's nest before you on the road, in any tree or on the ground, with chicks or eggs and the mother sitting on the chicks or on the eggs, do not take the mother along with her young. Send the mother away, and take only the young, in order that it may go well for you and you may prolong your days.

Though some commentators have argued that this biblical legislation is based in mercy, Deuteronomy makes no such claim.¹⁶ The rabbis take up this argument and, connecting it

¹³ The question of God's/gods' desire for ritual action also appears in ancient discussions of the basis for sacrifice. In general, see Daniel C. Ullucci, *The Christian Rejection of Animal Sacrifice* (New York: Oxford University Press, 2012).

¹⁴ Hayes, *What's Divine About Divine Law?*, 258, original emphasis.

¹⁵ This concern with the slaughterer is also reflected in rabbinic discussions about limiting meat consumption. See e.g., *b. Hullin* 84a.

¹⁶ Further, there are logical issues with such an argument; for discussion, see Jacob Milgrom, *Leviticus 17-22: A New Translation with Introduction and Commentary*, AB 3A (New Haven: Yale University Press, 2008 [1964]), 1884;

with another biblical slaughter regulation, assert strongly that mercy should not be considered the basis for this divine decree.

[A] It is taught: “The one who says [when leading communal prayer]: ‘May your mercies extend to a bird’s nest’...they silence him....”¹⁷...

[B] R. Yose b. R. Bun said: It is not good [to suggest] that the commandments are based on the merciful nature of the Holy One, Blessed be He.

[C] [Thus,] those who translate [the Hebrew verse in Leviticus 22:28, which reads, “However, no animal from the herd or from the flock shall be slaughtered on the same day as its young” into Aramaic as follows:]

[D] “My people, children of Israel, just as I am merciful in heaven, so too should you be merciful on earth.

[E] [For this reason,] a cow or an ewe shall not be slaughtered on the same day as its young” [the translators] are not doing good,¹⁸ because [in doing so, they suggest] that the commandments are based on the merciful nature of the Holy One, Blessed be He.¹⁹

The concern in this text is that one leading communal prayer would insert wording/ (mis)translate biblical texts and, as a result, lead an unsuspecting member of the (human) flock to incorrectly assume that these biblical rules are based on God’s compassion and not solely on God’s command. While a common rabbinic name for God is “The Merciful One” (רחמנא), these animal slaughter regulations are not to be understood as deriving from God’s merciful nature. Again, it is worth citing Christine Hayes, who observes that:

What is striking about this teaching is that it too denies a rationale to a biblical law that might otherwise be understood—quite easily and naturally—as arising from moral considerations. To ascribe a moral rationale or purpose to this law is portrayed not merely as misguided or unnecessary but wrong—divine law must be understood and affirmed first and foremost as pure fiat that attests to the sovereignty of its author.²⁰

and Jeffrey H. Tigay, *The JPS Torah Commentary: Deuteronomy* (Philadelphia: Jewish Publication Society, 1996), 201.

¹⁷ Quoting *m. Berakhot* 5:3 (cp. *m. Megillah* 4:9).

¹⁸ I use this more literal rendering to convey the fact that it is not just an improper practice, but also a contradiction of the ethical sense of “good” when a translator renders the verse as such.

¹⁹ *y. Berakhot* 5:3, 9c (ed. Schäfer and Becker 1/1-2:152-153; cp. *y. Megillah* 4:10, 75c; *b. Berakhot* 33b; *b. Megillah* 25a). I discuss various text-critical issues in *Jewish Dietary Laws*.

²⁰ Hayes, *What’s Divine About Divine Law*, 260.

Biblical and rabbinic animal slaughter regulations are justified on neither ethical nor rational bases; rather, they are justified on the basis of Revelation: God commanded them and, as divine decrees, they must be followed.

When examining rabbinic texts on kosher animal slaughter, therefore, a pattern emerges: proper procedure is not justified on ethical grounds of mercy for animals. Such a conclusion only seems surprising because of later rhetoric that presumes compassion is the motivating rationale for the *kashrut* system. Despite this popular public perception, Orthodox-controlled modern kosher-certification agencies and their supporters clearly articulate that such ethical justifications are not the basis for *kashrut*.²¹ Rather, according to one ultra-Orthodox guide to the kosher laws:

Throughout the ages Torah observant Jews followed the dictates of Torah as a matter of basic faith. That is as it should be. Our adherence to the Torah and its laws cannot be dependent upon our finding them satisfactory.... One who puts the commandments of Hashem [literally “The Name,” referring to God] under scrutiny before unreservedly assuming their fulfillment is essentially not accepting the dictates of Hashem but rather those of his own intellect.... Acceptance of the Torah entails subordination to its laws regardless of whether or not we can intellectually comprehend their logic or emotionally identify with them.²²

The laws must be accepted. Further, many Orthodox modern authorities argue that, if *kashrut* is about ethics, then it can be discarded when ethics change. On the one hand, this is a polemic especially against secular and especially Reform Jewish interpretations over the last

²¹ For references and discussion, see Gross, *Question of the Animal*, 16-25. A recent online petition by the Orthodox Jewish social justice group Uri L'Tzedek calling for the introduction of certain ethical standards by kosher certification agencies explicitly acknowledges this disconnect (while at the same seeking to close this gap): “Laws relating to ethical matters, such as the just treatment of workers, the compassionate treatment of animals, and dealing in business with integrity, while distinct from the laws of kashrut, are mandated by halakha [rabbinic law] and consequential to all God-fearing Jews” (<http://www.thepetitionsite.com/801/404/187/kosher-certifiers-include-transparent-ethics-in-your-kosher-certification-standards/#sign> ; last accessed on April 7, 2016).

²² Binyomin Frost, *The Laws of Kashrus: A Comprehensive Exposition of Their Underlying Conceptions and Applications* (Brooklyn: Mesorah Publications, 2010 [1993]), 21.

150 years.²³ On the other hand, this is a polemic that misrecognizes the extent to which the kosher system has changed over centuries (and, indeed, millennia!).²⁴

I introduce this modern evidence to show the impact over the *long durée* of the ancient rabbinic data. Rabbinic rejection of reason as a rationale for divine revelation led them to reject mercy as a justification for *kashrut*. Thus, kosher animal slaughter is not an act of mercy, but an act of obedience. While some scholars and theologians have tried to introduce ethical notions into this discourse, such practices face a structural issue: they must perform acts of eisegesis and not exegesis; they must read *into* the texts and not *out of* them. While I will confess to being sympathetic to this agenda on a personal level, as a scholar of rabbinic literature I cannot ignore this disconnect between ancient text and modern context.

So where do we go from here? In a conference such as this, which explicitly seeks to foster comparative conversation about the complicated intersections of animals, ethics, and law, I hope that my evidence throws into relief the tension between data and desire: on the one hand, many of us are personally committed to promoting, creating, and enacting ethical practices in regard to animals; on the other hand, we are also scholars whose disciplinary training forces us to approach material that challenges and fails to conform to our personal ethics. We cannot sweep this inconvenient evidence under the proverbial rug.

That being said, I am not suggesting that the ancient rabbis were a group of heartless, animal abusers.²⁵ Rather, I am arguing that, for the ancient rabbis, animal slaughter was a

²³ Reform Jews have disregarded *kashrut*, but also embraced it in new and interesting ways. For discussion, see e.g., Lance J. Sussman, "The Myth of the Trefa Banquet: American Culinary Culture and the Radicalization of Food Policy in American Reform Judaism," *American Jewish Archives Journal* 57/1-2 (2005): 29-52; Mary L. Zamore, ed., *The Sacred Table: Creating a Jewish Food Ethic*, CCAR Challenge and Change Series (New York: CCAR Press, 2011).

²⁴ In general, see David C. Kraemer, *Jewish Eating and Identity Through the Ages* (New York: Routledge, 2009 [2007]),

²⁵ The same comment applies to modern rabbis. I am not seeking to offer a polemic against modern rabbinic opinions. Rather, I wish to highlight how the ancient rabbinic desire to exclude mercy as a justification for

means of engaging in practices that demonstrated their fidelity to divine fiat. Their actions were based on a larger ethic of submission to divine will. That is not to suggest that modern interpreters cannot layer on additional meaning. In doing so, however, modern interpreters cannot erase or obscure the fact that the laws themselves explicitly reject some of the very claims that modern interpreters wish to make.

By way of conclusion, I will offer one final ancient example. On three separate occasions in the Hebrew Bible, the ancient Israelites are commanded: “Do not cook a kid in its mother’s milk.”²⁶ For Philo, a Jewish author steeped in Greek philosophical traditions, this unjustified biblical law is justified on the basis of logic:

...it was grossly improper that the substance which fed the living animal should be used to season and flavour the same after its death, and that while nature provided for its conservation by creating the stream of milk and ordaining that it should pass through the mother’s breasts as through conduits, the license of man should rise to such a height as to misuse what had sustained its life to destroy also the body which remains in existence. If indeed anyone thinks good to boil flesh in milk, let him do so without cruelty and keeping clear of impiety. Everywhere there are herds of cattle innumerable, which are milked everyday by cowherds, goat-herds and shepherds, whose chief source of income as cattle rearers is milk, sometimes liquid and sometimes condensed and coagulated into cheese; and since milk is so abundant, the person who boils the flesh of lambs or kids or any other young animal in their mother’s milk, shows himself cruelly brutal in character and gelded of compassion, that most vital of emotions and most nearly akin to the rational soul.²⁷

According to Philo, cooking a baby animal in milk from its own mother’s breasts is cruel, impious, brutal, and uncompassionate. God’s command is therefore a lesson ethics. Further,

animal slaughter has modern consequences and, as scholars interested in animal studies, we must first understand this phenomenon before we can analyze its historical reverberations.

²⁶ Exodus 23:19; 34:26; and Deuteronomy 14:21. My argument in this final section draws on Kraemer, *Jewish Eating and Identity*, esp. 35-54; and Jordan D. Rosenblum, “Thou Shalt Not Cook a Bird in its Mother’s Milk?: Theorizing the Evolution of a Rabbinic Regulation,” in *Religious Studies and Rabbis*, ed. Elizabeth Shanks Alexander and Beth A. Berkowitz (forthcoming).

²⁷ *Virtues* 142-144. Translation from: F.H. Colson, *Philo: In Ten Volumes (and Two Supplementary Volumes)*; 12 vols.; Loeb Classical Library (Cambridge: Harvard University Press, 1984), 8:249-251.

Philo's interpretation is that the thrice-repeated injunction is easily followed: so long as the milk and the meat come from non-related beasts, then one is acting mercifully.

Redacted about 150 years after Philo's death, the Mishnah offers a radically different reading of this biblical law: "All meat is forbidden to be cooked with milk, except for the meat of fish and locusts."²⁸ According to the rabbis, this commandment is general, not particular, meaning that it applies to *all* meat and *all* milk, and not just to meat cooked in *its own mother's* milk. While the rabbis will go on to discuss various nuances of the law, including whether it applies to fowl (which produce no milk; eventually the answer to this question is that, indeed, it does), they do not offer a rationale based on mercy. Their approach here fits with the general trend that I argue throughout: namely, that this law is a non-rational divine fiat, not – as Philo, influenced by Greek philosophical values, argues – that this is a rational law justified on the grounds of mercy.

Such an approach also explains a seeming anomaly that people often wonder: why is it kosher to eat fowl with egg, but not fowl with milk? Should not the egg also be prohibited? However, this question misses the point: for the rabbis, these laws are not based on mercy, they are based on divine command, which requires *prima facie* obedience. And since they have concluded that the law applies to fowl and milk, that mixture is banned. No such prohibition exists for mixing fowl and eggs, so it is allowed. It is the faulty premise of this question – that the biblical commandment is premised on being merciful – that leads one to inquire about a fowl/egg mixture; however, were one to begin from the rabbinic premise, that this law is not a logical law premised on mercy, then the very question would never come to mind.

²⁸ *m. Hullin* 8:1 (ed. Albeck 5:137).