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**PARASHAT HASHAVUA**

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**This parasha series is dedicated**

**in memory of Michael Jotkowitz, z"l.**

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**Please include Shaltiel Moshe Chizkiyahu Ha-Levi ben Pnina in your prayers.**

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Mazal tov to Rabbi David and Yocheved Debow of the Fuchs Beit Sefer Mizrahi of Cleveland, OH, on the birth of their daughter Ayelet Zahava! Yehi ratzon she-tizku le-gadlah le-Torah, le-chuppa u-le-ma'asim tovim.

- From your friends in Alon Shevut who await your return

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Mazal tov to Rabbi David and Dr. Caroline (Peyser) Bollag on the birth of their daughter! Yehi ratzon she-tizku le-gadlah le-Torah, le-chuppa u-le-ma'asim tovim.

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Mazal tov to Rabbi Josh and Shira Schreier of Efrat upon the engagement of their daughter Nomi to Avishai Magence of Har Nof. May Nomi and Avishai be zocheh to build a bayit ne'eman beYisrael!! – the staff at Yeshivat Har Etzion

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#### **The Explicit and Non-Explicit Dietary Laws**

**By Rav Elchanan Samet**

# A. THE SEQUENCE OF DIETARY LAWS IN OUR PARASHA

Chapter 11 of Vayikra, which concludes our parasha, deals entirely with the laws of animals on two levels: which animals are forbidden or permitted for consumption, and the carcasses of which animals render one tamei (ritually impure) upon contact. I devoted my shiur to [Parashat Shemini in 5760](https://etzion.org.il/en/tanakh/torah/sefer-vayikra/parashat-shemini/shemini-laws-animals-impure-and-pure) to an analysis of the structure of this chapter and the relationship between its two topics, the laws of consumption and the laws of tum'a. In the present discussion, I will concentrate on the laws of consumption presented in this chapter and consider both that which the Torah mentions explicitly and that which the Torah chooses to omit.

The various species of creatures whose consumption the Torah prohibits or permits are divided into five categories, addressed by the Torah in five separate sections:

1. Verses 2b-8: "Behemot" and "chayot" (land mammals) possessing the "simanim" (signs) of kashrut, which may be eaten, and a list of the four forbidden animals which have but one of the signs.
2. Verses 9-12: Fish possessing the signs of kashrut, which may be eaten, and the prohibition against all sea creatures that lack these signs.
3. Verses 13-19: The list of the twenty birds forbidden for consumption.
4. Verses 20-23: The prohibition against eating all "sheretz ha-of" (winged swarming creatures), besides the four mentioned.

The fifth section comes at the end of the chapter, after the Torah outlines all the laws of tum'a relevant to the various creatures whose carcasses generate tum'a:

1. Verses 41-45: The prohibition against eating all "sheretz ha-aretz" (swarming insects), including all its various types.

We thus have before us a description of the entire animal kingdom, divided into five categories. By what principles of categorization did the Torah divide the animal kingdom? At its core, this categorization is a practical one; it classifies the creatures based on where they live, the factor that determines the nature of man's encounter with them. This classification does not always correspond with the method of classification generally employed by modern zoology. Thus, for example, the final creature mentioned in the list of forbidden birds is the bat – a flying mammal.

# How does our chapter arrange these five groups of creatures?

The standard employed is the quantitative relationship within each category of animals between the species permissible for consumption and those forbidden to eat. The first half of the chapter (verses 2-23) begins, "These are the creatures THAT YOU MAY EAT." Meaning, the Torah here comes to teach us which animals are permitted for consumption within each category presented in this chapter. The prohibition against eating the other creatures of every category is taught (either explicitly or by implication) parenthetically, alongside the permissible animals.

I suggest that the Torah arranges the various sections in accordance with the proportion that exists within each between the permitted and forbidden creatures. The larger the group of permissible animals in a category, the earlier that category's discussion appears in the chapter. It must be noted, however, that this proportion is not mathematical or statistical, but rather depends on the manner in which it is presented in the verses within each section. A survey of the five sections will help clarify this point:

1. The first section deals with the group of animals that have split hooves and chew their cud. This entire group is permitted for consumption, with the exception of the four animals that lack one of these criteria, which the verses list by name.
2. The second section deals with water animals. Here the Torah mentions not one creature by name, giving only the necessary criteria for a fish's permissibility – the presence of fins and scales. This description gives the impression of an equation of sorts: many water creatures possess these features, whereas many others do not.
3. The third section lists the names of the twenty forbidden birds, and mentions by name not one permitted bird. We are thus left with the impression that a sizeable portion of all birds are forbidden for consumption.
4. The fourth section initially prohibits all winged insects, before proceeding to list the four permissible ones, which the Torah mentions by name and features. The structure of this section is thus inverse to that of the first section, where all creatures with certain criteria are permitted with the exception of four, which differ from the others with regard to one of the criteria. Here, the Torah forbids all creatures classified as "sheretz ha-of," with the exception of the four species which possess different features than the others.
5. The fifth section categorically forbids the entire group of "sheretz ha-aretz," without exception. This final section does not really belong under the title, "These are the creatures that you may eat," since no creature in this category may be eaten. For this reason, perhaps, the Torah places this section at the end of the chapter, as an addendum of sorts to the main body of this discussion.

# B. SIGNIFICANCE OF THE CRITERIA FOR THE KASHRUT OF ANIMALS

In the first category, "beheimot" and "chayot," the Torah establishes two criteria that determine the animal's permissibility: split hooves and the chewing of the cud. Wherein lies the significance of these two signs, and do they have any relationship to one another?

In Masekhet Chullin (59a), the Gemara connects these two signs not only to one another, but to other criteria as well:

"Any animal that does not have teeth on top – we know that it chews its cud and has split hooves, and is permissible."

Later (59b), the Gemara cites a baraita in the name of Rabbi Dosa:

"If it has horns, one need not check its hooves [to see if they are split]."

It thus emerges that FOUR features characterize kosher animals, two of which are mentioned in the Torah, and two added by the Sages, and all four are somehow related to one another: split hooves, chewing of the cud, the absence of upper teeth, and horns.

What is the developmental relationship between these four characteristics of the kosher animals? Animals with these features are completely vegetarian, feeding strictly off grass. With regard to all their bodily systems, they differ drastically from animals of prey.

Let us first explain the relationship between the cud-chewing and the absence of upper teeth. These two features both involve the digestive system. The grass and plants off which these animals feed contain large quantities of cellulose, which is hard for the body to digest. Even among the vegetarian animals, not all of them can digest grass. Animals that chew their cud have the most effective system for the digestion of materials such as grass and straw. Their stomachs consist of four compartments in which the process of digestion (meaning, the softening and breaking-down of the food) occurs in stages. While grazing in the field, the animal must swallow a large amount of grass in a short period of time and leave quickly, as the open field is a dangerous place and invites animals of prey. Using its tongue, the animal quickly picks up a bundle of grass and swallows it with hardly any chewing. The upper cartilage, with has no incisors, helps the animal quickly soften the food before swallowing. As stated, this takes place without chewing, which would take a considerable amount of time. At this point the animal leaves the pasture to a safer location, where, in the tranquil security of its concealed area, it brings the food from the stomach to its mouth, chews it, and swallows it again for the continuation of the digestion process in the second stomach, and so forth.

This vegetarian lifestyle requires the animal to wander over vast distances to gather a sufficient quantity of fodder. At times, the animal must embark on long excursions or run for an extended period of time to escape from its foes. The hoof – the horn-like sheath covering the toe, several centimeters thick – allows for easier foot travel over long distances. A hoof split into two (= two toes, each with a hoof) gives the animal greater flexibility in climbing and gripping onto otherwise slippery rocks.

It turns out, then, that both the digestive mechanism as well as the travel patterns of these animals suit their culinary needs and need to flee from threatening creatures of prey. However, these very mechanisms deny them two important means of defense used by other animals: they lack fangs to bite attackers, and nails to scratch them. They have therefore been granted a unique, alternate means of defense – horns, which they use to gore their enemies.

It would therefore appear that the permissibility of these animals relates to their lifestyle. The features described by the Torah (in addition to those mentioned by Chazal) testify to the fact that these animals are completely vegetarian, as distant as could be from the lifestyle of beasts of prey.

The same applies to the kashrut of birds. The vast majority of the forbidden birds listed in our parasha are birds of prey. Indeed, the Gemara comments in Masekhet Chullin (59a),

"The signs of [kosher] birds were not stated, but the Sages said: Every bird of prey is forbidden."

C. THE TORAH PROHIBITION OF CANNIBALISM

### What is the status of human flesh with respect to its consumption? Such a question obviously arouses justifiable unease; it is hard to imagine a situation where this issue becomes practically relevant. Sure enough, nowhere does the Talmud address this question. But this is a fundamental question that a discussion about the nature of the Torah's dietary laws and their scope cannot ignore. Indeed, the Rambam does address this question, in spite of the dearth of earlier source material on the subject. He writes (Hilkhot Ma'akhalot Asurot 2:3):

"The human being, though it is said about him (Bereishit 2:7), 'Man became a living beast' [possibly implying that he is technically considered an 'animal'], is not included with the species of hoofed animals. He is therefore not included in the prohibition, and so someone who eats the meat of a person or his fat, from either a live or dead [person], does not receive lashes."

Halakha teaches that the human being cannot be classified together with the camel, hare, rabbit or swine, nor with any other creatures that lack the required criteria. The prohibition against partaking of their meat therefore does not apply to cannibalism.

Excluding the human being from the animals that lack signs of kashrut can yield a paradoxical result: specifically the unique stature of the human being serves as the reason why no Torah law forbids the consumption of his flesh.

But the Rambam, followed by several other Rishonim, was not prepared to accept this conclusion, and he therefore struggled to find a basis for prohibiting the consumption of human flesh even on the level of Torah law. In the aforementioned halakha, he adds:

"But it [human flesh] is prohibited based on an asei ('positive' commandment), for the verse (Devarim 14:4) enumerates seven species of animals, and about them it says (in Vayikra 11:2), 'These are the animals that you may eat,' implying that anything else we should not eat. And a prohibition resulting from an asei ['lav ha-ba mi-khlal asei'] is an asei."

It should be noted that this position of the Rambam has no explicit source in Chazal, and appears to be an independent extrapolation of the Rambam from the biblical verses.

According to the Rambam, this prohibition has nothing at all to do with the lack of the prerequisite criteria; after all, the verse he cites ("These are the animals…") comes before the Torah's introduction of the simanim. Rather, the prohibition results from the exclusion of human flesh from the general group of creatures whose meat the Torah permitted. The Rambam thereby appears to circumvent the problem. The prohibition against cannibalism does not evolve from the human being's lack of the required indicators of kashrut, but rather from a technical reason – because the Torah did not include the human being in its list of permissible creatures.

Many Rishonim disagreed with the Rambam and raised difficulties with his position. Only a few Rishonim accept his stance and attempt to resolve these questions.

D. THE ABSENCE OF AN EXPLICIT PROHIBITION AGAINST CANNIBALISM

How, then, can we explain this astonishing phenomenon, that the Torah issues no explicit prohibition against the consumption of human flesh? This problem becomes particularly difficult in light of the painstaking detail with which the Torah specifies the laws concerning the various creatures on the basis of its classification of the animal kingdom. It details the different criteria required for the various groups of animals and lists by name dozens of creatures. Particularly the human being itself, the subject of all these instructions, does it ignore!

Twice in his beautiful work, "The Vision of Vegetarianism and Peace," Rav Kook zt"l mentions the attitude of humanity towards cannibalism. At the end of paragraph 6 (page 12), he writes that as a result of the permission granted to Noach after the flood to partake of animal meat, "proper man" reacts with "natural disgust" to the notion of eating human flesh, and in paragraph 4 (page 9) he writes that because of this natural revulsion,

"The Torah therefore had no need to write an explicit prohibition in this regard, for a person does not need a warning with regard to that towards which he has already acquired a natural sense, which is as good as explicit."

He seems to mean not only that the Torah felt no need to issue such a prohibition, but that such an explicit warning would be inappropriate.

In my shiur on [Parashat Kedoshim in 5760](https://etzion.org.il/en/tanakh/torah/sefer-vayikra/parashat-kedoshim/kedoshim-you-shall-not-place-stumbling-block-blind), I asked why Chazal rejected the literal meaning of the verse, "Do not put a stumbling block before a blind man" (Vayikra 19:14), and adopted instead a metaphoric interpretation. The literal meaning of the prohibition refers to abuse for abuse's sake, capitalizing on the handicap of a helpless invalid – a blind man who cannot see. I answered that it is implausible that the Torah would issue a prohibition against such sadistic conduct. The Torah works under certain basic assumptions concerning the moral level of its intended audience, and it therefore does not forbid behavior that falls short of this minimal ethical standard. An explicit prohibition outlawing such conduct assumes the possibility of its occurrence on the part of the Torah's audience, which would constitute a harmful expression of mistrust.

The same applies to our issue. The Torah does not presume that its intended audience needs to hear a warning against cannibalism. An explicit prohibition of this kind would be damaging in two respects. First, as mentioned, it would demonstrate a degree of mistrust in the audience to which the Torah's commands are directed. Secondly, it would suggest an equation of sorts between the prohibition against eating human flesh and that against eating non-kosher animals. This would blur the essential distinction between man and beast.

Although the absence of an explicit prohibition against cannibalism leaves such behavior formally "permissible," in light of the considerations discussed, as well as, perhaps, additional factors, it is preferable for the Torah to refrain from such an explicit reference. Instead, the Torah relies on a deeply ingrained taboo among civilized human society, for "that towards which man has already acquired a natural sense – is as good as explicit."

(Translated by David Silverberg.

The unabridged Hebrew version of this shiur is archived at:

<https://etzion.org.il/he/tanakh/torah/sefer-vayikra/parashat-shemini/shemini-explicit-and-non-explicit-dietary-laws> )

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