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A STUDY OF THE DIETARY LAWS

Based on Wiener's Die Juedischen Speisegesetze

by

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Referee
Dr. Samuel S. Cohon

To HADASSAH
Who Shares My Life and Work

TABLE OF CONTENTS

	<u>Page</u>
CHAPTER I INTRODUCTION	4
CHAPTER II WIENER'S LIFE	7
PART ONE - <u>DIE JÜDISCHEN SPEISEGESETZE</u>	
CHAPTER III INTRODUCTORY STATEMENT:	11
Description of Book and Method of Review	
CHAPTER IV THE SCIATIC NERVE	16
CHAPTER V SEETHING THE KID IN ITS MOTHER'S MILK	23
CHAPTER VI THE PROHIBITION OF FAT	36
CHAPTER VII THE PROHIBITION OF BLOOD	42
CHAPTER VIII ANIMALS THAT "DIED OF THEMSELVES" OR WERE "TORN BY WILD BEASTS"	52
CHAPTER IX CLEAN AND UNCLEAN ANIMALS	62
CHAPTER X THE NEED FOR REFORM	75
PART TWO - CRITIQUE	
CHAPTER XI GENERAL APPRAISAL	83
CHAPTER XII THE JEWISH DIETARY LAWS IN ORIGIN AND DEVELOPMENT	95
A. THE SCIATIC NERVE	95
B. SEETHING THE KID IN ITS MOTHER'S MILK	97
C. THE PROHIBITION OF FAT	100
D. THE PROHIBITION OF BLOOD	102
E. ANIMALS THAT "DIED OF THEMSELVES" OR WERE "TORN BY WILD BEASTS"	104
F. CLEAN AND UNCLEAN ANIMALS	106
G. THE DATE OF THE DIETARY LAWS	115
APPENDIX A BRIEF SURVEY OF THE CONTROVERSIES ON THE LAWS IN REFORM JUDAISM	117
NOTES	
SELECTED BIBLIOGRAPHY	

I. INTRODUCTION

Scattered throughout the Pentateuch, and occasionally in other portions of the Bible, are found dietary rules which are vested with the solemnity of religious observances and the binding power of moral duties. To the orthodox Jew, these rules constitute divine ordinances¹ and the rejection of the dietary laws is the rejection of Judaism itself. For many centuries, Jews everywhere have adhered to them religiously, believing that "the dietary laws are the same now as they were in the days of Moses."²

The traditional Jewish practices, that began to be evolved over twenty centuries, had easily been reconciled with the spirit of the Ghetto, but they appeared somewhat incongruous to the modern Jew who was doing his best to steep himself in the European life. Accordingly, without much speculation or many scruples, he began to flout the obligations of his religion. Many of the ancient rites, and among them the dietary laws, were discarded. To the movement of religious reform, which had developed pari passu with Jewish emancipation, fell the task of harmonizing the influences at work in a new environment with the forms and customs of an ancient religion.

Reform held from the beginning that "customs and ceremonies must change with the varying needs of different generations"³ and that "special laws which arise from temporary and local conditions are not written indelibly in the eternal scheme of things."⁴

Thus Reform Judaism accepted, modified, or rejected Jewish traditional practices in accordance with the needs of modern religion and life.

Once this rationale had been established, the approach of Reformers toward the dietary laws became clear. It implied two things. First, the laws needed to be examined objectively and scientifically; and secondly, their relevancy for the modern Jew had to be determined. For reasons that will be explained later, the literature in this field is extremely limited. Except for a few monographs,⁵ only one comprehensive study of the dietary laws, from the historical, critical and Reform standpoint, has ever been published. This work, Die Juedischen Speisegesetze by Adolf Wiener,⁶ will occupy our chief interest in this thesis.

What are the traditional dietary laws? With the following exceptions, the dietary laws concern only animal food:

1) Orlah - Forbidden Fruit. The fruit of the tree is forbidden during the first three years of its planting. The fruit of the fourth year is brought to the Temple in Jerusalem and eaten there. (Lev.19).

2) Chadash - New Corn. The eating of the new corn is prohibited until the second day of Passover. (Lev.23).

3) Kilaim - Mixtures of different kinds. It is forbidden to cross-breed all manner of plants, whether it be two kinds of herbs, herbs with trees, or grains with the grapevine. (Lev.19, Deut.22).

Because the main restrictions, until this day, focus

themselves about fauna as opposed to flora, these prohibitions will constitute our point of departure for this thesis:

- a) The sinew of Jacob or the sciatic nerve (Gen.32).
- b) Certain kinds of fat called cheleb (Lev.3,7).
- c) Blood and limbs torn from an animal while still alive (Lev.3,7,17. Deut.12. Gen.9).
- d) Meat and milk mixtures (Ex.23,34. Deut.14).
- e) Clean animals which died of themselves or were not ritually slaughtered (Ex.22. Deut.14).
- f) Animals that were torn by wild beasts or are ritually unfit for use because of certain diseases which render them trefah (Ex.1bid. Deut. 1bid).
- g).Unclean animals, fowl, fish, and creeping things (Ex.20. Lev.11. Deut.14).

The aim of this study has been to describe and analyze the arguments advanced by Wiener, the major Reform protagonist in this field, in pleading for a revision of the Jewish dietary laws. Accordingly, this study has been divided into two parts: the first will review our author's dissertation in detail; it will set forth his approach and relate his conclusions. The second will present a general appraisal of the work as well as a critical analysis of the laws in their origin and development. The controversies in Reform Judaism are dealt with briefly in an appendix.

The writer is indebted to Dr. Samuel S. Cohon, his referee, for his constant help and encouragement.

II. WIENER'S LIFE

Adolf Wiener was born on February 1, 1811, in Mürowna-Goslin, Posen.¹ His grandparents owned a tobacco factory and were people of means. But adverse circumstances set in and most of the fortune was lost when Wiener was still a little boy. The family lived in great poverty and both his mother and father were forced to work hard to maintain a living wage. The education of all their children was left to the grandmother who was a Talmudist of some accomplishment. His mother, incidentally, came from a distinguished family; she was the daughter of the Dajan of Gross-Glogau, Salomon Hermann.

Adolf attended the Gymnasium in Neu-Stettin and later earned his Doctor of Philosophy degree at the University of Stettin. While attending school, he was engaged in giving private lessons on a variety of subjects. Among his pupils was a Baron, Gerson v. Bleichroeder, with whom he had long discussions about different phases of Judaism.

After his graduation from the University, Wiener was elected rabbi and teacher of the orthodox congregation in Posen. One of his first efforts in the new community was to establish a modern school with progressive educational methods and a well-defined curriculum. However, the undertaking proved too advanced for the local Jewish population, and he was forced to close it after only a few years of existence. With zealousness and energy, he then took upon himself the task to resuscitate his congregation which

had suffered from a lack of interest and membership. The result of his efforts became soon apparent, for the Gemeinde grew considerably and became one of the larger congregations in the region. Wiener introduced a few reforms into his synagogal service, notably the German sermon. Strong opposition to these innovations developed from two quarters. First, the renowned Salomon Eger denounced and castigated him publicly. Secondly, the government became suspicious, for it was feared that this "modern" congregation might harbor revolutionary tendencies. The services thereafter had to be conducted under police protection.

Wiener then left Posen and took charge of congregations in Gruenberg and Kosten, both for a brief span of time. In 1845 he was called to the distinguished pulpit of Oppeln, where he officiated until his death, August 25, 1895.

It was in Oppeln, in the latter days of his life, that Wiener developed into the ardent champion of Reform. Thus he became prominently associated with the synods at Kassel (1844), Leipzig (1869), and Augsburg (1870) where he advocated the following reforms: revision of the prayer-book, abrogation of Chalitzah, employment of the organ in divine services, and abolition of the second days of Festivals. Wiener's main ambition was, as he put it, "to release the Jews from the authority of the Talmud."²

Wiener stood in the forefront of the struggle for the com-

plete emancipation of the Jew. He fought vigorously against the more judaico oath and was instrumental in establishing Religionsunterricht in the state schools of Silesia. In this connection, the following incident might help to reveal the man's personality.

When his Jewish pupils at the Gymnasium asked him, "Herr Doctor, wann haben wir Religion?" he used to beat them up and shout, "Wir haben nicht Religion, sondern Religionsunterricht."³

He was very closely associated with all other ministers in the community, particularly with the Catholic Prelate, Porsch, and, we are told, that at no other time did such a harmonious group relationship ever exist again. He was also Ehrenbuerger of Oppeln, the first and only Jew to achieve this honor.⁴

Wiener had the courage of his convictions. To give expression of his views on the dietary laws, he always requested his wife to cook rice on Passover. He never ate rice at any time during the year, but on Pesach he partook of it daily.⁵ It is little surprising that, soon after his arrival in Oppeln, his congregation was divided into two factions and, at one time, even his friends were counted among his opponents. In the course of time, Wiener succeeded in reconciling the warring groups but his radical views and uncompromising nature provided a constant source of controversy until the day of his death. However, the attacks which were leveled against him were never of a personal nature; for his profound scholarship, his im-

passioned idealism, and his complete lack of opportunism won him the respect of even his enemies.

His published works include the following:⁶

- 1) Die Opfer- und Akeda Gebete. Ein Beitrag zur Orientierung in der Cultusfrage. Breslau, 1869.
- 2) Worte gesprochen an der Bahre der seligen Frau Rosalie Verwitwete Cohn. Oppeln, 1871.
- 3) Die Juedischen Speisegesetze. Breslau, 1895.

PART ONE

DIE JÜDISCHEN SPEISEGESETZE

III. INTRODUCTORY STATEMENT:

DESCRIPTION OF THE BOOK AND METHOD OF REVIEW

DIE JUEDISCHEN SPEISEGESETZE nach ihren verschiedenen Gesichtspunkten, zum ersten Male wissenschaftlich-methodisch geordnet und kritisch beleuchtet covers 545 pages. It consists of 8 chapters (The Sciatic Nerve, Meat and Milk, Fat, Blood, Torn of Beasts, Carrion, Unclean Animals, Mixtures), a Preface, Epilogue, and Postscript, preceding the text proper; 2 Appendices (Origin of Dietary Laws, Influence of Dietary Laws upon Non-Jews, and Past Efforts at Reform), Supplementary Remarks, a Concluding Postscript, and 15 pages of corrigenda, following the text. The book is annotated extensively both by footnotes and additional notes at the end of each chapter.

Each of the major dietary laws is dealt with separately and, as hinted at in the title, is considered according to four major viewpoints: historical, religious, archaeological, and dietetic. These aspects are explained as follows:

Historical - Demarcation of the development of the laws in their Biblical, Mishnaic, ^{and} Talmudic stages as well as existing present-day practices.

Religious - Motivation of laws as propounded by exegetes and commentators and critical examination of same.

Archaeological - Comparison of Jewish laws with those of other peoples of antiquity.

Dietetic - Examination of medical evidence relative to the salutary or disadvantageous effects of these laws upon the human body.

A fifth aspect - the influence of the laws upon the social relationship between Jews and non-Jews - is dealt with at the conclusion and with reference to the laws in their totality.

Wiener, however, does not hold strictly to his own definitions, nor does he follow a definite order of sequence with regard to his divisions. Since he holds, as will become apparent shortly, that no one motive underlies all dietary laws, but rather that each law must be examined and explained as a separate entity, his plan of division is predicated by his approach to the individual law in question. Thus his entire arrangement lacks system and order and makes an adequate review of his work so much more difficult.

Wiener published his book in his 85th year. His health, particularly his eyesight, was failing and he was forced to interrupt his labors frequently. Whenever he returned to the writing of his manuscript, sometimes after an interval of many months, he was uncertain whether he had covered his previously composed material adequately. Thus countless repetitions, oftentimes in no way connected with the subject under discussion, and a mass of tangential matter were the result. Wiener feared that he might die before his book could be published. Therefore, he first treated a problem superficially, then later, when noticing his omissions, instead of revising what he had already done, he appended lengthy footnotes to whatever subject

he was considering at the time. Due to his age and near-blindness also, he employed numerous readers and secretaries whom he was forced to change often. This explains his many errors in orthography, transliteration, and quotations.

The foregoing is mentioned here, and not in the general appraisal which follows the review of the book, in order to indicate the slow and arduous task with which this writer was confronted in reconstructing Wiener's arguments. Two other facts need mention, which rendered our undertaking even more difficult. Wiener is animated by a violent dislike for the Talmud, its authors as well as its followers. Mercilessly venting his spleen upon the whole system of "Talmudism," his bias crops up at every opportunity. The subject therefore is often treated with more heat than light. We thought it necessary to exclude all supercilious remarks and to present his case in as scientific a manner as possible. Secondly, Wiener quotes copiously from Hebrew, Aramaic, French, Greek, and Latin sources. Frequently his translations are incorrect or are omitted altogether, and what makes matters even worse, his references are woefully inadequate. This writer has endeavored to check most of the quotations and establish their references, but where this could not be done, reference was made to Wiener's book itself.¹

Under these circumstances it became necessary to adopt certain criteria which would do justice to the author's chain of

reasoning and, at the same time, ensure a clear presentation of the subject matter. Wiener's plan of division has been maintained in its original order of sequence. Repetitions and all extraneous matters have been omitted as far as possible. The original eight chapters have been condensed to six.² His basic philosophy of Judaism, his views on various topics, and his plea for reform have been contracted into one chapter, the concluding chapter of this review.

However, due to the fact that Wiener's own thesis is rarely stated coherently, but rather diffused throughout the book, we felt compelled to deviate somewhat from the author's definitions of the various viewpoints. We have followed this plan in our analysis of each law:

- 1) A short description of the dietary law and its Biblical derivation.
- 2) The law considered from the RELIGIOUS viewpoint:
 - a) Wiener's analysis and motivation of the law.
 - b) Motivation of law by exegetes and, in some cases, Wiener's comment upon same.
- 3) The law considered from the HISTORICAL viewpoint:³
 - a) Expansion and extension of Biblical law in rabbinic literature.
- 4) The law considered from the ARCHAEOLOGICAL viewpoint:
 - a) Jewish law compared with analogous or antithetical practices among ancient peoples.
- 5) The law considered from the DIETETIC viewpoint:
 - a) Salutory or harmful effects of law upon human health.
 - b) Socio-economic implications of law.⁴

We may gain an insight into our author's approach to the subject by citing Luzatto, who enunciates Wiener's own theological point of view:⁵

"Ich bin weder starrgläubig, noch Neolog, weder Buchstabenverehrer, noch Philosoph, weder Rabbanit, noch Karait, aber ich forsche nach Wahrheit, nehme sie an von dem Geringsten, weise die Täuschung auch der höchsten menschlichen Autorität zurück. All mein Forschen gipfelt in dem Streben, 'Sinn und Absicht' der Schrift, des Gesetzgebers zu erfassen und verschafft es, den Schriftwerken eine Deutung unterzuschreiben, um sie mit der Halacha in Einklang zu bringen."

IV. THE SCIATIC NERVE

Wiener begins his discussion of the Biblical Dietary Laws with the *אגד הנד*, the sciatic nerve or, as it is usually translated, the sinew of the thigh-vein. There is no absolute certainty as to what *אגד הנד* connotes, but it is assumed that what was probably meant was the nervus ischiadicus, that nerve which forms the continuation of a large aggregation of nerves uniting at the hip and which extends from the nether extremity of the hip to the hollow of the knee and then runs from there, in new divisions, down to the lower part of the foot.¹

The prohibition not to eat the sciatic nerve is derived from Genesis 32:25-33 and specifically from verse 33. Verses 25 ff describe the bodily struggle between Jacob and a Godlike being, in which the latter disables Jacob by touching his thigh at the sciatic nerve, thus causing lameness. In memory of this event verse 33 concludes *אכלו בני ישראל את אגד הנד*, "Therefore the children of Israel eat not the sinew of the thigh-vein which is upon the hollow of the thigh unto this day."

A. Religious Aspect

1. Wiener's Analysis

Wiener is not concerned with the authenticity of the struggle, though he does regard it as a myth. Instead he concentrates his entire argument on verse 33, upon which the later

rabbinic interdiction bases itself. The verse, maintains the author, does not contain a prohibition at all. The words

$\text{לֹא יֵאָכְלוּ בָנֵי יִשְׂרָאֵל בָּשָׂר}$ rather suggest a custom, a usage, or, to use his own word, a "Gepfogenheit." He regards $\text{לֹא יֵאָכְלוּ בָנֵי יִשְׂרָאֵל}$ not as an infinitivum prohibitivum, but as an infinitivum historicum. These facts bolster his argument: the prohibition is found nowhere else in the Bible, especially not among those chapters which contain specific dietary prohibitions, such as Leviticus 11 and Deuteronomy 14.

לֹא יֵאָכְלוּ in the Bible, occurs always in connection with past and present tenses and when it is followed by a future verb, the action invariably implies a custom. Future tenses as well as hortatory statements are usually preceded by the particle וְ .

The only analogous passage to verse 33 in the Bible is I Sam. 5:5:

$\text{וְלֹא יֵאָכְלוּ בָנֵי יִשְׂרָאֵל בָּשָׂר וְלֹא יֵאָכְלוּ בָנֵי יִשְׂרָאֵל בָּשָׂר}$ This sentence also must be taken as an infinitivum historicum. Further evidence, that both the verse under consideration and the statement in Samuel must be regarded as simple narratives, which relate customs and usances, is supplied by the added phrase $\text{וְלֹא יֵאָכְלוּ בָנֵי יִשְׂרָאֵל בָּשָׂר}$.

For were we to regard these words as a prohibition, the verse would render no meaning at all: They should not eat until this day. Wiener instead translates the phrase literally: Therefore, the children of Israel do not (are not accustomed to) eat the sciatic nerve until this day.

The writer of chapter 32 (Wiener uses the word "referent")

knew of the custom not to eat the sciatic nerve. In the sources at his disposal, he found neither the prohibition nor the motivation for it. Thus the prevalent myth of the patriarch's wrestling bout with the angel presented him with the opportunity to explain the custom properly. Therefore he added verse 33 as a sort of parenthesis or a gloss. In other words, so runs Wiener's argument, the passage must be regarded as a later interpolation.³

Our author also takes the words (הַרְעֵה יָדְךָ) literally. He thinks the custom started with the sons of Jacob-Israel and prevailed בְּיָמֵי הַמֶּלֶךְ דָּוִד, the time of the writing of this account. Proof for this contention is furnished by a quote from the Mechilta to v.33 אֵין אִמְרָתָא דְּהַרְעֵה הַרְעֵה אֵינִי ; i.e., the origin is pre-Mosaic.⁴
מִן תּוֹרַת מֹשֶׁה

2. Motivation

It is apparent that no dietetic, ethical, or theological motive can underlie this prohibition, as is the case with other dietary laws. The reason is clearly indicated in the Bible itself: one should remember the epic struggle between God's representative and Jacob. But should the memory of this event, asks Wiener incredulously, be kept alive through a mere negation, through mere passive behavior, the non-eating of the sciatic nerve? S. R. Hirsch, who maintains that whenever Israelites sit down for a meal they are, or should be, reminded of this historical event ("Eine Mahnung aus dem Wanderbuche des

Lebens")⁵, is refuted by Wiener who claims that no one will or ever did think of it. Certainly not the housewife who removes the forbidden nerve; more likely, she will not know, why she does it altogether.⁶

3. Translation of the Versions and Karaite Interpretations

Onkelos translates לֹא יֵאָכֵל , a translation in harmony with that of Wiener's. Targum Jonathan who, according to our author, generally paraphrases the Talmudic interpretations, renders his translation in a similar manner: $\text{לֹא יֵאָכֵל וְלֹא יִשְׁתֶּה}$. The Vulgate also recognizes $\text{לֹא יֵאָכֵל וְלֹא יִשְׁתֶּה}$ as a praesens historicum. Only the Septuagint translates, in accord with later Rabbinic law, as a negative commandment. To the Karaites,⁷ it was originally not a commandment, but a $\text{דְּבַר יִשְׁמַעְיִל}$; later this $\text{דְּבַר יִשְׁמַעְיִל}$ became obligatory for all generations. The Bible speaks only of a custom, but later generations transformed it into an "accessory" law.

B. Historical Aspect

The Talmud, of course, as all later Jewish tradition, considers Gen 32:33 as a negative commandment and therefore forbids the eating of the sciatic nerve for all times. The question is debated, what constitutes דֶּם הָאֵרֶב ? Is it a nerve, a sinew, a tendon, a vein? Wiener thinks it is a hard, open nerve, in contradistinction to the soft, mild flesh substance.

That, in any case, is its meaning whenever ^{א'ל} occurs in the Bible: Is.48:4; Ez.37:6,8; Job,10:10, 40:17.

The Mishnah speaks of one nerve or sinew at the right thigh and at the left.⁸ R. Jehuda, who maintains that the Bible mentions only the nerve at the right thigh,⁹ is probably correct, says Wiener. For verse 33 qualifies ^{הוא על הירך} by "which is upon the hollow of the thigh," using the definite article with the singular and therefore speaking of only one thigh, probably the right one. The Talmud takes it for granted that two veins are meant here.¹⁰ Not only is the inner vein "which is upon the hollow of the thigh" forbidden, but also its upward and downward continuations.¹¹ Maimonides says that the former is a Biblical, the latter a rabbinical prohibition.¹² Another Talmudic addition is the fat, ^{שומא} , which overlays the sciatic nerve. Some say it is allowed, but others maintain that it is rabbinically forbidden. The Beraitha puts it this way: It is allowed but the Israelites who are over-religious abstain from it.¹³ The Shulchan Aruch forbids it outright, though it acknowledges that it does this only by rabbinic ordinance.¹⁴ Karo also holds that the holiness of Israel makes the law obligatory. But Wiener is enraged by this type of reasoning. We deal here with a law, he cries out, whose authenticity is debated in all of Jewish tradition and yet we should abstain from it because we should be "over-religious" and "holy." But is the often difficult and tedious cutting off of the branches ^(שומא) of the sciatic nerve to connote zealousness in religion or consecration?

C. Archaeological Aspect

1. Parallel Accounts to Gen. 32

Our author could not find analogous laws among the peoples of antiquity. However, the setting into which^{it} is placed, i.e., Jacob's life-and-death struggle with the deified being, has many parallels in ancient literature. In Greek literature, Heracles struggles with Jupiter or wrestles with the giant, Anataeus. According to another account,¹⁵ he wounds his hip when he fights Hippocon. Moreover, there are many ancient myths which tell of spirits of the night, who are victorious while darkness obtains, but disappear with the coming of the morning (cf. Gen.32:27 - *וַיִּתְּנָהּ אֵלָיו*).¹⁶ In the Indian epic, Ramayana, there are similar night spirits, known as Rakshasas.¹⁷ Wiener believes that the compiler of chapter 32 probably had the Greek myths before him and changed it in such a manner as to depict the Hebrew people as victorious Israel.

2. Hypothesis as to the Origin of the Custom.

The author contributes his own far-fetched, if not ingenious, conjecture of v. 33. Both Abraham and Jacob, whenever an oath was to be administered, would put their partner's hand under their thigh.¹⁸ The hip, therefore, must have been regarded as holy. Furthermore, the hip is in close proximity to the penis, the member which was sanctified through circumcision as the outward sign for God's covenant with Abraham. This holy

region, of which the hip is a part, is also the seat of fertility. In later times, the reason for this custom became obscured, so that what is now verse 33 was added to the ancient saga of Genesis 25ff.

D. Dietetic Aspect

Since considerable skill is required to trace the sciatic nerve in all its branches, scrupulous modern orthodoxy often forbids the flesh of the whole of the hind-quarters. This, says Wiener, is an interdiction which robs the Jew of that part of the animal which is extremely healthy and of great nutritional value.

From an economic viewpoint, the Jewish butcher is bound to suffer a financial loss. He is prohibited from selling the hind-quarters of an animal to his coreligionists and is, therefore, forced to dispose of them to non-Jewish butchers at a minimal price.

V. SEETHING THE KID IN ITS MOTHER'S MILK

Three times¹ the Bible commands *לֹא יִבְשֶׁת הַיָּדָיִם בְּחֵם אִמּוֹתָם* *lf*
"Thou shalt not seethe a kid in its mother's milk." Rab-
binic tradition understands by this injunction: Thou shalt
not boil (eat) any manner of meat with milk. But quite
obviously the literal Biblical text contains nothing which
would justify the time-honored Jewish interdiction not to mix
"milk" with "meat" dishes. No other prohibition, says Wiener,
has been so misunderstood. Never again have so many pages
been filled to explain five "simple" words in the Bible.
Twenty-eight folio pages in the Talmud and eleven sections in
the Shulchan Aruch deal with this verse. Many of the exegetes
admit quite frankly that the sentence offers considerable dif-
ficulties.

Chapters 23 and 34 of Exodus, in which the first two
references occur, do not contain any other dietary laws.
Deuteronomy 14, where the statement is found for the third
time, repeats the list of dietary laws of Leviticus 11 in some-
what briefer form. Nonetheless, the verse stands here among
the major prohibitions of food, even though it appears to be a
cryptic postscript.

A. Religious Aspect

1. Wiener's Analysis

In reconstructing Wiener's argument, it will serve our
purpose best if first we consider the language and meaning of

the verse itself and later the context in which it is found. It might be noted parenthetically that the author discusses the above mentioned Deuteronomy passage - certainly the most difficult and most challenging of the three - some 42 (sic!) pages later. After covering every exegetical interpretation that he could find and after treating the archaeological viewpoint in some detail, he devotes a mere page to its examination - an afterthought, to say the least.

If the verse were to be regarded as a dietary prohibition, it should properly read $\overline{\text{לֹא}} \text{כֹל} \text{כֹּף}$ and not $\overline{\text{לֹא}} \text{כֹּף}$. For if the law-giver really meant to convey a prohibition of "eating," he would express himself accordingly. Instead the interdiction is repeated three times in exactly the same language. The Talmudic interpretation of the three repetitions, to wit: thou shalt not eat, thou shalt not cook, and thou shalt not partake, must be regarded as a typical example of rabbinical casuistry.

The Bible says simply that a kid (or a young animal) should not be cooked in the milk of its mother. Obviously $\overline{\text{לֹא}}$ and כֹּף stand in close affinity to one another, especially so since כֹּף has the third person suffix. The Talmud, usually so meticulous in examining every letter of the Bible, overlooked this relationship entirely. The Bible speaks here of a kid and its own mother.

Further examination of the text yields even more conclusive results. The preposition בְּ is to be translated not

with "in" but with "at." It is not to be connected with לֶאֱנוּ כִּי , but to be related to אֶת as an attribute. Freely translated, the verse would then read: Thou shalt not prepare a young kid while it still is at the milk (breast) of its mother. Regarded in this light, the commandment purports to safeguard the young, tender animal from any possible cruelty.

Now in order to derive at the full meaning of the verse, it is necessary to examine the passages immediately preceding it (Ex.23:18-19a and 34:25-26a).² "Thou shalt not offer the blood of My sacrifice with leavened bread; neither shall the fat of my feast remain all night until the morning. The choicest first-fruits of thy land thou shalt bring into the house of the Lord thy God." The Bible speaks here of sacrifices: the land's choicest firstlings from among the fruits shall be brought to the Tabernacle. But, and now follows the commandment under consideration, not so with the living being. No, thou shalt not snatch away the suckling kid from its mother's breast, even if thou wouldst offer it unto the Lord for a sacrifice.

A close connection exists also with passages in the preceding chapter, Ex. 22:28-29: "Thou shalt not delay to offer of the fulness of thy harvest, and of the outflow of thy presses. The first-born of thy sons shalt thou give unto Me; likewise shalt thou do with thine oxen, and with thy sheep." The first-born of the oxen and the sheep are to be sacrificed,

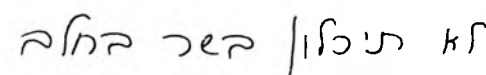
but Scripture counsels moderation: "Seven days it shall be with its dam; on the eighth day thou shalt give it to me." (Cf. Lev.22:28 - Mother and her offspring shall not be slaughtered on the same day;and also Deut. 22:6-7).

The foregoing substantiates Wiener's thesis that the real motive of the command is human^eness: to protect the animal from ruthless slaughter, to imbue man's soul with sympathy for the young, and to counsel moderation as against unlimited gluttony. Under no circumstances, it is to be construed, as the Talmud does, as a dietary law, forbidding the eating and mixture of milk and meat, but rather as a statute of humanitarianism. And even if we were to translate it in the conventional manner, "in the milk of its mother," it would make no essential difference. For the whole emphasis of the verse rests upon *ink* : Thou shalt not seethe the kid in the milk of its own mother.

We conclude Wiener's argumentation with his somewhat cursory discussion of Deut. 14:21 (cf.above). Nachmanides³ and others had pointed out that, while Ex. 23:19 and 34:26 may be considered sacrificial proscriptions, Deut. 14:21, because of the context in which it appears, must be regarded as a dietary law. However, Wiener contends that the laws enumerated in ch. 14 are motivated by *דבר אדם* and, in accord with his interpretation, seething a kid in its mother's milk also warns against an "abominable" practice. Furthermore, the law is not contained in the major compilation

of Lev. 11 and in other places which deal with dietary prohibitions - and so he holds fast to his exposition.

2. Exegetical Expositions

Onkelos and Pseudo-Jonathan translate with the Talmud:  . Both the Septuagint and the Vulgate render literal translations. Luther has "Du sollst das Boecklein nicht kochen, dieweil es an seiner Mutter Milch ist," certainly in line with Wiener. Symmachos's Greek translation, though open to interpretation, comes closest to that of our author's: "Thou shalt prepare the kid by means of ('vermittelst')⁴ the milk of its own mother."

Among the exegetes, Philo is given prominence, because his views coincide largely with those of Wiener's. Says Philo⁵ The Law-giver considers it to be exceedingly grievous that the offspring of a living being be used as seasoning in the preparation of food. If it is to be deemed worthy to boil flesh in milk, then one should not seethe it with cruelty but with consideration. . . Have mercy toward the offspring as regards the mother, if not the whole time, at least for the first seven days shall it be nourished on its mother's milk . . . Thus Philo emphasizes the humane implications of the law by relating it to Ex. 22:29.

Menachem b. Saruk⁶ motivates similarly. He regards the law as a plea to treat the young kid, while it sucks at its mother's breast, with consideration.

Abraham ibn Ezra⁷ says first that a proper motivation cannot be determined. Then, however, he states that perhaps it may be regarded as warning against cruelty (cf. Philo). He praises the Rabbis for their manifold extensions of this law.

Rashi's grandson, Samuel ben Meir⁸, also agrees with Philo. We find here, he says, a prohibition which admonishes us to be moderate when partaking of food . . . Also to protect animals . . . To tame our limitless craving for food . . . For basically all human beings are gluttons and desire only to satisfy stomach and palate. They will not shrink from devouring, in its mother's milk, the flesh of its own child . . . However, he concludes, in full accord with Rabbinic doctrine:

Joseph B'chor Shor⁹ takes נֶחֱמָה נֶחֱמָה לֵב אִתּוֹ
לֵב to mean "ripen" and deduces the following meaning from the verse: The young animal shall not be permitted to ripen to maturity. It should be sacrificed while still in its infancy, as prescribed in Ex. 22:28.

We now turn to Maimonides. While he views the unquestionably related passages, Lev. 22:28 and Deut. 22:6-7, from a humanitarian standpoint, he introduces an entirely different motive. As with all other dietary laws, he regards the injunction to be primarily hygienic in character. So he says:¹⁰ Milk and meat, when eaten simultaneously, make a very thick (נֶחֱמָה) dish, which produces excessive filling.

Yet there is another reason: It is not improbable, he maintains, that the Biblical law was originally related to idolatry. For Scripture commands at two occasions (Ex. 22:17 and 34:23) "Three times in the year all thy males shall appear before the Lord God." The Bible wants to express here that at the Festivals one should not cook the kid in such a (foreign) manner. Maimon examined the writings of the Sabeans, from which he quotes extensively, but was unable to find any analogous practices. In other words, Rambam finds that this law is most cogently to be motivated as a precaution against idolatry.

Nachmanides¹¹ is the first to connect the law with the concept of holiness. He relates the words *וְהָיָה בְּיָדְךָ* to the subsequent *וְהָיָה בְּיָדְךָ* and not to the preceding *וְהָיָה בְּיָדְךָ*, as is usually done. He then continues with Philo's argument and finally agrees with the Talmudic interpretation.

A curious motif is propounded by Bechai ben Asher¹² Milk originates from blood. Now if milk is mixed with meat, the milk will again turn into blood. And that would have a disastrous effect upon the soul . . .

Gersonides reproduces all the motives that have already been brought forth: idolatry, hygiene, sanitation, humanitarianism. He concludes that one law may have several reasons . . .¹³

Samuel Carca¹⁴ ventures into the field of allegory.

A widowed woman, he writes, who is left with suckling child, should not remarry for two years, so that the baby may not lose the nourishment of the mother's breast, as it is written: "Thou shalt not cook the kid, i.e., the orphaned child, who still sucks at his mother's breast."

Lippman Muhlhausen¹⁵ follows Bechai. Abravanel, though expansive in his discussions of this verse, adds little that is new.¹⁶ This item may prove of interest: in the Pyrenean peninsula, at his time, there existed a peculiar custom. Twice a year herdsmen would assemble to take counsel regarding the proper breeding of their cattle. At this occasion their nourishment consisted of "milk and meat" and they would eat the meat of a kid.¹⁷

Among the modern commentators, S.D.Luzatto¹⁸ sees our law as protecting the animal, and J.S.Reggio¹⁹ rejects the rabbinic interpretation altogether. Drs. L. Philipson²⁰ and Herzfeld²¹ follow the Philonic explanation, whereas Geiger²² agrees with Saruk and translates "das Junge an der Milch seiner Mutter, d.h. so lange es an der Mutterbrust genaehrt wird." Finally, Julius Fuerst²³ and Johannes Spencer²⁴ regard it as an injunction against previously existing idolatrous practices.

B. Archaeological Aspect

As we saw above, Maimonides, Gersonides, Arbavanel and

others regarded our law as an antithesis against a heathen superstition. In this connection, we might mention, that Eliezer Ashkenazi describes a practice then prevalent in India, where the kid is prepared in its own fat and then offered to the deities.²⁵

In Rome a similar superstitious rite took place at harvest time. The farmers would celebrate the event by sacrificing a pig to Tellus (Goddess of the Earth) and milk to Silvanus.²⁶ Spencer²⁷ quoting Ovid²⁸ relates that a kid and milk were offered to Sylvanus and Faunus, on some occasions together, on others separately.

If Saruk's exposition is correct (cf. above), then many ancient analogies could be found. Animals were wont to be regarded impure at birth; they required time and maturity to be ready for sacrificial purposes.²⁹

C. Historical Aspect

The law not to mix milk and meat dishes is not contained in the Bible, nor is there anything within its pages to indicate that this practice existed in Biblical times. The same can be said of the Septuagint, Philo, and Josephus, none of whom makes mention of it. Wiener believes that the law originated in the schools of Hillel and Shammai; i.e., at the time of Rabbi Akiba. As proof he cites a Talmudic story:³⁰ Rab came once to Tatalpus³¹ and heard there that a woman said to her companion: How much milk is necessary to cook meat of a certain weight? He said: They have not even heard that

"milk and meat" are forbidden. He remained there and forbade them even the "udder" . . .

To illustrate the development of the law and, of course, to point out the many later additions and hardships, Wiener begins with the Mishnah. "No flesh may be cooked in milk," says the Mishnah³² without apparent reason or Biblical proof, "excepting the flesh of fish or locusts." Our author believes that the Mishnah uses S advisedly, for Scripture prohibits only "the kid in the milk of its mother." A difference of opinion as to just what is forbidden is contained in a subsequent Mishnah.³³ R. Akiba says that, because of the three-fold repetition of "kid", wild animals, birds, and unclean beasts are excluded from the prohibition according to the Torah, whereas R. Jose, the Galilean, maintains that wild animals are forbidden by the Torah, but birds are not even prohibited, according to the Rabbis. To Wiener, this Mishnah offers added evidence to ascribe the origin of the law to the time of Rabbi Akiba, the age of the Hadrianic persecutions.

A later Mishnah³⁴ which is part of the canon of R. Meir, a pupil of R. Akiba's, indicates that, by this time, the law had been established in all detail. If a drop of milk fell upon a piece of meat and there was enough to give its flavor to that piece, then, it is legislated, that piece is forbidden, etc. . . .

Wiener proceeds to quote various rabbinic passages in order to gain "einen Einblick in das Gewebe der Auslegung und Begründung des Verbots nach talmudischer Auffassung;" which means to him citing such rabbinic dicta which are forced and contrary to fact. The Talmud asks the question:³⁵ From where is it proven that not only a 'זע but every type of meat is forbidden? In Gen.38:17 we find the expression מ'זע 'זע, but where 'זע stands by itself without the added מ'זע, every type of allowed animal is to be understood. Wiener admits that 'זע may mean goat, lamb, or calf, but the real meaning of 'זע implies a young animal.

R. Ashi asks: From where do we know that not only the cooking of "milk and meat" is prohibited, but also the eating thereof? The answer is contained in the Biblical passage: "Thou shalt not eat any abominable thing." (Deut.14:3)³⁶ A similar type of reasoning is employed by R. Lakish who states: It is written, "Eat not of it (the Passover lamb) raw or half-cooked (רעך רעך)". (Ex.12:9). This doubling of רעך teaches us that another cooked dish is also forbidden, namely "milk and meat" (137)

To our author, the following is a choice example of Talmudic casuistry: "The Rabbis teach 'in the milk of its mother'. I know this only from a mother's (goat's) milk, but whence do we derive the milk of a cow or a sheep? If with a mother (of animals of the same kind) the coupling of

heterogeneous animals is not forbidden, but the cooking is forbidden, how much the more with a cow or a sheep, with whom coupling is prohibited, must the cooking be prohibited?"³⁸

Various passages are then cited to show how the Talmud enlarged on the Mishnah and thereby rendered the whole law so much more burdensome. One sample may suffice for our purposes. The Mishnah has no trace of the interdiction not to cook "milk and meat" in the same utensil. But the Gemara argues that this is to be avoided scrupulously, for if the taste of the forbidden mixture is detected, the entire food is voided automatically.³⁹

D. Dietetic Aspect

The Biblical law of abstaining from a very young kid is considered salutary from the health standpoint. Wiener cites an example from his own family circle wherein an entire household took ill suddenly and without apparent cause and subsequently one person died. The physicians diagnosed the case as having been caused by the eating of baby beef which was too fresh. A Professor Zangger, director of a veterinary college in Zuerich, held that the flesh of too young an animal causes vomiting and diarrhea. The Talmud and the Codes concur in this view.

However, the far-reaching extensions of the Talmudic

law of "milk and meat" are believed disadvantageous to health. "Die Aerzte," says the author (without telling us on which medical authorities he relies), maintain that certain types of diseases are more frequent with Jews, due to their extensive use of goose fat. One would have liked to have seen a substantiation of this charge, for, as it stands now, without scientific evidence, it is utterly worthless. Wiener also complains that the six-hour waiting period works to the disadvantage of "weak" persons, who are required to drink milk frequently.

From a socio-economic standpoint, the law causes unnecessary hardships, such as the use of many sets of dishes and utensils. The housewife, too, is greatly handicapped by the meticulous and minute codex. Compelled to be overly cautious lest she mix "milk and meat", she labors under a constant dread in her anxiety to conform to the law.

VI. THE PROHIBITION OF FAT

Certain fat portions known in the Bible as ^{אֶפֶס} are not permitted to be eaten. According to tradition, ^{אֶפֶס} can be distinguished from ordinary fat by the fact that it adheres but loosely to the flesh, while ordinary fat is more firmly attached.¹ Furthermore, it always acts as a sheath over flesh and is never surrounded by muscular tissue.² Its use was only restricted to the ox, the sheep, and the goat, and was never extended to other edible species.³

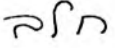

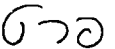
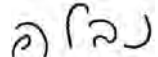
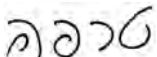
A. Religious Aspect

The prohibition of fat was repeatedly joined with that of blood in the Bible: "Ye shall eat neither fat nor blood."⁴ They were mentioned together, because both were devoted to the altar as choice sacrificial materials and the transgression of both was to be punished with equal severity, namely by excision.⁵

The reason why fat was interdicted as food was unquestionably the fact that "all the fat is the Lord's."⁶ Fat was valued among the richest parts of the animal, as numerous Biblical references indicate convincingly.⁷ Already in earliest times, it was considered dear and pleasant unto the Lord.⁸ It is, therefore, natural that man was bidden to abstain from this sacred substance, which was holy and belonged to God.

1. Wiener's Analysis

Our author's thesis is easily summarized: fat was forbidden only from those animals which were actually sacrificed and only so long as the sacrificial system existed; but away from the sanctuary, fat was permitted to be eaten. Certainly now, he maintains, since the sacrificial service has been abolished, this dietary law can no longer be obligatory.

Let us now pursue his argument in greater detail. Lev.7:25 states, "Whoever eateth the fat of the beast, of which men present an offering . . . unto the Lord, . . . shall be cut off from his people." This verse indicates that  was prohibited only so long as it was an object of sacrifice or at least as long as sacrifices were in use. Verse 26 continues, "Ye shall eat no manner of blood;" i.e., Scripture first forbids the conditional use of fat, but now hastens to add that blood is prohibited unconditionally. It may be argued that v.23 disallows fat generally: "Ye shall eat not fat, of ox, or sheep, or goat." But Wiener counters by saying that v.23 is the  and v.25 the  ; it only applies to those animals which are designated for the altar. Now v.24 ("The fat of that which dieth of itself, and the fat of that which is torn of beasts, may be used for any other service; but ye shall in no wise eat it") becomes understandable: The fat of  and  per se is not forbidden at all, because it is not sacrificable,

however it is prohibited because אֵלֶּיךָ and אֵלֶּיךָ are not to be eaten.

Deuteronomy 12 deals with the laws that should be observed "in the land." It permits the eating of meat for profane use "after the desire of thy soul." "Howbeit as the gazelle and the hart is eaten,⁹ so thou shalt eat thereof."¹⁰ Only the blood is emphatically and repeatedly (four times in the chapter) forbidden. Blood and fat are usually mentioned together, but nothing is said here of fat being denied to the individual, nor is it even mentioned. Thus the conclusion is inescapable: in the same manner that animals are permitted to be slaughtered for profane use, so fat is permitted to be eaten away from the national sanctuary.

Wiener concludes his presentation by refuting the argument that, because Lev.3:17 states unconditionally, "It shall be a perpetual statute throughout your generations in all your dwellings, that ye shall eat neither fat nor blood," the interdiction of fat for food is binding "for all generations." The word פֶּסַח, he says, is not to be taken literally. Ofttimes in the Bible פֶּסַח connotes a definite span of time.¹¹ He considers it as a hyperbolic expression, limited only to Palestine and the sacrificial cult.

2. Exegetical Expositions

Ibn Ezra, while attempting to prove the validity of the law in an argument with a Karaite, states that according to

Scripture, fat is only forbidden at the time of sacrifices.

Of course, he concludes: *הוא נאכל ונשחט* ¹²

Maimonides gives two reasons for the injunction. First, he opines that the fat of entrails is overly nutritious, injures digestion, produces cold and thick blood, and is therefore more useful for burning than for eating.¹³ Then he

maintains that because man's desire to eat fat is so strong, Scripture threatens excision. For if man partakes of it, would not the altar, for which it is meant, above all, suffer?¹⁴

Wiener sees a contradiction in Maimon's exposition. Either it is tasty and edible but cannot be eaten, because it belongs to God, or it is unsuitable for human eating, because of its unhealthy qualities.

Nachmanides and Aaron Halevi¹⁵ agree with Maimonides' first opinion and ascribe a hygienic motive to our law, whereas Gersonides seems to reproduce Rambam's reasons in toto.¹⁶

Many other commentators agree substantially with part or all of the interpretations advanced by Maimonides and Nachmanides. However, they lay special emphasis on the phrase "a perpetual statute."

Joseph Albo's exposition is in almost complete accord with Wiener's: fat was restricted originally to the altar and may conceivably be permitted again in the future. He rebukes those who maintain that *הוא נאכל ונשחט* is proof for the eternity of a law.¹⁷ Naturally, Albo is strongly denounced for his supposition.¹⁸

B. Archaeological Aspect

Other ancient peoples regarded the fat substance as a preferred part of sacrificial objects. The/choicest parts of the animal must be reserved for the dieties; the remainder was allowed for human consumption.

The Persians brought the net of the fat spreading over the intestines upon the altar and kept the remaining flesh for themselves.¹⁹ The Egyptians sacrificed a pig to Dionysis and Selene (Moon goddess) at the full moon. The tail, milt, net of the fat, and all suet were brought as a burnt-offering, the remainder they ate themselves.²⁰ A similar practice was followed by the Greeks, who covered the hind part of the animal with fat and then used it for burnt-offerings.²¹

The Koran's law approximates that of the Rabbis.²²

C. Historical Aspect

According to rabbinic exegesis, the fat prohibition applies not only to חֵמֶת but also to חֵמֶת חֵמֶת; not only to חֵמֶת חֵמֶת but also to חֵמֶת חֵמֶת; not only to חֵמֶת חֵמֶת but also to חֵמֶת חֵמֶת. Of course, this contention is motivated by relying on Lev. 3:17.

It is hardly necessary to follow the highly intricate discussion as to what the Talmud should or should not have

considered permissible in accordance with Lev. 3:14-15. It may be sufficient to record that the tail of a certain species of sheep was, after considerable Talmudic discussion, not interdicted as food, for the tail of sheep was "called fat only with respect to sacrifices."²³ The Karaites opposed this opinion.

D. Dietetic Aspect

Wiener holds that fat decomposes quickly and becomes rancid in warm climate. However, in the Western world, where different climatic conditions prevail, moderate use should not prove harmful. But the fact that *אֶפֶן* is forbidden, yet goose fat allowed, may be the cause of scrofula and hemorrhoids with which Jews, in particular, seem to be afflicted.

Jews suffer also from an economic viewpoint by their strict adherence to this law. The forbidden fat is much cheaper than goose fat, which must be used in its stead. Moreover, since most of the *אֶפֶן* is found in the hindquarters of the animal, and only qualified experts can be entrusted with its removal, and inasmuch as these are mostly unavailable, Jewish butchers refrain from selling the hindquarters altogether.

VII. THE PROHIBITION OF BLOOD

While the prohibitions of fat and blood have many points in common, as we have seen in the previous chapter, nonetheless there are important differences. Whereas only the fat of ox, sheep, and goat was forbidden, the blood prohibition extended to all domestic animals, all beasts of chase, and all fowl. אין was forbidden only to the Israelite, אז also to the אז. The former is interdicted as food in but two passages, the latter is mentioned much more frequently and emphatically. The transgression of both injunctions would lead to punishment by excision. Yet the blood prohibition is couched in much stronger language,¹ indicating that partaking of blood for food or any other purpose was considered one of the major crimes. Blood was forbidden already in the Noachide laws.²

A. Religious Aspect

1. Wiener's Analysis and Motivation

Wiener accepts the blood prohibition as binding, for the Bible states it explicitly. However, he has great difficulty in determining its motivation. He feels^{that} several reasons for the law are given in the Bible, with no emphasis placed on any one motive. Here in particular, we found it extremely difficult to reconstruct the author's argument, for unfortunately, what he thought confusing in the Bible became even more complicated by his argument.

Let us assume, at the outset, that the law has several motives in the Bible. We can then proceed to show what these motives are as contained in the various Biblical passages.

We begin with Gen.9:4: *וְהַנֶּפֶשׁ הַחַיָּה בְּדָמָהּ* commonly translated, "Only the flesh with the life thereof, which is the blood thereof, shall ye not eat." Wiener says that he thought about the meaning of this verse for many years and finally arrived at two possible interpretations. The first is that the words *וְהַנֶּפֶשׁ הַחַיָּה* motivate the immediately following *בְּדָמָהּ*. Also *וְהַנֶּפֶשׁ* is best translated with "creature," which is in accord with its meaning in the preceding chapters of Genesis.³ Then we would interpret the verse: Only a creature with its life (soul), namely, his blood ye shall not eat.

The second explanation would be that *בְּדָמָהּ* could be connected with *וְהַנֶּפֶשׁ* as an apposition and then add the particle *וְ* to *בְּדָמָהּ* and read *וְהַנֶּפֶשׁ בְּדָמָהּ*. Thus we would arrive at the following translation: Only the flesh with its soul, with its blood, ye shall not eat.

Whatever interpretation we adopt, both fit well into the context (Gen.9:2-4): Although the fear of you shall be upon every beast of the earth, although they are delivered into your hand, you shall eat the flesh of a dead animal only, never that of a live animal. In other words, Gen.9:4 prohibits the eating of blood from living animals and serves as

an antithesis against the practice of primitive people who were wont to draw off the blood from living beasts. It is thus a commandment against cruelty towards animals; it aims to prevent animal-killing in its most intensive form. Moreover, since the following verses (5-6) speak of

פֶּקֶדֶן פֶּקֶדֶן, this passage also implies a prophylaxis against the shedding of human blood. Wiener is enraged that the Talmud⁴ derives the law of יִדְבָּק / נֶקֶח from this verse, which, he maintains, is a blood prohibition and nothing else.

Lev. 3:17 and 7:26 forbid blood together with fat because they belong to the altar, to God. The latter verse, incidentally, exempts the blood of fish and locust.

Chapter 17 of Leviticus offers particular difficulties to our author. He cannot decide which of the various motivations are primary and which secondary. When after ten pages of digression and expression of despair, he does make up his mind, the reader is none too sure whether Wiener is really convinced, or whether he is trying to get out of a trying impasse. It would have been far better had he left the question unanswered and merely maintained that the chapter contains several strands and, therefore, several motivations. He does finally concede this, but alas, merely as an afterthought in a three-line footnote.⁵ We shall, therefore, merely present the three major motifs as they are apparent in the chapter.

Verse 7 says that the (blood) sacrifices to the "satyrs" can no longer be tolerated. If we connect this verse with Lev.19:26 ("Ye shall not eat with the blood; neither shall ye practice divination or soothsaying") and also with Lev.19:31 and 20:6, we learn the first reason why the use of blood was so vehemently condemned. By consuming the sacrificial meal near the blood, or by eating the blood itself, the heathens believed that they were communicating with demon spirits who would foretell the future to them. That such practices had taken root in Israel is amply evidenced by I Sam.14:32.⁶ Therefore Wiener holds that Lev. 17:1-9 represents a protest against such nefarious abuses.

Verses 11 and 12 then introduce another motive, to Wiener the most fundamental. "For the life of the flesh is in the blood. . ." Yes, we may kill animals for our self-preservation, but the innermost part or soul of the animal may not be eaten, for the blood is that element which is most fundamental to the animal's existence. If we were to consume the blood of the animal, we would show ourselves highly irreverent not only of the animal's life but also of our own. A similar idea is contained in Deut. 12:32.

Now to the third motive. Verse 11 continues, "I have given it to you upon the altar to make atonement for your souls." Blood is a means of atonement for the killing of the animal: "for it is the blood that maketh atonement by reason of the life." We may gain expiation for our sin of shedding

the life blood of a being by bringing the most fundamental part of its existence, blood, upon the altar. At the same time we thereby express our gratitude to God who has permitted us to slaughter animals for human consumption.

2. Exegetical Expositions

Ibn Ezra⁷ reasons, and Wiener agrees with him, that blood of non-sacrificial animals that was spilt upon the ground was to be covered with earth for the purpose of preventing idolatrous sacrifices. According to Wiener, Ibn Ezra is the first who has recognized the intrinsic connection between Lev. 17 and Lev. 19:26. Above all, he regarded the blood prohibition as an antithesis against demon worship.

Maimonides relates that the Sabeans regarded blood as unclean, but ate it nevertheless in order to effect a relationship with unclean spirits. Ex. 29:21 is the Jewish reaction to this practice.⁸ Due to the strong desire to engage in idolatrous practices, excision was instituted as the punishment.⁹ Naturally, Rambam, the physician, considered blood as difficult to digest and as a generally unhealthy food.¹⁰

Blood was forbidden because it belonged on the altar, according to Jehuda Halevi.¹¹ And Joseph Albo, as with fat, believed that different circumstances in the future, when the reasons for this prohibition will no longer be valid, may

Surfer

justify an abrogation of the law.¹²

Nachmanides discusses the problem thoroughly.¹³ The law-giver prescribes the strongest possible punishment in order to counteract existing forms of paganism. Blood is the soul of both animal and man; therefore man, who has a soul, should not eat the animal's soul, for all souls are God's. Moreover, by partaking of the animal-soul, man will take on beastly characteristics and will become corrupt and callous. Since the animal-soul is mortal, but the human soul immortal, it behooves man to make atonement by bringing blood upon the altar.

Were we to consume blood, says Aaron Halevi,¹⁴ we would commit a cruel act; for we would eat that substance upon which the life of a co-created being depends.

Abravanel adds little, though his discussion is detailed.¹⁵ He largely repeats Nachmanides' ideas and carries the concept of vicarious atonement a bit further. Sacrificing the animal-soul, instead of man's own, is demanded because of the principle of "life for life" (*לַחַיִּיתָ לְחַיִּיתָ*). The soul which God had breathed into the animal was given back to Him in the place of the worshipper's soul, which God had a right to demand.

Two modern commentators may be mentioned. Fuerst reasons that blood was a sacred part of the sacrificial cult and, as such, holy to God.¹⁶ Our author, however, refutes this argument. The law was of Noachidic origin and, at this

period, was not related to sacrifices. Furthermore, were Fuerst's exposition correct, he would plead for the abrogation of the law. That, however, is not his intention, for we must uphold the principle *לדבר חי נפש*.

B. HISTORICAL ASPECT

Examples of the development of as well as later additions to the law are now dealt with. The Mishnah legislates that if a man consumes an olive's bulk of blood shed in the slaughtering of cattle, etc., he becomes liable to extirpation. If the blood is from the spleen, heart, or testicles, his punishment amounts to only forty stripes.¹⁷ The Talmud also decrees extirpation in the latter case.

The blood of fish and locust, as we have seen above, was not forbidden, though the Noachide law was explicit in interdicting all blood.¹⁸ This exemption gave rise to extensive rabbinic discussion and the Karaites did not observe it.¹⁹

Jewish tradition established the distinction between "the blood of the soul" (*לדבר חי נפש*) and "the blood of the limb" (*פירא'ה*), the former being that which flows out of the killed animal, the latter that which issues from a wound. It was ordained that eating the one is punishable by excision, but eating the other, merely by stripes as a simple trespass - doubtless against the spirit of the Biblical precept.²⁰

We now come to that set of rabbinic prescriptions which, to Wiener, represent the most flagrant expansion of the Biblical law: the institution of salting. In order to preclude the possibility of even the smallest particle of blood being eaten, the Rabbis decreed incredibly minute regulations for soaking and especially for salting the meat, so that the blood might be thoroughly drawn out.

Wiener contends that Scripture never required the process of salting, which he calls "artificial and forced." The Bible only prohibited the blood that "flowed out" through slaughter, as can be clearly seen from Deut. 7:24 and 15:23. It is not at all concerned with the blood that remains within the meat. Indeed, the Mishnah and Tosefta speak only of clear flowing blood. Hence raw meat, once all surface blood had been removed by washing, may be eaten with impunity.²¹

The custom is first mentioned in the Talmud: *אין קורין ליה דמלח*²²
*אין קורין ליה דמלח*²²
 In addition, we are bidden *אין קורין ליה דמלח*²²
 Since Samuel is the author of this injunction, Wiener does
 not believe that salting existed prior to his time. The
 Karaites, who, incidentally, are extremely rigorous with regard
 to *אין קורין ליה דמלח*²³, also observe it. Salting
 of meat may be dispensed with, if the meat is broiled, for
 broiling itself is an effective method of drawing out the
 blood.²⁴

Dr. Herzfeld believes the practice is a transfer from sacrificial to profane use, as indicated by Ex.43:24 (or Lev.2:13, where salt is required with sacrifices).²⁵ Yet our author replies by pointing out that the connection with *שֶׁמֶן בֶּשֶׁל* is very specific, a custom which is found among many ancient peoples.

C. ARCHAEOLOGICAL ASPECT

If the rabbinic derivation of *שֶׁמֶן בֶּשֶׁל* from Gen.9:4 is correct, then many analogous practices can be cited. The custom of cutting pieces out of living animals was widespread. The Abyssinians and certain African tribes have remnants of this cannibalism. However, as we have seen, Wiener disagrees with the traditional derivation and therefore does not pursue the subject further.²⁶

With reference to Lev.17:7, Maimonides found the goat (satyr) cult prevalent among the Sabeans and also among the inhabitants of the Nile delta.²⁷ The Mendesians do not sacrifice goats, because they pay homage to a he-goat under the image of Pan.²⁸

Homer relates (cf. Lev.19:26 - *שֶׁמֶן בֶּשֶׁל*) that at the time of the sacrifices to the dead, the shadows of the departed would gather around the blood.²⁹ The Sabeans sought to discover the future through the blood cult.³⁰ Similarly among the Romans, blood was mixed in a trench, so that the Manes (goddesses) could summon forth souls "to give answers."³¹

Finally analogous to Lev.17:11, the Greeks cleansed the altar with blood and thereby purified themselves. The ceremony of the Roman Taurobolium, by which the high priest became sanctified to the fertility goddess Ceres, is well-known. A complete immersion in blood was believed to bring about a spiritual rebirth of the priest.³²

Mohammed found the blood prohibition already in existence in Arabia and merely sanctioned it by his legislation.³³

D. DIETETIC ASPECT

Blood, consumed en masse and in warm condition, causes death. In ancient times the drinking of blood was imposed as a death penalty.³⁴ Undoubtedly there has always existed a distinctive aversion to drinking blood.

Wiener quotes an "intelligent and experienced" physician writing in the Wiener Neuzeit of 1872 as follows: The underprivileged classes frequently cannot pay the high prices demanded for Kosher meat. Yet whenever they manage to buy meat they are robbed of most of its nutritional value. For excessive soaking and salting eliminate important blood substances and leave only fibrous tissues.

Drs. Niemann and Pappenheim agree with their colleague that salting of meat decreases the meat's nutritional value. The former writing in a medical journal³⁵ holds that it causes the loss of albumen, lactic acid, and important salt substances, especially bring. The latter claims that it is detrimental to people in ill health who should be given fresh, tender meat.³⁶

VIII. ANIMALS THAT "DIED OF THEMSELVES" OR WERE
"TORN BY WILD BEASTS"

The Jewish dietary laws prohibit as food the meat of "clean" animals that died of themselves or were not ritually slaughtered (תור) and of animals torn by beasts or ritually killed animals unfit for use because of certain diseases (טריפה) . Wiener's thesis is so simple that one wonders why he found it necessary to be so verbose in his exposition. His garrulousness is particularly annoying here, and we may be forgiven if we omit much of his tangential evidence.

In the Bible, says Wiener, תור and טריפה mean respectively, animals that either died of themselves or were killed by other beasts, but never animals that were killed by man. By establishing the etymological, and particularly the true meaning of both concepts in the Biblical context, Wiener contends that both expressions have been grossly misinterpreted by the Talmud. He therefore begins with the consideration of the historical view.

A. Historical Aspect

1. The Original Meaning of Nevelah and Trefah

In Gen. 31:39 Jacob tells Laban that he never brought him any animals "which were torn of beasts." The meaning of טריפה is clearly indicated in Ex. 22:30: "Ye shall not eat any flesh that is torn by beasts in the field." Many other references could be cited in which the meaning of

נבנל is equally clear.

The root נבנל means to tear, to tear to pieces, to rend, etc., e.g., Gen.37:33, Ex.22:12. is related to the root נפל . Both have the meaning of to fall, to drop down, to wither, to sink, as evidenced by many Biblical passages, such as Ex.18:18, Deut.22:1, Judges 5:27, 14:8, etc.

The noun נפל expresses "that which is fallen down;" i.e., a corpse, a carcass, or an animal that died a natural death. Particularly in Lev.11:39 the latter connotation is clearly indicated, namely, an animal that dies of itself or is about to die. Incidentally, the term נפל , with two exceptions¹, refers always to an animal and not to a human carcass.

The foregoing is ample evidence, maintains our author, that נפל denotes animals that died not by the hand of man but of themselves and נבנל animals that were torn to death by other animals but never diseased or organically injured animals. He concedes that both concepts include animals that are about to die or prove unable to live much longer. The decision whether such animals are fit for human consumption should not lie in the hands of an "incompetent" Shochet but rather with a veterinarian who, after all, is qualified to judge in these matters.

Isaac Arama and the Karaites are in agreement with Wiener's analysis.²

2. Development in Mishnah and Talmud

The Mishnah lists eighteen categories of ³ אֲרָבָה. These are mostly diseases or injuries which it regards as deadly. This general principle is established: "If the animal cannot continue to stay alive (for 12 months) in like state it is אֲרָבָה." The Talmud contracts the 18 signs of the Mishnah into 8 by composing the mnemonic ע"וּן חַיָּה ⁴ Though abridged in this formula, the Talmud actually enlarges on them considerably. It includes many organic diseases (which Wiener says are contrary to the Biblical meaning of אֲרָבָה and should in reality be designated as אֲרָבָה). The adhesions between the lobes of the lungs (אֲרָבָה), for example, are discussed in great detail.

Even if we would accept the Talmudic interpretation of אֲרָבָה, how, in the light of modern scientific research, are we to be sure whether these afflictions really are harmful? Should we not rather rely on the decision of a scientifically trained expert, such as the veterinarian? As a matter of fact, the opposite is true also, as in the case of the animal at the point of death (אֲרָבָה) which, under certain circumstances, is permitted to be eaten⁵. Though the Talmud frequently acknowledges the importance of medical opinion⁶, traditional Jews follow the Talmud and the codes with regard to אֲרָבָה. Maimonides' statement

illustrates this attitude: Even though all cases are not deadly, according to science, nonetheless, we must submit to the *מין* ?

According to Wiener's view, the literal Biblical connotation of *קריב* was absorbed by the Talmudic concept of *קריב* and thus it became necessary to invest the former with a new meaning. Says the Mishnah:

קריב קריב קריב *ב* *?* In other words, an animal that was not properly slaughtered, that is, not in accord with the minute regulations of *קריב*, is considered *קריב*. This, exclaims Wiener in righteous wrath, represents a deliberate perversion of the true meaning of *קריב*; for the entire system of ritual slaughter is nothing but Talmudic phantasy.

At this point, our author considers the institution of *קריב*. The Bible never prescribed any special mode of slaughtering. Reference is made to the slaughtering of an animal,⁹ but no details of how the animal was slaughtered are given. The term *קריב* is used only in connection with sacrifices and later it frequently became synonymous with *קריב*.¹⁰

It seems incredible, says Wiener, that a system of most complicated rules should be derived from the text of Deuteronomy 12:21, "Thou shalt kill of the herd and of the flock . . . as I have commanded thee." The Rabbis contend that the general

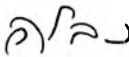
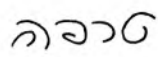
command is contained in the two words כֹּהֵן וְלֵוִי
and that the specific rules were taught orally by God
to Moses on Mount Sinai, who then explained them to the
elders, to be handed down by them to their successors,
until they were finally reduced to the written form as
found in the Mishnah and Talmud.¹¹

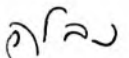
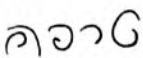
Although Deut.12:21 requires interpretation, it
certainly does not refer to any system of חֵטֵּאת .
כֹּהֵן וְלֵוִי is explained as
follows: חֵטֵּאת does not have to be slaughtered in
Jerusalem as קִדְשֵׁי ; חֵטֵּאת can be
slaughtered everywhere, as is mentioned in the previously
enunciated law of קִדְשֵׁי . The words כֹּהֵן וְלֵוִי
refer to verse 15: חֵטֵּאת אֵלֶיךָ וְלֵוִי וְכֹהֵן
Wiener admits that this interpretation can be termed at
best a "probable conjecture," though he prefers it decidedly
to the five slaughtering rules of the Talmud.

B. Religious Aspect

1. Wiener's Analysis

In examining the Biblical passages which contain the
proscriptions to abstain from נֶבֶל and
חֵטֵּאת , we are arrested by the fact that three
of the five passages,¹² which state the prohibitions directly,
refer specifically to priests. The remaining two verses deal
with non-priests but give "holiness" as the reason for the

interdiction. Moreover, Lev.11:40 and 17:15, though not forbidding  and  directly, regard both as "unclean" and prescribe measures whereby "purification" may be achieved.

The foregoing considerations lead Wiener to the conclusion that the law was directed primarily to the priests who are bidden to be "pure," "clean," and "holy." Both  and , just as the human corpse, cause levitical impurity and prevent the priest from fulfilling his duties as Temple functionary properly. Ezekiel, the priests' priest, glories in the fact that "from my youth up even till now have I not eaten of that which dieth of itself, or is torn of beasts" (4:14). The priests are forbidden specifically to partake of either (44:31), for he who eats of them "defiles himself therewith" (Lev.22:8).

If the law was primarily intended as a precaution against and elimination of levitical impurity, then the logical conclusion would be to plead for its abrogation. However, our author does not demand such a step in any manner. We can detect another motive in this legislation. As already alluded to above, the Bible bases itself also upon the principle of the holiness of Israel, the chosen people of a holy God: "Ye shall not eat of anything that dieth of itself . . . for thou art a holy people unto the Lord thy God."¹³ The animal dying prematurely of itself, no doubt, harbors within it the germ of

dissolution; even while living it partakes of death; and when it expires it may be considered in a state of unnatural decay. Eating of such flesh is, therefore, nothing less than contamination, sinful for a people which owes allegiance to the God of eternal life. ~~It is because~~ ^{therefore,} The Israelites are a holy people; [^] partaking of physically and aesthetically reprehensible foods would decrease the effectiveness of their mission. For the "perfect" life in God demands perfection in every creature that helped to support that life.

To sum up: Wiener traces two motivations - levitical purity and theocratic holiness - of which only the latter is in harmony with the modern age.

3. Exegetical Expositions

Many of the exegetes, such as Abraham ibn Ezra,¹⁴ Nachmanides,¹⁵ and Gersonides,¹⁶ explain the law on the ground of the theocratic holiness of Israel. Thus Nachmanides counsels that man should eat only clean things and never meat ^{which} ~~that~~ produces coarseness of spirit, as

^{נאכל} meat does. God desires that every Israelite be a true member of the holy people, and only if he eats proper foods can he cleave to Him properly. Both Maimonides¹⁷ and Aaron Halevi¹⁸ set forth similar reasons. First ^{נאכל} and ^{נאכל}, as all other dietary laws, are to be explained from the dietetic point of view.¹⁹ In our case,

Maimon opines, *הוראה* meat would be difficult to digest and harmful as food. He considers *הוראה* as the preparatory stage of *הוראה*. Wiener emphasizes in his rebuttal that it is impossible to deduce an over-all motive for all dietary laws, as his previous analysis has clearly demonstrated. Both commentators also hold that the Talmudic concept of *הוראה* seeks to reduce the pain of the animal to a minimum; i.e., it represents the most humane way of slaughtering. Wiener gives two reasons in refuting the latter argument. If perchance an animal was not ritually slaughtered, should its meat be forbidden for reasons of animal protection? What would be our attitude if science today would come to the fore with an even more humane way of *הוראה*? Could this motivation still be maintained then? Lastly, Halevi introduces an ethical reason: whatever is harmful to the body is detrimental to the soul . . .

C. Archaeological Aspect

Every civilized people of antiquity prohibited the use of *הוראה* and *הוראה* as food. Both were generally looked upon with disgust and abhorrence. However, there were always those who would eat carrion or partake of animals that were torn by beasts. Therefore, the laws of the Bible were not superfluous.

Bernays²⁰ has proven that these laws existed in Greece

as well as in Rome, though never as binding prohibitions but rather as accepted customs. Christian tradition decreed strict punishment for the transgression of these laws, which already occur in the New Testament (Acts 15: 20,29; 21:25); e.g., the church functionary was to be degraded in rank.²¹ Mohammedan legislation is similar to that of the Bible.²²

We can trace certain analogous practices with regard to animal slaughter among the Romans and Greeks. The Greeks would slaughter the animal, then catch its blood and sprinkle it upon the altar. The Latin word for slaughter is "iagulare," to cut (through) the throat. The Sabaeans similarly cut the throat and the jugular vein.²³

D. Dietetic Aspect

The Biblical laws are of the utmost importance for the modern society. Every state, pleads Wiener, should have strict provisions to keep diseased animals far away from the consumer's table.

However, the Talmudic exaggerations cause great economic difficulties to the low-income groups; they work many hardships on Jews in small towns and villages; and they are, therefore, indirectly injurious to health.

The Jewish communities are forced to expend substantial amounts for ritual slaughter purposes. The task of meat inspection should be left to the state which, because it has

access to the latest scientific discoveries, is far better equipped to handle it adequately. The funds usually set aside for the employment of several *p'Gnie* could then be used for educational and spiritual purposes.

Since the state prohibits all meat that is Biblically *חלב* and *חלב*, there is no need to observe the Talmudically expanded laws any longer. They, more than any other dietary regulation, impede a friendly intercourse between Jew and Christian.

Dr. J. Bergel maintains that certain minor injuries which the Talmud regards as *חלב* may heal and may therefore be considered harmless to both the animal and the human consumer.²⁴

IX. CLEAN AND UNCLEAN ANIMALS

The list of all animals that are allowed or prohibited for human consumption is contained in Lev. 11 and Deut. 14. Lev. 11 has a more comprehensive catalogue, but there are few dissimilarities between either account.¹ Wiener points out that, of all the dietary regulations, the laws concerning the clean and unclean animals are most clearly stated. Moreover, we are helped considerably by the Talmud which, in this case, does not add to or expand on the laws, but instead deduces signs of recognition which facilitate our understanding immeasurably.

A. Historical Aspect

Lev. 11 is anticipated by Gen. 7:2, Lev. 5:2 and 7:21, an indication that other oriental people possessed the concept of "clean" and "unclean."

In regard to mammals, fish and insects, the permitted animals are enumerated, while in the case of birds, the forbidden ones are listed. We may now proceed with a discussion of the marks which differentiate the clean from the unclean animals, as they are set forth explicitly in both Bible and Talmud.

1. Quadrupeds

The Bible states that all clean animals have cloven hoofs and chew the cud. The Mishnah does not add to these

characteristics, but the Talmud² gives these marks of recognition: an animal, which lacks upper teeth and whose hoofs are cloven, is clean, for its dental deficiency necessitates rumination.³ Only camels are disallowed, as tusks are found with them. The Talmud further explains that, since it is sometimes difficult to recognize whether an animal has upper teeth or not, it is sufficient to establish that the animal is cloven-hoofed, for it has been proven that a quadruped, whose hoofs are cloven, chews the cud, the only exception being the swine.⁴ The Talmud is less rigorous than the Bible in all these cases.

Other traits by which clean animals may be recognized are brought forth by the Mishnah: all animals that have horns are cloven-hoofed, but not all animals that have cloven hoofs have horns.⁵ The swine, here too, is an exception. Both Rashi and the Shulchan Aruch agree with this view.⁶

Another characteristic is given by the Talmud: if the muscle fibres under the coccyx intercross in length and width, the animal is clean,⁷ except in the case of the wild ass.

Wiener feels that the Talmud has improved on the primitive descriptions of the Bible by drawing on the discoveries of the natural sciences.

2. Birds

The Bible does not tell us by which marks the clean birds can be distinguished from the unclean, but the Mishnah has made

this clear. "Any bird that seizes food in its claws is unclean; and any that has an extra talon and a claw and the skin of whose stomach can be stripped off, is clean." R. Eliezer b. Zadok says: "Any bird that parts its toes evenly is clean."⁸ The Talmud simplifies matters even further by stating that all birds of prey are forbidden.⁹ Certain characteristics by which these may be recognized are listed. In uncertain cases, their uncleanness is determined by how they stand on a rope. If half of their claws are on one side of the rope and half on the other, they are considered unclean.

3. Insects

All insects, worms, mollusk, etc., are declared unclean by the Bible. However, four types of locust are exempted.¹⁰ The Gemara allows eight species.¹¹

Worms which develop in fruit after picking, and have never left the fruit, are not considered unclean, as the Torah forbids only insects "which creep upon the ground."

4. Fish

The Torah regards all fish that have scales and fins as clean. The Talmud established further that all fish which have scales have fins; consequently, it is enough to seek for this sign alone.¹² But the reverse is not true: many fish have fins and no scales. A single scale or fin is sufficient to establish cleanliness.¹³

Lev.11:10 maintains that fish that have neither fins nor scales "in the seas and in the rivers" are forbidden. Hence the Talmud allows such that are found in stagnant waters. Wiener argues that the Biblical statement "in the waters" is a general statement and that all specific localities are to be deduced therefrom, a view with which the Talmud itself seems to agree: וְהַיָּם וְהַנָּחַלִּים וְהַמִּינִים . The Karaites do not observe the Talmudic exemption.

B. ARCHAEOLOGICAL ASPECT

As was undoubtedly noted from a perusal of the previous chapters, few analogies, if any, could be found among the pagan nations of antiquity with regard to the various dietary laws discussed above. If such could be traced, the Biblical law served frequently as a warning or antithesis against the heathen practice. In this instance, however, the picture is totally different. Not only do similarities exist, but oftentimes the very same laws are found among peoples of the Orient. The question that we must resolve, says Wiener, is to ascertain where these laws originated or whether they developed spontaneously, due to the general aversion not to eat unclean animals, such as cats, mice, dogs, etc. In any case, it was to the credit of our Jewish forefathers, it was the genius of theocracy, that these laws were formulated and observed.

1. Parsees

The differentiation between clean and unclean animals plays an important role in the dualistic system of Parseeism. The clean animals are creatures of Ormuzd, the God of Good and Light, the unclean animals serve Ahriman, God of Evil and Darkness.

2. Hindus

The most striking similarities, especially with regard to the marks of recognition of clean animals, are to be found in the Hindu law-book of Manu. Excerpts from the Book of Manu and comparisons with the Biblical and Rabbinical laws, wherever necessary, follow.¹⁴

Ch.5,par.11: The "twice-born" is forbidden to eat birds of prey and animals whose hoofs are not cloven.

Ibid.,par.11: Birds whose claws cause injury and who dive into water to snatch fish, are forbidden. (Cf. Mishnah, Niddah 6:9 and Gemara, Chullin 63a).

Ibid.,par.14: No tame swines and no fish, except those which are specifically permitted, are allowed.

Ibid.,par.17: Solitary and rare animals as well as birds and beasts with five claws are prohibited, though they may be clean. The decision in all these cases should be left to experts. (Rashi expounds a similar view.¹⁵)

Ibid.,par.18: The hedgehog, porcupine, turtle, and rabbit, though they are beasts with five claws, are permitted. (The Bible prohibits them). Quadrupeds with

only one row of teeth, except the camel, are permitted.
(Cf. Gemara, Chullin 59a).

Ibid., par.22: Animals without blemish may be
slaughtered. (Cf. Lev.22:19 and Mal.1:8).

Paragraphs 49-55 admonish the "twice-born" not to
eat meat, but permit an animal to be killed under certain
circumstances. (Gen.1:29 prohibits all use of meat, per-
mits only plants. Flesh was first allowed to Noah,
Gen.9:2-3). Only meat from animals admitted for sacrifice
was to be consumed. (Cf. Lev.17:4-5).

3. Egyptians

The Egyptians prohibited birds of prey, all fish,
and single-hoofed animals. The presence of horns estab-
lishes the cleanliness of the animal.¹⁶ (Cf. Mishnah Niddah
6:9 and Gemara, Chullin 59b). It has been conjectured by
Hengstenberg that the Egyptians abstained from all those
animals which stood in relation to Typhon, the Evil Principle.
Certain animals were avoided, he holds, because they were
believed to represent various forms of Typhon.¹⁷

4. Sabeans

Quadrupeds with teeth in both jaws, i.e., non-ruminating
animals, were prohibited, such as the pig, dog, and ass.
The camel and all other animals that were not used for
sacrifice were also forbidden. No fowl, except doves and

beaked birds, are allowed.¹⁸ Oxen, sheep, and goats were sacrificed and, therefore, permitted as food.¹⁹

5. Mohammedans

The Koran states that only the swine, which is an abominable creature, is forbidden for human consumption.²⁰ Weil holds that Mohammed also prohibited the flesh of domestic donkeys, wild animals, and birds of prey.²¹ Wiener is convinced that Mohammed merely sanctioned by law what was then an existing Arab custom.

6. Greeks

The Greeks also did not partake of many of the Biblically unclean animals. Says Porphyrius:²² The Greeks do not eat dogs nor do they eat horses. However, they eat of the swine . . . Camels are also forbidden . . .

The Greeks originally permitted only the meat of sacrificial animals. Homer lists oxen, sheep, and goats as animals which were offered to the deities, and also includes the swine.²³ Fish seem to have been forbidden and were eaten only in dire need.²⁴

7. Romans

Tacitus relates an incident concerning people whose accustomed nourishment was entirely lacking, and who were forced by circumstances to eat their work-animals and their horses, though they were profane and repulsive.²⁵

Horace does not speak of food prohibitions but he does refer to "the unlovely and maddened dog and the pig friendly to mud."²⁶ According to a decree of Numa, only fish with scales were declared edible.²⁷ However, it appears that at the hecatombs swine was sacrificed.²⁸

8. Wiener's Theory on the Origin of the Laws

It is Wiener's contention that the Egyptians, through their priests' secret lore, adopted many parts of the Hindu code and that, in turn, the Pentateuchal law-giver revised these laws and gave them his own peculiar impregnation. The Jewish law-giver did more than merely copy; he added and revised the Hindu-Egyptian code on the basis of his own philosophy of morality and monotheism. He did more than imitate; he was eclectic and devised laws that were permeated by the spirit of the One God.^{28a}

Our author's theory is based largely upon Munk's exposition. Says the latter in a characteristic passage: However, what appears certain is, that the laws in the Mosaic code were enforced in the time of Moses and could have been known to Moses through the intermediary of the Egyptian priests who had received a great part of their institutions from India . . .²⁹

C. Religious Aspect

1. Motivation according to Wiener

According to our author, the motivation for the laws, concerning clean and unclean animals, is clearly stated in the Bible itself. The forbidden animals were characterized as *hng* and *g're*.³⁰ Both terms are used indiscriminately, though the latter seems to convey a stronger meaning. It may, therefore, be supposed that the forbidden animals inspired men with disgust either by their appearance or their habits, and induced a natural aversion to abstain from them.

A far more fundamental reason is propounded by both Lev. 11:44-45 and 20:25-26. "Ye shall therefore separate between the clean beast and the unclean . . . and ye shall be holy unto Me; for I the Lord am holy, and have set you apart from the peoples, that ye should be Mine." Many Christian scholars have deduced from these verses that the dietary laws purported to keep Israel separate from all other nations. This, says Wiener, is a deliberate misinterpretation. First of all, other ancient people had similar laws. And, secondly, "holiness" is to be taken in a general sense. What the law-giver really means to express is this: Because I have set you apart and because I have claimed for you a higher holiness, therefore shall ye abstain from unclean animals . . . Theocratic holiness then is the real motif

of these laws.

Some philosophers and commentators, both Jewish and Christian,³¹ maintain that the Bible counsels moderation in, or even abstaining altogether from, eating meat, and recommends a vegetarian diet, as indicated by Gen.1:29-30. Wiener disagrees sharply with this point of view. The Bible never prohibits meat as unfit for human consumption; such an interdiction would be contrary to the real spirit of the Bible and of Judaism. The Jewish point of view is inherently optimistic and joyful. Asceticism and exaggerated self-discipline are primarily Greek and Christian ideas.

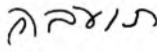
2. Exegetical Expositions

Abraham ibn Ezra reasons that if we were to partake of the unclean and detestable meat, it would become part of our own flesh and blood and would have a negative influence on our soul and reasoning faculties.³² Some forbidden birds are poisonous; eating them would cause illness and clog the canals leading to the mind. . .³³

In his supercommentary to ibn Ezra, Carca refers to "some who say" that eating the swine is really healthy; but, because the swine stands under the influence of Saturn, it is forbidden. .³⁴ Wiener refuses to go along with this theory. The Bible condemns astrological practices in the strongest terms and even if Carca's exposition is correct, the swine would have been permitted rather than prohibited. The swine, in particular, was forbidden because it was so

utterly loathsome and contaminated with disease.

Maimonides brings his medical knowledge to bear on the subject: Only the healthiest meat is allowed. This is a fact which medical experts cannot contest. The swine may serve as an example. It is unclean and feeds on many abominable substances.³⁵ Our author cannot accept the hygienic theory with regard to unclean animals, and asks why poisonous plants were not forbidden in the Bible, or, for that matter, in Manu and Egypt.

Nachmanides introduces a host of motives. Permitted fish swim at the surface of the water, come up for air and acquire a certain amount of bodily warmth. But the scale and fin-less fish gather in marshy waters and are possessed of "deadly" cold and moisture. Birds of prey, however, cause similar tendencies in man. As to the unclean beasts, their milk has adverse effects on human procreation.³⁶ At another place, this view is advanced: The Biblical expression  indicates that all forbidden foods are abominable to the pure soul . . . Prohibited foods cause coarseness and stupidity.³⁷ Aaron Halevi,³⁸ Gersonides,³⁹ and Albo,⁴⁰ who are cited next, advance similar ideas.

To Isaac Arama, these laws teach self-discipline and moderation. The more one abstains from earthly pleasures in this world, the more spiritual benefits will one receive in the world to come. Abstinence from forbidden food

makes man a more moral being.⁴¹

Abravanel gives a detailed biological explanation and, at the same time, regards the entire legislation as a reaction against animal worship. Saadia concurs in the latter motivation.⁴²

Chajim Viterbo, Rabbi of Venice,⁴³ sharply opposes Maimonides' dietetic explications. Some quadrupeds and birds which are permitted are less digestible than others which are not. Many people eat camels and hogs and are never harmed. Rather, the prohibited foods are injurious to the human intellect. Moreover, numerous physicians, astronomers, and mathematicians live on a very light diet . . . To all of which Wiener replies: Christians have their share of great scholars and mens sana in corpore sano . . .

Lastly, various Midrashim, which deal with the abrogation of all restrictive legislation in Messianic times, are dealt with. One example may suffice to indicate their general tenor: In the world to come, God will declare all "unclean" animals "clean" . . .⁴⁴ However, our author questions the advantage that can be gained by this procedure, if the animals remain as they are now.

D. Dietetic Aspect

Experience, taste, and medical science seem to agree with the Biblical laws. The vast majority of people partake of those animals which the Torah allows, and Gentiles

usually do not eat many of the prohibited foods. Despite claims to the contrary, pigs are unclean and are liable to breed tapeworms and trichinosis. Medical authorities are not cited, however.

X. THE NEED FOR REFORM

The foregoing analysis has provided our author with the scientific basis to plead for the reform or the modification of the Jewish dietary laws. Many reasons are given, many arguments advanced, to bolster his thesis. But pivotal among them is his approach towards Bible and Talmud in Jewish tradition and practice.

As already has been indicated, Wiener is not only a man of convictions but also a man of strong and incisive words. He spares no epithet nor omits an invective to denounce Talmud and Talmudists. Almost every line in his book testifies to his constant revolt against, what he likes to call, "Talmudism." We have eliminated all abusive and polemic argumentation in reproducing his attitude toward and his interpretation of the Talmud.

The Talmud is neither a well-ordered law-book of religion nor a definitive anthology of Judaism. It consists of heterogeneous elements and embodies within itself diametrically opposed philosophies. Interpretations, discussions, hyperboles, personal opinions, theses, antitheses, and hypotheses of law are mingled with guess-work, imagination, simple conversations, witchcraft, myths, fables, allegories, and hundreds of other subjects which do not have the remotest connection with religion and legal decisions. "Sublime and ridiculous" material occur side by side. Can such a compilation be termed an infallible law codex, a religious guide for our life?

No one who knows the Talmud and especially, no one who has acquired an impartial and critical attitude toward it, can deny its magnificent contribution to Jewish life and survival. In times and lands of darkness and barbarism, under Druck und Drang, it brought solace and cheer, light and hope. It kept Judaism and the Jewish people alive during the Middle Ages. Having acknowledged our debt, we may not shrink, however, from criticizing its shortcomings.

Among the hundreds of men whose opinions are contained in the Talmud, there are men of wisdom and folly, of learning and ignorance. The experiences of many centuries and the influences of totally different environments left their indelible mark. Jewish, Christian, and even pagan thinking is reflected in its pages. Once we understand the circumstances under which it was composed, we readily recognize that it cannot be faultless. Certainly as far as the modern age is concerned, the Talmud has lost its binding force. At least 85% of its content must be regarded as antiquated. It can only be of value to those who desire to return to Palestine and reinstitute there the priesthood and the sacrificial system.

Moreover, it is evident to every thinking person that the Talmud interpreted the Bible in accordance with the needs of its time. Thus, ^{it happened that} the Talmudists ^{frequently} neglected the

Bible, were less concerned with the clear meaning and spirit of the Biblical text than with every letter and insignificant detail. Some even admitted that they were not too well acquainted with the Biblical text.¹ This is indeed inexcusable; it is to the everlasting shame of our forefathers. For the Bible is the master, the Talmud at best its apprentice.

What then is the Bible and what specific meaning does it possess for the modern age? We shall let our author speak for himself:²

"Uns aber ist die heilige Schrift die Ur- und Hauptquelle der Religion, der klare, nimmerversiegende Born, aus dem wir, an der Hand einer einfachen und geraden, von aller Casuistik and Mystik freien Erfassung des Wortlautes und des Geistes, die lebendigen Wasser der Wahrheit, der Tugend, der Menschenliebe und die Kenntniss und das Verstaendniss der fuers religioese Leben noethigen und erspriesslichen Formen und Gebraeuche schoepfen."

The Talmud devised laws in harmony with its age; we moderns must not fear to follow a similar course for our own time:³

"Formen und Gebraeuche moegen im Laufe der Zeit unter anderen Himmelsstrichen und socialen Verhaeltnissen Aenderungen erheischen, wie ja so vielfach vom Talmud und den spaeteren Rabbinen als nothwendig erkannt und auch bewerkstelligt."

Most important of all, what would Judaism be today without the Reform movement? Has not even orthodoxy taken over many of the so-called "reforms"?

In applying these arguments to the subject under consideration, the following conclusions appear inescapable:

The reform of the Jewish dietary laws is an urgent necessity for our present mode of life and is also fully justified in the light of our scientific research. It has been shown that many laws lack Biblical foundation and wherever an attempt was made to establish a Biblical sanction, it was proven to be without justification. Therefore our author demands the abrogation of all talmudic or rabbinic dietary laws; however, Mosaic or Biblical laws he desires to keep intact. This reform would represent, in his own words, "a very modest effort."

With this general conclusion in mind, we may now summarize Wiener's views concerning the specific dietary prohibitions dealt with in previous chapters.

The following proscriptions are not of Biblical origin and, therefore, must be abolished:

- a) The sciatic nerve (and the custom to abstain from hind-quarters)
- b) Mixture of "milk and meat"
- c) The custom of "salting and soaking"
- d) The traditional laws of חלב ובהמה
- e) The traditional laws of כבוד (and the entire institution of כבוד)

The following law is of Biblical origin but no longer valid due to the abolition of the sacrificial system:

- a) Fat

The following laws are of Biblical origin and should be observed:

- a) Clean and unclean animals
- b) Blood
- c) "That which dies of itself" and "that which is torn of beasts"

Our author's argument, however, does not rest upon his desire to return to "Mosaism"⁴ alone. There are other considerations which motivate him.

The laws cause unnecessary and costly hardship. We shall enumerate only a few examples which, we believe, will amply illustrate his type of reasoning: strict separation of at least three sets of dishes; abstinence from the nutritious hind-quarters of the animal; depriving meat of its real strength due to excessive salting; use of expensive and frequently unhealthy goose-fat instead of butter or other fat; employment of a *Gnie*⁵ which constitutes a drain on the financial resources of small communities and makes the hiring of a Jewish teacher frequently an impossibility; high price of kosher meat due to intricate methods of ritual inspection and slaughter; inability of Jewish employee or apprentice to take meals with Christian employer, etc., etc.

Most heavily penalized by the meticulous observance of the dietary laws is the Jewish housewife. She lives under constant dread lest a "milchig" spoon is mistakenly used with a "fleishig" dish. Due to her preoccupation with minute and insignificant details, "Kuechenreligiositaet" has taken the place of truly spiritual activities. During the ghetto days

such a psychology was understandable, but today women must grapple with life's higher tasks:⁶

"Unsere Grossmuetter, die von der Welt isoliert lebten und nichts zu lernen hatten, konnten sich ohne Schafen fuer weitere and hoehere Interessen mit allen diesen Saechelchen, die als religioes galten, beschaeftigen; es war auch vielleicht fuer ihr sonst so leeres und einsames Leben gut, dass sie solchen Zeitvertrieb hatten, Die heutigen Verhaeltnisse verlangen aber auch von der Frauenwelt ausgedehntere und hoehere Bildung und Theilname am socialen Leben und Weben. Sie haben weitere Aufgaben in der Pflege des Geistigen, Idealen, des wahrhaft Religioesen zu loesen." d

This disproportionate emphasis upon religious trivia has resulted in superficiality, lip-service, and hypocrisy, and is leading our children to indifference and atheism. Only a reorientation of Judaism can stem the advancing tide of irreligiosity; a Judaism which emancipates itself from the ballast of antiquated rabbinic traditions and customs, and which stresses the great ethical precepts of justice, charity, and neighborly love.

Lastly, and perhaps most important of all, the laws must be revised to effect a better relationship with our Christian brothers. We owe it to them to take this step if we, as equals under the law, desire to become equals in our social life. Wiener reviews in great detail the historical accusations launched by non-Jewish writers against the Jews' "peculiar" dietary code. For thousands of years the Jews have been held up for derision and suspicion because they surrounded themselves with an impervious wall of separa-

tion which no outsider could pierce. There was good reason for their particularistic tenacity during the Middle Ages. Judaism and the Jewish people had to be preserved against all odds. But today the conditions of storm and stress do no longer exist. True, an anti-semitic movement is poised against us, but the forces of civilization and humanity are still in the majority and are bound to emerge triumphant. Moreover, we are full and equal members of the German Fatherland; we take part in its political and communal institutions. Thus we should never lose sight of our patriotic obligations. Therefore, all barriers that prevent the forward march of Brotherhood must fall. In advocating only the abolition of the rabbinic dietary laws, Wiener maintains that Jews would thereby be enabled to dine with Christians who, with exception of some unclean animals, generally follow the Biblical provisions.

In concluding his case, our author maintains, that neither the anti-semitic attacks upon the laws nor the fact that countless numbers of his coreligionists have already disregarded them, prompted him to write his treatise. Frequently, and in vehement language, he denounces such vicious accusations as the supposedly inhumane method of ritual slaughter.⁷ Nor is he impressed by those of his fellow Jews who look upon the dietary laws as obstacles to their inordinate desire for sensual enjoyment. It is only because he loves truth and piety, because he seeks to promote

knowledge and progress, that he has pleaded for a reform of the Jewish dietary laws. "For the sake of the Lord our God, will I seek thy good."⁸

What method does he advocate to effect the reform? Previous efforts⁹ have failed; rabbinical assemblies have proven ineffectual.¹⁰ Rabbis cannot and will not take the initiative; their hands are tied by vested interests. But a synod, specifically devoted to this subject, and called by medical, juristical, and philological experts, who might invite like-minded rabbis, could adopt the reforms immediately. No one individual, however eminent and erudite, may hope for success if he acts by himself. Only a body of well qualified and scientifically minded men can set the pattern and establish authoritative practices. They must act at once, for the revision of the dietary laws is long overdue. There will be repercussions, to be sure. But they need not fear: Magna est veritas et praevalet!

PART TWO

CRITIQUE

GENERAL APPRAISAL

Wiener's magnus opus must be examined against the backdrop of history.

Not before 1869 and 1871 was full equality of rights constitutionally granted to Jews in the North German union and the German Empire. Down to the time of World War I, German governments continued to discriminate against Jews in making appointments to high positions in administration, army and university. These facts are frequently forgotten or not sufficiently emphasized by modern historians. Complete emancipation was not achieved until the Weimar Republic.¹

In the Seventies and Eighties of the last century, then, the German Jew was still preoccupied with fighting for equal rights and opportunities, and with safeguarding them against the onslaughts of a nascent anti-semitic movement which threatened to whittle away the hard-won gains of centuries. After 1873, when the wave of over-speculation, which followed in the wake of the Franco-Prussian War, resulted in the inevitable crash, condemnation of Jews and Judaism became general. Mass dissatisfaction was largely diverted into anti-Jewish channels. Even Bismarck allied himself with the reactionaries and had no scruples in making the Jews serve as whipping-boys.² The leader of the new movement was the notorious Court Preacher, Adolf Stoecker,

who, through his Christian Socialist Workingmen's Union, gained popular support for his ideas. Nor was the movement confined to political opportunists. Even responsible publicists and scholars, such as Treitschke, reiterated the anti-semitic arguments. An unceasing stream of articles, pamphlets, and books reviling the Jews poured out from the printing presses. Duering arrived at the conclusion that the Jews were the most inferior branch of the Semitic race;³ Marr advanced proofs that the Jews were aiming at world mastery;⁴ and Rohling quoted the Talmud to demonstrate the dangerous and criminal character of Judaism.⁵ To be sure, enlightened Christian leaders, such as Delitsch,⁶ proved that facts had been falsified and history distorted; but, in spite of this, inflammatory publications were read with eager credulity. Thus anti-semitism became an openly active force in German affairs and the relations between Jews and their neighbors continued to be embittered by constant agitation.

In a measure, Wiener's book represented a Jewish answer to the new challenge. Anti-semites, he held, desire nothing better than to point to the peculiar, antiquated customs of the Jews. The dietary code, in particular, exhibits characteristics foreign to the modern world. Its Asiatic origins reflect upon the status of the German Jew.⁷ Why then provide our opponents with unnecessary points of attack? Why continue to insist upon separatistic practices which not

only make us easily vulnerable, but which also impede our complete integration with the Christian world?

Such was Wiener's argument. Already Montefiore, who otherwise has nothing but praise for our author's treatise, had recognized that a scrupulous observance of the dietary laws does not prevent a free social intercourse with Gentiles.⁸

Jews who take pride in their heritage are far better prepared to stand up under attack than those who seek to explain their Judaism away for social advantage. Under the first signs of anti-semitic manifestations, Jews in the latter category become lacerated with fear and their illusionary world of security crumbles from under their feet. Brotherhood is not achieved by enforced uniformity of religious and cultural behavior, but by respect for the differentiation of creeds and folk-ways, which, in turn, will enrich the common welfare of the nation. Even from a practical point of view, endeavors to minimize the differences between Judaism and Christianity have proven fruitless. For the anti-semite is not convinced by rational arguments. Rather he regards such attempts as concessions of weakness on the part of the Jew. History has proved Wiener wrong. Well-meaning Gentiles have always respected those Jews who respected themselves.

Another factor which influenced our author was the pre-eminence, in his day, of the rationalist philosophy. Begin-

ning with Kant, who had equated religion with morality, free-thinking litterateurs of the 19th century had disparaged ceremonial observances as being contrary to the true aims of religion. Religion, it was held, was to promote the good, the true, and the right. Traditional forms and ritualistic practices would tend to obscure these basic goals. It is little surprising then that, in harmony with these views, and particularly under the influence of Deistic philosophy and Hegelian Protestantism, Reform leaders sought to reduce Judaism to a creed alone. No longer was the force of tradition and common participation in a system of ceremonial regulations to be the uniting link, but those eternal truths, unto the validity of which the Jew should bear witness until their final adoption by all mankind. The essence of Judaism was thus found to be in adherence to credal principles. Translating this theory into reality meant that, in order to achieve full emancipation, the Jew had to become a German, Austrian, etc., in every respect but one, his creed.

The revolt centered against rabbinic traditions and Talmudic Judaism as a whole. Much of the old ceremonial was discarded. Rabbinical teachings were conscientiously ignored and the authority of the Talmudic structure was repudiated. There was an outspoken reversion to the Bible as the chief, and sometimes only, source of Judaism.

But was Reform a reformation in the sense of a complete return to Mosaism? From a superficial perusal of Wiener's book, it would appear to be the case with our author. He had advocated the abolition of the rabbinical dietary laws, but had pleaded for the continued observance of the "true" Biblical laws. Moreover, his whole approach to the problem would seem to indicate that he desired to uphold the Mosaic Law.

However, a detailed analysis will tell a different story. The Bible is our guide in ethical and moral questions only:

"wo diese durch die veraenderten Local- und Zeitverhaeltnisse unserer Zeit nicht ausreicht, muss die mens sana, die Erfahrung, ein gesünder, gelaeterter Zeitgeist und Culturfortschritt helfen . . ."⁹

Wiener admits frankly that several laws of the Pentateuch have already been discarded, as in the case of excision and excommunication.¹⁰ Nor does he believe that Moses was the author of the Pentateuch,¹¹ and in many cases he entertains critical views regarding authorship and text.¹² At the very end of his work, he holds that even many of the Biblical dietary laws have lost their relevancy for his time, due to changed climatic, social, and political conditions.¹³ One asks in wonderment, why his insistence upon keeping the Biblical laws? His answer is most revealing and provides¹⁴ us with the real motive of the book:

"Wozu zur Revolution schreiten, wenn das Ziel auf legalem, verfassungsmaessigen Wege zu erreichen ist? Da behaelt die Schrift ihre Sanction, das unbestreitbar noch heute Heilsame in diesen Gesetzen wird beibehalten, die unbegründeten

aber und dennoch das Leben sehr erschwerenden, Bewegung und Verkehr hemmenden fingirten Commente auf ganz legitime Weise abrogirt Nicht das biblische, sondern das rabbinische Speiseritual veranlasst die vielen Plackereien in der juedischen Kueche und die Hemmnisse des socialen Verkehrs"

For expediency's sake alone, the revision of the dietary laws was urged on "legal" and "constitutional" grounds. . . . To an extent, Riesser was right when he wrote to Dr. Stern in 1843:¹⁵

"The Bible is treated gently because of its noble kinship with Christianity and on account of the august police"

Some specific problems, which are either discussed or touched upon by our author, are dealt with next. Wiener is beside himself when he denounces the "inventions" of later rabbinical authorities. The Talmud, he cries out, manufactured our present dietary legislation "out of nowhere." As Hoffman has pointed out, Wiener completely ignored the fact that long before the Bible came to be written down, there existed an oral tradition which undoubtedly contained many of the details of the more general Biblical legislation.¹⁶ This, as will be shown in a later chapter, was true for the laws concerning ritual slaughter. It should be remembered also that the Rabbis, in attempting to harmonize the literal meaning of the Biblical text with their own legislation, frequently based their interpretations upon the Oral Law, to which they attached great authority.¹⁷ In any case, the men of the Talmud, in their desire to find Biblical sanction for many of the dietary laws already in existence for several

centuries, sought to correlate the rabbinic extensions with the ancient written code. Thus an unusual spelling, or the duplication of some word, provided justification for the more recent development.

Moreover, Wiener failed to understand the totally new character which the dietary laws assumed in Talmudic times, and particularly during the Middle Ages.¹⁸ While the origin of the laws is to be found in primitive tabus, in the course of time they were regarded as means for the moral purification of Israel. Not personal distaste, but submission to the divine will became the chief motive for their observance. This is the spirit of many rabbinic utterances:

"Say not, 'I do not like the flesh of the swine'; but rather, 'I do like it and am abstaining from it with the will of my Father in heaven'." ¹⁹

"Only to those who wrestle with temptation does the Kingdom of God come." ²⁰

To the medieval Jew, during centuries of wild dissipation, these laws served as lessons in temperance and moderation. As Maimonides asserts, the laws of prohibited food, like most other ceremonials and even many moral precepts, were meant to provide exercises for the discipline of the heart and mind:

"to check the greedy who are bent upon dainties, and to prevent men from looking upon luxurious eating and drinking as the end of their lives."²¹

And then finally, the dietary codex, which the Talmud so minutely illustrated and prescribed, gave the people of Israel a characteristic imprint which distinguished them from other peoples and which helped to provide them with their phenomenal power of resistance and cohesion. If the Jew was able to maintain his identity for long centuries of darkness, under conditions such as no other people has ever been known to surmount, it was due, in part, to these laws, which secluded and shielded him from his non-Jewish environment.

We must concur with Wiener, however, that, in some instances, separation from the world came to be regarded as an end in itself, as the following illustrations will indicate:

"R. Ishmael says: Israelites who reside outside of Palestine serve idols, though in pure innocence. If, for example, an idolater gives a banquet for his son and invites all Jews in his town, then, even though they eat of their own and drink of their own and their own attendant waits on them, Scripture regards them as if they had eaten of the sacrifices to dead idols, as it said: 'And he will call thee and thou wilt eat of his sacrifice'." (Ex.34:15)²²

"Whoever invites a non-Jew into his house as his guest and waits upon him, brings his children into misery and exile."²³

"Keep aloof from their bread and their oil on account of their wine, from their wine on account of their daughters, from their daughters on account of their idols."²⁴

"He who eats with a Gentile is as if he would eat with a dog."²⁵

To these teachers and leaders of the people, the dietary laws served as most effectual means of checking the

dreaded intercourse with the Gentiles. In ages of storm and stress, such splendid isolation was perhaps defensible. But for our day this type of reasoning must be rejected emphatically.

The social and intellectual emancipation of the Jewish woman demanded religious recognition. In this light, we must understand Wiener's concern for the Jewish housewife. Although the position of the woman in Judaism had always been rather high, she had not taken an active part in public life. Her functions were limited primarily to the private life of her family, though her domain extended to educational, philanthropic, and similar spheres. Our author's advocacy for the complete equality of the sexes was undoubtedly well-intentioned. One wonders, however, whether the consequences of his policy, as it became universally adopted, were as salutary as he had envisaged them. To be sure, "the walls of the special ghetto within the ghetto were broken down."²⁶ But with the elimination of every religious discipline, the modern woman had suffered a great spiritual loss. While many women paid mere lip-service to Judaism through a religion of "pots and pans," regulations, such as the dietary laws, contributed immeasurably to the erstwhile sanctity of the Jewish home. Unless we are prepared to devise other disciplinary means which are capable of engendering these moral and spiritual purposes, we may not lightly disparage of the dietary laws,

even if we are to observe them only in a modified form.²⁷

That the dietary laws have caused economic hardships cannot be denied. The housewife was expected to pay a premium for ritual slaughter costs. The price of kosher meat has remained high until our day.²⁸ Unscrupulous practices of Jewish butchers have driven many women to shop in non-kosher markets. But what is frequently ignored is that the dietary laws per se were the victims of a set of circumstances, and were not the villain. To make the laws of Kashrut the scapegoat, as Wiener does, is manifestly unjust. The blame lies rather with the Jewish community at large, which has shown a lack of responsibility in these matters and which has failed to bring such pressure as to eliminate, or at least ameliorate, these conditions.

To establish the dietetic value of the dietary laws would require a far more thorough study than Wiener presents. As has been indicated in our review, Wiener indulges here in haphazard assertions and frequently non-confirmable statements. Though some practices, resulting from the overly cautious observance of the Jewish dietary laws, must be stamped as innutritious, in the main, modern investigations have proven that the Jewish laws conform to the dietary as well as sanitary laws of today. Unbiased sanitarians, pathologists, and physiologists have sanctioned them as scientifically justifiable. The reader is referred to the

extensive literature on this subject.²⁹

What then shall we say of Dr. Wiener's volume? We cannot help but admire the courage of the man who published an elaborate dissertation on this highly controversial subject, in the face of certain attacks against him. Not only is his the best and ^{most} comprehensive study of the dietary laws, from a critical standpoint, that we have. It is also an independent and erudite work. Motivated, no doubt, by his deep love of Judaism, he fearlessly advanced his proposals and labored unceasingly for their adoption. He had originally intended to write the book in Hebrew for publication in scholarly journals. But when he sent excerpts, in German, to several Jewish periodicals, the latter refused to print them. Fearing that the same fate would befall the finished manuscript, upon offering it to the scientific journals, he decided to publish his work in book form and also in the German language. By this method, he hoped to reach a large circle of intelligent layman, and, at the same time, his ideas would not be suppressed. All credit is due to Adolf Wiener for his courage, his scholarship, and his pioneering effort.

We had previously pointed out that his work suffers from "garrulousness of age."³⁰ Awkwardness in arrangement, countless repetitions, and extensive verbosity, make the reading of his volume a cumbersome task. One could hardly expect the layman, for whom this book was avowedly intended,

to wade through some 524 ponderous pages. And even if he were to accomplish this task, it is to be doubted whether he could fully understand the contents. For many of the quotations from non-Germanic languages are not translated and without them much of the argument loses its force.

One more comment is in order. No scholarly work, however scientific, can be written from a completely objective point of view. But we must expect a certain degree of detachment and, therefore, a certain degree of objectivity. Wiener's book lacks these prerequisites. His writing is polemical and his approach biased by preconceived notions. Thus he is never content merely to cite source materials. He immediately proceeds to deride them. We must concur with Kohler, that this method is lacking in scientific and historical insight.³¹

Wiener's scientific investigations, with regard to the individual dietary laws in their origin and development, are dealt with in subsequent chapters.³²

XII THE JEWISH DIETARY LAWS IN ORIGIN AND DEVELOPMENT

A. THE SCIATIC NERVE

Wiener is correct in regarding the law of abstaining from the sciatic nerve as a custom. It is never again alluded to in the Bible. Hosea, who mentions the struggle between the patriarch and the angel, connects it with no consequences for the life of the Israelites.¹ Certainly the language of Gen.32:33 does not contain an ordinance of diet, and Wiener is borne out by Gesenius when he regards

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as an infinitivum historicum:

"Der Imperfect zum Ausdruck von Handlungen, etc., die sich jederseits, also auch in der Gegenwart, wiederholen koennen oder bei gegebener Gelegenheit zu wiederholen pflegen (z.B. Gen.32:33, etc.)."²

Wellhausen calls attention to a trace of a similar custom in ancient Arabia.³ Parallels may also be found among tribes of North American Indians, who cut out and throw away the hamstrings of the deer they kill.⁴ In any case, the sciatic nerve was regarded, because of its extent and size, as the chief manifestation of life or locomotion, which naturally appeared to primitive observers the most decisive characteristic of animal creation. On this account it was deemed too holy for food, just as blood was excluded because it was supposed to represent life itself.⁵ Neither Wiener's conjecture that the nerve was believed to be the seat of man's procreative power, nor Kohler's theory that it was taken over from the Phoenician priests, has ever been

substantiated.⁶

What appears probable, however, is that the custom must have existed in earliest times and persisted even when it was understood that the vital functions of movement do not depend on one nerve.⁷ The original reason was forgotten, but the practice remained. Thus the redactor of J and E, in order to invest the popular practice with a new meaning, sought to gain support for it by adding verse 33 to the ancient myth of Jacob's wrestling with the angel.⁸

B. SEETHING THE KID IN ITS MOTHER'S MILK

Wiener's evidence, that the thrice-uttered Biblical injunction not to seethe a kid in the milk of its mother cannot possibly be harmonized with its later Talmudic interpretation, is conclusive and nothing need be added here. However, modern scientific discoveries¹ have now established the probable origin of the law by presenting new facts which were, of course, unavailable to our author.

The poems of Ras Shamra (Ugarit) were written to be recited at festivals celebrated in temples situated at points south of Ugarit. Poem III, in particular, is a liturgy which was originally composed for a spring festival at Jerusalem during the period prior to 1600 b.c., the time of Abraham and Melchizedek.² Line 14 of this poem reads as follows:³

tb(h g)d . bhlb . 'a(?)nnh . bhm'st /

Slay a kid in the milk, resting in the curds (broken off)

What is indicated here represented the chief feature of a sacrifice for the fields, by the pre-Israelite inhabitants of Syria, i.e., the slaying (or cooking) of the kid in the milk. The text is broken, but the kid was apparently boiled over the fire.⁴ In any case, this religious ceremony was performed in the belief that the fertility of fields and orchards would be increased, or the milk-producing powers of the mother improved thereby.⁵ It is astonishing, indeed,

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that Maimonides suspected a similar heathen rite to be the basis for the Biblical law, though, of course, he was unable to cite facts with which to prove his supposition.⁶

The Biblical injunction then was the lawgiver's reaction against a prevalent Canaanite practice. His prohibition was based on "singular compassionateness, a sentiment against brutality, or even unseemliness . . . the cooking of the kid in its own 'blood'."⁷ Moreover he sought to avoid "a specific mystical rite which conveyed a definite meaning to the participants . . . the fertility cult."⁸

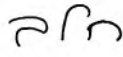
But the Pentateuchal ordinance did not put an end to the pagan custom. Large sections of Palestinian provincials were fearful of giving offense either to Yahweh or to the gods of Canaan. So they compromised. They seethed the kid in milk, but not in its own mother's milk.⁹ However, the interpreters of the Law, ever alert to the dangers of syncretism, were determined to wipe out the last vestiges of the superstition. To exclude any chance of such a contingency, they enjoined that no milk and meat whatsoever may be cooked together.¹⁰

Yet the controversy continued. The provincials consumed fowl together with milk, for they did not consider the former as "fleishig." But the sages of Jerusalem

extended the prohibition to include fowl, even though birds "have no mother's milk."¹¹ As late as the second century, Rabbi Jose the Galilean resisted this restriction,¹² yet his colleagues overruled him.¹³ The Shammaites sympathized with the Galilean's view, for they permitted fowl to be served on the same table with cheese, if the same person would not eat of both.¹⁴ But the Hillelites' rejoinder was unmistakable: it may neither be served nor eaten together.¹⁵

Wiener's hypothesis that the rabbinic law originated during the period of the Hadrianic persecutions, at the time of Rabbi Akiba, must now be regarded as spurious, as Kohler has already recognized.¹⁶

C. THE PROHIBITION OF FAT

Wiener is unquestionably right when he holds that fat was originally forbidden because it belonged to the deity on the altar. From earliest times, Semitic nations valued fat among the richest and choicest parts of the animal. The Hebrew  or the Syrian helba is not only the omen-turn but also includes the fat and suet connected with it. Since it was regarded as the seat of emotion, it was especially holy and was to be burned on the altar.¹

However, Wiener's reasoning that the fat was at first prohibited by Leviticus, yet later permitted for profane use by Deuteronomy, must be rejected in the light of modern Biblical research. It is generally held today that Deuteronomy 12 antedates Leviticus 3 and 7 by about a century and a half.² The conclusion then is inescapable that, for long periods, it was not interdicted as food at all. The Song of Moses, for example, lists fat among the most delectable of dainties.³ But in the course of time, as the Levitical system of sacrifice asserted itself, the fat of all sacrificial animals was prohibited for human consumption. For the priestly writer would not permit men to partake of what was believed to be the life and strength of the animal, the "soul" of its existence, which rightfully belonged to God.⁴

Nonetheless, Wiener's basic contention that this prohibition was most intimately connected with the sacrificial system must be upheld.

D. THE PROHIBITION OF BLOOD

The various motives that underlie the blood prohibition are all cited by Wiener or by many of the exegetes. However, as our review indicated, Wiener was not too clear in his presentation, mainly because he failed to recognize that not one, but many, reasons impelled the Pentateuchal writers to adopt such stringent legislation. For purposes of clarity, we will list below the various leitmotifs which led to the prohibition of blood. No attempt has been made to establish which ideas preceded in the order of time.

1. The sacrosanct nature of blood as the vehicle of life.
2. Eating of blood detrimental to humanity and injurious to health.
3. Blood superstitions by heathens:
 - a) Sealing of oaths and treaties with and over blood
 - b) Seeking alliance of demons by drinking blood
 - c) Fraternization with demons by consuming sacrificial meal near the blood
 - d) Ritual purgation by establishment of fellowship with deity
4. The atoning qualities of blood:
 - a) Expiation for the killing of the animal
 - b) Sinner's life saved by sacrifice of "soul" of animal (vicarious atonement)
 - c) Blood guilt must be expiated with blood
5. The blood belongs to God.

It is undoubtedly true, as has been said, that "tief in der Menschenbrust liegt eine geheime Scheu vor dem Blute."¹

Though Wiener is correct in maintaining that the practice of salting and soaking was a later rabbinic institution, we

may not overlook the reason why it became an essential part of Jewish dietary tradition. The Rabbis, measuring the importance of the command by the dread punishment threatened for its neglect, were naturally concerned with any possible transgression. Thus they devised precautionary rules which would eliminate the danger of blood ever being consumed. They therefore established a safeguard - salting - which was known for its decomposing action on blood.

Moreover, Wiener's refutation of Herzfeld's hypothesis with regard to salting must be regarded as specious.² Says Dr. Herzfeld:³

"Das Salzen ist von dem Opferritus auf den Privatgebrauch uebertragen worden . . . Die Uebertragung des Salzens auf profanes Vieh schien um so mehr gerechtfertigt, als man seine Einfuehrung sich bald daraus erklarte, dass hierdurch dem Fleische das zu geniessen verbotene Blut entzogen werden sollte."

Among the Arab nomads, a covenant was frequently concluded at a ceremonial meal. Salt was used as a fitting symbol to commemorate the occasion. Even today, when speaking of a contract or a treaty, the Arabs use the expression, "There is salt between us."⁴ Similarly, the Bible speaks of a "covenant of salt before the Lord."⁵ We may therefore conjecture that salt was not only used for sacrificial purposes⁶ but also had significance at profane meals.⁷

E. ANIMALS THAT "DIED OF THEMSELVES"
OR WERE "TORN OF BEASTS"

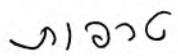
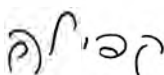
That the Biblical terms *חיה* and *חיה* assumed an entirely new meaning in rabbinic tradition is, of course, clear beyond doubt. Wiener's thesis that both Biblical laws were originally intended to guard against levitical impurity is also generally agreed upon by scholars.¹

One important fact has been overlooked, however, in tracing the origin and development of these concepts. Wiener contends, it will be remembered, that two motivations, levitical purity and theocratic holiness, prompted their promulgation. However, he failed to recognize the inherent connection between the two motives. Purity, cleanliness, holiness were at first the province of the priests; therefore, they were bidden to abstain from both *חיה* and *חיה*.² Gradually, with the course of time, as theocratic views prevailed, these qualities became the property of the entire people. Then all of the priest-people, all of whom were regarded as the chosen people of God, were enjoined not to partake of these abominable foods.³ We must concur with Kohler that, in failing to understand this historic development, Wiener's analysis is lacking in depth.⁴

That the Old Testament never prescribes any special mode of slaughtering needs no repetition.⁵ However, it

is reasonable to assume that the priests possessed slaughtering rules and that Deut.12:21 may refer to some old traditions which existed in this respect.⁶ Certainly in the light of the importance that was usually attached to the sacrifice and/or the sacrificial meal, it stands to reason that priests preserved, with some degree of accuracy, "the features of a sacrificial ritual that dates from extreme antiquity."⁷ Wiener himself has described analogous practices among the peoples of the Orient, and we might add the following Sabeian account:⁸

"Das Schlachten des Opferthieres geschieht bei ihnen zugleich mit der Durchschneidung der Halsader und der Kehle; das Schaechten ist unanfloesslich mit dem Schlachten uerbunden."

It is argued that a veterinarian, not a Shochet, should be consulted in the matter of . Though this procedure might be conceivable for the modern age, it was utterly impractical for the Ghetto Jew. For how could he secure the advice of a  during the Middle Ages? Was it reasonable to expect him to seek out a non-Jewish expert in matters which he considered primarily of religious import?

F. CLEAN AND UNCLEAN ANIMALS

Innumerable conjectures have been offered by scholars regarding the origin of the Jewish laws of the clean and unclean animals.¹ The subject is vast and intricate and a proper treatment of it would require a separate study. Moreover, since our examination leads us to the very earliest stages of human history, we are dealing frequently in the realm of speculation. Frazer's statement is still valid today:

"To explain the ultimate reason why any particular food is prohibited to a whole tribe or to certain of its members would commonly require a far more intimate knowledge of the history and beliefs of the tribe than we possess." 2

How then are we to proceed? Our task is to examine Wiener's presentation, his analysis, and his conclusions. His method is quite simple. He first cites the analogies that are found among many peoples of the ancient world. He then contributes his own theory concerning the derivation of the laws. Lastly, he seeks to establish the motive which impelled the Levitical writer to promulgate this legislation. This arrangement is logical and has the additional merit of delimiting the problem clearly.

We shall, therefore, follow Wiener's procedure, with one important exception. The author examines the laws of each of the ancient peoples, notes the similarities and deviations from the Jewish codex, and then arrives at the conclusion that, inasmuch as the Hindu and Egyptian canons

correspond closely with those of the Pentateuch, the Jewish laws must have been derived from these countries. This approach, we believe, is superficial and unscientific. It is true that we can detect certain analogous practices among the Hindu and Egyptian peoples. But it is also true that there are countless divergencies, differences, and variations. To state, as Wiener does, that the Hebrew lawgiver was eclectic and was guided by high principles of morality, is to indulge in mere speculation. Moreover, a connection between the Egyptian priests' "secret lore" and the Hindu Manu has never been established and has absolutely no basis in fact.³

This same criticism would apply to many other attempts which consider the dietary laws in their entirety and then seek to compare them to parallel legislation of other peoples.⁴ In most cases, the differences far outnumber the similarities. And even if we do trace certain resemblances, we would still have to prove a historical inter-connection.

A much simpler, and certainly a more scientific, approach would be to analyze each law separately.⁵ Even here our study will not produce incontestable results, but at least we shall guard ourselves against unwarranted generalizations.

We will now examine some of the unclean animals which are prohibited in the Bible. Due to the limitations of this

study, only the more important ones have been considered.

1. Swine

The Bible does not emphasize the prohibition to abstain from the meat of the swine unduly. Only in later periods, did this interdiction assume supreme importance.⁶

The swine was regarded as "tabu"⁷ with many people; i.e., it was considered either "unclean" or "holy."⁸ The Egyptians considered the swine as unclean. The swineherds could not enter the Temples and were enjoined to marry among themselves. If perchance a man touched a pig, he had to purify himself by bathing in a river.⁹ The reason for its uncleanness is presumed to be that the demon Set once appeared in the form of a pig.¹⁰ However, once a year, a swine was sacrificed to the God Osiris, Set's deadly enemy, and at that time the priests ate it.¹¹

All other Semitic nations, with the exception of the Babylonians,¹² also regarded it as tabu. To the Syrians the swine was sacrosanct, devoted to Astarte and Aphrodite.¹³ An ancient ceremony was practiced by the Harranians who, according to Al-Nadim, sacrificed the pig once a year. In Cyprus the swine was connected with the worship of Aphrodite and Adonis and was not ordinarily admitted for sacrifice. Only on April 2 was it offered up and eaten.¹⁴ This pagan rite is alluded to in Is.65:4.

The inference to be drawn from the above is that the Israelites considered the swine "unclean" because other people considered it "holy." Certainly it played a conspicuous role in many Semitic cults. However, the worship with which the swine was associated did not find equal acceptance among all Semites. "Where it did find acceptance, the flesh was forbidden because it was sacred; where it did not, it was prohibited because of its association with the worship of false gods."¹⁵

According to Wiener and the majority of the exegetes, the prohibition was due to psychological reactions, such as disgust and repugnance, or to dietetic motives. It is clear from the foregoing that such reasons came into being after the superstitions of old were rationalized.

A similar pattern can be detected with other animals.

2. Camel

The camel was connected with the Egyptian worship of Typhon.¹⁶ The Sabians neither ate nor sacrificed it.¹⁷ The Greeks regarded it as unclean and would eat it only in dire need. The Arabs thought the camel was a demonic character of the netherworld, but would, on occasions, partake of it as part of a sacrificial meal.¹⁸

3. Dog

The Egyptians considered the dog a holy animal.¹⁹ According to Al-Nadim, the dog was sacred to the Harranians. They would offer a sacrificial gift to it, and dogs were solemnly declared to be brothers of the mystae.²⁰ Smith detects a hint as to the identity of the god, to whom the dog was sacred, from Jacob of Sarug who mentions "The Lord with the Dogs" as one of the Deities of Carrhae (Harran).²¹ In Arabian tradition a demon character is ascribed to black dogs, which brings out the fact that dogs had a certain degree of holiness in heathenism.²² On the other hand, whenever a dog is mentioned in the Old and New Testament, it is referred to as a contemptible animal.²³

4. Wild Ass and Horse

The Egyptians thought the wild ass stood under the influence of Typhon. To the Greeks it was a demonic creature and forbidden for food and sacrifice.²⁴ The Harranians treated the ass in much the same manner as swine and dog, and Smith conjectures that it was probably sacrosanct.²⁵ The Bible tells of an ass' head being eaten at the time of a great famine.²⁶

The horse was sacred to the sun-god in Rhodes; four horses were cast into the sea, at the annual feast of the sun, as a sacrifice. A winged horse, Pegasus, was a sacred

symbol of the Carthaginians.²⁷ In the Bible itself, we have evidence that horses were devoted to the sun.²⁸

5. Mouse

The mouse was regarded as "detestible" and together with swine and dog was part of a mystical cult.²⁹ An Egyptian Temple dedicated to Hephastus contained a picture of King Sethos with a mouse in his hand with the inscription "Look at me and be pious."³⁰ Maimonides relates that the Harranians sacrificed field-mice.³¹

The same feeling of detestation applied to all "swarming things."³² The Arabic equivalent for *Gpe* is hamesh (vermin). The latter possessed supernatural and demoniacal qualities.³³

6. Fish

Fish without scales and fins were considered unclean, either because of their seemingly defective and unnatural development, or more likely due to their snakelike appearance.³⁴ That snakes were demonic animals (cf. Gen.3:1) and were an object of religious superstitions among practically all the peoples of the ancient world, needs no elaboration here.³⁵

The Israelites ate fish, but did not sacrifice them. The Syrians held certain species sacred to Atargatis, to whom they offered them as sacrifice. They abstained from

eating them, however, believing that if they partook of them, they would be visited by ulcers. Yet fish were cooked daily, placed on the table of the goddess, and then consumed by the priests.³⁶ In Egypt, fish were avoided in ancient times. It is interesting to note that in Old Egyptian script the cuneiform picture of the fish had the meaning of "detest."³⁷

7. Origin of laws

This evidence should suffice to indicate that the pagan Semites, as all primitive people, held certain animals to be tabued. Some were forbidden because they were holy, others because they were unclean. Animals that were kindred to a deity were considered holy. Animals not ordinarily eaten were regarded as unclean. However, when an unclean animal was sacrificed, it became a sacred animal, and when a holy animal was touched or eaten by man, the individual defiled himself thereby. In the primitive conception of tabu, therefore, the line of demarcation between holy and unclean is very narrow indeed. The powers of making holy and making profane are practically the same. Certain animals then, following this principle, were interdicted as food because they were considered holy and because of the belief that the holy might defile.

Beyond these general conclusions we dare not go; for more detailed explorations would lead us far afield.

8. Motivation of laws

Why were the laws of the clean and unclean animals promulgated? Again, many different explanations have been advanced.³⁸ Wiener and others have refuted the so-called dietetic, totemistic and pedagogic theories effectively.³⁹ Many scholars have confused the issue by dealing exclusively with the origins of the laws. The question is not only, how the laws originated, but also why they were instituted.

It is generally conceded today that the greater parts of both Lev. 11 and Deut. 14 emanate from the same source, namely, the Priestly Code.⁴⁰ It was a priestly writer then, one steeped in the levitical traditions, who authored this legislation. What were his objectives?

Many of the chapters, now commonly attributed to P, are permeated by a deeply religious spirit. We are, therefore, convinced that the laws of the clean and unclean animals are primarily motivated by a religious purpose.

In enjoining the dietary laws, the writer stresses the theocratic holiness of Israel; i.e., Israel is bidden to be holy just as Yahweh is holy.⁴¹ Originally most animals, which the Torah brands as unclean, probably stood in relation to some heathen rite. The snake was thought to possess demoniac qualities; therefore snakes and animals resembling snakes were avoided. The lawgiver protests against foreign cults, as in the example of the swine.⁴² Whoever partakes of

an animal which is dedicated to a pagan deity becomes innately related to that deity and unfit for Yahweh worship. Thus the levitical author sought to eradicate the vestiges of prevalent idolatrous practices and bind the nation to the true God. What this standard of holiness implied has been ably expounded by Wiener.

However, other reasons, too, must have impelled the Pentateuchal legislation. Some classes and species of animals were entirely out of the question. Who, for example, would think of eating poisonous creatures, such as vipers and adders? The mode of living of certain animals also played a role. This probably influenced the decision to outlaw all carnivorous animals - for the eating of blood was "abominable." The same applies to the forbidden birds who are largely birds of prey. We may suppose then that certain animals inspired men with disgust, either by their appearance or their habits.⁴³ In addition, some animals were included in the list of prohibited foods because they were neither known nor found in Palestine and the neighboring countries.⁴⁴

Nonetheless, we hold the religious motive to be of primary significance. How strongly this motif has influenced the dietary prohibitions of other advanced religions can be seen from this analogy: The early German Christians proscribed the use of horsemeat, because pagan Germans regarded the horse as a sacred animal.⁴⁵

G. THE DATE OF THE DIETARY LAWS

A word may be said about when the dietary laws were first developed into law. Wiener¹ sets the date at 218 b.c., a few decades before the Maccabean revolt, during the reign of Antiochus the Great. Kohler² believes "the levitical brotherhood of the Chasidim" was responsible for their adoption. According to Geiger³ and Lauterbach,⁴ the Pharisees made the observance of the dietary ordinances mandatory upon the people. Though the dates of these scholars are not greatly at variance, the latter view seems to be the most plausible. Casper

Our previous analysis has shown that many of the dietary laws were first and primarily enjoined to the priests.⁵ This is true specifically for the laws of אֵלֶּל and חֵלֶב. It also applies to the prohibitions of blood and fat, which were intimately connected with the sacrificial system. In the case of the unclean animals, it may be presumed that they were primarily forbidden to the priests, who, above all others, were charged to guard against defilement.⁶ Gu

Due to the changing conditions brought on by the Hellenistic era, the singular position of preeminence, which the priests had previously occupied, gradually deteriorated. The priesthood lost touch with the life of the people and became corrupt. Thus the Pharisees were able to proclaim,

that the law was not only the concern of the priests, but the heritage of all Israel. Since the Pharisees were laymen, they argued that, any man, so long as he was familiar with the Law, could perform many of the functions which formerly had belonged to the priests. For all of Israel was to be "a nation of priests and a holy people." To this end, the dietary laws became the property of the entire nation.⁷

Singer has summarized these views in a paragraph:⁸

"There can be no doubt that the early fears connected with food have survived among cultured people, but the larger number of restrictions which applied to the priests alone were imposed upon the entire Jewish people after Ezra established his religious reforms. Under the influence of the Pharisees who had lost faith in the corrupt priesthood of their day, the tendency to invest the layman with all the restraints of the priesthood accentuated this view."

APPENDIX

A BRIEF SURVEY OF THE CONTROVERSIES ON
THE LAWS IN REFORM JUDAISM

Only in Germany did the dietary laws create controversy in the Reform movement. In America, due to a totally different social milieu and unhampered economic opportunities, they caused hardly a stir. However, in all countries where Reform Judaism gained a foothold, the matter was subject for discussion, and even today opinion is divided on the official position, if any, that the movement should take.

It is little surprising that the various rabbinical conferences and synods, which were convened in the latter part of the 19th century to resolve the many religious problems then troubling the liberal German Jew, hesitated to commit themselves officially on the issue of the dietary laws. For many centuries the Jew had lived in Germany, had faithfully practiced the traditions of his religion, and had attached particular importance to the observance of the dietary laws. Though the Reform movement had its inception in Germany, nonetheless the majority of Jews still clung to Orthodoxy. Reform leaders feared, therefore, that an official act abrogating or modifying the laws of Kashruth would constitute too radical a step and would alienate the masses from joining the new movement. None-

theless, many individual rabbis and communities felt the need to speak forthrightly on this issue, and Wiener's book is primarily an appeal to effect a change in the doing nothing attitude of the leaders.

The Worms community sent a memorial to the first rabbinical conference in Brunswick (1844) which contained these arguments: Only that may be considered divine, which can arouse faith and morality. The Jewish laws governing diet no longer convey any meaning and are contrary to our conception of religion. But we do not have the authority to teach these truths to our children, and we fear that unless we may be permitted to present these matters in their true light, our children will sooner or later be lost to our faith.¹ The conference took due note of the memorial but did not act upon it.

The second rabbinical conference in Frankfurt (1845) received a memorial from Breslau, signed by 168 members of the local Gemeinde, in which various reforms were urged upon the conference. In the third section, the diet reforms are taken up. No specific suggestions are made, but important hardships, caused by the laws, are enumerated. These include: unnecessary expenses connected with ritual slaughter and employment of Shochet; inability to participate fully in social functions of the Christian community; Jews cannot take meals in public hospitals and universities.²

In its response, the conference took recognition of the conflict between many Jewish traditions and exigencies of modern life, but advised the Breslau memorialists that the conference deemed it necessary to proceed slowly in this matter.³

The first official action was taken by the third rabbinical conference, meeting in Breslau in 1846, when a commission was elected to report on the possible abrogation or modification of the dietary laws. Members elected included the following: D. Einhorn (then of Birkenfeld), S. Holdheim (then of Schwerin), S. Hirsch (Luxembourg), L. Herzfeld (Brunswick), and S. Adler (then of Alzey).⁴ The report of the commission was never presented to any conference or synod. It was published 13 years later by Einhorn,⁵ who had acted as commission reporter. The views contained in the report were mainly those of Holdheim, Hirsch, and Einhorn, for Herzfeld and Adler dissented frequently. A resume of the principles ideas follows:

The revision of the dietary code is a difficult matter, nonetheless, an honest evaluation should be attempted. The laws are based on the ancient concepts of clean and unclean and were primarily intended for the priests, who were to guard against bodily uncleanness. With the destruction of the Temple, the provisions dealing with levitical impurity have lost their significance. Furthermore, the notion, that corporeal cleanliness engenders holiness, runs counter

to the spiritual concept of the mission of Israel. The main task confronting Reform is to lift the people gradually above the dead letter of the law and to lead them to the true religion. This can be accomplished without undermining the moral authority of the Bible. Inasmuch as most laws have lost their binding force in our day, a revision is imperative. The report contains no specific recommendations for procedure.

At the first synod at Leipzig (1869) several motions were made to modify the dietary laws. The resolution presented by Julius Fuerst is noteworthy:⁶ the synod should elect a commission to examine the laws from a scientific standpoint. Such a scientific study should determine whether the laws are still relevant for our day. The findings of that commission should then be adopted without question. All motions were referred to the Committee on Ritual.⁷

The views of some of the leading German Reformers of this period are examined next. Abraham Geiger, though critical of the dietary code,⁸ adopted an intransigent attitude. To him, the crucial problem was: would the laws interfere with the world mission of Israel? If, after due investigation, the answer would be in the affirmative, they should be abolished completely. But there can be no middle course:⁹

"Die Speisegesetze sind nun einmal der Art, dass sie fuer Reform und die Uebergangstufen nichts bedeuten; sint ut sunt, aut non sint."

In his personal life, Geiger observed the laws very carefully.

Samuel Holdheim believed that the laws were originally connected with both the sacrificial cult and levitical purity.¹⁰

"Whatever, however, may have once been the reason for the dietary laws, this much is certain, that the reason no longer exists for us, and has no religious efficacy; every irrational practice, every belief in talismanic power is opposed to the spirit of religion. Therefore, the abrogation of the dietary laws is highly desirable, since, in addition to being a disturbing feature in the civic and social life of the Jews, these laws are particularly prone to continue the differences between them and the other inhabitants." ¹¹

We may cite here a violent diatribe by Jacob Stern who, under the pen-name of "Theologus," published a pamphlet entitled, Die Juedischen Speisegesetze.¹² In cynical and sarcastic language, he denounces those "antiquated Jews" who practice a "Judaism of the stomach." Modern life, he exclaims, demands a rejection of these ancient superstitions.

Before we turn to America and the modern period, an illustration of how the observance or non-observance of the laws led to many a congregational controversy may prove of interest. Leopold Stein, distinguished rabbi of Frankfurt, had applied for the vacant pulpit at the Liberal Synagogue in Nuerenberg. However, the latter congregation rejected

him on the grounds that he had dined at a public banquet which was not entirely "kosher." In an open letter to the trustees, Stein set forth the reasons for his action: only the Mosaic dietary laws, he maintained, are of divine origin; the Talmudic expansions must be disregarded. He concluded by denouncing the congregation's narrowness and lack of modernity and for choosing a "less qualified" person in his stead.¹³

The free spirit of the American institutions was impatient of the restraints of rabbinical legislation as embodied in the Shulchan Aruch. The Jewish immigrants and their descendants were so affected by the free atmosphere in which they lived that they faced great difficulties in entertaining the religious views of their forbears. Thus, in the United States, the Reform movement found its fullest and freest development. Without hindrance from government or obstacle from environment, the early American Reformers divested Judaism from all religious practices that appeared to run counter to the temper of the times.

At the first American conference of Reform Rabbis in Philadelphia (1869), Samuel Adler pleaded for a revision of the dietary laws.¹⁴ Though his proposal was not acted upon, it served to crystallize opinion behind his ideas. In 1885, the Pittsburgh Conference made its position unequivocally clear:¹⁵

"We hold that all such Mosaic and rabbinical laws as regulate diet, priestly purity and dress originated in ages and under the influence of ideas entirely foreign to our present mental and spiritual state. They fail to impress the modern Jew with the spirit of priestly holiness; their observance in our day is apt rather to obstruct than to further modern spiritual elevation."

The views of early American proponents of Reform coincided largely with this statement. Einhorn, as we have seen, published the previously unprinted Commission report, because "convictions are needed on this question."¹⁶ That these were no idle words is attested to by Isaac Mayer Wise, who wrote after a visit to Baltimore:¹⁷

"The congregation presents radical views. The Rabbi and the principal members eat T'refoh and Chomez on Passover, smoke cigars, and ride on Shabbos . . ."

Wise himself observed the laws carefully. He regarded them as "sanitary laws which intend to protect life, health, and strength" and "are no less obligatory than other duties."¹⁸ A cause célèbre may be related here. In connection with the first Graduation Exercises of the Hebrew Union College (1883) a banquet was given at a local restaurant at which, through the oversight of a committee, food, Jewishly unfit, was served. Sabatai Morais, whom Wise wanted to interest in the cause of the College, had been invited to attend this banquet. Morais was deeply hurt by this incident and he never again supported the College.¹⁹

Kohler, who in his early days considered the dietary

laws as "hieroglyphs on ancient monuments," later modified his views considerably. His changing attitude presents an interesting study. In 1872 he concluded an analysis of the laws with these words:²⁰

"Die Speisegetze sind, wie die zerbrochnen Gesetztafeln, heilige Truemmer, heilig, weil ein hoeherer Geist ehemals in ihnen verkoerpert war, aber Truemmer, weil der lebendige Geist aus ihnen entflohen. Sie sind todt, weil sie kein religioeses Leben mehr in uns erwecken. Sie beruhen auf Anschauungen und wurzeln in Sitten, denen wir ganz und gar entwachsen sind. Die Begriffe von 'rein und unrein', die Begriffe vom physischem Leben und seinem Sitze, wie sie die Bibel voraussetzt, starren wie die Hieroglyphen auf uralten Denkmaelern, uns an. Die Biblischen Speisegetze haben mit ihrer Verstaendlichkeit auch ihre Geltung und Verbindlichkeit verloren."

But 23 years later, in a review of Wiener's book, his approach is more conciliatory. His own experiences taught him to qualify his previous judgment. In the past the laws were of great disciplinary value. They trained Jews in the art of moderation. They acted as a sobering influence in a drunken world. Above all, they caused a spirit of holiness to dwell in the Jewish home. However, when many Jews discarded the laws, they became part and parcel of the debauchery of the world. This should not be. The Jew should set an example for the world to follow. The dietary laws can accomplish this goal; they can teach moderation, self-discipline and can re-establish the sanctity of the Jewish home.²¹

These arguments notwithstanding, the position of

Reform Judaism is described as follows in his Jewish Theology:²²

"The priestly character of these laws is no longer understood . . . Reform Judaism . . . sees in the humanitarianism of the present a mode of realizing the Messianic hope of Israel. Therefore it cannot afford to encourage the separation of the Jew from his environment in any way except through the maintenance of his religion, and cannot encourage the dietary laws as a means of separatism. Its great problem is to find other methods to inculcate the spirit of holiness in the modern Jew. . ."

In recent times, many Reform leaders have exhibited a more moderate attitude. They have felt that creed per se is not sufficient in effecting a Jewish way of life in an ever-changing world, and that certain safeguards are needed if Judaism's moral and religious tasks are to be fulfilled. They frankly conceded the primitive tabu origins of the dietary laws, but maintained that their spiritual vitality was still unexhausted. Observed in modified form, they might be effective means to attain high moral ends.

Morris Joseph was the leading exponent of this changed trend of thought. The dietary laws, he believed, are still capable of accomplishing their three traditional purposes: they may ~~aid to~~ maintain Jewish separateness; they may preserve the idea of Israel's consecration; they may exert a powerful influence upon personal purity.

"If all that could be said for . . . the dietary laws is that they divide the Jew from his neighbour, the fact would condemn them. If they deserve to live, it is

because without them and the separateness they maintain Judaism cannot live."²³

By strengthening the Jew in his adherence to Judaism, the laws would serve as a constant witness to Israel's divine tasks. Moreover, they would admonish the individual Jew to subject his sensual pleasures to the restraints of the moral law. They would either "keep us aloof from something hurtful or educate us in goodness."²⁴

Baeck gave expression to a similar view, but warned that the observance of the laws might be considered as an end in itself:²⁵

"Vor allem sind sie ein wichtiges Erziehungsmittel, das eine gewisse Askese, eine Forderung, den Gendanken ueber das Begehrende herrschen zu lassen, in die taegliche Gewohnheit einfuehrte. Die Gefahr bestand allerdings, dass sie schon Religiositaet sein wollten."

A contemporary English Liberal Rabbi, C. E. Cassel, saw ethical lessons, such as cleanliness, neighborliness, and integrity, embodied in the laws. However, he felt that the Jewishly uneducated believer, who lacks an understanding of their real meaning, might derive little benefit from them.²⁶

On the other hand, modern Reform proponents have also justified the abolition of the dietary laws. O. Lazarus, following largely in the footsteps of C. G. Montefiore,²⁷ denies their religious significance. Many Jews, he says, keep them through sheer force of habit, but this does not make them better Jews. . . .²⁸ A primer in Reform Judaism

by F. Isserman begins with the characteristic question: Do you eat ham? This device is used in order to indicate the difference between orthodox Jews, who follow the dietary laws, and Reform Jews, who do not. Reform Jews have taken this stand because they look upon them as "rationalizations about health" in an age when refrigeration is available to all . . .²⁹ The "Basic Principles" of Congregation Beth El, Houston, patterned in part after the Pittsburgh Platform, contain this credo:³⁰

"While respecting the convictions of our orthodox and conservative brethren concerning the rabbinical and Mosaic laws which regulate diet, priestly purity, dress, and similar laws, we, however, as an American Reform Congregation, reject the religious obligatory nature of the same, as having originated in ages and under influences and conditions which today are entirely unsuited, unnecessary to the beliefs and observances of progressive Judaism in modern America."

It may be safely presumed that the majority of American Reform Jews have discarded the dietary laws entirely. However, a substantial number of rabbis and laymen still adhere to parts of the laws, in some form or another. . Few congregations will serve ham at a Temple banquet and many individuals abstain from the meat of the swine altogether.

The reluctance on the part of most Reform leaders to create unnecessary controversy in this matter is illustrated by the Columbus Platform of 1937 which, while declaring that certain laws have lost their binding force with the passing

of the conditions that called them forth, did not specifically mention the dietary laws. In this respect, as in many others, these guiding principles marked a departure from the views of the Pittsburgh Platform.

NOTES

Abbreviations

AZdJ	Allgemeine Zeitung des Judentums, Berlin
CCAR	Central Conference of American Rabbis
ICC	International Critical Commentary, Edinburgh and New York
JBL	Journal of Biblical Literature and Exegesis
JE	Jewish Encyclopedia
JQR	Jewish Quarterly Review
JT	The Jewish Times, New York
Wiener	<u>Die Juedischen Speisegesetze</u>

CHAPTER I

1. S.R.Hirsch, Horeb, 1837, p.433: "Our Father in Heaven has decreed that we should abstain from it."
2. M. Friedlander, The Jewish Religion, American edition, 1946, p. 237.
3. D. Philipson, The Reform Movement in Judaism, first edition, 1907, p.6.
4. Ibid., p.7.
5. D. Einhorn, Commissions Report der dritten Rabbiner Versammlung, Sinai, 1859-60;
K. Kohler, Die biblischen Speisegesetze, The Jewish Times, New York, 1872, August-September;
K. Kohler, Die Speisegesetze (A review of Wiener's book), Allgemeine Zeitung des Judentums, 1895, pp.245 ff.;
M. M. Kalisch, On the Dietary Laws of the Hebrews in A Historical and Critical Commentary on the Old Testament, Leviticus, Part II, London, 1872, pp.1-113.
6. Breslau, 1895.

CHAPTER II

1. The facts relating to Wiener's life were gathered largely from the following sources:

Article "Wiener", Jewish Encyclopedia, N.Y., 1905, XII, p.515;
J. Wiener, Mein Vater, AZdJ, 1892. pp. 51-53;
Article "Wiener," Achissaf, 1896, p.532.

2. Mein Vater, loc. cit.
3. This incident was related to the writer by Dr. Alfred Jospe, Bloomington, Indiana, whose father-in-law is a native of Oppeln and who remembers Dr. Wiener well.
4. Ibid.
5. Ibid.
6. Ch. D. Lippe, Bibliographisches Lexicon, Wien, 1881, p.303.

CHAPTER III

1. Acknowledgment is hereby made to Messrs. Ernst Conrad and Sol Kaplan who assisted with the translation and location of the many Greek and Latin references.
2. The two chapters on N'velah and Trefah have been condensed into one, because of their close affinity to one another. The brief chapter on "Mixtures" has been dropped altogether, for, after showing that the Talmudic injunction not to mix "milk and meat" lacks Biblical foundation, a review of this highly technical and involved subject would add nothing to the argument.
3. The Historical Aspect, with the exception of the chapters on N'velah and Trefah and Clean and Unclean Animals, is not treated very clearly by Wiener. One would have expected a description of the gradual development of the respective laws, from the Biblical statements until the present day. Instead we find polemical material which illustrates the "fantastic" expansions of the Talmud. If, therefore, the proper continuity in delineating the development of the laws is lacking, this is Wiener's omission, not ours.
4. The economic and social implications of the laws are considered together with the dietetic view and, for purposes of compactness, we have followed the author's arrangement.
5. S. D. Luzatto, Mishtadel, preface.

CHAPTER IV

1. Kalish, op.cit., p. 24f., particularly notes 2 and 3. The German word, as first used by Luther, is "Spannader" and perhaps describes it most adequately.
2. For examples, see Wiener, p.39, note (g) .
3. Wiener says that he arrived at this conjecture quite independently. However, later he found a similar interpretation in J. Fuerst's Bibelkommentar, Leipzig, 1874, to Gen. 32:33.
4. Cf. Mishnah Chullin 7:6; Gemarah Chullin 91a and Sanhedrin 59a.
5. Hirsch in comment on Gen. 32:33 in Der Pentateuch, etc., 1869-94.
6. This argument could be countered by citing the non-eating of bread on Pesach. However, the prohibition of chamez is freighted with deep meaning and refers to an important historical event. Moreover, chamez is forbidden for only one week.
7. Aaron b. Joseph in his supercommentary סוּפְרָא לְפָנֵי הַשֵּׁנִי to Gen. 32:33; also לְפָנֵי הַשֵּׁנִי , to same verse.
8. Chullin 7:1.
9. Tosefta 7:1; also Gemarah Chullin 90b.
10. Chullin 91a, 93b.
11. Chullin 96a. The inner is near the bone, the outer near the flesh.
12. Forbidden Foods, 8a.
13. Chullin 92b.
14. Yoreh Deah 65.8 and 9.
15. Pausanius, III, 9:7.
16. G. H. A. Ewald, Geschichte des Volkes Israel, Goettingen, 1843-7, I, p. 406f.
17. Ibid.
18. Gen. 24:2-3, 47:29.

CHAPTER V

1. Ex.23:19, 34:26; Deut. 14:21.
2. The context in both chapters is essentially the same and "וְכִי תִשָּׁאֵל" is in both cases the (2) part of the last verse of a paragraph.
3. In his comment on Ex. 34:26.
4. According to Wiener, שֶׁלֹּא with the genetive has this meaning.
5. Ed. Magney, II, p. 400.
6. Tenth century exegete who lived in Northern France. Author of *Sefer ha'Yerushim*.
7. To Ex. 23:19.
8. Wiener, p. 61. No reference given.
9. Ed. Jellinek, p. 134.
10. Moreh Nevuchim, II:48. III
11. To Deut. 14:21.
12. Wiener, p. 67. No reference given. He lived about 1290 a.d. For a related argument, see Gemarah Niddah 9a.
13. To Ex. 23:19, 34:26; Deut. 14:21.
14. Supercommentary to Abr. ibn Ezra; see Wiener, p. 71f.
15. In his book *Sefer ha'Yerushim* to *Sefer ha'Yerushim* 70.
16. See Wiener, pp. 75-78.
17. Abravanel to Ex. 23:19.
18. *Sefer ha'Yerushim* to Ex. 23:19.
19. In his glosses to Leon de Modena; see Wiener, p. 82.
20. L. Phillipson, Die Israelitische Bibel, Leipzig, 1841-54, p. 596.
21. L. Herzfeld, Geschichte des Volkes Israel, Braunschweig, 1847, II, p. 154.
22. Juedische Zeitschrift fuer Wissenschaft und Leben, X, p.275.

23. Fuerst, op. cit., to Ex. 23:19.
24. De legibus Hebraeorum ritualibus, chapter 8, p. 271.
25. "ד) דלח to Ex. 43:26. He lived in the middle of the 16th century.
26. Horace, Epistulae, II, 1:139-143.
27. Spencer, *ibid.*
28. Fasti, IV, 746.
29. J. G. Sommer, Biblische Abhandlungen, Bonn, 1846, p. 347.
30. Gemarah Chullin 110a.
31. Location of place is uncertain. Some hold that it is near Sura.
32. Mishnah Chullin 8:1.
33. *Ibid.*, 8:4.
34. *Ibid.*, 8:3.
35. Gemarah Chullin 113b.
36. *Ibid.*, 114b.
37. *Ibid.*, 115a.
38. *Ibid.*, 114a.
39. *Ibid.*, 97a and 111b.

CHAPTER VI

1. Yoreh Deah 64,4.
2. *Ibid.*, 8,9,14.
3. Lev. 7:23, 25.
4. Lev. 3:17.
5. Lev. 7:25.
6. Lev. 3:16.
7. Nu. 18:12; Gen.45:18; Deut. 32:14; Ps. 81:17.

8. Gen. 4:4.
9. Both gazelle and hart were never sacrificed.
10. Deut. 12:20-22.
11. I Sam. 1:22; Ex. 21:6; Deut. 15:7; Nu. 35:22. For detailed argument, see Wiener, pp. 129-132.
12. In comment to Deut. 12:15.
13. Moreh Nevuchim, III:48.
14. Ibid., III:41.
15. Chinuch, paragraph 47.
16. To Lev. Chapters 3 and 7.
17. Ikkarim, III:16.
18. See Wiener, p. 142f.
19. As quoted by A. Knobel, Die Buecher Exodus und Leviticus Erklaert, Leipzig, 1857, to Lev. 3.
20. Herodotus, II, 47.
21. Iliad, XI, 773; Odyssey, III, 456ff.
22. Sura VI.
23. Yoreh Deah, 64,5.

CHAPTER VII

1. Lev. 17:10.
2. Gen. 9:4.
3. For detailed evidence, see Wiener, p. 203, note 1.
4. Tosefta Avodah Sarah 9, Baraita Sanhedrin 57a, 59a; Chullin 102.
5. See Wiener, p. 171, note 3.
6. Note that the same expression, נפשו כח, is used in both Lev. 17 and I Sam. 14:32.
7. In comment to Lev. 17 and 19:26.
8. Moreh Nevuchim, III:46.

9. Ibid., III:41.
10. Ibid., III:48.
11. Kusari, III:11.
12. Ikkarim, III:16.
13. In commentary on Lev. 17:11 and other references.
14. Chinuch, par. 148.
15. See Wiener, pp. 180ff.
16. Fuerst, op. cit., to Lev. 7:26.
17. Mishnah Kerithoth 5:1.
18. Gen. 9:4. Note the use of the word P^r as a contrast to the previous verse.
19. See Wiener, pp. 187-8.
20. Yoreh Deah, 67,1. See also Wiener, pp. 188-9.
21. Chullin 14a.
22. Ibid., 113a.
23. A.b. Elijah in אין ארץ; also see Wiener, p. 204, note 2.
24. Yoreh Deah, 76,2.
25. Op. cit., II, p. 154.
26. Wiener, pp. 207-8.
27. Moreh Nevuchim, II:46. III
28. Herodotus, II, 46 and 42. The analogy in both cases is with זֶה in Lev. 17:7.
29. Odyssey, XI, 25-34.
30. Moreh Nevuchim, ibid.
31. Horace, Satires, 1, 8, 28.
32. Wiener, p. 210. No reference given.
33. Sura II, V, VI.
34. J. D. Michaelis, Mosaïsches Recht, IV, par. 28.

35. Casper's Medic Vierteljahrschrift, vol. 9, p. 73.
36. Dr. Pappenheim, Sanitätspolizei, p. 491.

CHAPTER VIII

1. Is. 26:19 and Ps. 79:2. In the latter passage reference is made to enemies who treat Israelite corpses in the same manner as animal carcasses.
2. Arama, Akedath Yizchak, porta 46.
3. Mishnah Chullin 3:1.
4. Defects arising from attack; non-congenital defects involving missing organs; congenital defects involving missing organs; perforations; severances; defects arising from a fall; lacerations; and fractures.
5. Mishnah Chullin 2:6 and Gemarah ibid. 37a.
6. Gemarah Niddah 22b, Berochoth 28b, Sanhedrin 33a, Chullin 77a.
7. Yad Hachzakah: Hilchoth Sh'chitah, X:13.
8. Mishnah Chullin 2:4.
9. Gen. 4:4, Gen. 22, Ex. 12:6, etc.
10. One occurs also as "killing," e.g., Nu. 14:12, 40; I Kings 18:40.
11. Sifre to Deut. 12:21 and Chullin 28a.
12. Lev. 22:8, Ez. 44:31, 4:14; Ex. 22:30, Deut. 14:21.
13. Deut. 14:21.
14. In comment to ibid.
15. Ibid.
16. Ibid.
17. Moreh Nevuchim, III:48.
18. Chinuch, par. 73.
19. Generally speaking, Maimonides also feels that the law seeks to counsel moderation and a mild form of asceticism (Moreh Nevuchim, III:35).

20. J. Bernays, Ueber das Phokylidische Gedicht, 1858.
Compare Phocylides, V, 145-149.
21. Apostolic Canon, ed. Burns, porta 26.
22. Koran, Sura II, 168; V, 4: VI, 146; XVI, 116.
23. D. Chwolson, Die Szabier und der Ssabismus, St. Petersburg, 1856, II, p.8.
24. Dr. J. Bergel, Studien ueber die Naturwissenschaftliche Kenntnisse des Talmuds, Leipzig, 1880, pp. 41ff.

CHAPTER IX

1. Some variations may be mentioned. Leviticus has the prohibition of *g'zka g'ze*, which is lacking in Deuteronomy. The latter forbids *g'zka g'ze*, whereas the former excepts locust.
2. Gemarah Chullin 59a.
3. Wiener says that the Rabbis based themselves on Aristotle, (De Naturis, IX, 50) for their explanation.
4. Chullin, *ibid*.
5. Mishnah Niddah 6:9.
6. Rashi to Gemarah Niddah 51b and Yoreh Deah, 79.
7. Chullin, *ibid*.
8. Mishnah Chullin 3:6.
9. Gemarah Chullin 61b.
10. Lev. 11:21f; also Mishnah Chullin 3:7.
11. Gemarah Chullin 65a.
12. Niddah 51a,b.
13. Chullin 59a.
14. Wiener uses the German translation of Huettnner and takes excerpts from S. Munk, Reflexions sur le Culte de Anciens Hébreux, in French Bible of S. Cahen, IX, 1831-51.
15. To Lev. 11:19
16. Porphyry, De Abstinencia, lib. 1 and Herodotus, History, II.

17. E. W. Hengstenberg, Die Buecher Moses und Egypter, p.192.
18. Hottinger, Historia Orientalis, 1651, ch.8, p. 282.
19. Chwolson, op. cit., II, p. 7ff.
20. Sura VI - The Animal.
21. G. Weil, Mohammed der Prophet, Stuttgart, 1843, p.188.
22. Op. cit., lib. 1.
23. Odyssey, XIV: 437.
24. Plutarch, De Iside, 7; Odyssey, XII:327.
25. History, IV, 60.
26. Satires, I, 3, 100.
27. Virgil, Aeneid, I, 638.
28. Pliny, Historiae Naturalis, XXX, 10.
- 28a. Sic: D. Schenkel, Bibel-Lexicon, Leipzig, 1869-75, II,p.518.
29. Munk, Reflexions, cinquieme livre de lois de Manon, p.60.
30. Lev. 11:8, 12.
31. Maimonides, Albo, Aristotle (Ethics), etc.
32. In comment to Lev. 11:43.
33. Cited by Carca to Lev. 12.
34. Lev. 11 and in several comments on פירוש רמב"ם
35. Moreh Nevuchim, III:48.
36. To Lev. 11.
37. To Deut. 14:3.
38. Chinuch, par. 154.
39. To Lev. 11 and Deut. 14.
40. Ikkarim, III:15.
41. Akedath Yizchak, porta 60.
42. Emunoth V'deoth, III:2.
43. 17th century. His work: Emunath Chachomim.
44. Shochar toy to Ps. 146.

CHAPTER X

1. Baba Bathra 113a; also Wiener, p. 121, note 2.
2. Wiener, p. 418.
3. Ibid.
4. The term "mosaic" is used by Wiener synonymously with "biblical" and antithetically to "rabbinic." When speaking of Mosaism, he does not mean to imply that Moses was the author of the Pentateuch.
5. Wiener, p. 424, note 1: The Shochet is frequently a "naturalized Polish ignoramus."
6. P. 425, note 2.
7. Sections dealing with "human blood" and "human flesh," in which Wiener disproves the anti-semitic accusations, were not included in the review, as they were considered tangential.
8. Ps. 122:9.
9. See Appendix.
10. Ibid.

CHAPTER XI

1. Cf. M. Lowenthal, The Jews of Germany, Philadelphia, 1936, chapter 17.
2. Bismarck had been elected with Liberal support, but once in power he made a political about-face.
3. E. Duering, Die Judenfrage als Racen -, Sitten -, und Culturfrage, 1881.
4. W. Marr, Der Sieg des Judentums ueber das Germentums, 1879.
5. A. Rohling, Talmudjude, First edition, 1891.
6. Franz Delitsch, in ^{the} a course of a trial, proved the ignorance of Rohling, a professor of theology at Prague.
7. A similar argument was advanced by C. G. Montefiore in his review of Wiener's book, JQR, VIII, pp. 392ff.
8. Ibid.
9. Wiener, p. 10(1)-10(m).
10. Ibid.

11. Ibid., p. 8, note. 2.
12. Cf. Wiener, pp. 161, note 1; 163; 171, note 3; 255, note 1; 431; 432, note 2; 437; 438, note 2; 444f.
13. Ibid., p. 483.
14. Ibid., pp. 482-3.
15. G. Riesser, Gesammelte Schriften, Frankfurt, 1867-8, I, p. 358.
16. D. Hoffman, Die Ueberlieferung der Vaeter und die Speisegesetze in Carlebach Festschrift, Berlin, 1910, pp. 31-88. An excellent appraisal of Wiener's work from the orthodox viewpoint.
17. Gittin 60b: לא ברית הקדש ברית עם ישראל אלא ברית עם ישראל
העצום
18. This has been recognized by S. Cohon, Judaism as a Way of Life, Cincinnati, 1942, II, p. 307f., K. Kohler, Jewish Theology, Cincinnati, 1917, p. 452, and others.
19. Sifra to Lev. 20:26.
20. Tanchumah to Lev. 11:2.
21. Moreh Nevuchim, III:35.
22. Avodah Zarah 8a.
23. Sanhedrin 104a.
24. Avodah Zarah 36b.
25. Pirke Rabbi Eliezer, ch. 29. Later editions, as that of Lemberg (1867), have changed this phrase to read:
א"י אלוהים עם ישראל ויהוה אחד
26. Quoted from S. W. Baron, A Social and Religious History of the Jews, N.Y., 1937, II, p. 248.
27. Cf. Francis A. Joseph, The Dietary Laws from a Woman's Point of View, JQR, VIII, pp. 343 ff.
28. The Indianapolis Jewish Post of March 28, 1947, quotes an editorial comment by the Detroit Jewish Chronicle with reference to the refusal of the Kosher Butchers Association to meet the Detroit Jewish Community Council to discuss charges of exorbitant meat prices:
"How long do you think a young couple is going to go on paying 70 cents for a pound of steak, when it is on sale for 39 cents at Kroger's or the A & P? All right, kosher meats

cost more, we concede that, but do you have to be greedy and charge a 31 cents differential and fail to label your meat, give the weight, or trim the fat and bone on top of the high prices?"

29. C. J. Brim, Medicine in the Bible, N.Y., 1936;
D. Macht, Scientific Aspects of the Jewish Dietary Laws in Jewish Library, second series, N.Y., 1930;
N. E. Aronstam, Jewish Dietary Laws from a Scientific Standpoint, N.Y., 1912;
H. Behrend, The Communicability to Man of Diseases from Animals Used as Food, London, 1881;
J. Dembo, Einige Worte ueber die juedischen Speisegesetze, Juedische Presse, Berlin, Number 40 and 11.
The latter takes issue with the scientific basis of some of Wiener's dietetic arguments.
30. This expression is used by Montefiore, op. cit.
31. Kohler, AZdJ, loc. cit.
32. Some factual errors are listed by D. Hoffman, op. cit. pp.85ff.

CHAPTER XII
A. THE SCIATIC NERVE

1. Hos. 12:4-5.
2. Gesenius-Kautsch, Hebraeische Grammatik, 28th ed., Leipzig, 1909, p. 326.
3. Reste Arabisches Heidentums, second ed., 1897, p.168, note 3.
4. J. R. Frazer, The Golden Bough, abridged edition, N.Y., 1923, II, pp.419ff; and Folklore in the Old Testament, p. 257.
5. W. R. Smith, Religion of the Semites, London, 1894, p. 289; and K. Kohler, JT, loc. cit.
6. Kohler, ibid.
7. M. M. Kalish, op.cit., p. 27.
8. The Cambridge Bible, Genesis, 1914, (ed.H.E.Ryle), p. 326.

B. SEETHING THE KID IN ITS MOTHER'S MILK

1. The excavation at Ras Shamra (Ugarit) was first begun in 1929.
2. G. A. Barton, Archaeology and the Bible, 7th ed., Philadelphia, 1937, pp. 353ff.
3. Text published by Virroleaud, Syria, XIV, pp. 127ff.
4. Barton, *ibid.*
5. L. Finkelstein, The Pharisees, Phila., 1940, pp. 58ff.; also N. Schmidt, JBL, XIV, p. 278, note; and S.R.Driver, Deuteronomy, ICC, p. 166.
6. Moreh Nevuchim, III:48.
7. Smith, *op. cit.*, third ed. by S. A. Cook, N.Y., 1927, p. 576.
8. *Ibid.*
9. Finkelstein, *op. cit.*
10. Mishnah Chullin 8:1ff.
11. *Ibid.*, 8:4.
12. *Ibid.*
13. Gemarah Chullin 116a.
14. Mishnah Chullin 8:1 and Eduyoth 5:2.
15. *Ibid.*
16. Kohler, JT, *loc. cit.*

C. THE PROHIBITION OF FAT

1. Smith, *op. cit.*, London, 1894, p. 379, note 4. All subsequent references are derived from this edition.
2. R. Pfeiffer, An Introduction to the Old Testament, N.Y., 1937, chapter 7.
3. Deut. 32:14.
4. Kalish, *op. cit.*, p. 12.

D. THE PROHIBITION OF BLOOD

1. J. Marbach, Das Blut, Zeitschrift fuer Wissenschaftliche Theology, Frankfurt, 1866 (IX), p. 137, as quoted by J. Doeller, Die Reinheits- und Speisegesetze des Alten Testaments, Muenster, 1917, p. 219.
2. Wiener, p. 205.
3. Ibid.
4. J. Wellhausen, op. cit., pp. 124, 189.
5. Nu. 18:19.
6. Lev. 2:13; Ez. 44:24.
7. Cf. Kohler, AZdJ, loc. cit.

E. ANIMALS THAT "DIED OF THEMSELVES"
OR WERE "TORN BY WILD BEASTS"

1. Kohler, JT and AZdJ, loc. cit.; Doeller, op. cit., p. 210; and many others.
2. Lev. 22:7; Ez. 4:14, 44:31.
3. Ex. 22:30.
4. Kohler, AZdJ, loc. cit.
5. Cf. A. Geiger, Wissenschaftliche Zeitschrift, VI, p. 67, "auch die Schlachtrege[n] haben nicht die geringste Begrue[n]dung in dem Bibelwort." Note the Talmud's rationalization (Chullin 42a): 0
מלמד שחיה נקבה מכאן ואילן וקראת או לחיה
ואמר או לזר איבול ולזר לא תיבול:
6. Kohler, AZdJ, loc. cit.
7. Smith, op. cit., Lectures VI-IX.
8. Chwolson, op. cit., p. 8.

F. CLEAN AND UNCLEAN ANIMALS

1. For a good survey see J. Doeller, op. cit., chapters 12 and 15; also JE, IV, articles "Clean and Unclean" and "Dietary Laws."
2. Frazer, The Golden Bough, 3rd. ed., London, 1911-15, I, p. 392.

3. Wiener bases himself upon Munk's various studies. However, Munk never supplies any evidence with which to support his hypothesis. The Hindu and Egyptian traditions are totally different in conception as well as in practice. No records have ever been found which would indicate that a "secret" relationship existed between the two priestly dynasties.
4. Cf. v. Orelli, article "Speisegesetze bei den Hebräern," Realenzyklopaedie fuer Protestantische Theologie, Leipzig, 1906, XVIII, p. 603f, and E. Westermarck, Origin and Development of the Moral Ideas, London, 1906-8, II, p. 334f.
5. For detailed studies see Doeller, op. cit., chapter 13 and Encyclopedia of Religion and Ethics, ed. Hastings, under articles dealing with various animals.
6. II Macc. 6:18f., 7:1.
7. The word originated in the Polynesian Islands and may be translated "forbidden." Its usual connotation is that a thing "tabooed" may not be used, touched, or eaten for a variety of reasons. The term may be equated with the trefah of modern Jewish usage.
8. Uncleanliness and holiness meet in the primitive conception of taboo. For an exposition of this idea, see below, p. 112.
9. Herodotus, II, 47.
10. M. H. Farbridge, article "Swine," Enc. of Rel. and Ethics, XII, p.132.
11. Herodotus, *ibid.*
12. Farbridge, op. cit. However, even among the Babylonians there appear traces that the swine was dedicated to the god Nin-Ēakh (Master of Pigs); cf. M. Jastrow, Die Religion Babyloniens und Assyriens, Giessen, 1912, I, p.87.
13. Lucian, De dea Syria, 54, and Smith, op. cit., p. 294.
14. Smith, *ibid.*
15. J. Singer, Taboo in the Hebrew Scriptures, Chicago, 1928, p.10.
16. Doeller, op. cit., p. 190.
17. Chwolson, op. cit., II, p. 445.
18. Doeller, *ibid.*
19. Herodotus, II, 67.

20. Smith, op. cit., p. 291.
21. Ibid.
22. Ibid.
23. Job 30:1; I Sam. 17:43, 24:15; II Sam. 3:8, 16:19; Is. 66:3; Matt. 7:6; Phil. 3:2; etc., etc.
24. Doeller, op. cit., p. 194.
25. Smith, op. cit., p. 468.
26. II Kings 6:25.
27. Smith, op. cit., p. 293f.
28. II Kings 23:11.
29. Is. 66:17.
30. Herodotus, I, 141.
31. Quoted by Smith, op. cit., p. 293.
32. Lev. 11:41.
33. Smith, *ibid.*
34. Doeller, op. cit., p. 196.
35. Cf. Doeller, *ibid.*
36. Smith, op. cit., p. 292f.
37. Doeller, op. cit., p. 198.
38. Doeller, *ibid.*, chapter 15 gives an excellent survey of the various hypotheses. Also compare Kohler, JT, loc. cit., and Kalish, op. cit., pp. 40-113.
39. The dietetic theory, notably advanced by Michaelis in Das Mosaische Recht, holds that the laws were instituted for reasons of health and hygiene. Smith (Religion of the Semites, Kinship and Marriage in Early Arabia) and Stade (Biblische Theologie des Alten Testaments) propounded the totemistic hypothesis. A fair sample of their arguments is this statement by S. A. Cook (JQR, April, 1902):

"The most reasonable conclusions we may draw is that there are sure and certain survivals of animal worship among the Hebrews, and since they appear in the guise of forbidden foods, it is probable that the animals were at some time regarded as closely allied to clans or communities of men."

The pedagogic theory maintains that the dietary laws were framed with the objective of teaching certain virtues, such as cleanliness, discretion, and moderation. Among others, its exponents are J. Spencer (De legibus Hebraeorum ritualibus et earum rationibus) and Maimonides (Moreh Nevuchim, III:35).

Besides Wiener, these views have been refuted decisively by the many scholars who are quoted by Dceller, Kohler, and Kalish.

40. Marti and Ottley as quoted by Singer, op. cit., p. 4. See also Driver, Deuteronomy, ICC, p. 158f., Lev. 11:43-45 probably belonged to the Holiness Code; cf. Pfeiffer, op. cit., p. 254.
41. Lev. 11:44f.; 20:25f.; Deut. 14:21.
42. Is. 65:4.
43. To Kalish (op. cit. pp. 73ff.) this idea provides the basic motive of the laws. However, as has been shown by the example of the swine, the notion of sensual repugnance frequently represents a later rationalization.
44. W. Wundt, Voelkerpsychologie, Leipzig, 1904-18, IV/1, p.404f.

45
G. DATE OF THE LAWS

1. Wiener, p. 442.
2. Kohler, AZdJ and JT, loc. cit.
3. Geiger (Juedische Zeitschrift, VII, pp. 124-132) describes the transference of priestly laws upon the private lives of the Pharisees.
4. J. Lauterbach, The Pharisees and their Teachings, N.Y., 1930.
5. Kohler contends that the laws were intended for the priests and originally observed only by them. He further holds that the levitical writer was influenced by and reacted

against the practices of non-Israelite priests.

6. Also note that Lev. 11 is placed between chapters devoted exclusively to the priesthood.
7. For a detailed analysis, see Lauterbach, op. cit.
8. Singer, op. cit., p. 4.

APPENDIX

1. Quoted by Wiener, pp. 484f. and 493f.
2. Protokolle der zweiten Versammlung deutscher Rabbiner in Frankfurt, 1846, p. 252.
3. D. Philipson, op. cit., p. 267.
4. Protokolle der dritten Versammlung deutscher Rabbiner, Breslau, 1847, p. 301f.
5. Einhorn, op. cit.
6. Verhandlungen der ersten israelitischen Synode zu Leipzig, Berlin, 1869, p. 254.
7. Ibid.
8. Geiger, Nachgelassene Schriften, Berlin, 1875, I, p. 253.
9. Juedische Zeitschrift, VIII, p. 24.
10. S. Holdheim, Juedische Glaubens- und Sittenslehre, Berlin, 1857, pp. 114-5.
11. Philipson, op. cit., p. 391.
12. Theologus, Die Juedischen Speisegesetze, Loebau (West-Preussen), 1880.
13. This incident is related by Kohler, JT, loc. cit.
14. Wiener, p. 497.
15. Philipson, op. cit., p. 491f.
16. Einhorn, op. cit.
17. The American Israelite, VII, no. 7, August 17, 1860, p. 51.
18. I. M. Wise, Judaism, Cincinnati, 1868, p. 78f.

19. Wm. Rosenau, Sabatai Morais - An Appreciation, CCAR Year Book, XXXIII, p. 363.
20. Kohler, JT, loc. cit.
21. Ibid., AZdJ, loc. cit.
22. Ibid., Jewish Theology, Cincinnati, 1917, p. 453.
23. M. Joseph, Judaism as Creed and Life, 4th ed., London, 1920, p. 188.
24. Nachmanides, quoted by Joseph, *ibid.*, p. 182.
25. L. Baeck, article "Speisegesetze," *Die Religion in Geschichte und Gegenwart*, IV, p. 679.
26. C. E. Cassel, The Jewish Dietary Laws, The Synagogue Review, London, January, 1947.
27. See C. G. Montefiore's review of Wiener's book, JQR, VIII, pp. 392ff.
28. O. Lazarus, Liberal Judaism and its Standpoint, London, 1937, pp. 79-88.
29. F. Isserman, This is Judaism, Chicago, 1944, pp. 1-3.
30. Annual Report, Congregation Beth El, Houston, 1944, p. 60.

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