January 1992

Ox-Slaughter and Goring Oxen: Homicide, Animal Sacrifice, and Judicial Process

Marilyn A. Katz

Follow this and additional works at: https://digitalcommons.law.yale.edu/yjlh

Part of the History Commons, and the Law Commons

Recommended Citation

Available at: https://digitalcommons.law.yale.edu/yjlh/vol4/iss2/3

This Article is brought to you for free and open access by Yale Law School Legal Scholarship Repository. It has been accepted for inclusion in Yale Journal of Law & the Humanities by an authorized editor of Yale Law School Legal Scholarship Repository. For more information, please contact julian.aiken@yale.edu.
Ox-Slaughter and Goring Oxen: Homicide, Animal Sacrifice, and Judicial Process

Marilyn A. Katz*

Among the ancient Greeks, both animals and inanimate objects could under certain circumstances be held liable on a charge of homicide; a number of ancient testimonia refer to a special homicide court dedicated to the adjudication of such cases. In the Bible, too, an ox which has gored a human being to death is itself punished with death. Analogous provisions appear in ancient Near Eastern law collections. These regulations—in their Greek, Israelite, and Mesopotamian versions—are ordinarily discussed as sub-categories of legal provisions having to do with homicide in general,¹ and consequently discussion focuses on the shedding of human blood, and on the taking of human life.

In the present essay, I explore this same network of analogous ideologies and practices from a somewhat different perspective in order to illuminate the relationship between the laws governing homicide committed by non-human agents, and those myths and traditions that concern the origin of animal sacrifice. The first two parts of my discussion focus on the point of intersection between the judicial and ritual spheres, and investigate the particulars of a cultural logic that constructs a complementarity between the slaughter of animals by men and the killing of human beings by animals. Underlying this paradoxical complementarity between rite and crime, mandate and transgression, is an ideology which takes the form of a complex cultural discourse on the proper relationship between human beings and animals. In the third section of this essay I present an analysis of this ideology, and I try to show how it is related to the structure of legal liability and moral agency in the areas of ritual and judicial practice.

* I would like to thank Hilary Brest, Jay Katz, Rebecca Sinos, and Steven Wilf for perceptive comments and judicious criticism which were helpful in revising various versions of this essay.

¹. This is typical of academic works on the subject. In Talmudic scholarship, these regulations are treated as part of tort law.
SACRIFICE: MYTHS OF ORIGIN AND RULES OF PRACTICE

Following the flood, Noah introduces into the world a momentous innovation which subsequently is sanctioned by God—the practice of animal sacrifice (Gen. 8.20-22). Although Cain's and Abel's presentations to God in Gen. 4.4, respectively, of "the fruit of the soil" and "the choicest of the firstlings of his flock" are called "offerings" (אֶפֶרֶנָא), no terminological distinctions identify the gifts as "sacrifice." Noah, by contrast, builds an altar, selects "clean animals and birds" (לוּלֶדֶת מָלֵא יְהוָה חֲסֵדָו חָסֵדָו מַלָיִן תָּשׁוֹחֵת תָּשׁוֹחֵת), and performs a "burnt offering" (לְעָל מִלְבָּה). It may be that Abel's offering of "fat" (מַלְבָּה) should be interpreted as a form of animal sacrifice, since a later passage explicitly enjoins offering an animal's fat along with its blood, and prohibits the consumption of either (see below). It may also be that this intuitive awareness on Abel's part of the "correct" object for the shedding of blood forms the grounds for God's preference of his offering. Cain might then be understood as having erred in two opposite directions—in bringing a vegetarian rather than an animal offering, and in shedding human rather than animal blood. The text, however, does not clarify either of these points, and we must assume that the practice of sacrifice came into being with Noah's spontaneous offering in Gen. 8.20-22.

In the narrative immediately following, Gen. 9.1-7, God introduces an alteration in the dietary code for human beings and animals. Human beings were at first confined to seed-bearing plants and trees with seed-bearing fruit (כֵלֵל מִשְׁמָהּ בְּשֵׁר בְּשֵׁר אֶרֶץ אֶרֶץ שָׂרָה-מָאָר כַּרְעָה נְבַעֲתִין נְבַעֲתִין—Gen. 1.29), while animals were given "all the green plants" (כֵלֵל מִרְכָּבֶת—Gen. 1.30). Following the expulsion, men are assigned "the grasses of the field" (שֶׁמֶךָ הָשָּׁם—Gen. 3.18), along with the fruits of their own labor. In the opinion of Rashi, an eleventh-century medieval commentator, these initial provisions for food placed men and animals in the same category, a situation which was altered after Noah (commentary on Gen. 1.29-30). Nachmanides (d. ca. 1270) disputes Rashi on this point, insisting instead that there was an initial discrimination in dietary provisions for men and beasts which was revised further


after the flood. But when, at the time of Noah, the consumption of animal flesh (גִּזְמַנָּת חַיָּה לִצֵּבָה לַבָּד) is added to that of the “green plants” (יֵדֶעֶשׁ לְעֵין —Gen. 9.3), there is no question that a crucial distinction separates the dietary code of human beings from that of animals. The permission to consume animal flesh is nevertheless regulated by a strict prohibition against the consumption of blood: “You must not, however, eat flesh with its life-blood in it” (אַךְ אֵלֶּה לָבָדִים אַלְּלָבָד אֵלֶּה לָבָד אַלְּלָבָד —Gen. 9.4). The text goes on to add to this prohibition against the consumption of animal blood an injunction against the shedding of human blood: “But for your own life-blood I will require a reckoning: I will require it of every beast; of man, too, will I require a reckoning for human life, of every man for that of his fellow man” (אֵין אַלְּלָבָד אַלְּלָבָד אַלְּלָבָד אַלְּלָבָד אַלְּלָבָד —Gen. 9.5; cf. Deut. 12.23).

Why should this admonition against murder appear here in the text, when dietary provisions are under discussion? As Nachmanides observed, the insertion of the warning implies that the permission to slaughter animals entailed consequences for the evaluation of human life: “on account of the permission given here for slaughtering . . . it became necessary to [specify that spilling the blood of human beings] is forbidden to [men] as well as to all living things.” Animals, by contrast, are permitted to devour each other. Or to put it somewhat differently, animal sacrifice risks confusion or even conflation with the murder of human beings, and the two consequently must be discriminated explicitly from one another by God.

There is no further discussion in Genesis of the prohibition against the consumption of “flesh with its life-blood in it.” But sacrificial procedure is further elaborated in the Holiness Code of Leviticus, where the prohibition against the consumption of animal blood is based on the principle that “the life of the flesh is in the blood” (כִּי לְפִי חֲיֶתָּה לְפִי חֲיֶתָּה —Lev. 17.11; cf. 17.14), and where it is specified that the violation of the prohibition incurs a charge of bloodguilt. The Biblical hierarchy that allows

5. Ibid., 135.
6. Ibid.
human beings dominion over the animal world, then, is not absolute, and
the structure of sacrificial ritual encodes an insistence on certain limita-
tions. As the formulation in Gen. 9.4-5 suggests, and as the Holiness
Code makes clear, the regulations forbidding the shedding of human
blood by animals or other men are complemented by those prohibiting
the consumption of animal blood by human beings.

Sacrificial ritual incorporates this prohibition by requiring the devo-
tion of the animal's blood and fat to the divinity, on the grounds that
these "belong to the Lord" (Lev. 3.16-17). In every sacrificial offering
the blood and fat are disposed of separately: the fat is turned into smoke
upon the altar, and the blood is dashed out against its sides (Lev. 17.6).
This joint disposition of the two substances constitutes an acknowledg-
ment of the divinity's proprietary interest in all of his creations, and a
recognition as well that human dominion over the animal world is lim-
ited, and does not include unqualified control over life and death.

Among the ancient Greeks too, sacrificial practice included the devo-
tion to divinities of certain animal parts, and, as in the Bible, the blood
and fat of the sacrificial victim must be offered up to the gods prior to
human consumption of the animal's flesh. But the Greeks did not
explain this practice with reference to a divine commandment or to the
gods' proprietary interest in their creations. Rather, two separate and
complementary mythological sequences etiologized the practice of
animal sacrifice and of various aspects of sacrificial ritual with reference
to human beings' original relationship to the gods on the one hand, and
to the animal world on the other.

The best known story of the origin of sacrifice among the Greeks
appears in Hesiod's Theogony, which attributes the invention of the sac-
rifice to the god Prometheus. In the Hesiodic account, Prometheus con-
trives to disrupt a primitive commonality and commensality prevailing
between men and gods through an unequal division of sacrificial por-
tions; he conceals the savory edible parts in the animal's unappealing
skin and stomach, and makes up a second, superficially delectable por-
tion by wrapping the white bones in gleaming fat. Invited to choose
between them, Zeus sees through the trick but nevertheless selects the
portion which is ever after destined to belong to the gods: "ever since
that time, the tribes of men have burned white bones for the immortals
upon aromatic altars." 8

According to this myth, men and gods are forever after separated from

57. For a complete analysis of the myth, together with a consideration of the parallel though not
identical version in Hesiod's Works and Days, see Jean-Pierre Vernant, "At Man's Table: Hesiod's
Foundation Myth of Sacrifice," in The Cuisine of Sacrifice among the Greeks, ed. Marcel Detienne
one another, consigned to different spheres, and characterized by distinctive dietary regimens. The gods require the devotion to them of the animals' blood, and they regularly enjoy the insubstantial savor that rises from the burning fat laid across the victim’s white bones. The body of the animal is assigned to human beings—the viscera engorged with blood and roasted over the open fire and the flesh carved into choice portions of meat and boiled in large cauldrons.9

In the *Theogony*, the origin of sacrifice is referred back to a primordial moment of unity between the divine and human worlds. The “invention” of sacrifice coincides with an original instance of discrimination or judgment—leading, in this case, to a permanent disruption between gods and men. Within this new order, sacrifice now becomes the means, as Vernant has shown, through which the rift between the human and divine realms is simultaneously instantiated and restored: “the central act of worship [sacrifice] links men with gods, but it does so by separating their respective shares. . . . It unites them, not so that they may be rejoined . . . but to confirm the necessary distance between them.”10

A different but complementary mythological sequence is located in a primordial moment before animals and human beings were divided into separate realms, and before the hierarchy between them was established. In a section of Porphyry’s *de abstinentia* which was drawn directly from the περὶ εὐσεβείας of Theophrastus,11 Porphyry recounts the history of a certain Sopatrus.12 Sopatrus was an alien farming in Attica who had set out upon a sacrificial table grain and fruit offerings to the gods. These were consumed and destroyed by a plough-ox returning from the fields. In a rage, Sopatrus slew the beast but was subsequently overcome by remorse; he thereupon fled away,13 but a drought descended nevertheless upon the Athenians. In accordance with instructions from Delphi, Sopatrus was recalled and the slaughter of a plough-ox was performed again—this time as a sacrifice. This doubling of the slaughter reveals the cultural logic which underpins Greek sacrificial ritual by making clear


10. Jean-Pierre Vernant, “At Man’s Table,” 34, 35.


13. Similarly, θαυλόν in the scholium to *Iliad* 18.483 is described as φυγαδευθείς (“chased away into flight” or “banished”) following the sacrifice of the ox.
the close proximity between murder and sacrifice: they are rendered distinct only through divine intervention and sanction.

Sopatrus agreed to perform the remedial ritual in return for a grant of citizenship, and on condition that the community as a whole take part in it. The resulting ritual was perpetuated as the ox-sacrifice or bouphonia (βουφόνια, lit. "ox murder") at the Dipolieia in Athens, an annual festival held in honor of "Zeus of the city" (Δίω Πολιεία): "from that time until the present these carry out in the same manner the sacrifice of the ox at the Dipolieia in Athens" (de abstinentia II.30). The myth thus operates as an etiology for the festival. But as commentators have observed, the pattern of ritual actions in this festival closely parallels that of ordinary sacrifice, and consequently may also explain the origins of sacrificial practice in general.

In the bouphonia, water carriers were selected to carry water for sharpening the knife and ax; when the implements were readied, the ax was handed to the slaughterer; following the slaughter and flaying of the slain beast everyone partook of the animal’s flesh; and its hide was stuffed with hay, stood upright, and yoked to a plough. The participants all together now proceeded to a trial of this same action (κρίσσει δὲ πουσφυμενοι τοῦ φόνου πάντας ἕκαλον εἷς ἀπολογίαν τούς τῆς πράξεως κοινωνήσαντας), calling to account in succession the water-carriers, the knife-sharpeners, the one who handed over the ax, and the one who performed the slaughter. The last-mentioned passed the blame on to the knife itself (τὴν μάχαιραν), which, unable to speak in its own defense (καὶ ὅς οὕτως ἄφωνος), was adjudged guilty of the murder (τὸν φόνον κατέγνωσαν) (II.29-30).

The annual festival of the Dipolieia at Athens at which this mythological sequence was reportedly reenacted as the ritual of ox-slaughter, the bouphonia, has been interpreted variously. Thus, Mommsen viewed it as a threshing festival designed to secure favorable weather conditions, in accordance with a notion of ritual action as unmediated instrumentality. Hyde, following Robertson Smith’s interpretation of sacrifice as totemic meal, argues that the bouphonia was "in some way connected with agrarian rites, and [probably] had some form of totemism behind

---

14. Another notice of the bouphonia at the Dipolieia appears at a different point in Porphyry’s text, but it comprises only the initial stages of the Sopatrus saga: βοῦν δὲ Δίως ἐξῆλθεν πρῶτος, ἱερεὺς δὲ τοῦ Πολιείου Δίως, ὅτι τῶν Διμολίων ἀγαμέμνονα καὶ παρασκευαζόμενα κατὰ τὸ πάλαι ἔθος τῶν καρπῶν ὁ βούς προελθὼν ἀπεγεύσατο τοῦ ἰεροῦ πελάνων συνεργός γὰρ Λαβων τοῖς ἄλλοις δοσὶ παρήγαγεν, ἀνέκτεινε τούτον (II.10).

15. See Katz, “Problems of Sacrifice in Ancient Cultures,” 90-100. For discussion of such issues as the location of the festival, the relation between the Διμολία and bouphonia, conflicting testimony on the matter of the guilty instrument (identified as both knife and ax), and the like, see Hyde, “The Prosecution of Lifeless Things and Animals in Greek Law.”

As he explains further: "It [the rite] seems to show that the early community which centered around the Acropolis believed it was mystically maintained by eating an ox as a sacrament, in which ox, god and worshippers were akin. Slowly the special deity of an agricultural ox-clan grew to become the god of the State."

Burkert, following Meuli, detects elements of the "comedy of innocence" in the *bouphonia*, but regards its primary function as a marker of the year's end. Pestalozza argues that it was originally a festival of the primordial mother goddess. And Durand and Vernant—who I follow—propose structuralist analyses which emphasize elements in the myth that invert the "proper" relationship between man and beast. Durand, in discussing the myth's formulation of the relation between savagery and civilization, particularly focuses on the role of the ox in cereal cultivation, and argues that the beast is endowed with a double status as both sacrificial object and agricultural auxiliary.

None of these interpretations attempts to comprehend the rite either within the framework of its extension into the judicial realm, or with reference to its resonance with the origin of sacrifice in Hesiod's *Theogony*, which assigns its invention to the god Prometheus. In the Hesiodic account, too, the judicial and religious realms are conflated, since the epic narrative begins at the point "when gods and mortal men were coming to a settlement (*ekprívοντο*) at Mekonê." And as West remarks on the translation of *ekprívοντο*: "the word denotes a 'settlement' in the legal sense, though not necessarily in a legal context; a definitive division between parties, however arrived at."

---

17. Ibid., 167.
18. Ibid.
23. Indeed Hyde, who discusses both *bouphonia* and *prytaneion* (on which see below), nevertheless concludes that "there appear to be two different sets of ideas quite independent of one another at the bottom of the bouphonia and the trials." "The Prosecution of Lifeless Things and Animals in Greek Law," 298.
But the culmination in a trial is critical to the myth's cultural meaning. For the mythic exegesis of the origin of the *bouphonia* is structured around three specific mythical moments—the crime of the ox, the crime of the ox-slayer, and the crime of the ax/knife. The ox's consumption of the meal-offering placed on the altar represents a transgression: the devouring by an animal of an offering set aside for the gods. The ox thereby establishes its culpability and its liability for punitive action. Slaying the ox, however, incurs further guilt, the expiation of which is only made possible through the remedial efficacy of judicial action.

This account condenses into a single myth a tripartite sequence which is in other respects characteristic of Greek culture, and which envisions the establishment of civilization and of its institutions as the stabilizing third element in a succession of criminal actions. Both Hesiod’s *Theogony* and Aeschylus’ *Oresteia* are constructed around a succession-myth in which the remedy for violence is the transfer of a dispute to a politico-judicial sphere constituted for the purpose and overseeed by the gods.

The *bouphonia* brings the slaughter of animals within the compass of this same ideological scheme, and makes clear an implied equivalence between animal and human life which is ultimately resolved into a hierarchy between them. The slaughter of animals by human beings is first criminalized and then legitimized by means of its transfer into the judicial realm. In this way, the judicial procedure divides the world of men from that of beasts, and it serves also as the means for establishing the proper, hierarchical relation between them.

Thus, among the Greeks the ritual of sacrifice, in which an animal is slaughtered and its parts distributed between gods and human beings, extends both into the domain above men and into the realm below them. The two myths of sacrifice taken together make up an inclusive unity, a complementary pair applying to each of these separate domains. The myth of Prometheus regulates interactions on what Detienne calls “the high road” that leads from men to the gods; its complement is the myth of the *bouphonia*, which institutionalizes relations on “the low road,” in the avenue of continuity between man and beast. The hierarchy between men and gods, according to the myth of Prometheus, is defined by divine fiat, while the establishment of the proper relation between men and beasts is a matter of more complexity, requiring but not simply resting on divine sanction. Its basis is the human capacity, as Aristotle defined it, to distinguish between the just and the unjust, and the myth of the *bouphonia* is organized so as to bring this element to the forefront.

If we now introduce a brief comparison with sacrificial practice and

---

the myth of the origin of sacrifice among the ancient Mesopotamians, we shall be in a position to understand better certain conceptual and ideological similarities between the Greek and Biblical systems which do not, however, share a surface resemblance. In contrast to the ancient Israelites and ancient Greeks, the ancient Sumerians did not systematically distinguish the slaughter of beasts from other aspects of the food preparation which formed the core of the daily worship of the gods. 27

Four daily offerings consisting in an elaborate set of meals (two in the morning, two in the evening—a principal and secondary meal in each case) were prepared for the divinities of the temple and set before them. These served also as the means for provisioning the temple personnel. The meals consisted in each case of drink, bread, fruit, and meat. An examination of the texts describing the procedure for the preparation of these repasts reveals no tendency to particularize animal sacrifice or to interpret blood as a symbolic substance, as among the Greeks and Israelites. The slaughtering of the requisite animals is listed as one among several procedures to be accompanied, like grinding the meal and kneading the bread, with the recitation of a specific ritual text. But no special instructions are included for performing the slaughter itself. Nor is there any division between those parts of the animal destined for divine and those destined for human consumption. There was no need to do so, since in this ritual system the meal in its entirety was first offered to the gods, and then consumed by their mortal servants.

Similarly, in the one Mesopotamian myth known to us which represents the first occasion of animal sacrifice, 28 animal slaughter is simply part of the procedure for provisioning the gods. In the epic known as Lugalbanda I, or "Lugalbanda in [or and] Hurrumkurra," the cultural hero Lugalbanda is visited in a dream by the god Anzaqar, who asks him, "The red bullock—who will tie it up for me?/Who will make its animal fat flow for me?" Upon awakening, Lugalbanda slaughters the requisite animals, and prepares a banquet for the gods which includes meat, beer, black bread, and wine. The story thus becomes an etiology for the Mesopotamian oblational system which was focused around the provision of daily meals for the gods. For it represents the first time and original moment at which man— instructed, to be sure, by the gods—carried out the proper procedure for feeding the gods.

27. For a more detailed discussion of this material, see Katz, "Problems of Sacrifice in Ancient Cultures," and the references cited therein.

In the Bible, as we saw earlier, the legitimation of animal slaughter provokes a complementarily strict prohibition on the shedding of human blood. Among the Greeks, the slaughter of an animal is initially treated as though it were equivalent to the murder of a human being, from which it must be differentiated in order to be legitimized. But among the ancient Mesopotamians there is no elaboration of a cultural discourse around the meaning of animal sacrifice: it is part of what the gods require, and animals, like bread, beer, and other offerings, are no more (or less) than the instruments by which human beings communicate with the gods and satisfy their needs.

HOMICIDE BY ANIMALS: JUDICIAL PRACTICE AND SACRIFICIAL RITE

In ancient Mesopotamia, human beings can shed animal blood more or less casually in the course of provisioning the gods. But both in the Bible and among the ancient Greeks men can shed the blood of beasts only within the parameters of a strictly limited set of procedures. What consequences, then, are entailed when an animal sheds human blood? This situation is addressed in the famous Biblical case of the goring ox (אַרְגֶּה נְבֶלֶת) which has parallels among the law codes of ancient Mesopotamia, and in the institution of the homicide court of the Prytaneion among the ancient Greeks.

The goring ox appears in a section of the so-called Covenant Code of Exodus, Chapters 21-24, which is regarded as one of the oldest sections of the Bible.29 A strikingly analogous set of regulations appears in two ancient Near Eastern law collections, both dating from the first half of the second millennium B.C.E. and both written in Akkadian—the Laws of Eshnunna and the Laws of Hammurapi.30 All three sets of laws are cast

in casuistic form, and all three envision the same sets of circumstances. The protases ("if" clauses) are comparable in both the Hebrew and the Akkadian sets of regulations, and address two basic situations: the goring of a human being and the goring of another ox. These two situations are further qualified in accordance with the status of offender and of victim: the ox either was or was not an habitual gorer; the victim was either a free person, a minor, or a slave. The first section of the Biblical Covenant Code, consisting of the first thirty-two verses of Chapter 21, covers the "Law of Persons," including slavery, intentional and accidental homicide, kidnapping, assault and battery, and wrongful injury and death. The case of the goring ox appears as part of the last category, in verses 28-32, where it is specified, along with other provisions, that an ox which gores a human being to death must in turn be stoned and its flesh discarded:

28. When an ox gores a man or a woman to death, the ox shall be stoned (סְפִּלָּה תֹּהֲרָה) and its flesh shall not be eaten, but the owner of the ox is not to be punished.
29. If, however, that ox has been in the habit of goring, and its owner, though warned, has failed to guard it, and it kills a man or a woman—the ox shall be stoned and its owner, too, shall be put to death.
30. If ransom is laid upon him (טִשָׁךְ פִּים יִשְׂרָאֵל), he must pay whatever is laid upon him to redeem his life (יִשְׂרָאֵל פִּים יִשְׂרָאֵל).
31. So, too, if it gores a minor, male or female, [the owner] shall be dealt with according to the same rule.
32. But if the ox goes a slave, male or female, he shall pay thirty shekels of silver to the master, and the ox shall be stoned.

* * *

35. When a man’s ox injures his neighbor’s ox and it dies, they shall sell the live ox and divide its price; they shall also divide the dead animal.
36. If, however, it is known that the ox was in the habit of goring, and its owner has failed to guard it, he must restore ox for ox, but shall keep the dead animal.

The relevant triads of laws in the Mesopotamian collections are roughly comparable: each contains three provisions, the second and third of which fine the owner of an ox known to be dangerous which has killed a man, and specify a reduction of the fine if the victim was a slave. Furthermore, both triads are divided into a consideration of those damages inflicted accidentally, as it were, and those for which fault can be

---

31. On the relationship between protasis and apodosis in these groups of laws, see Jackson, "The Goring Ox," 136-37.
assigned. They differ only in that the Laws of Eshnunna address first the case of an ox which has gored another ox, and the Laws of Hammurapi first consider an instance in which an ox not known to be dangerous kills a man:

53. If an ox has gored another ox and caused its death, the owners of the oxen shall divide between them the sale value of the living ox and the carcass of the dead ox.

54. If an ox was a habitual gorer, the local authorities having so duly notified its owner, yet he did not keep his ox in check and it then gored a man and caused his death, the owner of the ox shall pay two-thirds of a mina of silver (to the survivors of the victim).

56. If it gored a slave and caused his death, he shall pay fifteen shekels of silver.32

* * *

250. If an ox, while walking along the street, gored a person and caused his death, no claims will be allowed in that case.

251. But if someone's ox was a habitual gorer, the local authority having notified him that it was a habitual gorer, yet he did not have its horns screened nor kept his ox under control, and that ox then gored a free-born man to death, he must pay one-half mina of silver.

252. If [the victim was] someone's slave, he shall pay one-third mina of silver [to the slave's owner].33

In the Mesopotamian regulations, the absence of any notion of the animal's liability reflects the general disposition in this culture toward an instrumental treatment of beasts; the matter of the goring ox in the Laws of Eshnunna is taken up together with that of a decrepit wall that falls upon an individual; and in the Laws of Hammurapi the owner of the goring ox is considered along with the builder whose construction of a house or boat is faulty. In both cases, the animal is simply the instrument that brings about death or injury, and is excluded from the compass of fault and responsibility. In Biblical law, by contrast, the animal does incur liability of a sort, but this is only one of several significant differences from the Mesopotamian provisions.

There is a strict comparability between the Biblical and the Mesopotamian laws only with respect to the disposition of an ox which kills another ox: verse 35 of Exodus 21 and section 53 of the Laws of Eshnunna. The discrepancy between the laws results partly from a difference in context—the Mesopotamian laws concern the issue of culpable negligence generally and the Biblical chapters address the Law of Persons. Or as van Selms puts it, "the fundamental idea which underlies the

33. The Laws of Hammurapi, ibid.
whole [Mesopotamian] system is that of the protection of property. . . .

Israelite law is altogether different. The incommensurability between the Mesopotamian and Biblical laws appears exclusively in the consequences attendant upon the goring of a human being (free person, minor, or slave). The singularity of the Biblical legislation can be isolated under four headings: (1) the offending animal must be stoned to death; (2) its flesh may not be consumed; (3) the owner of a dangerous ox is subject to capital punishment; and (4) such an owner may ransom his life. The first two of these provisions apply whether or not the ox was an habitual gorer; the third and fourth apply only if it was.

For our purposes it is the first and second provisions which are of greater interest—the stoning of the animal and the prohibition against the consumption of its flesh; we shall take up the owner's liability for capital punishment and the provision for ransom in this same context. What interests us is not so much the special status accorded human life, but the question of the animal's status in this same legal situation. Is the animal by virtue of its crime accorded the status of a human being for the purposes of punishment, or is the original difference between humans and animals preserved? Let us address this question by taking up in sequence the first and second provisions.

First, why is the animal stoned? Different answers are advanced, usually by comparison with other Biblical instances of either the crime (homicide) or the punishment (stoning). Where homicide is the reference point, importance is attached to "the uniqueness and supremacy of human life," which is set forth in Gen. 9.5 as an inviolable principle. Where stoning is emphasized, interpreters point to the "ritual defilement" incurred by the ox, and to the need for communal expiation.

There are problems connected with both sets of explanations. Homicide in the Bible is characteristically a crime calling for private execution of the guilty party by the relative of the dead man who functions as the avenger, ("redeemer of blood," Num. 35.19) a procedure which is not envisioned here, and which in any case could only be undertaken against an agent capable of incurring blood-guilt (on which see

---

34. "The Goring Ox in Babylonian and Biblical Law," 327. On the disputed matter of conceptualizing the relationship among the ancient law systems, see Finkelstein, The Ox That Gored, 24 and 37-38, where he argues against both the idea that Israelite law was wholly unique, and the notion that there existed a "customary law common to the entire ancient Near East" (ibid., 18 n. 10; see also Yaron, "The Goring Ox in Near Eastern Laws," and Jackson, "The Goring Ox," 135-41).
Furthermore, in the Biblical view (as opposed to that of the Talmud) an animal clearly lacks the necessary mens rea for the commission of the crime of homicide: as Nachmanides remarks on Gen. 9.5, “The beast has no reason [with which to discern between good and evil] so that it should be punished or rewarded [for spilling human blood].”

Finally, the principle assigning a special status to human life is called into question by the law—also part of the Covenant Code—allowing a thief caught in the act to be executed on the spot with impunity: If the thief is seized while secretly entering in the night, and he is struck down, there is no bloodguilt in this case. If the sun has risen upon him, there is bloodguilt in that case.

This is, to be sure, the point of view adopted in the Mishnah and Talmud (e.g., Mishnah Sanhedrin 8:6; Yoma 85a, Sanh. 72a), but it cannot be presumed to apply to the Biblical situation. In the Bible, the distinction between killing a thief at night and by day is more probably related to the availability of aid, as in the case of the engaged girl who is attacked in open country (Deut. 22.25). In this case, in contrast to the penalty meted out to both the woman and the man when the attack takes place in town (Deut. 22.23), only the man is punished. The case is specifically analogized to that of murder in self-defense: “this case is like that of a man attacking another and murdering him” (Deut. 22.26). And the justification is specifically identified as the lack of defense: “he came upon her in the open; though the engaged girl cried for help, there was no one to save her” (Deut 22.27).

Stoning, on the other hand, is never the prescribed method of execution for homicide, which in the Talmud is punished by decapitation with a sword (Mishnah Sanhedrin 9:1; Sanh. 52b). The precise form of execution for murder is not specified in the Bible, but from the discussion in Num. 35.16-22, where those who kill with an “iron object”

38. There are provisions outlined in tractate Sanhedrin 2a for bringing to trial animals who have killed a human being (see the discussions in Finkelstein, The Ox That Gored, 32, and Jackson, “The Goring Ox,” 120; cf. also William Woodburn Hyde, “The Prosecution and Punishment of Animals and Lifeless Things in the Middle Ages and Modern Times,” University of Pennsylvania Law Review 64 (1916): 696-730.


40. Greenberg does not take up this case, and Finkelstein argues that the situation envisioned is killing in self-defense. The Ox That Gored, 38. This seems questionable, since the interpretation does not flow from the text, but is dictated by an (apologetic) interest in claiming for the Bible a lenient view of crimes against property. Cf. Greenberg, “Some Postulates of Biblical Criminal Law,” 18-19.
or other fatal weapon must be executed in turn, it is deduced to be beheading by the sword.

Stoning, while it can serve as an expression of popular outrage, is the regular sanction invoked against crimes that entail ritual defilement of the corporate community—child sacrifice, for example, which is equivalent to the worship of foreign gods (Lev. 20.2ff.), or any other form of idolatry (Deut. 13.7ff., 17.2ff., etc.). This form of execution bears a close resemblance to expiatory ritual (and in particular to the scapegoat rite of Lev. 16.22): it is carried out in public by the community as a whole, and it represents a form of capital punishment that avoids further defilement of the executioners. But in what respect has the ox become defiled or polluted? Not, surely, simply by the commission of homicide, for which stoning was not the appropriate penalty.

Finkelstein attempts to address both of these issues—to take into account the shedding of human blood without assigning to the ox liability for homicide, and to bring the ox’s act within the compass of a crime against the corporate body. He argues that the ox “has objectively committed a de facto insurrection against the hierarchic order established by Creation,” the hierarchy, that is, which sets man over beast. Goring to death a human being constitutes an act of “insurrection against the cosmic order,” and the ox’s action thus constitutes a crime which “‘offends’ the corporate community” and strikes at its “moral and religious fibers,” for which the prescribed penalty is death by stoning.

This construction of the ox’s crime in political terms (“insurrection”), however, is not altogether satisfactory. It is contrary to a magico-religious interpretation, which argues that the animal is stoned as the bearer of demoniac possession. Both views seem insufficiently attentive to the specific operation of purity and pollution categories within the Biblical system itself: the political approach attempts to transcend such categories, whereas the ritual approach draws them into the orbit of a generalized primitivity.

The stoning of the ox is most economically interpreted, I think, by comparison with the case of the unknown murderer, or ‘egla ‘arufa

41. For review and brief discussion, see Finkelstein, The Ox That Gored, 27-28; Jackson, “The Goring Ox,” 112-14; and Morgenstern, “The Book of the Covenant, Part II,” 89-91.
44. The Ox That Gored, 27-28.
This law specifies that when a murderer is unknown, the elders of the town nearest to the point where the corpse was discovered break a heifer’s neck beside a stream in a valley. They thereupon wash their hands over the heifer’s corpse, declaring, “Our hands did not shed this blood, nor did our eyes see it done,” and they request absolution from blood-guilt.

As this instance makes clear, any homicide brings blood-guilt into the community, and this blood-guilt must be expiated. When the agent is known, the blood-guilt is fixed upon him; a relative of the dead man acts as an avenger or “blood redeemer” (מְשֹׁם הָעִד). When the murderer is unknown, however, blood-guilt permeates the community as a whole, and its agents must cleanse the corporate body by exacting a penalty from an animal, which substitutes for the murderer. The owner of an habitual gorer is permitted to ransom his life because the ox’s death will expiate the blood-guilt.

In the case of the goring ox, the animal does not, like the heifer, substitute for the actual agent guilty of homicide, since it is itself the agent. But on the other hand, while the animal has shed the blood of a human being, it cannot be regarded as equivalent to a murderer—i.e., as having itself incurred blood-guilt. As in the case of an unknown murderer, blood-guilt attaches to the community as a whole. The ox, as the instrument of communal pollution, is executed in a manner that absolves the community as a whole.

This argument proceeds from the assumption that the difference in the two procedures for treating homicide does not amount to a qualitative distinction between the two crimes, but reflects instead a difference between the two types of criminals—one who is identifiable and to whom liability can be assigned, and another who is either unknown or to whom liability cannot be assigned. The goring ox, then, would at one level be regarded as equivalent to an unknown murderer.

This conclusion seems especially clear from the treatment of the owner of an habitual gorer: the owner becomes liable in a manner similar to (though not identical with) any other person convicted of homicide, as is
shown by the language describing his penalty. The text reports that in such a case "the owner will be put to death," (יְהוָה יְהֵם וּכְלָלֶךָ — Exod. 21.29), and it draws here on the terminology for private execution.\footnote{2}

What accounts for the difference in the dispositions of the cases of a non-habitual and of an habitual gorer? It is not that the owner of a non-habitual gorer was not negligent, but that the owner of an habitual gorer was. For although criminal negligence does cause bloodguilt—as, for example, when someone falls and dies from a roof on which the builder had failed to install a parapet (Deut. 22.8)—this does not account for the stoning of the ox in the first instance. The difference in the two cases is rather that liability of any kind can be assigned only if the ox was an habitual gorer; even then liability cannot be assigned to the ox, but instead falls upon its owner.

The stoning of the ox, then, does not reflect a special value attaching to human life in the ancient Israelite system any more than does the breaking of the heifer's neck. It does, however, indicate the particular importance which is assigned in this cultural system to life-blood.\footnote{3} As the regulations of Gen. 9.5 set it forth, the life-blood of human beings may not be shed at all with impunity;\footnote{4} the life-blood of animals may only be shed through sacrifice.\footnote{5} These two provisions complement each other, both at the point where they are first articulated in the text, and where they find expression within the ancient Israelite cultural system. Consequently, neither provision should be interpreted in isolation from the other, in the manner, for example, of Greenberg, who elevates what he calls "the uniqueness and supremacy of human life" to the status of a "jural postulate."\footnote{6}


\footnote{3. See, most recently, Zohar on "the special nature of blood as רוחב". Noam Zohar, "Repentence and Purification: The Significance and Semantics of Hatta’i in the Pentateuch," Journal of Biblical Literature 107 (1988): 609-18, 611. And contrast Daube’s notion that a murderer seizes or takes control of his victim’s blood (David Daube, Studies in Biblical Law (Cambridge: Cambridge University Press, 1947), 123-24), on which Jackson bases an unlikely argument that the stoning of the ox is related to a form of retaliation designed to "secure the return of [the dead man’s] blood to his family." Jackson, "The Goring Ox," 117; see generally 116-18.}

\footnote{4. This is not to claim, of course, that Biblical law does not recognize the categories of justifiable homicide (as in the case of the thief who tunnels at night, Exod. 22.1-2) or of involuntary homicide (discussed at Num. 35.22-28).}

\footnote{5. I do not take up in this essay the distinction between animals which are sacrificed and those which are "struck down": "He who strikes down a beast shall make restitution for it, but he who strikes down a human being shall be put to death" (Lev. 24.21). The difference between the animals in the two situations (sacrifice and slaughter) can in my view be understood on the analogue of the distinction between free men and slaves (cf. n. 66 below). That is, the killing of an animal or slave, while criminal, does not incur blood-guilt.}

keeping with the first of these two regulations; the prohibition against its consumption, I suggest, derives from the second.

It is most commonly assumed that the ox’s flesh is proscribed because the animal was ritually defiled or made “taboo”: “the killing of a man by an animal rendered that animal... taboo”\(^57\) “probably... the animal is regarded as being somewhat demoniac in character, and therefore unclean and not to be used by mortals for profane purposes, such as eating [sic]...”;\(^58\) “[the ox may not be consumed because it] is laden with guilt and is therefore an object of horror.”\(^59\) Paul, too, following Greenberg, refers to “the taboo status of [the beast’s] flesh.”\(^60\) Boecker claims that the animal is accursed,\(^61\) but this has even less supporting textual evidence.

But to what Biblical concept does the term “taboo” correspond? Elsewhere, dietary prohibitions encompass permitted animals which have not been sacrificed (as discussed above), or certain animals categorically excluded as “unclean” (אכילה — e.g. Lev. 11.4-8), as an “abomination” (לא ינקה — e.g. Lev. 11.10-12), or as “abhorrent” (אוכלי חרב — e.g. Deut. 14.3). Similarly, no animal that has died a natural death (לִקֵּי יָם — Deut. 14.21) or that has been “torn by beasts in the field” (יָם — Exod. 22.30) may be consumed, regardless of whether the beast was a permitted or a forbidden animal (Lev. 11.24-28; 39-40). Although any of these terms might be translated also as “taboo,” none of the categories to which the terms refer seem capable of accommodating an ox which has killed a human being.\(^62\)

Greenberg argues that “the tabooed status of the corpse [is] inferred from [Exod. 21.28,]”\(^63\) and explains further that “any ox that killed a human was bloodguilty and its flesh taboo.”\(^64\) But this reasoning is circular; and it is not clear in any case that “bloodguilt” may be imputed to an animal in the same way it may be to a human being. If it should be, the animal would then be guilty of homicide, and liable to pay at the hands of the “avenger” (האלף לעב; we argued above that this cannot be the case.\(^65\) It may be, then, that the animal has become polluted, but this too

\(^{57}\) Morgenstern, “The Book of the Covenant, Part II,” 89.

\(^{58}\) Ibid., 88.


\(^{60}\) “Annotations to the Laws of the Book of the Covenant,” 78-79.


\(^{62}\) Contra Jackson, who argues that the beast that has killed a human being should be regarded as “torn,” (יִתְנָה) a term which, as he observes, “normally denotes tearing by wild animals.” “But,” he goes on to argue, “the difference between this and stoning is not substantial.” “The Goring Ox,” 116.


\(^{64}\) Ibid., 14 n. 27.

\(^{65}\) van Selms observes in this connection that the ox must be stoned also when it has gored a
would not necessarily prohibit its consumption. For the expiatory offer-
ing (תּוּמָה) to which an individual guilty party’s pollution is transferred, is nevertheless consumed after having been sacrificed (Lev. 6.17-22). It is true, on the other hand, that the expiatory offering of the anointed priest (Lev. 4.3) or of the community as a whole (Lev. 4.13) may not be consumed (Lev. 6.23); it must be entirely burnt outside the camp (Lev. 4.11-12; 20-21). It may be that the flesh of an ox that has been stoned to death is assimilated to this category, and that this suffices to account for the proscription. But while pollution can be transferred to an animal, and while an animal's act of shedding human blood can bring pollution into the community, it is not clear that the animal itself can be regarded as committing a wrong requiring expiation, any more than it can itself incur blood-guilt.

An alternative interpretation is suggested by a comment in the Mekhilta, a first or second century c.e. exegetical commentary on Exodus, which inquires why the prohibition against consumption was included at all. “Do I not know this from the fact that it is to be stoned?” the commentator asks. And he goes on to explain, “If the owners of an ox that is being led out to be stoned, anticipating its stoning, slaughter it ritually, its flesh is nevertheless forbidden to be eaten. In this sense it is said: ‘And its flesh shall not be eaten.'” The logic behind this argument implies an initial assumption that the animal could be consumed if it could be sacrificed; the proscription, however, indicates that the beast has been consigned to the category of forbidden food—the category of the “unclean” (טְבִיל) which, in turn, may not be rendered fit through sacrifice. Sacrifice in general is a purifying and inclusionary procedure: it renders an animal’s flesh fit to eat and brings it within the compass of the permitted. Stoning, by contrast, is an exclusionary procedure: it expels the animal from the human community and consigns it to the category of the inadmissible.

The ox’s flesh, then, may not be consumed because the animal cannot be sacrificed. And the animal cannot be sacrificed, in turn, not because of the act it has committed, but rather because of the action that has been taken against it; not, in other words, because it is polluted, but because it has been stoned. Thus, Maimonides, drawing on the passage in the Mekhilta cited above, remarks that “by this prohibition we are forbidden slave, but that “the killing of a slave cannot form a reason for blood-revenge.” “The Goring Ox in Babylonian and Biblical Law,” 328.


to eat the flesh of an ox that has been stoned, even if it was slaughtered before it was stoned, because once the sentence was passed it became forbidden food, even though it was slaughtered in accordance with the ritual requirements.

The law of the goring ox reflects the hierarchy governing relations between man and beast that was enjoined at the time of their creation. And it incorporates this principle by differentiating the animal from a human criminal, by treating it as other than a murderer or sinner. Thus, the animal is stoned, not because it has committed homicide, but because it is the instrument through which blood-guilt has come into the community. Its flesh is proscribed, not because it is laden with pollution, but because the judgment against the animal has rendered it unfit for sacrifice. Such a disposition upholds both the principle that the life-blood of human beings may not be shed at all with impunity, and the regulation which restricts the consumption of flesh to those animals whose life-blood is shed through sacrifice.

In ancient Greece too, the treatment of an animal that has killed a human being is connected with the rules governing sacrificial practice, and with the cultural construction of their origins. And in fact the ancient Greek sources affirm an explicit connection between sacrificial rite and judicial process: Pausanias, describing the court at the Prytaneion where animals, inanimate objects, and unknown killers were tried for homicide, traces the origins of its procedure back to the time of Erechtheus, the legendary king of Athens, during whose reign “an ox-slayer killed an ox for the first time on the altar of Zeus Polieus” (τὸ τρῶτον βοῦν ἐκτείνεν ὁ βουβόνος ἐπὶ τοῦ βωμοῦ τοῦ Πολιέως Διός). When he ran off, the axe he had used in the slaughter was tried and thereupon expelled (ὁ δὲ πέλεκυς παρατὰ ἀφεῖ θη κριθεῖς). At another point in the same narrative section, Pausanias discusses sacrifices to Zeus Polieus; these, he explains, ordinarily conclude with a judicial proceeding in which the participants “bring to trial the axe” utilized in the ritual slaughter (ες δικην ὑπάγουσι τον πέλεκυν). This interrelationship between sacrifice and trial is attested in a number of other brief notices, and as we saw earlier, it appears also in an extensively elabo-

70. Ibid., I.24.4.
71. Ibid., I.24.4.
72. For a full consideration of the testimonia, and of the differences among them, see Hyde, “The Prosecution of Lifeless Things and Animals in Greek Law”; see also Jean-Louis Durand, Sacrifice et Labour en Grèce Ancienne: Essai d'anthropologie religieuse (Paris: Editions la Découverte, 1986).
rated account in a section of Porphyry’s *de abstinencia*.

The kings’ court at the Prytaneion was one of the five homicide courts at Athens, and there trials of animals, inanimate objects, and unknown killers took place. As Aristotle describes it, “whenever one does not know who did it, one brings a case against ‘the doer.’ The basileus and the phylobasileis try also the cases of inanimate objects and of animals besides” (ὅταν δὲ μὴ εἰδὴ τὸν πονήσαντα, τῷ δρασάντι λαγχάνει. δικάξει δ’ ὁ βασιλεὺς καὶ οἱ φυλοβασιλεῖς καὶ τὰς τῶν ἄφυχων καὶ τῶν ἄλλων ζώων). Other testimonia (the Suda, Harpocration, Pollux, etc.) mention only the prosecutions of unknown murderers and lifeless objects; but Plato includes an extensive discussion of homicide by animals in the *Laws*, at 873E-874B, where this crime is considered, as in Aristotle, together with homicide by inanimate objects and unknown murderers.

These judicial proceedings occurred at a building otherwise reserved for state dinners and the administration of various forms of social welfare, and it is this group of functions which provides the key to the logic governing the trials in question. The Prytaneion housed the city’s hearth, the sacred central space around which the city constituted itself symbolically as one large household or *oikos*. Ambassadors and certain other classes of privileged outsiders gained admission to the city proper through association with this inner sanctum and through the same rituals of incorporation which at the family hearth integrated strangers into the individual *oikos*. The welfare of orphans and heiresses (*epiklēroi*) also was overseen at the Prytaneion, which again substituted for the family hearth. Thus, individuals bereft of family protection and hence deprived of their means of connection to the *polis* were retrieved from exclusion and brought back within its compass through programs of social welfare which symbolically replicated the ordinary functioning of family life.

Similarly, in the so-called trials of animals and inanimate objects, the state took upon itself a function normally reserved to the family. For although homicide in ancient Greece, as in ancient Israel, polluted the community as a whole, the responsibility for prosecution and hence for the expiation of blood-guilt fell upon the closest surviving family mem-


76. For discussion of the building and its functions, see Miller, *The Prytaneion*; all of the relevant testimonia are collected in Appendix A.
The precise form of the judicial proceedings at the Prytaneion and the makeup of its personnel are unclear: jury trials were probably not available, and a defense would naturally have been out of the question except perhaps where animals were involved and could have been defended by their owners. There are conflicting opinions on whether the tribal kings (phylobasileis) or commissioners (ephetai) presided. The end result of such trials was in all likelihood execution and expulsion of the animal's corpse. This, at any rate, is what Plato, our only witness on the matter, suggests, and it is also consistent with the "penalty" visited upon an inanimate object: this, we are told, was to be "cast beyond the frontier [of the city]" (ἐξορίζεσθαι, ὑπερορίσαται).

The penalty for a person who had committed intentional homicide, on the other hand, was either death or perpetual exile, along with confiscation of property (Dem. 21.43). Involuntary manslaughter called for exile until the dead man's relatives granted a pardon (IG I2 115.11-32; Dem. 23.72), and the criminal had to bring a sacrifice and undergo purification before being permitted to rejoin the community (Θώσαι καὶ καθαρθήναι καὶ ἀλλὰ ἀττα—Dem. 23.72). The individual who had committed justifiable homicide, on the other hand, suffered no penalty and was not regarded as impure or unclean (Dem. 20.158).

How should we interpret the penalty which, in all likelihood, applied to the animal that had killed a human being? We might regard it as equivalent to "exile," and thus as tantamount to the punishment visited in absentia upon an unknown murderer. But the penalty is best understood, in my opinion, by comparing it with the treatment of an individual found guilty of treason (προδοσία) or temple-robbing (ἰεροψυλία), who

---

78. For further discussion, see references in n. 73 above, and Michael Gagarin, Drakon and Early Homicide Law (New Haven: Yale University Press, 1981), 132-133.
79. Laws 873E.
was the subject of a special law in effect at least until the end of the fifth century B.C.E. (Xen. *Hellen.* 1.7.22).  

Such individuals, if found guilty, were subject to execution, confiscation of their property, and, what is of particular interest for our purposes, a prohibition against burial in Attica. This last punishment meant that their corpses were thrown beyond the borders of Attica. Similarly, according to the so-called decree of Kannonos, an individual who "wrongs the people" (ἐὰν τις τῶν τῶν Ἀθηναίων δῆµον ἀδική—Xen. *Hellen.* 1.7.20) is to be executed and thrown into "the pit," and his property is to be confiscated.  

Thus, Herodotus reports that after Megacles and his followers were found to have committed sacrilege at the end of the seventh century B.C.E., the living members of his clan were exiled, and the dead members were disinterred and their bones expelled beyond the borders of the city (Herodotus *Histories* V.71). Likewise, after the overthrow of the tyranny of the Four Hundred in 411 B.C.E., the bones of Phrynichus, who had been among their number, were disinterred and thrown beyond the borders of Attica (Lykurg. *Leocrates* 113-15).  

This punishment represents a sanction against crimes that involve ritual defilement of the corporate community. It is equivalent to stoning in the Bible; stoning was also the method of execution for treason in ancient Greece (though there is little evidence for its actual application). The disposition of homicidal inanimate objects and the corpse of a homicidal animal in ancient Greece resembles the treatment of a goring ox in the Biblical system. There, I argued above, the animal should be regarded as having brought pollution into the community in much the same way as an unknown killer. In the Greek system, the equivalence between an animal that kills a human being and an unknown murderer is made explicit, since both are brought to trial in the Prytaneion. Among the Greeks, the pollution which the unknown killer has introduced into the community is expelled along with him, since he is treated like an ordinary murderer (voluntary or involuntary) and condemned to exile. In the Bible, since exile was not a penalty for murder unless the killing was known to be involuntary (Num. 35.22-28), the pollution must be first transferred to an animal and then expelled.

---

MacDowell asks with reference to inanimate objects without settling on an answer: "when the phylobasileis cast [a stone or falling branch that killed a man] beyond the frontier of Attica, were they performing ritual vengeance for the dead man, or were they freeing the country from a polluted object?" The answer, I think, is clear: it is the latter, but not because the Greek system of homicide law as a whole is specifically rationalized with reference to categories of purity and pollution (a notion to which MacDowell objects). Rather, it is because, as in the Biblical case, a blood crime has been committed for which responsibility in the fullest sense cannot be assigned. 

Hyde, it is true, appeals to the functioning of the lex talionis (reciprocal punishment) in order to explain the punishment of animals who have killed men, but this interpretation also entails embracing the questionable view that the Greeks attributed rationality to animals. We should understand the trials of homicidal animals among the Greeks instead as similar to the treatment of the goring ox in the Bible on one level: in both cases the animals are instruments of communal pollution, and in both cases they are dealt with in a manner that absolves the community as a whole.

Thus, where homicide committed by an animal is at issue, the act is comprehended as a crime in much the same way in the Bible as among the ancient Greeks. And in both cases this crime and its punishment are related to the origin and practice of sacrificial ritual. But the specific cultural construction of this relationship in the two societies is quite different. For among the ancient Israelites, as we observed above, the flesh of the ox may not be consumed; this was interpreted as a consequence of the impossibility of sacrificing the animal, and of the concomitant necessity to preserve the hierarchy between beasts and humans. Thus, the sacrificial sphere is separate from and prior to that of judicial (or quasi-judicial) action: sacrifice and murder belong to different, although complementary, categories. Among the Greeks, by contrast, these two cultural areas intersect explicitly: the origins of both the kings' court at the Prytaneion and the practice of sacrifice itself were mythologized as accounts of ox-slaughter (bouphonia) in which the primordial slaying of an ox by a human being is first comprehended as murder and is then transformed into sacrifice through the development of a judicial sphere.

Underlying this difference between the Greek and Israelite understanding of the relation between sacrificial and judicial practice is a more

90. Athenian Homicide Law in the Age of the Orators, 144.
91. Ibid., 141-50.
92. "The Prosecution of Lifeless Things and Animals in Greek Law," 297-98. Space does not allow for a consideration here of the cases of injury by an animal, and of their judicial remedy through the γραφή βλάπτες.
fundamental ideological rift having to do with the construction, in each culture, of the relationship between man and beast. And it is ultimately this set of ideas which accounts for both the similarities and the differences in the rules regarding sacrifice, blood-guilt, and the disposition of a homicidal animal.

"BETWEEN BEAST AND GOD"

Among the ancient Greeks, humanity was a status defined through a double exclusion of its opposites—animals and gods. In this respect the human realm was constituted, as Jean-Pierre Vernant, Pierre Vidal-Naquet, and Marcel Detienne have established in separate articles, as an arena located "entre bêtes et dieux"—between beast and god. Human beings differentiate themselves from the gods chiefly through the practice of animal sacrifice. But they separate themselves from the realm of beasts primarily through marriage and agriculture, which represent acculturations of those sexual and dietary habits whose unregularized and indiscriminate forms characterize the world of brute animals. Men neither graze the fields nor mate at random, as animals do, but they sow their seed in woman and field alike according to a set of strictly observed social regulations.

The ancient Greeks made a distinction between wild and domesticated animals, and regarded the latter as members in some form of the civilized realm. Thus, human beings were not creatures radically alien from animals, but instead were distinguished from them by a more fluid boundary—in Aristotle's view by the capacity for logos ("rational language") and for to dikaion ("justice") (Politics I.1.1253a14-16). A human being was, like an animal, a zoon, a living creature, but one with a capacity for life in a political collectivity, and hence a zoon politikon (Politics I.1.1253a4). Certain classes of humans—women and slaves among them, although in different degrees—shared an incapacity for fully rational existence that caused them to be aligned in Greek thought with the realm of beasts. Similarly, young boys as well as girls, in the period before they assumed adult status, were regularly compared to young wild animals. The equivalence was developed from the other side as well—

95. Detienne, "Culinary Practices and the Spirit of Sacrifice."
Greek mythology abounds in those hybrid creatures such as centaurs ("horse-men") and satyrs ("goat-men") which the Bible rigorously excludes from the limits of the created world.

The Greeks did not, however, sentimentalize the relation between man and beast in the manner, for example, of the Romans, who prohibited the slaughter of a domestic animal because "he is a most hardworking companion to a man in his work" (laborissimus . . . hominis socius in agricultura—Columella VI. Pref. 7,99 cf. Aelian, Var. Hist. V.14,100 Varro, Res Rusticae II.5.3).101 Although Varro and Columella report that the slaughter of an ox at Athens was prohibited (Varro II.5.4; Columella VI. Pref. 7), Aristotle makes clear the general Greek assessment of the relationship in its concrete and practical aspects: domestic animals exist, Aristotle explains, solely "with a view to the good of man."102 One might compare Rashi's explanation for the destruction of animals in the flood: since animals exist for the sake of man, their survival without man would be pointless (commentary on Gen. 6.7).

Among the Greeks, then, the realm of beasts constituted a domain of the "Other," a zone, as one commentator has put it, of "non-civilization . . . indispensable to the existence of civilization, like a belt which, so long as it constrains the body of society, prevents it from falling apart."103 And thus, what especially marks ancient Greek ideas about the relation between men and animals is a concern with the dialectics of that relationship. The ancient Greeks engaged in an extensive cultural discourse on the boundary separating the human from the animal world; and they also, as we have seen, developed specific cultural practices which functioned to constitute it.

"IN OUR IMAGE, AFTER OUR LIKENESS"

In the Bible, the notion of the Other is constituted from the idolatry, immorality, and impiety of the Canaanites and other inhabitants of the promised land—in the context, to be sure, of the assumption of an original unity of the human species, subsequently differentiated only through secondary and acquired characteristics (ethnic, geographic, political, or

---


100. Aelian, Varia Historia (Leipzig: Teubner, 1866).


102. ὥστε ὁμίως δήλων ἢ καὶ γενομένως οὐσιόν τά τε φυτά τῶν ζῴων ἔνεκεν εἶναι καὶ τᾶλα τῶν ἀνθρώπων γάριν (Politics I.3.1256b15-18).

Thus, when God, after the episode of the golden calf, renews his covenant with the Israelites, he repeats his earlier warning against entering into any kind of agreement with "the inhabitants of the land" into which he is bringing them (Exod. 34.12-16; cf. Exod. 23.31-32). For, he insists, they will be a "snare" to the Israelites, enticing them to worship other gods (Exod. 34.16). These people, he assures them later through Moses, "perform for their gods every abhorrent act that the Lord detests; they even offer up their sons and daughters in fire to their gods" (Deut. 12.31), and the Israelites must "beware of being lured into their ways" (Deut. 12.30). The narrative structure of the book of Judges, which recounts the conquest of the promised land, is in fact organized around just such a rhythm of successive seductions by the Canaanites and salvations by God.

Among the ancient Israelites, an ideologically charged dialectic is constituted around the opposition between Israelites and Canaanites, rather than between the animal and human worlds, as among the ancient Greeks. The relation between man and beast is not, however, culturally irrelevant in the world of the ancient Israelites. For in the first of the two narratives which make up the creation story in Genesis (the P source), mankind is brought into being for the explicit purpose of exercising dominion (םֹּלֶל) over the "fish, birds, cattle, and all creeping things" (Gen. 1.26); in the second (the J source), the animals are first proposed and then rejected as helpers (יִישוּד) for Adam.

Animals in the Biblical text therefore are not men's companions, as in the Roman view cited above, nor is the boundary between the human and animal worlds problematic, as among the Greeks. Nevertheless, human conduct toward beasts is regulated in the Bible in a number of different ways. Rest from labor is provided for man, slave, and animal...


105. Historical criticism identifies four discrete sources of tradition making up the first five books of the Bible (Pentateuch or Torah), and designates one of them by the book where it appears exclusively (D, the Deuteronomic source), another by its partisan set of concerns (P, the Priestly source), and the other two (J and E) by the first letters of the names which predominate therein for designating the deity.

106. It is worth noting that, in contrast to the distinction between animals and human beings on which the Biblical text appears to insist, Rashi interprets שֶׁבֶט as reflecting a contiguity between men and beasts: human beings, depending upon the character of their conduct, may end up "subordinating" animals (שֶׁבֶט) or "descending" to their level (שֶׁבֶט—commentary on Gen. 1.26).

107. Molly Myerowitz Levine calls to my attention a parallel Talmudic story that Adam had intercourse with all the animals, but found no satisfaction (לֹא מָסַר רֹאשָׁו) until he approached Eve (Yevamoth 63a).
The prohibition against boiling a kid in its mother's milk (Exod. 23.19b; cf. Deut. 14.21b), from which the Jewish dietary code derives, can be connected also with the injunction against slaughtering an animal on the same day as its young (Lev. 22.28), or taking a mother bird together with her young (Deut. 22.6-7). Similarly, divine commandments require one to raise up a beast—even that of one's enemy—which has fallen under its burden (Exod. 23.5; cf. Deut. 22.4), and prohibit the muzzling of an ox while it is threshing (Deut. 25.4).

These Biblical commandments are sometimes understood as examples of a general injunction of kindness toward animals. The spirit of the text is probably better reflected, however, when interpretation emphasizes the benefits which accrue directly to human beings from such regulations. Nachmanides, for example, explains that these commandments are not a matter of extending mercy to animals, "but they are decrees upon us to guide us and to teach us traits of good character." Similarly, Maimonides (d. 1204) explains that the object of the law requiring us to raise up a tired animal is "to make us perfect; that we should not form cruel habits; and that we should not uselessly cause pain to others; that on the contrary, we should be prepared to show pity and mercy to all living creatures, except when necessity [to eat] demands the contrary [i.e. sacrifice]."

Although the behavior of human beings towards animals is regulated in the Biblical system, then, the boundary which divides men from beasts is no more problematic than that which separates men from the divine realm. This contrasts with the elaboration in Greek culture of a hybrid race of giants, demigods, and theriomorphs like satyrs and centaurs. In Hesiod's *Theogony*, the Greek creation epic, the ultimate triumph of the reign of Zeus is predicated on his capacity to contain and control such monstrous creatures as the giants, Titans, and hundred-handers who had been created in the generations preceding his, and who persist under his reign. And following the establishment of Zeus' reign, the gods—and especially Zeus—proceed to mate freely with mortals in order to create the race of heroes. But the Biblical narrative (Gen. 6.1-4) contrives to eliminate completely from the created world at an early stage the monstrous race of Nephilim and Gibborim (both translated in the Septuagint...
as γίγαντες—"giants"). Specifically, in response to mating between "the daughters of men" (בנָהָיָהוֹן) and the "divine beings" (בְּנֵי אֱלֹהִים), the human span of life is limited to 120 years (Gen. 6.3). Following the generation of the Nephilim and Gibborim from this nefarious union, God resolves upon the destruction of his creation (Gen. 6.7), and subsequently brings on the flood.

CONCLUSION

In the Bible, the distinctions between animals and humans, and between human beings and God, exist from the outset and constitute the premise of the narrative. But, as we have seen, when men shed the blood of animals in sacrifice, and when animals shed human blood by homicide, a special potential develops for the intersection of the ontological status of the two realms on the basis of their shared existence as living beings. For, as God instructs the Israelites through Moses, while they are permitted to eat meat, they must beware of partaking of an animal's blood: "for the blood is the life, and you must not consume the life with the flesh" (כֵן עַקֵּר הַבַּד הָאָמָר לְאָנוּאֵלֵי תָהָלָמ שָׁם רְפֵנים —Deut. 12.23).

Thus, the initial sanction for the consumption of animal flesh, and consequently the permission to spill the animal's blood, provoked, as we saw earlier, a warning about murder in the Biblical text, and a reformulation of the hierarchy between animals and men (Gen. 9.4-5). Animals may be killed by men under certain regulated circumstances, but human beings may not be killed by either beasts or men. As I have interpreted it, the law of the goring ox instantiates this complementarity of permission and prohibition, by requiring the ox to be stoned for shedding human blood, but enjoining against its consumption since it cannot be sacrificed. The example of the goring ox, then, ultimately reflects fully the principle of the fundamental distinction between men and beasts in the Bible, as well as that of mankind's limited dominion over the animal world.

Like the ancient Israelites, the ancient Greeks developed a complementarity between the killing of animals by humans and the killing of human beings by animals. For the Greeks, however, this complementarity was part of a larger cultural scheme which affirmed the commonality of animals with humans, and which constituted the human realm through an elaboration of its difference from the domain of beasts. The bouphonia myth constructs an original moment when animals can commit sacrilege, and when their killing is equivalent to murder; similarly,

111. See the discussion in E. Cassin, "Le semblable et le différent: Babylone et Israël," in Hommes et Bêtes: Entretiens sur le racisme, ed. Léon Poliakov (Paris: Mouton, 1975), 115-27, 122-25. (It is not relevant to the present discussion to take up the question of the creatures identified as Nephilim in Num. 13.33.)
the *Theogony* myth originates from a point of commonality between men and gods. Subsequently, both the practice of sacrifice and the court at the Prytaneion come into being through a differentiation of the human realm from both that of the beasts and that of the gods.

Both the ancient Israelites and the ancient Greeks practiced animal sacrifice and developed legal remedies for the killing of human beings by animals. But the cultural elaboration of these practices in each case was correlated with a different understanding of the relationship of the world of men to that of beasts. These were expressed in a specific ideology of legal liability and moral responsibility which brought both animals and human beings within its compass. Its ultimate implication is to make it clear that the humanness of human beings and the bestiality of beasts are not to be taken for granted. It is rather a principle whose validity remains open to question and which therefore must be constantly reaffirmed through rituals of cultural inscription which are designed to establish it as truth.