

***Kapparot* (Ritual Slaughter) in Hasidic Communities: A Test Case of Competing Comprehensive Doctrines**

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ABSTRACT

There is perhaps no better case highlighting the tension between religion and the public sphere than the Hasidic Jewish ritual, *kapparot*. On multiple levels, this yearly sacrificial ritual poses fundamental questions as to how religion and its various rationalizations figure into the complexities of creating a public sphere backed by universal reasons that are epistemologically acceptable to all. After much discussion regarding the case of *kapparot*, it appears that many comprehensive doctrines and their rituals, while on the surface unjustifiable, can actually be defended in a reasonable way, resulting in an inevitable legal and moral stalemate at the basic epistemological level between two conflicting worldviews.

Keywords: public sphere, religion, Judaism, Hasidic, ritual slaughter, Habermas, Rawls

***Kapparot* (Ritual Slaughter) in Hasidic Communities: A Test Case of Competing Comprehensive Doctrines**

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Every year before the Jewish New Year, Hasidic Jews around the world practice a ritual where they swing a live chicken around their heads, eventually sacrificing it, symbolically eradicating their year's worth of sins. This ritual, called *kapparot*, is controversial both within Judaism and within the wider public sphere. This past year an animal rights group in Los Angeles County has attempted to bring Chabad (a Hasidic group) to court, arguing that they should not be able to carry out this act of ritual sacrifice.² This paper will focus on three different, but intrinsically connected, aspects of the *kapparot* lawsuit which illustrates and elucidates many of the inherent difficulties and tensions between religion and the public sphere. The first section of this paper will discuss the purely legal details surrounding this case. Then, once a legal precedence is set, the idea of public reason will be discussed as it corresponds to our case. Finally, the moral underpinnings of both sides will be evaluated with some critiques appearing when necessary.

The first issue that must be discussed regarding the *kapparot* ban is that of pure legality. Does Chabad have a legal right to continue this ritual? The baseline case that Chabad's attorneys used to launch their defense is a Supreme Court case known as *Church of the Lukumi Babalu Aye v. City of*

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² Josh Blackman, "Chabad's Ritual Is a Clear Example of the Free Exercise of Religion." *Los Angeles Times*. October 20, 2016. <http://www.latimes.com/opinion/op-ed/la-oe-blackman-kapparot-first-amendment-20161020-snap-story.html>.

Hialeah.³ In this case, the city of Hialeah, FL passed a law which stated that any sacrifice done in public or private, for non-consumption purposes was completely unnecessary and therefore illegal. However, this law stymied the worship of the Church of Lukimi Babalu Aye, an Afro-American religion with ritual slaughter at the center of their religious practice. The Church felt that they were being unfairly discriminated against given that other organizations were able to freely kill animals whether it be for food, clothing, or research. After passing through the court system, in 1993 the Supreme Court unanimously agreed that this law was unconstitutional on the grounds that it did not allow religious groups the same freedoms as other organizations. The *kapparot* case in Los Angeles had a very similar conclusion to the Florida case.⁴ The court agreed that Chabad was able to continue their *kapparot* ritual, as long as they agreed to be bound by the same laws that restrict the food industry (such as basic human animal treatment and cleanliness).

Once it is determined that there is technically nothing wrong with *kapparot* on the legal level, the idea of public reason as it relates to this case must be discussed. The difficulty in this case stems from the fact that the prosecution is trying to convince the Hasidic group that they should rethink their actions due to various public reasons, specifically those that pertain to animals' rights. John Rawls, the prolific political philosopher, understood that one of the most difficult parts of political liberalism is that there is no easy or sure way to adjudicate conflicts between public and nonpublic reasons.⁵ Why would Chabad, a fundamentalist religious group, forgo their deeply held private reasons for practicing *kapparot* to satisfy

³ Church of Lukimi Babalu Aye v. City of Hialeah, 508 U.S. 520 (1993).

⁴ Louis Sahagun, "Federal Judge Lifts Temporary Ban on Ritual Slaughter of Chickens, Minutes before Start of Yom Kippur." Los Angeles Times. October 11, 2016. <http://www.latimes.com/local/california/la-me-slaughter-chickens-20161011-snap-story.html>.

⁵ Micah Schwartzman, "Reasoning from Conjecture: A Reply to Three Objections," in *Rawls and Religion*, ed. Tom Bailey and Valentina Gentile (New York: Columbia University Press, 2015) 152-169.

some public reason that is not, in some immediate way, a part of their own comprehensive doctrine? Rawls' general solution to this conflict, as elucidated by the legal scholar Micah Schwartzman, is to try and argue from within another's comprehensive doctrine via a form of reasoning called "reasoning from conjecture".⁶ When one reasons from conjecture they must try to understand the comprehensive doctrine of the other in an attempt to come at a conclusion that is reasonable and internally consistent within the other's comprehensive doctrine. If reasoning from conjecture is carried out correctly, the hope is that both groups can come to a mutual understanding since they are both interested in the same end goal (even if their respective reasons for getting there are different).

One of the most blatant shortcomings in this case is the fact that the prosecution absolutely fails to try and understand the Hasidic group's side. The prosecution makes many unfounded statements and attacks that show their absolute failure to reason from conjecture. One argument that was used to challenge this ritual was to claim that it was a front for a money-making scheme set up by Hasidic organizations. The prosecution attorney, Bryan Pease, explicitly stated that "we believe that Rabbis' motivation is tremendous profit."⁷ While it is true that in some synagogues there is either a small cost or customary donation expected during the course of the service, arguing that the goal of a religious ritual is centered around money is an offensive and shortsighted thing to say. Many religious organizations and groups require money to function and therefore must charge for various rituals that they perform. This fact has been true for thousands of years. To claim, without any serious evidence, that a religious ritual is actually a covert money-making scheme is to completely ignore the worldview of any religious individuals. It is one thing to challenge the moral acceptability, or even the objective truth of a religious act, but it is an entirely different thing to challenge the motives behind that act. In this

⁶ Ibid., 153.

⁷ Sahagun, "Federal Judge Lifts."

sense, the prosecution has clearly failed to try to understand the other side, by attributing questionable motives behind their performance of the ritual that would have been unthinkable from within the comprehensive doctrine of Chabad.

A further indicator of the lack of effort to fully understand the *kapparot* ritual is evident by the claim that the use of chickens in the *kapparot* ritual is unnecessary. While anti-*kapparot* activists are quick to point out that this law is not codified in the primary source of Jewish law, the Talmud, this factor makes very little actual difference. Like all religions, Judaism has heavily evolved over the last 1,500 years since the codification of the Talmud and it seldom makes a difference to the religious Jewish mindset whether or not a law was conceived of in biblical times or by a great Jewish scholar in the seventeenth century. In this light, Pease again shows his lack of attempt to try to understand why any person would wish to participate in a ritual as seemingly abhorrent as *kapparot*. He states during the case that “killing chickens is not required for *kapparot* to take place, but is simply a preference.”⁸ Once again the abstract relationship between something being a preference versus it being a requirement has a vastly disparate nature and definition in the Orthodox Jewish realm than in the secular, and Pease shows no attempt to try to understand this distinction that has been the subject of thousands of articles over the course of Jewish legalistic history.

It becomes apparent that the prosecution does not understand the internal logic of the other side, which makes mutual understanding almost impossible. Reasoning from conjecture can only help alleviate conflicts between public and private reason if groups are presented with “good reasons, as evaluated from within their own comprehensive views.”⁹ In the

⁸ Sean Emery, "Attorneys Try to Save Chickens from Being Slaughtered in Jewish Ritual in Irvine." *Orange County Register*. October 05, 2016. Accessed May 29, 2018.

⁹ Schwartzman, "Reasoning from Conjecture," 155.

case of *kapparot*, as with many other cases in Judaism, there are many arguments that may be used to stop the sacrifice of chickens and have, in fact, been made by many Jewish scholars throughout the ages. If one truly wanted to understand and argue from within the Hasidic view one would probably begin by quoting the many biblical injunctions against animal suffering (such as Exodus 23:5 or Deuteronomy 22:6). To come up with deceptive strawman arguments by saying that the Rabbis are engaged in a monetary scheme or to argue that the use of animals is only preferred is simply unhelpful and will only come to increase the friction between these two groups.

The failure to reason from conjecture leads directly into a discussion of morality in this case. This is a case where we have two vastly different comprehensive doctrines pitted against each other, with neither one attempting to or able to understand the other. The prosecution believes that the Hasidim are doing something morally wrong by slaughtering animals for ritual purposes, while the Hasidim obviously feel like they are justified in their actions. To say it more explicitly, from the point of view of the animals' rights activists killing animals for ritual purposes is morally unacceptable, while from Chabad's point of view if they have the ability to cleanse someone of their sins (subsequently securing divine reward) by killing an animal it would be immoral to not do this act. When trying to debate the moral attributes of both sides, it is immediately apparent how difficult a task any discussion of morality entails.

It seems safe to posit that the animal rights group is using a form of Kantian reasoning to conclude that killing animals is "wrong". On the surface it seems like this conclusion may be backed up by ration and logic since one can conceive of any number of well-constructed arguments to ultimately arrive at the conclusion that killing these chickens is morally unacceptable. However, this type of philosophical conclusion is extremely specious. The idea that reason has its limits is one that is duly noted by

almost all contemporary philosophers, religious and secular alike. In their famous debate, the sociologist and philosopher Jurgen Habermas and Joseph Ratzinger, better known as Pope Benedict XVI, both agree that some sort of non-reason based moral underpinning is necessary to run a society.¹⁰ The obvious question then becomes what this pre-political basis will be, which is, of course, where the difficulty begins. If we chose to follow Rawls' basic construction of a liberal democracy, then we need to create a notion of mutual respect where groups with vastly different comprehensive doctrines can find common grounds, or an overlapping consensus, from which they can communicate. This would mean creating a space where the animal rights group and Chabad both speak in terms that are fully comprehensible to the other group.

On the surface it would seem difficult to defend the Hasidic desire for animal sacrifice via any sort of public reason. However, this changes when we consider the Habermasian idea that religious groups can maintain their religious values and beliefs as long as they “translate” their ideas into that of public reason. The idea that is the basis for much of our political underpinnings is the deeply religious idea that “all men are created equal”, derived from the biblical line “God created mankind in his image” (Genesis 1:27). When we unpack this idea a bit further in the realm of public reason, one can argue that since humans are intrinsically important (translated from image of God), and the life of a human is infinitely more important than that of a nonhuman (who, according to the bible, were not created in the image of God). In this worldview, which is easily translated into public reason, there is no way to compare the life of an animal to that of a human. At this point one may push back and argue that there is still no way to translate an archaic ritual such as *kapparat* into terms accessible to all. What if one does not believe in God at all? It is at this point when the full extent of the difficulty of claiming that something is objectively immoral

¹⁰ Jürgen Habermas. *The Dialectics of Secularization: On Reason and Religion*. (San Francisco: Ignatius Press, 2006).

comes into broad view. Let us assume that *kapparot* is an absolutely ridiculous act that has no metaphysical effect whatsoever. Even if this is true it would still be valuable as a ritualistic placebo. If the person slaughtering this chicken truly believes that he is pacifying God, it will, at the very least, have a positive psychological effect on this man. If one views humans as infinitely more important than animals, then this positive psychological effect is easily worth the death of a chicken. At this point we have gone full circle. We can fully translate a religious ritual such as *kapparot* into the realm of public reason. If we assume that humans are infinitely more valuable than animals, then it is not only fully justified, but actually a moral imperative, to slaughter a chicken for a ritualistic placebo effect.

The difficulties in rationally arguing the supremacy of one comprehensive doctrine to another brings us to the true definition of what it means to be living in a secular age. Charles Taylor writes that “We live in a condition where we cannot help but be aware that there are a number of different construals, views which intelligent, reasonably undeluded people, of good will, can and do disagree on.”¹¹ Questions regarding ethical treatment of animals is one area that definitely falls in the category of questions that reasonable people disagree on. As I have argued in the previous paragraph, one’s view of animal treatment will, in many cases, directly hinge on one’s view of the inherent value of humans compared to the inherent value of animals. This is not something that can be completely argued with via ration or reason. Rather, different comprehensive doctrines will start with different axiomatic premises and their subsequent views will follow accordingly.

The *kapparot* case is then a perfect example of a stalemate between different comprehensive doctrines. However, this case could have played

¹¹ Charles Taylor, *A Secular Age*. (Cambridge, Massachusetts: The Belknap Press of Harvard University Press, 2007), 11.

out much better if both groups would have attempted to be a little more ecumenical in caring about the other's position. Habermas argues that one of the modern shortcomings of our liberal democracy is that we have lost our "democratic bonds" that bind citizens in our society together. In order to run an effective liberal democracy, groups with conflicting comprehensive doctrines must engage in mutual reciprocity and have the symmetrical burden of trying to explain their comprehensive doctrines to others. The *kapparot* case represents a missed opportunity for mutual learning. Both groups came into this situation viewing it as a zero sum game rather than an opportunity to build bridges between two vastly different communities. As Habermas laments, these groups tried to "brandish their individual rights as weapons against each other."¹² While it is understandable why these groups did not want to engage in a type of Hegelian dialectic or accept a philosophy such as Terry Eagleton's where they are constantly sacrificing their wants and desires for that of the "other",¹³ there seems to have been little reason why a case as seemingly insignificant as ritually slaughtering a couple hundred chickens had to create a divide between communities.

This aforementioned idea brings me to my final point. As we attempt to live together in a pluralistic liberal democracy we must very carefully pick and choose which battles we feel necessary to fight. In other words, in our secular age where we live amongst a myriad of vastly different comprehensive doctrines, we must display a heavy sense of reservation. Any action or opinion that a group espouses in our country is almost guaranteed to have another group that is fundamentally opposed to it. If every group that has an issue with another group decides to make a big deal about it, then our liberal democratically based society will cease to function. The discussion that takes place between communities is crucial

¹² Philippe Portier, "Religion and Democracy in the Thought of Jürgen Habermas," *Society* 48, no. 5 (2011): 426-32.

¹³ Terry Eagleton, *Reason, Faith, & Revolution: Reflections on the God Debate* (Yale University Press, 2010).

for our society to work. Even if various groups come to vastly different conclusions, the act of discussion itself will act as a bridge between different communities.

In conclusion, the kapparot case is a prime example of the friction that will inevitably arise in a liberal democracy. Two groups with vastly different comprehensive doctrines, each refusing to consider, or even understand, the reasoning of the other. While it is unlikely that these two groups would have been able to come up with a solution that would have made them both completely happy, friendly deliberation could have strengthened the bond between them. Instead, the failure to reason from conjecture, or consider the moral tenability of the other side led to a larger gap between these groups. As with most problems that arise in a democracy, both groups need to realize that ultimately the freedom and privileges of their own group is dependent on others having equal rights.

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