

CCAR Journal

The Reform Jewish Quarterly

Halachah and Reform Judaism

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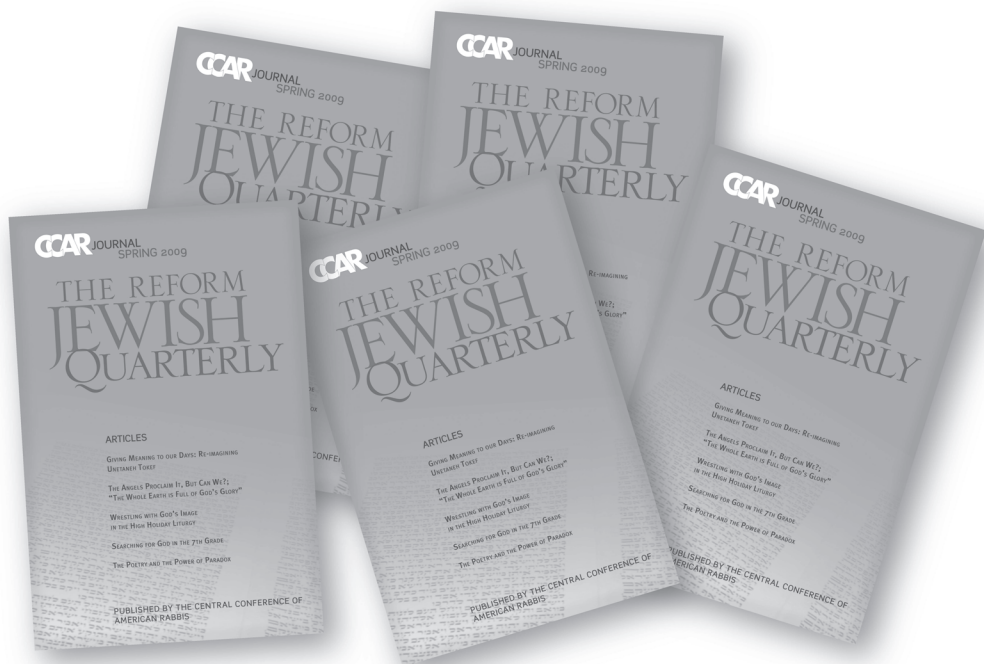
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At the Gates — בשערים: The Redemption of Halachah

Halachah, according to former Israeli Supreme Court Justice Izhak Englard, is “the set of norms considered binding by orthodox Judaism.”¹ This symposium issue of the *CCAR Journal* on “Halachah and Reform Judaism” comes to refute Justice Englard’s premise. Halachah is most certainly not the sole province of Orthodoxy.² There is, of course, a rich tradition of Reform halachic discourse and an extensive body of Reform halachic literature going all the way back to the beginnings of our Movement—and our contributors to this issue demonstrate that this tradition remains alive and well in the Reform rabbinate and in Reform congregations today.

Yet Englard’s sentiment, and its relevance to the Reform consciousness, cannot be so easily dismissed. Despite our Movement’s ongoing engagement in halachic conversation and production of copious responsa, Mark Washofsky—himself one of the *g’dolei hador* of Reform halachah and a longtime CCAR Responsa Committee Chair—has lamented liberal Jews’ “complicity in allowing . . . the orthodox authorities . . . a virtual monopoly over serious halachic thought.”³ Consequently, many in our community have come, ironically, to share a view of Reform Judaism that is held by some of our most ardent critics: that, as is too often said, we are a “non-halachic” movement. Several contributors to this symposium suggest that so many in our Reform tent have accepted this view because, in ceding the realm of halachah to the Orthodox to the degree we have done so, we have also (perhaps unwittingly) bought into the orthodox⁴ premise that there is but *one* legitimate body of rules which everyone agrees is “*the halachah*” and it is the exclusive purview of the Orthodox “rabbinic oligarchy”⁵ to tell us what “*the halachah*” is. To the extent that modern Reform Jews do in fact accept this definition of halachah, they will almost surely reject any role for it in their lives on the grounds that many of its norms are unethical or unjust,

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that it focuses too much on minutiae, that it is “entirely foreign to our present mental and spiritual state,”⁶ and that it is simply not compelling or life-enriching enough to warrant surrendering a measure of individual autonomy in order to abide by it. Indeed, many in our community take precisely this stance: to wit, “If *that* is halachah, we don’t want any part of it.”

It is the aim of this issue of the *Journal* to join in the long tradition of prominent Reform rabbis and scholars in arguing that the conventional binary choice between either accepting Orthodox halachah as *the* halachah or simply being “non-halachic” is a false choice. There are numerous other ways—compelling, authentic, and authentically Reform ways—of thinking about and engaging with halachah. There is no *one* halachah and no *one* community that has a monopoly over it: on the contrary, there can be and are *many* different expressions of halachah, each one developed by a particular Jewish interpretive community⁷ with its own narrative,⁸ culture, core values and commitments, ways of reading and interpreting texts, and vision of what it means to live in relationship with God. As Gordon Tucker, one of the Conservative movement’s leading halachic theorists, has said, Torah “is a *many-party* effort, for there is no unalterably authoritative voice or hermeneutic among God’s human servants.”⁹

This special issue of the *Journal* contains essays by some of the Reform Movement’s leading academic thinkers in the field of halachah along with a number of colleagues who are engaging in halachic discourse and decision-making in congregational, community, and personal settings. The symposium is divided into two sections: Section One is comprised of essays on halachic theory from a Reform perspective, in which contributors consider key topics such as the nature of halachic authority and the desirability of codification in a movement premised on individual autonomy; the validity of using aggadah, personal stories, and texts and disciplines conventionally thought of as “extra-halachic” as sources in *p’sak halachah*; and innovative ways of thinking about the nature of law and reading legal texts. Section Two consists of case studies in the application of halachah to issues arising in the daily life of Reform communities, from interfaith relations, Jewish yoga, holiday observance, and liturgical practice to nursing a baby in the sanctuary, mourning for a miscarriage, and seeking healing in the wake of sexual abuse.

In addition to this unique collection of writings on halachah and Reform Judaism, this issue brings us outstanding book reviews that examine rape myth in Jewish tradition; the life of David Ben-Gurion; at-home caregiving's blessings and challenges; the intersection between business and Judaism; and a journey through Psalm 27—as well as the voices of colleagues and established and emerging writers whose poetry inspires, delights, challenges, and illuminates.

In his magnificent book *Halakhah: The Rabbinic Idea of Law* (2018), Chaim Saiman proposes a distinction between “halachah-as-regulation”—meaning: a set of rules that govern Jewish life—and “halachah-as-Torah”—which he defines as “a way, a path of thinking, being, and knowing,”¹⁰ a reflection “on core questions of human nature”¹¹ couched in the language of law, the study of which “is one of the most pristine forms of divine worship.”¹² The essays in this symposium demonstrate that halachah-as-regulation plays a role in the Reform context insofar as it offers guidance (though not governance) for practice and categories in which to think about complex questions. And yet, as Saiman contends—in terms that are apt to resonate strongly with many Reform Jews—halachah is also much more than “law” as that word is conventionally understood:

[T]he term “Jewish law” fails to do justice to halachah . . . I have spent a decade and a half among accomplished legal scholars, and am fortunate to know very successful lawyers. Yet I have never been to a stadium full of people celebrating the Constitution, much less the Tax Code; have never heard a law professor address a church group on the details of contract law; and have never seen a parent faced with the joy of new life, or a child with the tragedy of a parent’s death, whip out the Uniform Commercial Code in search of inspiration or insight. By contrast, it is hard to imagine *any* private, public, social, religious, or institutional setting where it would not be appropriate to pull out a book and expound on some finer point of Jewish law.¹³

Saiman cogently argues that the Rabbis always intended halachah to be engaged with and *learned*—not only, and not *always*, as regulatory law, but also as Torah.¹⁴ As the essays in this volume demonstrate, the halachic tradition is a treasure chest of wisdom and insight waiting to be mined, discovered, expounded, and shaped for our community by Reform Jews who are animated by spiritual

curiosity and creativity. In my view, Saiman's brilliantly articulated idea of "halachah-as-Torah" has the potential to liberate us from the vise-grip of the orthodox premise that there is but one legitimate halachah—in which we have no say—and to redeem halachah from the pit of irrelevance into which it has been cast. It is my hope that this symposium issue will, in some small way, help to bring about that redemption.

* * * * *

It has been a great joy and honor for me to guest-edit this symposium issue of the *CCAR Journal* on "Halachah and Reform Judaism." The idea for this project has been percolating in my mind for several years now, and I am grateful to our editor-in-chief, Elaine Rose Glickman, for giving me her encouragement and enthusiastic support to pursue it. Elaine is a colleague of exceptional wisdom, intellect, patience, conviction, and kindness, and I consider the opportunity I have had to collaborate with her on this project to be one of the great privileges of my rabbinate to date.

Halachah has been a particular passion of mine since I was first introduced to it as a rabbinical student at HUC-JIR/Cincinnati by my beloved teachers Jonathan Cohen and Mark Washofsky. Today, I am pursuing a doctorate in halachah part-time under the guidance of Professor Washofsky, Professor David Ellenson, and Professor Alyssa Gray, and as I submit this issue of the *Journal* for publication, I am in the midst of preparing for my first comprehensive exam in the field of legal theory. I am eternally grateful to my teachers for their inspiration and mentorship, and for agreeing to write essays (for me, for a change) for this symposium issue. It is humbling, to say the least, to be in the position of editing the work of my most revered teachers; I hope I have done so respectfully and in a way that does honor to all they have taught me. I also want to thank the board and membership of Temple Israel in Omaha, Nebraska, where I am privileged to serve, for recognizing that Jewish scholarship is sacred and valuable work, and for supporting me so generously in my academic pursuits. I am also grateful to my clergy teammates, Rabbi Deana Sussman Berezin (who is also a contributor to this issue) and Cantor Joanna Alexander, for their friendship, their support, and their passionate devotion to our congregation; I simply could not do anything I do in my rabbinate without them. I also want to express my sincere thanks to and love for my wife, Karen, and my children,

Lindsay and Zachary, for their patience, understanding, and unconditional support as I have focused on this project. Finally, I would like to thank all our wonderful contributors who thought so deeply and worked so hard to make this symposium issue of the *Journal* a meaningful contribution to the ongoing conversation about halachah and Reform Judaism. I pray their insightful works will fuel the fire of curiosity in you, our readers, as they have in me, and open the door to deeper exploration of and engagement with our halachic tradition.

A. Brian Stoller
January 2020
Omaha, Nebraska

Notes

1. Izhak England, "Research in Jewish Law: Its Nature and Function," in *Modern Research in Jewish Law*, ed. Bernard S. Jackson (Leiden, The Netherlands: E. J. Brill, 1980), 23.
2. On the difference between the usage of the words "Orthodox" (with a capital "O") and "orthodox" (with a lower-case "o") in this essay, see note 4 below.
3. Mark Washofsky, "Halachah in Translation: The Chatam Sofer on Prayer in the Vernacular," *CCAR Journal* (Summer 2004): 142.
4. The "o" in "orthodox" here is intentionally lower-case because I am using the word in its sense of "conforming to the one correct or approved way"—i.e., the premise that there is but one legitimate form of halachah is, in this sense, an "orthodox" premise. While Orthodox Judaism (indicated by a capital "O" because it is the proper name of a formal stream of Judaism) surely affirms the orthodox premise regarding halachah, I intentionally use the lower-case "orthodox" in referring to the premise because many people who are not Orthodox Jews also accept the premise that there is just one correct or approved form of halachah. Wow . . . that was a mouthful! And, as if this is not already confusing enough, I must caution that my explanation of the difference between "orthodox" and "Orthodox" does not apply in the two instances in this essay where the word "orthodox" (with a lower-case "o") is used in apparent reference to Orthodox Judaism (as in, the movement): in those two cases, I am quoting other authors who used the lower-case form of "orthodox" for reasons unknown to me.
5. Alan J. Yuter, "Legal Positivism and Contemporary Halakhic Discourse," in *Jewish Law and Legal Theory*, ed. Martin P. Golding

- (New York: NYU Press, 1993), 63. Yuter uses this phrase in describing Izhak England's view of halachah.
6. CCAR, "Declaration of Principles: 'The Pittsburgh Platform'—1885," <https://www.ccarnet.org/rabbinic-voice/platforms/article-declaration-principles/>.
 7. The concept of the "interpretive community," a community of people who share, inter alia, common assumptions, goals, language usage, authoritative texts, and ways of interpreting those texts, is credited to Stanley Fish. For an extended exposition of this concept, see Fish's book *Is There a Text in This Class?: The Authority of Interpretive Communities* (Cambridge, MA: Harvard University Press, 1982). Mark Washofsky has drawn extensively on Fish's concept of the interpretive community in his writings on liberal halachah, including in his essay in the present issue of the *CCAR Journal*. In another piece, in terms particularly pertinent to the present discussion, Washofsky contends that "Liberal *halakhah*, like the Orthodox variety, is the intellectual practice of a particular self-defined community of interpretation. It is *our* practice, and we, as its practitioners, need not seek legitimacy or validation in the eyes of another community of interpretation. Our decisions are 'correct' when they satisfy *us*. Our responsibility, therefore, is to ourselves and our own practice, the same responsibility shouldered by the participants in any other intellectual discourse: we should seek to conduct our practice according to *our* own best understanding of it . . . Though we need not seek Orthodox approval of our work, we do seek our own; we measure it according to the criteria of value that motivate us." Mark Washofsky, "Against Method: Liberal Halakhah Between Theory and Practice," in *Beyond the Letter of the Law: Essays on Diversity in the Halakhah*, ed. Walter Jacob (Pittsburgh: Rodef Shalom Press, 2004), 55.
 8. The recognition of narrative's essential role in the law is due to the work of the late Yale Law School Professor (and Jew) Robert M. Cover, whose seminal article "Nomos and Narrative" (*Harvard Law Review* 97, no. 4 [1983–1984]: 4–68) stands at the heart of so much work in contemporary non-positivist legal theory, both secular and Jewish. Cover famously argues that "No set of legal institutions or prescriptions exists apart from the narratives that locate it and give it meaning. For every constitution there is an epic, for each decalogue a scripture. Once understood in the context of the narratives that give it meaning, law becomes not merely a system of rules to be observed, but a world in which we live." *Ibid.*, 1. That is to say, every interpretive community has a narrative, or master story, that it tells as a way of defining itself, and any given rule or law in that community's legal system has meaning only in relation to that narrative. Cover goes on to explain: "Authoritative precept may be national in character—or at least the authoritative

text of the authoritative precepts may be. But the meaning of such a text is always ‘essentially contested,’ in the degree to which this meaning is related to the diverse and divergent narrative traditions within the nation. All Americans share a national text in the first or thirteenth or fourteenth amendment, but we do not share an authoritative narrative regarding its significance.” *Ibid.*, 17. Cover’s theory provides insight into why Reform Jews and Orthodox Jews can share (many of) the same authoritative texts and yet interpret them completely differently. A prominent example of this is the law of *mamzerut*: an Orthodox community, which tells the story of Torah as the revelation of a sovereign God Who demands absolute obedience to the divine will, might regard this law as a binding “edict of the king” that is beyond human capacity to rationalize; by contrast, a Reform community, which tells the story of Torah as an ongoing human endeavor to live in accordance with the will of a God Who calls us to pursue justice and compassion toward all human beings because they are created in the divine image, would regard the very same precept as antithetical to God’s will and in urgent need of change. For other Jewish works in the field of halachah that draw on Cover, see, for example: Rachel Adler, *Engendering Judaism* (Boston: Beacon Press, 1998); Tamar Ross, *Expanding the Palace of Torah* (Lebanon, NH: University Press of New England, 2004); Barry Scott Wimpfheimer, *Narrating the Law* (Philadelphia: University of Pennsylvania Press, 2011); Gordon Tucker, “The Sayings of the Wise Are Like Goads: An Appreciation of the Words of Robert Cover,” in Gordon Tucker, *Torah for its Intended Purpose: Selected Writings (1988–2013)* (New York: Ktav, 2014), 183–211; and the essays by Amy Scheinerman and Alyssa M. Gray in the present issue of the *CCAR Journal*.

9. Tucker, “Sayings of the Wise,” 207.
10. Chaim Saiman, *Halakhah: The Rabbinic Idea of Law* (Princeton, NJ: Princeton University Press, 2018), 8.
11. *Ibid.*, 61.
12. *Ibid.*, 6.
13. *Ibid.*, 7.
14. Indeed, Saiman points to the Rabbis’ enthusiasm for studying halachot that have no practical application in the realm of halachah-as-regulation: “Throughout Jewish history rabbis continued to study, debate, and produce halakhah on topics far removed from practical questions of governance with the same rigor given to issues of halakhah that formed the backbone of daily practice . . . The central point is clear: many halakhot are most obviously *not* legislated for the purpose of governing.” *Ibid.*, 36, 39. See also Christine Hayes’s argument that the Rabbis believed the law of the stubborn and rebellious son was given in the Torah *specifically*

to be expounded but not applied: “The rabbis make a clear and explicit ethical calculation—the plain sense of the text is morally unacceptable, and we will be rewarded if we labor to disable this law. Indeed, this law was given to us precisely to challenge us to perform this task of moral critique and disabling.” Christine Hayes, *What’s Divine About Divine Law?: Early Perspectives* (Princeton, NJ: Princeton University Press, 2015), 317.

Halachic Theory

What Do We Mean When We Say, “We Are Not Halachic”?

Leon A. Morris

One of the most oversimplified and often repeated formulations of Reform Judaism is that “we are not a halachic movement.” What do we mean by describing ourselves in this way? One possibility of being “non-halachic” is this: We are not bound by the *Shulchan Aruch*, Joseph Karo’s sixteenth-century code of Jewish law, nor any other specific code. As Jewish law evolved, and particular precedents were established, there was a narrowing of the range of opinions and legal possibilities, and the shift from “halachah”—a rich, multivocal discourse with majority and minority positions—to “The Halachah”—a defined set of legal rules and standards as codified by the most widely accepted religious authorities—now feels too rigid, too inflexible for the times in which we live.

Another, more likely understanding of our being “non-halachic” is this: We acknowledge that the classic halachic texts no longer carry the kind of inherent authority for us that they did for previous generations of Jews. Our contemporary reality as (post-)moderns, and as liberal Jews, is so different from the reality in which those texts emerged. These differences are enormous and far-reaching, beginning with all that was gained from the Enlightenment and from Emancipation. The genie of modernity has opened us up to ever-expanding fields of thought that change the way we think about religious life: history, anthropology, sociology, psychology, source criticism, gender studies, and much more. In equal measure, our integration with the larger world, and our deep

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relationships with and affection for non-Jews is unprecedented in Jewish history.

Yet another meaning of Reform as “not halachic” is that we live in a time when individual autonomy is a given. We understand that Jewish texts read through contemporary eyes are inescapably mediated by the needs and perspectives of real communities. Within those communities, each person determines their own behavior and shapes their own life, religious and otherwise. Anything that reigns in that autonomy is to be rejected.

Any or all of these definitions of “non-halachic” give expression to the significant changes in the way we understand and relate to halachah. Inevitably we end up saying or suggesting far too often that halachah is irrelevant to our Jewish lives. Yet, the very notion of a Judaism without a relationship to halachah is both absurd and detrimental. As Mark Washofsky writes in his introduction to *Teshuvot for the Nineties*:

It will not do to argue that we can link ourselves to Jewish religious tradition without the halakhah, that we can substitute other “friendlier” texts in place of the legal literature . . . [Judaism’s] dominant expression is not the search for correct belief but rather a standard of practice that sanctifies us to God’s service. And that branch of traditional Jewish literature which most directly concerns practice is the halakhah . . . There is, in other words, no “tradition” of Jewish practice without halakhah.¹

Virtually everything we consider familiar and normative about Jewish life is because of halachah: the structure of our prayer services and siddur; how we sound the shofar on Rosh HaShanah; that our Torah scrolls are written on parchment in a particular script; that we have a seder on the first night at Passover; that the four species we bless on Sukkot are a citron (*etrog*), palm branch (*lulav*), myrtle (*hadas*), and willow (*aravah*); and so on. The list is endless. To claim that we are “not halachic” suggests a groundless, ahistorical Jewish life that does not accurately describe any contemporary Jewish community.

In a very different cultural context from our own, Hayim Nachman Bialik’s 1916 essay (published one year later), “Halakhah and Aggadah” offered to the secular intelligentsia who were creating a new Hebrew culture in the Land of Israel a plea for the need to be

grounded in notions of duty, of a shared set of actions, and of the indispensability of obligation. His words resonate with meaning for contemporary liberal Jews.

A generation is growing up in an atmosphere of mere phrases and catchwords, and a kind of go-as-you-please Judaism is being created out of the breath of empty words . . . But what is this love-in-the-air worth? Love? But where is *duty*? Whence can it come? On what is it to live? On *Aggadah*? But *Aggadah* is by its very nature the embodiment of volition; it admits something between *yea* and *nea*. A Judaism all *Aggadah* is like iron that has been heated but not cooled. Aspiration, good will, spiritual uplift, heartfelt love—all these are excellent and valuable when they lead to action, to action which is hard as iron and obeys the stern behests of duty . . . Let there be given to us moulds in which we can mint our fluid and unformed will into solid coin that will endure. We love for something concrete. Let us learn to demand more action than speech in the business of life, more Halakhah than *Aggadah* in the field of literature."²

Have we 21st century Reform Jews created a Jewish life that is all *aggadah*? Indeed, we are well-versed in the phrases and catchwords that define our religious lives. But, echoing Bialik, where is duty?

Halachah is, of course, much more than ritual. Perhaps our commitment to social justice provides one context in which we clearly articulate specific duties and obligations. Are we able to extend the realm of liberal Jewish action more broadly to encompass all aspects of life that enable individuals to embody holiness in a concrete way and build communities that share those practices?

What Is Halachah, Then?

When Abraham Joshua Heschel addressed the CCAR convention in 1953, he presented a broad conceptualization of halachah that might find a place in Reform Judaism:

A Jew is asked to take a leap of action rather than a leap of thought: to surpass his needs, to do more than he understands in order to understand more than he does. In carrying out the word of the Torah he is ushered into the presence of spiritual meaning. Through the ecstasy of deeds he learns to be certain of the presence of God. Jewish Law is a sacred prosody. The divine sings in

our deeds, the divine is disclosed in our deeds. Our effort is but a counterpoint in the music of His will. In exposing our lives to God, we discover the divine within ourselves and its accord with the divine beyond ourselves.³

A “discovery of the divine” that is expressed through “the ecstasy of deeds” encompasses a whole array of human action. Halachah, after all, is derived from the verb *lalechet* (to go or to walk). Halachah is the path, or the “way,” in which Judaism is lived out in the world. Ethics and ritual, personal practice and communal obligation are all encompassed by halachah. Perhaps the most fitting contemporary translation of halachah should be “spiritual practice.” Spiritual practice comprises actions we perform to orient us toward holiness, to gain a heightened awareness of the world around us, to experience a sense of profound connection—with ourselves, with those who lived before us, with those who will come after us, with our people, and with God.

Halachah, of course, is not only *personal* spiritual practice. It is the way in which the community gives expression to its deepest values. As Leon Wiener Dow writes so beautifully in his award-winning meditation on *halachah*:

The Divine voice that bursts forth into the wide open from the written verses of Torah demands actualization, and the halakha is its fulfillment. The unremitting insistence of the halakha is that the encounter with the Divine must, for the sake of its veracity, find expression in the world . . . Holiness must manifest itself in all aspects of life, private and public. The “language” of doing thus becomes constitutive of community: the halakha, in this respect, is none other than the shared doing of the Jewish community.⁴

Liberal Judaism and Halachah

Barbara, a friend of mine in her eighties, once shared a story with me. Fifty years ago, as a young woman in her thirties, she tragically lost her husband and was left to care alone for three small children in the suburbs. Immediately after the funeral, she turned to her Reform rabbi for guidance about how she should be marking this period of loss and mourning. She was eager to receive from him some set of Jewish guidelines that would be a comfort for her in her loss. Her rabbi told her that she “could do anything

she wanted." After all, he reminded her, "That's the beauty of being Reform."

To be sure, her well-meaning rabbi wanted her to feel free to mourn her husband in her own way, without feeling bound by traditional religious law or custom that could have been alien to her. Perhaps he assumed that most of the traditional mourning practices would be artificial and completely irrelevant to a modern twentieth-century family living in the suburbs. He could have said instead: "Judaism provides a treasury of spiritual practices that can be a source of comfort and support in times like this. They include things such sitting shivah, refraining from social obligations through *sh'loshim*, and reciting the *Kaddish*. I can help you navigate your own way through these traditions, but all of them have enormous potential for strength and healing."

Reform must no longer be afraid of the word "halachah," nor place itself outside of this rich language of discourse about duty and about the details of living Jewishly.

Beyond the specific duties and obligations that emerge within our religious lives, halachah is also a language of discourse, a methodology that demonstrates creativity, interpretation, and expansiveness. Of course, as liberals, our attitude toward halachah is shaped by the acknowledgment of its historical development. But just as the Torah's profundity and contemporary meaning is not eliminated when one acknowledges human authorship and redaction of its words and the historical context in which it emerged, halachah is not rendered irrelevant by placing it in its historical context. To the contrary, for a movement that celebrates human ingenuity and adaptability to new social circumstances, the halachic literature provides us with models for the application of Jewish ideas and values to real life.

Reform Judaism has tended to argue against "The Halachah" as if it were a monolithic system synonymous with the most rigid expressions of ultra-Orthodoxy. Because Reform rejects the traditional role of women in Judaism, for example, or because *mamzerut* represents an unethical category, we Reform Jews often assume that to attach ourselves to the halachah would result in either an oppressive religious determinism or reflect a deep inconsistency in our liberal religious lives.

While halachah may not operate with the same sort of authority it once had, it still has *some* authority. As Mark Washofsky has

written, halachah's real authority for twenty-first-century Jews lies in its ability to be persuasive.⁵

We are grateful to live without religious coercion. None of us is prepared to fully abandon our own autonomy even if we could. Yet, in deciding how to act in the world in ways that reflect a sense of goodness and holiness, we need help. We cannot do that entirely on our own. As Robert Cover wrote, "There is a difference—intelligible to most pre-adolescents—between the directions 'Do what you want' and 'Do what you think is right or just.'"⁶

A Reform approach to halachah should seamlessly weave together a careful reading of those classic texts that have always been central to Jewish life—Mishnah, Talmud, commentaries, and responsa literature—with research drawing from fields as diverse as history and science and informed by all of the many contemporary disciplines that inform our lives. A dialogue with our classic texts will certainly elicit critique, and at times may even be alienating as we "mind the gap" between their perspectives and our own. Yet, there is much within our halachic literature that can be retrieved "as a discourse with a serious claim on contemporary Jews," in the words of Martin Jaffe.⁷

Of course, the texts are reflective of the particular times and places in which they were written. There is a significant challenge in applying ancient texts to contemporary situations. Still, the past is not irrelevant. The ways previous generations have dealt with issues and challenges help us to understand what this moment still shares in common with the past, and to fully appreciate exactly how it differs. The exposure to halachic opinions helps us to take note of eternal values, modes of thought and deliberation, and categories of concern still deserving of our attention.

This sort of Reform approach to halachah is reflected in the prodigious work of the Responsa Committee of the CCAR. Moshe Zemer, of blessed memory, and Walter Jacob, have provided us with the seminal principles and criteria for Reform philosophy of halachah.⁸ Mark Washofsky and the Freehof Institute of Progressive Halakhah have advanced these ideas and fostered serious study to aid scholars in this work. Now we must ask how this work might provide the basis for an expanded engagement with halachah within the institutions of our Movement and within our synagogues. The possibilities are endless, but might include Shabbat guidelines for our camps and conventions that would

be considered by our congregations if they so choose. This work might lead us to stress the primacy of the Jewish calendar in Reform Jewish life, reclaiming the Festivals and their observance. An expanded engagement with halachah might also enrich our opportunities for Jewish learning and help us to embrace the mitzvah of *talmud Torah* more fully.

Such an expansion of our engagement with halachah in Reform Judaism would reorient our liberal religious lives. If halachah were seen as an indispensable component of liberal Jewish life, Jewish identification would shift from feeling to action, from ideas to concrete ways in which those ideas would be expressed through deed. An engagement with halachah would promulgate the notion that practice is primary and would thereby encourage all Jews to do more—more social activism, more work on improving their character, more ritual practice, and more acts of kindness.

A deeper engagement with halachah would also broaden our realm of Jewish study. Halachah is the "room" of Jewish life and learning where the most interesting conversations are happening. A rapprochement with halachah would help us to acquire a language that would anchor our own creativity in frames of reference and categories that add depth and connect our contemporary questions and issues to the Jewish past.

A renewed engagement with halachah would also remind us that we are not (or do not want to be) isolated individuals. We live with others in community. We seek to build Jewish communities with some measure of shared behavioral patterns through which our commitments are lived out and best expressed. Halachah is a way, as Wiener-Dow explains, for "human beings to meet in time." "What does it mean for human beings to meet in time? Ultimately, it implies that individuals relinquish a part of their autonomy in order to share their doing with others in time."⁹

A rapprochement with halachah would remind us that while ideas and values are central to Jewish life, a religious civilization invested in transmission of those ideas and values must find concrete expressions in daily life.

Notes

1. W. Gunther Plaut and Mark Washofsky, *Teshuvot for the Nineties: Reform Judaism's Answers to Today's Dilemmas* (New York: CCAR, 1997).

2. Haim Nahman Bialik, *Revelment and Concealment: Five Essays* (Jerusalem: Ibis Edition, 2000), 86–87.
3. Abraham Joshua Heschel, *Moral Grandeur and Spiritual Audacity: Essays* (New York: Farrar, Straus and Giroux, 1997).
4. Leon Wiener-Dow, *The Going: A Meditation on Jewish Law* (New York: Palgrave MacMillan, 2017), 100.
5. Mark Washofsky writes, “Our *teshuvot* are advisory opinions; they are intended to serve as arguments in favor of a particular approach to a particular issues of observance. Their ‘authority,’ whatever we mean by that word, lies in their ability to persuade.” Washofsky, *Teshuvot for the Nineties*, xxvii–xxviii.
6. Robert Cover, “Books Considered,” *New Republic*, January 14, 1978, p. 27.
7. Martin S. Jaffee, “Halakhah as Primordial Tradition,” in *Interpreting Judaism in a Postmodern Age*, ed. Steven Kepnes (New York: New York University, 1996), 88.
8. See Walter Jacob and Moshe Zemer, *Progressive Halakhah: Essence and Application* (Tel Aviv and Pittsburgh: Rodef Shalom Press, 1991).
9. Wiener-Dow, *The Going*, 51.

Halachah in Reform Theology from Leo Baeck to Eugene B. Borowitz: Authority, Autonomy, and Covenantal Commandments

Rachel Sabath Beit-Halachmi

The inherent tension between Reform theology and halachah is as foundational as it is enduring. At the outset, early Reformers in Europe such as Abraham Geiger (1810–1874) focused less on the project of developing an evolving Reform halachah and more on what they saw as the necessary transformations of Jewish life and prayer precisely because Jewish law had failed to allow for these transformations. While halachic considerations—as well as the accompanying political and sociological considerations—were certainly part of their thinking about the transformation of Judaism that these Reform thinkers led, they focused more on the philosophy of Judaism that would provide the foundation for it. At its core, Reform Judaism sought the re-framing of Jewish life not by creating a new halachah but, rather, primarily through the development of a new theology—through prayer and practice—for a Judaism that could thrive in the modern world.

For most Reform thinkers, from Leo Baeck (1873–1956) to Eugene Borowitz, the primary focus was—following the philosophers and other religious thinkers of their respective eras—what God and ethics demand of the modern Jew. They were less concerned about what a legal code might demand, and each had reservations about

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any attempt to create any kind of legal code for a community that had so deeply embraced autonomy. It was—and is—more the theology of Reform Judaism rather than its halachic methodologies that guide its development of Jewish practice, prayer, and responses to internal and external questions. From Baeck to Borowitz the ideas of ethical monotheism of the neo-Kantian philosopher Hermann Cohen (1842–1918) were of greater significance than the main legal code, the *Shulchan Aruch*. Cohen was the founder of what is known as the Marburg school of philosophy. Of greatest relevance to the present discussion, we note that it was Cohen who transformed the God of traditional Judaism into a “God-idea” and also wrote passionately about Judaism as “ethical monotheism.” This radical new Jewish understanding of the *idea* of God was seen as a break from the traditional notion of the Jewish God revealed by the words and laws of the Bible. Neither did Cohen affirm the God of traditional Jewish philosophy in which there is one understanding of Divinity.¹ Theology rather than law guided their thinking and provided the foundations for their radical departure from a Judaism focused on the limited possibilities of legalistic decision-making. The influence of Cohen’s understanding of Judaism as primarily a prophetic and not a legal tradition trained the focus of liberal thought on ethics. While notable Reform rabbis have continued to engage in a substantial responsa literature,² Reform theologians have focused their attention on the theological and philosophical underpinnings of Jewish life and prayer.

Cohen, as well as his student Franz Rosenzweig (1886–1929) and many others after them, understood human thought to be the root of all statements *about* God. One subsequent attempt to make the God-idea more real is found in the writings of a later German non-Orthodox rabbi, Leo Baeck, who believed that *ethics* must be supported by *faith* in God.³ Thus Baeck’s emphasis on the wisdom of Judaism’s particular applications of theology and ethics, when seen from a universal and rationalist perspective, emerged organically out of the earlier thinking of Hermann Cohen. Baeck also focused on ethics, theology, and peoplehood rather than the legal aspects of Judaism. This neo-Kantian rationalist philosophical stance toward God combined with the later introduction of nonrational elements by thinkers such as Leo Baeck, Martin Buber, and Franz Rosenzweig, who also, at

the same time, maintained a primary concern with ethics, would serve as the foundation of Reform Jewish theology for the next century.⁴

But the most influential statement—and that which would guide the Reform Movement for the next half century—was created in 1885.⁵ Reform rabbis in the United States were led by Isaac Mayer Wise in articulating their understanding of Judaism in the new world:

We hold that Judaism presents the highest conception of the **God-idea** as taught in our Holy Scriptures and developed and spiritualized by the Jewish teachers, in accordance with the moral and philosophical progress of their respective ages. We maintain that Judaism preserved and defended midst continual struggles and trials and under enforced isolation, this **God-idea as the central religious truth** for the human race.⁶

Such emphasis on ethical monotheism and thus Judaism's essence of rational universal ethics and the responsibility to create a society that reflects those ethics guided much of the development of the theology of Reform Judaism in the half century to follow.

Although later thinkers inherited the texts of these rationalists, some mid-twentieth-century American Reform thinkers, attracted to the existentialism of Buber and Rosenzweig, began once again to consider the place of God and halachah in Jewish thought. However, for the most part, leaders of the Reform Movement retained a primary focus on the adaptation of Judaism to modern life in America as the fulfillment of their Jewish duty and wanted it to allow them to be fully American. One of the most prolific thinkers of the question of duty and obligation in Reform Judaism was Rabbi Professor Eugene B. Borowitz. Trained in philosophy and Rabbinic literature, Borowitz found purely rationalist understandings of Judaism inadequate for the emerging spiritual condition of American Jews in the second half of the twentieth century.⁷

The Meta-Halachic Theology of Eugene B. Borowitz⁸

Borowitz's approach to halachah is an essential case study of perhaps the most extended discussion of the theology of halachah in the context of Reform Judaism. Borowitz's work, which

includes hundreds of articles, dozens of book reviews,⁹ letters-to-the-editor,¹⁰ and more than eighteen books¹¹ on Jewish thought and theology that have gained the attention of both scholars and laity made him one of the most influential thinkers of a new breed of American Jewish thinkers.¹² A professor of Jewish thought, Borowitz was considered to be “the premier liberal Jewish theologian at work today,”¹³ the “dean” of contemporary American Jewish thinkers,¹⁴ and “pastor to Jews in a postmodern world.”¹⁵ He was best known in the broader Jewish community as the editor of a pluralistic journal he founded in 1970 called *Sh'ma, a journal of Jewish responsibility*, whose pages often included halachic discussions.

Borowitz was the primary thinker who articulated the religious concerns of non-Orthodox North American Jews in the second half of the twentieth century and early twenty-first century,¹⁶ and in many ways he reconfigured the field of modern Jewish theology.¹⁷ The scope of his work spans the areas of Jewish philosophy, modern and postmodern Jewish theology, ethics, halachah, Jewish-Christian theological discourse, sociology and identity studies, and the language theory and theology of rabbinic texts.¹⁸ Borowitz describes the breadth of his work thus: “To my surprise and consternation, the theological task I early set for myself refused to remain unified, but ramified into three independent, if correlated, foci of interest: (1) the response to our culture, (2) the dialogue with Jewish tradition, and (3) the testing of these ideas in Jewish action.”¹⁹

Between 1964 and 2015 Borowitz wrote about and taught courses in Jewish thought, courses in Jewish thought, philosophy, ethics, and Talmudic readings. His primary focus, however, was theology. He spent a lifetime seeking to create a systematic theology or framework he called “Covenant Theology.” Borowitz coined the term in 1961 as part of his initial attempt to transcend liberal Judaism’s focus on ethics and broaden its theology to include a sense of “duty” and obligation to God, to the Jewish people past, present, and future, while at the same time taking into consideration the postmodern understanding of a covenantal obligation to one’s (autonomous but) Jewish self. Covenant Theology was a move to correct the problems of modernity and its “false messiah” of human autonomy. Instead, Covenant Theology argued that the postmodern Jew is not merely an autonomous

individual, but rather simultaneously a member of a covenantal community, which may, at times, mean that communal concerns will limit even a liberal Jew's autonomy because it increases one's sense of duty to the Jewish people of the past, which includes the texts, the books, the ideas, and even the laws that previous generations understood to be binding.

Initially, in what might be described as his early period, Borowitz sought out "the promise" of existentialism having found the narrowly rationalist and conceptual ideas of God lacking. As his life-long study partner, colleague, and friend Arnold Jacob Wolf (1924–2008) remarked on the intellectual context in which Borowitz's thought developed:

Hermann Cohen, Martin Buber, Leo Baeck, and Franz Rosenzweig were not mere names to us . . . They were symbols of the task we knew we had inherited: to reconfigure and to reassemble Jewish thinking in the world in which we grew up and in which we were to find our intellectual tasks.²⁰

While the existentialism of Martin Buber and others appealed to Borowitz and some of his colleagues because it not only "restores a real God to us, but one who now has sufficient regard for human freedom such that people become partners in revelation,"²¹ Borowitz eventually found that he still needed to search for "a less inadequate language of Jewish theology."²²

Borowitz framed the "theological challenge to non-Orthodoxy" as the challenge "to identify an Absolute (God) weak enough to allow for human self-determination yet absolute enough to set the standards for autonomy's rightful use."²³ This irresolvable tension between covenantal duty (the authority of the tradition) and the Jewish self's autonomy (conscience) proved to be the focus of much of his thought in a later stage of his work. The very fact that for Borowitz the tension was irresolvable caused many traditional as well as liberal Jewish readers to view it as a central problem in Borowitz's theology. Yet it is *precisely* the decision to give primacy to the tradition while *at the same time* maintaining a measure of autonomy for the Jewish self that is the uniqueness of his theology. He called this tension "freedom-in-covenant."²⁴ This dual emphasis on duty and autonomy is what made his theology of halachah so unique.

It is important to note that while some classified Borowitz as a Reform theologian, others saw him—and he saw himself—more as a liberal (non-Orthodox) theologian, writing for and speaking to a wider audience of North American Jews in their postmodern reality and not solely the membership of a particular denomination.²⁵ On several occasions he clarified his goal to create a new theology relevant for non-Orthodox Jews and not only for the Reform community.²⁶ His understanding of the wider need to establish a serious theological and learned cross-denominational discussion led him to found in 1970, and edit for twenty-three years, the periodical *Sh'ma, a journal of Jewish responsibility*.²⁷ This concern for a shared Jewish theological language and for pluralism within Jewish communal life as well as in his theological writings was demonstrated in a variety of articles and conference presentations.²⁸ It is in this particular historical and sociological context that Borowitz's works met an interested community of readers. The questions he began to raise about God and about the secular Jew's identity and ethics were also on the agenda of the intellectual community of American Jewry.²⁹

We stopped relying on our traditional God to save us and instead put our faith in humanity's power to create justice. Borowitz argued:

[We now] expected that education, cultural creativity, economic expansion, and political action—not observance of the Torah—would bring us to a Messianic age. **Ethics became our surrogate for *mitzvot***; the concert hall, bookstore, and university replaced the *bet midrash*. Those who still talked of God largely meant an idea that unified their ever-expanding humanistic worldview . . . In sum, non-Orthodox American Jewish spirituality, in ways typical of every modernized Jewry, now sought human fulfillment through Western culture rather than through the Written and Oral Law.³⁰

While social justice appeared to be the core of the theological agenda at the close of the nineteenth century, the first part of the twentieth century would witness a transition toward a greater openness to what some called the capacity of God to respond to individual needs. They argued that the members of the CCAR should publish and teach about emotional and spiritual healing

of the Jewish religion “while keeping with the principles and traditions of Judaism.”³¹ This concern with the resources and challenge of modern psychology would continue as a theme for many Reform rabbis, and by 1937 the Hebrew Union College offered an elective course in pastoral psychology.³²

To a great extent, this expansion and reorientation of the theological concerns of American Reform rabbis can be felt in the 1937 Columbus Platform, written largely by Samuel S. Cohon (1888–1959).³³ In it the God-idea so central to the 1885 document is not specifically present; rather, God is described as the “creative source” of “all existence” and as the “indwelling Presence of the world,” revealed “in the vision and moral striving of the human spirit.”³⁴ The document reflected Cohon’s attempts to bridge two worlds, that of rational inquiry and scientific methodology and “the world of the holy, the non-rational basis of religion.”³⁵ Cohon saw the need for not only a new platform to adequately express the reoriented theological sentiments of Reform leadership but a new liturgy as well.³⁶ These efforts at “bridging” would characterize one of the central creative tensions in the theology of Reform Judaism until and following the Second World War. Yet it was not until after the war that the extent to which the ideas of modernity were no longer adequate to answer the religious needs of American Jewry would become apparent. As Borowitz terms this initial stage, it was the period in which an increasing number of Jewish intellectuals and rabbis would understand the extent to which modernity was the “betrayers.”³⁷

Covenant Theology: Moving from “Obedient Observance” to “Authentically Living”

While Borowitz committed himself in the 1960s to the idea of what he was the first to call “Covenant Theology,” the idea that covenant was essential to a future for non-Orthodox theology, he also sought to understand and repeatedly consider whether or not halachah—as a concept and as a procedure—should occupy a more significant place in his theological writing.³⁸ In particular, throughout the following stages of Borowitz’s thought, the questions of autonomy and authority play an increasingly larger role.

Borowitz initially takes a classic Reform view of halachah, even a liberal version of it, as that which can “guide but not govern”³⁹

appropriate behavior, but Arnold Eisen stresses that Borowitz is aware that “he cannot guide, let alone command.” If each Jew decides how to live the covenant out of the depth of knowledge and in terms of his/her own deepest commitment, Borowitz avers, as Eisen notes, that “whatever we choose from the past or create for the present should rest upon us with the full force of commandment.”⁴⁰ In other words, Borowitz argues for a new kind obligation, the obligation of covenantal duty.

In the section of his *Reform Judaism Today*, based on his commentary on the CCAR 1976 Centenary Perspective, Borowitz writes:

Our founders stressed that the Jew’s ethical responsibilities, personal and social, are enjoined by God . . . Within each area of Jewish observance Reform Jews are called upon to confront the claims of Jewish tradition, however differently perceived, and to exercise their individual autonomy, choosing and creating on the basis of commitment and knowledge.⁴¹

And later in the same volume he clarifies the general rejection of traditional halachah in the Centenary Perspective:

The document must be understood as rejecting the possibility that traditional Jewish discipline, Halachah as it is understood in Orthodoxy, can be a part of Reform Judaism. For Halachah says that regardless of personal will, the individual must do what the Torah says. Such a doctrine is incompatible with Reform Judaism’s teaching about personal autonomy.⁴²

While Borowitz could define this rejection of Orthodox halachah by the rabbinic body of the Reform Movement and knew full well the complex history of the debate between “governance” and “guidance,” he repeatedly re-emphasized the notions of duty, obligation, and “the commanding presence of God.”⁴³

In 1984, Borowitz outlined four basic aspects of “the Jewish self” using terminology we would hear echoes of and additions to in the decades that followed.⁴⁴ The four core aspects are: (1) “the Jewish self is personally and primarily involved with God. Jewishness is lived out of a relationship with God that precedes, undergirds, and interfuses all the other relationships of the Jewish self”;⁴⁵ (2) “inextricably bound up with the first,” the Jewish self participates in the Jewish people as part of its ongoing

relation with God. All forms of radical individualism on the human level are negated by this stance. "The Jewish self will be concerned with the community which is so great a part of its selfhood . . . For the sake of community unity, the Jewish self will often undoubtedly sacrifice the exercise of personal standards";⁴⁶ (3) The Jewish self is "historically rooted as well as Divinely and communally oriented." We are similar to, and therefore ought to behave like, those who preceded us and thus "we will substantially rely on their guidance in determining our Jewish duty. But not to the point of dependency or passivity of will";⁴⁷ and, finally, (4) the Jewish self is "sensitized to more than the present and its call to decision. All persons, as I see it, but certainly Jews, should put the immediate exercise of autonomy into the framework of attaining personal integrity."⁴⁸ So while law plays a greater role than in the majority of earlier non-Orthodox theology, "this does not rise to the point of validating law in the traditional sense, for personal autonomy remains the cornerstone of this piety."⁴⁹ Even while he celebrates the autonomy of the Jewish self, Borowitz carefully clarifies where the authority lies in cases of a conflict between the authority of the tradition and the autonomy of the individual: "But in the clash between a pressing, immediate insight and an old, once-valuable but now empty practice, we will know ourselves authorized to break with the past and do acts which more appropriately express our deepest commitments."⁵⁰ It is with this last statement that Borowitz further develops his own response to the dilemma that we saw earlier between authority and autonomy that Rosenzweig raises.

As Borowitz focuses on the concept of the Jewish self and the question of observance more directly in the same essay, he states again (and repeatedly elsewhere) that his position follows that of Rosenzweig:

From a relational perspective, the Jewishness of the Jewish self should now be seen less in its obedient observance than in its authentically living in Covenant . . . I would add, again following Rosenzweig, that everything one then did and not merely some delimited activities would be Jewish.

In seeking authenticity, Borowitz maintains the fullness of the authenticity of the self's experience. "Against Rosenzweig," however,

he writes, “I do not see how, even in principle, Jewish law can be imposed on such a Jewish self. Rather with autonomy essential to selfhood, I avidly espouse a pluralism of thought and action stemming from Jewish commitment.” Borowitz does not fail to address the question of how such autonomy could possibly lead to sustaining communal norms:

I also look forward to the day when enough Jewish selves autonomously choose to live in ways sufficiently similar that they can create common patterns among us. A richly personal yet Jewishly grounded and communally created Jewish style or way would be the autonomous Jewish self’s equivalent of “*halakhah*.”⁵¹

Thus, several aspects of the dilemma of the clash between autonomy and tradition are directly addressed in this essay. Borowitz’s outlining of a strategy for how the Jewish self might engage with the tradition, while still confirming the self’s autonomy, certainly moves a step forward in further clarifying the central dilemma of modernity.

In several of his essays, Borowitz focuses on the question of law—of halachah per se—and even oversaw and experimented with the creation of Reform halachah over many years—even editing and publishing a collection in 1994 of the work of his students entitled *Reform Jewish Ethics and the Halakhah*.⁵² He remained convinced that liberal Jews needed to focus on the idea of covenant and not law or ethics:

Over the millennia Judaism has been far more concerned with action than with thought, a consequentialism still manifest among Jews today and central to contemporary Jewish religious thought. I therefore had long believed I could test something of the Jewishness of my thinking by employing it as a meta-*halakhah* and seeing what obligations it directed me to.

I have mostly carried on this inductive program by working on specific issues in applied Jewish ethics, such as our societal, sexual, business, and interreligious responsibilities. In my recently published collection of these papers, *Exploring Jewish Ethics . . .* I have carried out the third item on my agenda: the testing of these ideas in Jewish action.⁵³

Initially, much of Borowitz's writing focused on the relevance of existentialist thought, on Covenant Theology, on ethics, and on the condition of the American liberal Jew. But in his 1984 essay, "The Autonomous Jewish Self," Borowitz takes a significant turn in his thinking and focuses on the question of authority, clarifying the limited nature of the autonomy of the Jewish self. He begins, as he often did, with the problem of a lack of authority or absolute "duty" in the writings of the philosopher Martin Buber:

Buber never clarified how he made his intellectual way from individual "command" to national duty. When pressed on this issue, he insisted on an uncompromising individualism with all its universalistic overtones . . . To meet our particularistic needs we must find a way to reshape Buber's relationally autonomous self so that it has a direct, primary, ethnic form. I suggest, prompted by some hints in Rosenzweig, that my sort of liberal Jew is constituted by existence in the Covenant.⁵⁴

In this essay Borowitz moves beyond Rosenzweig by identifying more concretely precisely what such a notion of covenantal commandedness might imply about Jewish duty and Jewish life. In his review for the *New York Times* of the English translation of Rosenzweig's master theological treatise, *The Star of Redemption*, Borowitz notes that today—October 3, 1971—while most Americans are likely to identify with Rosenzweig's "search for a value base for a better life-style," they are "likely to find only his struggle, not his answers, appealing." But Borowitz himself was passionately drawn to Rosenzweig throughout his life because "Rosenzweig created the most compelling model yet known of what it might mean to live as an autonomous Jew, as a non-Orthodox but serious, hence post-liberal, existential Jew."⁵⁵

Both in his early and later writings, Borowitz's theology emphasizes that God's age-old covenant with Israel is still binding. Borowitz defines a serious Jew as one who has "a living relationship with God as part of the people of Israel and therefore lives a life of Torah." Arnold Eisen, attempting to distinguish between traditional commandments regarding ritual practice, understands that Borowitz's proposal for a covenantal—and not legalistic—sense of obligation emphasizes that for Borowitz, "prescribed

duties—both ethical and ritual—flow from this [covenant] relationship.” So does involvement in the life of the Jewish people as a whole and with the State of Israel: “The Covenant, being a collective endeavor, can best be lived as part of a self-governing Jewish community on the Land of Israel. A good Jew will seriously consider the possibility of *aliyah*.”⁵⁶

Eisen aptly describes the context in which Borowitz is making an argument for the authority of the covenantal aspect of Judaism. Eisen offers a “retrospective of two decades of American Jewish theology,” which was published in 1991, just before the appearance of Borowitz’s *Renewing the Covenant*:

Borowitz knows, however, that the vast majority of Reform readers will not give that option serious consideration, any more than they will assume their covenantal duties in more than rudimentary fashion. What is more, he himself cannot accept the Torah (written or oral) as divine revelation, and is unwilling to compromise his commitment to the autonomy of each individual believer.⁵⁷

Indeed, while Borowitz affirms the place of autonomy in Reform Judaism, he also attempts to create in his own theology a greater place for the authority of the tradition. While Eisen notes correctly that Borowitz makes “no special claims to ‘authority,’” he might have underestimated Borowitz’s ultimate goal “to persuade” liberal Jews to make choices that would then have the “full force of commandment.” Eisen continues:

He [Borowitz] can suggest appropriate behavior but he cannot guide, let alone command. If each Jew decides how to live the covenant out of the depth of knowledge and in terms of his/her own deepest commitment, Borowitz avers, “whatever we choose from the past or create for the present should rest upon us with the full force of commandment.”⁵⁸

Making knowledgeable choices about Jewish tradition was an emphasis Borowitz gave to his commentary on the CCAR Centenary Perspective, of which he was the principal author. But that these choices should “rest upon us with the full force of commandment” was something few of his colleagues and students were necessarily willing to accept. But one thing did bind

together most of his colleagues and students: an absolute and Jewish commitment to ethics. Understanding the limits of a general acceptance of any kind of authority of the commandments, whether or not it rested on an ethical foundation, kept Borowitz searching for the kind of system that would grant a more central role for God and covenant.

Borowitz understood that ethics remained at the heart of liberal Judaism even though he believed that the demands of community and covenant should—at times—trump the autonomy of the individual. In much of his writing, halachah is rejected on principle. This general questioning of the authority of the tradition in Borowitz's writing caused Arnold Eisen (then a professor of modern Judaism at Stanford University and currently the chancellor of the Conservative Movement's Jewish Theological Seminary) to question the role of authority in Borowitz's thought altogether while equating the results with what takes place in the process of halachic discourse in the Conservative Movement:

What authority remains? Borowitz seems to rely (as did Kant and Buber, in differing ways) on an inborn sense of duty or conscience that summons each and every human being. He relies, too, on his Jewish readers' unwillingness to sever the ties linking them to their parents, grandparents, and the Jewish past more generally, however much they might strain these ties to the breaking point. Conservative colleagues wrestling with the same issues—and appealing to "*mitzvah*" and "tradition" rather than "covenant" and "ethics"—find themselves in a similar sociological situation, with similar theological results.⁵⁹

While Eisen aptly compares the "theological results" as well as correctly notes Borowitz's focus on duty rather than the "more" halachically binding notion of *mitzvah*, Eisen fails to understand that, for Borowitz, the notion of covenant and duty are in fact binding, albeit in very different ways.

The Liberal "Posek" in Borowitz's Covenant Theology

A close reading of the concluding chapter of *Renewing the Covenant* reveals that Borowitz proposes a parallel liberal process to the Orthodox halachic decision-making process. In considering how Covenant Theology might function regarding specific

legal questions in Reform Judaism, Borowitz suggests the idea of a liberal *posek*, a halachic legal decision-maker. Borowitz bases this notion of a Covenantal *posek* on the fact that all halachic *poskim* are inherently making decisions based on their own human autonomous sense of Torah. In Orthodox Judaism the *posek* ultimately bases their authority on their general “knowledge/sense” of Torah and thus their “personal intuition of our Jewish duty” that grows out of their “learning and piety but [is] finally valid as the insight of a Torah personality.” By definition, all legal interpretations flow from the approach and understanding of the particular legal authority. Borowitz emphasizes the role of the individual in halachic decision-making in order to create a parallel possibility in liberal Judaism: “I have in mind something similar, a non-orthodox self that is autonomous yet so fundamentally shaped by the Covenant that whatever issues from its depths will have authentic Jewish character.”⁶⁰ Determining when or how to train or educate toward “a self that is fundamentally shaped by the Covenant” is left to the reader, as is a defined system of such an application. An analysis of the multiple examples he brings of how such a *posek* would operate and when and how we would know if “whatever issues from its depths” is or isn’t flowing from a sense of Covenantal duty is beyond the limits of this essay, yet the possibility of such a liberal halachic *posek* is essential to Borowitz’s theology.

A modernized halakhic process could have considerable Jewish value, but we shall know what constitutes “flexibility” only when we have been personally persuaded of the validity of its theory of Jewish decision making are we likely to make its rulings our law . . . I think it unlikely that a non-Orthodox religitimation of Jewish law would have either theoretical success or practical effect. I therefore turn first to the theological task and only then inquire what kind of Jewish discipline it engenders.⁶¹

This redefining of the *posek* in a liberal non-Orthodox context as applying to the individual knowledgeable Jew making decisions about what Borowitz calls “Jewish duty” based on his or her own “knowledge/sense” and “the legislative authority of his or her own personal intuition” is key to how Borowitz understands the potential role of such persons in the liberal community:

I have in mind something similar, a non-Orthodox self that is autonomous yet so fundamentally shaped by the Covenant that whatever issues from its depths will have authentic Jewish character. The secular conception of autonomy must be transformed in terms of its Covenantal context.⁶²

Another example of Borowitz's theological halachic concern can be found in a 1987 essay entitled "The Blessing Over a Change of Wine: A Study in the Development of a Jewish Law."⁶³ Published in honor of the eightieth birthday of his friend Nathaniel Hess, Borowitz's essay offers a light-hearted and still serious analysis of an obscure—for most liberal Jews—blessing that the halachah prescribes to be recited over a glass of wine that is of higher quality than the wine over which God was just previously blessed. Generally, God is blessed before one consumes wine or grape juice with a familiar blessing ending in "*borei p'ri hagafen*": "Blessed are You, Adonai our God, Sovereign of the Universe, Creator of the fruit of the vine." But if one shortly thereafter is about to consume a wine of a higher quality, one adds an additional blessing: "Blessed are You, Adonai our God, Sovereign of the Universe who is good and does good." God is described in this blessing as: *HaTov V'HaMetiv* (God the Good One), Who is primarily to be praised for all the goodness in our lives that we often may not recognize. Borowitz plays with the various categories of blessing and rests on this formula as that which should be recited on such an occasion.

Borowitz's "Unfinished" Theological Halachic Tasks

Throughout his life and work, Borowitz sought to offer liberal Jews a theological system that might have the force that Jewish law or universal ethics have in other contexts. Yet there were two issues in particular with which Borowitz wrestled especially in the last couple of decades of his life. The first was the question of rabbinic officiation at intermarriages and the second was whether or not he should sign the ordination certificates of openly gay or lesbian rabbis (note: these were the only categories he understood—or were broadly debated—in his world at the time). While many of his colleagues disagreed with his original position on each issue, it is important to note that Borowitz employed

halachic categories *together with* the five premises of Covenant Theology he had developed in order to determine his views.⁶⁴ In both cases he initially arrived at negative conclusions; that is, no, he should not officiate at intermarriages because of how he understands his duty to the Covenant, yet he respects with his “capacious pluralism” the view of colleagues who have reached other conclusions. And for decades he held the position that he could not sign the *s’ michah* documents of openly gay and lesbian candidates for ordination at HUC-JIR. In taking both of these positions, while painful for him and extremely painful for many others, he believed he was following the system of Covenant Theology in considering not just what an individual Jewish self might require, and not just what God might require, but what the Jewish people—past, present, and future—required of him. Toward the end of his life, his position on both issues changed upon learning more deeply how these realities function for the Jewish people at present and that the assumption that they would have a negative impact for the future, which had initially deterred him, had, in fact, proven erroneous.

Fortunately the present and future generations can learn from and witness Borowitz himself responding to some of these questions and these unfinished tasks in a session recorded less than a year before his death.⁶⁵ In shifting his position on both issues he indicated that this change was based on an evolving understanding of the reality and the “covenantal duty” involved, just as other halachic decisions have changed over time when a medical or sociological understanding of a human reality evolves.

Along with these challenging issues and a life devoted to the question of what God still demands of us, we can conclude that for Borowitz, Covenant Theology and its demand for serious commitments and limited autonomy of the Jewish self made it essentially the equivalent of a halachah. Reaching that goal, was, in fact, what Borowitz aspired to all along:

I also look forward to the day when enough Jewish selves autonomously choose to live in ways sufficiently similar that they can create common patterns among us. A richly personal yet Jewishly grounded and communally created Jewish style or way would be the autonomous Jewish self’s equivalent of “*halakhah*.”⁶⁶

Notes

1. Hermann Cohen, *Religion of Reason: Out of the Sources of Judaism*, trans. Simon Kaplan (Atlanta: Scholars Press, 1995), 327ff (first edition published in Leipzig in 1919).
2. For information on Reform Responsa literature, which goes back to the nineteenth century, see the work of the *CCAR Responsa Committee* and Rabbi Solomon B. Freehof (1892–2009).
3. Leo Baeck, *The Essence of Judaism*, trans. Victor Grubwieser and Leonard Pearl (London: Macmillan, 1936).
4. For a study of the influence of Rosenzweig, Baeck, Buber, and Heschel on the theology of Eugene Borowitz, see chapter 2 of my dissertation “Freedom-in-Covenant: God, Duty and Autonomy in the Covenant Theology of Eugene B. Borowitz.”
5. Michael Meyer, *Response to Modernity: A History of the Reform Movement in Judaism* (Oxford: Oxford University Press, 1988), 265.
6. For the full text of the 1885 Pittsburgh Platform, see <http://ccarnet.org/documentsandpositions/platforms/>.
7. Eugene B. Borowitz, *Studies, Studies in the Meaning of Judaism* (Philadelphia: Jewish Publication Society, 2002), 3 and “A Life of Jewish Learning,” 388ff.
8. Eugene Borowitz taught at the Hebrew Union College in New York from 1964 until the year before his death in 2016. It is beyond the scope of this essay to assess his influence, but one can note that after he had taught at HUC for only four years, in 1968 the sociologist Charles Liebman published an article based on a study in which Borowitz emerged as one of the most significant teachers and influencers at a Jewish seminary. See Charles Liebman, “The Training of American Rabbis,” *The American Jewish Yearbook* 69 (1968): 3–112. The *New York Times* obituary can be found here: <https://www.nytimes.com/2016/01/31/us/rabbi-eugene-b-borowitz-reform-leader-dies-at-91.html>. His influence can also be seen in (1) the *festshrift* published on the occasion of his seventieth birthday, Lawrence A. Hoffman and Arnold J. Wolf, eds., *Jewish Spiritual Journeys* (West Orange, NJ: Behrman House, 1997); (2) the Fall 2009 issue of the *CCAR Journal*, offering essays presented at the event in honor of Borowitz’s eightieth birthday, including the present author’s paper: “Freedom-in-Covenant: The Contours and Challenges of Eugene B. Borowitz’s Theological Quest”; and, of course, (3) the many eulogies offered at Borowitz’s passing in January 2016. A selection of the eulogies and articles can be found at <http://huc.edu/news/2016/01/23/dr-eugene-b-borowitz-zl-beloved-rabbi-scholar-faculty-member-and-dean-american>.

9. Between 1945 and 1968 Borowitz published over a hundred articles and book reviews, and he published two books during the same period: *A Layman's Introduction to Jewish Existentialism* (Philadelphia: Westminster Press, 1965) and *A New Jewish Theology in the Making* (Philadelphia: Westminster Press, 1968). By the end of 2007 Borowitz had published eighteen more books and hundreds more articles and book reviews.
10. Letters from the readers of *Commentary* magazine in response to Borowitz's articles can be found, for example, in *Commentary* (November 1961): 440–41 and *Commentary* (April 1962): 347–48.
11. Titles of these books are shared throughout this paper.
12. For evaluations of Borowitz's significance in the field see Peter Ochs, "Borowitz and the Postmodern Renewal of Theology," in *Reviewing the Covenant: Eugene B. Borowitz and the Postmodern Renewal of Jewish Theology*, ed. Ochs and Borowitz (Albany: SUNY Press, 2000), 111–44; David Ellenson, "Eugene B. Borowitz: A Tribute on the Occasion of His 70th Birthday," *Jewish Book Annual* 51 (1993–1994): 135; Alan L. Mittleman, Review of *Renewing the Covenant* in *First Things* 30 (February 1993): 45; Leora Batnitzky, "Postmodernity and Historicity: Reflections on Eugene Borowitz's Postmodern Turn," *Religious Studies Review* 27, no. 4 (October 2001): 363–69; S. Daniel Breslauer, "Building a Postmodern Reform Judaism: The Example of Eugene B. Borowitz," in *Platforms and Prayer Books: Theological and Liturgical Perspectives on Reform Judaism*, ed. Dana E. Kaplan (Rowman and Littlefield Publishers, 2002), 129–54; Arnold M. Eisen, *The Chosen People in America* (Bloomington: Indiana University Press, 1983); and Arnold M. Eisen, "Autonomy, Community and Covenant: Liberal Judaism Confronts the Twenty-First Century," in *Freedom and Responsibility: Exploring the Challenges of Jewish Continuity*, ed. Rela Mintz Geffen and Marsha Bryan Edelman (Hoboken, NJ: KTAV, 1998), 197–205. See also this author's article, "'Freedom-in-Covenant': The Development of the Theology of Eugene B. Borowitz," *Journal of Jewish Ethics* (March 2014).
13. David Novak, Book Review of Eugene B. Borowitz's *The Talmud's Theological Language-Game*, *Journal of Religion* 87, no. 2 (April 2007): 305.
14. See biography at <http://www.huc.edu/faculty/faculty/borowitz.shtml>. See also Peter Ochs, Preface, *Reviewing the Covenant*, vii.
15. Peter Ochs, "The Emergence of Postmodern Jewish Theology and Philosophy," in *Reviewing the Covenant*, 3.
16. For the most inclusive collection of Borowitz's work, see "A Life of Jewish Learning: In Search of a Theology of Judaism," in *Studies in the Meaning of Judaism*.

17. See collection of essays in *Jewish Spiritual Journeys*, ed. Hoffman and Wolf. Hoffman writes that Borowitz “created the field of modern Jewish theology.” In a review of *Renewing the Covenant*, Alan Mittleman writes: “Borowitz has long helped to redefine the terrain of Jewish theology in America.” See Mittleman, Review of *Renewing the Covenant*, 45. In a review of *Renewing the Covenant*, Neil Gillman writes: “He [Borowitz] has been the articulate spokesman for all of us who have insisted on the legitimacy of a nontraditionalist approach to Jewish belief and practice, without drifting down the slippery slope into radical relativism and anarchy.” Book jacket cover, 1991 JPS edition.
18. Among the eighteen books that Borowitz has authored are *The Mask Jews Wear: The Self-Deceptions of American Jewry*, which received the National Jewish Book Award in 1974 in the field of Jewish thought; *Renewing the Covenant: A Theology for the Postmodern Jew* (Philadelphia: Jewish Publication Society, 1991), Borowitz’s cumulative statement of his postmodern theology; and more recently, an evaluation of the role of theology and agadah in the Talmud in *The Talmud’s Theological Language-Game* (2006).
19. Borowitz, *Renewing the Covenant*, ix.
20. Arnold J. Wolf, “The Making of Gene Borowitz,” in *Jewish Spiritual Journeys*, ed. Hoffman and Wolf, xxi.
21. Borowitz, “A Life,” 389, 395.
22. Ibid, 95. See also Borowitz, “Comments [on lecture, “Baeck’s and Buber’s Social and Political Thought”],” in *Leo Baeck Memorial Conference on Jewish Social Thought* (New York: American Federation of Jews from Central Europe, 1974). When, in the early 1990s, HUC students asked Borowitz to name the most influential books for him, he cited Martin Buber’s *Moses* and Leo Baeck’s *This People Israel* and later *The Essence of Judaism* as crucial to his own thinking. (Letter to the present author, June 1993).
23. Borowitz, *Renewing the Covenant*, 78
24. For further discussion of this term see the present author’s doctoral dissertation and forthcoming book *Freedom-in-Covenant: God, Duty and the Autonomous Jewish Self in the Theology of Eugene B. Borowitz*.
25. In the preface to his 1969 book *How Can a Jew Speak of Faith Today*, Borowitz notes that he seeks to address “the entire Household of Israel.” He writes: “Since I speak about Judaism, albeit from a non-Orthodox perspective, I am desirous of indicating what I understand to be the broad area of agreement between myself and other Jews, as well as to delineate the lesser area of our disagreements. It is also important to me that the theology be meaningful

- not to one class of Jews only, say the academic or the sentimental." See Eugene B. Borowitz, *How Can a Jew Speak of Faith Today?* (Philadelphia: Westminster Press, 1969), 8. Thus when he wrote his culminating work on covenant theology, *Renewing the Covenant*, thirty years later, he gave it the subtitle: *A Theology for the Postmodern Jew*. See also Borowitz's understanding of his transdenominational role in *Renewing the Covenant*, ix.
26. See for example his 1989 essay entitled "B'rit, Mitzvah and Halakha: In Search of a Common Vocabulary," adapted from a tape made at a 1989 conference sponsored by CLAL to discuss the possibilities and limits of interdenominational Jewish cooperation, printed in Eugene B. Borowitz, *Judaism After Modernity: Papers from a Decade of Fruition* (New York: University Press of America, 1999), 119–24.
 27. Eugene B. Borowitz, "At the Beginning," *Sh'ma* 1, no. 1 (November 9, 1970): 5–7. The journal was later published by CLAL, then by Jewish Family Life, and then independently until it published its final issues online in 2019. In other words, the pluralistic journal he created was published regularly for fifty years.
 28. See for example Eugene B. Borowitz, "Religious Pluralism: A Jewish Perspective" (in collaboration with Sherry Blumberg), in *Religious Pluralism and Religious Education*, ed. Norma H. Thompson (Birmingham: Religious Education Press, 1988), reprinted in *Judaism After Modernity*; and "Respecting Limits in Pluralism," *Sh'ma* 29, no. 561 (April 1999). For a review of Borowitz's concern for pluralism in Jewish life, see Rachel Sabath Beit-Halachmi, "The Gifts and Limits of Pluralism: Reflecting on the Thought of Eugene Borowitz," in *Sh'ma* (March 2006): 12–13. For the full audio recording of a session at the 37th Annual Association for Jewish Studies conference honoring Borowitz's work in the area of pluralism, go to http://www.shma.com/37_ajs.phtml. The April 1999 issue of *Sh'ma* includes essays by Borowitz and others on the pragmatics of pluralism in Jewish life.
 29. Regarding Borowitz's role, through the work of *Sh'ma*, in responding to the American Jewish agenda, see Carolyn Toll Oppenheim, ed., *Listening to American Jews: Sh'ma 1970–1985*. Collection of *Sh'ma* articles published privately for its long-term subscribers by *Sh'ma* (1986).
 30. Borowitz, *Renewing the Covenant*, 5 (emphasis added).
 31. Meyer, *Response*, 315.
 32. *Ibid.* Borowitz's sense of the significance and influence of psychology and the understanding of the self on the development of the theological possibilities after the Second World War appears throughout his writings. The most comprehensive account can be found in Borowitz, *Renewing the Covenant*, 25ff.

33. Meyer, *Response*, 318–19. See also Jakob Petuchowski, Introduction to Samuel S. Cohon’s collected *Essays in Jewish Theology* (Cincinnati: Hebrew Union College Press, 1987), xi–xiv.
34. Platform 1937, available at <http://ccarnet.org/documentsandpositions/platforms/>. Notably the 1937 Platform re-emphasized the religious and ritual aspects of Judaism and endorsed political and cultural Zionism.
35. Petuchowski, Introduction, xii–xiii. Regarding Borowitz’s challenge to Cohon’s methodology as a student, see Borowitz, “A Life of Jewish Learning,” 388.
36. Meyer, *Response*, 320; Petuchowski, Introduction, xii.
37. Eugene B. Borowitz, *Renewing the Covenant*, 19ff. “Modernity the Betrayer” is the title of the second chapter of Borowitz’s cumulative and apologetic theology.
38. Eugene Borowitz, “The Authority of the Ethical Impulse in Halakhah,” in *Through the Sound of Many Voices: Writings Contributed on the Occasion of the 70th Birthday of W. Gunther Plaut*, ed. Jonathan Plaut (Toronto: Lester and Orpen Dennys, 1982). Reprinted in *Studies in Jewish Philosophy*, ed. Norbert M. Samuelson (Lanham, MD: University Press of America, 1987). Also reprinted as “On the Ethical Moment in Halakhah: A Disagreement with Aharon Lichtenstein,” in Eugene B. Borowitz, *Exploring Jewish Ethics* (Detroit: Wayne State University Press, 1990).
39. This phrase is based on the work of Rabbi Samuel B. Freehof (1892–1990), a rabbi and scholar who focused on responsa literature and responded to questions of Reform Jews. While he was “opposed to any attempt to create a code of Reform practice, he nevertheless called for Reform Judaism to turn to the *halakhah*, not in order to adhere to codified law, but to be guided in ritual and in all areas of life by its values and its ethical insights. For Reform Jews, Jewish law was to offer ‘guidance, not governance,’ and this guidance was to be provided through the writing of *responsa*, individual rulings based on legal precedent, written by an organized rabbinic authority in response to questions about real-life situations.” Excerpted from introduction to Joan S. Friedman, “Guidance, Not Governance”: *Rabbi Solomon B. Freehof and Reform Responsa* (Cincinnati: Hebrew Union College Press, 2013).
40. Arnold Eisen, “Jewish Theology in North America: Notes on Two Decades,” *American Jewish Year Book* 1991, 11.
41. Eugene B. Borowitz, *Reform Judaism Today* (New York: Behrman House, 1978), xxii–xxiii.
42. *Ibid.*, 120–21. Excerpted from the section entitled “Ten Affirmations of Autonomy.” The book was initially three volumes entitled

(1) *Reform in the Process of Change*, (2) *What We Believe*, and (3) *How We Live*.

43. Borowitz, *Renewing the Covenant*, 133.
44. Borowitz, *Renewing the Covenant*, 288ff.
45. Eugene B. Borowitz, "The Autonomous Jewish Self," in *Exploring Jewish Ethics*, 182.
46. *Ibid.*, 182–83.
47. *Ibid.*, 183.
48. *Ibid.*
49. *Ibid.*, 44.
50. *Ibid.*
51. *Ibid.*, 184.
52. Eugene B. Borowitz, ed., *Reform Jewish Ethics and the Halakhah* (West Orange, NJ: Behrman House, 1994).
53. Borowitz, *Renewing the Covenant*, xi–xii.
54. Borowitz, "The Autonomous Jewish Self," 181.
55. Eugene B. Borowitz, "Judaism as a Life-Style for Today: *The Star of Redemption*," Book Review in the *New York Times*, October 3, 1971.
56. "Eugene B. Borowitz, *Liberal Judaism* (New York: UAHC, 1984), 129–36.
57. Eisen, "Jewish Theology in North America," 10.
58. *Ibid.*, 11. He notes: See Eugene B. Borowitz, *Reform Judaism Today* (New York, Behrman House, 1978). Lawrence Hoffman calls Borowitz the principal theological influence upon the Reform siddur *Gates of Prayer* (New York: CCAR, 1975). See Lawrence Hoffman, ed., *Gates of Understanding* (New York: CCAR, 1977), 6.
59. Eisen, "Jewish Theology in North America," 11.
60. Borowitz, *Renewing the Covenant*, 284.
61. *Ibid.*, 287–88.
62. *Ibid.*, 284.
63. Borowitz, "The Blessing Over a Change of Wine: A Study in the Development of a Jewish Law," republished in *Studies in the Meaning of Judaism*.
64. Regarding his position on officiating at an intermarriage, see Borowitz, *Renewing the Covenant*, 297–99. Regarding his thinking on the ordination of gay and lesbian rabbis, see, for example, Borowitz, "On Homosexuality and the Rabbinate, a Covenantal Response," originally published in the *CCAR Yearbook* (1989) and the pamphlet *Homosexuality, The Rabbinate and Liberal Judaism* (1989). Reprinted in *Exploring Jewish Ethics*, 270–84 and *Renewing the Covenant*, 138, 190, and 273–74. Borowitz's concern for normative behavior is also apparent in an unpublished letter to the 1997 graduating Rabbinic School class of HUC-JIR/New York, in

response to their letter to him on the subject of his position against ordaining gay rabbis, June 6, 1997. See also this author's article "The Gift and Limits of Pluralism in the Thought of Eugene B. Borowitz," in *Sh'ma, a journal of Jewish responsibility*. (March 2006): 12–13. By 2013, Borowitz began signing the ordination certificates of many rabbis whose *s'michah* he had previously refused to sign or who had not asked him to sign. See also Yoel Kahn, "Judaism and Homosexuality: The Traditionalist/Progressive Debate," *Journal of Homosexuality* 18, no. 3–4 (1989): 47–82. Reprinted in *Homosexuality and Religion*, ed. Richard Hasbany (New York: Haworth Press, 1989).

65. See the author's discussion with Borowitz on these subjects, recorded in February 2015, less than a year before his death: "Challenges of Faith in Our Time: Unfinished Tasks of Liberal Theology," <http://huc.edu/academics/learn/challenges-faith-in-our-time-unfinished-tasks-liberal-theology>.
66. Borowitz, "The Autonomous Jewish Self," 184.

The CCAR Responsa Committee: A History

Joan S. Friedman

Prior to the encounter with modernity, Jews (excepting Karaites and isolated groups such as the Beta Israel of Ethiopia) constituted, in Moshe Halbertal's phrase, a classic text-centered community, i.e., a community in which agreement on a common text defines the boundaries of the community and makes it cohesive.¹

The shared text may be a source of conflicting beliefs and practices, but the community recognizes that it alone must be used to justify them all . . . It is a procedural agreement that all practices, beliefs, or institutions, whatever they may be, are to be justified in reference to the text, as an interpretation of the text. In a text-centered community . . . interpretation becomes the main and central form of justification. Legal practice is similarly bounded by such procedural agreement. Courts can produce radically opposing rulings; what binds them together is agreement about the text that is the ground for the rulings.²

The text at the center of the Jewish community was the Torah, both written and oral, as exemplified in the Talmud. Jewish life was lived within the "four cubits of the halachah," the law as expounded in the Talmud and the literary edifice of commentaries, codes, responsa, and so forth, erected upon it.

Of all forms of halachic literature, responsa by definition deal most immediately with the actualities of individual and communal life. Responsa are, as it were, the "shock troops" of the halachah: In their pages we find the record of Rabbinic Judaism's encounter

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with what is new and different. Thus the earliest battles in the war over religious reform were waged through the medium of responsa literature. However, by the late 1840s, responsa as a genre disappeared from the Reformers' literary output. As "Reform" and "Orthodoxy" gradually coalesced into two opposing blocs there was no purpose in debate between them; they were satisfied either to ignore or condemn each other. More critically, although many Reformers continued to turn to the Rabbinic sources for guidance in determining the course of reform, they employed the nontraditional hermeneutic of the *Wissenschaft des Judentums* in the analysis and interpretation of those texts. They consulted the Rabbinic texts not for their normative guidance but for elucidation of Judaism's historical development, for determining which elements of Judaism were timeless and essential and which were merely the products of historical contingency and therefore subject to change. Indeed, the more radical Reformers viewed the entire edifice of "Rabbinism" as an unfortunate by-product of the centuries of oppression and exile, and were eager to dispense with it altogether.

Reformers replaced the responsa process with a different type of decision-making mechanism—parliamentary procedure. In place of the individual eminent scholar to whom questions were to be addressed, they held conferences and synods where they decided matters of religious practice by majority vote. At the European and American rabbinical conferences and synods, it made no difference whether a participant arrived at his individual position through a traditional reading of the sources, a historical critical reading of the sources, or some other process altogether. The same was true for the CCAR when it was organized in 1890. In David Ellenson's words, "The absence of [responsa] literature by the 1890s reveals that Reform Judaism ultimately came to abjure law as a defining characteristic of the movement and marks its departure from the classical legal canon of rabbinic civilisation . . . It was a Reform . . . that was no longer tied to 'the authority of precedent' to sanction its actions."³

Between 1890 and 1914 the CCAR attempted to impose some order and uniformity upon the chaotic and variegated practice of American Reform congregations. At least on a pragmatic level, unity of praxis would reflect unity of purpose and a shared vision of Reform Judaism. Nevertheless there remained an implicit tension between a concept of Judaism in which ritual was not a

proper subject of religious law and the need to reach agreement on what constituted appropriate Reform praxis. This tension would lead to the creation of the Responsa Committee.

The CCAR committee tasked with creating a manual of life-cycle rituals presented its draft at the 1906 convention. They reported that they had also asked HUC President Kaufmann Kohler to “formulate a number of Halakot or laws, which should serve as a guidance for Reform Rabbis.”⁴ Kohler explained that this was being done in response to requests for guidance from younger rabbis, in particular, who did not know what constituted proper Reform practice in life-cycle rituals. Although the committee stressed that these were to be guidelines only, nevertheless, the term “Halakot” elicited a storm of protest. A lengthy and heated discussion ensued, with opponents arguing that even setting down guidelines for ritual observance would place Reform in danger of becoming a new Orthodoxy. The assembled rabbis eventually reached a compromise, resolving “that an extra appendix be added to the Year Book, such appendix to contain questions that might, from time to time be submitted concerning Jewish customs and traditions, together with appropriate answers.”⁵ Kohler would chair the committee that would provide the answers to these questions. Samuel Schulman, who had bitterly opposed the “Halakot” proposal, explained why he favored this solution: Establishing a Responsa Committee was merely a way to recommend that younger colleagues who didn’t know what to do in “a matter of practice,” do what had been done “from time immemorial in Israel: write to older men and men of learning and experience for an answer, and . . . be guided in their conduct with due deference and reverence for such authority and information.” Since “such answers may be valuable . . . they should receive some form of permanence in our Year Book.”⁶ David Philipson, equally opposed to introducing any “Halakot” into Reform Judaism, endorsed the proposal as well, noting that “If the Conference were to act on these responsa and make it an action of the Conference, it might look like the offering of a new Shulkan Aruk. If they are simply the responsa of an individual, or of a committee of three, they remain an individual matter.”⁷ Thus was born the CCAR’s Responsa Committee.

Already in its early years, a dynamic emerged that would be repeated many times: Some “hot button” issue involving a departure

from traditional practice would be raised; the Responsa Committee would produce a responsum; rabbis who agreed with the committee's decision would agitate for it to be adopted as CCAR policy; and rabbis who opposed it would emphasize the committee's purely advisory role.

In 1913 the question, from the rabbi of Congregation Emanu-El in San Francisco, was whether the Torah reading could be done completely in the vernacular. (He had introduced the practice, but his members had overruled him.) Kohler responded that the proper procedure, according to the tradition, was to read all the Hebrew and then translate it into the vernacular. In the past, he explained, there had been two "deplorable" departures from this practice: the Alexandrian Jews who read only in Greek and, as a consequence of losing touch with the Hebrew, were assimilated into the Greek-speaking Christian world; and the traditional synagogue, which discontinued the vernacular translation and thereby turned the Torah reading into a meaningless rote performance. Today, said Kohler, in order to "revive the ancient spirit of genuine devotion" by making the Torah reading meaningful again, the "recommended" course of action was to read at least a small portion in Hebrew, translate it, and follow it with a "Scriptural lesson" from Prophets or Writings in the vernacular. "By such reading . . . the impressiveness of the ancient custom is greatly enhanced *and at the same time the continuity of the Synagogue tradition maintained.*"⁸ Kohler, who had no difficulty breaking with synagogue tradition when it suited him, was clearly dismayed by the prospect of change that he considered too radical. When Kohler presented his responsum at the CCAR convention, David Philipson tried unsuccessfully to have it adopted as a CCAR resolution. He was opposed by Moses Gries, who had also dispensed with all Hebrew reading and did not want the CCAR to adopt a stance declaring his practice unacceptable. Others objected on principle, insisting that "in the creation of the Committee on Responsa, it was intended to establish a moral authority in this country . . . However, it should not be adopted as the sense of the Conference. We shall print this report, but the individuals may do as they like."⁹

Between 1913 and 1921, thirty-one responsa appeared in the *CCAR Yearbook*. A plurality of them dealt in some way with relations between Jews and gentiles—more specifically, with the consequences of life in a society where Jews were free both to marry

gentiles and to maintain their affiliation with the Jewish community. What Reform rabbis needed above all in these years, apparently, was help in defining the boundary between Jews and non-Jews.

In 1921 HUC Professor of Talmud Jacob Z. Lauterbach succeeded Kohler as committee chair. He suffered from ill health and in 1934 passed the chairmanship to HUC Professor of History Jacob Mann, who died in 1940. Mann's responsa tended to be quite short with limited text citations. He had had no involvement with the committee prior to his appointment and evinced little interest in it during his six years as chairman. Under Mann the committee barely functioned, forwarding only one annual report to the CCAR.

Lauterbach, who famously identified halachah as prophetic ethics applied to daily life,¹⁰ valued the halachic tradition more highly, and cited it far more extensively, than Kohler had done. Nevertheless, his responsa were also more critical scholarship than halachic reasoning; they "tended to be long explorations of the history of Jewish rituals with citations from a wide range of materials, some rabbinic and some not."¹¹ The questions he received reflected the growing presence of East European Jews among the laity. Two of his responsa, on head covering and naming, are among the best known of this genre. He deployed his vast erudition to demonstrate that wearing a *kippah*, naming a child after a deceased relative, and (in a scholarly article rather than a responsum) breaking a glass at weddings—three of the most visible and common East European practices, whose absence in Reform Judaism was cited as proof of Reform's lack of *Yiddishkeit*—were, in fact, mere folk customs with no basis whatsoever in halachah, and that there was no rational basis for maintaining them. Lauterbach is also remembered as the author of the responsum opposing the ordination of women.¹²

When Jacob Mann died in 1940 the CCAR leadership named HUC Professor of Midrash and Homiletics Israel Bettan as his replacement. Bettan served until 1955, when he stepped down upon taking the presidency of the CCAR. His responsa tended to be extremely light on citations from Rabbinic sources and heavy on appeals to Reform principles and ideology. In his first ten years as chair (1940–1950) he submitted only six responsa to the CCAR; in the next four years, he submitted twenty. The difference, as we

will see, was the presence of Solomon Freehof on the committee. Bettan received questions that reflected the new circumstances of postwar American life: medical ethics and other matters related to the enormous changes in health care following World War II; the growing social integration of American Jews; the construction of new suburban synagogues; and the struggle over the reappropriation of traditional practices in Reform congregations as the Movement's demographics changed.

It is impossible to know how widely the decisions of the Responsa Committee were consulted or accepted prior to World War II. When Kohler presented his responsum on burial of non-Jewish wives to the 1914 convention, he expressed his hope that CCAR members would continue to consult the Responsa Committee so that it would become "the clearing house for all important ritual and theological questions."¹³ This did not happen. The CCAR accepted the vast majority of responsa that the chairmen presented, and even requested one, on contraception, for its own guidance.¹⁴ But rabbis continued to make their major decisions without consulting the committee and the CCAR actually voted in 1922 to reject Lauterbach's responsum on women's ordination. The postwar years, however, would see a dramatic change in the committee's prominence, primarily because of Solomon B. Freehof.

In the years after World War II, Reform rabbis suddenly began submitting questions in greater and greater numbers, sometimes to committee chair Bettan, but more often to Solomon Freehof, senior rabbi of Pittsburgh's Rodef Shalom Congregation. In fact, the war had interrupted an intense discussion within the CCAR on guidance for Reform practice and the relationship between Reform and halachah, in which Freehof had played a central role. During the war he managed to produce a guide to Reform practice¹⁵ even while maintaining his opposition to the idea of a code of Reform practice. When the discussion resumed after the war, he was the central figure in it. He was also well known among his colleagues, respected, and liked. His status as the CCAR's foremost halachic scholar came primarily from his prestigious role, from 1942 through the end of the Korean War, as chair of the Jewish Welfare Board's military chaplaincy division's Responsa Committee. In this capacity Freehof wrote responsa in consultation with Conservative and Orthodox colleagues that established norms of Jewish practice in the U.S. armed forces.¹⁶ His standing was only

enhanced in 1947, when the CCAR finally adopted clear guidelines on intermarriage and conversion, which he wrote.

Freehof brought to the committee's work a profound love for the halachic tradition and an encyclopedic mastery of the responsa literature, as well as a gargantuan personal library of responsa. Deeply influenced by his teacher Lauterbach, he was convinced that the early Reformers were gravely mistaken in their exaltation of the biblical prophets at the expense of the Rabbinic tradition. "Early Reform may have rejected contemporary rabbinic authority," he wrote, "but it could not avoid the constructs that lived in the pageantry of the Jewish mode of life."¹⁷ Contemporary Judaism could not be authentic, he insisted, if it severed its connection to the halachah, which was, as Lauterbach taught, nothing other than prophetic ethics brought to bear on daily life.

Nevertheless, it comes as a shock to many people that Freehof, whose name is today synonymous with the prominence of halachic literature in our Movement, did not think it was possible—or desirable—to create Reform halachah. Freehof's idiosyncratic understanding of halachah held that popular creativity is the real dynamic that propels all religious life and that the rabbi's function has never been to lead the people to, or demand from them, new observances, but only to "regularize" the practices that emerge organically from the people's life, by making sure that popular changes did not stray too far from the Torah's essential teachings. Furthermore, he held that halachah was only *law* to the extent that it could be enforced. Since the Jewish community lacked authority to enforce it in the modern era, there was now no real halachah; it was all merely *minhag* (custom). Thus, contrary to the traditionalists' claims that Reform was a deviation from authentic Judaism, he insisted that the process by which Reform Jewish practice evolved was not essentially different from what Jews had always done. Throughout his tenure as Responsa Committee chair, he remained opposed to the creation of any guide to Reform practice, asserting instead that responsa could provide whatever guidance was needed while the natural process of evolving practice worked itself out within the Movement. As he memorably wrote, "The law is authoritative enough to influence us, but not so completely as to control us. The rabbinic law is our guidance but not our governance."¹⁸

Freehof's conviction that popular *minhag* should not be unnecessarily stifled led him to conclude that he had an obligation to answer as leniently as possible. Careful reading of his enormous output of published and unpublished responsa, however, reveals his meta-halachic values. He opposed popular *minhag* when it violated any one of four standards:

- Practices contrary to official CCAR policy (e.g., officiation at intermarriages)
- Practices that blurred religious boundaries or undermined the integrity or dignity of the Jewish minority vis-à-vis the Christian majority (e.g., according synagogue membership to gentiles or allowing gentiles to participate in ritual that was properly exclusively Jewish)
- Practices that reflected badly on Reform Judaism by flouting widely acknowledged traditional sensibilities (e.g., holding a synagogue rummage sale on Shabbat or serving shrimp in the synagogue)
- Practices that he considered vulgar and tasteless (e.g., having a rock band play at a Shabbat afternoon bar mitzvah reception, or raising funds for the synagogue by gambling)

As Responsa Committee chair, Freehof was careful to adhere to the committee's original mandate, each year submitting a responsum for inclusion in the *CCAR Yearbook*. He received dozens of inquiries each year, however, and so in addition, he published nine volumes of what he termed "Reform responsa," to emphasize that his methodology differed from that of Orthodox *poskim*. Unlike his predecessors Kohler and Lauterbach, he read the text as precedent in the classic sense, rather than as historical literature to be understood with a critical perspective. However, unlike Orthodox *poskim*, he ignored the principle of *hilcheta kevatrai* (the law is according to the most recent decisors).¹⁹ As noted above, he combed the halachah for permissive precedents, whether early or late, in order not to tell the people that they were wrong, unless it was absolutely necessary.

The intersection of Freehof's personal stature within the CCAR with the postwar trend toward reintroducing ritual observances to Reform congregations resulted in the efflorescence of responsa as a genre of Reform expression. By the early 1960s Freehof was

receiving about two hundred inquiries annually, many of which required only a brief response. He wrote all the responsa himself, and then mailed the drafts to his committee for approval by return postcard. There was virtually no opportunity for discussion, and rarely any dissent.

Did Reform rabbis and congregants follow his guidance? On the one hand, most of his colleagues never asked him any questions, and there is no way of knowing to what extent they paid attention to his work. His responsa volumes, published every few years from 1960 through 1980 and then one in 1990, went out of print until the 2010s. His views did not prevail on a number of matters of Reform Movement policy on which he expressed strong views: intermarriage, marriages on the Sabbath, synagogue membership for non-Jewish spouses, patrilineal descent, and acceptance of LGBT people. On the other hand, there was certainly a demand for his direction, and most of the questions he received were requests for practical guidance. Questioners appear to have heeded his responses. Many rabbis shared his responsa with their boards and used them as adult education material, thereby furthering Freehof's aim of raising awareness of the halachah among Reform Jews.

Immediately after World War II it was Freehof's unique personal stature that gave the responsa process its prominence in Reform Judaism. However, three ongoing trends within postwar Reform Judaism reinforced that prominence: growing conflicts over boundary issues ("What is so radical that it is no longer authentically Jewish? What is so traditional that it is no longer authentically Reform?"), the return to more traditional observances, and the growing desire of more and more Reform Jews for some sort of ritual guidance. When Walter Jacob, Freehof's assistant and successor at Rodef Shalom, succeeded him as chair in 1976, the committee was about to enter a quarter-century of turmoil. For some rabbis, its decisions would acquire quasi-official status; others would dismiss it as the voice of reaction, especially as its chairmen became involved in the effort to define and create a Reform halachah.

Developments in the 1970s raised the committee's profile further. When Walter Jacob became chair the leadership began a regular rotation of committee members, resulting in a group with fewer HUC professors and more rabbis from the field. Jacob disseminated responsa more widely in Reform publications and held

open committee meetings at CCAR conventions, allowing more rabbis to get a taste of how the committee operated. Increasingly, other Reform Movement bodies began turning to the committee for guidance on questions that arose as they tried to fulfill their mandates. The CCAR leadership decided that W. Gunther Plaut, chair of the Committee on Reform Jewish Practice, would sit *ex officio* on the Responsa Committee, while Walter Jacob sat *ex officio* on Plaut's committee. As the CCAR was finally developing guides to Reform practice, it made sense for the two committees involved with ritual observance to communicate with each other, lest they issue conflicting guidance. Finally, in the 1980s and 1990s, decisions were made (the details are lost) to add the heads of the Israeli and European Progressive *batei din*, Moshe Zemer and David Lilienthal, to the committee. Intentionally or not, however, this resulted in tilting the committee toward a far greater regard for, and adherence to, traditional halachah than was characteristic of the CCAR's membership.

American Reform Judaism has always struggled with three questions. The first is theological: Are Reform Jews obligated as Jews to do anything in addition to acting ethically, and if so, on what basis? The second is procedural: How do Reform Jews decide to carry out those acts? The third is pragmatic and pedagogical: How do rabbis and leaders move the people to act the way they are supposed to act as Reform Jews? Freehof rejected the idea that ritual observance was in any way obligatory; he wanted Reform Jews to be moved to educate themselves to practice Judaism voluntarily, because of the ways in which daily observance creates a spiritual life. Others, however, adopted a different approach. The history of the committee since Freehof shows conscious engagement with these questions in order to offer a coherent system of Reform halachah.

Freehof's attempt to identify *minhag* with the halachic process itself ultimately failed to convince, and Reform thinkers have generally ignored it. However, he reintroduced and modeled for Reform Judaism a halachic *process* (i.e., reading the text as precedent and interpreting it to apply to a contemporary situation). All three committee chairs since Freehof—Walter Jacob, W. Gunther Plaut, and Mark Washofsky—assert that there is, indeed, Reform halachah, and that the committee is engaged in a halachic process, albeit one that rests not on compulsion but on persuasion.

Walter Jacob avoided explicitly engaging with theology and instead focused on the similarity between the traditional halachic process and the Reform halachic process. Both, he noted, rely on a basis of revelation moderated through human interpreters. W. Gunther Plaut rooted his responsa in the covenant theology articulated most fully by Eugene Borowitz. He explained the methodology of Reform halachah thusly:

We begin with Tradition and ask: how does it treat this *she'elah*? We then proceed to ask: What is there in our Liberal tradition that would have us disagree? Is there a previous ruling or other legal document that would have us decide otherwise? If not, our Tradition stands; if there is, we must examine how our Liberal halakhah, as developed so far, can be applied in the case before us.

In this way we are in fact creating a new body of reference, a distinctly Liberal halakhah and we must have no hesitation to call it just that.²⁰

To this, Mark Washofsky added:

Reform Jewish individuals and communities do not consider themselves bound to adhere to the legal rulings found in our sacred texts or in the decisions of leading rabbinic authorities past and present. Reform Judaism does not accept the notion that a particular observance or action is either obligatory or forbidden *solely* because some book or set of books . . . says so. This, perhaps, is what some Reform Jews really mean when they describe our movement as “non-halachic.” But even if we do not accept the law’s binding authority upon us, it would be incorrect to say that we reject the relevance of those books—which is to say our sacred texts—in wholesale or systematic fashion . . . Our innovations have historically taken place within a context of practice that is inextricably rooted in the traditional rabbinic literature. We often say that the readiness to express change is central to the idea of Reform Judaism, and that is true. But so is the desire to live in continuity with the religious heritage of the Jewish people. To ignore or minimize the importance of either of these aspirations is to distort the history of Reform Judaism and to render an inadequate account of our particular version of the Jewish religious experience.²¹

In short, the committee’s collective approach (a genuinely collective and collaborative approach since the advent of e-mail) still

affirms Freehof's dictum that the tradition offers us "guidance, not governance." However, the committee has distanced itself from Freehof's problematic notion of *minhag* (as he himself began to do in the 1970s, at least in his private correspondence) because of its inadequacy in the face of challenges such as the widespread neglect of even the most rudimentary observance of Shabbat by many Reform Jews. Freehof, who never abandoned the classical Reform distinction between ethical law and mere "ceremonies," could find no grounds, except in the limited ways described earlier, to say that any observance was essential to Reform Judaism. His successors, all implicitly or explicitly rooted in some form of covenant theology, have no difficulty in affirming that a religious Jew must live the mitzvot according to the mode of the Jewish community of which they are a part.

The evidence appears to be mounting that, whether or not Reform Jews find this approach compelling with respect to their ritual observance, they increasingly find halachah relevant. While the last twenty years have seen a decrease in the number of questions about synagogue ritual, life cycle, and personal status, all matters on which the Movement provides extensive guidance, the same time period has witnessed a significant increase in the number of questions involving difficult questions and the ethical dilemmas of daily life. It appears that our era of rapid, destabilizing social and technological change, which has brought challenging questions about medicine, interpersonal relationships, the marketplace, and much more, has made Reform Jews recognize the value of halachah as a guide to much more than just the correct form of the prayers, or who may be buried in the congregational cemetery. In the same way that secular Israelis are discovering the Talmud as a cultural treasure, so Reform Jews in North America appear to realize that, as Chaim Saiman has so cogently explained, "While halakhah is undoubtedly law, it is also something else . . . It is not only a body of regulations, but a way, a path of thinking, being, and knowing . . . The rabbis use concepts forged in the regulatory framework to do the work other societies assign to philosophy, political theory, theology, and ethics."²² Early in its second century of existence, the Responsa Committee is more relevant and more essential than ever. As its newly appointed chair, blessed with a committee membership possessing great collective wisdom and textual expertise,

I am honored and humbled to continue the work of my distinguished predecessors.

Notes

1. This article is largely adapted from my book *“Guidance, Not Governance”*: Rabbi Solomon B. Freehof and Reform Responsa (Cincinnati: HUC Press, 2013).
2. Moshe Halbertal, *People of the Book: Canon, Meaning, and Authority* (Cambridge, MA: Harvard University Press, 1997).
3. David H. Ellenson, “A Disputed Precedent: The Prague Organ in Nineteenth-Century Legal Literature and Polemics,” *Leo Baeck Institute Yearbook* 40 (1995): 263.
4. *Central Conference of American Rabbis Yearbook (CCARY)* 16 (1906): 58.
5. *Ibid.*, 67.
6. Discussion of President’s Message, *CCARY* 17 (1907): 121–22.
7. *Ibid.*, 123.
8. “Report of the Committee on Responsa,” *CCARY* 23 (1913): 167–70 (emphasis added).
9. *Ibid.*, 185–91.
10. Jacob Z. Lauterbach, “The Ethics of the Halakah,” *CCARY* 23 (1913): 249–87.
11. Peter Haas, “American Reform Responsa: An Oxymoron?” *Proceedings of the Eleventh World Congress of Jewish Studies* (Jerusalem: World Union of Jewish Studies, 1994), D/I: 75.
12. “Worshipping With Covered Heads,” “Ordination of Women as Rabbis,” and “Naming of Children,” in Walter Jacob, ed., *American Reform Responsa (ARR)* (New York: CCAR Press, 1983).
13. “Report of the Committee on Responsa,” *CCARY* 24 (1914): 154.
14. “Birth Control,” *ARR*.
15. A second volume appeared in 1952. See Solomon B. Freehof, *Reform Jewish Practice and Its Rabbinic Background*, combined edition (New York: UAHC, 1963).
16. See Solomon B. Freehof, *Responsa in War Time* (New York: National Jewish Welfare Board, 1947).
17. Quoted in Mark Washofsky, “On Halachah and Reform Judaism,” in *Reform Responsa for the Twenty-First Century*, vol. 1 (New York: CCAR Press, 2010), xviii.
18. Solomon B. Freehof, *Reform Responsa* (Cincinnati: HUC Press, 1960), 22.
19. See Menahem Elon, *Ha-Mishpat Ha-Ivri* (Jerusalem: Magnes Press, 5738/1979), 232ff.

20. W. Gunther Plaut, "Reform Responsa as Liberal Halakhah," in *Dynamic Jewish Law: Progressive Halakhah—Essence and Application. Studies in Progressive Halakhah 1*, ed. Walter Jacob and Moshe Zemer (Pittsburgh: Rodef Shalom Press, 1991), 114.
21. Washofsky, "On Halachah and Reform Judaism," xviii–xx.
22. Chaim Saiman, *Halakhah: The Rabbinic Idea of Law* (Princeton, NJ: Princeton University Press, 2018), 8.

Reform Halachah and the Claim of Authority: From Theory to Practice and Back Again

Mark Washofsky

From Theory

It is the fate of some controversies to last forever, or at least for as long as anyone can remember. Like a *machloket l'shem shamayim*, they resist all efforts at final resolution.¹ And maybe that's for the best, for as Jewish tradition demonstrates, it is through disagreement and honest argument that the truth, if we shall ever know it, ultimately emerges.²

That, at any rate, has been my experience working for several decades in the field of Reform halachah,³ a practice that is constantly beset by controversy. The disagreement touches upon the very existence of the practice itself. *Why* do Reform rabbis write halachic literature at all? Why are they speaking the language of Jewish law, which like other forms of legal discourse works with rules, standards, prohibitions, and the like, when ours is a movement that disdains any sort of religious authority? I first encountered these questions during my rabbinical school days at Hebrew Union College, in the sharp criticisms leveled by teachers and some of my fellow students against the very idea of Reform halachah, criticisms that persisted long after I had joined the faculty. One moment in particular is especially memorable. I was by this time a recently appointed faculty member at HUC-JIR/Cincinnati, delivering a paper on the prospects of "liberal halachah"⁴ to an informal evening gathering of faculty at the home of one of my senior⁵ colleagues, all of whom had been my

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teachers. When I was finished, they complimented me (politely, as I recall)—all except for one of them, who disputed the premise of my paper. There is no such thing, said my teacher/colleague, as Reform or liberal halachah. Furthermore, there can be no such thing until someone comes up with a theory to justify it. Such a theory would have to resolve the great theological conundrum of autonomy versus authority: so long as Reform Jews insist upon their autonomous freedom, the right to make their own individual decisions in the realm of Jewish religious practice, there can be no warrant for halachah, a system of authoritative rules and pronouncements (however “liberal” or “progressive” they might be) that govern behavior. Reform responsa writers (by whom he meant primarily our teacher Rabbi Solomon B. Freehof) have never devised such a theory, and until they do (which my teacher/colleague didn’t think was likely), they are wasting their time and their *t’shuvot* are worthless.

I had little to say that evening in response to my teacher/colleague, and for good reason. For one thing, as a junior and not-yet-tenured faculty member, I was keenly aware that discretion might be the better part of valor. Besides, what *could* I say? Isn’t he right, after all? Isn’t it true that autonomy and authority are, in rabbinical language, *tartei d’satrei*, contradictory concepts that can’t live under the same theoretical roof? Aren’t we are taught that Reform Judaism privileges autonomy over authority, that it rejects any notion of legal discipline exerted by Torah and the Jewish legal tradition upon the individual Reform Jew? And if so, what possible role can responsa and other halachic writings play in the religious life of what we commonly refer to as a “non-halachic movement?” Clearly, Reform halachah was a practice in search of a theory, a body of writing in need of some justification. But what could it be? That night, confronting the great theological conundrum, I had nothing. I was stumped.

I’ve spent a good chunk of my subsequent academic career trying to get un-stumped. Specifically, while continuing my work in the practice of Reform halachah, I’ve sought to identify the sort of theory that might meet the criticisms of my teacher/colleague. The results appear elsewhere,⁶ and the reader can judge whether and to what extent they succeed. Yet all along I have been puzzled by a problem of historical fact, namely that Reform rabbis have continued to produce halachic literature despite the

absence of an adequate theory to explain what they were doing. We are talking, after all, about a literary genre as old as Reform Judaism itself. Reform rabbis began writing halachic responsa during the early nineteenth century in defense of the innovations that the early Reformers were introducing into the liturgy and the ritual of the synagogue.⁷ In North America, the Responsa Committee of the CCAR was established in 1906—at the height of the “classical” (anti-halachic?) period of Reform Judaism—and to date has issued over 1,300 halachic responsa on subjects of Jewish religious observance, both ritual (*bein adam lamakom*) and ethical (*bein adam l’chaveiro*). Outside the Conference structure, the Solomon B. Freehof Institute of Progressive Halakhah, founded in 1991 by Reform Rabbis Walter Jacob and Moshe Zemer, provides a forum for halachic liberals to think, write about, and apply Jewish legal ideas to a wide range of issues and problems.⁸ Consider, too, the many guidebooks, manuals, and compendia dealing with observance that have appeared under the auspices of the constituent bodies of the Reform Movement, all of which draw their content heavily from Rabbinic and halachic sources (check the footnotes and you’ll see). All of this adds up to an impressively large body of halachic literature that advertises itself as “Reform.” Which means, in other words, that Reform halachah has existed as a distinct *practice* throughout the entire two-century history of a movement that supposedly describes itself as “non-halachic” and even though nobody has as yet successfully resolved the autonomy-versus-authority conundrum.

How do we account for this odd occurrence? It’s possible—and this was the argument of my teacher/colleague that evening—to explain away this Reform halachah as an aberration, a historical anomaly, a practice that refuses to die long after it should have received a decent burial. In this view, halachic writing is little more than the avocation (obsession?) of a few Reform rabbis who are hardly representative of the Movement’s mainstream. But that explanation fails. Given the names of the many and prominent rabbis who have participated over the years in the creation of Reform halachic literature, we can’t simply dismiss this activity as marginal, extremist, the product of rabbinical outliers.⁹ How does one disqualify as “un-Reform” a practice that enjoys this kind of pedigree and has achieved this record of publication? It turns out that Reform halachah is as “mainstream” as any other Reform Jewish

intellectual practice: liturgy, theology, Bible commentary, and all the rest. We could therefore suggest an alternative answer. Perhaps we've been wrong all along about the great conundrum: history demonstrates that the practice of Reform halachah can do just fine on its own, that it can proceed without any sort of justifying theory. I find this suggestion attractive, not least because I tend to believe that the value of "theory" is almost always exaggerated and that in any event it neither guides nor governs the practice that it attempts to define.¹⁰ Still, I don't want to push my skepticism too far. Theory remains important, especially in a case like ours, where critics challenge the theological legitimacy of the practice in question. And it is difficult to imagine that Reform halachists, all those practitioners who produced the Movement's substantial halachic literature, never gave serious thought to the need for a theory to meet that challenge.

So I'd like to posit a third answer: there *is* a theory to justify the practice of Reform halachah. I'm not referring here to the various essays and think-pieces that Reform rabbis over the years have devoted to the topic,¹¹ however valuable they might be. Rather, as a general rule I think that the best place to find the theory that defines and directs an intellectual practice is within the practice itself, in the work of its practitioners, for it is there that theory sheds its abstract nature, confronts the real world, and actually counts for something. Such is true, at least, for Reform responsa. To be more specific: I argue that every piece of halachic literature written by Reform rabbis bears evidence of the theory that stands behind it. Every Reform halachic text makes a claim for its authority, its right to speak halachah to Reform Jews even in the face of our commitment to individual autonomy. This claim is generally not stated explicitly, but it's *there*, between the lines of the text and standing behind it, available to us through a process of careful and critical reading.

To Practice

To show you what I mean, I want to engage in such a reading of a Reform responsum. I've chosen as my example CCAR Responsum no. 5759.7, "The Second Festival Day and Reform Judaism,"¹² for two reasons. First, it is uniquely "Reform"; that is, it answers a *sh'eilah* that could only be raised in a Reform or liberal Jewish

context. And second, it is complex, a *t'shuvaah* that encompasses virtually all the characteristic features of Reform responsa, which will help illustrate the points I want to make. At the same time, I think that this responsum is typical of the *practice* of Reform halachah in the way it creates and supports its claim of authority.

We begin with the *sh'eilah*:

Our Reform congregation normally schedules Confirmation services on Shavuot, which this year (1999/5759) falls on Thursday night and Friday. Our Confirmation class prefers to have their service on Friday night so more of their friends, family and other Religious School kids can attend. Although Friday night is no longer Shavuot according to our Reform calendar, it is the second day of the festival which is traditionally observed in the Diaspora (*yom tov sheini shel galuyot*). Is it acceptable for us to “stretch” the festival to accommodate their request, observing Shavuot for a second day so as to observe Confirmation along with the holiday?

The most significant word in this query appears in its final sentence: the congregation asks whether it would be “acceptable” to declare Shabbat as the second day of Shavuot. The word signals us that the congregation is looking for a serious, substantive answer. It does not wish to be told that “you’re a Reform temple; you have autonomy; you can make any decision you want.” Of course it can make whatever decision it wants, but that’s not why it has submitted a *sh'eilah* to the Responsa Committee. Rather, the synagogue seeks to know whether what it *wants*—to “stretch” Shavuot to Friday night in order to accommodate the Confirmation class—meets a standard of *acceptability* or, if you prefer, correctness; is this something that a Reform congregation ought to do? And that standard is necessarily a halachic one. The structure of the festival and liturgical calendar is traditionally a matter of law, defined and worked out in the biblical and Rabbinic legal sources. The Reform *luach* is founded in the very same sources even as it departs from the traditional calendar in its elimination of *yom tov sheini*; it, too, is a matter of halachah, albeit of the Reform variety. Thus, there is no way either to imagine or to talk about this *sh'eilah* except through the discourse of Reform halachah. The congregation is asking whether Reform halachah would support their desire to make a one-time exception to our

Movement's calendrical tradition. And by posing the question, it authorizes—that is, grants authority to—the Responsa Committee to answer it. This does not imply that the congregation bears any duty to follow the answer it receives from the Committee; “authority” does not necessarily imply coercive power, and Reform halachic writings don't exert such power in any event. But all responsa possess authority to the extent that they, well, *respond* to an invitation proffered by an individual or a community. It's possible that the congregation, if persuaded by the responsum's arguments, will accept its conclusion. But whether those arguments persuade or not, the authority to speak, to make those arguments in the first place, flows from the congregation's request to this committee of Reform rabbis to consider the question and to suggest an answer.

The *t'shuvoah* begins, as many *t'shuvoth* do, by framing the *sh'eilah*: What is this question truly *about*? What is the proper context—theological, historical, halachic—in which to consider it? In choosing a frame for the question, the responsum invites its readers to understand the issue(s) involved in the way that its authors do. And to the extent that the readers accept that invitation, they are more likely to be persuaded by the *t'shuvoah's* argumentation and conclusion. In this case, the frame is nothing less than the history of Reform Judaism, specifically the story of the Movement's relationship to ritual practice in general and to the second festival day in particular. The narrative sets up a tension between the wide arc of Reform history, where *yom tov sheini* has been universally abandoned ever since the Movement's earliest days, and that history's more recent decades, which have witnessed a widespread tendency to recover and restore many ritual practices that earlier generations of Reform Jews had left behind. The responsum resolves this tension by deriving two lessons. First, it is clearly not “forbidden” for a Reform congregation to restore the observance of a second festival day, just as we have brought back so many other ritual observances, if it finds that practice to be “an appropriate and desirable expression of our Jewish consciousness.” Second, we ought not reject the teaching of our Reform predecessors “in the absence of good and sufficient cause.” This is because what makes us *Reform* Jews is not the idea that we can make any choice we wish but the fact that we participate in a *tradition*, “the historical religious enterprise

that our predecessors founded.” To observe and practice as a Reform congregation means that we imagine and explain our religious lives within the context of that Reform tradition (as well as within the context of the wider Jewish tradition). The responsum urges its readers to treat this tradition and its teachers—“our rabbis”¹³—with the utmost respect and to think carefully before we renounce their instruction, especially “a teaching [i.e., the elimination of *yom tov sheini*] that has for so long characterized our movement.”

Here, too, the responsum claims its authority. By framing the question as it does, it invokes the particular audience that it wishes to address,¹⁴ a readership of serious and thoughtful Reform Jews who approach religious decision-making from a stance of reverence for both the Jewish and the specifically Reform Jewish past. If you are that kind of Jew, it tells them, then you are part of *our* community of inquiry. The arguments we shall make are *your* arguments, precisely because *you* would make them, because they reflect your sense of what counts as an appropriate argument to make about Jewish practice. If the readers recognize themselves in this identification and accept it, they will be interested in and receptive to the *t’shuvah’s* analysis and, by that token, more likely to find its conclusion persuasive.

Addressing itself to this audience, the responsum proceeds to discuss the substance of the question. Since the congregation seeks to alter the long-standing Reform *minhag* of observing one day of *yom tov*, it is only proper to begin with an account of how that *minhag* came to be. The roots of that story, recounted in part 1 of the *t’shuvah*, lie in the traditional narrative of the origins of *yom tov sheini*, how Diaspora Jewish communities in late antiquity came to add a second day to each of the *mo-adim* described in Leviticus 23 (with the exception of Yom Kippur¹⁵). It’s a familiar story, but, as the responsum suggests at the end of part 1, perhaps not entirely familiar. There is a tendency to explain the continued observance of *yom tov sheini* as a response to calendrical doubt: communities outside of *Eretz Yisrael* added a second festival day due to their uncertainty as to which day had been declared Rosh Chodesh¹⁶ by the legal authorities in Jerusalem, an uncertainty blamed upon the slow communication in those days. If so, then the rationale for annulling the observance of the second day would be clear: since nowadays our calendar is

determined by mathematical calculation and does not rely upon eyewitness testimony of the new moon, this doubt has disappeared and, therefore, so should the extra, no-longer-necessary festival day. As the responsum indicates, however, this argument is insufficient. The Talmud¹⁷ informs us that it is not at all clear that *yom tov sheini* originated out of our ancestors' empirical doubt as to the date of Rosh Chodesh; perhaps the custom began as an edict (*takanah*) of the high court in Jerusalem. Moreover, the Talmud says, the fact is that "nowadays" (*ha-idana*) we continue to observe a second festival day, even though we determine the calendar with precision by mathematical calculation and therefore have no doubt whatsoever as to the proper dating of Rosh Chodesh and the festivals. The reason for this, the passage continues, lies in an additional *takanah* issued by that great *beit din*: "take care to maintain the custom of your ancestors, lest the government someday forbid you from studying Torah and you forget how to determine the calendar and come to observe the festival on the wrong date."

In (re)telling this story, the responsum places the congregation's question squarely within the context of historical halachic discourse. In doing so, it rules out two potential lines of argument that might have supported the Reform Movement's decision to do away with the second day of *yom tov*. The first argument would be that "we, the Reform Movement, recognize the Bible as our official legal standard, and we accordingly restore the Biblical standard of one (and only one) festival day." That argument is insufficient because, simply put, the biblical calendar has not been the *Jewish* calendar for at least two millennia. The responsum calls upon us to self-identify neither as Sadducees nor as Karaites (let alone as biblical Israelites) but as heirs of and continuing participants in the *Rabbinic* tradition. As such, we speak the language of that tradition and respond to its history when we make our religious decisions. Second, it's also not enough to say that "we have eliminated the second day of *yom tov* because we no longer have any doubt as to the proper dates for the festivals." The Talmudic passage informs us that the observance of *yom tov sheini* today is *not* dependent upon the existence of empirical doubt but upon a Rabbinic ordinance that, like *takanot* generally, has all the force of a Toraitic mitzvah.¹⁸ Therefore, if you want to argue that the Jewish tradition permits us to do away with the

added day of festival observance, you will have to show that the halachic tradition which created *yom tov sheini* through Rabbinic *takanah* empowers us to rescind that ordinance in the event that its original rationale (“take care to maintain the custom of your ancestors, lest . . . you forget how to determine the calendar, etc.”) no longer exists or is relevant.

This issue, the lead item in part 2 of the *t’shuva*h, “The Second Festival Day in Our Time,” is the subject of a *machloket* among the *rishonim* (the designation for post-Talmudic authorities who precede the appearance of the *Shulchan Aruch* in the sixteenth century). On one side of the dispute stands Rambam (Maimonides), who holds that once a *beit din* has ordained a practice that is subsequently adopted by the entire Jewish community, that enactment may not be overturned by a subsequent *beit din* unless that later court is superior in halachic status to the original one. In practice, such a “superior” *beit din* would have to be a Sanhedrin, which most likely will not be available until Messianic times.¹⁹ Thus, halachah requires that we continue to observe the second festival day even though its founding rationale has disappeared. The opposing point of view is represented by, among other halachists, R. Avraham ben David (Rabad), the great contemporary and critic of Rambam, who offers Talmudic examples of *batei din* that rescinded the ordinances of preceding courts when the stated purposes for those ordinances had become irrelevant—this, despite the generally held view that later authorities are never “superior” in legal status to earlier ones. Rambam’s position has become the standard of practice throughout the centuries, and it continues to define the contemporary Orthodox understanding of this issue. The CCAR responsum, however, breaks with that halachic consensus and declares the position of Rabad and the other authorities to be preferable, both because it represents a more plausible reading of the Talmudic sources and because it coheres with common sense: “If the Rabbis explicitly adopted their ordinance for a particular reason . . . it strains credulity to assert that they meant that *takanah* to exist for all time . . . even in the absence of the reasons for which they enacted it.” Thus, if the reason for the original *takanah* no longer applies in our day and time, then there is no reason why a contemporary *beit din* (by which we mean our Reform predecessors) cannot annul the observance of *yom tov sheini* if it has good and sufficient cause to do so.

This, again, is a claim of authority, in at least two respects. First, whatever motives the early Reformers had for eliminating the observance of *yom tov sheini*,²⁰ the responsum claims the full authority of Jewish law for their decision. And second, it claims the authority of Reform Judaism to make its own unique contribution to the halachah. This contribution consists not only (as in this case) of specific rulings, decisions, and understanding of what halachah requires in terms of religious action but also of a particularly Reform or progressive approach to its study. The responsum announces that we, too, no less than any other Jews, read the texts of Jewish law, but unlike our Orthodox coreligionists we do not regard ourselves bound to the halachic consensus. We will adopt that interpretation of the halachic sources that *we* consider the best one, that makes the most sense to *us*, in the world in which we live, even in the face of long-standing precedent.²¹ We are not arguing, in other words, *against* the Jewish legal tradition; we are arguing with our fellow participants in that tradition over just who has the better understanding of how to read and to apply its texts.

Having established that “Our Reform movement made a principled decision to nullify the ancient Rabbinic *takanah*” that instituted the observance of a second festival day, the responsum now moves to the congregation’s actual query: is it “acceptable” for a Reform congregation to restore that observance? The answer is clearly “yes”: just as the early Reformers rescinded *yom tov sheini* for good and sufficient cause, we are entitled to bring it back on the same grounds. Various reasons are cited to support this action, and, as the responsum notes from the evidence of actual Reform practice, a significant number of our congregations have taken this step, at least with respect to the second day of Rosh HaShanah. But the question in our case is in reality a different one: is it “acceptable” for *this* congregation to restore the observance of a second day of Shavuot for *this* reason? Here the responsum urges caution. While we are entitled, just as the founders of the Reform Movement were entitled, to depart from precedent, our decision to do so ought to be, as was theirs, a “principled” one. To restore the second day of a festival ought to mean that we restore it *as* a festival, a *yom tov* fully observed as such, the ritual equivalent of the first day of the festival in virtually²² all respects. This, too, should be the practice with *every*

festival, not only with Shavuot. It is highly unlikely, the text indicates, that the congregation that submitted this *sh'eilah* really means to do that. Its desire to “stretch” Shavuot to a second day is a one-time response to a practical need. “They do not indicate any readiness to ‘stretch’ the other Festivals to a second day, to hold Festival services and to close their offices on those days, or to do so again for Shavuot when that holiday does not fall on a Friday.” They want to declare a second day of Shavuot, not because they really regard that day as Shavuot—like Reform Jews in general, they don’t—but because they want to create a more positive atmosphere for the Confirmation service. That goal, while laudable, can be accomplished in a number of ways apart from creating a faux second day of *yom tov*.

All of this leads to the *p’sak*, the *t’shuva*’s decision: because Reform Jewish practice historically recognizes only one day of a festival, and because the congregation itself in all other circumstances has accepted this standard, the congregation should not declare a one-time *yom tov sheini* to accommodate its Confirmation service. That service, held on the day after Shavuot, may draw upon the symbolism of that holiday so long as it does not declare or imply that the day is, in fact, Shavuot. The authority behind this decision is that which the responsum has already claimed through the community it has created with the *sho-eil*. You, it tells the congregation, have declared your readiness to decide this question through the Reform halachic process. You have joined with us, the authors of the *t’shuva*, in a study and consideration of the relevant texts and facts of history. We have offered an answer that we think best reflects the values to which you have committed yourselves: the desire to root your religious practice firmly within the Jewish tradition and the Reform Jewish interpretation of that tradition. It also, we think, reflects your desire to make a decision that is principled, consistent with your understanding of Reform Jewish values and of how a Reform congregation ought to arrive at and undertake a serious consideration of its religious choices. If we are right about this, then we think you will find our arguments persuasive. If you don’t find our arguments persuasive, and you disagree with our conclusion, that’s okay; perhaps you’ll tell us why, so that we can consider where our reasoning may have fallen short, arrive at answers that might meet your objections, and ultimately forge

a response that is more convincingly argued. And if *that* doesn't happen, then at the very least, we can say that we have studied and created Torah together.

And Back Again

Does our reading of this responsum answer the question posed by my teacher/colleague? The reader can be forgiven for saying "no." This *t'shuva* does not explicitly address, let alone resolve, the fundamental contradiction between authority and autonomy that, in the view of my teacher/colleague along with many others, undermines the legitimacy of the Reform halachic project. For that matter, I don't know of any Reform responsum that does. Our *t'shuvot*, much like traditional responsa, do not tend to discuss meta-issues. They deal with specific questions of ritual observance and ethical action, identify sources from within the Jewish legal tradition that might bear on those questions, and offer arguments as to what those texts might mean to Reform Jews in our time, and drawing conclusions as to how those questions ought to be answered. But as I've tried to argue, this responsum shows that Reform halachah does have a theory, a theological justification for its authority. This theory is not some grand abstract and systematic construct that stands over the practice of Reform halachah in order to define its procedures and evaluate its product. It exists rather *within* the practice, in every example of Reform halachic writing, because each of these texts makes a claim (or a series of claims) for its authority. It's a claim that originates when writers and readers come together to create a community of meaning-making, of Torah learning. A Reform responsum or other halachic text is the literary outcome of such an encounter. That's all the authority it can ask. It's all the authority it needs to ask.

From all of this, and on the basis of that authority, I think that three conclusions follow:

1. We ought to stop referring to Reform Judaism as a "non-halachic" movement. I say this because, as I noted above, a large and variegated Reform halachic literature already exists, texts written by Reform rabbis in the face of criticisms over

the theological legitimacy of their work. This literature exists because, despite those criticisms, it is relevant, speaking as it does to the reality of our religious practice. It was Rabbi Freehof who taught us that, although our classical Reform predecessors were passionately committed to the understanding of Reform Judaism as “prophetic” in nature, a Bible-centered religion, what they actually bequeathed to us was something altogether different.

The weakness of the proposition was primarily that the self-description of Reform as being solely Biblical was simply not true. All of Reform Jewish life in all its observances was actually post-Biblical in origin. None of the arrangements of worship, the hours of service, the text of the prayers, no matter how rewritten, was primarily Biblical. The whole of Jewish liturgy is an achievement of post-Biblical times. The religious calendar, based indeed on Scripture, was elaborated in post-Biblical times. Marriage ceremonies and burial rites were all post-Biblical. The Bible, of course, was the source of ethical ideas, but the actual religious life was rabbinic. Early Reform may have rejected contemporary rabbinic authority, but it could not avoid the constructs that lived in the pageantry of the Jewish mode of life.²³

That is to say, the ritual practices (and Freehof might have added the ethical practices as well²⁴) that distinguish our religious lives as palpably *Jewish* have taken on their distinctly Jewish shape and character within the Rabbinic—which is to say the halachic—literature. It is impossible to understand Reform religious life without reference to its foundations in the world and the texts of Jewish law. Which, obviously, is why we’ve spent these two centuries creating our own texts of Jewish law. To call our movement “non-halachic” is for these reasons a non sequitur, a rejection of the facts of our own history and experience.

2. Reform halachah differs profoundly from the halachah as understood by other Jewish groupings. “Differs,” I hasten to qualify, does not mean that it is a *b’riah chadashah*, a phenomenon entirely of our own creation, with no attachment to halachah as it is traditionally understood and practiced.

That's not the case. We study the same halachic texts as do other students of Jewish law—the Talmud, the *poskim* (“codes”), the responsa literature, and so forth—which suggests that we see ourselves as participants along with our Orthodox colleagues²⁵ in the never-ending history of argument over the meaning of those texts, an argument that *is* the Jewish legal tradition.²⁶ As I've tried to show in this essay, halachah is the foundation of all Jewish religious practice, including our own, and no sufficient understanding of the nature of our observance (of *yom tov*, or *yom tov sheini*, or for that matter any other practice) is possible without a study and interpretation of traditional halachic texts and an engagement in halachic argument. Where Reform halachah differs is that we learn different things from these texts than do Orthodox Jews. This ought not to surprise anyone. We Reform Jews form a distinct interpretive community, whose members read texts on the basis of shared strategies and practices of interpretation.²⁷ These include, for example, our commitments to gender equality, to the moral equality of all humankind, to the proposition that innovation is not a bad thing and that existing forms of observance are not by that token the “correct” ones, and to the right to depart from long-standing readings of the law when we find those readings to be in conflict with the moral and religious values that compose our progressive outlook. Reform halachah is the name we give to both the process by which we study the Talmudic-halachic literature and the product of that study, the conclusions we draw about what Jewish law tells us. That process and those conclusions express our conviction that the tradition of Jewish law is fully compatible with our own values. That's what our Reform halachists have been doing for these last two hundred years, even if our theologians have yet to issue us a license to do so. We should neither ignore nor minimize the importance of the literature they have created. Indeed, I immodestly claim, we ought to take pride in it.

3. And finally, speaking of immodesty, let me suggest the importance of our Reform halachic work for the wider Jewish tradition and the Jewish people. This suggestion begins with the

centrality of halachah to Jewish history, both as the dominant preoccupation of the Jewish mind until recent times—Rabbi Freehof calls the study of Jewish law “the essence and the climax of Jewish culture”²⁸—and as the formative discourse of Jewish religious action, the body of texts and techniques that Jews have employed for two millennia in order to work out their best understandings of their responsibilities under the covenant of Sinai. To put this another way, if there is such a thing as an authentically Jewish language of meaning, it is the halachah. It would be a shame—in fact, as I think, downright criminally negligent—to leave the study and the interpretation of this literary and intellectual tradition to the monopoly control of Jews who, to say the very least, do not share our religious and moral worldview. While those Jews have every right to study halachah, we should not concede to them the position of its exclusive spokespersons. Yet that’s exactly what we do when, thinking of ourselves as a “non-halachic” movement, we abandon to them the serious study of Jewish law. Our Reform halachah, as I’ve argued here, makes its own claim of authority to speak, not only *k’lapei panim*, to an audience of Reform Jews, but also *k’lapei chutz*, to the wider Jewish audience. It is our uniquely Reform Jewish contribution to the discourse of Jewish law, the argument over the meaning of the texts from which all Jewish religious practice is derived. It conveys our hope that a “sane” halachah,²⁹ an understanding of Jewish law that fits our progressive moral and cultural temperament, will emerge out of these debates.

Notes

1. Except, of course, for the halachic disputes between the schools of Hillel and Shammai, which are described as *machloket l’shem shamayim* (*Mishnah Avot* 5:17) and which were ultimately resolved by the ruling of a divine voice (BT *Eiruvin* 13b). But then, we usually don’t pay attention to heaven’s efforts to decide our disputes over halachah; see BT *Bava M’tzia* 59b.
2. See Bartenura’s comment to *Mishnah Avot* 5:17:
 יתברר האמת והמחלוקת שהיא לשם שמים, התכלית והסוף המבוקש מאותה מחלוקת להשיג האמת, וזה מתקיים, כמו שאמרו מתוך הויכוח (*Disagreement for the sake of heaven*: the desired purpose and conclusion of such a dispute is the apprehension of truth. And that is

the disagreement that shall endure (*mitkayem*), as it is said: truth is clarified through debate.)

3. These include two collections of responsa: W. Gunther Plaut and Mark Washofsky, eds., *Teshuvot for the Nineties: Recent American Reform Responsa* (New York: CCAR Press, 1997) and Mark Washofsky, ed., *Reform Responsa for the Twenty-First Century: Sh'eilot Ut'shuvot* (New York: CCAR Press, 2010). In addition, my *Jewish Living: A Guide to Contemporary Reform Practice*, rev. ed. (New York: URJ Press/Behrman House), 2010, draws its material from existing Reform halachic literature. Finally, I should mention the "Historical and Halachic Notes" section of *L'chol Z'man V'Eit: The CCAR Lifecycle Guide* (New York: CCAR Press, 2015).
4. Eventually published as "The Search for a Liberal Halakhah: A Progress Report," in Walter Jacob and Moshe Zemer, eds., *Dynamic Jewish Law* (Tel Aviv and Pittsburgh, Freehof Institute of Progressive Halakhah, 1991), 25–52, <https://digital.ub.uni-potsdam.de/content/pageview/320509>.
5. While it's getting harder and harder to remember this, it's a fact that at one time *all* my colleagues were senior to me.
6. See my "Kiddushin as a Progressive Halakhic Concept: Toward a Theory of Progressive Halakhah," in *The Modern Family and Jewish Law*, ed. Walter Jacob (Pittsburgh: Rodef Shalom Press, 2018), 27–80, https://www.freehofinstitute.org/uploads/1/2/0/6/120631295/kiddushin_as_a_progressive_halakhic_concept.pdf; "Halachah, Aggadah, and Reform Jewish Bioethics: A Response," *CCAR Journal* 53, no. 3 (Summer 2006): 81–106; and "The Jewish Path," in *A Life of Meaning: Embracing Reform Judaism's Sacred Path*, ed. Dana Evan Kaplan (New York: CCAR Press, 2018), 191–98. I also devote some attention to theory in *Jewish Living*, xxii–xxix, as well as in the Introduction to *Reform Responsa for the Twenty-First Century*, xv–xxiv.
7. The comprehensive survey is Alexander Guttman, *The Struggle Over Reform in Rabbinic Literature During the Last Century and a Half* (New York: CCAR Press, 1977). See also Jakob J. Petuchowski, *Prayerbook Reform in Europe: The Liturgy of European Liberal and Reform Judaism* (New York: World Union for Progressive Judaism, 1968), 84–104.
8. Much of this material is available at <https://www.freehofinstitute.org>.
9. For a fuller development of this point see Washofsky, "Halachah, Aggadah," 83.
10. I find three sources particularly enlightening on this point. The first, dealing with literary theory, is Steven Knapp and Walter Benn Michaels, "Against Theory," *Critical Inquiry* 8, no. 4. (Summer 1982): 723–42. The second is Richard Posner, "The Problematics

of Moral and Legal Theory," *Harvard Law Review* 111 (1997–1998): 1637–1717, http://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=2828&context=journal_articles, expanded into Richard Posner, *The Problematics of Moral and Legal Theory* (Cambridge, MA: Belknap/Harvard University Press, 1999). See also his "Legal Reasoning from the Top Down and from the Bottom Up," *University of Chicago Law Review* 59 (1992): 433–50, https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=2885&context=journal_article. The third is Stanley Fish, "Dennis Martinez and the Uses of Theory," *Yale Law Journal* 96 (1987): 1773–99, <https://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=7093&context=ylij>. And see in general Stanley Fish, *Doing What Comes Naturally: Change, Rhetoric, and the Practice of Theory in Literary and Legal Studies* (Durham, NC: Duke University Press, 1989).

11. My own efforts are listed in note 6, above. But I'm hardly the first or the only one. For example, Rabbi Solomon B. Freehof's introductions to the volumes of his collected responsa offer some important insights into his understanding of the justification for Reform halachah. For a full treatment of Freehof as halachist see Joan S. Friedman, "*Guidance, Not Governance*": *Rabbi Solomon B. Freehof and Reform Responsa* (Cincinnati: HUC Press, 2013).
12. *Reform Responsa for the Twenty-First Century*, vol. 1, 49–64, <https://www.ccarnet.org/ccar-responsa/nyp-no-5759-7>.
13. A not-so-subtle reference to the ethical—and halachic—value of *k'vod harav*, the obligation to show honor to those who teach us Torah. See Rambam, *Mishneh Torah, Hilchot Talmud Torah*, chaps. 5–6, and *Shulchan Aruch Yoreh Dei-ah* 242.
14. Persuasive communication, of which the responsum is a good example, is deeply dependent upon the audience that is spoken to. "Argumentation aims at securing the adherence of those to whom it is addressed, it is, in its entirety, relative to the audience to be influenced"; Chaim Perelman and Lucie Olbrechts-Tyteca, *The New Rhetoric: A Treatise on Argumentation* (Notre Dame: Notre Dame University Press, 1969), 19.
15. See note 24 in the responsum (note 12, above). The logic behind the second festival day, based upon doubt among Diaspora residents as to which day had been declared Rosh Chodesh, applies just as well to Yom Kippur as to Sukkot. The fact that Jewish communities have not seen fit to add a second day to Yom Kippur testifies that such doubt no longer exists (if, in fact, it ever did).
16. Since the new moon can appear either 30 or 31 days since the appearance of the previous new moon, the month can begin on one of two possible days. The tradition's version of how the *beit din*

accepted *edut hachodesh*, eyewitness testimony to the appearance of the new moon, is described in the first two chapters of *Mishnah Rosh HaShanah*.

17. BT *Beitzah* 4b.
18. Which is why, when performing a Rabbinic *mitzvah* (such as lighting the *ner shel Chanukah* or reciting *Hallel*), we recite a *b'rachah* that says *asher kid'shanu b'mitzvotav v'tzivanu* ("the God who has sanctified us by mitzvot has commanded us to" perform this action), just as we do when performing a Toraitic *mitzvah*. See BT *Shabbat* 23a.
19. I say "most likely" because Rambam raises the possibility that a Sanhedrin might be convened prior to the coming of the Messiah (*Mishneh Torah, Hilchot Sanhedrin* 4:11). That speculation has in turn become a much-cited source by those rabbinical activists throughout history who have tried but failed to restore the Sanhedrin, most notably the sages led by Rabbi Yaakov Berab in sixteenth-century Safed.
20. The responsum cites two such motivations in particular: the inconvenience and economic hardship wrought by an extra day of festival observance, and the hope that by concentrating our efforts upon one day of observance we would increase its spiritual significance.
21. Academic historians tend to posit that Jewish law does not recognize a formal doctrine of binding precedent, and in this they are certainly correct. Any number of citations can be brought from eminent *poskim* (halachic authorities) to the effect that each scholar is entitled to arrive at his (to which we would add "her") independent ruling based upon a careful consideration of the sources. See Menachem Elon, *Jewish Law: History, Sources, Principles* (Philadelphia: Jewish Publication Society, 1994), 983–85, and Zerach Warhaftig, "Hatakdim bamishpat ha'ivri," *Sh'naton hamishpat ha'ivri* 6–7 (1979–1980): 119–20. Such independence, however, is rare. What I call in the text "the halachic consensus" exerts a powerful precedential force in Jewish legal discussion, serving as a very real (though informal) constraint upon the traditional rabbi's halachic freedom of decision. See Mark Washofsky, "Taking Precedent Seriously: On Halakhah as a Rhetorical Practice," in *Re-Examining Progressive Halakhah*, ed. Walter Jacob and Moshe Zemer (New York: Berghahn Books, 2012), 1–70. This responsum can be read as one effort to restore that freedom to the contemporary halachist.
22. There are some differences in observance between the two days. For example, a burial may take place of the first day of a festival, provided that non-Jews perform the forbidden labors. On *yom tov sheini*, Jews may perform those actions. See BT *Beitzah* 6a and *Shulchan Aruch Orach Chayim* 526:1–4.

23. Solomon B. Freehof, *Reform Responsa* (Cincinnati: Hebrew Union College Press, 1960), 15–16.
24. That is, any substantive discussion of “Jewish ethics” in the areas of commerce and business, medicine, politics, and society will involve the interpretation and application of halachic texts.
25. Witness the fact that we do not hesitate to cite Orthodox authorities (by which I mean scholars living during the last two centuries who are specifically identified as such) in our halachic works. They, to put it mildly, never seem to return the favor.
26. On the definition of “tradition” as an extended argument see Alasdair Macintyre, *After Virtue* (Notre Dame, IN: University of Notre Dame Press, 1981), 221: “For all reasoning takes place within the context of some traditional mode of thought, transcending through criticism and invention the limitations of what had hitherto been reasoned in that tradition . . . Moreover when a tradition is in good order it is always partially constituted by an argument about the goods the pursuit of which gives to that tradition its particular point and purpose . . . A living tradition, then, is an historically extended, socially embodied argument, and an argument precisely in part about the goods which constitute that tradition.”
27. It’s not often that I get to name-check Stanley Fish twice in one essay (see note 10, above), but this is one of those times. His *Is There a Text in This Class? The Authority of Interpretive Communities* (Cambridge, MA: Harvard University Press, 1982) was instrumental in popularizing the notion, built upon reader-response theories of interpretation that were developed by literary critics like Wolfgang Iser and others, that (1) the readers of a text exert most of the power over its interpretation and (2) readers interpret texts from the position of their membership in interpretive communities.
28. Solomon B. Freehof, *Reform Judaism and the Law*, Louis Caplan Lectureship on Jewish Law 1 (Cincinnati: Hebrew Union College Press, 1967). On this score, Isadore Twersky’s famous metaphor is too good to pass up: “Jewish intellectual history to the dawn of the nineteenth century is comparable to a fast-moving stream coursing through a complex network of tributaries and offshoots. The waters of the rivulets which poured into or eddied alongside the mainstream of Judaism were colored by a dazzling variety of cultural disciplines: philosophy and mysticism, rationalism and pietism, exegesis and commentary, poetry and belles-lettres, linguistics and grammar . . . The mainstream, however, was the *hal-akhah* (Jewish Law)—its ever-expanding corpus of literature and its cumulative body of practice”; Isadore Twersky, *Rabad of Posquières: A Twelfth-Century Talmudist*, rev. ed. (Philadelphia: Jewish Publication Society, 1980), vii.

29. An obvious reference to the work of our colleague and teacher Moshe Zemer, Halachah *sh'fuyah* (Tel Aviv: D'vir, 1993), published in English as *Evolving Halakhah: A Progressive Approach to Traditional Jewish Law* (Woodstock, VT: Jewish Lights, 1999). On Moshe's contributions to our enterprise see Walter Jacob, "Moshe Zemer: An Appreciation," in *Beyond the Letter of the Law: Essays on Diversity in the Halakhah*, ed. Walter Jacob (Pittsburgh: Rodef Shalom Press, 2004), 1–3, <https://digital.ub.uni-potsdam.de/content/pageview/349325>.

Is a Reform *Shulchan Aruch* Possible?

Alona Lisitsa

“What do Reform Jews have to do with halachah?” This rhetorical question is frequently raised by the opponents of the Reform Movement in Israel in times of heated discussions in order to marginalize Reform Jews and to send the message that we do not belong. It implies that there is no use in talking with the Reform Jews about essential Jewish matters since, they assume, Reform Jews do not keep halachic prescriptions and do not accept the authority of the *Shulchan Aruch*—and that is why, in their judgment, we are not part of “authentic Judaism.”¹

In conversations of this kind, the term “halachah” is meant in the sense of “Orthodox halachah,” and it is perceived as being completely equivalent to the *Shulchan Aruch*. The choice of this compilation of halachot is iconic because it encompasses the entirety of halachah up to its time, although in the centuries since the *Shulchan Aruch* was written and printed in the sixteenth century, many additional halachic decisions have been reached and other important halachic compilations have been published. According to this popular view, commitment to the halachic tradition means wholehearted commitment to the *Shulchan Aruch*. For many Orthodox Jews, the *Shulchan Aruch* has become the defining element of their Jewish identity, and total commitment to this compilation is thus the dividing line between the streams in Judaism.²

Within the Reform Movement, in more than two hundred years of its history, no compilation like the *Shulchan Aruch* has ever been

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written. Some would say it is obvious; others would say it is surprising. In this article I will discuss this puzzling phenomenon.

Let us start with the *Shulchan Aruch*. Rabbi Yosef Karo was born in Spain in 1488, not long before the Jews were expelled from that country. Following the expulsion his family wandered from place to place until they arrived at Tzfat in *Eretz Israel*. There Rabbi Karo wrote two of his famous works, the *Beit Yosef* and the *Shulchan Aruch*. In his introduction to the *Shulchan Aruch* he calls the *Beit Yosef* “the great compilation . . . in which I have included all the laws from all the halachic authorities, the new ones and the old ones, together with their whereabouts, whether in their courts or in the castles, in the Babylonian Talmud and in the Jerusalem Talmud, in *Tosefta*, *Sifra*, *Sifrei*, and *M’chilta*, the words of the commentators and *poskim* and the new and old responsa, and each law was explained there and clarified well, and each statement stated clearly.”

From this citation it is clear that Rabbi Karo viewed the *Beit Yosef* as his greatest and most important work, as *the* comprehensive halachic guide: well arranged, detailed, and meticulously explained. Not only did he collect all the sources and halachic rulings that existed up to his time, but he also cited them with full references to the Sages, Rabbis, and the compilations to which they belonged. Therefore, the *Beit Yosef* is a manual for *talmidei chachamim* (disciples of the Sages) that opens new horizons and allows them to continue their study through a detailed reference system. It allows them to open the Talmuds and other halachic compilations according to the references, study them in their context, and formulate their individual halachic perspective and rulings.³

This introduction reveals that the *Shulchan Aruch* was meant to be a brief summary of the great and voluminous *Beit Yosef*:

I have seen in my heart that it would be good to pick up the best of my book in a brief mode and clear language in order that God’s perfect Torah is studied by all Jews; that when they ask a wise student for halachah, he will not stutter, but “Say to Wisdom, ‘You are my sister’” [Prov. 6:4]—as it is clear to him that his sister is forbidden to him, in the same manner every law, that he might be asked about how to practice (*halachah l’maaseh*), would be clear to him from studying this beautifully structured book, the mount everyone seeks for. It is divided into thirty parts, so one can learn each day one of them; and in the end he would find that each month he repeats his Talmud (study, learning) and he

would say about the book: “Happy is the one who arrives with his studies in his hand” [BT *Bava Batra* 10b].⁴

The purpose of the *Shulchan Aruch* was to be a readily available and immediate source of halachah. Thanks to its brevity, clarity, and its logical structure, Rabbi Karo structured the *Shulchan Aruch* to be a text book divided into thirty chapters that could be repeated and finished as a whole every month. This “brief and clear” compilation enables the teacher (*talmid hacham*) to give a quick and definite reply to any question he might be asked. It is clear that this book was not designed for in-depth independent study because it does not include references or cite halachic opinions in the name of the Rabbis who taught them but, instead, states them as anonymous *halachah l’maaseh*. Rather, the *Shulchan Aruch* was meant to serve as a manual for short on-spot answers without delay when there was a need for such a ruling.⁵

Another important point for our discussion is the distinction Rabbi Karo makes in the introduction to the *Shulchan Aruch* between “junior students” and *maskilim* (educated, advanced students):

Moreover, the junior students will always repeat it and learn it by heart, and there would be a neat well-arranged version of practical halachah in their mouths from their young age, and also when they get old, they would not leave it; and the educated will be delighted as shining skies and leave all sadness, and hard work, but entertain their souls by this book, which is all beloved “*p’sakened*” halachah.

For the “junior” students, this book would be a basis for study and acquisition of the tradition, while the advanced students would be able to appreciate the greatness of this work and its beautiful arrangement; therefore, this book would be a source of enjoyment and pleasure of study. Short halachic rulings, which is an identifying mark of the book, are about “repairing the whole world” (*Ke-sef Mishneh*, introduction to the *Mishneh Torah*), because even the most illustrious students sometimes need a short and definitive answer, especially when they do not have enough time for independent in-depth study. If so, the *Shulchan Aruch*, like the *Beit Yosef*, is designated for the most advanced students (*talmidei chachamim*);

according to Rabbi Karo, it was not meant to be a textbook or manual for everyone.

But why did Rabbi Karo decide to write another book of halachic rulings if he thought that Rambam's *Mishneh Torah* was a successful innovation that could repair the whole world? There were indeed many reasons for this, but it is beyond the scope of this article to deal with them here.⁶ However, one of them was surely the feeling, shared by many other halachic authorities after Rabbi Karo, that the halachic sources had increased in number to such an extent that it was very difficult to follow them all, and that there was an urgent need to collect them all in one place. Another important reason was the political, social, and economic reality of Jewish community in the Diaspora. The persecutions and live threats that Jews in the Diaspora were experiencing caused them to fear that the Torah and its chain of transmission were endangered, and God forbid, might ultimately be forgotten. In Karo's time many Jewish communities were uprooted, the expulsion of Jews from Spain being just one example. Forced to move to new places, they brought their traditions with them, but they were also exposed to new customs and traditions that frequently conflicted with their own. The great number and variety of traditions and responsa and the desire to reconcile them led to the creation of summary compilations like the *Shulchan Aruch*.⁷ The motivations to keep the Oral Torah in order not to lose or forget anything, to reduce controversy, and to navigate among different customs, characterize other halachic compilations and manuals as well. From this perspective, the realities of multiple sources and rulings, diverse customs, and variations in prayer practices were seen as threatening to the unity of the tradition. Therefore, the *posek's* role was to gather, clarify, choose, and codify the tradition in order to create unity out of the diversity and to bring about a clear bottom line for whomever might need a halachic ruling.

Another purpose of such compilations of short and decisive rulings (*p'sakim*),⁸ like the *Shulchan Aruch*, is to enable rabbis everywhere to give immediate halachic rulings to the general public without the need for extensive discussion and study. In short, these compilations function as halachic manuals that state conclusively how the halachah should be practiced. The usability of this literature is based on the authority of its author: for it to be most effective, the Jewish community needs to trust the *posek* to such a

degree that they would feel that no further independent examination would be necessary. The widespread use and popularity of the *Shulchan Aruch* and other compilations of *p'sakim* and halachot testify to the reality that, in their time, the opportunity to engage in in-depth study, which requires intellectual ability and time, was not available to all. Moreover, the world of Torah and the sea of halachah were perceived as so great and so immense that sometimes the wisest of rabbis might not know or remember the exact answer, although they would certainly be able to reach it after studying the issue at hand. If the case was urgent and would not allow time enough for sufficient study of all the sources, the *posek* might end up giving an incorrect answer that could lead people into transgression.

Although Rabbi Karo saw the *Beit Yosef* as the more important work, the *Shulchan Aruch* received a place of honor in the Jewish tradition and is considered the classic and foundational book in rendering halachic rulings. What can we learn from this role reversal? At the very least, it demonstrates the desire for clear and unambiguous answers that can unify and unite a diverse community, the importance of accessibility of knowledge, and great respect for a rabbi whose authority has been widely accepted by many. The study of the Torah continued to exist as a mitzvah in its own right and as a device for halachic rulings in very special cases, but in most cases, preference was given to memorizing the opinions of accepted halachic authorities. The time and proficiency required for in-depth study continued to be a privilege of the very few. The reversal of priority of these two compilations, just after their publication, indicates that not everyone is interested in learning, but many are interested in practical halachah (*halachah l'maaseh*).

The reasons that led Rabbi Karo to write the *Shulchan Aruch* are not different from those that led other halachic authorities to write their compilations, the books that belong to the genre of *p'sakim* and halachot: the political and social reality of persecutions, upheavals, difficulties of economic and physical survival in unsympathetic society, wanderings and expulsions, on the one hand; and on the other hand, the diverse nature of the halachic literature that was influenced by the geography and long history of our people. Moreover, in traditional Jewish society the uniformity of law and custom preserves the traditional identity, the "correct" identity in the eyes of the legislator, the author of the *Shulchan Aruch*, or any

other compilation of *p'sakim*.⁹ This uniformity is an end in itself; it prevents disputes that are perceived as destructive to the Torah and Jewish existence. Rabbi Karo succeeded in gaining the uniformity due to his authority and great knowledge while the basic premise for these is hierarchical: authority, knowledge, and proficiency are not available to all.

The need for manuals of short rulings stems from the need to live according to the halachah at any moment of life, and thus their ruling must be an immediate reply while the learning itself is time consuming. Therefore, it is important that the collections serve as helpful tools and at the same time do not undermine or prevent deep learning but rather fill the gap when in-depth study is not possible.

Since the publication of the *Shulchan Aruch*, countless commentaries and books containing extensions and precisions were written. Even more books have been composed in its format and structure and continue to be written to this day. However, with the appearance of the modern movements in Judaism—Reform, Orthodox, and Conservative, which followed the period of Enlightenment—writing of the compilations à la *Shulchan Aruch* has been solely the Orthodox stream endeavor. In the Reform Movement, since its birth and despite its preoccupation, both direct and apologetic, with halachah in general and Orthodox halachah in particular, no manual nor compilation has been written in the format of the *Shulchan Aruch*.

Since the beginnings of the Reform Movement there has always been and still is much interest in halachah. The need to respond to the Movement's opponents gave rise to extensive apologetic halachic writing and search for precedent that included an effort to reinterpret biblical and Rabbinic sources. The most important historian of the Reform Movement, Michael Meyer, wrote in the introduction to his book *Response to Modernity*:

It is characteristic of reforming movements that they seek precedents. Unlike revolutions, they tend to stress continuity, links with the past rather than radical departure from it. From its beginnings, the Reform movement in modern Judaism was accused of sectarianism, of removing itself from the chain of tradition. Not surprisingly, its exponents were therefore perpetually concerned to show that they were merely elaborating elements

found within Jewish history. They argued that religious reform had been indigenous to Judaism from early times and that they were simply giving new energy to currents that had dried up, mostly through persecution and isolation. Classical Judaism, they maintained, has been hospitable to reform. It was only with the authoritative codification of the Jewish law in Joseph Caro's *Shulchan Aruch* (The Set Table) in the sixteenth century that it had become stagnant.¹⁰

From the beginning of the Movement its advocates and rabbis viewed the *Shulchan Aruch* as the root and symbol of halachic fossilization that prevented the natural and gradual development of Judaism. They saw themselves as returning to the authentic original pre-*Shulchan Aruch* Judaism. Therefore, it is no surprise they did not hurry to compose books like it, or of the literary genre of *p'sakim* and halachot in general.

The Reform Movement in its various centers around the world has devolved and changed over the course of two hundred years since its birth, and of course its attitude towards halachah has also changed. If we look at the reasons that led to the creation of the *Shulchan Aruch*, and the compilations of *p'sakim* and halachot in general, through the Reform prism, we would be able to trace some differences of perception between the traditional and the liberal worlds.

Compared to the periods prior to the Enlightenment, both the first Reformers in nineteenth-century Europe and in the second half of the nineteenth and early twentieth centuries in America did not suffer persecutions and deportations, social hostility and non-acceptance to the same extent as the medieval Jews. The influence of Enlightenment, optimistic belief in advancement of all humanity, opening of the universities to Jews, civil rights, and the separation of the state and religion in America¹¹ were interpreted by the Reform Jews as the beginning of the Messianic era. The new high yeshivot were now the places of the Jewish Studies, Jewish high academic learning, and not only of traditional studies;¹² the printing press revolution and modern critical studies of the ancient sources gave some assurance of Torah continuity. The fears of the past that the Torah should be protected were not strong enough anymore; not because the Torah was less important, but because of the new confidence in the ability to preserve it that was strengthened by

the changes in the relationships with the non-Jewish society, the printing press, and research that allowed the sources to be stored and preserved.¹³

In the past, the multiplicity and diversity of sources, rulings, and customs were experienced as negative; it threatened the people of Israel and might cause them to forget its Torah. Therefore, an effort of harmonization, reflected in authoritative compilations that summarized the sea of halachah in the form of short final rulings, was required. In those compilations, the “correct” halachah and custom were established. The rabbi-compiler saw himself as having the authority to rule for many, and the more Jews accepted his authority, the more influence his compilation had and became more determinative, as we saw above in the case of the *Shulchan Aruch*. However, in the world of the Reform Movement, diversity is experienced as a blessing worth cultivating rather than an obstacle to fight and overcome. Rabbi Mark Washofsky, in the introduction to his book *Jewish Living*, defines the Reform community in the United States by its diversity and halachic variety:

Diversity.

There is no better or more accurate word to summarize the state of religious practice in today’s North American Reform movement. Each Reform congregation or community charts its own course in Jewish living. Each makes its own decisions as to how it shall worship, how it shall organize and conduct its business, how it shall celebrate Shabbat and the festivals, and how it shall mark the important moments in the life cycle of its members. No one community’s decisions are binding upon any other; neither the movement nor its rabbis attempt to enforce a uniform standard of religious observance among Reform congregations.¹⁴

Uniformity is no longer seen as the ideal to aspire to. Authority has given way to personal and community autonomy.

Rabbi Karo’s concern for a quick arrival to the halachic responsum gave way, in the Reform Movement, to a focus on learning which placed the emphasis on the halachic decision-making process itself. Individual learning is the result of this perception. The unauthoritative and non-hierarchical nature of the Movement, its focus on the autonomy of the individual and of each community, turn the process of learning and making the halachic decision,

personal and communal “*p’sakening*” into the essence: “The progressive Jew is called to deal with the legacy of Halacha through an in-depth continuous learning process that aims to shape his way of life.”¹⁵

The first religious reforms in the Movement were done in the framework of traditional halachah and with accordance to its traditional tools.¹⁶ As the changes and reforms were applied to the well-known and rooted traditions, they had to be explained and justified. The literary genre most suited for these needs was and still is the responsum. Reform thinkers advocated a developmental historical approach to Judaism in general and to halachah in particular. According to them, halachic ideas and conclusions are not expressed in the literature of the *p’sakim*, such as the *Shulchan Aruch*, but rather in the learning and comparing of one compilation to the others, those that preceded and followed it. This is why since then, one of the most common types of halachic literature in the Reform Movement has been responsa. The CCAR has a Responsa Committee, which answers halachic questions from laypeople and rabbis; and in Israel, rabbinic responsum is one of the requirements for ordination.

As we mentioned above, the attitude toward halachic observance in the Reform Movement has also changed over the years. With the establishment of the Reform Movement center in the United States in the 1950s, the more traditional approach to mitzvot observance was evident among the Reform Jews; and the Reform rabbis showed a stronger tendency to determine in the questions of Jewish practice. The number of questions that reached the Responsa Committee rose significantly in this period and reached the rate of more than two hundred questions a year.¹⁷ The questions asked were mainly about the life cycle, synagogue issues, medical ethics, conversion, homosexuality, and suicide, but many questions were also asked about daily personal practice. Indeed, the nature of Reform responsa was different from the Orthodox, as Rabbi Solomon Freehof wrote: their goal is guidance not governance.¹⁸ In addition to the responsa, individual rabbis began writing Jewish practice guides for Reform Jews. These guides were limited in scope, compared to the *Shulchan Aruch*, and their purpose was different, as reflected in the introductory remarks their authors wrote for them.

The first two guides published in the U.S. Reform Movement were written by Rabbis Jerome Folkman and Abraham Feldman.

Rabbi Folkman aimed his guide to young couples who wanted to build a Jewish home,¹⁹ and Rabbi Feldman responded to his congregational board members' request for a guide that would describe the beliefs and practices of Reform Judaism.²⁰ In the introduction to the guides, their authors defined their target audience: Rabbi Folkman's guide was for "the scores of young people who have asked me to suggest to them a design for Jewish living, and to the hundreds and perhaps thousands of others like them";²¹ and Rabbi Feldman addressed new members of his congregation at the beginning, and later, in the extended edition, those who came to join the nationwide Reform Movement.²²

Just like the *Shulchan Aruch*, which was compiled to meet the needs of its time, so were these guides. But the needs for writing them, unlike those that led to the creation of the *Shulchan Aruch*, were positive: according to Rabbi Folkman, a revival of the religious spirit in the country and in the world that led young people of all faiths to seek spiritual values, and young Jews to seek design of their Jewish living; and in the case of Rabbi Feldman, the growth of the U.S. Reform Movement, often at the expense of other movements, so the need to explain the Reform worldview and its practice appeared. In the words of Rabbi Feldman, he set himself a goal to bring consistency and order into this situation of confusion. Rabbi Folkman addressed mainly young couples who come from families with different religious backgrounds or from no religious background whatsoever, and he pointed out that Jewish life patterns of the past might not always fit into the rapidly changing modern life. Both rabbis viewed the reality of Reform Jews in the United States of the 1950s as optimistic and crafted their guides as helpful tools and not as a rescue plan.

Unlike the *Shulchan Aruch*, these guides did not have any pretense to "*p'saken*" halachah for the entire people of Israel, but for those who approached the rabbi with a question and those who would find interest in his answer (Rabbi Folkman); or for the Movement's activists and rabbis who want to impart a solid reform worldview to newcomers (Rabbi Feldman). To a certain extent, these guides are essentially more like *responsa* than the literature of *p'sakim* and *halachot*. Moreover, Rabbi Folkman admits from the outset that every Jewish family is different from one another, so the guide is a proposal that should be adopted to each individual case. Rabbi Feldman even stresses that his guide is not a code. Furthermore,

he was personally opposed to the creation of such a code and believed that there was no room for it in the Reform Movement:

But neither is Reform Judaism an inchoate, anarchic, nebulous matter. Reform Judaism has a clearly defined position, and in the course of the decades it has freely developed into a recognizable pattern, not dogmatic, not crystallized as of any one moment or generation; nevertheless it has convictions, it has direction, and it has voluntarily accepted prevailing practices.²³

But according to Rabbi Feldman there are indeed accepted customs and practices in the Reform Movement, but they were not ruled by the Rabbis but rather accepted by the majority voluntarily. Even if it is essential to present the comprehensive and consistent view, Rabbi Feldman went forth to declare unequivocally that his guide is not a Reform *Shulchan Aruch*: "To bring some modicum of consistency and order into this situation, rejecting dogmatism and shunning even the possibility of a liberal *Shulchan Aruch*."²⁴ He went on and defined his essay as not an official or all-inclusive guide, but as a modest effort to describe the common practice of U.S. Reform Judaism. Rabbi Feldman recognized the existence of variations to these practices and confirmed their legitimacy. His guide imparts knowledge and direction but does not constitute instruction or obligating halachic ruling. These first guides focus on Shabbat, holidays, and personal prayer, mainly on their meaning: what the meaning of a holiday and its main customs is, without providing a detailed description of their practices. They have no clear ruling as to what a Jew should do and what is forbidden, but general guidelines to the good and comfortable way for both spouses to build their religious "togetherness," emphasizing the Jewish religious aspect in supposedly non-halachic areas, such as planning and honeymoon guidelines, choosing the place of residence, and the type of material environment appropriate to a Jewish home (Rabbi Folkman); or an explanation of the Reform theology and practice in the synagogue and some of the general guidelines for Shabbat and holidays at home, emphasizing the importance of prayer both at home and in public with the help of the Reform siddur (Rabbi Feldman). None of these guides have clear solutions and guidelines for every moment of Jewish daily life.

Both booklets also present the guiding principles for creating a Jewish lifestyle that a Reform Jew can use to make halachic decisions. The decision is personal and the guides do not use the language of obligation. Another guide, published in the same decade, *A Guide for Reform Jews* by Rabbis Frederic A. Doppelt and David Polish,²⁵ differed in character from its predecessors. In this book, the introductory part, and the part that introduces the Reform “halachic” principles and the authority of a mitzvah are equal in length to the part devoted to practice, mainly the circle of life and the circle of the year. This is perhaps the first guide that addresses all Reform Jews and uses the language of obligation. The authors represented the guide as a response to Reform Jews who wanted a religious lifestyle on a daily basis. Although the authors claimed they did not aim to rule behavior and mitzvot observance, but rather to create a guide that would enable those who wish to do so,²⁶ they indeed spoke a “should” language, canceled mitzvot, and established new ones, such as the obligation of a barren couple to adopt a non-Jewish orphan,²⁷ conduct a Confirmation ceremony,²⁸ and celebrate Israel Independence Day:

It is a Mitzva to observe the fifth of Iyar, the anniversary of the re-establishment of the State of Israel as a special holiday, commemorating a redemptive moment in the life of the Jewish people, as our Torah states, “Hear the word of the Lord, O nations, and declare it in the coastlands afar off: say, ‘He Who scattered Israel will gather him, and will keep him as a shepherd keeps his flock.’ For the Lord has ransomed Jacob, and has redeemed him from the hand of him who is stronger than he” (Jer. 31:10, 11).²⁹

They “*p’sakened*” three positive mitzvot of the day: the blessing, the special public prayer, and donations to the State of Israel. As is customary in the books of *p’sakim* and halachot, the blessing they ruled is defined in terms of the time of its utterance—the family meal—and in terms of its wording: in the traditional blessing formula, using the Divine Name and kingdom, with the special seal (*chatimah*), “Who has raised up the State of Israel.”

In the decades to follow, the U.S. Reform Movement published dozens of guides on almost every issue: Shabbat, holidays, and mitzvot, for the rabbis, for the mourners, and more. The common denominator of these guides is the attempt to talk about God

who gives us opportunities to behave and act in certain ways rather than about God who commands. At the same time, the guides include positive and negative mitzvot described in more detailed manner than in the first guides mentioned previously.³⁰ One of the most recent guides published, *Jewish Living: A Guide to Contemporary Reform Practice*, by Rabbi Mark Washofsky does not only teach about evolvement of the mitzvot and their values, but also gives practical guidance on how to keep them. In addition to the usual areas, such as year and life cycles, this guide also includes questions of human life that are not connected to synagogue or worship, such as medical ethics, relationships with non-Jews, with general society, and more. The various sections are similar to short responsa that call for choice and not necessarily “*p’saken*” what one should do. However, there are quite a few places where Rabbi Washofsky clearly states that this or that practice is not customary or unacceptable, or alternatively permits a particular practice. For example, in the case of opening a souvenir shop at the synagogue on Shabbat or conducting ceremonies on this day, he ruled:

For example, while the synagogue gift shop ought to be closed on the Shabbat, the needs of the community may require that it operate before and after services. In such a case, while the shop may be opened for browsing, no business transactions should be completed. Delivery of and payment for goods can take place at the end of Shabbat. . . .

Funerals are not held on Shabbat.

As in the other guides, Rabbi Washofsky does not use the language of obligation and prohibition, but certainly sets the boundaries for creativity and personal choices. This is another common characteristic of the Reform guides: phrasing that avoids the notion of mitzvah as commandment and attempts to call the public to study in depth the values embodied in them, examine, and choose what to embrace in daily life. In conclusion, although these guides are very distant in their spirit and wording from the *Shulchan Aruch*, they clearly express a Reform attempt to create a common denominator that is not only theological but also practical. These guides try to shape the Reform practice, when the acts are not one-time actions but daily routines.

Despite the extensive occupation with halachah in both the rabbinical seminary and Israeli society, no similar guide was published in Israel: neither one like the *Shulchan Aruch* nor like the guides published by the sister movement in the United States. This is despite the fact that Rabbi Moshe Zemer's *Evolving Halakhah: A Progressive Approach to Traditional Jewish Law* was translated into Hebrew and has received much publicity and interest. The question of "why" certainly requires more sociological research than we can afford here. Just to add to the above, one of the most popular halachic books in the Orthodox circles, *Peninei Halachah* (Pearls of Halachah) by Rabbi Eliezer Melamed, does not suffice providing short halachic rulings but expands significantly on background, reasons for observance, and spiritual and symbolic meanings of the mitzvot. Although as customary in the books of halachot, here too this book uses the obligation language of permissions and prohibitions, but it has many extensions compared to the *Shulchan Aruch*. It seems that even among the diverse Israeli Orthodox society, there is a growing sector that does not settle for "forbidden" and "permissible" alone but wants to understand in a more profound manner the halachic logic, a group that is less interested in an authoritative rabbi and his rulings and more in the ability to engage in self-study and finally decide for themselves.

So, should we have our own *Shulchan Aruch*? In the postmodern world, there is no reason to think that those Reform Jews, who have been educated on the premises of non-hierarchical and unauthoritative Judaism and the world in general, would accept the authority of the Rabbis in practice [*halachah l'maaseh*] without any critical analysis. It is precisely this situation that frees us to express our halachic views clearly, without fear. The concern and discomfort of interfering in another individual's personal realm, "p'sakening" and ruling for others on the personal matters of *avodat HaShem*, keeping Sabbath, or what to put in one's mouth, are understandable and necessary. Nevertheless, it is also obvious that these concerns have become a silencing force. This is how, among other things, we came to the reality of countless essays on the history and meaning of *t'fillin*, the women's obligation to wrap them and the validity of "vegetarian" *t'fillin*, and very few, definitely not enough, detailed writings, essays, or videos to guide Reform Jews how to put *t'fillin*, how to tie the straps, when and how to bless over it. If, after a thorough study, a Reform Jew makes a decision to

put *t'fillin* or to keep kosher at home, she would need an Orthodox guide that goes down to the details of proper performance. Even in order to clarify and shape an individual lifestyle that is different from that required by Orthodox halachah, liberal Jews need to use Orthodox sources and literature because of the lack of Reform practical guides.

In the Reform Movement there is still much reluctance to use a language of obligation and to take a stand on personal lifestyle issues. Out of respect for individual autonomy we do not teach enough how to perform mitzvot in the traditional ways or offer enough Reform solutions to apply to everyday life and practice. Thus, a void is created, especially when it comes to the daily life in the personal and home space. It is a void that cannot be filled with theological ideas and discussions alone, just as one cannot shape a meaningful Jewish lifestyle relying solely on a specific halachic ruling.

Once a Jew seeks an answer about some religious performance, even if the goal is to collect the diverse opinions and to decide autonomously, the Reform opinions about actual practice are often absent or scarce. Therefore, there is certainly a room and a need for halachic guidance that is not purely theoretical. The fear of coercion, especially in the community that does not consider itself committed to the opinion or ruling just because it has been "*p'sakened*" by someone with a rabbinic ordination, seems somewhat exaggerated. There is a real need, both practical and spiritual, to set up rich and varied Reform tables, decorated with colorful maps in front of our people, and invite them to sit down with us, to taste, to be engaged and feel at home. It will be an opportunity to expose opinions and rulings, which are our educated choices, as a platform for learning, choosing, and shaping our way of life.

Notes

1. This is an English variant of the original article in Hebrew to appear in the book in memory of Rabbi Moshe Zemer (in progress). I want to thank dear colleagues Rabbis B. Stoller and J. Herman for their kind editing of my translation.
2. Isadore Twersky, "*Shulchan Aruk: Enduring Code of Jewish Law*," *Judaism* 16 (1967): 141–58, esp. 130–31. Twersky argues that the term *Shulchan Aruch* (The Set Table) has at least three, if not more, different meanings. The origin of this expression is in the *M'chilta*

D'Rabbi Yishmael, Mishpatim, Masechta Denzikin Case, parasha alef. The first meaning is the name of the short, four-part compendium by Rabbi Joseph Karo, published in the sixteenth century. The second is the *Shulchan Aruch* together with the map of Rabbi Moshe Isserles, a compendium that adds Ashkenazi customs to the book that is mainly Spanish and kabbalistic tradition. At times, the term "*Shulchan Aruch*" also includes the interpretations and the various tools that have been connected to it and its map.

3. In the introduction to the *Beit Yosef*, Rabbi Karo writes that his purpose is to bind all the halachic material so that the wisdom of Israel will not be lost during the difficult period of persecutions and intellectual poverty. See Twersky, "*Shulchan Aruk*," 132; J. R. Woolf, "'La'Avodat Bor'ot: The Body in the 'Shulchan Aruch' of R. Joseph Caro," in *The Jewish Body; Corporeality, Society, and Identity in the Renaissance and Early Modern Period*, ed. M. Diemling and G. Veltri (Leiden: Brill, 2009), 161–62; M. Elon, *Jewish Law: History, Sources, Principles*, vol. 2 (Jerusalem, 1988), 1090–92 (Hebrew).
4. It is interesting to note that Rabbi Karo was strongly opposed to short essays, the practical summaries of halachah, which do not encourage study, such as *the Book of Agor*. He saw great importance not only in practical summation but in understanding the roots of halachah and its Talmudic origins. As Twersky writes, this see-saw tendency, gathering the material with the extensive references, interpretations, and annotations and then shortening all these materials to the form of brief practical halachic summaries, is not unique to Rabbi Karo or his period, see Twersky, "*Shulchan Aruk*," 149–50.
5. The resemblance of style between the *Shulchan Aruch* and *Mishneh Torah* of Maimonides is obvious. Indeed, in contrast to many rabbis who strongly criticized Maimonides for bringing the rulings without quoting and acknowledging their authors or providing the references, Rabbi Karo writes in his book, *Kesef Mishneh* about Maimonides' introduction to *Mishneh Torah* as follows: "And I say that the reasoning of Our rabbi [Rambam] was that if he had wanted to follow the way of the former authors before him, what advantage he would have had to add to the words of Rabbi Yitzchak Alfas, as in most places he [Rambam] ruled like him [Rabbi Alfas]; and thus he renewed the halachic ruling in the clear and brief language like the Mishnah, and any subsequent wise person may rely on [the Rambam's] decisions. If there would be a great sage who does not wish to rely on his determinations, such that he also weighs the matter with his discerning intelligence, who can stop him from studying the books of the Talmud and the codes? Thus, this path that [the Rambam] blazed is beneficial to the whole world except for one person in every generation. And it is beneficial for that individual as well: if he must rush to make a

decision, he may rely on the opinion of [the Rambam]. And even if he is not rushed, it is no small thing to be familiar with the reasoning of [the Rambam]." According to Rabbi Karo, the *Mishneh Torah* allows a quick answer without delaying to anyone who relies on Maimonides' opinion; and anyone who wants to deepen their study and time is in his hands, can do so. In the same manner the *Shulchan Aruch* allows to answer without delay and anyone who wants to deepen his studies would look into *Beit Yosef*. But it is important to note that the model that Rabbi Karo followed in organizing his compilation was *Arbaa Turim* (four columns) of Rabbi Yaakov ben haRosh and not that of the *Mishneh Torah* of Rambam.

6. J. Davis, "The Reception of the Shulhan 'Arukh and the Formation of Ashkenazic Jewish Identity," *AJS Review* 26, no. 2 (2002), 251–76. Davis describes the sixteenth century in Europe, the century when Rabbi Karo lived, as an age of legal codification. It is obvious that each of these efforts of codification either strengthen certain identities as "the correct" and legitimate, or weaken the others that are less legitimate from the point of view of the legislators.
7. Elon, *Jewish Law*, 1088.
8. *Ibid.*, 938–40.
9. Davis, "The Reception," 251–52. There he brings an important idea for understanding the codification process in general and the halachic one in particular: "Efforts to codify a body of law are tied necessarily to questions of political identity, that is, questions of who should be bound by the same law and who by different laws. Broadly speaking, legal codification can have either of two opposite effects. It can erase local differences and serve a universalizing goal. Or, by giving local differences written form and official sanction, it can serve to defeat universalizing trends in the law, and preserve and foster a sense of local or regional identity."
10. Michael A. Meyer, *Response to Modernity: A History of the Reform Movement in Judaism* (New York: Oxford University Press, 1988), 3.
11. *Ibid.*, 225–27.
12. *Ibid.*, 75–77.
13. There is no question that the *Shoah* has left a very strong imprint on the Reform Movement. The U.S. Reform Movement made great efforts to save prominent Jewish scholars and bring them to the American safe land.
14. Mark Washofsky, *Jewish Living: A Guide to Contemporary Reform Practice* (New York: UAH Press, 2000), ix.
15. The Israeli Reform Movement Platform, Gate 2, Reform Judaism and Halachah.
16. At the same time the tendency to deny the authority of halachah has developed in the Reform Movement.

17. Meyer, *Response to Modernity*, 375–76.
18. CCAR Yearbook LXXIII (1963), 163–64
19. Jerome D. Folkman, *Design for Jewish Living, A Guide for the Bride and Groom* (New York: UAHC, 1955).
20. Abraham J. Feldman, *Reform Judaism: A Guide for Reform Jews* (New York: Behrman House, 1956).
21. Folkman, *Design for Jewish Living*, v.
22. Originally the booklet was published in 1953 and was handed to the new members of the congregation. But soon it became popular outside it, and with the encouragement of the CCAR and UAHC, Rabbi Feldman wrote a more extensive guide that included additional customs and traditions, and not only those of his congregation.
23. Feldman, *Reform Judaism*, 3.
24. *Ibid*, 4.
25. Frederic A. Doppelt and David Polish, *A Guide for Reform Jews* (New York: Bloch, 1957).
26. *Ibid.*, vii.
27. *Ibid.*, 51.
28. *Ibid.*, 64–65.
29. *Ibid.*, 109.
30. Meyer, *Response to Modernity*, 377–78.
31. Washofsky, *Jewish Living*, 85–86.

An Evolving Israeli Reform Judaism: The Roles of Halachah and Civil Religion as Seen in the Writings of the Israel Movement for Progressive Judaism

David Ellenson and Michael Rosen

In this essay we will examine position papers that the Israeli Movement for Progressive Judaism (IMPJ) has published on issues of public import in contemporary Israel to comprehend the role that leaders of the Movement assign halachah in articulating their stances on such matters to the membership of the IMPJ and larger Israeli public. We will also apply the sociological concept of “civil religion” as a framework for understanding these policy statements and position papers. In so doing, we hope to gain a greater appreciation of the nature of Reform Judaism and its relationship to halachah in Israel today.

To do this, we will consider these Israeli Reform writings against the backdrop of the larger Reform context in which they are located. After looking at the concept of “civil religion,” we will offer a brief consideration of the role halachah has played historically in the Reform Movement and then focus on the work of Rabbi Moshe Zemer, who was the foremost public spokesman and exponent of halachah on the Israeli scene for the latter part of the twentieth century. By doing this, we can contextualize and contrast the contemporary writings of the IMPJ with past directions of the

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Reform Movement in both the Diaspora and Israel. In this way, a greater appreciation of the distinct character of Israeli Reform Judaism will be attained. By illuminating the trajectory of current-day Israeli Reform through the lenses of both “civil religion” and past Reform Jewish legal currents, we hope to offer insight into the evolving relationship between halachah and Israeli Reform Judaism in the past and present. We now begin our analysis by turning to a discussion of how the notion of “civil religion” can be adapted to an analysis of Israeli Reform.

Civil Religion and Israel

A major theme in modern-day social research associated with thinkers like Karl Marx and Georg Simmel has been the problem of social conflict and societal transformation. These thinkers focused a great deal of attention on the mechanisms of social change and revolution. However, as Talcott Parsons pointed out in his 1937 work, *The Structure of Social Action*, another group of social theorists identified with scholars such as Emile Durkheim and Max Weber centered their researches on structures of social integration and cohesion.¹ These scholars asked how equilibrium and solidarity was attained in a polity or among a people. Their research did not center on the question, “Why do societies or associations undergo change?” Rather, their query was, “What binds a social group or a people together?”

One of the answers to this latter question has been the notion of “civil religion.” First coined by the French *philosophe* Jean Jacques-Rousseau in his chapter on “Civil Religion,” in his famed work, *The Social Contract*,² the term has been employed by many social scientists in the centuries following Rousseau to describe the foundational documents, beliefs, and rituals suffused and practiced among a nation or people that serve as the “social cement” that unites them into a single polity.

In the United States, no theorist was more prominent than the late Berkeley sociologist Robert Bellah in applying this concept as a framework for understanding the American nation. In his classic 1967 essay, “Civil Religion in America,” Bellah defined civil religion “as an institutionalized collection of sacred beliefs about the American nation” that transcended the nation itself and provided the “terms in which it should be judged.” He pointed out that in

America these terms often found expression in “sacred texts” such as the Declaration of Independence and the Constitution, and he demonstrated that these documents played prominent roles in the ritual events of the American civil religion as presidents of the United States cited from them freely and often in their inaugural addresses. These texts and the values they contained provided for the expressions of ideals that created a “moral unity” among the American people.³

The late Jewish educator and communal leader Jonathan Woocher, in his *Sacred Survival: The Civil Religion of American Jews*, employed and adjusted this concept of civil religion to define an American “civil Judaism” that he described as “the constellation of beliefs and practices, myths and rituals which animates the organized American Jewish community today.” Woocher identified seven major tenets and three central myths that underscored this “American Jewish civil religion” and claimed that this “civil Judaism” provided the mortar that bound together “American Jewry as a community.”⁴

While the concept of “American Civil Judaism” proved to be an invaluable conceptual tool for comprehending many aspects of American Jewish life,⁵ Jonathan Sarna also expressed one important caveat regarding its usage. As Sarna saw it, Woocher’s employment of the concept was too overarching. Sarna wrote of the notion appreciatively, when he said, “The world view and ethos of civil Judaism are ‘persuasive to a large number of Jews for whom they substantially define what it means to be an American Jew today.’” However, Sarna also observed that *Sacred Survival* and the usage of the notion of an American Jewish Civil Judaism Woocher offered should be constricted to providing a framework for understanding the beliefs and commitments of “Federation Jews” who played “an active role in the work of the United Jewish Appeal and the Jewish federations across the country.” In sum, the concept did not illuminate the ethos of all American Jews. Rather, it shed light on the principles and attitudes that animated a subsection, albeit a crucial one, of the American Jewish community.⁶

In this essay, we will build upon the work of Bellah, Woocher, and Sarna and apply the concept of “civil religion” as a framework for understanding the nature of Israeli Reform Judaism as elite leaders of the IMPJ articulate it in the documents we will examine.

We will employ the conceptual tool of an “Israeli Jewish civil religion” to comprehend the character of Israeli Reform and its relationship to Jewish law.

Of course, we recognize that we are not the first persons to employ the notion of an “Israeli civil religion” to understand the culture and spirit of Israeli Jews. The Bar Ilan social scientists Charles Liebman and Eliezer Don-Yihya wrote a pathbreaking book, *Civil Religion in Israel*, in which they sought to apply the concept of “civil religion” to an understanding of Israeli Judaism as a whole.⁷ However, while Liebman and Don-Yihya emphasized the role of traditional religious Judaism in their conception of “Israeli civil religion,” we will modify their conception to grasp the spirit and attitudes that inform Israeli Reform Jews and Judaism. In so doing, we tailor our conception of an “Israeli civil religion”—in the spirit of Sarna—to provide an analysis of a large segment of, but not all, Israeli Jews. Like many of their fellow Israeli *chiloni* Jews, we will contend that Reform Israeli Jews look to “sacred texts” like *M’gillat HaAtzma-ut* (The Israeli Declaration of Independence) and the Basic Laws of the State (*Chukei HaYesod*) as the foundational documents of an “Israeli civil religion” that inform and sustain their views of the Israeli nation and its most valued principles. However, in keeping with the attitudes towards “civil religion” as defined by Bellah and Wocher, we recognize that these documents are seen by Israeli Reform Jews as uniting the nation by expressing the “beliefs” these Jews and others in Israel hold to be “sacred and inviolable” about the Israeli State. In short, *M’gillat HaAtzma-ut* and the Basic Laws occupy the same place in Israeli civil religion that the U.S. Declaration of Independence and the Constitution possess in American civil religion. They are seen by Israeli Reform as promoting the unity of the State and as providing the “transcendent terms” by which the nation will be judged. In applying this understanding of Israeli civil religion and its “sacred texts” to our presentation and analysis of position papers and policy declarations put forth in these IMPJ documents, we will underscore the ethos of the Israeli Reform Movement and its relationship to classical halachah. In the next section of this paper, we will provide a broad overview of the role halachah has occupied in Reform Judaism over the past two hundred years as well as an analysis and appreciation of the central place that the prominent Israeli Reform leader and

scholar Rabbi Moshe Zemer assigned halachah in his presentations of Reform Jewish positions in the Israeli public square in the last decades of the twentieth century.

Halachah in Reform Judaism and in the Work of Rabbi Moshe Zemer

When the Hamburg Reform Temple was established in 1817, it became, in the words of Jakob Petuchowski, “the first congregation in the nineteenth century which was founded on a declared Reform basis.”⁸ A year later the Hamburg Temple was officially dedicated, and in 1819 the first edition of the Hamburg Temple prayer book appeared. This siddur engendered considerable controversy, and contemporaneous champions of Orthodoxy savagely attacked it in *Eileh Divrei Habrit*, a collection of responsa compiled and edited by the Hamburg Rabbinical Court. The opinions contained within this volume marshaled Talmudic and other halachic sources against the innovations introduced by the Reformers into Jewish prayer.

M. J. Bresslau, an editor of the Hamburg Temple prayer book, responded to the Orthodox in a Hebrew volume, *Herev Nokemet Nekam Brit*, and contended that the authors of *Eileh Divrei Habrit* had misinterpreted some and ignored other classical rabbinical sources in making their case against the Hamburg Reformers’ liturgy. Drawing upon earlier halachic works (*Or Nogah* and *Nogah Hatzedek*) in defense of Reform, Bresslau did not confine his response to a critique of what he claimed was an Orthodox misuse of Rabbinic literature. He also cited much Rabbinic material to defend the deeds of the Hamburg Reformers. Nor was Bresslau alone among the Reformers in offering such a statement. David Caro, in his *Brit Emet* (1820), also condemned the Orthodox responsa as misinformed, and he too gathered together alternative halachic sources to provide a traditional warrant for the deeds of the Reformers.⁹

While historians and partisans continue to debate the merits of each side’s arguments in the dispute, “what remains of abiding interest [in this affair],” as Petuchowski observed, “is the fact that the early Reformers should have felt the need to defend themselves in that particular arena, and with these particular weapons. Nothing demonstrates more clearly than this that the farthest thing from

their mind was the formation of a new Jewish sect, let alone the founding of a new religion. The Judaism to which they wanted to bring reform was a Judaism based on Bible, Talmud and Codes; and it was by an appeal to these accepted bases of Jewish life that they sought to justify their place *within* Judaism."¹⁰

Gunther Plaut, commenting upon the same episode, analyzes it much as Petuchowski did and notes that the literature of the Reformers in this dispute "is couched in the same language which Orthodoxy had used." These initial proponents of Reform, Plaut asserts, "demanded that any change from the past be founded in genuine Jewish tradition." In so doing, these men, in Plaut's opinion, established a pattern for later generations of Reform leaders who "insisted that all of tradition was significant, that Reform had to grow organically from it, and that a renewal of Judaism could only come from a continuity of spiritual development [anchored in no small measure in halachah]."¹¹

However, a Reform Judaism that saw itself as part of the historical community of Rabbinic Judaism that was tied to Jewish legal literature to sanction its actions and attitudes soon weakened during the course of the nineteenth century, and this vector toward antinomianism unquestionably continued into the twentieth century.¹² Figures like Samuel Holdheim in Germany and David Einhorn and Kaufmann Kohler in the United States as well as later Reform ideologues like Alvin Reines and Eugene Mihaly surely forged a version of Reform Judaism that no longer defined itself in any significant way in legal categories, and Reform Judaism, through the spirit of instruments like the Pittsburgh Platform, ultimately came to abjure law as a defining characteristic of the Movement. It was a Reform, as Gerald Blidstein has observed, that was no longer tied to "the authority of [legal] precedent [and halachah]" to sanction its actions.¹³

Despite this dominant anti-legalistic trend in Reform Judaism, halachah was never completely abandoned by other spokespersons of the Movement. Jacob Lauterbach, Samuel Cohon, Solomon Freehof, Walter Jacob, Eugene Borowitz, Jacob Petuchowski, Gunther Plaut, Rachel Adler, and Mark Washofsky all contended that halachah comprised too central and idiomatic a dimension of Jewish tradition for Reform Judaism to ignore. These persons produced a plethora of writings and responsa that granted halachah an honored role in Reform Judaism. They believed that to

deny Reform Jews the continuity and wisdom this literature provides would constitute an unwarranted break with the identity and community that have marked Jews and Judaism for millennia. While these proponents of a Reform halachah have surely departed from a traditional approach that would regard halachic decisions issued by the rabbinate as normative and binding, they all maintained that an authentic religious expression of Reform had to express itself in part in terms and sources taken from the halachah. As Petuchowski wrote, Reform Judaism was to be “predicated on organic growth and development, that is, on evolution.” A Reform that would abrogate the halachic elements of the tradition, in the words of Petuchowski, “stands for revolution and [a] radical break with the Jewish past.”¹⁴

In Israel in the latter years of the twentieth century, no one affirmed this approach to Reform with more integrity and tenacity than Rabbi Moshe Zemer of Tel Aviv. Zemer, *av beit din* of the Israel Council of Progressive Rabbis and director of the Freehof Institute for Progressive Halachah, published his halachic work, *Halachah Shefuyah*, in Israel in 1993.¹⁵ Divided into eight sections and forty-two chapters that represent a distillation of thirty years of Zemer’s scholarly writings on many matters of moment to the Israeli public, most of these works were published in Israeli newspapers like *Haaretz*. This meant, as Michael White and David Ellenson wrote in an assessment of the Zemer book in the pages of this journal, “Zemer’s book can neither be understood nor judged apart from the religious-political reality of the Jewish State within which Zemer operates. Zemer’s topics are often determined by events on the Israeli scene. Particular attention is paid to a whole host of issues ranging from the State of Israel’s relationship to its own non-Jewish minorities and the Palestinians to the status of women within the State. These issues, and others, are treated within the context of an Israeli political situation where halachah and State are frequently intertwined.”¹⁶

Michael Rosen, also writing on Zemer and his halachic methodology in the *CCAR Journal*, observed that Zemer regarded Judaism “as a system that is bounded by legal definition.” Zemer, Rosen stated, was surely a ‘modernist.’ In keeping with his identity as a Reform rabbi, Zemer believed that “*halachah* is intrinsically an ethical system” that “evolves over time.” Furthermore, Reform halachah “relies on scholarly study of the classic texts of

Judaism, which discovers variety, flexibility, and creativity in *halachah* and draws on new information derived from archeological excavations and documents unknown to our ancestors." While these emphases on ethics, evolution, and academic scholarship clearly distinguished Zemer from Orthodox *poskim*, Zemer was unquestionably a "halachist." Again, to cite Rosen, "Zemer starts from a specific case and builds upon that in a classical halachic mode. He then frames the question within its halachic context. In essence, Zemer is creating a case model that is modeled upon the classical responsa literature." He used "the techniques and methodologies of the traditional halachists within a liberal framework that weaves the fabric of *halachah*, making it into one ethical and mitzvah system."¹⁷

As a "halachic formalist" who employed the classical system of Jewish law "in fresh ways,"¹⁸ Zemer was committed to the notion that Reform must speak in the genre of the responsum as it addressed the Israeli public. As the most prominent Reform voice on the Israeli public scene during his lifetime, Zemer championed a tradition of Reform entwined with halachah and demonstrated how an informed and concerned Israeli Reform rabbi could apply the precedents and ethos of Jewish law to the public problems of Israel. Having provided an overview of the attitude elements in the Reform Movement have had towards halachah since the inception of the Movement and having offered a picture of the position that the most prominent public representative of the Israeli Reform Movement put forth at end and turn of the century,¹⁹ we are now able to survey the public writings of the IMPJ on current matters of import to the Israeli public. In so doing, we will evaluate what these sources suggest about the character of the Israeli Reform Movement and the role that Jewish law and classical Jewish sources occupy within it today.

An Examination of IMPJ Position Papers on Current Issues

In this final part of our paper, we will focus on five specific issues of public import and concern on which the Israeli Reform Movement has articulated a policy position. These positions are found in Hebrew on the IMPJ website, under the title "Position Papers."²⁰ At the outset, we would note this section only appears in the Hebrew language and only on the Hebrew and

Arabic versions of the website. This is not surprising since these issues are extremely topical to the Israeli public but would likely strike non-Israelis, including English-reading American Reform Jews, as rather esoteric and beyond their cultural-political-social awareness.

The fact that these papers are written exclusively in Hebrew signals that the target audience for these papers is unquestionably the Israeli, Hebrew-speaking public. They are meant to inform Israeli Reform Jews as well as other Israelis what the Reform Movement's positions are regarding these matters. The topics indicate that the IMPJ, like the American Reform Movement, places an overwhelming emphasis on Social Justice Issues.

The position papers cited are all the products of the Israel Religious Action Center (IRAC), the Israeli counterpart to the American Reform Movement's Religious Action Center (RAC). Like IRAC, the RAC has an extensive website on matters of topical import to Reform Jews as well as other Americans both Jewish and non-Jewish. Although the position papers do not focus on Jewish sources for the rationales for its positions, the web pages that highlight each issue addressed do make an explicit point of relating the positions the RAC adopts to Jewish tradition in every single instance. While the language of the RAC is not halachic, the RAC goes to great lengths to base their stances on the Jewish prophetic tradition and the moral ethos of Rabbinic Judaism.

As we shall see when we examine the position papers in detail below, the Israeli Reform Movement barely cites scriptural sources and rarely references halachic sources. Rather, the "sacred and inviolable texts" of the IMPJ and IRAC are principally the foundational documents of the "Israeli civil religion" (i.e., The Israeli Declaration of Independence and the Basic Laws of the State).²¹ As such the Israeli movement wraps itself in the "scripture" of the Israeli civil religion, not traditional religious sources as the American Reform Movement does, nor in classical halachah as Zemer did. Instead, it employs documents that have resonance to members of the IMPJ and vast number of *chiloni* and other non-Chareidi Israelis. In so doing, the IMPJ places itself squarely in the social-cultural reality and matrix of Israel and, as we will argue, the Israeli Reform Movement today has essentially replaced the "halachah" of traditional religious

sources with the laws, principles, and documents of the State of Israel itself.

We now turn to the specific position papers to support our argument that these writings indicate that the Israeli Movement for Progressive Judaism identifies itself with the civil religion of the State of Israel for its Jewish citizens. To do this, we will provide a brief analysis of each position on its website that the Movement adopts by first summarizing the particular issue each paper addresses. We then examine the “proof texts” used to justify the IMPJ stance on each matter. For each paper we will refer to the web source so that the reader can refer directly to the Hebrew documents. We begin by examining these papers in the order in which they appear on the website.

The first position paper deals with changes in the Basic Law regarding the Jewish nature of the State of Israel. This law created a firestorm in both the State of Israel and the Diaspora.²² This paper ([http://www.reform.org.il/Assets/nationality-law11.14%20\(2\).pdf](http://www.reform.org.il/Assets/nationality-law11.14%20(2).pdf)) was published in 2018 in reaction to the proposed 15th Basic Law of the State, which stated that Israel was the official nation state of the Jews and elevated Hebrew above Arabic as an official language. It was explicitly opposed by the Reform Movement on the grounds that it was contrary to the principle enshrined in *M’gillat HaAtzma-ut* that defined Israel as both a Jewish and a pluralistic State that granted all its citizens equal rights. The opposition to the law was based on the concern that this fundamental principle enshrined in the founding document of the State was in effect negated. The IMPJ held that the proposed Nation State Bill violated this principle by promoting the national rights of the Jewish people while ignoring the rights of other communities.

The most striking section in the IMPJ position paper for our purposes is found in Section 6. Here the IMPJ quotes the Israeli Declaration of Independence and asserts that the Declaration demands that the State deal righteously and equitably with the entire population of the State of Israel. No biblical text justifying this stance is put forth. Instead, the document cites the Declaration of Independence alone for a justification of this requirement and the Movement reaches out to the Arab minority inhabitants of Israel with the claim that Israel must bring “the blessings of progress to all the country’s inhabitants.”

The summary statement in this section locates the Reform Israeli Movement squarely within the Zionist Movement and pleads its case in the following words. The IMPJ writes, "As a Zionist Movement we believe that the principle of Israel as the national homeland of the Jewish people is worthy of a clear legislative statement that will firmly establish this principle in the Israeli community and the world. A partial statement that ignores foundational principles about the identity of the State and its path from the time of its establishment will harm the principle of the nation state [as being for all of its inhabitants]." The argument is based upon the foundational text of the state, not the foundational texts of the prophetic or Rabbinic traditions.

In considering the second position paper, "The Relationship between Religion and the State of Israel: Fundamental Principles for the New Israeli Reality," published in 2011, the Movement notes in its Preface (p. 3) that this paper was published on the 107th anniversary of Herzl's death (<http://www.reform.org.il/Assets/reformdatumedinah.pdf>). The paper states that the aim of this paper is to realign the position of religion and the State in keeping with the vision of a complete separation between Church and State that Herzl put forth. The foundational text that this paper quotes and upon which it bases its position is taken from *The Jewish State*.

The introduction (p. 7) to this second paper cites, as did the first IMPJ paper we discussed, the Declaration of Independence as demanding that the State grant complete religious freedom "to all its citizens, regardless of race, religion or sex," The Declaration serves as the foundational and inviolable text that justifies the claim that the "torah of the state" demands a separation of religion from State. Once again, the IMPJ cites no proof texts from Jewish religious tradition for a justification of its position, though the Israeli Supreme Court ruling requiring that the State recognize the legality of non-Orthodox conversions within Israel is referenced as providing support for this position.

The balance of this IMPJ paper lays out specific positions regarding issues of concern to the Israeli Public (e.g., role of religious courts, role of Shabbat, freedom of choice in marriage, and conversion, among others). Again, no religious texts are mentioned in the discussion of these matters. Instead, the foundational texts of Israeli civil religion, the Declaration of Independence and the Basic Laws, are named.

In a third position paper, also published in 2011, “‘And Should You Love Him as You Love Yourself’, Racism in the Name of Halacha: Racial Incitement by Rabbis in the State of Israel” (<http://www.reform.org.il/Assets/racismirac2012.pdf>), the IMPJ incorporates the biblical verse from Leviticus 19:34 as part of the title. For the first time in our investigation, a biblical source is cited. Nonetheless, the substantive arguments advanced in this policy paper follow the overall pattern that we have noted previously. Traditional Jewish sources are not explicitly relied upon to provide foundational arguments for the position advanced in this paper. Instead (p. 3), the paper cites an Israeli legislative document for justifying the view that “Hebrew tradition places a high esteem on the value of respect due a person.” While the paragraph does speak about Jewish tradition as a source for this value, it is the Israeli tradition that is the major moral guiding point.

To be sure, there is a complete section devoted to the halachic sources (pp. 25–31) in this position paper. The first part of this section (pp. 25–28) cites sources that would argue against an exclusionary posture towards non-Jews residing in Israel. The balance of this section cites the sources upon which the Rabbis inciting racism rely, including the infamously notorious tract *Torat HaMelech* of Rabbis Yitzhak Shapira and Yosef Elitzur, which contends that murder of gentiles is halachically permitted in many instances (p. 30).²³ The IMPJ concludes this summation of these two schools of thought by stating that the sources these latter decisors (*poskim*) select and the interpretation each decisor offers on this matter admit of more than one interpretation. The Israeli Reform Movement maintains that the conclusions at which the authors of *Torat HaMelech* arrive are hardly “objectively” required and that they can surely be contested. The racist views these rabbis express testify to the “being and faith” of these men far more than they do to the meanings inherent in each verse they cite. Indeed, the IMPJ concludes this section by citing the ethical charge Moses made to the Israelites in Deuteronomy 10:12–19: “And now, Israel, what does Adonai your God require of you, but to fear Adonai your God, to walk in all God’s ways, and to love God . . . For Adonai your God is God of gods, and Master of masters, the great God, the mighty, and the awful, who does not regard persons, nor takes reward. God executes justice for

the orphan and the widow, and the stranger, giving them food and clothing. Therefore, love the stranger for you were strangers in the Land of Egypt (p. 31).” The moral exhortation to love and support the stranger and the vulnerable trumps all other halachic concerns or claims.

The last sections of the paper detail concrete actions that morally conscientious Israelis need to take to rectify the scourge of racism in the State. There is also a summary of the issue that concludes with a statement that these rabbis, by their racist attitudes, are causing real harm to Judaism. It is noteworthy that even though this paper deals with halachic attitudes of racist rabbis, it quotes no sources in the summary to show why the evils that these rabbis are urging in the name of Jewish law run contrary to major halachic principles and sources. Obviously, if halachah was of vital import to the writers of this paper, they would have couched their arguments in such halachic language. Indeed, when Moshe Zemer dealt with a comparable issue, “The Attitude Toward the Enemy” as well as “Kahanism and Racism” in a section of his book entitled “The State of Israel and Gentiles,” he, in contrast to the authors of this IMPJ document, dealt extensively with halachic sources.²⁴ Again, our aim here is not to critique the authors of the IMPJ policy paper. Rather, the absence of halachic sources indicates that the writers of this paper did not feel that it would bolster their arguments to their target Israeli audience.

In a fourth position paper on “Reform Conversion—the Situation in Israel (<http://www.reform.org.il/Assets/reformdatumedinahgyur.pdf>), published in 2013, the IMPJ offers a concise two-page summary of the current legal status of Reform conversion in Israel, a sensitive matter for the Reform Movement in a Jewish State where the Orthodox rabbinate has held a legal monopoly over matters of conversion since the early years of the State. Therefore, it is not surprising that the paper cites decisions of the Israeli Supreme Court on the issue as well as the holdings of the Neeman Commission, which was established by the State in 1998 to resolve disputes over issues of conversion within the State of Israel. The paper points out the theoretical enfranchisement the decisions of the Court as well as the proposals of the Neeman Commission would have allowed the Reform and Conservative Movements over matters of conversion. However, the

paper quickly contrasts the latitude of these decisions and proposals with the constrictions on the two movements that persist in reality in contemporary Israel. While the paper deals primarily with “secular sources,” it is noteworthy to observe that this paper begins with a famous quotation from a Rabbinic source, *Massechet Gerim* (4:3): “The Land of Israel is beloved because it enables conversion. If one says I am a convert in the land of Israel, they immediately accept him [at his word]. But outside of Israel he is not accepted unless he has witnesses with him [that attest to his conversion].”

The paper continues by discussing the current status and ongoing challenges the Reform Movement faces on this question and puts forward Reform Movement initiatives on this matter. The last section of the paper is entitled, “From Study to Action (*MiTalmud l’maaseh*),” which details the accomplishments of the Movement in this area and recounts “facts currently on the ground.” The use of this expression, while rooted in the Talmudic tradition, is part of Israeli discourse that would be familiar to secular Israelis.

The paper concludes with a quotation from Chief Justice Barak that he issued in a legal opinion on the matter, where he stated, “Israel is not the state of the *eidah y’hudit* (Jewish congregation). Israel is the state of the Jewish people, and it is the expression,” citing the Israeli Declaration of Independence, “of the right of the Jewish people to national rebirth in its own land.” (p. 31). This citation is once more a “proof text” drawn from Israeli rather than religious or halachic sources. Once again, the appeal is to a “secular text” that Israeli civil Judaism holds as authoritative.

Finally, the last position paper we will consider, “The Exclusion of Women in the Chareidi Community” (www.reform.org.il/Assets/mudarot2012.pdf), was published in 2012. It is a comprehensive review of the various ways that women are systematically excluded from the public life of the Chareidi community. More importantly, the paper considers how such constrictions on the public behavior of women in the ultra-Orthodox world “spills over” into the civil realities of Israeli life. The paper consists of several sections. The introduction begins with a quotation from the Supreme Court decision in the case of *Na’ami Ragen v Ministry of Transportation* (2011). The case involved gender-segregated seating on buses that served Chareidim. Justice Elyakim

Rubenstein, himself an Orthodox Jew, stated, "Is it even necessary to state that it is forbidden to require a woman, or even instruct her, to sit in the back of the bus?" This citation sets the tone for the rest of the paper.

Indeed, the next section of this lengthy paper (almost thirty pages) provides detailed and meticulous descriptions of the multiple instances of discrimination against women in the public sphere because of ultra-Orthodox pressures. A short section of four-and-a-half pages, entitled, "An Analysis of the Religious Requirement in Judaism for the Separation of Women and the Status of Women," follows. However, the title of this section is somewhat misleading, for it hardly touches on halachic discussions of this matter. Instead, it indicates that the Rabbis consistently interpreted the masculine pronoun in the Bible in a manner that generally narrowed the rights and often excluded the participation of women in the public arena. The IMPJ statement is a well-crafted argument that demonstrates that the situation that currently exists in Israel is a discriminatory one that fails to grant equality to women. It argues against the restricted status traditional Judaism accords women and maintains that it is inappropriate in a modern society that champions the notions of gender equality in the public square. Again, our point is not to disagree with or critique the positions the IMPJ takes on this issue. We could not be in fuller agreement with its stances. It is to simply emphasize once again that halachic sources that could counter these Chareidi arguments are essentially ignored in the IMPJ discussion, and that this reflects once more the secular nature of the Israeli audience the IMPJ addresses in its positions. Furthermore, it stands in sharp contrast to the writings of Moshe Zemer on issues relating to women, where halachic and other Jewish religious sources were cited at length in his responsa on such matters.²⁵

The section concludes with a citation from Rabbi Meir Ben-Hai Ouziel, the first Chief Sephardic Rabbi of Israel, regarding the right of women to vote.²⁶ Interestingly, the IMPJ position paper does not cite the halachic arguments that Ouziel raised in his responsum. Rather, the IMPJ cites an ancillary argument that Ouziel put forth in arguing that suffrage should be extended to women. R. Ouziel had observed that those elements in the Chareidi world who opposed granting women voting rights did so in

part because they claimed that granting women the right to vote would lead to sexual immodesty at polling stations. Ouziel found such an argument ridiculous. He observed that no immodesty could take place in the voting booth. He stated that men regularly interacted with women in the public sphere—in the street, in the store, and in commerce. No one would suggest that such normal interaction would lead to lewd behavior. Ouziel considered the argument ludicrous, though the IMPJ noted that large elements in the contemporary Chareidi community held this position. The IMPJ cited him on this point to indicate to the Israeli public that even a revered Orthodox religious figure would not countenance such a practice (p. 51).

Once again here, it is significant that the IMPJ ignored his substantive halachic arguments justifying the extension of suffrage to women. This decision not to consider such arguments, as well as a final eight-and-a-half page section presenting Israeli legal opinions issued by secular courts championing equal rights for women in the public arena, demonstrates the lack of importance the Movement assigns to classical halachah and testifies to the import the laws of the State occupy in the Israeli civil religion of Israeli Reform Jews.

Concluding Remarks

In our discussion of the five position papers posted to the IMPJ's website, we have shown how the leadership of the Reform community today has elevated the Israeli Declaration of Independence and the Basic Laws of the State—not halachah and the classical texts of Jewish religious tradition—to primary status in its efforts to articulate Israeli Reform Jewish positions on matters of public concern to the Israeli polity. In so doing, we have argued that *M'gillat HaAtzma-ut* and the Basic Laws of the State, not classical halachah, play the central role in informing the consciousness and promoting the unity of Israeli Reform Jews and their leaders.

Our argument is not that biblical, classical Rabbinic, and halachic sources are totally absent in the writings of present-day Israeli Reform. These sources are surely cited in the contemporary works of the Reform Movement in Israel. However, they are unquestionably reduced to an ancillary status when compared to the place

the 1948 Declaration of Independence and other “secular sources” occupy in these writings. Furthermore, when halachah is cited, it is generally not employed to grant credence or support for a position taken by the Reform Movement. Instead, it is typically mentioned to voice criticisms of the ultra-Orthodox authorities who express attitudes that most Israeli Reform and *chiloni* Jews consider a moral anathema. Given the negative perception many if not most secular Israelis hold towards the established Rabbinat and the Chareidi community, it is hardly surprising that they view halachic texts and their arbiters negatively in this way.

By elevating “secular documents” like the Declaration of Independence and the Basic Laws as its “sacred texts,” the IMPJ partakes in the ethos of an Israeli civil religion that guides the Israeli enterprise. These texts serve as a “social cement” promoting the unity of a majority of Jewish Israelis who draw inspiration and guidance from these “secular albeit revered”—not traditional religious—sources as warrants for its policy declarations and positions.²⁷ These writings open a window that provides a glimpse into modern-day Reform Judaism in the historic homeland of the Jewish people, and our essay displays the IMPJ as a self-consciously Zionist movement dedicated to seeing that the moral values expressed in these primary documents of the State hold sway in the public sphere.

This trajectory represents a shift in the public direction of twenty-first-century Israeli Reform Judaism and the place of halachah within it. It is surely far removed from the style and substance Moshe Zemer advanced towards halachah in his work in the Israeli public square. *M’gillat HaAtzma-ut*, not classical halachah, now plays the same central role in informing the consciousness and promoting the unity of Israeli Reform Jews and their leaders that the Declaration of Independence and the Constitution play in promoting social solidarity among countless citizens on the American scene. The use of the foundational documents of the State of Israel allows the Israeli Reform Movement to imbue the State of Israel with Jewish values by granting these documents the same level of authority that the traditional Jewish world imputes to traditional halachic texts.

Our study has shown that the Israeli Reform Movement participates in the Israeli civil religion and is in the process of creating Judaism in a non-halachic mode. In so doing, the IMPJ is hardly

unique in Reform Jewish history. Other elements among earlier generations of Reform Jews have developed in a similar manner. The next chapters in the ongoing evolution of the Reform Movement in Israeli guise remains yet to unfold.

Notes

1. See Talcott Parsons, *The Structure of Social Action* (New York: The Free Press, 1968).
2. Jean-Jacques Rousseau, *Political Classics. A Treatise on the Social Compact. Or, The Principles of Political Law* (Book 4, chap. 8) (London: Printed for D. I. Eaton, at the Cock and Swine, 1795). *Eighteenth Century Collections Online*, <http://tinyurl.gale.com/tinyurl/CML83X> (accessed November 26, 2019).
3. Robert N. Bellah, "Civil Religion in America," *Daedalus* 96, no. 1 (1967): 1–21. Reprinted in Robert N. Bellah, *Beyond Belief: Essays on Religion in a Post-Traditional World* (Berkeley: University of California Press, 1991 [1970]), 168–89.
4. Jonathan Woocher, *Sacred Survival: The Civil Religion of American Jews* (Bloomington and Indianapolis: Indiana University Press, 1986).
5. See Jonathan Woocher, "'Sacred Survival' Revisited: American Jewish Civil Religion in the New Millennium," in *The Cambridge Companion to American Judaism*, Cambridge Companions to Religion, ed. D. Kaplan (Cambridge: Cambridge University Press, 2005), 283–98.
6. J. D. Sarna, "Books in Review: 'Federation Judaism,'" *Commentary* 84, no. 6 (December 1987): 74. Retrieved from <http://resources.library.brandeis.edu/login?url=https://search-proquest-com.resources.library.brandeis.edu/docview/195859268?accountid=9703> (accessed November 26, 2019).
7. Charles Liebman and Eliezer Don-Yehiya, *Civil Religion in Israel: Traditional Judaism and Political Culture in the Jewish State* (Berkeley: University of California Press, 1983).
8. Jakob J. Petuchowski, *Prayerbook Reform in Europe* (New York: World Union for Progressive Judaism, 1968), 49.
9. For a summary of this controversy and its literature, see *ibid.*, 49–54 and 84–98, as well as Michael Meyer, *Response to Modernity: A History of the Reform Movement in Judaism* (New York: Oxford University Press, 1988), 53–61.
10. Petuchowski, *Prayerbook Reform in Europe*, 98.
11. Gunther Plaut, *The Rise of Reform Judaism* (New York: World Union for Progressive Judaism, 1963), 37 and xviii–xix.
12. See David Ellenson, "Antinomianism and Its Responses in the Nineteenth Century," in *The Cambridge Companion to Judaism and*

- Law*, ed. Christine Hayes (Cambridge: Cambridge University Press, 2016), 260–86
13. Gerald Blidstein, “Early Reform and Its Approach,” in *Tradition* 11, no. 3 (1970): 85.
 14. See Petuchowski, “Abraham Geiger and Samuel Holdheim,” *Leo Baeck Institute Yearbook* (1977): 159.
 15. Moshe Zemer, *Halachah Shefuyah* (Tel Aviv: D’vir, 1993). This book has been translated into English as Moshe Zemer, *Evolving Halachah: A Progressive Approach to Traditional Jewish Law* (Woodstock, VT: Jewish Lights Publishing, 1998).
 16. David Ellenson and Michael White, “Moshe Zemer’s *Halachah Shefuyah*: An Israeli Vision of Reform and Halachah,” *CCAR Journal* 43, no. 2 (Spring/Summer, 1996): 33.
 17. Michael Rosen, “Defining Death: The Interaction of Ethics and *Halachah*,” *CCAR Journal* 53, no. 4 (Fall, 2006): 44–61. All quotations in this paragraph concerning Zemer are taken from this article.
 18. *Ibid.*, 59.
 19. To be sure, Rabbi Galia Sadan of the Daniel Centers in Tel Aviv, in a discussion and later e-mail correspondence regarding our paper on November 7, 2019, observed that while Rabbi Zemer did write frequently in *Haaretz*, our conclusion about the role that halachah played in Israeli Reform during his lifetime should be tempered by the reality that he was an “outlier” in the IMPJ and that no one else developed “Reform halachah” in Israel the way that he did. While we accept and thank her for her insight, we do not feel that our citation of him and his work is altered by this fact. After all, because of his writings in the Israeli press, Zemer still remained the most well-known representative of Reform to the Israeli public. Even if other Israeli Reform leaders did not follow his halachic model, it is still valid to contrast his approach and the place of Jewish law within it to the policy and position papers that the leaders of IMPJ put forth at this time. Indeed, this contrast combined with our use of the “civil religion” framework we outlined above will say a great deal about how current-day Israeli Reform can be seen and regarded in a larger Israeli context.
 20. This can be found on the Hebrew tab of the IMPJ at <http://www.reform.org.il/heb/public-agenda/position-papers.asp>.
 21. While Israel has no written constitution, the Israeli Supreme Court has turned to the Basic Laws of the State as the constitutional law of the State. Among these laws is a 1992 law guaranteeing “Human Dignity and Liberty.” The most recent Basic Law was the controversial Nation-State Bill of 2018, which defined Israel as the nation state of the Jewish people. As we shall see, the IMPJ was opposed to the adoption of the Nation-State Bill of 2018, though it frequently cites the 1992 law guaranteeing

- “Human Dignity and Liberty” to all the inhabitants of the State as a justification for its positions. These laws protect the civil rights of Israelis and also are employed to legitimate the power of judicial review that the Supreme Court claims. In *Bank Miz-rachi v. The Minister of Finance* (1995), former President of the Israeli Supreme Court Aharon Barak maintained explicitly that the Court had the prerogative to overrule any laws enacted by the Knesset that contradicted the Basic Laws of the State and ushered in what he himself labeled a “constitutional revolution” in Israel. On this point, see Aharon Barak, “A Constitutional Revolution: Israel’s Basic Laws” *Faculty Scholarship Series* 3697 (1993), http://digitalcommons.law.yale.edu/fss_papers/3697. For a description of this chapter in Israeli legal history, consult Daphne Barak-Erez, “Broadening the Scope of Judicial Review in Israel: Between Activism and Restraint,” *Indian Journal of Constitutional Law* 3 (2009): 121.
22. For a superb presentation of the law and a discussion of its implications and meaning by twenty commentators representing a full spectrum of views by Israelis and Diasporan Jews on the bill, see Simon Rabinovitch, ed., *Defining Israel: The Jewish State, Democracy, and the Law* (Cincinnati: Hebrew Union College Press, 2019).
 23. See Bar Guzi, “Between Ethics and Jewish Law: Torat Ha-Melekh and the Moral Problems of Contemporary Halakhic Discourse,” 2018 Whizin Prize Essay, <https://www.reconstructingjudaism.org/center-jewish-ethics/whizin-prize-essays> (accessed December 2, 2019).
 24. See Zemer, *Halachah Shefuyah*, 185ff., and his *Evolving Halachah*, 212–15 and 220–23.
 25. See Zemer, *Halachah Shefuyah*, 59–104 and 207–38, and his *Evolving Halachah*, 59–120 and 239–80.
 26. For a full exposition of this responsum by Rabbi Ouziel, see David Ellenson and Michael Rosen, “Gender, Halakhah, and Women’s Suffrage,” in *Gender Issues in Jewish Law*, ed. Walter Jacob and Moshe Zemer (New York: Berghan Books, 2001), 65–71.
 27. As Michael Marmor informed us in an e-mail of December 11, 2019, Israeli organizations are increasingly “pouring over” *M’gillat HaAtzma-ut* as if it were “a sacred text.” For example, Rabbis for Human Rights has looked to the text as a “sacred warrant” for its work. See <https://rhr.org.il/heb/about-dep-education/order-atzmaut/>. In addition, Bina: The Jewish Movement for Social Change, has recently published a Hebrew volume, Israel Dov Elbaum, ed., *Megillat Ha’Atzmaut—The Declaration of Independence with an Israeli Talmudic Commentary: Sources, Research, Literature, and Midrash* (Rishon Lezion: Miskal–Yedioth Ahronoth Books and Chemed Books, 2019). See <https://www.bina.org.il/content/>

talmud-israeli/. Marmor points out that this suggests that “there is a tendency to relate to the document not only as a foundational text of the new state, but also as a canonical text of the Jewish tradition.” It also reflects the way in which the Israeli Movement for Progressive Judaism participates in the larger Israeli political, cultural, and religious scene.

Aggadic Judaism

Edwin Goldberg

I like to tell people that I am a proud Reform Jew, born and raised, but that I admire Reconstructionist Jews because, at least in the beginning, following Mordecai Kaplan, they had the guts to be clear about what they believed and what they didn't believe. Kaplan didn't believe in a "supernatural" God idea, so the notion of God choosing us was erased from his prayer book. Personally and professionally, I do not wish to change the traditional Torah blessing as he did, but I admire those who do refashion their prayers (in Hebrew, no less!) to reflect their understanding of reality. At heart, I agree with the famous declaration of Einstein, who, when asked if he believed in God, said: "I believe in the God of Spinoza."¹

I am writing this essay in Amsterdam, the place where Spinoza had the guts to declare he believed in a non-dualistic view of God and that the Torah was written by human beings. At the time, as everyone knows, it did not go well for Spinoza. Visiting the Portuguese Hebrew synagogue in Amsterdam is not a pleasant experience for me because I am resentful of how they treated Spinoza, excommunicating him, although I may have done the same were I there at that time.

I am willing to give seventeenth-century Jews of Amsterdam the benefit of the doubt. But what about twenty-first-century Jews? I respect all who make a choice for their theology and practice. I can only decide what works for me. Nevertheless, following Spinoza, I am not able to consider myself in any way a halachic Jew. To paraphrase that old sixties slogan: "Say it loud: I am non-halachic and proud!" I don't need to dress up my belief and practice with words that are completely out of context, except, of course, because from a

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“marketing” point of view they sound authentic and are therefore of some use. Take the word “mitzvah,” for example. I am happy to use it although I don’t believe in the traditional view of God being a “*m’tzaveh*.” Kaplan chose to change the word to “folkway” but he was an extremist in use of language, and I respect his choice but do not follow it. (His Reconstructionism is for me a guide, not a governance.)

As a Reform Jew, I follow the logic of that hit song of 1919: “How Ya Gonna Keep ‘em Down on the Farm (After They’ve Seen Pa-ree?)” In other words, midwestern American soldiers in World War I could not go back to boring Kansas life after they enjoyed Paris. To use sociological language, their “plausibility” structure was broken and the old ways no longer worked.² So, too, for me Reform Judaism means we do not start from a watered down version of halachah with a battle of the proof texts (very nineteenth-century Germanic) but rather from a recognition that we are in a completely different kind of discourse. We are not seeing halachah as a process that began with God at Sinai but rather as a human-created attempt to impose structure on our lives.

When I consider religion, I start from a pragmatic, utilitarian view: what can religion do for me? In other words, religion should be the solution, but what’s the problem? For me, post Spinoza, obeying God is not the problem. Living with authenticity is the challenge. It’s all about authenticity, not authority. Hence the question isn’t “what does God ask of me?” but “what does life ask of me?” Hillel had his classic tripartite formation of this question two thousand years ago (i.e., “If I am not for myself, who will be for me? If I am not for others, what am I? And if not now, when?”), but I prefer E. B. White’s formulation from 1969: “If the world were merely seductive, that would be easy. If it were merely challenging, that would be no problem. But I arise in the morning torn between a desire to improve the world and a desire to enjoy the world. This makes it hard to plan the day.”³

So the question that religion asks us is “how shall we spend our day?” How much for others and how much for us? Judaism gives us a structure that invites us into the conversation. I would call it something different than halachah. In fact, to make good use of an old word, I choose *aggadah*. For me *aggadah* represents a conversation. It’s a culture of responsibility, a flavor of gratitude, a midrash on meaning in life.

Don't give me "halachah lite." That puts me on the defensive. Zacharias Frankel, that early German reformer, believed in keeping the trappings of halachah, with his positive historical Judaism. Let the Conservative Jews struggle with that position. I prefer the good old Reform of Geiger, Holdheim, and Einhorn. Except that I have none of their arrogance in assuming they could create a new Jewish model. I would suggest, like the Aggadah, we take ourselves less seriously and enjoy the interplay between poetry and spiritual striving that the Aggadah represents.

From a practical side, what does this look like? It means that when leading a worship service or crafting a life-cycle event I ask not what is *right* but what *works well*. When helping to create *Mishkan HaNefesh*, the new Reform *machzor*, we made sure that the traditional prayer book was the basis for the new book, but much was removed by the final draft because of pragmatic as well as theological concerns. The many normative Jewish theologies represented in *Mishkan HaNefesh* allow for diverse prayer experiences in the fine tradition of aggadah. I also keep a kosher home but don't expect the local Chabad rabbi to come over for Shabbat.

I know that for traditional Jewish thinkers like Abraham Joshua Heschel, there is no halachah without aggadah and vice versa. I love reading Heschel but I don't pretend I come to the tradition from his point of view, any more than Geiger saw the world through the eyes of his old roommate, Samson Raphael Hirsch.

Here is a prime example of how the aggadah inspires me in my spiritual work. There is a powerful midrash from *B'reishit Rabbah* (39:1), explaining why God chose Abraham: "The Eternal said to Abram: Go forth from your country" (Gen. 12:1).

Rabbi Isaac began his *d'var Torah*:

"Listen, O daughter, and consider, incline your ear;
forget your people and your father's house" (Ps. 45:11).

Rabbi Isaac taught:

This may be compared to a man who was traveling from place to place, when he saw a *birah* burning. He said, "Might one say that the *birah* is without a leader?" The owner of the *birah* looked down at him and said, "I am the owner of the *birah*."

Likewise, because our father Abraham had said, "Might you say that the world is without a leader?" the Holy One, blessed be

God, looked out at him and said, "I am the owner of the world."
 . . . And the Eternal said to Abram: Go forth from your country.

Newer scholarship identifies the *birah* as a tenement from two thousand years ago in Rome; the landlords would build firetraps in order to exploit the people. The traveler is the first to ask the question whether or not God cares. God answers in the affirmative but admits that God needs help. (In the parable God is actually trapped within the building!) In essence, God chooses Abraham because he was the first to ask the right questions, namely does God care and what is our responsibility?

This lesson profoundly captures how a leader leads: we start by asking the right questions before we offer what may in fact be irrelevant answers.⁴ For me, God cares far more about addressing the right questions than about answering questions of minutiae.

Another important aggadic text for me comes from the story of Abaye, a noted sage who learns about his complicated nature in a miniature story from the Talmud:

Abaye heard a certain man saying to a certain woman, "Let us arise betimes and go on our way." "I will," said Abaye, "follow them in order to keep them away from transgression," and he followed them for three parasangs⁵ across the meadows. When they parted company, he heard them say, "Our company is pleasant, the way is long." "If it were I," said Abaye, "I could not have restrained myself," and so he went and leaned in deep anguish against a doorpost, when a certain old man came up to him and taught him: The greater the man, the greater his evil inclination. (BT *Sukkah* 52a)

This brief tale is a literary masterpiece which offers a terse but acute understanding of the human psyche. The structure of the story mirrors the central lesson of the events: even great leaders are split by their competing natures. The first half of the story features Abaye as moral paragon. The second half demonstrates his own moral challenges. Abaye only comes to understand at the end of the story that he wishes to be righteous but also is tempted by sin.⁶ Paradoxically, the couple are two people of one mind and Abaye is one person of two minds. Like a well-written poem, I can spend hours digging deeper into the psychological depth of this short tale. For me, the aggadah can be no finer.

The ancient writers of the aggadah did not compose psychological or philosophical essays but their *divrei Torah* and aggadot raise profound issues and impress upon a careful reader the magic of language and imagery to capture our soul's yearning for righteousness and truth. Jewish classical literature is filled with such tales and recent modern scholars have created a trove of secondary literature that helps the reader unravel the mysteries and appreciate the artistry.⁷

One final story, a modern parable: The famous Chicago Bears quarterback Sid Luckman was born to parents originally from Lithuania, who had settled in Brooklyn's Flatbush area. Luckman's mother, Ethel, had always hated football and would not watch, or even try to understand, her son's games. On Sid Luckman Day at New York's Polo Grounds in 1943, when the Bears played the Giants, Luckman finally convinced his mother to attend. The Bears easily dominated, but once, when Luckman dropped back to pass, his protection broke down and many huge Giants linemen chased after him. His mom's shouts carried over the quiet stands: "*Sideleh! Sideleh! Gebn zey di pilke, Sideleh!*" ("Give them the ball, Sidney! You're going to get hurt!").

Mrs. Luckman loved her son but she did not understand football. Reform Judaism may love the authenticity of tradition but we are fooling ourselves if we think we are playing the same game as traditional Jews, and we are shortchanging ourselves as well. For me, to be an aggadic Jew means I am authentic without competing with those who adhere to the halachah. I appreciate the Talmud, responsa literature, and even the codes, but without the burden of feeling like an amateur amongst professionals. My own approach becomes not *ain somchin b'aggadah* (do not use the aggadah for legal conclusions) but rather *ain somchin b'halachah* (do not use the halachah to guide one's life choices).⁸ To put it more clearly: when a messianic Jew tells me they are Jewish I politely disagree, telling them that, they are actually the classic definition of a Christian. Moreover, they should be proud of who they are. Likewise, an aggadic Jew need not pretend to be halachic. We should be delighted to claim our status as those who blend modernity with tradition without being chained to old beliefs and ancient strictures.

Rabbi Solomon Freehof famously said that for Reform Jews, Jewish law was to provide guidance, not governance. For him that meant adopting the methodology of halachah and creating

something new (Reform responsa). I admire this approach, but this is not aggadic Judaism. For me, Jewish texts that inspire, inspire. Those that do not need not be a stumbling block or detour on our path toward enlightenment. This is why I did not choose to study *daf yomi* even though I liked the idea of Jews sharing the same text each day. There is just too much that is not relevant. A Reform *daf yomi* would be wonderful, but impossible. Deciding what part of the Talmud fits this label would be both too difficult and *chuzpadik*. This is why I am an aggadic Jew. It does not require me to render my beliefs into old systems of organization. The aggadah approach allows me to rejoice in the *conversation* of Judaism without feeling like a fake or watered down practitioner of Jewish life. After all, if I believed in the God of Sinai I would have left Reform Judaism years ago and joined an Orthodox community.

But I choose the aggadic approach. As we read in *Midrash Sifrei* Deuteronomy 49:

So you want intimacy with
the One Who spoke the world into being?

Then master the aggadah
For then you will thereby become familiar with
the One Who spoke the world into being.

I am proud to follow this approach and in so doing address the most important questions. In this way, just maybe, God's presence will be felt and my life will have deep meaning.

Notes

1. "I believe in Spinoza's God, who reveals Himself in the lawful harmony of the world, not in a God who concerns Himself with the fate and the doings of mankind." His words were a response to Rabbi Herbert Goldstein (1929). Cf. Mandy Katz, "Einstein and His God," *Moment* magazine, April-May 2007. Einstein's answer was terse, as it was in a telegram.
2. Peter Berger, *The Sacred Canopy—Elements of a Sociological Theory of Religion* (New York: Doubleday, 1967), 45, 192. The plausibility structure of religion was destroyed in the modern period and only through an artificial refashioning can one lead a traditional religious life.
3. From an interview with Israel Shenker, *New York Times*, July 11, 1969.

4. For an astute analysis of this text see Paul Mandel, "The Call of Abraham: A Midrash Revisited," *Prooftexts* 14 (1994): 267–84.
5. About ten miles.
6. I discuss this story in detail in Edwin Goldberg, *Love Tales from the Talmud* (New York: URJ Press, 2010). Professor Jonathan Cohen introduced this story to me at Hebrew University in 1988.
7. A list of modern scholars includes Yonah Fraenkel, Aviva Zornberg, Avigdor Shinan, Jonathan Cohen, Ruth Calderon, and many more.
8. Rav Saadyah and others teach we do not rely on the aggadah for legal answers.

Talmudic Aggadah: Illustrations, Warnings, and Counterarguments to Halachah

Amy Scheinerman

After nourishment, shelter and companionship,
stories are the thing we need most in the world.

—Philip Pullman

No set of legal institutions or prescriptions exists
apart from the narratives that locate it and give it meaning.

—Robert Cover

Halachah wears a frown, Aggadah a smile . . .
The interrelationship of halachah and aggadah is the very heart
of Judaism.

—Hayim Nachman Bialik

Humans are Storytellers

In the 1940s psychologists Fritz Heider and Marianne Simmel produced a short animated film of simple geometric shapes moving about on the screen. They showed it to 120 people, 117 of whom saw stories of romance, comedy, and tragedy enacted by anthropomorphized rectangles, triangles, and circles interacting with one another. From our dreams and daydreams, to our fundamental modes of communication through narrative, to telling jokes and entertaining oneself and others, storytelling is how our brains absorb and organize data, and understand and express ideas. Our stories facilitate social bonding and promote pro-social behavior.

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As literary scholar Jonathan Gottschall expresses it, humans are the storytelling animal.¹

Narrative theorist William Labov has observed, “Narratives are privileged forms of discourse which play a central role in almost every conversation.”² This cannot be over-emphasized. Narrative stories facilitate effective communication and convey information and wisdom in every domain: medicine,³ history,⁴ philosophy,⁵ economics,⁶ mathematics,⁷ and, yes, law. Even more, stories inspire ideas, priorities, and pursuits in every realm of human endeavor.

Legal scholar Robert Cover (1943–1986) famously argued in “Nomos and Narrative”⁸ that while narrative and law are distinct realms and even mutually exclusive modes of discourse, they are nonetheless inseparably interrelated. Law exists only in the context of stories that define the origin and authority of a society’s laws: “No set of legal institutions or prescriptions exists apart from the narratives that locate it and give it meaning. For every constitution there is an epic, for each decalogue a scripture. Once understood in the context of the narratives that give it meaning, law becomes not merely a system of rules to be observed, but a world in which we live.”

Scholar of Bible and Rabbinic literature Moshe Simon-Shoshan supports Cover’s claim in his exposition of the role of narrative in Mishnah. He goes so far as to say that Mishnaic stories must be considered as *both* halachah and aggadah. “I argue that stories are an integral part of the Mishnah’s halakhic discourse. They serve not only to present individual cases and rulings but also to convey fundamental rabbinic teachings about the nature of halakhah and the individuals to whom it has been entrusted.”⁹ As students of Talmud are aware, storytelling plays an even larger and grander role in Gemara.

Mishnah Y’vamos 16:4 illustrates Cover’s and Simon-Shoshan’s ideas. The mishnah discusses whether or not a woman may re-marry if her husband has fallen into a body of water and there is no proof of his demise because his body has not been recovered. Opinions are expressed and law is shaped by means of three short stories:

If a man fell into water, whether [one can see] its end or not, his wife is forbidden to [marry again]. R. Meir said: It once happened

that a man fell into a large cistern but came out after three days. R. Yose said: It once happened that a blind man descended to immerse in a cave and his guide descended after him. After enough time had passed for their souls to depart, their wives remarried. Another incident occurred in As'ya. A man was lowered into the water and only his leg was brought back up. The Sages said: [if the recovered leg included] above the knee, [his wife] may remarry; if below the knee, she may not remarry.

R. Meir supports the initial statement, citing an account of a man who survived three days in a cistern. R. Yose challenges R. Meir's point with a story that sets three days as the maximum length of time the wife must wait to be considered a widow who may remarry. A third, anonymous story about an incident in As'ya, addresses the question of whether a woman may remarry if only part of her husband's body is found, prompting the Sages to rule on this matter. The discussion in the Gemara (BT *Y'vamot* 121b) cites a *baraita* in which R. Meir's story was taken to recount a miracle and hence is ineligible for determining halachah. The Gemara, presuming that the *baraita* considered survival for three days and nights without food or drink to constitute a miracle, cites Esther's instruction for the Jews, "Fast on my behalf; do not eat or drink for three days, night or day" (Esther 4:16) as proof that one can survive without nourishment for three days without a miracle. Hence R. Meir's story is reasonably part of the legal discussion. The Gemara has explained his story by citing yet another story to construct halachah.

The Nature and Purpose of Rabbinic Storytelling

Masterful Talmudic storytellers spun narratives of the fibers of life that accomplish all these goals and more: illustrate and reinforce halachic viewpoints, explicate and justify communal standards and theological views, and criticize and even denigrate opposing viewpoints. And beyond these, stories are marshalled to question the universal truth or efficacy of revered beliefs, and question the wisdom and propriety of halachah. The Sages' extensive use of stories in their legal discourse has rendered both the Babylonian and Jerusalem Talmuds archives of Rabbinic storytelling talent.

In the world of literary analysis, for centuries writers and literary critics have attempted to categorize stories. Some focus on

universal plot types (e.g., quest, tragedy, rebirth, rags to riches, overcoming adversity). Others focus on literary genres (e.g., fiction, nonfiction, poetry, drama).¹⁰ To the Chachamim, this approach would have sounded alien, not only for historical and cultural reasons, but because purpose, not style, was their intent. Their narratives may include historical events or biographical anecdotes, but their purpose was never to document either.¹¹ As Jeffrey Rubenstein has noted:

The storytellers were not attempting to document “what actually happened” out of a dispassionate interest in the objective historical record, or to transmit biographical facts in order to provide pure data for posterity. This type of detached, impartial writing of a biography is a distinctly modern approach. Nowadays we distinguish biography from fiction . . . In pre-modern cultures, however, the distinction between biography and fiction was blurred. Ancient authors saw themselves as teachers, and they were more concerned with the didactic point than historical accuracy.¹²

Talmud flows seamlessly among genres—legal, narrative, theology, mythology, philosophy—all woven inextricably together. The Chachamim examined halachic, theological, ethical, and philosophical concerns from many angles and expressed their views and wisdom in a variety of literary modes.

The Halachah/Aggadah Dichotomy

The dichotomy between halachah and aggadah is far from new. Hayim Nachman Bialik began his famous and influential essay “Halakhah and Aggadah,” published in 1917, with these words:

Halachah wears a frown, Aggadah a smile. The one is pedantic, severe, unbending—all justice; the other is accommodating, lenient, pliable—all mercy. The one commands and knows no half-way house; her yea is yea, and her nay is nay. The other advises, and takes account of human limitations; she admits something between yea and nay. The one is concerned with the shell, with the body, with actions; the other with the kernel, with the soul, with intentions. On one side there is petrified observance, duty, subjection; on the other perpetual rejuvenation, liberty, free volition.¹³

The shell needs an inner substance; the soul requires a vessel to carry it.¹⁴ Midrash asserts that just as body and soul are inseparable in life, after death, “What will the Holy Blessed One do [with the body and the soul]? God will bring the soul and force it into the body, and judge both as one.”¹⁵

Abraham Joshua Heschel, among many others, carried Bialik’s torch. Writing with the passion of a poet, he directly addresses the prioritization of halachah over midrash and the notion that halachah can stand without aggadah. Heschel forcefully and succinctly writes, “Halakhah deals with the law; aggadah with the meaning of the law . . . There is no halakhah without aggadah, and no aggadah without halakhah.”¹⁶

Numerous scholars¹⁷ concur and have gone further, claiming that aggadah is integral to the Talmudic enterprise because aggadah *is* an expression of halachah. These scholars have provided ample evidence of the conviction that narrative is integral to the formulation of law and norm.

Two Questions for Us to Ask

To fully comprehend and appreciate Rabbinic stories, the question we need to ask is: *What do the Rabbis want us to learn about their beliefs, ethics, and values?* For the Sages, the value, truth, and purpose of a story is not necessarily found in its plotline or genre. Potent and substantive Talmudic stories provide food for thought; they might serve to illustrate a principle, warn us against danger, or call into question an accepted truth or norm.

We, as interpreters, should ask an additional question: *What insight(s) do I glean from my engagement with this story and how does it inform my understanding of Jewish beliefs, ethics, and values in my lived experience?* The brilliance of Talmud extends beyond its capacity to convey ancient analytical reasoning and legal decisions. Talmud opens conversations on both universal questions of human experience and particularistic Jewish conversations about ritual and practice, theology, ethics, and philosophy. When we immerse ourselves in its folios, we participate in the ongoing conversations it initiated. Philosopher Paul Ricoeur would remind us that in the process of interpretation, the reader engages in “dialogic appropriation,” both understanding the text through their worldview and modifying their worldview in response to the text. He wrote:

“By [dialogic] appropriation I understand this: that the interpretation culminates in a self-interpretation of a subject who thenceforth understands himself better, understands himself differently, or simply begins to understand himself.”¹⁸ Talmud offers each of us this religious, intellectual, and spiritual gift of challenging our own assumptions, beliefs, and commitments so we can continue to grow and expand.

I will focus on three uses of Rabbinic storytelling: to illustrate and bolster the Rabbis’ halachic and ethical assertions, to issue warnings to those who would trespass their dicta, and to serve as counterarguments to accepted legal understandings. I have written elsewhere about narratives that challenge, refute, and undermine halachah and refer the interested reader there.¹⁹ I will therefore mention several examples but briefly.

Stories as Illustration

Stories can serve to buttress a halachic argument by illustrating its legitimacy and truth in the world outside the walls of the *beit midrash* (study house). A prime example is found in Tractate *M’nachot*; *Mishnah M’nachot* 4:1 (38a) addresses *t’chelet*, the blue thread running through tzitzit, ritual fringes on the corners of a garment. Tzitzit and *t’chelet* are described in Numbers 15:38 and included in the third paragraph of the *Sh’ma*, which is traditionally recited several times each day.²⁰ On daf 44a, a *baraita* informs us that *t’chelet* comes from an exceedingly rare and inordinately expensive snail called the *chilazon*. This is followed by another *baraita*: “R. Natan said, ‘There is no mitzvah in the Torah so minor that its observance is not rewarded in this world. And concerning its reward in the world to come, I do not know how great it is. Go and learn this from the mitzvah of tzitzit.’”

Two salient elements of the first *baraita* (scarcity and expense) and the theological claim of the second *baraita* are imaginatively situated in a remarkable story inspired by the language of Numbers 15:37–41, which literally warns against being seduced and led astray by other deities and going “whoring” (*asher atem zonim achareihem*) after them. The story is told of a young student of Torah who is obsessed with the desire to visit a famous courtesan. Her availability is rare: one must make an appointment long in advance. She is exceedingly expensive: her price is 400

dinarim paid in advance. She lives in the “cities by the sea,” an image of *t’chelet*. When the appointed day to be with her finally arrives, the young student is ushered into her opulent boudoir. At the very moment his desire is at its peak, “suddenly the four tzitzit struck him across the face,” saving him from the sin of sexual engagement with her. Their ensuing conversation reveals the young man’s commitment to Torah, supported by the power of tzitzit. Deeply moved and impressed, she divests of her life of harlotry and follows him to his *beit midrash*, where she demands that his teacher, R. Chiyya, convert her. R. Chiyya bar Abba perceptively intuites what has transpired and responds approvingly. The story closes with this comment: “Those very bedclothes that she had spread for him for lust she now spread out for him for sanctity. This is the reward [for obeying the commandment of tzitzit] in this world, and as for its reward in the world-to-come, I do not know how great it is.” The tzitzit have performed their purpose of reminding the wearer of the mitzvot. What is more, the student’s reward fulfills R. Natan’s contention that the mitzvah of tzitzit is rewarded in this world, in this case far beyond what one might even dream of: the exceptional cost of the *t’chelet* is more than recouped in the exceptional value of this woman as a wife.

Stories as Warnings

A Talmudic story can encourage a more nuanced view of legal principles and decisions, serving as a warning. An example is found in Tractate *Kiddushin*. *Mishnah Kiddushin* 1:7 (29a) discusses *kol mitzvot haben al haav*, the obligations of parents toward their children. The Gemara on 29a, b cites two *baraitot*. The first *baraita* provides not an inclusive list of the obligations a father must fulfill vis-à-vis his son but rather examples that suggest categories of obligation: seeing to the religious obligations of a minor child and preparing him for marriage and a trade, as well as self-preservation. The second *baraita* adds detail to the generalities of the first: specifically, if the father is “sharper,” his learning should be prioritized over his son’s. Taken together, the two *baraitot* suggest a simplicity to fulfilling the Mishnaic legal requirement *kol mitzvot haben al haav*, the father’s obligations toward his son. The pitfalls of this simplistic formulation are addressed by a story

about Rav Acha bar Yaakov, whose son was unsuccessful in his studies, suggesting that he is intellectually inferior to his father. Rav Acha therefore told him to stay home and took his place in Abaye's academy. Thus far, the story illustrates how the guidance of the second *baraita* might function. The story could end here. Instead, it enters the wild, wooly world of demons, a common concern among the Babylonian Rabbis.²¹ By the end of the story we might wonder if the presence of demons in the study house is responsible for the son's lack of success. The problem is so serious that even with a companion by one's side, the students are endangered.²²

Abaye heard [that Rav Acha bar Yaakov] was coming. There was a certain demon in Abaye's study hall, [so powerful] that when two entered together they would be harmed, even during the day. [Abaye] said to them, "Do not provide lodging [for Rav Acha bar Yaakov]. Perhaps a miracle will occur." [Finding no other lodging,] [Rav Acha] entered and spent the night in this study hall. [The demon] appeared to him as a serpent with seven heads. With every bow that [Rav Acha bar Yaakov] bowed [in prayer], one of the heads fell off. The following, day [Rav Acha] said to them²³ (the townspeople?), Had a miracle not occurred, you would have placed me in danger.

Abaye, having learned that Rav Acha is coming to study in his son's stead, devises a plan designed to assure that the righteous Rav Acha will spend a night in the school house and exterminate the demonic pest. Sure enough, Rav Acha survives the night and triumphs over the demon in a colorful and dramatic manner thanks to his prayers to God and accompanying bows. The story concludes with Rav Acha's resentful charge that Abaye placed him in a dangerous situation requiring God's intervention, calling into question the simplistic guidance of the second *baraita*. It warns us that "real life" is complicated, involving factors we might not have considered—such as the presence of demons and a child who does not succeed for reasons a parent does not recognize, and a teacher harboring a secret agenda. The un-nuanced mishnah, along with simplistic *baraitot*, present an unrealistic picture; the story delivers a warning message.

Talmudic aggadah can deliver a warning amidst a theological discussion as amidst a halachic exposition. An extended treatise

on God's justice in relation to human suffering in BT *B'rachot* 5 explores the Rabbinic concept of *yisurin shel ahavah* (chastisements of love), the theological belief that God sometimes visits painful suffering on innocent people in this world in order that they will merit a greater reward in *olam haba* (the world-to-come). I have treated this *sugya* at length elsewhere;²⁴ I will therefore provide a brief summary here. The *sugya* methodically explores the labyrinth of this thinking, posing questions and challenges, responding to each, and presenting two thought experiments to evaluate aspects of the Rabbis' theological reasoning. The *sugya* concludes with three brief stories, or anecdotes, about sages suffering from illness. Each is visited by a colleague who, in accordance with the theology just presented, asks: "Are your sufferings welcome to you?" Presumably, if the suffering sage endorsed the theological perspective that the *sugya* has gone to great lengths to explicate, the answer would be an enthusiastic "Yes!" Yet in each case, the sage, wracked with pain, responds with a resounding no: "Neither they [i.e., God's loving chastisements in the form of painful suffering] nor their reward [i.e., a greater portion in *olam haba*]." In the context of a discussion of *yisurin shel ahavah*, the stories serve as a warning: However much the logic of Rabbinic thinking, values, and text interpretation may lead to the conclusion that God visits horrific suffering on innocent people in order to boost their reward in the world-to-come, it should not be presumed that every suffering (but otherwise innocent) soul will find comfort and meaning in the theology. Therefore, accepting the theology of *yisurin shel ahavah* should not be treated as a faith obligation and one engaged in *bikur cholim* (visiting the ill) should not presume a sufferer does, or should, accept it. In the "real world," the theology of *yisurin shel ahavah* sometimes fails to bring comfort.

Stories as Counterarguments

Talmud is sprinkled with anecdotal accounts of rabbis who did not follow the halachah reasoned and recorded on its pages. Why did it retain these stories? Often, they serve as counterweights to the halachah, supplying cogent arguments for adjusting halachah.

Mishnah K'tubot 5:8 addresses the court's authority to apportion wine to women whose husbands, while away from home for

an extended period, leave an agent to provide her food, clothing, and furnishings.²⁵ The mishnah stipulates quantities of food and a budget for her clothing. The Gemara discusses the quantities of various foods (bread, wheat, barley) the *beit din* (Rabbinic court) should allot, their cost, a calculation of precisely how many meals she is entitled to, and even a consideration of whether the husband should provide a sufficient sum to host guests for Shabbat. Thus far, the Gemara paints a picture of a powerless woman whose life is controlled by men deciding how much food and clothing she may have day to day and season to season when her husband is absent.

The Gemara then points out that while *Mishnah K'tubot* 5:8 stipulated quantities of legumes, oil, and fruit, no mention was made of wine. This is apparently because R. Elazar taught that women are not allotted wine. R. Yehudah of Neviraya supplies biblical backup from I Samuel 1:9: *Hannah arose after she had eaten in Shiloh and after he had drunk*. Elimelech drank wine, but Hannah did not; hence women are not entitled to wine. The Gemara responds that by this reasoning, women are entitled to food but men are not, yet nonetheless concludes that Hannah did not consume wine in Shiloh. A *baraita* is quoted that presumes women are entitled to wine: women accustomed to drinking wine are allotted one cup; those not accustomed are allotted two cups. The Gemara seeks to explain this counterintuitive view, ultimately concluding that a woman accustomed to drinking wine is allotted two cups if her husband is home, one if he is not; a woman not accustomed to drinking wine is allotted one cup if her husband is present, none if he is not. Yet another opinion holds she is given wine only for cooking. Why so much attention to the quantity of wine a woman may have? Because, the Gemara tells us, while one cup is acceptable, after two cups a woman becomes a disgrace, after three cups she will verbally request sexual intercourse, and after four cups she will request sex even with a "donkey in the marketplace."

Three narratives follow this halachic ruling and discussion, all of which concern women who come before a *beit din* and request more wine than halachah permits. The first concerns Choma, the widow of Abaye, her third husband.

Choma, Abaye's [widowed] wife, came before [the *beit din* of] Rava.²⁶ She said, "Award me a stipend for food [from my hus-

band's estate]." He awarded her the stipend. She said to him, "Award me a stipend for wine." He said to her, "I know that Nachmani [a nickname for Abaye] did not drink wine." She said to him, "By the life of my Master, I gave him [wine] to drink in goblets like this (i.e., this large)." As she was showing him, her arm became uncovered. Light fell upon the *beit din*. Rava arose, went home, and solicited [sex from his wife,] the daughter of R. Chisda. R. Chisda's daughter said to him, "Who was in the *beit din* today?" He said, "Choma, Abaye's wife." [R. Chisda's daughter] went out in pursuit of [Choma], and beat her with *kulpei deshida* [stick or club; according to Rashi, the lock of a chest], until she left the entire [district of the city of] Mechoza. [R. Chisda's daughter] said to [Choma], "You have killed three men, and now you come to kill another!"

Rava rejects Choma's petition for money from Abaye's estate to purchase wine on the basis that Abaye himself did not imbibe. Choma says, effectively, "Nonsense. He most certainly did. In fact, when he was alive, I would serve him large quantities." Her gesture implies that she not only served him, but drank with him. Either her gesture or the image it paints of a happily married couple drinking together is so sexually arousing to Rava that he rushes home to his wife and proposes an afternoon delight. Unaccustomed to this request, she is immediately suspicious and asks who came to court that morning. Learning that it was Choma, who has outlived three husbands, she fears that her husband may be endangered by his attraction to Choma. Although the story does not definitively confirm that Choma is given her requested apportionment for wine, it is presumed that, having been accustomed to drinking large quantities of wine, she is entitled to the same after Abaye dies.

The second story concerns Rav's daughter-in-law, who appears before Rav Nechemya. Her general request for sustenance is granted, as is her particular request for wine. Rav Nechemya readily agrees on the basis that drinking wine is customary among the people of Mechoza, where she lives. The story amends the blanket apodictic law to take into account local custom.

The third story concerns the wife of Rav Yosef, who requested sustenance and, in particular, wine. The *beit din* complied. When she next requests silk, a luxury we would expect the court to deny

her, the court accepts her petition after she asserts it is appropriate to her position in the community.

Taken together, the three stories stretch halachic rigidity and Rabbinic authority to control women's lives by undermining the application of fixed and formulaic standards for allotting quantities of food, clothing, furnishings, and wine.

If stories can serve to question the rigidity of halachic rulings, they can also challenge the validity of the halachah. An example concerns the appropriate disbursement of *tzedakah*. Talmud often discusses the obligation to help those who have fallen on hard times (e.g., BT *Bava Batra* 10a) and how much should be allotted to people in need (e.g., BT *K'tubot* 67b), and makes the argument that anonymous giving is desirable when it will prevent the recipient from suffering public embarrassment,²⁷ as the story of Mar Ukva illustrates:

Mar Ukva had a poor person in his neighborhood for whom every day he would toss four zuzim into his door socket. One day [the poor person] thought, "I will go and see who is doing this kindness for me." That day Mar Ukva was delayed in the *beit midrash*. His wife was with him. When [the poor person] saw Mar Ukva moving the socket, he went out after him. They ran away from him and entered a certain oven from which the coals had been removed. Mar Ukva's feet were burned. His wife said to him, "Put your feet on my feet." He was upset. She said to him, "I am usually at home and my benefactions are immediate." Why all this? For Mar Zutra bar Toviyah said in the name of Rav, and others say Rav China bar Biz said it in the name of R. Shimon Chasida, and others say R. Yochanan said it in the name of R. Shimon b. Yochai: It is better that someone throw himself into a fiery furnace than that he publicly shame a person. Whence do we know this? From Tamar, for it is written, *When she was taken out* (Gen. 38:25). (BT *K'tubot* 67b)

Mar Ukba climbs into an oven as a form of self-punishment for what he perceives as the great sin of failing to maintain his anonymity and thereby subjecting the object of his largesse to humiliation. This concern receives unequivocal rabbinic endorsement from a string of rabbis conveying a teaching of R. Shimon b. Yochai. Curiously, Mar Ukba's wife is not even singed by the oven. She explains to him that she disburses *tzedakah* at home, discreetly,

not in public. We could reasonably conclude that the proper and desirable way to give tzedakah is *privately*, and if that is not feasible, anonymously.

A story in BT *Bava Batra* 7b, however, expresses an opposing opinion. *Mishnah Bava Batra* 1:5 rules that people whose homes open onto a shared courtyard with a door to the public road may be assessed to build a gatehouse attached to the door. (Rabban Shimon b. Gamliel²⁸ expresses a minority opinion.) The Gemara questions whether a gatehouse between a common courtyard and the public road would truly be an improvement and challenges the propriety of the Mishnah's halachic ruling with a story that includes its own internal analysis.

This is to say that a gatehouse is an improvement? There was a certain pious man (*chasid*) with whom Elijah would converse until he made a gatehouse; then Elijah no longer conversed with him. This is not a difficulty [i.e., contradiction]. In the one case, [the gatehouse that caused Elijah to stop conversing with the pious man is located] inside [the door of the courtyard]; in the other case [Mishnah permits it to be located] outside [the door of the courtyard]. Or, if you want you may say that [both] this [the gatehouse of the Chasid] and that [the gatehouse Mishnah permits] are [built] outside [the door to the courtyard]. [Still] there is no difficulty: this [gatehouse that caused Elijah to stop conversing with the pious man] had a door; that [Mishnah-authorized gatehouse] had no door. If you want, you may say that this [gatehouse built by the chasid] and that [gatehouse permitted by the Mishnah] have a door. [Still] there is no difficulty: This [gatehouse to which Elijah objected] has a lock; that [gatehouse which the Mishnah authorized] has no lock. If you want, you may say that this one and that one [each] has a lock and still there is no difficulty: The lock of this [gatehouse to which Elijah objected] is on the inside; the lock of this [gatehouse authorized by the Mishnah] is on the outside.

The story is constructed on the foundational motif of Elijah the prophet visiting people in our world out of concern for the poor, a motif found elsewhere in the Talmud and throughout later Jewish folklore. Elijah engages in regular conversation with an unnamed Chasid ("righteous individual"). One can imagine them meeting weekly for coffee. No sooner does the Chasid build the sort of gate the Mishnah explicitly permits than Elijah stops visiting

him. Elijah cutting off all communication with the “Chasid” is a less-than-subtle hint of a moral concern related to people who are impoverished. Terming Elijah’s interlocutor a “Chasid” is an ironic assertion that sometimes those who consider themselves pious are not, as the Gemara will reveal.

The Gemara constructs four sequential explanations for Elijah’s mysterious behavior. Each suggests a manner in which the Chasid’s gatehouse differed from what the Mishnah permits. First, the Gemara proposes that Elijah objects to the placement of the gatehouse inside the door; the Gemara thereby presumes that the Mishnah allows a gatehouse only outside the door. Second, if the Chasid built his gatehouse outside the courtyard door, perhaps Elijah’s objection is that the Chasid installed a door in the gatehouse rather than leaving it open to the street. Third, if the Mishnah permits a door in the gatehouse itself, perhaps Elijah’s objection is to installing a lock (likely a crossbar) on the gatehouse, which the Mishnah did not authorize. Finally, if the Mishnah permits locks on both the gate and the gatehouse, Elijah’s objection is that the gatehouse lock is on the inside—facing the courtyard—rather than on the outside.

Throughout the series of explanations, the Gemara reveals that its concern is accessibility to the courtyard by people begging for alms. If the gatehouse is positioned inside the gate, the guard cannot see someone who seeks entrance to the courtyard to knock on the doors of the houses that open into the courtyard. If the guardhouse has a door, the guard can be insulated from street sounds, including a beggar’s petition to enter. The gate and the guardhouse with a door present a double barrier between a beggar and the residents of the courtyard. If the door to the courtyard is locked, a person in need would be unable to open it; all the more so if it is locked from within. Architectural design can facilitate indifference.

Torah is keenly aware of the danger of indifference to impoverished people: *If there is a needy person among you, one of your kinsmen in any of your settlements in the land that Adonai your God is giving you, do not harden your heart and shut your hand against your needy kinsman. Rather, you must open your hand and lend him sufficient for whatever he needs* (Deut. 15:8–9). Elie Wiesel eloquently spoke of the scourge of indifference in relation to racism and genocide; his words apply, as well, to poverty:

Of course, indifference can be tempting—more than that, seductive. It is so much easier to look away from victims. It is so much easier to avoid such rude interruptions to our work, our dreams, our hopes. It is, after all, awkward, troublesome, to be involved in another person's pain and despair. Yet, for the person who is indifferent, his or her neighbor are of no consequence. And, therefore, their lives are meaningless. Their hidden or even visible anguish is of no interest. Indifference reduces the other to an abstraction.²⁹

The story of Elijah's terminating his meetings with the Chasid calls established Mishnaic halachah into question on moral grounds by addressing the way in which architecture and design influence our attention and risk contributing to the invisibility and thereby neglect of people in need. Elijah's concern is a literary, midrashic expression of Rabbinic dissent of the Mishnah's unqualified permission to build a gatehouse. Elijah's view of the Chasid is aptly described by the Rev. Martin Luther King: "What scares me most is not the oppression of the wicked, but the indifference of the good." The Chasid, like all of us, is not intentionally wicked, but his indifference is tantamount to neglect of poor people. And even if we are not inclined to be indifferent, those who are out of sight and sound are often out of mind.

Conclusion

Robert Cover forcefully argued that law arises and is forged only in the context of stories because it is through narratives that we express the meaning law requires. The Talmud, a dialogue between story and law, engaging one another in "conversation," as it were, engages in that quest for meaning. The stories incorporated in the Mishnah and the Gemara often function to validate halachah in practice, illustrating the strength and importance of halachah (as well as theological and moral claims). They also serve to warn against halachic rigidity, challenge weaknesses in legal reasoning, and even voice dissent powerfully enough to undermine what might otherwise be an established legal ruling.

In studying Talmud, we enter the realm of Ricoeur's "dialogic appropriation," interpreting not only the text of the Talmud, but ourselves, as well. As I suggested, when we study Talmud, we might ask ourselves, *What insight(s) do I glean from my engagement*

with this story and how does it inform my understanding of Jewish beliefs, ethics, and values in my lived experience? In this way, we become participants in the conversations initiated by the Rabbis.

Notes

1. Jonathan Gottschall, *The Storytelling Animal: How Stories Make us Human* (New York: Mariner Books, 2013). Elie Wiesel expressed this basic human proclivity: "God made man because He loves stories." In his introduction to *The Gates of the Forest*, he tells (naturally) a story:

When the great Rabbi Israel Ba'al Shem-Tov saw misfortune threatening the Jews, it was his custom to go into a certain part of the forest to meditate. There he would light the fire, say a special prayer, and the miracle would be accomplished and the misfortune averted.

Years later when a disciple of the Ba'al Shem-Tov, the celebrated Magid of Mezritch, had occasion for the same reason, to intercede with heaven, he would go to the same place in the forest and say: "Master of the Universe, listen! I do not know how to light the fire, but I am still able to say the prayer," and again the miracle would be accomplished.

Still later, another rabbi, Rabbi Moshe-leib of Sasov, in order to save his people once more, would go into the forest and say, "I do not know how to light the fire. I do not know the prayer, but I know the place and this must be sufficient." It was sufficient and the miracle was accomplished.

The years passed. And it fell to Rabbi Israel of Ryzhyn to overcome misfortune. Sitting in his armchair, his head in his hands, he spoke to God: "I am unable to light the fire, and I do not know the prayer, and I cannot even find the place in the forest. All I can do is tell the story, and this must be sufficient." And it was sufficient.

Elie Weisel, *The Gates of the Forest* (New York: Schocken Books, 1966).

2. William Labov, "Some Further Steps in Narrative Analysis," *Journal of Narrative and Life History* 7 (1997): 396.
3. Narrative Medicine is an approach to medical practice in which people's narratives are encouraged and utilized in the clinical setting, research, and teaching. Columbia University's "Narrative Medicine" approach notes: "Narrative Medicine fortifies clinical practice with the ability to recognize, absorb, interpret, and be moved by stories of illness. We realize that the care of the sick unfolds in stories, and we recognize that the central event of health care is for a patient to give an account of self and a clinician to skillfully receive it." See also Rita Charon, *Narrative Medicine: Honoring the Stories of Illness* (New York: Oxford University Press, 2008), as well as <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5851389/>.

4. History, itself, is a form of narrative that makes use of others' stories to weave a larger narrative around texts, facts, and events. In its discussion of Hannah Arendt, the *Stanford Encyclopedia of Philosophy* notes: "The discussion of Arendt's theory of action . . . [has] emphasized the importance of narrative and remembrance, of the retrospective articulation of the meaning of action by means of storytelling and its preservation through a community of memory." <https://plato.stanford.edu/entries/arendt/>.
5. Philosophers employ narrative to pose hypothetical cases, as well as to explore actual examples related to philosophical questions and principles.
6. Robert Shiller, 2013 Nobel Laureate in Economics, recently published a book whose title says it all: *Narrative Economics: How Stories Go Viral and Drive Major Economic Events* (Princeton, NJ: Princeton University Press, 2019). As one example: Welfare fraud was recognized in the early 1960s, but beginning in 1974, the narrative of the "welfare queen" was repeated again and again to stigmatize black, single mothers. On October 18, 1976, Ronald Reagan delivered a three-minute diatribe in a Hollywood recording studio, in which he told the story of one case of welfare fraud, knowing that the story would become emblematic of a presumed widespread phenomenon of welfare queens: "The trail extends through fourteen states. She has used a hundred and twenty-seven names so far, posed as a mother of fourteen children at one time, seven at another, signed up twice with the same case worker in four days, and once while on welfare posed as an open-heart surgeon, complete with office. She has fifty Social Security numbers and fifty addresses in Chicago alone, plus an untold number of telephones . . . Now the Department of Agriculture is looking into the massive number of food stamps she's been collecting. She has three new cars, a full-length mink coat, and her take is estimated at one million dollars . . . I wish this had a happy ending, but the public aid office . . . refuses to cooperate. She's still collecting welfare checks she can use to build up her defense fund."
7. Applied Mathematics professor Satyan L. Devadoss, explaining what is crucial to giving a successful mathematics presentation: "Giving good talks involves not just a command of words and images but speech, body movement, control of time, and a disproportionate emphasis on storytelling." *Notices of the American Mathematical Society*, November 2019, 1647.
8. https://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=3690&context=fss_papers.
9. Moshe Simon-Shoshan, *Stories of the Law: Narrative Discourse and the Construction of Authority in the Mishnah* (New York: Oxford University Press, 2012), 9.

10. Simon-Shoshan's typology of Mishnaic literary forms entails three types: irrealis texts present hypothetical situations and actions; realis texts recount what is claimed as actual events in the past (*maasim*); and speech acts describe transmission of law among rabbis in the academy. Although Simon-Shoshan says that irrealis texts are, by their nature, limited in their narrative quality, it would seem that they nonetheless tell a story: hypothetical in nature, perhaps, but evincing the qualities of a story: protagonist, plot composed of beginning, middle, and end.
11. Gedaliah Alon and Ephraim E. Urbach claimed that Rabbinic stories record actual occurrences or the kernel of historical events. Jacob Neusner argued forcefully against this claim, arguing that historical caution and scrupulous scholarship prevent us from mining reliable historical data from Rabbinic stories. In "Story and Tradition in Judaism" he wrote: "The story is something other than history. Those who read this material as history misread the purpose of the storyteller." Jacob Neusner, *Judaism: The Evidence of the Mishnah* (Eugene, OR: Wipf and Stock, 1981), 322.
12. Jeffrey Rubenstein, ed. and trans., *Rabbinic Stories* (New York: Paulist Press), 12. In *Talmudic Stories* he writes: "Rabbinic stories present cause and effect in terms of spiritual and metaphysical forces, not the material factors such as political or economic power that underlie 'historical' causality. Stories are generally limited to a single event, unaware of time and space beyond their frame. History, on the other hand places events in a sequence with each situation related to the past and the future in substantive ways . . . Stories express the spiritual world of the storytellers, not the real world of the characters." Jeffrey Rubenstein, *Talmudic Stories* (Baltimore and London: Johns Hopkins University Press, 1999), 9.
13. Bialik's essay in English translation can be found here: https://masorti.org/wp-content/uploads/2018/02/Bialik_Halachah_and_Aggadah-1.pdf.
14. Just as halachah requires aggadah, Bialik also argued that aggadah needs halachah: "The value of Aggadah is that it issues in Halachah. Aggadah that does not bring Halachah in its train is ineffective. Useless itself, it will end by incapacitating its author for action."
15. *Vayikra Rabbah* 4:5.
16. Abraham Joshua Heschel, *God in Search of Man* (New York: Farrar, Straus and Giroux, 1955), 341.
17. Daniel Boyarin and Barry Scott Wimpfheimer are among them. Boyarin draws on Michael Bakhtin's dialogism, actual and represented by an individual or social group, and claims that the dialogues of Plato employ a mix of literary genres to produce what, on a deeper level, is essentially a monologue. Narrative, therefore,

- is an essential, indispensable element of Talmudic legal material. *Socrates and the Fat Rabbis* (University of Chicago Press, 2009). Wimpfheimer argues that the legal impetus to create precedent, an essential element of a working legal system, depends upon narrative to, among other things, temper the limitations of theoretical statutes. It thereby invites a broader understanding of law than would otherwise inher. *Narrating the Law: A Poetics of Talmudic Legal Stories* (Philadelphia: University of Pennsylvania Press, 2011).
18. Paul Ricoeur, *From Text to Action: Essays in Hermeneutics* (Evanston, IL: Northwestern University Press, 2007), 118.
 19. Amy Scheinerman, "Rabbis Undermining Rabbis: Subversive Midrashic Narratives," *CCAR Journal* (Spring 2014): 107–24. The narrative examples here concern the abrogation of settled halachah, theological beliefs concerning suffering, and legal/ethical imperatives around procreation.
 20. A more extensive commentary and analysis of this story may be found in Amy Scheinerman, "Maintaining Self-Control," *The Talmud of Relationships*, vol. 2 (Philadelphia: Jewish Publication Society, 2018), chap. 1.
 21. For the Babylonian Rabbis, the world was rife with demons, their existence being a steadfast belief pervading Persian culture. Zoroastrians believed that demons lurked virtually everywhere, waiting to pounce on unsuspecting innocents. They harmed not only one's physical being, but also lay siege to one's personality, afflicting morality and behavior. The Rabbis taught: "Six things were said about demons: three in which they resemble ministering angels, and three in which they resemble human beings. The three in which they resemble ministering angels are that they have wings, they fly from one end of the earth to the other, and they know the future . . . And the three in which they resemble humans are that they eat and drink, reproduce, and die" (BT *Chagigah* 16a; *Avot D'Rabbi Natan* 37). Other mentions of demons include BT *B'rachot* 6a, BT *P'sachim* 109b–112b, and BT *Gittin* 68a, b. Abaye, the master of the academy in the story at hand, is among those who took demons seriously: "Abaye said, 'At first I thought the reason why the last hand-washing may not be performed over the ground [but rather must be performed over a vessel] was that it made a mess, but now my master [Rabbah bar Nachmani] has told me it is because an evil spirit rests upon [the water].' Accordingly, Abaye was advised by his master not to drink directly from a jug but rather first to spill out some water." BT *Chulin* 105b.
 22. This is a measure of the severity of the problem, given that BT *B'rachot* 7a holds that walking with another person affords a measure of protection from demons.

23. It is not clear if “them” refers to Abaye’s students or the townspeople.
24. For a far more extensive analysis of this *sugya*, please see Amy Scheinerman, “Understanding Our Suffering,” *The Talmud of Relationships*, vol. 1 (Philadelphia: Jewish Publication Society, 2018), chap. 3.
25. One could reasonably presume that the couple are not living together. Perhaps he is away on business or to study. The Mishnah does not say.
26. In this case, the husband is absent from home due to death. The situation is precisely what the Mishnah addresses—whereby a second party agent applies to the *beit din* for guidance—yet concerns the issue of whether and how much wine is allotted to a woman whose husband is not present to make that determination.
27. Moses Maimonides’ Eight Levels of Charity (Mishneh Torah, *Hilchot Matanot Aniyim* 10:7–14) codified this principle.
28. While Rabban Shimon b. Gamliel expresses the view, “Not all courtyards require a gatehouse,” the context makes clear that his objection concerns compelling people to pay for something they don’t want and don’t need. It is likely that Rabban Shimon b. Gamliel has in mind what economists call the “Shared-Cost Effect,” which says that a group of people are more likely to choose a more expensive (or unnecessary) project if individuals pay only a fraction of the overall cost but enjoy the full benefit of it. Perhaps Rabban Shimon b. Gamliel is concerned lest a group of wealthy homeowners compel less affluent neighbors to share the cost of improvements they want.
29. From Elie Wiesel’s remarks on April 12, 1999, at Millennium Evening in the White House. His talk was entitled “The Perils of Indifference: Lessons Learned from a Violent Century.”

Halachah for Hedgehogs: Legal Interpretivism and Reform Philosophy of Halachah

Benjamin C. M. Gurin

“The fox knows many things, but the hedgehog knows one big thing.”
— Archilochus

Legal theorist Ronald Dworkin (1931–2013) begins his work of systematic philosophy, *Justice for Hedgehogs* (2011), in the proper Rabbinic fashion of citing one’s sources back through the chain of transmission, with this quote from philosopher Isaiah Berlin citing the ancient Greek poet Archilochus.¹ His “hedgehogian” thesis is refreshingly simple: “Value is one big thing.”² We often find ourselves trapped in the fox’s manner of thinking when we speak instead of our “values” with capital letters whose conflicts are portrayed as either/or struggles: Liberty versus Security, Justice versus Mercy, etc. We live in a complex world, and often seek to understand its complexity by focusing our intellectual energies on mastering increasingly narrow bits of knowledge in an attempt to grasp the entirety of a smaller idea rather than contemplate the enormity of the big picture. The fox’s approach deals with complexity by compartmentalizing its components and dismisses the hedgehog’s search for unity as naïve. But the hedgehogs are correct: we cannot hope to understand the complexity of the world by denying its interconnectedness. Dworkin’s concept of the *unity of value* argues that our ethical and moral principles all form a unified and mutually supporting system that must be understood in their

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relationship to each other. To live well, we must live by a system that acknowledges and navigates this reality and guides our actions when conflicts between mutually held values arise. For Jews, this system is called halachah, which I define following my teacher Rachel Adler: “A halachah is a communal praxis grounded in Jewish stories.”³ Like all other systems of value, halachah derives its character and authority from the shared mythos and historical experience of the people who create it.

The philosophy of law advanced by Dworkin—legal interpretivism, or, as he calls it, “*law as integrity*”—provides a solution for addressing the key challenge in articulating a Reform philosophy of halachah as summarized by the prompt of this symposium issue: how do we simultaneously hold the values of *b’rit* and autonomy? To expand on this question: what makes a philosophy of halachah Reform? And how should a Reform Jew live out a philosophy of halachah? After defining some of Dworkin’s core ideas, I will suggest my own interpretivist conception of a Reform philosophy of halachah that seeks to address the first two questions. Finally, I will offer a reading of a covenantal narrative that grounds the legal story of Reform Jews and can offer a model to answer this third question: the case of Mahlah, Noah, Hoglah, Milcah, and Tirzah b’not Zelophehad in Numbers 27 serves as the point of origin and ideal model of application for a Reform philosophy of *halachah as integrity*.

Legal Interpretivism on One Foot

Dworkin’s definition of legal interpretivism provides a good starting point to contrast his thought with other philosophies of law and to highlight a few points for further investigation. Dworkin’s contention is that:

legal reasoning is an exercise in constructive interpretation, that our law consists in the best justification of our legal practices as a whole, that it consists in the narrative story that makes of these practices the best they can be. The distinctive structure and constraints of legal argument emerge, on this view, only when we identify and distinguish the diverse and often competitive dimensions of political value, the different strands woven together in the complex judgement that one interpretation makes law’s story better on the whole, all things considered, than any other can.⁴

In short, an interpretivist judge sees their role as an interpreter of the community's legal story. This judge bases their ruling in accordance with moral principles derived from an analysis of the full legal tradition. This may involve overturning precedent or pointing out that the law as stated is deficient from the vision of its best self—a vision that is inherent to and embedded within the story as a whole. One interpretation is superior to another, Dworkin argues, when it better achieves the aims of system integrity and moral responsibility. As he explains, "Interpreters have critical responsibilities, and the best interpretation of a law or a poem or an epoch is the interpretation that best realizes those responsibilities on that occasion."⁵ In order to arrive at this best interpretation, a judge must have their own conception of the story of law and the interwoven principles that shape it.

Dworkin explains the construction of this "narrative story" of the law with his famous chain-novel thought experiment. He imagines the act of crafting a legal theory, which he considers a crucial activity for any responsible judge, as similar to writing the next chapter in a chain novel. The author aims to produce a new chapter to add on to the preceding ones, with the caveat that each subsequent chapter must attempt to encapsulate the meaning of the entire book. Each successive author attempts to craft a new coherent chapter in the book by reflecting and expanding upon the chapters bequeathed by previous authors. This desire for coherence requires a sophisticated understanding of the meaning, aims, and plotlines of the previous chapters of the story. The author has a significant degree of interpretive leeway, yet, as each chapter must both summarize the story thus far and advance it in ways that reflect the spirit of all the other previous chapters, the integrity of the book itself will help guide and provide boundaries to the author. Dworkin's thought experiment of the chain novel demonstrates the utility of legal interpretivism for those who wish to better understand and advance the legal story of their own community.

For the legal interpretivist, law is made up of legal principles, almost a hybrid between the rules of legal positivism and the moral norms of natural law theory. These principles are derived from within the system and aim to make the law "as best [it] can be." Such principles, Dworkin contends, guide the judge's interpretation of the law, who seeks to harmonize and decide between these principles when adjudicating hard cases. Dworkin explains:

I argue that the nerve of responsibility is integrity and that the epistemology of a morally responsible person is interpretive . . . Interpretation knits values together. We are morally responsible to the degree that our various concrete interpretations achieve an overall integrity so that each supports the others in a network of value that we embrace authentically.⁶

It is this aim, establishing a network of values and an authentic framework for their expression, which must ground a Reform philosophy of halachah that takes both covenantal responsibilities and autonomous rights seriously.

For the past two to three decades a number of Jewish legal scholars have referenced or utilized components of Dworkin's thought in analyzing philosophies of halachah or Jewish texts.⁷ In that tradition, I aim to apply Dworkin's concepts of "law as integrity," legal interpretivism, and the chain novel from a religious and denominational perspective, in order to demonstrate how legal interpretivism can inform and ground a specifically *Reform* philosophy of halachah.

Reform Halachah as Integrity: An Interpretivist Approach

An interpretivist conception of Reform halachah can hold both *b'rit* and autonomy simultaneously as core values that guide the creation of a legal-ethical system. However, beyond this harmonization of two values (among many) learned from the Jewish legal story, legal interpretivism can actually help achieve another wider-ranging wholeness or integration, namely, that between halachah and aggadah. Here, too, Dworkin's work is useful in addressing the question of the relationship between these two components of Torah and the impact of one on the other. This question, indeed, is so fundamental to Rabbinic culture that Rashi begins his Torah commentary by asking: why is it that the Torah begins with aggadah? In our time, however, its corollary demands our attention: what should a Rabbinic culture, so predominantly concerned with halachah, do with our aggadic inheritance? I argue that a Reform philosophy of halachah and a theory of the Reform halachic process should restore the proper balance and relationship between halachah and aggadah.

To understand this relationship first requires a definition of terms and an acknowledgment of two theologians whose work

influenced these definitions: Rachel Adler and Abraham Joshua Heschel. To return and add to Adler's definition of halachah as stated in the introduction to this essay: "A halachah is a communal praxis grounded in Jewish stories . . . *A praxis is a holistic embodiment in action at a particular time of the values and commitments inherent to a particular story.*"⁸ Our Jewish actions, the mitzvot we perform individually and collectively, derive from our Jewish stories. Mitzvot are the commitments and values of these stories brought to life. Without these lived expressions of value, we would remain passive readers of the story rather than active inheritors of it who are commanded and empowered to write the next chapter in our chain novel. Enacted metaphor, a direct embodied experience with reference to a higher value, makes an action into a mitzvah. In other words, a seder is not merely an annual dinner party in which I wax poetic about the importance of freedom, sharing our blessings, and empathy with the oppressed. Rather, one fulfills the mitzvah only when these values are brought to life through an intentional and interwoven set of actions that connect the participants to the particular story of the Jewish people. A discourse about values remains mere words, but experiencing the origin story of these values invites them to shape our lives. Reform Jews, to use one of my teacher's memorable descriptors, are often "squirmy" about the word "halachah" because it implies *chiuv* (obligation);⁹ however, she points out that without a communal praxis, there would be no lived community: "Orthodoxy cannot have a monopoly on halachah," she contends, "because no form of Judaism can endure without one; there would be no way to live it out."¹⁰ For this reason, the idea of a Reform philosophy of halachah is not an oxymoron, but, rather, a necessity; indeed, crafting one is urgently needed to bolster the integrity of our tradition. In order to do this, Adler urges us to consider the utility of legal theory for crafting a halachah "that fully, complexly, and inclusively integrates the stories and revelations, the duties and commitments of Jewish women and men."¹¹ For Adler, our Jewish story is not only about all of us; it is about each of us. Therefore, a Reform philosophy of halachah must take as its first principle the respect and dignity of each individual created in the image of God.

A holistic definition of aggadah requires more explanation than that of halachah. The word "aggadah" does not simply mean the

stories told by the classical Rabbis, but also denotes a particular mode of thinking, the fundamental framework within which Jewish life can be lived out, as well as the moral and ethical sense that pervades the advancement of that framework. Abraham Joshua Heschel's *Torah min HaShamayim*, which engages in deep exploration of the purpose and value of aggadah, demonstrates how a philosophy of halachah needs to begin with aggadah. Heschel creates an aggadically focused portrait of Rabbinic thought for an audience oriented towards a Judaism of halachic primacy. He broadly defines aggadic material as the philosophical and theological underpinnings of the Rabbinic system and laments their dismissal as merely superfluous legends. Heschel's structuring of *Torah min HaShamayim* itself demonstrates the necessity of understanding the texts and purpose of the aggadah before attempting to create a systematic Rabbinic theology or philosophy of halachah. Heschel's depth of analysis and breadth of knowledge combine to make *Torah min HaShamayim* into a kind of *Mishneh Talmud*—that is, a complete reorganization of Rabbinic literature—organized by theological, aggadic topics.

Heschel explains his understanding of the relationship between halachah and aggadah, which comes to fruition in *Torah min HaShamayim*, in his earlier work *God in Search of Man*.¹² There he explains, "Halachah is ultimately dependent upon agada [sic] . . . its ultimate authority depends on agada. For what is the basis of halachah? The statement, 'Moses received the Torah from Sinai' . . . the event at Sinai, the mystery of revelation, belongs to the sphere of agada."¹³ For Heschel, aggadah is not the filler material between the halachot, but, rather, the source of the fundamental principles from which halachot gain their power. He continues, "Halachah is an answer to a question, namely: What does God ask of me? . . . That question, however, is aggadic, spontaneous, personal."¹⁴ The response to aggadah is necessarily halachah: mitzvot rooted in stories that compel the hearer to go beyond hearing them to *living* them. He provides the widest possible definition of aggadah and begins to hint at its purpose:

The question (what does God ask of me?) is not immutable in form. Every generation must express the question in its own way. In this sense, agada may be employed as denoting all religious thinking in the tradition of Judaism.¹⁵

Both Adler and Heschel provide a connection between halachah and aggadah in their investigation of each term. Turning these theoretical underpinnings into an integrated definition that can guide a Reform philosophy of halachah, we might say: aggadah *precedes* halachah, and halachah *proceeds from* aggadah.

Returning to the interpretivist approach I am proposing, our story of law provides the moral principles that guide our process of decision-making. The question of how we can craft and identify our story of law and its core principles remains, and it is here where the tools of legal interpretivism combine with the insights of Heschel and Adler to address it. The Reform contribution to the Jewish chain novel attempts to advance the story of Judaism as guided by moral principles. These principles receive their authority and derive from this story and are located in what I call “covenantal texts.” A covenantal text is one that answers the perennial Rabbinic question “from where do we learn this?” It tells a story that grounds a core value within the tradition and turns it from one story among many into a guiding refrain.

We each have favorite texts (with the term “texts” being construed as broadly as possible): *p’sukim*, songs, literary passages, family legends, etc., that we read and recite again and again. They become so core to us, and speak to us so profoundly, that they shape our reactions to the world around us. These are the covenantal texts that guide our process for discerning central values. Which stories touch our hearts may seem arbitrary and could be seen as a rather shaky criterion for guiding our lives. Yet there exist good precedents for relying on these core texts to ground us. *Pirkei Avot* teaches that some rabbis become synonymous with their oft-taught sayings, and the Rabbis of the Talmud are rather partial to certain *p’sukim* and biblical figures while they rarely mention others. Similarly, our families’ immigration stories, each unique and punctuated by luck or happenstance, shape our awareness of our blessings and our empathy towards others, and the story of how we met our partner turns into a tale that foreshadows lifelong romance—an interpretation we could not have known at the time. To borrow and reinterpret a Rabbinic saying, *maasei avot siman l’banim* (stories of the ancestors are a sign for the children) means that the texts that we have inherited shape us because we ascribe to them the power to help us understand our own lives. To be sure, we choose our covenantal

texts and are responsible for their interpretation, but we might say that some spark of holiness inherent in them has chosen us, and our attachment to them as guideposts transcends our simple partialities.

Yet we are not alone in determining the covenantal texts that form our story of law, because we live in community and participate in a communal story. This communal process provides an additional check on our subjectivity and further guidance as to which stories achieve the status of covenantal texts. A Jewish community of interpretation, in the law-as-integrity model, should point to the covenantal texts that guides it and the aggadic principles that informs its halachah. That is, before engaging in the halachic question of "What are we to do to live well in covenant with God and with each other?" each generation must ask the aggadic questions offered by Heschel and the Rabbis, respectively: "What does God demand of us? From where do we know this?" Jews who seek to comport themselves by, and understand the burdens of, intellectual integrity know that the *posek* (the legal authority) does not simply "look in the Torah and create the world."¹⁶ Rather, an aggadic, interpretive framework constructed by the *posek* guides the legal process that produces each decision. In the law-as-integrity model, it behooves the *posek* to state explicitly their "aggadic process," that is, the manner in which the judge and their community have selected aggadot as covenantal texts. These covenantal texts serve as a framework for guiding their "halachic process," that is, the manner of legal reasoning that produces individual rulings and determines right actions. The necessity of both a preceding aggadic process and a subsequent halachic process is already native to Reform Judaism and must serve as the basis of any Reform philosophy of halachah.

From the origins of the Reform Movement up to the present day, each generation has sought to identify the principles that guide the character and aims of the Movement. These enumerations of principles are called "platforms," and the principles contained therein should be seen in the Dworkinian sense of the term as the moral guideposts that form the heart of law. Although the language of aggadah has not been applied to this phenomenon, I argue that the subsequent platforms of the Reform Movement and the process by which they are written and adopted should be identified as the

aggadic framework necessary to a Reform philosophy of halachah. The Reform Movement is an interpretive community, which I define as a group that shares similar assumptions and aims regarding the meaning and purpose of a collective story. Each generation of Reform Jews puts forward a vision to guide those who belong to this interpretive community as to what the aims, emphases, and values are of this iteration of the community and in what manner it both advances and aligns with the spirit of prior generations. The platforms of the Reform Movement provide the aggadic framework to which the autonomous Reform Jew must turn to as a guide to embrace the challenges and opportunities of crafting, in partnership with the community as a whole, the halachah that brings this vision to life. The relationship and partnership between the autonomous individual and the interpretive community in this halachic process will be explored below in our exegesis of Numbers 27.

To summarize, in an approach of *halachah as integrity*, that is a legal interpretivist understanding of halachah, the burden is on the interpretive community to set its intentions and motivations explicitly. The building blocks of this philosophy of halachah are already present within the Reform Movement, yet a Reform philosophy of halachah in this spirit would require an intentional visioning of this process. *Halachah as integrity* would admit its biases, aims, policies, and principles from the outset. Each generation would contribute its part in the chain novel first by stating its aggadah and then by living out its halachah. These core principles would guide the halachic decision-making process of those who assume the responsibilities of being a part of the interpretive community: each subcommunity (congregations, organizations, schools, etc.) and each individual. However, to return again to the halachic question that demands an aggadic answer: from where do we know this? What is our covenantal text that demonstrates how moral principles, learned from the story as a whole, can guide the praxis of a community and serve as an example for how individuals can live out their obligation to apply this process within community? How do we know that aggadah—our values and beliefs about God, covenant, and the purpose of mitzvot—must shape halachah? For this covenantal text, we turn now to the story of Mahlah, Noah, Hoglah, Milcah, and Tirzah b'not Zelophehad.

***Ken B'not Zelophehad dovrovot: Autonomy and Covenant
in Reform Halachah***

An example of a core narrative that models an approach of *halachah as integrity* to change and build Jewish law is found in Numbers 27:1–8. In short, Mahlah, Noah, Hoglah, Milcah, and Tirzah b'not Zelophehad argue to Moses that they should be permitted a land-holding amongst their tribe given that their father left no sons to inherit his share of the land. Moses takes their case to God, who responds “yes” to their argument. God furthermore decrees a new law in accordance with this ruling, and immediately after doing so, God announces to Moses that he will soon die. The Rabbinic tradition further develops this core narrative. *Sifrei B'midbar* 133 teaches:

The Rabbis taught: When the daughters of Zelophehad heard that the land of Israel was being apportioned among the males of the tribes but not the females, they consulted together as to how to make their claim. They said: “The compassion of God is not like human compassion. Human rulers are more concerned with males than with females—but the One who spoke and brought the world into being is not like that. Rather, God shows mercy to every living thing, as Scripture says, ‘Who gives food to all flesh/ Whose steadfast love is eternal’ (Ps. 136:25), and ‘The Sovereign is good to all/God’s mercy is upon all God’s works (Ps. 145:9).’¹⁷

This story demonstrates both an interpretivist approach to making new law as a community and provides a guide for the individual Reform Jew in applying this approach to Jewish decision-making in their own lives. Based on the midrashic principle that the first named character is the ringleader,¹⁸ and in order that the example of these women as a collective is not taught only in the name of their relationship to their father, for ease of reference let us focus on Mahlah as the central character in the story. Mahlah, in both the Torah text and the midrash, applies an interpretivist approach to the law and God accepts her argument when making the ruling. She notices an incongruity between the law as it is and her aggadic principles as expressed in the midrash: fairness, mercy, and equality under the law. Mahlah derives these principles from within Scripture. These *p'sukim* from Psalms form a covenantal text that guides her understanding of God. It is here that we can see

Mahlah's process of halachic reasoning as an archetypal example of the Reform Jew guided by *halachah as integrity*.

Ronald Dworkin proposes a hypothetical perfect judge named Hercules as the ideal model of how an interpretivist judge should act in confronting a hard case, that is, one in which there is no determined rule to serve as guiding precedent.¹⁹ Raymond Wacks summarizes Hercules' thought process:

In a hard case the judge therefore draws on principles, including his or her own conception of the best interpretation of the system of political institution and decision of the community. "Could my decision," he or she must ask "form part of the best moral theory justifying the whole legal and political system?"²⁰

Let us similarly propose an ideal Reform Jew, Mahlah, to demonstrate how an interpretivist Reform halachic process would work. In conjunction with the sources of our tradition, and with the community of her sisters and the people of Israel as an interpretive community to guide and support her, she crafts an argument designed to realize and make manifest the justice that God demands of us. She points out that the law as it currently stands obfuscates, rather than illuminates, the covenant between God and Israel by failing to model God's treatment of us in our treatment of each other. In the midrash, Mahlah begins with aggadah, proofs about the nature of God and the covenant derived from within the tradition and uses it to advocate for the construction of new halachah. In this spirit, she models the use of, and proper relationship between, these two components of Torah to come to a decision that forms part of the "best moral theory" of the system as a whole.

Halachah as integrity recognizes the autonomy of individual Jews who, like Mahlah, must make decisions of ethical and spiritual import daily. It also recognizes that each of us is in covenant with a community and with God. Autonomy does not imply perfect freedom and covenant does not imply tyranny of the majority or of the tradition. Halachah as integrity reminds us that our responsibility lies between the warning of the Book of Judges against following a path in which "each [does] what [is] right in their own eyes"²¹ and the astute admonition of Heschel against those who "have made the Halachah primary and life secondary to it."²² A Reform philosophy of halachah incorporates both autonomy and

covenant by recognizing that the aggadah produced by the community guides not only the Rabbis as *poskim* or the community in its production of communal praxis, but also the individual who seeks to make Jewish decisions in their lives in relationship with God and the Jewish people.

Returning to our covenantal text, God confirms the “one right answer,” another Dworkinian term signifying that the Herculean judge produces not merely a satisfactory answer to a hard case, but rather, the best one which fits into the best possible interpretation of the legal system as a whole.²³ God responds, *ken* (yes/correct) to Mahlah and crafts new law in accordance with her interpretive resolution to this case. Furthermore, Rashi, drawing on *Sifrei B’midbar* comments twice on God’s statement *ken b’not Zelophehad dovrot* (the daughters of Zelophehad speak correctly): “We translate this as ‘correctly’: meaning, ‘thus this parsha was written before Me on high.’ This tells you that their eyes saw something that Moses’ eye did not see . . . Their claim is well-founded. And happy is the person that God assents to their words.”²⁴ As Rashi points out, Mahlah is able to see the supernal Torah. She prophesies in a way that Moses could not, and sees the Torah not as it is currently understood and practiced, but as the best version of itself. God both agrees with her argument and commends her for her love of Torah that seeks to see it as God wants it to be seen. Following this ruling, God announces that Moses, up to this point the center of both legislative and judicial functions, will soon die. The case brought by Mahlah, Noah, Hoglah, Milcah, and Tirzah demonstrates to God that the Jewish people now have the proper intention for “taking over” judicial responsibility from Moses. God sees how our halachic Hercules, Mahlah, advances an argument for core principles, derived from a holistic reading of the Torah, and demonstrates that reasoned argument with an eye towards mercy should form the basis of new law.

This is the place of autonomy and covenant in Reform halachah. We each live as participants in a legal story, together with others in an interpretive community, and we live as individuals made in God’s image. Together and individually we strive for integrity and wholeness in our lives. Each Reform Jew is invited to act as the interpretivist judge, one with the responsibility for seeing the whole story in its best, most moral sense and with awareness of its impact on the community (past, present, and future) and each of its

members. Jewish decision making is not only an act of the rabbinic elite, but an activity that individual Jews engage in every day, by using the covenantal texts that guide them to make choices on how to live in covenant with God and each other. Thoughtful committed Reform Jews are not “reed cutters in a bog”²⁵ (i.e., “Rabbinic chopped liver”) but descendants of Mahlah, who saw Torah more clearly than Moses, and Abraham, who declared “Should not the Judge of all the earth do Justice?”²⁶

Why Have a Theory of Law at All?

My teacher Elliot Dorff relates a story from his teacher Harry W. Jones, of Justice Benjamin Cardozo, Associate Justice of the Supreme Court of the United States.²⁷ Justice Cardozo took a sabbatical from his work as a judge about twenty years before his appointment to the Supreme Court. During this year, he studied and wrote a book about legal theory. Cardozo’s decisions after his sabbatical are much better than his decisions before, in Jones’s estimation, because “his post-sabbatical rulings reflect a clear perception of how any given decision fits into a larger understanding of the role of law.”²⁸ Why should we Reform Jews care about having a philosophy of halachah? For our integrity. A concern for integrity, a desire to see the world as the hedgehog does: unified and whole, will lead to the desire to improve and harmonize one’s actions. We can appreciate the beauty of the world in its complexity when we are guided by a commitment to an integrated network of values striving for greater unity.

Many thoughtful people, curious about matters of truth and morality, love and justice, responsibility and community, find talk of theologies and legal theories abstruse and irrelevant. All the jargon and argumentation seem to obscure rather than clarify the predominant ethical question in our lives, “how do I know what I am supposed to do?” Philosophy of halachah should never remain theoretical but, rather, should help guide the serious Reform Jew, like Mahlah, who cares about integrity in answering this question. Dworkin remarks, “Law’s attitude is constructive: it aims, in the interpretive spirit, to lay principle over practice to show the best route to a better future, keeping the right faith with the past.”²⁹ Legal theory should be examined with an eye towards building and applying new halachic approaches. In this spirit, Reform Jews can

utilize Dworkin's legal interpretivism to add our chapter onto the Jewish legal story, and, more importantly, live lives of integrity by building a better future.

Notes

1. My thanks to R. Rachel Adler for encouraging me to craft this piece from a combination of my final papers for her courses in Philosophy of Halachah and Modern Jewish Thought. This article is dedicated to the memory of my teacher, R. Richard Levy z"l. When his students would state their views, he would often follow up with a gentle yet insistent, "Do you believe that?" to inspire us to have courage in our convictions. This essay is my attempt to offer an idea worthy of the answer "yes" if he asked me.
2. Ronald Dworkin, *Justice for Hedgehogs* (Cambridge: Belknap Press, 2011), 1.
3. Rachel Adler, *Engendering Judaism: An Inclusive Theology and Ethics* (Philadelphia: The Jewish Publication Society, 1998), 25.
4. Ronald Dworkin, *Law's Empire* (Cambridge: Harvard University Press, 1986), vii.
5. Dworkin, *Hedgehogs*, 7.
6. Dworkin, *Hedgehogs*, 101.
7. See in particular vol. 25 (2008) of *Dine Israel*, whose English section is devoted to the work of Ronald Dworkin in analyzing Jewish law or sources. See also Louis E. Newman, "Woodchoppers and Respirators: The Problem of Interpretation in Contemporary Jewish Ethics," *Modern Judaism* 10, no. 1 (February 1990), 33–35.; Alexander Kaye, "Eliezer Goldman and the Origins of Meta-Halachah," *Modern Judaism* 34, no. 3 (October 2014).
8. Adler, *Engendering Judaism*, 25–26 (emphasis Adler's).
9. Rachel Adler, personal communication, July 10, 2019.
10. Adler, *Engendering Judaism*, 26.
11. *Ibid.*, 34 and 59
12. Abraham Joshua Heschel, *God in Search of Man* (1955), see particularly chaps. 32–34.
13. *Ibid.*, 338.
14. *Ibid.*, 339.
15. *Ibid.*
16. *B'reishit Rabbah* 1:1.
17. *Sifrei B'midbar* 133, as translated by Judith R. Baskin in *The Torah: A Women's Commentary* (New York: URJ Press and Women of Reform Judaism, 2008), 984.
18. E.g., Rashi on Numbers 12:1.

19. Raymond Wacks, *Philosophy of Law: A Very Short Introduction* (New York: Oxford University Press, 2014), 51.
20. *Ibid.*, 53.
21. E.g., Judg. 21:25
22. Abraham Joshua Heschel, *Heavenly Torah as Refracted through the Generations*, ed. and trans. Gordon Tucker with Leonard Levin (New York: Continuum, 2005), 717.
23. Wacks, *Philosophy of Law*, 53.
24. My thanks to R. David Kasher for directing my attention to Rashi's comments and pointing out his source. The translation is his with my edits.
25. BT *Sanhedrin* 33a
26. Gen. 18:25.
27. Elliot N. Dorff, *The Unfolding Tradition: Jewish Law after Sinai* (New York: Aviv Press, 2005), 23. See the section "Why care about legal theories?"
28. *Ibid.*
29. Dworkin, *Law's Empire*, 413.

The Halachic Canon as Literature: Reading for Jewish Ideas and Values

Alyssa M. Gray

At the beginning of his commentary to *Parashat B'har* (Lev. 25:1–26:2), Rashi (1040–1105) famously asks: “What does the Sabbatical [year] have to do with Mount Sinai?” That is, what relevance do the agricultural laws of the Sabbatical year, applicable to the land of Israel, have to do with Israel’s post-slavery wanderings and revelatory sojourn at Mount Sinai? For decades an analogous question has been both explicitly and tacitly posed about Reform Judaism’s relationship with the vast, complex body of literature, law, and custom known as halachah: “What does halachah (understood as “law,” a heteronomous system of obligations) have to do with Reform Judaism (understood as a realm of autonomy)?” This formulation of the question is admittedly not unproblematic. Both “halachah as law” and “Reform Judaism as/is autonomy” (not to mention “law”) require careful definition. Space being in short supply, this essay will attend explicitly (and necessarily incompletely) only to problematizing the identification “halachah as law.” This essay argues that Reform Judaism’s engagement with halachah need not consist solely of debates about the authority of halachah understood in some way as “law,” a system of mandated behaviors. Indeed, some contemporary scholars of halachah are now openly questioning whether “halachah” fits within such a conventional understanding of “law.”¹ Rachel Rafe Neis colorfully points out that “to produce Jewish law is to freeze into a certain configuration the messy mix of moving parts: ‘halakhah,’ ‘Jewish law,’

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'religious law,' and 'civil law,' not to mention 'law.'"² Neis appears to be saying that "producing" something called "Jewish law" involves "freezing" together certain "moving parts" that otherwise would not necessarily be connected; one of these is halachah, which is not necessarily, on its own, reducible to "law." Viewing "halachah" as "law" is thus a particular cultural choice, a cultural construct, and one (I might add) that may not be valid or useful in all times and places. Unlike Neis, Chaim Saiman does not question the identification of "halachah" as "law," but he argues that "halachah" is much broader than our conventional understanding of "law." He points to such phenomena as the medieval halachic codes' "codifications" of various halachot that are not to be applied in practice, the ubiquitous blending of "halachah" and "aggadah" in the various Rabbinic and halachic corpora, and halachic literature's interest in moral, ethical, and even philosophical concerns. Saiman concludes that the "Rabbinic idea of law" is vastly more capacious than our conventional understanding of "law."³

Halachah, then, need not—and perhaps even should not—be seen (solely) as "law" in a conventional sense. This essay will argue that there is another way to frame Reform Jewish engagement with halachah: the literature of the halachah (the "halachic canon") can and must be taken seriously, interpreted carefully, and closely read, as part of the Jewish people's canon of great *literature*. "Can and must" imply a Jewish *obligation* to read the Jewish canon, including the halachic canon. This obligation is bound up with the Jewish people's being, in Moshe Halbertal's term, a "text-centered" community.⁴ Halbertal observes that the "text" does more than set out Jewish behavioral norms, "it is one of the tradition's central operative concepts, like 'God' or 'Israel.'"⁵ Torah study is about more than learning what Jewish behaviors are and how to do them; it is a "foremost religious ideal," a "locus of religious experience," and agreement on a canon "defines the boundaries of the community and makes it cohesive."⁶ While a "normative" canon is indeed a source of behavioral norms, a "formative" canon is "studied, taught, transmitted . . . and reflected upon. It affects and influences . . . attitudes, beliefs, judgments, sensitivities, aspirations, ideals." It can "shape the framework for future discourse within a community and constitute its terms."⁷

The idea of reading the halachic canon as literature is also indebted to the Anglo-American intellectual movement known as

“law and literature.”⁸ A full discussion of the various intellectual currents comprising the law and literature enterprise is beyond this essay’s scope, but as Kieran Dolin has aptly observed, “law and literature” scholars have recognized “that law is inescapably a matter of how language is used” and have emphasized “the ‘close reading’ of its structures and meanings, its genres and contexts.”⁹ Apropos of close reading, Dolin quotes Dara Culhane’s methodological clarification that “close reading” means reading texts “not only for their literal or ‘factual’ content, but also to understand the various ways they communicate meanings . . . by using language in particular ways; by writing and speaking in rhetorical styles; by deploying metaphor and evoking images and emotions . . . and constructing each text as a whole along specific lines.”¹⁰

Jane B. Baron’s two decades-old sympathetic critique of the “law and literature” movement is also relevant.¹¹ Baron claims that the Anglo-American legal academy failed fully to realize the interdisciplinary potential of “law and literature.” That is, scholars did not think through the possibility that by bringing “literature” to bear on the reading of “law,” their understanding of what “law” is might or should change.¹² Baron notes that “suggestions that law is like literature in being textual” and that “law is inherently narrative in structure or content” seemed to point to a reconsideration of the disciplinary boundary between “law” and “literature,” but disappointingly, “the promised reconsideration . . . has often been rather thin.”¹³ We will leave the resolution of this particular issue to the Anglo-American legal academy but at the very least, Baron reinforces what we learn from Halbertal, Neis, and Saiman: in reading the halachic canon as literature, we should not breezily continue to view “halachah” as an autonomous, self-contained, “nonhumanistic” field. The encounter between “halachah” and “literature” productively complicates our understanding of the category “halachah”; halachah is not just behavioral norms or “law”; it is text, formative canon, literature—a key part of our uniquely *Jewish* literature.

Apropos, we might paraphrase Dara Culhane as follows: the halachic canon should not be read only for its normative content, but also to understand the various ways its constituent literary corpora communicate meanings, and use language, rhetorical styles, metaphor, images, and emotions. Adding Halbertal back to the mix, we see that to read the halachic canon as literature is to read it with

the understanding that language matters; hence, attention must be paid to how language is used to construct and reconstruct not only behavioral norms but also beliefs, ideas, aspirations, religious experience, and the self-image of the Jewish people. In addition, reading the halachic canon as literature brings this canon within the (hopefully enduring) general cultural consensus that reading literature expands our minds, exercises our imaginations, and gives us new insights, new frameworks for thinking about, and a growing vocabulary for how to discuss, being human. Tractate *Sanhedrin* of the Babylonian Talmud (*Talmud Bavli*) and the section *Choshen Mishpat* of R. Jacob ben Asher's (1269–1343) code *Arbaah Turim* are no less important sources to read deeply and on which to meditate about “justice” than is Plato's *Republic*. And *Bavli Sanhedrin* and *Choshen Mishpat*, unlike Plato's *Republic*, are part of the formative literary canon that constitutes us as the Jewish people, without which we would not *be* the Jewish people. We have made these literary corpora “Torah,” and as a people of Torah, we are bound to think about, meditate upon, interpret, argue with, and learn from them.

The following three sections present illustrative readings of the halachic canon as literature. Each section's literary approach is distinct. The first is a reading of a *sugya* (passage) from the *Talmud Bavli* that focuses on the *sugya*'s intertwining of legal prescription and biblical narrative to make a point about the superiority of contemporary Torah study (even) to the original revelation at Sinai. The second is an unpacking of Maimonides' (1138–1204) intertextual artistry in stressing the horrors of human captivity (in contemporary terms, this crime also includes human trafficking) and his insistence on the individual Jew's responsibility to do what he can to mitigate it.¹⁴ The third section looks for the aggadah within the halachah, as it were, illustrating how the two sides of a medieval dispute about the recitation of a particular liturgical passage on Rosh HaShanah and Yom Kippur are actually competing religious visions of the nature of those holy days.

The Interplay of Law and (Biblical) Narrative: Contemporary Torah Study as Sinai Redux or Even Better

Given Torah study's centrality to the Jewish religious experience, this seems like an appropriate starting point. *Mishnah M'gillah* 4:1

opens: “The reader of the [Esther] scroll may stand or sit.” Rashi clarifies the *mishnah*’s meaning: the public reader of *M’gillat Esther* on Purim may choose to perform the reading while standing or sitting. We will elide the rest of the *mishnah* and proceed directly to the *Talmud Bavli*’s engagement with this line (*Bavli M’gillah* 21a):

1. It was taught: Which is not the case with the Torah.
2. From where are these words derived? R. Abbahu quoted the verse (Deut. 5:28): *But you remain* [literally, “stand”] *here with Me.*¹⁵ And R. Abbahu said, “Were the verse not written, it would be impossible to say it; as it were, even the Holy Blessed One was standing.”
3. And R. Abbahu said, “From where do we learn that a master should not sit on a couch and teach his student [who is sitting] on the ground? As it is said, *But you remain* [literally, ‘stand’] *here with Me.*”

The first point to notice is that the *Talmud Bavli* reads the *mishnah* as making a negative point about public Torah reading as well as a positive point about public *M’gillah* reading. The public reader of *M’gillat Esther* may choose to stand or sit; the public Torah reader must (only) stand. The *Talmud Bavli* buttresses its reading with its construction of a unit of three teachings attributed to the Land of Israel sage R. Abbahu. Units of three are common in the *Talmud Bavli* and the completion of a unit of three may indicate the complete presentation of a particular idea.¹⁶ Indeed, this unit of three is itself the first (Unit I) of three units on *Bavli M’gillah* 21a. We will shortly attend to the other two.

The *Talmud Bavli* uses R. Abbahu’s quotation of Deuteronomy 5:28 to support the idea that the public Torah reader must stand. The biblical context is Moses’s Deuteronomic recounting to Israel of the Sinai experience, including his repetition of the Decalogue (Deut. 5:6–18). Moses also recounts the people’s fear and awe, which led them to ask that Moses alone approach God and then report back God’s words to them (Deut. 5:24). God warmly approves of the people’s awe-filled reticence and request: *they did well to speak thus. May they always be of such mind . . . But you remain* (literally, “stand”) *here with Me, and I will give you the whole Instruction* (literally, “Torah”)—*the laws and the rules—that you shall impart to them* (Deut. 5:25–28). R. Abbahu then points out Deuteronomy 5:28’s stunning anthropomorphism, one that he marvels would be

impossible to express were it not written in Scripture itself: God was *standing* like a human being on Mount Sinai and invited Moses to stand *together* with God. Taken together, paragraphs 1 and 2 make the point that the public reading of the Torah is a mini recapitulation of the Sinai experience, with God as “Torah reader.” Just as God “stood” while relaying “*the whole Instruction*” to Moses, so should the public Torah reader in every time and place stand while relaying “*the whole Instruction*” to the assembled community.¹⁷

But paragraph 3 goes further. God stood while conveying (“teaching”) Torah to Moses at Sinai; the human Torah master of a later era must not sit on a couch while teaching Torah to a student who is sitting on the ground. Note how the definition of “Torah” shifts in paragraph 3: “Torah” now refers not only to the public reading of the Torah scroll, but also to the ever-growing corpus of Rabbinic Torah that is taught and transmitted in every generation since Sinai. Not only is public Torah reading a mini recapitulation of the Sinai experience, so is the quotidian learning of Torah teachers and students.

Unit I thus concludes with a tacit shift in the meaning of “Torah.” But Unit I is not without its puzzlements. One may grant that Torah teachers should not sit on couches while teaching students who are sitting on the ground. But the question remains: how should the learning environment be arranged? Should both teachers and students stand as God and Moses did at Sinai? Or, if the problem with teachers sitting on couches while students sit on the ground is that the two are not on the same level (not that they need to stand), then is the solution that both teachers and students sit on couches at the same level? Or should everyone sit on the ground? Unit I does not say. At this point we move on to Unit II, which consists only of paragraph 4:

4. Our Rabbis taught: “From the days of Moses until Rabban Gamliel they would only study the Torah standing. From the time Rabban Gamliel died a sickness descended to the world and they would study the Torah sitting. And this is consistent with what we learned in the *Mishnah* (*Mishnah Sotah* 9:15): ‘When Rabban Gamliel died, the honor of the Torah ceased.’”

Unit II clearly implies that Rabbinic teachers and students of Torah in the *Talmud Bavli*’s time and place do *not* stand during their studies. But why is that so, given what we learned in paragraphs

1–2? The answer comes from “history.” “Rabban Gamliel” is “Rabban Gamliel the Elder,” who according to Rabbinic tradition died approximately twenty years prior to the Second Temple’s destruction in 70 C.E. The *Talmud Bavli*’s juxtaposition of “Our Rabbis taught” with the *mishnah* makes the point that in the two decades leading up to the Temple’s destruction, a weakness entered the world of Torah, a weakness that made it impossible to study the Torah while standing, as had been the practice—and the law. Standing to study had been an obvious behavioral manifestation of “honor of the Torah,” said to have ceased after Rabban Gamliel’s death. But Unit II complicates Unit I’s tacit closing suggestion that Rabbinic Torah study is a recapitulation of Sinai. When could the “honor of the Torah” have been greater than at Sinai, the experience of which was characterized (inter alia) by God’s (the master’s) standing to teach and Moses’s (the student’s) standing to learn? Torah study in this time of “sickness,” in this time when “the honor of the Torah [has] ceased,” Torah study that takes place among *sitting* teachers and students, can only, at best, be vastly *inferior* to what took place on Sinai.

After Unit II, then, the *Talmud Bavli* is in a difficult position. It wishes to analogize Rabbinic Torah learning to Sinai (Unit I), but it lives in a world in which that analogy seems impossible. A “sickness” has “descended to the world” that requires Torah teachers and students to sit during their studies, a crystal-clear behavioral manifestation that the “honor of the Torah” has ceased (Unit II). Can the analogy of Rabbinic Torah study to Sinai be saved? On to Unit III:

5. One verse says (Deut. 9:9): *And I stayed* (literally, “sat”) *on the mountain* and one verse says (Deut. 10:10): *I had stayed* (literally, “stood”) *on the mountain*. Rav said, “[Moses] stands and studies, he sits and repeats.” R. Chanina said, “[Moses] neither sits nor stands, but bends down.” R. Yochanan said, “[The Biblical word] ‘sitting’ (Deut. 9:9) only means ‘tarrying,’ as it is said (Deut. 1:46): *after you had remained* (literally, “sat”) *in Kadesh all that long time.*”
6. Rava said: “[Moses studied] easy subjects [while] standing; difficult [subjects while] sitting.”

In paragraph 5 three sages interpret the juxtaposition of Deuteronomy 9:9 (Moses’s “sitting” on Sinai) and Deuteronomy 10:10

(Moses's "standing" on Sinai). (Note that paragraph 5, like paragraph 1, is constructed of three parts.) The contrast between the view of the Babylonian sage Rav (third century C.E.) and the Land of Israel sages R. Chanina and R. Yochanan is telling. Rav constructs Moses as a rabbinic student, not a prophet; Sinai was not just a locus of divine revelation, but of Moses's Rabbinic-style Torah study. Rav understands Moses to have "stood" to study new material, and to have "sat" to review ("repeat") what he had already learned. Rav implicitly sees "study new material" as being of greater value than "repetition"; Moses therefore sat to do the latter but stood for the former. By contrast, the two Land of Israel sages refuse to grant that Moses sat on Sinai at all. R. Chanina opts for the view that Moses "bent down," while R. Yochanan insists that Deuteronomy 9:9's *stayed* (literally, "sat") means "tarried." While not necessarily disagreeing with Rav that Moses engaged in Rabbinic-style Torah study on Mount Sinai, the Land of Israel sages are unwilling to grant that he *sat* to do so. Rav, on the other hand, implicitly argues that not only did Moses engage on Sinai in Rabbinic-style Torah study, but he did so partly in a sitting position—as "contemporary" rabbis do. Not only that, but Moses's (and by extension, contemporaneous Babylonian Rabbis') sitting to review learning is not a manifestation of "sickness," but is accounted for in the biblical text itself (Deut. 9:9). To Rav, even Rabbinic study undertaken in a sitting position is thus properly and appropriately analogized to the Sinai experience.¹⁸

In paragraph 6 the later Babylonian *Amora* Rava (mid-fourth century C.E.) goes even further than Rav. Rav's binary was "new learning" and "repetition"; the latter being of lesser value, one may sit to "repeat," but not to learn something new. Rava's new binary is "difficult subjects" and "easy subjects." "Easy subjects" count for less than "difficult subjects" but, crucially, Moses studied the more highly valued "difficult subjects" *while seated* (presumably for greater concentration and focus). To Rava, "sitting" ranks *higher* than "standing," and his reversal of the hierarchy of "sitting" and "standing" reflects another reversal as well. To Rava, Rabbinic Torah study—which, after Rabban Gamliel, is largely accomplished while seated—is not simply a recapitulation of the Sinai experience; Rabbinic Torah study is *superior* to it. Sinai was the realm of both "standing" (i.e., easy subjects) and "sitting" (i.e., difficult subjects), but the world of Rabbinic Torah is exclusively a

world of “sitting” (Unit II; paragraph 4), hence, of tackling difficult subjects. Rava thus unravels the web of negativity Unit II spins around “sitting.” Far from being an expression of “sickness,” of a cessation of Torah’s honor in the world, the Rabbis’ default posture of sitting to work through “difficult subjects” of Torah is, to him, a *superior* form of Torah engagement than what took place on Sinai. Sinai was a realm of both “standing” (i.e., easy subjects) and “sitting” (i.e., difficult subjects); the Rabbinic world is all sitting—all difficult subjects.

Where does all this leave us? A close reading of *Bavli M’gillah* 21a shows that it comprises three units, of which Unit I and part of Unit III (paragraph 5) also consist of three units. The reading journey from the beginning of Unit I to the end of Unit III is a journey from a Land of Israel view that public Torah reading is a recapitulation of the Sinai experience to a Babylonian view that Rabbinic Torah study may even be superior to the Sinai experience.¹⁹ This reading journey shows us the interplay between legal prescription and biblical narrative, how the *Talmud Bavli* uses biblical narrative as the background to its quiet articulation of its own bold idea about the superiority of “contemporary” Torah study (even) to Sinai. This *sugya* is thus one small “text point” relevant to the perennial religious question of how each new generation of Torah teachers and students stands in relation to Sinai.

Maimonides’ Intertextual Artistry: Highlighting Individual Responsibility for Redeeming Captives

Defining “intertextuality” has been the topic of many studies, including book-length studies.²⁰ For this essay’s purpose, intertextuality refers to the many connections between a text and other aspects of the culture of which it is a part; these aspects include, but are not limited to, other texts. Daniel Boyarin has noted that texts are “produced” through the “conscious and unconscious citation of earlier discourse.”²¹ A reader may recognize these connections as linguistic formulations, themes, or motifs shared by the text being read and other texts (or cultural artifacts). In short, all texts are part of a larger discursive web consisting of other cultural artifacts including other texts. No text is created *ex nihilo* or stands alone. Reverse engineering an author’s (if one can be identified) exercise of intertextuality by carefully unraveling this discursive web and

noting how the author reused texts, placed them in new contexts, and thereby forged new meanings through this recontextualization also reveals something of that author's religious and cultural values and ideas. And when that author is a pillar of the Jewish literary canon (not just the halachic canon) like Maimonides, a close, granular analysis of his literary choices is bound to be revealing and rewarding.

Maimonides' Laws of Gifts to the Poor 8:10 is a tapestry of language, images, and literary structure drawn from the *Mishnah* and the *Talmud Bavli*, intricately woven together on the uniquely Maimonidean loom. In this passage he writes about the mitzvah of redeeming captives, a crime that today is part and parcel of such atrocities as human trafficking:

The redemption of captives precedes the sustaining and clothing of the poor, and there is no mitzvah as great as the redemption of captives. For the captive is among the hungry, the thirsty, and the naked, and stands in danger of death. And the one who hides his eyes from redeeming [the captive] transgresses *do not harden your heart and shut your hand* (Deut. 15:7) and *Do not stand idly by the blood of your fellow* (Lev. 19:16),²² *he shall not rule ruthlessly over him in your sight* (Lev. 25:53), and he nullifies the commandment *you shall surely open your hand to him* (Deut. 15:8), and the commandment *Let your brother live by your side* (Lev. 25:36), and *you shall love your neighbor as yourself* (Lev. 19:18), and *if you refrained from rescuing those taken off to death* (Prov. 24:11), and many [other verses] like these. And there is no great mitzvah like the redemption of captives.

This passage has the structure and feel of a mini sermon. The first sentence ("there is no mitzvah as great as the redemption of captives"; Hebrew: *mitzvah g'dolah*) echoes and reinforces the last ("And there is no great mitzvah like the redemption of captives"; Hebrew: *mitzvah rabbah*). In the middle, Maimonides advises the reader that if he²³ "hides his eyes" from redeeming captives he will run afoul of seven biblical precepts. "Seven" is a formulaic number. A closer look at these seven precepts shows that three are negative commandments ("thou shalt not's"), one from Deuteronomy and two from Leviticus. Four are expressed in the form of positive commandments ("thou shalt's"), and again, one is from Deuteronomy, two are from Leviticus, and the fourth is, surprisingly, from

Proverbs. This sudden move from the Pentateuch to Proverbs is a silent signal of something, to which we will return.

This “mini sermon” is quite powerful on its own. But taking the additional step of unpacking Maimonides’ intertextual artistry shows us how he has utilized older texts in making new meaning, how he has used those older texts to hone a particularly and uniquely Maimonidean take on the redemption of captives. Maimonides proclaims the redemption of captives to be a mitzvah that takes precedence over feeding and clothing and poor and closes by calling it a “great mitzvah” (*mitzvah rabbah*). The source for this is *Bavli Bava Batra* 8a–b. The Persian King Mother Ifra Hormiz sent a bag of money to Rav Yosef, insisting the coins be used for a “*mitzvah rabbah*.” Rav Yosef’s younger contemporary Abaye helps him figure out (with an assist from a relevant Rabbinic tradition) that the redemption of captives should properly be considered such a “*mitzvah rabbah*.” The *Talmud Bavli* evidently finds Abaye’s explanation of “*mitzvah rabbah*” to be unsatisfying, because the story of Rav Yosef and Abaye is immediately followed by the sage Rava’s independent inquiry into why the redemption of captives is a “*mitzvah rabbah*.” Rava’s answer is based on Jeremiah 15:2: *And if they ask you, “To what shall we go forth?” answer them, “Thus said the Lord:*

*Those destined for the plague, to the plague;
Those destined for the sword, to the sword;
Those destined for famine, to famine;
Those destined for captivity, to captivity.*

The *Talmud Bavli* proclaims each successive item on this list to be worse than the last, meaning that “captivity” is the worst of all. This is the reason that “redemption of captives” is a “*mitzvah rabbah*”; as the *Talmud Bavli* concludes: “captivity is the hardest of all; for all of them (plague, sword, famine) are included within it.” Jeremiah 15:2 arguably underlies Maimonides’ representation that “the captive is among the hungry, the thirsty, and the naked, and stands in danger of death.” But why then doesn’t Maimonides quote Jeremiah 15:2? We may surmise that the verse’s context undermines its usefulness for Maimonides. Jeremiah 15:1 has God angrily telling the prophet not to intercede with God on behalf of the about-to-be-exiled people of Judah, and verses 3–15 are filled

with divine wrath, notably *I will destroy My people* (verse 7). God appears to be telling Jeremiah to “hide his eyes,” the very thing Maimonides cautions his reader *not* to do.²⁴

We may understand, then, why Maimonides neglects Jeremiah 15:2, but why does he quote the seven verses he chooses? The path to an answer leads first to another intertext: *Mishnah N'darim* 9:4. The *mishnah's* topic is releasing vows for those who undertook them in haste and wish to be free of them. Person “X” imposes a prohibitive vow on “Y,” forbidding Y to benefit in any way from X’s property. X subsequently wishes to be released from the vow. In order to do this, X must approach a sage, who will look for an “opening,” something X hadn’t considered at the time she imposed the prohibitive vow. R. Meir states that “we open [for X] from that which is written in the Torah.” R. Meir suggests asking X: “Had you known that you would transgress *you shall not take vengeance or bear a grudge* (Lev. 19:18) and *you shall not hate your kinsfolk in your heart* (Lev. 19:17), *love your fellow as yourself* (Lev. 19:18), *let him live by your side as your kinsman* (Lev. 25:36), that were he to become poor you would not be able to support him?” If X acknowledges that she would not have made the prohibitive vow had she been aware of all this, R. Meir allows the vow to be released.

There is an unmistakable echo of *Mishnah N'darim* 9:4 in Maimonides’ passage on the redemption of captives. For one thing, Maimonides takes Leviticus 19:18 and 25:36 from the *mishnah*. But there is more. Comparing *Mishnah N'darim* 9:4 and Maimonides to *Bavli Bava Batra's* discussions of redemption of captives, we see that the latter’s discussion of the redemption of captives is not addressed to *individuals*; it says nothing about an individual obligation to redeem captives. *Mishnah N'darim* 9:4 is addressed to one individual about another individual, as is Maimonides’ own passage on the redemption of captives. Maimonides thus reaches for and reworks a mishnaic intertext about one person’s religious and moral obligations toward another discrete person as part of the literary scaffolding of his passage about the redemption of captives; his message is that each Jew must see him- or herself as *individually and personally obligated* to become involved in the redemption of captives. Moreover, aside from Leviticus 19:18 and 25:36, Maimonides’ choice of verses is entirely original. Each Pentateuchal verse Maimonides chooses is formulated with singular subjects and verbs; each thereby underscores Maimonides’ overall message

that each Jew is *individually obligated* not to “harden the heart,” “shut the hand,” “stand idly by,” or watch as a captor “rules ruthlessly” over a captive.²⁵

Finally, Maimonides’ quotation of Proverbs 24:11 (together with verses 10 and 12), follows as a fitting, even brilliant, capstone. The verses read:

*If you showed yourself slack in time of trouble, wanting in power,
If you refrained from rescuing those taken off to death, those
condemned
to slaughter—
If you say, “We knew nothing of it,” surely He who fathoms hearts
will discern [the truth].*

Proverbs 24:11 (and verses 10 and 12) are also expressed in the singular. These verses are not only the perfect Maimonidean riposte to a Jew inclined to “hide the eyes” from redeeming captives, from human trafficking, but underscore Maimonides’ view that every individual is obligated to do what is possible to help victims of this atrocity. And, returning to this essay’s overall methodological point, this uniquely Maimonidean message only comes into bold relief when we engage in a careful intertextual analysis of the Maimonidean passage.

Nomos as Narrative: Finding the Aggadah That Is Implicit in the Halachah

“Nomos as Narrative” is a play on Robert Cover’s famous essay, entitled “Nomos and Narrative.”²⁶ Scholars have devoted much effort to unpacking the challenging complexities of “Nomos and Narrative”; oft-quoted is Cover’s poetic observation that legal prescriptions do not exist “apart from the narratives that locate [them] and give [them] meaning. For every constitution there is an epic, for each decalogue a scripture.”²⁷ Cover gives substance to this observation in part through a survey of the interplay between the Deuteronomic law that the firstborn son even of the “hated wife” inherits a double portion (Deut. 21:15–17), and the narrative intertexts in which younger sons typically displace the hapless firstborn: Cain and Abel, Isaac and Ishmael, Jacob and Esau, Joseph. He observes that this interplay demonstrates that “the biblical narratives always retained their subversive force—the memory that divine destiny is

not lawful."²⁸ To Cover, these biblical narratives also grapple, among other things, with a problem of "political legitimacy": "every legal order must conceive of itself . . . as emerging out of that which is itself unlawful."²⁹ My point is neither to affirm nor contest Cover's reading of this particular biblical flashpoint, but to call attention to the methodological fact that he does in fact find significance in the interplay of biblical law and narrative. Both legal prescriptions and narratives are part of a civilization's overall cultural production; legal prescriptions when read together with thematically relevant narratives reveal elements of that civilization's self-understanding. With this in mind we may extrapolate from Cover to make a different point: halachic prescriptions and behavioral norms *themselves* may encode a narrative, a larger world of meaning. Halachic prescriptions, halachic disputes, and codified Jewish behavioral norms, when studied closely, can reveal elements of a religious or moral vision of the world. In this extrapolation from Cover we are assisted by Stanley Fish: "The content of the law . . . even . . . the most technical and mechanical of matters . . . is always some social, moral, political or religious vision."³⁰ In our search for what we might call the "ag-gadah" in the "halachah" we must therefore necessarily widen our lens and examine a broad selection of connected texts rather than a discrete text.³¹ Our example is the medieval dispute over the recitation of the Festival *Amidah* addition "Bestow upon us the blessing of Your holy Festivals" on Rosh HaShanah and Yom Kippur. That text reads as follows:

Bestow upon us the blessing of Your holy Festivals,
and may we so celebrate them as to be worthy of Your blessing.
Our God and God of our ancestors, make us holy with Your
mitzvot
and let Your Torah be our way of life.
May our rest on this day be pleasing in Your sight.
Satisfy us with Your goodness, gladden us with Your salvation,
and purify our hearts to serve You in truth.
Let Your (Shabbatot and) holy Festivals remain our heritage,
and let us celebrate them with (love and favor and) joy
so that all Israel, hallowing Your name, may have cause to
rejoice.
We praise you, Adonai, who sanctifies (Shabbat,) the House of
Israel and the Festivals.³²

Seder Rav Amram Gaon (ninth century C.E.), the reputed “first prayer book” from gaonic Babylonia, prescribes that “Bestow upon us” be recited on Rosh HaShanah, with additions appropriate to the day, including the closing blessing: “We praise you, Adonai . . . King over all the earth, who sanctifies Israel and the Day of Remembrance.”³³ R. Eliezer ben Nathan, a twelfth-century scholar in Mainz (Ashkenaz), recounts in his *Sefer Raavan* that the tenth-to-eleventh-century scholar R. Isaac ben R. Judah of Mainz instituted the recitation in that community of “Bestow upon us” on Rosh HaShanah and Yom Kippur. Reciting “Bestow upon us” on Rosh HaShanah is also attested in the twelfth-century Provençal work *Sefer HaEshkol* (which was very influenced by gaonic learning), and in the fourteenth-century Spanish liturgical work *Sefer Abudarham*. R. David Abudarham, author of that work, justifies this recitation by pointing out that Rosh HaShanah is included in the biblical category of *mo-adei Adonai* (Festivals of *Adonai*) in Leviticus 23:4–44 along with such undoubtedly joyous days as Passover and Sukkot. Moreover, Numbers 10:10 describes “joyous occasions” on which the “trumpets” are to be blown as a “reminder (*zikaron*)”—which Abudarham also sees as an allusion to Rosh HaShanah.

But a contrary view also emerged. R. Isaac Halevi of Worms (mid-eleventh century) reversed the earlier Ashkenazic tendency to recite “Bestow upon us” on Rosh HaShanah and Yom Kippur because of the absence of those days from the list of pilgrimage festivals in Deuteronomy 16:16–17. His position was taken up in the northern French work *Machzor Vitry* (Ashkenaz; late eleventh-to-twelfth century), which even polemicizes sharply against the recitation of “Bestow upon us,” stigmatizing one who recites it on Rosh HaShanah and Yom Kippur as *A fool [who] walks in darkness* (Eccles. 2:14). The thirteenth-century northern French work *Sefer HaMachkim* also prohibits reciting “Bestow upon us” on Rosh HaShanah and Yom Kippur.

The divergent lines of authority about the recitation of “Bestow upon us” caught the attention of R. Asher ben Yechiel (ca. 1250–1327), the German expatriate scholar in Spain, who notes that unlike Ashkenaz, Jews “in other places” recite “Bestow upon us” on Rosh HaShanah and Yom Kippur. His son, R. Jacob ben Asher, makes a similar observation in his *Arbaah Turim* (*Orach Chayim* 582). R. Jacob ben Asher’s Provençal contemporary R. Yerucham ben Meshulam (*Toldot Adam V’Chavah netiv* 6, part 1) notes the disagreement of “the

great ones” about reciting “Bestow upon us,” observing that the Ashkenazic refusal to recite it was spreading to other Jewish cultures. Ultimately, the sixteenth-century legal compilation *Shulchan Aruch* (*Orach Chayim* 582:8) settles the issue: “Bestow upon us” is not recited on Rosh HaShanah and Yom Kippur, and naturally, “Bestow upon us” is not part of our contemporary *machzorim*.

So where is the aggadah in this congeries of halachic details? In fact, what we have here are dueling visions of the nature of Rosh HaShanah and Yom Kippur. According to one vision, these days are essentially similar to Passover, Sukkot, and Shavuot: they are *mo-adim* like the pilgrimage festivals (Leviticus) and there is an element of *simchah* (joy) associated with them (or at least with Rosh HaShanah) (Num. 10:10). The other vision emphasizes an equally discernible, fundamental *dissimilarity* between Rosh HaShanah and Yom Kippur and the other festivals: they are not included in the Deuteronomic recap of the Festivals and, in the words of *Machzor Vitry* (chapter 322): “blessing and ‘happiness’ (*simchah*) are not at all mentioned in connection with Rosh HaShanah and Yom Kippur, but with [the] other festivals.” Although our contemporary practice seems to render these dueling visions moot, they remain important sources of reflection that can deepen our understanding and observance of what we have come to term the “Days of Awe.” Why, particularly in Ashkenaz, was the vision of Rosh HaShanah and Yom Kippur as times of “happiness” marginalized in favor of a vastly more sober, solemn vision? Why did other medieval jurists choose to find “happiness” in Rosh HaShanah and Yom Kippur? What exactly is that “happiness”? And, for that matter, what does “happiness” mean in the context of Jewish religious experience more broadly? Addressing such larger questions begins with reading halachah for its aggadah.

Conclusion

Jews are a “text-centered community” (Moshe Halbertal). The halachic canon is a core body of the “texts” at the “center” of the “community,” engagement with which is incumbent upon all Jews. One way to do so is by reading the halachic canon through a literary lens: reflecting carefully and critically on what and how ideas and values are presented in the canon and noting the ebb and flow of shifting meanings resulting from the interplay of legal

prescription and narrative, conscious and even unconscious exercises of intertextuality, and different religious visions presented as halachic disputes. For now let us leave the sage Hillel with the last word: *Zil gemor* (“Go and learn”).

Notes

1. See, e.g., Rachel Rafe Neis, “The Seduction of Law: Rethinking Legal Studies in Jewish Studies,” *Jewish Quarterly Review* 109, no. 1 (Winter 2019): 119–38. Arguably a much earlier harbinger of the contemporary debate over whether and to what extent halachah is “law” is Gordon Tucker’s trenchant critique of Joel Roth’s legal positivist work *The Halakhic Process: A Systemic Analysis* (New York: The Jewish Theological Seminary of America, 1986). Tucker’s critique was in the form of a review essay entitled “God, the Good, and Halakhah,” *Judaism* 38, no. 3 (1989): 365–76. Tucker agrees with Roth that halachah is indeed “law”; his disagreement is with Roth’s rather facile assumption that legal positivism is the right lens through which to view halachah. Tucker’s resort to the legal theorist Ronald Dworkin augurs the possibility of a literary turn.
2. Neis, “Seduction,” 138 (emphasis added).
3. Chaim Saiman, *Halakhah: The Rabbinic Idea of Law* (Princeton: Princeton University Press, 2018).
4. See Moshe Halbertal, *People of the Book: Canon, Meaning, and Authority* (Cambridge: Harvard University Press, 1997), 1–10 and passim.
5. *Ibid.*, 2.
6. *Ibid.*, 6–8.
7. *Ibid.*, 90.
8. A complete list of the scholars working within the law and literature framework is neither necessary nor desirable here. In addition to the scholars mentioned in this discussion and later in the essay, mention should be made of the oeuvres of James Boyd White, J. M. Balkin, Peter Brooks, and Ronald Dworkin. Mark Washofsky is one scholar of halachah who has fruitfully used law and literature methods in his work; see, e.g., his “Responsa and Rhetoric: On Law, Literature, and the Rabbinic Decision,” in *Pursuing the Text: Studies in Honor of Ben Zion Wacholder*, ed. John C. Reeves and John Kampen (Sheffield: Sheffield Academic Press, 1994), 360–409.
9. See Kieran Dolin, *A Critical Introduction to Law and Literature* (Cambridge: Cambridge University Press, 2007), 20.
10. Dara Culhane, *The Pleasure of the Crown: Anthropology, Law, and First Nations* (Burnaby: Talon Books, 1998), 21, quoted in Dolin, *A Critical Introduction*, 20.

11. Jane B. Baron, "Law, Literature, and the Problems of Interdisciplinarity," *Yale Law Journal* 108, no. 5 (1999): 1059–85.
12. *Ibid.*, 1080.
13. *Ibid.*, 1079. Kieran Dolin likely alludes to Baron's critique when he writes: "the absolute separateness or autonomy of the two domains cannot be sustained . . . the law and literature project adopts a critical perspective towards both its constituent fields—and their border." See Dolin, *A Critical Introduction*, 15.
14. Using gender-neutral language in speaking of Maimonides may at times be inaccurate. The commandment to engage in the redemption of captives may be one such case.
15. Unless otherwise noted, translations of verses are taken from the Jewish Publication Society translation (1985).
16. On this point see Alyssa M. Gray, "The Power Conferred by Distance from Power: Redaction and Meaning in b.A.Z. 10a–11a," in *Creation and Composition: The Contribution of the Bavli Redactors (Stammaim) to the Aggadah*, ed. Jeffrey L. Rubenstein (Tübingen: Mohr Siebeck, 2005), 31–32 and n. 28.
17. Deuteronomy 5:28 also constructs Moses as the intermediary who will convey God's instructions to the people. The intermediary in Talmudic times who mediated between the public Torah reader and the community was the *meturgeman* (translator), the public performer of the Aramaic translation of the Torah. The *Talmud Bavli* thus implicitly understands Moses to be that *meturgeman*. The *Talmud Bavli* takes up discussion of the translator and Aramaic translation on 21b and succeeding folios. The *Talmud Y'rushalmi*, which neither quotes nor discusses Deuteronomy 5:28, takes up the Aramaic translation and the "intermediary" (*sarsor*; an allusion to the *meturgeman*) explicitly in its discussion of this opening clause of *Mishnah M'gillah* 4:1. See *Y'rushalmi M'gillah* 4:1, 74d (ed. Academy of the Hebrew Language, 2001), 768.
18. On the deep, even overriding, importance of Torah study in the Babylonian Rabbinic worldview, see, e.g., Richard Kalmin, *Jewish Babylonia between Persia and Roman Palestine* (New York and Oxford: Oxford University Press, 2006), 20–29, 31–36; Alyssa M. Gray, *Charity in Rabbinic Judaism: Atonement, Rewards, and Righteousness* (New York and London: Routledge, 2019), 95–96.
19. Compare Rava's view on *Bavli Shabbat* 88a. On this passage see Gray, *Charity in Rabbinic Judaism*, 160–61.
20. See, e.g., Graham Allen, *Intertextuality* (New York: Routledge, 2000); B. J. Oropeza and Steve Moyise, eds., *Exploring Intertextuality: Diverse Strategies for New Testament Interpretation of Texts* (Eugene, OR: Cascade Books, 2016). See also David H. Aaron, *Etched in Stone: The Emergence of the Decalogue* (New York: T&T Clark,

- 2006), and Joshua Levinson, "Intertextuality," *Encyclopedia of the Bible and Its Reception*, vol. 13 (Berlin: DeGruyter, 2016).
21. Daniel Boyarin, *Intertextuality and the Reading of Midrash* (Bloomington and Indianapolis: Indiana University Press, 1990), 12.
 22. I have altered JPS's translation *Do not profit by the blood of your fellow*.
 23. Maimonides would have been referring to "he."
 24. The source for Maimonides' instruction not to "hide the eyes" is likely *Bavli K'tubot* 68a and *Bavli Bava Batra* 10a, on which a sage says that "whoever hides his eyes from *tzedakah* is like one who worships idolatry."
 25. Maimonides certainly codifies a communal obligation to redeem captives; see, e.g., Laws of Gifts to the Poor 8:11, 12. But it is interesting that he opens the subject in 8:10 with such a pointed statement of an *individual* Jewish obligation.
 26. Robert Cover, "Nomos and Narrative," reprinted in *Narrative, Violence, and the Law: The Essays of Robert Cover*, ed. Martha Minow, Michael Ryan, and Austin Sarat (Ann Arbor: The University of Michigan Press, 1995), 95–172.
 27. Cover, "Nomos and Narrative," 95–96. For a creative use of Cover's work in a liberal Jewish context, see Rachel Adler, *Engendering Judaism: An Inclusive Theology and Ethics* (Philadelphia and Jerusalem: The Jewish Publication Society, 1998), 34–36, 51–52 and *passim*.
 28. Cover, "Nomos and Narrative," 119.
 29. Cover, "Nomos and Narrative," 118.
 30. Stanley Fish, "Fish v. Fiss," in *Interpreting Law and Literature: A Hermeneutic Reader*, ed. Sanford Levinson and Steven Mailloux (Evanston, IL: Northwestern University Press, 1988), 260.
 31. As an example of such work, see my "Poverty and Community in R. Joseph Karo's *Shulhan Arukh*: 'Law and Literature' and Halakhic History," *Diné Israel* 29 (2013): 57–89.
 32. I take the text from *Mishkan T'filah: A Reform Siddur* (New York: CCAR, 2007), 482.
 33. This translation is my own.

Communal Halachic Decision-Making

Erica Asch

My first year in rabbinical school, I walked along the street in Jerusalem discussing “the role of the rabbi” with a third-year student studying at the Conservative seminary. He grandly explained that he viewed the rabbi as the rabbinic decisor (the *mara d’atra*), who looks at the sources and explains to his congregation how to follow Jewish law in the correct way. My future colleague knew his role was clear. Learn Talmud and codes. Be conversant in relevant responsa. Answer questions of Jewish law congregants have based on the knowledge and skills acquired in rabbinical school. Serving as an authority on Jewish law was central to his vision of his rabbinate.

I was only a few months into my first year of school, and I was not sure exactly what a rabbi was supposed to do, but I felt that this definition was by no means complete. While I would certainly spend time studying Jewish law, my studies, like those of my classmates, focused on a wide range of rabbinic responsibilities: pastoral care, life-cycle events, leading worship, teaching, and more. I had a hard time imagining future congregants coming to me and asking me legal questions about keeping kashrut, what time they needed to daven, or how exactly to light Shabbat candles. While I was fully committed to a Reform Judaism that is more mindful of tradition than was the kind of Reform practiced by generations who came before me, I could not picture myself as the *mara d’atra*. I knew halachah was important to me. I knew I wanted it to be

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important to my congregants in some way. Beyond that, I was not sure where or how to resolve the issue of the rabbinic role in Jewish life.

This question—what is the place of a Reform rabbi in halachic decision making?—stayed with me through school and after ordination. It was at a CCAR convention, in a session on halachah given by Dr. Mark Washofsky, that I found part of the answer. In response to a question about how to incorporate halachic decision-making into congregational life, Dr. Washofsky suggested that rather than a rabbi acting as the *mara d'atra*, the community should make its own decisions. The following, he suggested, would be a Reform approach to halachah: The rabbi makes sources and arguments accessible to the congregation, walking them through the halachic decision-making process from the Torah to contemporary Reform responsa. Then the community debates and discusses as the rabbi guides the congregation. Finally, the community decides for itself what its communal halachah should be, based on the sources as well as other contemporary considerations. This makes sense, I thought to myself. The rabbi is not the decider but, rather, the curator and explainer of Jewish tradition. The community decides what to do not just based on *minhag* (custom) or how strongly one faction feels about an issue or who is president at the time, but based on a reasoned consideration of sources. I decided to try it in my congregation.

Communal Halachic Decision-Making: Three Examples

Temple Beth El in Augusta, Maine, has been affiliated with the Reform Movement for only thirty-two years of its seventy-eight-year history. The congregation has had a rabbi since 1997. In its early years, congregants led services and a visiting Orthodox rabbi came for Rosh HaShanah and Yom Kippur. The nearest synagogue is thirty minutes away, which means that people from many different backgrounds have found a home at Temple Beth El. The congregation is a mix of Conservative and Reform Jews with some people who lean more towards the Reconstructionist or Renewal movements. Hence, the congregation's practice is an amalgamation of traditions. We use *Mishkan T'filah* for Shabbat and the Reconstructionist *machzor*, *Kol Haneshamah*, for the High Holy Days. We observe two days of Rosh HaShanah and eight days of Passover.

We have a dairy kitchen. Many of the rules that we follow are observed because “we’ve always done it that way,” which usually means that some more traditional members of the congregation did it a long time ago and now we still do so. Many of these observances were not in line with where the majority of the congregants were in terms of their practice. These areas seemed like the best place to start the process.

We have used this method of communal halachic decision-making for three issues so far. I will briefly describe what we did in each situation before concluding with some lessons we can take from this form of halachic engagement and where we can go from here.

1. *Shofar and Avinu Malkeinu When Rosh HaShanah or Yom Kippur Falls on Shabbat*

One tradition we had at the synagogue was not to sound the shofar or sing *Avinu Malkeinu* when Rosh HaShanah fell on Shabbat. Two days of Rosh HaShanah meant that anyone could hear both of those parts of the service on the second day if they desired. In practice, most people did not attend the second day of Rosh HaShanah and most people did not understand why two of the most central parts of the service were omitted. We also omitted *Avinu Malkeinu* when Yom Kippur fell on Shabbat except for during the *N'ilah* service. The recitation of *Avinu Malkeinu* was the first topic we took on in our process of collective halachic decision-making.

We had the discussion on Yom Kippur afternoon (on a year when Yom Kippur also was on Shabbat), in the study slot during the afternoon service. We looked at traditional texts highlighting why we do not petition on Shabbat as well as the fact that the letter of the law permits the recitation. We also discussed how the traditions we had growing up and the traditions at the congregation were a part of our decision-making process. In the discussion, people were most moved by the argument that we traditionally do not petition on Shabbat, rather than the idea that we should not say *Avinu Malkeinu* because Yom Kippur is a fast day. Particularly persuasive was Isserles’s writing in *HaMapah* that *Avinu Malkeinu* is a petition similar to the *bakashot* in the *Sh'moneh Esreih* and therefore we should not say them. There was a consensus that Shabbat was

a different day and that our liturgy should mirror that difference in some way. Congregants also were moved by the Talmudic story in which Rabbi Akiva showed the power of this particular prayer, and they discussed what was important to them about saying it. As they talked, many people came to realize that they connected not to the specific words recited, but to the melody of the last sentence. That melody was what they missed when not reciting this prayer.

In the end, the group overwhelmingly decided not to recite *Avinu Malkeinu* when Rosh HaShanah or Yom Kippur fell on Shabbat, but instead to hum the melody of the last sentence without words. This was an outcome I had not envisioned. While there was a small majority who felt that we should not say *Avinu Malkeinu*, those who wanted to say it came to understand that they missed the melody and not the prayer itself. The argument that we do not petition on Shabbat and the strong feelings of their fellow congregants were enough to convince them not to include the words. The community felt this followed the law, which was important, but also allowed people to experience the spiritual power of the melody, a central part of the holiday for so many in our congregation. More importantly than this individual decision, they understood the reason behind the traditional ruling and why we, as a congregation, decided as we did. There was clear consensus in the room and this has become our congregational halachah.

2. *Kitniyot in the Synagogue During Passover*

The next topic we looked at was allowing *kitniyot* in the synagogue during Passover. Not having *kitniyot* in the synagogue had been the halachah since the building was constructed. Again, this was a rule that we followed in the synagogue building that few congregants (approximately 5 percent) practiced in their homes. It led to a lot of confusion, especially during our Passover seder, which is a potluck meal. In addition, the Rabbinical Assembly's Committee on Jewish Law and Standards had ruled *kitniyot* permissible several years earlier. For all these reasons, this was a good topic for discussion. We held two study sessions, one on a weeknight and one on a Saturday morning during Torah study. We examined the Conservative and Reform responsa dealing with *kitniyot* and

learned some basic halachot about Passover (what we can and cannot eat) that were new to many people. We explained the outcome of our decision in the following e-mail we sent to the entire congregation:

Important Community Decision Regarding *Kitniyot*

After two sessions of study and discussion, the community has decided to allow *kitniyot* in the synagogue building and the Shuman Education Center during Passover. This decision was made in consultation with the traditional sources on this subject. Those who attended these discussions felt this change makes sense for several reasons including: (1) the prohibition of *kitniyot* led to confusion about what was and was not allowed, sometimes leading to us forgetting to focus on the biblical prohibitions of this holiday. (2) The confusion around *kitniyot* and the expense of kosher for Passover products led to some people not bringing main dishes to the seder. Allowing *kitniyot* will mean that more people will feel comfortable cooking “main dish” foods. (3) Our seder is vegetarian, and rice and beans provide an important source of protein for those attending the seder.

Everyone who attended the sessions wanted to be sure that those members of our community who do not eat *kitniyot* are able to fully enjoy the community Passover seder. This year, we will have tables of food either labeled “*Kitniyot*” or “No *Kitniyot*.” We ask that when you come, you place your dish on the appropriate table. Those who do not eat *kitniyot* will be invited to eat first (with those who have other dietary restrictions). The rest of the community will then be invited to eat from either table. If you have questions about if your dish contains *kitniyot*, please consult Rabbi Asch in advance of the seder.

Three more important things to note:

1. One who does not eat *kitniyot* during Pesach may eat from Passover dishes, utensils, and cooking vessels that have come into contact with *kitniyot*. In other words, if you refrain from eating *kitniyot*, you are still able to eat at our seder even though there will be *kitniyot* in the kitchen.
2. There is an absolute prohibition on eating anything made [of] the five grains: wheat, barley, spelt, oats, or rye, that is not in the form of matzah or other derived product (matzah meal, matzah cake flour, etc.). The Temple will continue to forbid those food items (pasta, cereal, muffins, oatmeal,

cookies, etc.) and I encourage you to refrain from eating them during the week of Passover.

3. Passover is a special moment in time and our diets should also reflect that this week is different. Even if you do eat *kitniyot*, I encourage you to make changes in your diet during the week of Passover. Make foods that your family made growing up, experiment with different recipes, and try something new. Refrain from eating things you eat frequently during the rest of the year.

If you have any questions about this decision, please contact me directly.

Wherever you celebrate, I wish you a joyous holiday,
Rabbi Asch

3. Tallit on the Bimah During the Torah Service

The third decision we took on was the requirement of wearing a tallit on the bimah when one is involved in the Torah service. We have a number of classical Reform Jews for whom wearing a tallit is an anathema; at the same time, we have many Conservative Jews for whom *not* wearing a tallit is an anathema. This had resolved itself in previous years by the gabbai simply putting a tallit on people whenever they walked up to the bimah for an honor. This was done without any advance warning given to the participants. For me, this was a problematic response because it made the decision *for* people, potentially put them in an embarrassing or uncomfortable situation in front of the congregation, and deprived them of doing the mitzvah of putting on a tallit if they wanted to do so. We needed a clear policy and I felt this was a decision the community should make.

We had an evening discussion of this topic. This time, I solicited input from congregants if they could not attend the discussion and received responses from four people. We framed the discussion around a 1980 CCAR responsum, which asks whether being called for an *aliyah* is a duty, a right, or a privilege. Most people felt that having an *aliyah* was a privilege rather than a right. While the responsum suggested that the idea that an *aliyah* was a privilege would lead a congregation to have certain requirements for having that honor, the discussion group felt strongly that although it was a privilege, it should be open to as many people as possible. The majority felt that while we would enforce certain issues of

appearance (no wearing of swimsuits), the fact that some members of our congregation did not want to wear a tallit was compelling. One member shared that as a classical Reform Jew, he never wore a tallit, but that out of respect for those in the congregation who were more traditional, he did put one on when called for an *aliyah*. If there was a requirement, he said, he would not wear a tallit and refuse all honors. The fact that he was voluntarily making this decision was very important to him and had weight with others. Some felt that the tallit was a symbol of the dignity of the service and was what visually separated the service from other activities we do at the synagogue or on a daily basis. The visual marker of it being a special event was important. All agreed that part of the issue was a lack of education about a tallit. Some people in the congregation did not know when or how to wear one. There was a feeling, which I think is correct, that if more people understood what a tallit is and how and when it is worn, then they would opt into this mitzvah.

While there was generally consensus on the other two issues, this one was trickier. About three-quarters of participants wanted to encourage but not require tallitot, while one-quarter wanted to require that tallitot be worn. Interestingly, several people were fine with requiring only men to wear a tallit, which I overruled (I am a *mara d'atra* in some things) based on the principle of gender equality that is foundational to Reform Judaism today. The group decided that there needed to be more discussion of this topic before we could come to a decision, and we are currently looking at ways to engage more people in study and dialogue about this issue. We also decided to do more education around wearing tallit, for example by prominently displaying a sign next to our tallit rack indicating who should wear a tallit, when it should be worn, and the blessing to say before putting it on. We also will put a sign next to our *kippot*. This will help not only our congregants but also non-Jewish visitors understand how to appropriately wear ritual objects.

Lessons Learned

The congregation has now gone through this process three times in the course of three years. There are some lessons we can draw

from our experience about how this process works best, what difficulties it presents, and when it does not work.

First, the process of communal halachic decision-making is countercultural. At various times during the process, people suggested that “the board should decide” or “the rabbi should decide.” These comments were more numerous when it was difficult to come to a decision. While giving the decision to an authority figure may seem easier, it undermines the community’s ability to have a difficult conversation and come to a reasoned decision. Only when the community struggles with issues that are difficult and discusses how to manage competing values—traditional halachah, openness, and respect for individual practices—can we truly live out our values of choice through knowledge in a communal setting.

Second, this process engages the community not only in making a particular decision, but in halachah more generally. In-depth text studies give people access to a wide range of sources: biblical, Talmudic, codes, and responsa. Admittedly, we cannot cover all the halachic nuances in an hour and a half, but we can delve into the most important sources, trace the arguments as they develop, and understand and discuss the salient issues.

This method of decision-making helps people realize that halachah has meaning in their own lives. Too often we fall into the trap of seeing halachah as something that other Jews do or something that we fight against. When making decisions, individual rabbis might consult halachic sources, but that can often happen behind the scenes without congregants even realizing the research and thought that is going into a certain decision. This method of communal decision-making brings congregants in touch with halachah and makes it an important part of the congregation’s decision-making process. This does not mean that we always follow the rulings of traditional sources, but that we give tradition weight and seek to understand what it tells us without dismissing it as antiquated or not for Reform Jews. This method says that halachah is important for our community and, by extension, for individual Jews.

Throughout our discussions, people have frequently expressed amazement at what they have learned. They learn why they or their family do not eat *kitniyot*; they understand the meaning and history of a tallit; they learn why we do not petition on Shabbat

(and question the recitation of the *Mi Shebeirach!*). This study not only brings us to a communal decision based in Jewish law, but also gives individuals more insight into their own ritual lives. I believe this process, which brings people into the world of halachah, can become a template for how to approach individual as well as communal decisions about Jewish practice.

Third, this approach does not work for every issue. Not every issue should be decided by the community. There are issues that I, myself, still decide as the *mara d'atra*. These include those things that relate to Reform Judaism's core values—egalitarianism (we will not have different requirements, honors, or rules for people of different genders, sexual orientations, races, etc.) and belief in one God (messianic “Jews” and those who want to proselytize are not members). We celebrate holidays on their correct Jewish date and observe two days of Rosh HaShanah and eight days of Passover. As the rabbi, I also retain discretion over life-cycle events. For example, I have the final say on requirements for *b'nei mitzvoah* and if I will perform a wedding.

There are other issues that are congregational *minhagim* and do not need a process in order to be changed. Our *minhagim* are numerous and include how we conduct services (how many *aliyot* we read on Shabbat, passing the Torah to a *b'nei mitzvoah*, how we read haftarah, etc.) and how we celebrate holidays (the songs we sing during the Passover seder, *Tashlich* liturgy, our Shavuot study session).

While I decide which issues to put through this process on a case-by-case basis, there are certain factors that I consider. For example, are there *minhagim* that we follow that are clearly out of step with where the majority of the congregants are in terms of ritual practice? I put both *Avinu Malkeinu* and *kitniyot* in that category (note that I was surprised that the congregation wanted to keep the traditional stricture on *Avinu Malkeinu*). In this category, a further discussion might be sounding the shofar when Rosh HaShanah falls on Shabbat. Additionally, I look for areas where there is community disagreement. The tallit discussion is a clear example. I think that the general discussion of non-Jewish participation at services or how we count a minyan (we will count a child 10 or over who is Jewishly knowledgeable as our tenth) both fall into this category. In these cases there are competing values: welcoming and Jewish ritual law; being able

to say *Kaddish* and the tradition of a minyan. I think that issues where there are competing values are the most interesting to discuss. In the case of the tallit discussion, we were balancing individual autonomy with communal norms. The issues have to be chosen carefully so that they generate good discussion rather than tension and divisiveness.

In this essay, I use the word “halachah” intentionally to mean the law that we follow in our congregation. I believe that these decisions are binding for the congregation and will outlive my tenure. That is not to say that they are immutable. It is possible that at some point in the future any decision that we make through this process will be overturned, but I feel strongly that we cannot change these decisions without another community process.

Conclusion

For me, a communal approach to decision-making is an essential part of Reform Judaism because it affirms who we are as Reform Jews and encourages us to embrace our tradition of making choices based on knowledge. Too often I hear the phrase, “I don’t do that, I’m Reform.” I’m Reform, I don’t keep kosher. I’m Reform, I don’t observe Shabbat. I’m Reform, I don’t go to services. There is a general perception both in our community and outside it that Reform Judaism is shorthand for doing less. This dismissive mind-set defines us by what we do not do. Imagine how different it would be if we said, “I’m Reform, I believe in equality; I would never say that a woman cannot be a rabbi.” Or, “I’m Reform, I believe in *tikkun olam*; we have a duty to reach out and help those in need.” Or, “I’m Reform, I believe in serious study of the Torah, and I don’t need to defend everything in it as moral or correct.” That is a way to describe being a Reform Jew not apologetically, but affirmatively.

With communal decision-making, we are saying, “We are Reform; we study our traditions and make choices based on knowledge. We do not have to blindly follow every law, but not following them because we don’t want to (or don’t know what the law is) is just lazy. We should think critically about what we choose to do and not to do.” That is the benefit and the challenge of not accepting all the halachot as traditionally understood. We have

a duty as rabbis to encourage our congregants not to observe more just for the sake of observance, but to be more thoughtful and intentional about *how* they observe. I think that if people look at the sources and traditions and their own values, most will choose to do more ritually. But even if they choose not to follow traditional law, it will be a decision that was made Jewishly. I would much rather have someone in my congregation who eats pork fully understanding the laws against it and the importance of not eating pork in the history of the Jewish people than someone who does not eat pork just because that is what their family did.

Being a Reform Jew is hard. We do not have a set of laws that we have to follow. Instead we have the opportunity and the challenge to figure out what our observance will look like, for ourselves, for our families, and for our community. I hope that this process models for people what careful study and consideration looks like and shows them that they are able to take this approach to more of the personal Jewish decisions they make.

So what is the place of a Reform rabbi in halachic decision-making? In some cases, it involves making decisions for the community. There are certain principles or practices that are non-negotiable, and they may vary from congregation to congregation. But there are many areas where a community can make a decision with the guidance of the rabbi. The communal process is certainly more time consuming and messier, but it also has great rewards. As a result of it, my congregants are more engaged with the halachic sources and see them as relevant to their own lives and the life of the congregation. Decisions are made by the people affected by those decisions, through study and discussion with one another. The community, rather than the rabbi, owns the decision. This process is one way to live out the principle "choice through knowledge," a hallmark of Reform Judaism first laid out in the Centenary Perspective (1975). It gives people the knowledge necessary to make a choice and lets them talk with one another about how to balance competing values and visions. It moves parts of the ritual life of the synagogue from "something we have always done" or "something the rabbi decides" to "something we as a congregation studied and discussed before coming to a decision." Communal halachic decision-making also allows individual Reform Jews to experience what informed

choice looks like in a communal setting and then, ideally, to figure out how to apply it in their personal lives. It makes Jewish sources accessible and says that halachah matters to us as individuals and as a community. Guiding people on that journey is central to my rabbinate.

Growing More Than Vegetables: A Case Study in the Use of CCAR Responsa in Planting the Tri-Faith Community Garden

Deana Sussman Berezin

Mr. Rogers may have famously coined the phrase, “won’t you be my neighbor?” but in Omaha, Nebraska, we at Temple Israel live that phrase every day as members of the groundbreaking Tri-Faith Initiative. The Tri-Faith Initiative began over a decade ago when members of the three Abrahamic faiths came together to begin conversations about a bold vision “to be in relationship together as neighbors on one campus, committed to practicing respect, acceptance, and trust.”¹ Today, that bold vision has become our reality as we find ourselves situated on one beautiful thirty-eight-acre campus with our Christian and Islamic partners, Countryside Community Church (UCC) and The American Muslim Institute.

Our mission is simple: “The Tri-Faith Initiative fosters empathy, invites understanding, and advances common action between people of diverse faiths through the shared efforts of intentionally co-located congregations.”² Our shared vision is to “imagine and work for a world in which religious differences are seen as an asset and strength to be celebrated, where people realize the ability to overcome fear and stereotypes and embrace one another.”³

A synagogue, a church, and a mosque, all on one campus known as the Tri-Faith Commons. To many, it sounded like a pipe dream, a vision of a utopia beyond our grasp; and yet, here we sit, encountering

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each other as neighbors and friends each and every day. Our communities strive to break down the barriers that have historically divided us by creating opportunities for authentic relationship building: our clergy teach and preach at each other's congregations; our children gather monthly to learn about faith traditions other than their own while creating real and lasting friendships; and our congregants sit on committees together to create joint programming where meaningful relationships can flourish.

And yet, though the Tri-Faith Initiative is more than a decade old, it was just this past year, in the spring of 2019, that the building process was completed and the vision of our founders was realized as all three partner congregations finally find themselves co-located on the Tri-Faith Commons.⁴ And so, we find ourselves in brand new territory, discovering what it means to live together as neighbors.

Oftentimes, this manifests itself in the realm of the mundane—utilizing one another's parking lots or drawing up joint contracts for lawn care and snow removal. But sometimes it becomes more than maintenance, and sometimes, the maintenance becomes more than mundane, and every so often, the mundane becomes holy—as was the case of the Tri-Faith Community Garden.

The Tri-Faith Community Garden was originally envisaged by the Temple Israel Social Justice Committee as part of our work on issues of hunger and food insecurity, which brought it to the Tri-Faith Initiative as an opportunity for collaboration, education, and communal engagement. As expected, the response from the three partner congregations and the Tri-Faith Initiative staff was overwhelmingly supportive, and our work began.

Temple Israel provided the land for the Community Garden and plans were soon drawn up for eight beds to be constructed during our inaugural planting season. Congregants from each of the partner congregations worked with Tri-Faith Initiative staff to determine what should be planted and how it should be maintained. How would we ensure that the garden was watered regularly? That it was weeded and maintained throughout the hot summer months? When would we harvest the fruits and vegetables, and where would they be donated? The Gardening Committee worked diligently, thoughtfully considering how to best work together to achieve our desired goals. As planting season drew nearer, we began making firmer plans for the construction of the beds and the

planting of the garden—and suddenly our amicable relationship became fraught with tension and emotion.

Was the tension over who would be responsible for engaging volunteers? No. Was it over who would pay for this garden? No. Was it over what we would be planting? No. It was over *when* we would be planting it. Yes, the question at hand was whether we could plant our Tri-Faith Community Garden on Shabbat.

In commanding us to observe Shabbat, the Torah states: “Six days you shall work, but on the seventh day you shall rest; in plowing time and in harvest time you shall rest.”⁵ The Torah categorically prohibits any type of *m’lachah* (מלאכה, work) on Shabbat but leaves the definition of “work” vague. And yet, that ambiguity does not extend to plowing and harvesting—these activities are expressly prohibited in the Torah itself. Furthermore, the Rabbis of the Talmud outline thirty-nine categories of proscribed labor on Shabbat. Included in the categories of labor are building, sowing, plowing, and reaping.

The question of whether we should engage in the construction and planting of a Tri-Faith Community Garden on Shabbat from a halachic perspective has a clear answer. The types of transformative, creative labor that would be necessary to construct the beds, haul the soil and fertilizer, dig the holes, plant the seeds, and water the beds are obvious violations of the command to abstain from *m’lachah* on Shabbat.

And yet, for us, as Reform Jews in an interfaith setting, the answer was somewhat less clear. When the Tri-Faith Gardening Committee approached us with this question, it was evident that both parties believed that this would be a simple decision with little fanfare. The committee, which included members of all three congregations, believed that, as Reform Jews, we would be amenable. When we, the clergy, discussed the issue, we believed our response—that we did not feel that it was an appropriate activity for a synagogue on Shabbat—would be met with perhaps some disappointment, but ultimately accepted without resentment. We were all sorely mistaken.

As the controversy gained momentum, we realized that the issue at hand manifested itself in two discrete dimensions: (1) the desire of Temple Israel’s Reform Jews to do gardening work on Shabbat and (2) the desire of the Tri-Faith Initiative’s non-Jewish partners to do gardening work on Shabbat—and to do so, moreover, *on synagogue property with the sanction of the synagogue*.

The Question of Jews Doing Gardening Work on Shabbat

To tackle the first dimension, we first considered what Reform Judaism has to say about *m'lachah* on Shabbat, particularly since a strong argument could be made for allowing congregants to exercise personal autonomy (the hallmark of Reform Judaism) in their decision to garden. As a movement with a mandate of personal choice, we encourage our congregants to find what is spiritually nourishing and to make it an ongoing part of their lives. With regard to Shabbat, we urge our constituents to wrestle with the texts and the traditions in order to determine how to elevate and sanctify their Jewish experiences, and, in turn, their Jewish identities. Striking a balance between *m'lachah* and *m'nuchah* (מנוחה, rest) is up to each of us as individuals. It is therefore no surprise that many in our Temple Israel community find gardening—working with their hands, basking in the beautiful sunlight that illuminates the natural world, feeling the cool, damp soil as they pick, prune, and water—to be the very definition of Shabbat *m'nuchah*.

Our first task was to ask ourselves if we were, in fact, limiting personal autonomy by denying Temple Israel congregants the ability to work in the Tri-Faith Community Garden on Shabbat. We turned to CCAR Responsa for guidance and found the following statement to be helpful to us in articulating our Movement's aim in achieving our ideal Shabbat observance:

It is our goal to “balance creativity in practice with the desire to conserve and adapt what speaks to us from the past.” This conception implies that we are not neutral and dispassionate in our attitude toward traditional standards of practice . . . As liberal Jews who seek to affirm our connection to our people in all lands and all ages, we should maintain the traditional practice in the absence of a compelling reason to abandon or alter it. The Responsa Committee has long followed this approach with respect to questions on the observance of Shabbat. We have stressed time and again that Shabbat is a mitzvah in its own right, one that makes its own legitimate demands upon us, demands that often take precedence over worthy causes.⁶

While we cannot deny that engaging in the work of the Tri-Faith Community Garden is a worthy cause, we could find no compelling

reason to abandon or alter our observance to allow for its work to be done on Shabbat.

We then had to determine if the Tri-Faith Community Garden's position as a congregational interfaith social justice project would grant it special status in the Reform Movement. Fortunately, the same responsum, dealing with social action projects on Shabbat, provides a directive for this, too—one that seemed to speak to the very heart of our issue:

We have also urged that social action and *tzedakah* projects involving traditionally prohibited labor not be held on Shabbat. *Tzedakah* is indeed a mitzvah, but then, so is the observance of Shabbat; and generally, "we do not perform a true mitzvah if it is done by transgressing another command." In light of our movement's increasing efforts during recent decades to strengthen Shabbat observance among our people, we must acknowledge that while a social action project may be scheduled on a weekday, "the seventh day is the Sabbath; it belongs to *Adonai* your God" (Exod. 20:10; Deut. 5:14). Shabbat is not simply a day on which we do good deeds. It is *Shabbat kodesh*, a holy day, **a refuge from many of the activities associated with the weekday world of building and planting, sowing and reaping**, getting and spending [emphasis mine]. We do not trespass upon Shabbat, even for the sake of mitzvot, unless those mitzvot must be performed on that very day.⁷

Furthermore, another responsum specifically addressing communal interfaith social justice work on Shabbat notes that there is a distinct but significant difference between personal Shabbat observance and institutional Shabbat observance:

We are certain that those who are ready to participate think that they are doing the right and religious thing, and we suspect none of them observes Shabbat as a day of rest in the accepted way. But as partners in this activity they perform the labor not as private persons; they act under the auspices of the synagogue. Jews may eat pork privately and find it both delectable and religiously acceptable, but the synagogue will refuse to serve it.⁸

While we respect our congregants whose personal theology permits them to do gardening work on Shabbat, we could not, in good conscience, sanction the activity on an institutional level.

Given that these responsa provided us clear reasoning for our decision, our clergy team felt comfortable maintaining our position that it would not be permissible to do the work of gardening on Shabbat. And yet, even as the clergy team came to a well-thought-out conclusion (much to the dismay of our congregants), I began to question if there was more than deference to the responsa influencing our decision.

Our Movement had indeed provided immense clarity on this issue, and yet a small part of me wondered if we used the responsa to validate the “gut response” that felt appropriate in this situation. So much of our observance of *halachah*—and specifically our observance of the traditional *halachot* of Shabbat—is lenient, so why did we feel that this particular case crossed the line? Why was gardening on Shabbat the boundary that we could not transgress?

Perhaps the key to understanding our apparent certainty is the sociological significance of the decision. In his work *Tradition in Transition*, Rabbi David Ellenson suggests that boundaries are often determined by a community’s (conscious or unconscious) need to identify deviant behavior, which is socially defined:

The group, by assigning a label of deviance to a particular form of behavior or belief is able to establish and clarify its own norms and mores regarding acceptable forms of practice and belief. The range of activities open to persons in the group is thereby limited and the group is able to state precisely where the boundaries of permissible behavior or belief for its members are located. Deviance, from this sociological perspective, helps to establish limits for the community. It contributes directly to the social task of boundary maintenance and identity formation.⁹

According to Ellenson, deviance theory helps to explain some of the phenomena at work in the development of Orthodoxy as Reform Judaism advanced and enmeshed itself in Jewish communities in nineteenth-century Europe. To help define themselves, Orthodox Jews established guidelines to help followers determine which reforms crossed the bounds of Orthodoxy. Such boundaries included a ban against hearing a sermon delivered in a non-Jewish language, entering a synagogue where the bimah was not in the center, erecting a synagogue with a tower, and the donning of clerical robes by the clergy. But the most controversial symbol of all was the organ. As Ellenson points out: “It was forbidden to enter

a synagogue where an organ was played on the Sabbath or holidays, and [some Orthodox authorities] stated that no rabbi who allowed an organ in the synagogue could be called 'Orthodox.'"¹⁰ It is important to note, however, that this stringent ban on organs in the synagogue was geographically limited: while the organ became a boundary issue in Hungary and Germany, its introduction in French and Italian synagogues did not cause widespread controversy, thus affirming the principle that deviance is socially defined. As Ellenson notes: "What is permissible in one context may not be in another. The organ represents one such issue and . . . became the major practical dividing line between Orthodox and Liberal varieties of Judaism in Germany around the turn of the twentieth century."¹¹

In seeking to understand why gardening on Shabbat had become a boundary issue for us, I had to consider the issues raised by deviance theory as possible contributing factors. Could this be Omaha's "organ moment?" As the sole Reform congregation in Omaha, Nebraska, we are often defined by our halachic leniency in comparison to the Conservative and Orthodox congregations. And yet, one of the strengths of the Omaha Jewish Community is the strong relationship the three congregations have with one another. It would not be implausible that we subconsciously recognized that synagogue-sanctioned gardening on Shabbat, an activity plainly visible to anyone near our building (including those walking to and from the Orthodox synagogue located just down the street from Temple Israel), would be too far outside the bounds of acceptable religious practice. Even as we maintain our identity as a Reform congregation committed to the core principles of Reform ideology (e.g., egalitarianism, LGBTQ inclusivity, radical hospitality), it is still important to us not to put ourselves so far outside the bounds of Jewish practice that we become unrecognizable to our counterparts.

Furthermore, it seems to me that while much of our practice is open to interpretation, the fact that our Movement has issued several *t'shuvot* that deal explicitly with this issue cannot be ignored. While I do believe certain concerns highlighted by deviance theory were subconsciously present, I am equally certain that it was the determinative nature of the CCAR responsa we studied that provided us with the confidence we needed to maintain our position that gardening was not permissible on Shabbat.

The Question of the Synagogue Allowing Our Non-Jewish Partners to Do Gardening Work on Shabbat on Synagogue Property

These *t'shuvot*, however, address only one dimension of the issue at hand. Though we had made our decision, I felt it necessary to delve deeper into the second dimension: the desire of the Tri-Faith Initiative's non-Jewish partners to do gardening work on synagogue property on Shabbat. Up to this point, the responsa indicated that the desire of our congregants to engage in interfaith social justice work mirrored the experience of other Reform congregations. But on the issue of whether we were unfairly limiting our Tri-Faith partners, the responsa were far less conclusive. I soon recognized that our intentional co-locating in the Tri-Faith Initiative placed us in a league of our own.

Suddenly, the realization that this decision was not just about us—the Jewish partner in this three-pronged relationship—compelled me to grasp the enormity of this moment in the life of the Tri-Faith Initiative. What was already a difficult decision to justify to our own congregants became compounded with the additional dynamic of our Tri-Faith partners' needs. Did we owe it to our Muslim and Christian neighbors to allow gardening to take place on Shabbat? Would restricting access be anathema to our pluralistic vision? Does being a “good neighbor” mean that we should compromise our own religious beliefs and practices to protect the vision of interfaith partnership and cooperation that we know as the Tri-Faith Initiative?

An examination of CCAR responsa led me to two *t'shuvot*, one which addresses the question of whether a non-Jewish contractor is permitted to build a synagogue on Shabbat, and another which considers whether an off-premises synagogue thrift store may be operated by non-Jews on Shabbat. While not directly related to my specific question, elements of these responsa helped to define the questions we should be asking at this critical juncture.

The first of these *t'shuvot* notes that Jewish law expressly prohibits Jews from hiring laborers to do work for them on Shabbat:

[A Jew] may, however, let out work to a non-Jew and need not concern himself whether the non-Jew does it on Sabbath or not, provided that the non-Jew has the time and could do the work

on the weekdays. Since the Jew does not profit by the work being done on the Sabbath, he is not responsible for the non-Jew's choosing to do the work on the Sabbath. For the Jew is not commanded to try in any way to make the non-Jew observe the Jewish Sabbath. In any case, then, where the non-Jew is not a hired laborer (i.e., paid wages by the day or week or month), but receives payment for the finished job or contracts to do the whole work and receives payment for the delivered product (*bekablanut* or *bekibolet*) and not for the hours of labor put in the Jew may let him do on the Sabbath the labor contracted for.¹²

A similar construct whereby the non-Jew would not be an employee or agent of the synagogue might allow for them to work in a synagogue owned thrift-store on Shabbat. Indeed, the responsa points out that "Jews have for centuries resorted to such legal devices in order to engage in a variety of business relationships with Gentiles and yet observe the letter of Shabbat law."¹³

And yet, both *t'shuvot* point out the importance of the concept of *mar'it ayin* (מראית עין, appearance of impropriety) and how these situations might be perceived by the public. Although both scenarios might be acceptable within the framework of Jewish law, it is important to determine whether the practice in question is so pedestrian within the community that it would not arouse concern that the laws of Shabbat were being violated. The responsum explains that

even though the formal *halakhah* (Torah law; *dina de'oraita*) permits a Jew to lease a business to a Gentile for operation on Shabbat, the rabbis forbade this arrangement under the following circumstances: 1) when it is widely known that the business is Jewishly-owned, and 2) where it is not the common local practice to lease such a business. The rabbis feared that people seeing the business in operation on Shabbat would suspect that the Gentile was in fact the employee of the Jewish owner, working for that owner and not for himself.¹⁴

For many liberal Jews, refraining from various activities for the purposes of *mar'it ayin* (for the sake of appearances) lacks the power it holds in other denominations. The responsum acknowledges this, and yet advocates that, in certain cases, it should be given due consideration. To accede that something should not be done for the sake of *mar'it ayin*

suggests, at a certain level, appearances are more important than substance, and that is a sentiment we most definitely do not accept. Yet in another respect, *mar'it ayin* retains its ethical power for us, as the age-old expression of the maxim that one's actions must not only be proper but appear to be proper as well. Our religious institutions are charged with the sacred task of teaching Torah, and we accomplish this task in the example we set no less—and perhaps more—than in the words we preach.¹⁵

The responsum on doing synagogue construction on Shabbat is more amenable to work being done on Shabbat because of the highly conventional nature of construction contracts and the likelihood that the general public would be aware of said conventions. The second responsum, however, counsels explicitly against operating a synagogue thrift store on Shabbat. So, while the Tri-Faith Community Garden is certainly not renting out land, nor is it hiring laborers, the issues to which the responsum is speaking are similar. It might be possible halachically to have non-Jews engaged in doing Tri-Faith gardening work on synagogue premises on Shabbat, but only if such a situation were so commonplace that passersby would not suspect the people working in the garden were Jews, which, of course, would not be the case.

The responsum cites the *Magen Avraham* commentary to the *Shulchan Aruch, Orach Chayim* 244:8, which states that some authorities refused to allow work to be done, even by contract. In the *Magen Avraham's* words:

Since the non-Jews do not let any person do any public work on their Holiday or Sunday, it would be a disgrace, a sort of *Chilul Hashem* if we would permit work on our buildings to be done on our Sabbath . . . This is a poor argument, and Rabbi Akiva Eiger in his notes on the *Shulchan Aruch*, ad loc., rightly remarks that he cannot see any disgrace in our not imitating other people by forcing our Sabbath upon others.¹⁶

The responsum further notes that, “And we today who strongly object to other people’s seeking to force Sunday laws upon us, certainly do not consider it disgraceful to refrain from forcing other people to observe our Sabbath.”¹⁷ In light of this, denying our Tri-Faith partners access to working in the garden on Shabbat may be considered unfair and potentially interpreted as Temple Israel

foisting the Jewish observance of the Sabbath upon our interfaith neighbors.

The primary difference between these responsa and the case of the Tri-Faith Community Garden is the involvement of Jews in the work. It would be impossible to limit the work of the Tri-Faith Initiative to two-thirds of the partner faith traditions; the work, by definition, involves Jews, Muslims, and Christians. Even if we were able to achieve widespread communal understanding that ours was a Tri-Faith garden rather than a Temple Israel garden, permitting gardening on Shabbat would inevitably compromise our institutional religious values by giving what would essentially amount to a *hechsher* (הכשר, approval) to Jews doing the work of gardening on Shabbat.

Moreover, in the same responsum that discusses communal social justice work on Shabbat, we are reminded that upholding our own traditions and commitments is imperative as we interact with the religious other.¹⁸ To engage in work that is a clear violation of Shabbat in order to participate in interfaith efforts would be to diminish Judaism in our own eyes as well as in the eyes of our neighbors. How can we expect our neighbors to value and uphold the sanctity of our religious traditions if we devalue them?

Ultimately, CCAR responsa seem to be silent on how to approach interfaith social justice work when this work takes place on a communal campus with shared resources. Though the Tri-Faith Community Garden sits on Temple Israel's property, it is paid for and maintained jointly by partners from all three congregations and the Tri-Faith Initiative itself. As we move into a new era when, God willing, interfaith collaboration and intentional co-locating are becoming more commonplace, understanding where halachah orients itself on such issues will be vital to communities engaged in this kind of sacred work.

Choosing a Planting Day Acceptable to Jews, Christians, and Muslims

Though we had concluded that it was impermissible to plant the garden on Shabbat, the question of when we *could* plant the garden remained. I began to contemplate other days and times that gardening might be permissible for all three of our traditions. Could we garden on Friday afternoon before Shabbat begins? No—Friday

afternoons are the time of the Muslim *Jum'ah* prayer, the most important weekly service. What about Sunday either during or after religious school? No—Sunday is the Christian Sabbath, the holiest day of their week. If Friday, Saturday, and Sunday are *all* holy days for the Tri-Faith partner congregations, what were we to do? How would this garden ever get planted?

Of course, halachah is only concerned with Jews doing work on Shabbat, meaning that refraining from work on both Friday and Sunday is obviously not a halachic necessity. However, the unique arrangement of the Tri-Faith Initiative means that the religious traditions of all three partner faith traditions carry equal weight, an understanding that is unfathomable in halachic literature as well as in our Reform responsa. Indeed, in our paradigm, the requirement to refrain from violating Muslim and Christian holy days provides its own sort of quasi-halachic force to which we hold ourselves accountable.

We consulted with our clergy partners from Countryside Community Church and the American Muslim Institute. They wholeheartedly supported our decision to abstain from gardening on Shabbat. Our clergy partners taught us that though Friday and Sunday are holy days in the Muslim and Christian calendars respectively, they do not carry with them the same prohibitions against transformative labor that Shabbat in the Jewish tradition does. Together, we concluded that Sunday afternoon after Countryside Community Church's worship services finished would be an ideal time to plant the garden.

Conclusion

Reaching this conclusion together was, itself, a holy process, and felt, to some degree, as if I were sitting in a *beit din* (בֵּית דִּין, rabbinic court) of sorts. The rabbis and cantor, the imam, and the ministers of the Tri-Faith Initiative are responsible for what my dear friend and Tri-Faith clergy partner, Rev. Dr. Eric Elnes, calls “the soul of Tri-Faith.” While a great many people look out for the “body” of Tri-Faith (the physical grounds, the buildings, etc.), it is our responsibility, as its clergy, to maintain the health and well-being of its soul. Ensuring that we are upholding our religious traditions and the values that make our faiths sacred enlivens the soul of the Tri-Faith Initiative.

Though our constituents did not all agree with our collective decision, they abided by it and made it work. We were all reminded that being part of this grand experiment we call the Tri-Faith Initiative means that sometimes we have to sit in the tension and navigate around boundaries and barriers that would simply not be present in any other situation. But our commitment to being neighbors means that, sometimes, we are inconvenienced, and that part of learning the lessons of how to live together means respecting and upholding the sanctity of the religious other.

The Tri-Faith Community Garden controversy reminded me of an important lesson that I have the honor of learning and re-learning daily: encountering the religious other does not dilute my own beliefs. Rather, meaningful encounters with members of other faith traditions strengthens me in my own faith. I am a stronger, more faithful Jew because of my experience in the Tri-Faith Initiative, a sentiment that I am confident is shared by all those who are touched by our efforts.

Restricting gardening on Shabbat does not make us “bad neighbors.” In fact, I believe it makes us better neighbors. We model our commitment to our faith by maintaining our religious integrity. We create opportunities to teach our neighbors about our laws and traditions by not compromising them. We demonstrate our commitment to pluralism as we hold fast to the values that make our faith tradition different from those of our neighbors.

Serving as a rabbi in a partner congregation of the Tri-Faith Initiative is a rare privilege. Being part of this neighborhood means having the opportunity to go to work each day knowing that my office sits squarely upon holy ground. It means knowing that every decision we make, every conversation we have, every interaction that we experience is part of our unfolding story. Being part of the Tri-Faith Initiative means that our work is always sacred, even when we might be tempted to dismiss it as mundane. Each and every decision, whether it be utilization of one another’s parking lots, joint contracts for lawn care and snow removal, and yes, even planting a community garden, has the capacity for greatness when you consider where you are making these decisions. And when you get to go to work every day bearing that in mind, it is *always* a beautiful day in the Tri-Faith Neighborhood.

Despite its tense beginnings, the Tri-Faith Community Garden has been an unqualified success, yielding over five hundred

pounds of produce, which was donated to local food pantries. This summer, we have plans to more than double the size of our garden, proving that in working together, we really do grow more than vegetables.

Notes

1. Tri-Faith Initiative, "About," <https://trifaith.org/about/> (accessed October 30, 2019).
2. Tri-Faith Initiative, "Our Mission," <https://trifaith.org/about/> (accessed October 30, 2019).
3. Ibid.
4. Note: A shared Tri-Faith Center on the Tri-Faith Commons is still under construction, anticipated to open in early 2020. The Center will serve as a hub of collaboration for social events, educational activities, and conference facilities.
5. Exod. 34:21.
6. Central Conference of American Rabbis, "CCAR Responsa: Presenting a Check for Tzedakah at Shabbat Services," <https://www.ccarnet.org/ccar-responsa/nyp-no-5756-4/> (accessed December 6, 2019).
7. Ibid.
8. Central Conference of American Rabbis, "CCAR Responsa, Communal Work on Shabbat," <https://www.ccarnet.org/ccar-responsa/tfn-no-5753-22-169-170/> (accessed October 25, 2019).
9. David Ellenson, *Tradition in Transition: Orthodoxy, Halakhah, and the Boundaries of Modern Jewish Identity* (Lanham, MD: University Press of America, 1989), 35.
10. Ibid., 45.
11. Ibid., 46.
12. Central Conference of American Rabbis, "CCAR Responsa: Work on a Synagogue on Sabbath by Non-Jews," <https://www.ccarnet.org/ccar-responsa/arr-71-75/> (accessed December 10, 2019).
13. Central Conference of American Rabbis, "CCAR Responsa: The Synagogue Thrift Shop and Shabbat," <https://www.ccarnet.org/ccar-responsa/nyp-no-5757-7/> (accessed December 10, 2019).
14. Ibid.
15. Ibid.
16. Central Conference of American Rabbis, "Work on a Synagogue."
17. Central Conference of American Rabbis, "Work on a Synagogue."
18. Central Conference of American Rabbis, "Communal Work on Shabbat."

Yoga as a Jewish Worship Practice: *Chukat Hagoyim* or Spiritual Innovation?

Liz P. G. Hirsch and Yael Rapport

There has been a proliferation of yoga practice across the world in the past few decades, a phenomenon that has seen dramatic up-ticks across several demographic fields. Many of the members of our congregations see their yoga practice as essential to both their physical and mental well-being. There are many Jews, some of whom are members and some of whom are clergy (two of whom are these authors), who are engaged in a regular “spiritually embodied practice.” By this, we mean a regular and meaningful routine or ritual that incorporates both mind and body, which a Jewish practitioner may consider wholly outside their Jewish practice. As two rabbis who are quite public about the importance of our own personal yoga practice and who sought to adapt it into worship modes for our communities, we initially struggled to determine our level of comfort promoting and participating in a spiritual system that is appropriated or borrowed originally from a non-Jewish source. We wondered, can we create a yoga practice that is also a Jewish practice? What might we learn from halachah as we seek to integrate spiritual practices from outside of Jewish tradition?

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Should yoga by Jewish practitioners only be approached in its physical but not its spiritual aspects? What are the boundaries of cultural borrowing, cultural influence, and cultural appropriation? Finally, how as Jews and how as rabbis would we integrate yoga and prayer in a way that is holistic, current, halachically sound, and intellectually honest about its strengths and limitations?

In the past few decades, there have been many Jews across the spectrum of affiliation who are actively engaged in synthesizing their yoga practice with their Jewish practice. Two early adopters of this modality who continue to lead across the Jewish denominational spectrum are Diane Bloomfield¹ and Rabbi Myriam Klotz (RRC 1999).² Since the early 1990s, both individually and in collaboration with the Reform Movement,³ they have created a number of resources specifically toward this end of featuring yogic-style postures and chants within explicitly Jewish worship. Although this practice is now prevalent, what interested us more than the “how” was to go back all the way to the perspectives of halachah and Jewish history to find out the “why,” or perhaps “why not.”

Our starting point, which provided both a resonant halachic superstructure as well as a breadth and depth of interpretations and commentaries across Jewish sources, was the biblical edict regarding *chukat hagoyim*. Based on Leviticus 18:3 and 20:23, the principle argues against following non-Jewish practices. Leviticus 18:3 reads, “As is done of the land of Egypt, where you dwelt, you shall not do; and after the doings of the land of Canaan, where I will bring you, you shall not do; you shall not walk in their ways (*u’vechukkoteihem lo telechu*).” Similarly, Leviticus 20:23 instructs, “You shall not walk in the customs of the nation, which I am casting out before you; for they did all these things, and therefore I abhorred them.” This remains a relevant red line in the Reform Movement; authors of a CCAR responsum on the subject of “Blessing the Fleet” from 1991 address this legal stricture in detail:

The biblical phrase, “you shall not walk in their ways” (*u’vechukkoteihem lo telechu*) was understood as one of the negative commandments and was seen to reinforce the distinctiveness and separateness of the Jews, who are set apart from the nations (Lev. 20:26: “And you shall be holy unto Me; for I the Eternal am holy, and have set you apart from the peoples, that you should be Mine.”). While the principle of the prohibition was never in

doubt, it was understood that it had limits, but just what these were was a subject of frequent debate.⁴

In *Jewish Living: A Guide to Contemporary Reform Practice*, Mark Washofsky further delineates this principle, which was established to retain the distinctive character of the Jewish religion:

The verse Leviticus 18:3 . . . warns the people to reject the practices and the laws of Egypt, the land which they have left, and of Canaan, the land in which they shall settle . . . This does not mean, of course, that we are forbidden to learn anything from our neighbors. Specifically, tradition teaches, the verse prohibits us from adopting the “statutes” (*chukkot*) of other peoples, those religious laws and cultural customs whose adoption would suggest a desire to imitate the Gentiles and to deny our Jewish distinctiveness . . . Rabbis had to consider each issue on a case-by-case basis, making their determination against the backdrop of the social environments in which the community lived.⁵

In many of these cases, stretching across time and throughout the Jewish world, communities have struggled with and sometimes adopted practices of their cultural context to their Jewish practice. Proponents of such incorporation hail them as innovations; detractors describe them as assimilation or heresy. Throughout Jewish history, we observe two main strategies in approaching the integration of the practices of outside systems, practices that would be considered *chukat hagoyim*. Beth A. Berkowitz describes these two strategies as “nativization” and “neutralization” in her book *Defining Jewish Difference*. She categorizes them based on two separate episodes in the Babylonian Talmud that describe two different viewpoints on the practice of burning funeral pyres at the death of an Israelite king. In describing this practice, the Talmud, at *Sanhedrin* 52b, employs the strategy of “nativization.” The text reads:

Pyres may be lit in honor of deceased kings, and this is not forbidden as being of the “ways of the Amorites”: but why so? Is it not written, “neither shall ye walk in their ordinances [*chukat hagoyim*]”? But because this burning is referred to in the Bible, as it is written: “[But thou shalt die in peace:] and with the burnings of thy fathers . . . [so shall they burn for thee]” (Jer. 34:5), it is not from them [the outsiders] that we derive the practice.⁶

When faced with the prevalence of what is considered an “outside practice,” the “Amorite” custom of burning funeral pyres for a king, this Talmudic *sugya* put forward the etiology of the practice as an inherently Jewish one by connecting it to a reference in the Book of Jeremiah to the burning of funeral pyres, making this a “native” Jewish practice. The Talmud does not attempt to deny that funeral pyres are *also* an outside practice; rather, its primary objective is to create convincing “concentric circles, so that the practice can remain a part of both cultural clusters.”⁷

As Berkowitz categorizes it, a “nativized” approach to yoga would be to prove that its etiology is inherent to Jewish cultural practice. The benefits that many practitioners derive from yoga can be traced to the physical, mental, and spiritual well-being that come from its system of flexibility in stretching and holding postures, its concentrated attention on breath control, and its meditative approach to mindfulness and feeling present in the current moment, rather than being focused on past or future. These practices at their core are quite universal in nature and can be found in many systems of worship, including Judaism. The medieval mystics Abraham Abulafia and Abraham ben Maimon, the son of Maimonides, were in the habit of accompanying their traditional prayers with chant and motion. However, if we designate the core benefits and approaches of yoga as *exclusively* “native” to Judaism, we would be guilty of not giving credit where it is due. Our ancient mystics and modern congregants do find that these practices enhance their enjoyment and engagement in Judaism, but when we are honest with ourselves, we cannot purport that our inspiration for this current type of exercise and worship comes straight from Abulafia. Rather, we feel that we should be transparent and appreciative of the fact that the influence and wisdom of these practices is sourced from outside systems that we have experienced in our contemporary globalized society. As progressive Jews, we recognize and celebrate that no one person or institution has a complete monopoly on truth, and that beauty and meaning can come from many different sources to enrich understanding and experience. Therefore, we do not recommend adopting a completely nativized approach. As conscientious consumers and creators of Jewish experiences that are beautiful and meaningful, it is only appropriate and respectful to give credit *b’shem omrim* (to those from whom we draw inspiration).

Berkowitz classifies the second strategy employed by the Talmud in response to the widespread practice of burning funeral pyres as “neutralization.” At *Avodah Zarah* 11a, the Rabbis do not consider the practice of funeral pyres to be a *chok*, or gentile practice, that is explicitly religious: “Rather, everyone agrees that the public burning itself is not an idolatrous custom. Rather, it is performed due to the great importance of the king who passed away.”⁸

Therefore, we understand public burning of funeral pyres to be a permitted cultural practice for Jewish funerals, despite the fact that gentiles *also* light funeral pyres. Berkowitz uses the two Talmudic texts to illustrate the differences between nativization and neutralization. The *Sanhedrin sugya* claims that burning is a Torah practice but does *not* deny that it is also a gentile practice. The *Avodah Zarah sugya*, on the other hand, negates the presence of its religious, and therefore idolatrous, intent, demonstrating the effectiveness of the neutralization strategy in this particular example.

In his glosses (*HaMapah*) to Rabbi Joseph Karo’s *Shulchan Aruch*, R. Moses Isserles further explicates the understanding of *chukat hagoyim* presented at *Avodah Zarah* 11a. At *Yoreh Dei-ah* 178, Isserles establishes three qualifications for acceptable gentile practices that are allowed to be incorporated into Jewish practice: (1) those that are not done for the sake of licentiousness, excusing what is commonly accepted as bad behavior; (2) those that are done for a useful purpose, such as identifying a doctor by his garb; or (3) those that are done out of respect, such as burning a fire for a deceased king. We value and concur with these principles today. We do not intend to retrofit Isserles’ system squarely onto the issue of yoga as a Jewish practice: given his distaste for using rugs as synagogue decorations in an Islamic milieu where rugs were used as prayer objects,⁹ we imagine we’d disagree on this issue as well. Rather, we see his parameters as an historic and helpful set of boundaries and a lens that can help to focus respect for both Judaism and for the non-Jewish culture from which we borrow this yoga practice.

It has been the longtime position of the Reform Movement to support positive cultural transmission, respectfully sharing and borrowing between religions and identity groups. We find that this closing statement of the aforementioned 1991 CCAR responsum resonates with us:

It is well to remember that most of the ritual innovations which the Reform movement proposed in the course of its history were attacked by its opponents as *chukkat ha-goyim*, such as prayer in the vernacular, instrumental music, or gender equality. These ritual innovations are central pieces of our Reform Jewish ideology and practice. We affirm this sentiment as a clear expression of the value of positive cultural transmission in enriching and distinguishing Reform Jewish life.¹⁰

Since our earliest days as a people, we Jews have faced the question of how to meaningfully and authentically process outside cultural influence. Some of these outside practices were reviled and decried, but some of them were integrated by these means of nativization or neutralization. We can see the use of both of these strategies as nuanced tools for honing Jewish meaning as early as the time of the Babylonian Talmud. However, with yoga specifically, we feel particularly conscious of the dynamics of the identity politics at play. Berkowitz highlights this cogently, questioning “whether practices can comfortably belong to two systems, particularly when one of the systems has political control over the other.” This concerns us as well.

We encourage every practitioner of yoga, Jewish or not, to take responsibility as an admirer or consumer and learn more about the fullness of its roots and history.¹¹ What we typically think of as yoga was only one part of a substantial Eastern Ayurvedic system that encompassed many streams of practice as it was originally conceived. The pathway of *asana*, the physical component in which the practitioner holds postural poses, is the most widely practiced in our North American context, sometimes in concert with *dhyana*, the pathway of meditation. True yoga practice involves an integration of both the outer and inner experience through a series of philosophical steps, of which *asana* is only step three. Our modern posturally centered yoga practice, with its focus on health benefits rather than metaphysical attainments, bears little resemblance to the five-thousand-year-old system from which it was derived. It retains the clear imprints of a major cultural shift that occurred in India with the rise of British imperialism a mere hundred years ago, where it gained widespread popularity as a resistance movement. Where Western colonial definitions of power determined the ideal to be those who could exert the maximum amount of external

force, as in the military subjugation of an entire people, yoga practice was a home-grown movement, emphasizing internal power through awareness, integration, flexibility, and self-control. While we might find some validation in a neutralized approach, which would minimize the religious components of contemporary yoga practice, we must empathize with an ancient system of belief that has been marginalized by an oppressive majority culture. The story of yoga and the story of Judaism share many common themes.

In conclusion, we are supportive of the thoughtful and intentional inclusion of yoga-inspired *asana* practice within a Jewish framework. We suggest utilizing the many resources available to learn about the roots of yoga as a complete and complex cultural system. We encourage forthright behavior and attention to the roots of *asana* when utilizing it in a Jewish worship context. We invite and celebrate incorporating embodied practice into Jewish worship within these respectful boundaries as proposed by Isserles centuries before: (1) examine your intention: does your practice have a stated thoughtful aim and *kavanah*?; (2) is it done for a “useful purpose,” in an accessible way that brings others towards greater engagement and fulfillment?; and (3) is it done out of respect, with transparency and credit offered to the teachers ancient and new who have influenced it and you as the next generation of teacher and leader?

Notes

1. Suggested Resource: <https://www.torahyoga.com/page1-what-how-content.htm>.
2. Suggested Resource: <https://www.jewishspirituality.org/product/preparing-the-heart-yoga-for-jewish-spiritual-practice-cd/>.
3. Suggested Resource: <https://www.jewishbookcouncil.org/book/yoga-shalom>.
4. CCAR Responsa Committee, “Blessing the Fleet,” CCAR Responsa 5751.3, accessed online: <http://ccarnet.org/responsa/tfn-no-5751-3-159-164/>.
5. Mark Washofsky, *Jewish Living: A Guide to Contemporary Reform Practice* (New York: UAHC Press, 2001).
6. Beth A. Berkowitz, *Defining Jewish Difference* (New York: Cambridge University Press, 2012).
7. Ibid.
8. BT *Avodah Zarah* 11a.

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9. Louis Jacobs, *Jewish Mystical Testimonies* (New York: Schocken Books, 1977).
10. CCAR Responsa Committee, "Blessing the Fleet."
11. An excellent and carefully researched resource on the subject is the book *Yoga Body* by Mark Singleton, which traces the history of Ayurveda in ancient Vedic texts, tracks yoga as it evolved through generations, and carefully chronicles its dissemination the United States as early as the 1900s.

Nursing in Shul: A Halachically Informed Perspective

Michal Loving

I arrived at HUC-JIR/Cincinnati in 2007 in my mid-twenties, intensely interested in the topics of Jewish attitudes toward birth, nursing, and young motherhood. The original version of this piece was my final paper for a Talmud class; I opined that yes, women should be allowed to nurse in shul, but I laid all responsibility for other people's ability to pray solely upon the shoulders of the mother. Thirteen years and three children later, I have become much more comfortable with my feminism, and my conclusion has evolved to that which is presented below. I thank the CCAR Journal editorial board for helping me reframe my thoughts and shift my paradigm. I am also grateful to Rabbi Brian Stoller, who pointed out that the journey of this piece reflects the Reform approach to halachah: our decision-making is not based on text alone, but carries within it the weight of our lived experience.

A congregant who is a new mother wishes to attend services at temple and she stated quite publicly that she intends to nurse her infant in the sanctuary should he become hungry. Another congregant overheard this and felt quite uncomfortable. He came to the rabbi for clarity. What does tradition say regarding the issue of nursing mothers during prayer?

In addressing the question, I must first acknowledge the social concerns that arise from the notion of a woman breastfeeding in the temple sanctuary. Discomfort on the part of other congregants is a valid concern. Yet social habits change over time, as do the attitudes of congregants. I therefore acknowledge that the values involved in making this decision (*tzniut*—modesty, *k'vod hatzibur*—respect for the community, “sanctity,” etc.), are rooted in social

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convention, no matter how much I may wish such conventions to be religiously grounded.

I must thusly consider two separate yet related issues: (1) *tzniut*, or the laws of modesty; and (2) laws regarding the sanctity of the synagogue.

Tzniut

Were I to regard nursing in public immodest, there would be no question but to refuse a woman the right to nurse her child in the sanctuary. However, the value of modesty (*tzniut*) is a fluid term. To engage in *tzniut* in Reform Judaism is not the same as following a straightforward rule, like how to build a sukkah or how to say a prayer correctly. Modesty is not determined by the authority of any medieval religious body, but rather is subject to contemporary social convention and requires community standards. These standards constantly change throughout the years, for women now wear pants, keep their hair uncovered, and participate equally with men on the bimah. Orthodox Jews adhere to different standards of modesty, and while their definition of *tzniut* has evolved over time, in general, it is much more fixed.

Traditionally, halachah derives the laws of *tzniut* from biblical sources, primarily Micah 6:8: "The Eternal requires of you: only to do justice and to love goodness, and to walk modestly (*v'hatz'nei-a lechet*) with your God." Other biblical sources of *tzniut* include Genesis 3:21: "And the Eternal God made garments of skins for Adam and his wife, and clothed them." This is seen as God teaching humanity the laws of *tzniut*. In *B'reishit Rabbah* 16:2, the Rabbis explain that Eve was created not from the mouth, nor the eyes, nor any external part of Adam's body, but from his internal limb, in respect to *tzniut*. Genesis 24:63–65 continues the theme, for Rebekah puts on her veil as she is about to meet Isaac, say the Rabbis, for reasons of *tzniut*.

Throughout Rabbinic literature, to walk modestly (*v'hatz'nei-a lechet*) with your God has been interpreted in a variety of ways, all based upon the expectation that one's clothes and actions reflect Rabbinic understandings of humility, privacy, and decency. Their overarching goal in enforcing *tzniut* is to avoid thoughts of sexuality. As *Pirkei Avot* 4:1 asks, "Who is powerful? One who subdues his passions." To this end, the Sages have provided numerous

ways in which men can avoid arousal: men can avoid conversation with women,¹ women follow behind men, even in a mourning procession,² women do not expose their hair in public,³ and men do not listen to a woman sing.⁴ As a last resort, if men are truly overwhelmed with sexual thoughts, it is advised that they study Torah or even ponder the day of their deaths.⁵

As a whole, Reform Jews today do not stringently follow these rules. We do not believe that men are incapable of controlling themselves; on the contrary, we hold that men, women, and those of all gender identifications *do* have the ability to conquer or subdue their sexual urges. Yet, we only wish to subdue these urges in situations where they are unwelcome or inappropriate. We embrace sex when it is consensual, and we welcome expressions of healthy sexuality.⁶ As an egalitarian movement, we do not require women to cover their hair,⁷ and HUC-JIR ordains female cantors, rejecting the statement that *kol b'ishah ervah* (a voice of a woman is nakedness).⁸ While we *do* value modesty and humility, we do not solely define it in terms of keeping sexual thoughts at bay.

The expression of *tzniut* is generally a personal choice in Reform Judaism. We acknowledge societal values by encouraging modest dress at services, particularly at *b'nei mitzvah*, yet ultimately the choice of dress is a person's own and largely unenforceable. That said, I cannot ignore the fact that the possibility of baring a woman's breast in the synagogue can negatively affect the prayer of others. As codified by sixteenth-century *poskim* R. Joseph Karo and R. Moshe Isserles, the *Shulchan Aruch* states that a man can only recite *d'varim sh'bikdushah* (words pertaining to holiness) in the presence of a modestly dressed woman: "when a handbreadth of the body of a woman in an area which is normally covered is exposed, then, even if the woman is one's own wife, one is forbidden to read *k'riyat sh'ma* opposite it," with *k'riyat sh'ma* including any words of prayer or Torah study.⁹ The commentary in *Mishnah B'rurah* further explains that "one must therefore be careful while one's wife is nursing a child and her breasts are exposed [in order] to avoid uttering anything holy."¹⁰ Traditionally, this means a man may not pray in the presence of a nursing woman.

On the other hand, a minority opinion by the thirteenth-century Rabbeinu Asher deems it acceptable for a mother herself to study Torah and recite any blessing or prayer while nursing, even if she is not completely covered.¹¹ His contemporary Rabbi Shlomo ben

Aderet (Rashba) adds that other women in the same room may also recite all prayers and blessings in the presence of a nursing mother.¹² The woman's husband may study Torah and recite blessings and prayers while facing his nursing wife, but only if no parts of her body which are normally covered are exposed.¹³ If her breasts *are* exposed, say the Acharonim, then he may still study Torah and recite blessings, but only if his entire body is turned away from his wife.¹⁴ This applies only to a husband and wife, however, for if a woman were to pray and nurse immodestly in front of any man other than her husband, she would be liable for divorce.¹⁵

The Sages' concern is clearly the exposure of the bosom, for they see any attention to a woman's body as inherently sexual. As a modern Reform Jew, I do not share this unease. I have faith that anyone who is observing a nursing mother will not sexualize a lactating breast. And if for some reason someone *is* aroused by the sight, I believe that that person is capable of recognizing their sexual urge as inappropriate and uninvited, and will do their best to conquer it immediately.

In addition, I feel that in today's world, the opinion of Rashba should be expanded: a woman should be able to nurse not only in the presence of other women who are praying, but should be able to nurse in front of any *person* who is praying, including men and other genders. Perhaps the Rabbis did not consider that another woman might be aroused by the sight of a nursing breast; or, if they did, perhaps they discarded the possibility, believing that women could overcome their sexual urges better than men. In either case, I believe that a permissive act for women should be a permissive act for all genders. And since all individuals can control their urges, I have no issue with anyone praying in the presence of a nursing mother.

As I place the responsibility to tame inappropriate sexual urges upon those who are viewing a nursing mother, and do not hold her liable for their urges, it also follows that I put the onus of the ability to pray upon the person who is distressed by a nursing child, and not upon the mother herself. It is not the nursing mother's responsibility to make others in the sanctuary feel comfortable, and the observer's *ability* to pray does not take precedence over the mother's *desire* to pray. Reform Judaism does not hold to the same obligation to pray as does Orthodoxy, so if an observer is uncomfortable or distracted by the sight of a nursing child, they

may alter the focus of their attention or remove themselves from the immediate vicinity.

It is important to note, as well, that all the halachot cited portray relative leniency in the tradition. They underscore the Rabbis' feelings that it was equally crucial to nurse a child as it was to pray to God. In contrast to today, in which the availability of formula and the necessity of returning to the workforce lead almost 80 percent of American women to stop nursing by the time their child is one year old,¹⁶ Jewish women of old were expected to nurse for much longer. The *Shulchan Aruch* states that "a child nurses for two years, or even four or five if he is weak."¹⁷ A baby should also be allowed to nurse as often as it desires, up to and including all day.¹⁸ This is likened to prayer, as the *Talmud Y'rushalmi* states that "just as an infant must nurse all through the day, so every person . . . must toil in the study of Torah all through the day."¹⁹

Like Orthodoxy, Reform Judaism supports the concept of nursing a baby at all hours as needed. And, since we are egalitarian, we regard "a Jew involved in Torah study" as a Jew of every gender. It is a basic right of every Jew to pray, just as it is a basic right of every child to eat, and a man's obligation to pray does not trump the obligation of a woman. If a nursing mother wants to go to synagogue to pray and her infant becomes hungry, then we must support her in her choice to pray, as well as in her need to feed her child.

The Sanctity of the Synagogue

BT *M'gillah* 28a states that "synagogues must not be treated disrespectfully." If a woman were to nurse in the sanctuary, would she be treating the sanctuary with disrespect? What does it mean to violate the laws of sanctity of the synagogue (*k'dushat beit haknesset*)?

According to tradition, one must engage in dignified behavior, and not "act with light-headedness" in synagogues or in a *beit midrash* (house of study).²⁰ This includes not playing or engaging²¹ in "idle talk" or "foolishness," as well as not eating, drinking, or sleeping in shul.²² Today, this same respectful behavior can mean creating a *b'nei mitzvah* dress code or a congregational requirement for bimah attire. As explained by Rabbi Mark Washofsky, however, "the definition of propriety is determined largely by *minhag*, the

religious custom of the people, the standards of morality and taste that prevail within a particular community."²³ Synagogue standards of what constitutes "respect" can thus vary dramatically.

One contemporary form of respect that is almost universally accepted is the custom for a parent to remove a child from the sanctuary if that child becomes loud or boisterous, in order to show regard for the synagogue as well as for the other congregants. Yet, in discussing the reading of the *M'gillah*, the *Shulchan Aruch* says that parents are obligated *not* to remove their very young children from the sanctuary because they must perform the mitzvah of educating their children.²⁴ To do otherwise is to violate the sanctity of the shul.²⁵ I contend that if the presence of loud, boisterous children are conducive to sanctity at Purim, then the presence and noise of a nursing child in the sanctuary, when the mother is literally providing physical as well as spiritual nourishment, is also conducive to sanctity on Purim and all other days.

Taking into account both the concept of *tzniut* and the sanctity of the synagogue, I conclude that a nursing mother is welcome and encouraged to feed her child wherever she so pleases. An individual's choice to pray does not, and should not, supersede either a woman's necessity to feed her child or the child's right to be fed. If observers find her exposed breast or the attention to her chest distracting, they may choose to direct their thoughts elsewhere or to physically move to another location. The miracle of nursing a child is holy work and unequivocally belongs in a sanctuary.

Notes

1. *Mishnah Avot* 1:5
2. *JT Sanhedrin* 2:4d
3. *Shulchan Aruch, Orach Chayim* 75:10. This is learned from Numbers 5:18, "The priest shall bare the woman's head," and its interpretation in *Sifrei B'midbar* 11, "We learn from this that the daughters of Israel covered their heads."
4. *BT B'rachot* 24a, *Shulchan Aruch, Orach Chayim* 75:17. A woman's voice is *ervah* (a source of eroticism).
5. *JT B'rachot* 4:1, 7d.
6. See discussion of sexual ethics in Rachel Adler, "Justice and Peace Shall Kiss: An Ethics of Sexuality and Relationship," in *Engendering Judaism: An Inclusive Theology and Ethics* (Philadelphia, PA: The Jewish Publication Society, 1998), chap. 4.

7. CCAR *New American Reform Responsa* 13: "Women with Heads Covered in the Synagogue" (August 1990).
8. BT *B'rachot* 24a.
9. *Shulchan Aruch, Orach Chayim* 75:1 and *Mishnah B'rurah* 75:1–7 and 76:2.
10. *Mishnah B'rurah* 75:3 (Orenstein translation).
11. *Shulchan Aruch, Orach Chayim* 74:1, *Mishnah B'rurah* 75:4.
12. *Mishnah B'rurah* 75:8.
13. *Shulchan Aruch, Orach Chayim* 75:1, *Mishnah B'rurah* 75:3.
14. *Shulchan Aruch, Orach Chayim* 75:6, *Mishnah B'rurah* 75:29.
15. Extrapolated from BT *Gittin* 89a, in which R. Meir states that a married woman who nurses in the street in front of men other than her husband is liable for divorce. How much the more so, we assume, if she nursed in front of men other than her husband while praying!
16. Centers for Disease Control and Prevention, "Breastfeeding Among U.S. Children Born 1999–2006, CDC National Immunization Survey," http://www.cdc.gov/breastfeeding/data/NIS_data/index.htm.
17. *Shulchan Aruch, Yoreh Dei-ah* 81:7.
18. *Tosefta Sotah* 4:2D.
19. JT *B'rachot* 9:5, IX.C, 350 (Neusner translation).
20. *Shulchan Aruch, Orach Chayim* 151.
21. *Ibid.*
22. *Ibid.* See *Mishnah B'rurah* 151:5–9 for exceptions to these rules.
23. R. Mark Washofsky, *Jewish Living: A Guide to Contemporary Reform Practice* (New York: UAH Press, 2001), 64.
24. *Shulchan Aruch, Orach Chayim* 689:6, *Mishnah B'rurah* 689:17–18.
25. *Ibid.*

Can We Say Mourner's *Kaddish* in Cases of Miscarriage, Stillbirth, and *Nefel*?

Jeremy R. Weisblatt

The idea for this essay comes out of my processing of a painful and deeply intimate experience in the late spring of 2018. My wife had informed me that she was pregnant again. As we struggled with fertility issues, we were cautiously optimistic with this good news. Slowly, our restrained hope turned to sadness. The tests and ultrasounds would come to show us that the fetus had stopped growing. After eleven weeks, it was determined that the fetus my wife had been carrying was no longer alive, and she would have to undergo a procedure to remove it. In the days and weeks that followed the procedure, I tried to support her as best I could. She turned to me at some point, asking me what Judaism could give her for spiritual and emotional comfort. To our shock and dismay, I found my knowledge wanting and the lack of ritual to address this moment in our lives distressing to us both. As a result of this, I began my journey for answers.

In the months that followed, I spoke with colleagues and friends about my experience, and these conversations led to a short article that I wrote for RavBlog. Following the posting of the article, people began to reach out to me and ask not just for a ritual or rituals (from our Movement or in general), but more specifically: "What does Reform Judaism say?" and "Can I say *Kaddish* for such a loss?" This led me to realize that there needs to be, in my opinion, a Reform halachic answer to this important issue. I decided then that I would work towards finding an answer to the following

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question: “Does Reform Judaism permit the recitation of the *Kaddish Yatom* (Mourner’s *Kaddish*) following a miscarriage or *nefel* (a child that has died before thirty days), including stillbirth?”¹ In the paragraphs that follow, I lay out my findings, based on my research into this question. As this is a paper published in an edition of the *CCAR Journal* devoted to exploring Reform Judaism and halachah, it is important that I take a brief moment here to explain the halachic approach that I employ in this essay.

My Halachic Approach

I am a Reform rabbi who finds halachah to be an integral and inseparable part of my Jewish identity and lived Jewish experience. When I approached this question, I therefore did so through a halachic lens, which has been influenced and formed by the works of Rabbi Mark Washofsky and Rabbi Gordon Tucker, a halachic thought-leader in the Conservative Movement. For me, the halachic methodology that I employ is a human-centered hybrid of our traditional sources combined with aggadah.

What exactly does such an approach look like? It is a process that looks at a halachic question, such as the one considered in this essay, first through our generations of tradition and texts, and then surveys and incorporates the current lived experience of our communities. In section VIII of his *t’shuvah*² on homosexuality, Rabbi Tucker calls his approach “An Alternative (Enhanced) Halachic Method.” Tucker’s method is one that both makes use of the normative sources of halachah and looks at the classical sources not considered normative halachic material (i.e., midrash and what is generally termed “aggadah”) as well as the lived experience of people. In his words:

The ongoing, developing religious life of a community includes not only the work of its legalists, but also its experiences, its institutions, and the ways in which its stories move it. This ongoing religious life must therefore have a role in the development of its norms, or else the legal obligations of the community will become dangerously detached from its theological commitments.³

Does this mean, then, that there is a correct “method” to finding answers in liberal halachah? Not at all. On the contrary, according to Rabbi Washofsky, there is not a “true” method of liberal halachic

process. In his essay "Against Method: Liberal Halakhah Between Theory and Practice," Rabbi Washofsky writes:

It is useless to speak of a "halakhic" method if by that we mean a set of rules or criteria to evaluate in an objective way the correctness of a particular halakhic decision or line of decisions . . . Rules are always and constantly being interpreted by lawyers and judges in the course of their work. Rules do not "mean" anything until they are applied to the facts and circumstances of the particular question, and every application reshapes, modifies, and transforms the meaning of the rule . . . In short, there is no objective methodological basis on which to judge the work of a practice [in this case halachah]; any and all standards of judgment are exercised by the practitioners themselves in the course of their work.⁴

This argument of Rabbi Washofsky does not imply that anything and everything can be deemed "liberal halachah." Offering an answer as to what should be considered liberal halachah, Rabbi Washofsky states:

His [the *posek's*] interpretation is "correct" to the extent that it secures the adherence of that audience, that it persuades them to form a community around his words, that it brings them to interpret Torah and halakhah in the way that he reads them . . . The proper term to apply to this process is "rhetoric," not "method" . . . Our decisions are correct when they satisfy us . . . The standards that we apply are therefore the ones that we have, the ones that we as a community of practice determine to insist upon as the yardsticks by which to evaluate our efforts."⁵

In a similar vein, Rabbi Tucker argues that the *posek* is not entirely "free" to decide whatever she wishes. Rather, following the Dworkinian theory of law ("that there is more to law than the rules which have been produced by a legal system"), the *posek* needs to consider, too, the principles "which express fundamental moral beliefs."⁶ These are what I define as "metahalachah" (a concept upon which I will expand later in this essay). If a *posek* does not take these principles into account in his ruling, then he could be accused of "creating bad law." Rabbi Tucker, like Rabbi Washofsky, while simultaneously expanding the scope of authoritative sources to which the *posek* can turn in deciding cases

of halachah, also finds that the *posek* is in fact constrained and that liberal halachah is not a “free for all” at all. Rather, this understanding of the legal process, which Rabbi Tucker extends to the halachic realm as well, “is never a matter of ‘anything goes,’ just because the rules and precedents are silent. Law is about more than just rules.”⁷

It is from these wellsprings of rigorous liberal halachic thought that I draw my inspiration and the philosophy of my own work in the realm of “liberal halachic rhetoric.” My process is one that delves deeply into our rich textual tradition, looking at the laws and precedents while, at the same time, providing equal weight to metahalachic principles and the reality of our at-present lived Jewish experience. This approach will become quite evident over the following sections. I encourage the reader to note that while I attempt to expand the halachah, I also find myself constrained, and that “not anything goes,” just as Rabbis Washofsky and Tucker state in their approaches to the halachic decision-making process. I therefore submit that this essay represents my attempt not only to continue but also to contribute to the ever-unfolding tradition begun by previous generations of Reform *poskim*. Simultaneously, I believe that this process can demonstrate the continued validity and significant contributions that Reform halachic thinking can bring to our sacred community.

One last comment before proceeding to the question at hand: In discussions with many colleagues about this topic, a number of related questions arose about the following adjacent topics: (1) what about saying *Kaddish* for an abortion?; (2) what about doing so for a selective abortion?; and (3) can we claim a difference between early and late miscarriage vis-à-vis the halachic boundary of eight weeks or less? These are incredibly important questions and I do not mean to downplay their value by excluding them from the present analysis, but there is simply not enough space to devote to these important issues in this essay. Instead, I make a point of mentioning them here in the hopes that this article will not only demonstrate how halachic practice can continue to guide Reform Jews and rabbis, but also that it will begin a larger conversation about these painful pastoral situations that many of us encounter in our rabbinate.⁸

Ritual Practices Following a Miscarriage, Stillbirth, and/or *Nefel*: A Halachic Analysis

It is clear that this is a topic that needs to be viewed through a number of lenses: (1) the history and ritual of the *Kaddish Yatom* (Mourner's *Kaddish*) (hereafter referred to simply as *Kaddish*); (2) the current halachic view on the topic of *Kaddish* and miscarriage or stillbirth; (3) the metahalachic issues (that is, the principles and values we bring to a halachic issue from outside of the texts themselves) surrounding a tragic event such as miscarriage, stillbirth, or *nefel*; and (4) relevant precedent and current practice in Reform Judaism.

1. *Kaddish Yatom* (Mourner's *Kaddish*)

A full, detailed explanation of the origins of the *Kaddish* itself and its place in Jewish liturgy are beyond the scope of this paper, so what follows is a brief overview of the *Kaddish*'s function and history within Jewish practice.⁹

The origins of the *Kaddish* itself are difficult to discern, but the first explicit mention of the *Kaddish* in a legal context is found in *Machzor Vitry* (c. thirteenth century).¹⁰ It is linked with a well-known midrash about Rabbi Akiva.¹¹ The tale is about a man who has died and is facing the punishment of Geihenna, as his son does not have the knowledge to stand and lead prayers in the congregation (specifically *Bar'chu*) such that the congregation could respond "*yihei sh'mei raba m'varach.*" Eventually, Rabbi Akiva tracks the son down and teaches him Torah, *Sh'ma*, and the *Birkat HaMazon*. This knowledge enables the son to stand before the congregation and recite the *Bar'chu*, which in turn allows the congregation to respond "*Baruch HaShem ham'vorach.*" Through this act of praising God's name, the father is released from the punishment of Geihenna. This passage in *Machzor Vitry* ends with the following statement: *ברכו או קדיש ועל כן נהגו לעבור לפני התיבה במוצאי שבת אדם שאין לו אב או אם לומר ("and it is customary at the conclusion of Shabbat for an individual who does not have a mother or father to lead and recite either the *Bar'chu* or *Kaddish.*"¹² Why must this action take place at this time? The answer comes from *B'reishit Rabbah*, where it states that "during Shabbat, souls receive a reprieve and respite from Gehennah and only return there to be tormented at Shabbat's conclusion."¹³*

From this point, the practice of reciting the *Kaddish* evolves further in the halachic system and is next mentioned in *Sefer Or Zarua*. Here too, the midrash of Rabbi Akiva is cited and the text concludes: רקתן האומר יתגדל מציל האביו מן פורענות ("that a minor who recites *yitgadal* [that is, *Kaddish*], saves his father from punishment").¹⁴ This and the previous source teach us two important points about the *Kaddish*: (1) The custom of reciting the *Kaddish* by a mourner developed over time into a standard practice, and (2) perhaps most surprisingly, *Kaddish* was recited by a minor! This surprising practice of a minor reciting *Kaddish* was questioned in nearly every generation; however, the Maharil (R. Yaakov Moellin, Germany 1360–1427) ruled that since the *Kaddish* is an addition to the service and not considered a part of the obligatory (חובה) liturgy, it (like other such additions) can indeed be recited by a minor.¹⁵

The ruling of the Maharil was not the final say on the recitation of the *Kaddish*, as the practice continued to evolve. There is an intriguing gloss on the *Kaddish* in the *Shulchan Aruch* by the Rema at *Yoreh Dei-ah* 376:4. The Rema indicates that, by his time (middle of the sixteenth century), the ritual for the *Kaddish* had taken on the following additions: (1) one can recite *Kaddish* for one's father and mother; (2) even if one's father is alive, one can still recite *Kaddish* for one's mother; and (3) one can recite *Kaddish* for one's father and mother קרובים לא בשאר (but not for any other relatives).¹⁶ Here too, however, this statement was not the last word on the practice of the recitation of the *Kaddish*, and the ritual continued to develop. In some places, connecting with the belief regarding Geihenna, *Kaddish* remained "locked" to the conclusion of Shabbat, whereas in other places, one could find a community reciting *Kaddish* during the weekdays.¹⁷

The practice of reciting *Kaddish* eventually expanded to include the addition of multiple people saying *Kaddish* at once, as well as individuals reciting *Kaddish* for relatives beyond one's parents. In response to a question of how many individuals can recite *Kaddish* simultaneously in a prayer service, Rabbi Moshe Feinstein wrote that multiple people may do so at the same time. Rabbi Feinstein also ruled that one can pay for an (unrelated) individual to recite *Kaddish* on one's behalf, and noted that, in his time (twentieth century), one says *Kaddish* not just for one's parents but also for a number of other deceased relatives (which continues to remain the

custom today). At the present time, it is still the custom for many people to recite *Kaddish* for immediate relatives—and even to do so for eleven months, well beyond the customary thirty days. It also remains the common practice in contemporary prayer communities for multiple people to recite *Kaddish* at the same time.¹⁸

2. Current Halachic Views of *Kaddish* as it Relates to Miscarriage and Stillbirth¹⁹

The Dominant View

Having looked at the evolution of the *Kaddish* in general, I now turn my focus to the issue of the *Kaddish* in the halachic literature as it relates specifically to miscarriage, the *nefel*, and stillbirth. The halachic discussions regarding the viability and status of a fetus seem to derive from the *Sifra*, *Parashat Emor* 1:6. This text deals with the issue of whom a *kohein* may mourn for, thereby allowing himself to become ritually impure (not such an insignificant issue as the *kohein* almost always needed to be in a state of ritual purity). The Torah states at Leviticus 21:1–2: “And the Eternal said to Moses: speak to the *kohanim*, to the sons of Aaron, and say to them: Let none [of you] become impure for a dead person among his people, except for his relative who is closest to him, his mother, his father, his son, his daughter.” Taking this verse, the *Sifra* creates a *midrash halachah* through interpretation of the words “his son, his daughter.” According to the *Sifra*, the Torah uses the term “his son and his daughter” to mean “even for the son or the daughter [he may become impure], and therefore this excludes his son or daughter who were *nefelim*, and thus not alive.” This ruling from the *Sifra* that the *kohein* does not make himself impure for a *nefel* becomes the basis for subsequent rulings and customs pertaining to mourning for a miscarriage, stillbirth, or *nefel* (or more precisely, the absence of mourning practices in these cases).

For example, in the *Shulchan Aruch*, Rabbi Yosef Karo (*Yoreh Dei-ah* 344:6) states that “one does not recite *Kaddish* and *tzdiuk hadin* for an infant less than thirty days old.” The Rema (*ad. loc.*) adds that “this is not our custom, as we do not do this for a child less than twelve months old.”²⁰ At *Yoreh Dei-ah* 374:8, Karo writes: “Babies, all that are thirty days old, including the thirtieth day, we do not mourn for them, even if they should be fully developed, with hair

and fingernails.” This remains the dominant halachic position in our own time: indeed, the twentieth century work *Yesodei S’machot* (3:1) states that “the laws of *aninut* (the period of time between the death and subsequent burial of the deceased) do not apply upon the death of an infant who has not lived thirty days.”

It is clear from these texts that the prevailing halachic consensus is that *hilchot aveilut* (the laws of mourning) do not apply to the *nefel* (a child that died before thirty days of life) or, by extension, to a stillbirth or miscarriage. (The latter is derived from the logic of *kal v’chomer*: if we do not mourn for a baby that lived even one day, all the more so do we not mourn for a baby that was never born and lived only in utero.) Were we to limit ourselves to these texts only, however, we would fail to grasp the leeways that Jewish text and tradition provide for us to expand our practices in order to meet the needs of our communities. Sadly, by failing to inform our leaders and communities of different viewpoints that exist within our tradition, we do our people a great disservice. Indeed, with the gradual changing of societal norms and the current openness to discussion of such losses, it is imperative that we provide our communities with such knowledge. As in many other areas of halachah, the situation of the *nefel* is, not surprisingly, not so clear cut, and there is room to make a text-based argument that runs counter to the aforementioned prevailing view.

An Alternative View

The foundational text for this alternative view within the tradition is from the *Mishnah*, Tractate *Nidah* 5:3 (which predates the *Sifra* text cited above). This mishnah states: “a one-day old child who dies . . . is to his parents and family like a full-grown bridegroom.” Although it has not been the basis for previous halachic rulings regarding mourning for a *nefel*, this mishnah indicates that our Sages were aware of the psychological pain that such a loss carries with it. Furthermore, this text seemingly contradicts the Ramban’s later claim that “the reason our Sages did not institute practices of mourning for a baby under thirty days or a fetus is because one does not feel as anguished over such a loss.”²¹ Though it is clear that the Sages were aware of the psychological and emotional suffering that such a loss brings, it is difficult to understand why they

did not then create or ordain a mourning practice for a *nefel*. At this time, I am unaware of any text that gives an explicit reason for their decision. In any case, there are a number of texts that either (a) acknowledge the emotional reality of such loss and/or (b) provide room to argue for a change in current practice. The following are examples:

- *Shulchan Aruch, Yoreh Dei-ah 374:8*

"[The parents] had intercourse and then separated [i.e., they had no further relations]. Even if the child was born after nine months, even if the child died on the day of the birth, one mourns [for such a child]."

- *Rema, Yoreh Dei-ah 374:6*

"And there are those who say that it is customary to be lenient with this mourning [that is, mourning for a child that died before thirty days] . . . if for no other reason than to honor the one that one is mourning for."

- *Yesodei S'machot, p. 2*

"The blessing [*Baruch Dayan HaEmet*] should be recited for the death of an infant less than thirty days old even though *shiva* and *k'riah* are not observed under such circumstances."

- *Tzitz Eliezer 7:49*

"Those who recite *Kaddish* for even the youngest baby are correctly observing the tradition . . . And even to light a *yahrzeit* candle."

To summarize these statements, it is clear that the halachic tradition recognizes the emotional and psychological pain of the loss not only of a child that lives for more than thirty days, but also of a *nefel*, a child that dies before thirty days of life. (There are, however, no texts regarding the painful experience of miscarriage, which is an issue that I will address later in this essay.) Furthermore, given the number of texts that recognize the emotional and psychological pain of the loss of a *nefel*, I believe there is a foundation upon which we can expand the halachic framework to address the case of a stillbirth. Lastly, it is precisely because of the recognition of the emotional and psychological issues, which has greatly expanded in our day, that it is necessary to address this as

a separate topic. I would define these issues as falling into the category of metahalachah.

3. The Metahalachic Issues Pertaining to Miscarriage, Stillbirth, and *Nefel*

It should be clear at this point that many rabbinic authorities recognized the emotional (though not necessarily the physical) pain that accompanies early loss. Though not fully addressed in responsa literature, there is a strain of rabbinic thought originating in the earliest sources (i.e., the *Mishnah*) demonstrating that the Sages found it acceptable to (a) expand the range of whom one can mourn for and/or (b) differ from the dominant position that one does not mourn for the loss of a *nefel*. Today, thankfully, the conversation is not relegated to quiet whispers; indeed, people experiencing such loss are now finding the wider community ready to listen and provide emotional support. As a result of this sociological change, rabbinic authorities are being forced to deal with these real and painful situations.

As I mentioned in the introduction to this essay, the halachic process that I employ readily embraces aggadot and metahalachic principles in an effort to articulate halachic answers. Modeled on the processes employed by Tucker and Washofsky, my approach does not look solely at the textual tradition for the answers.²² Rather, I contend that expanding the halachic sphere to include the voices and stories of our people may very well provide us with the tools we require to reach answers that will enable our people to continue to view their lives as compatible with their Judaism. In the words of Rabbi Tucker, “separate halachah from theology, separate it from morals, allow rabbis to use discretion when God and the good seek to determine their decisions, and you have sacrificed much of the power of halakhah.” He adds that “rabbis must never permit God’s moral imperatives to lose their authority over the *beit din*. Otherwise, for whom do we labor?”²³ I believe our communities need us to pursue the answers with these principles in mind so that we may indeed find ways to provide for our people’s spiritual and religious needs.

Reflecting on these metahalachic issues, a Reform colleague, Rabbi Jill Cozen-Harel, recently penned an article in the *Forward* that brings into focus the need for such discussions and adaptation

of our mourning rituals. I believe her article, "How Jewish Rituals Helped Me Mourn My Miscarriage," contains helpful wording to express some of the metahalachic issues that accompany such loss. In personal and painful terms, Rabbi Cozen-Harel writes:²⁴

With help, I recognized that I was deep in the throes of grief. Jewish tradition provides an incredible structure for mourners to grieve the death of a loved one. Yet nothing is prescribed for my miscarriage grief. When grieving, it can be harder to make any decision, large or small. I craved a prescription for what to do; that might have left me with fewer heart-wrenching decisions. Nonetheless, I found healing and comfort in adapting Jewish rituals and traditions . . . we are taught that up through 40 days after conception (this would be just under 8 weeks pregnant in today's terms, since counting begins at the woman's last period, not at conception), the embryo is considered to be merely water (*Yevamot* 69b). This does not describe the emotional reality of many pregnant women or couples. Even in those early weeks, the connection to the embryo can be incredibly deep. And yet I recognize that mourning a miscarriage is not the same as mourning the death of a child or an adult. I didn't lose a baby that I'd held. I didn't even lose a fetus. I lost an embryo (the transition from embryo to fetus happens in the 11th week), but that embryo was supposed to make me a mother. That embryo was supposed to grow into a fetus. I would have delivered a baby, named and held my child. That embryo had a due date. I had a timeframe sketched out already for when I would start looking at daycare options . . . Today, too, families may experience one or more miscarriages. While miscarriage rates may or may not have changed since rabbinic times, many things have changed: birth control has led to less pregnancies; at-home pregnancy tests help women find out that they are pregnant much earlier than even several decades ago; because of ultrasound technology, pregnancies feel much more "real" when a future parent sees an embryo or a flickering heartbeat at a fairly early stage. All of this leads to pregnant people (and their partners, if applicable) who are more likely to experience grief when losing a pregnancy.²⁵

From the painful words of Rabbi Cozen-Harel, it is evident that an approach to halachic thought that recognizes the metahalachic issues at work in cases of these losses (miscarriage, stillbirth, the *nefel*) hones in on serious and important areas of our ritual lives that the more dominant halachic approach does not. Like Rabbi

Cozen-Harel, my wife and I found it extremely painful to discover such a dearth of guidance from our tradition (including the modern Reform tradition) as we attempted to navigate the world of our loss. In her closing words, Rabbi Cozen-Harel asks that we find rituals and ways to address these losses, for “had I been steered toward taking several days to fully grieve in a way that parallels *shiva*, I believe that I would have healed more easily.”²⁶

4. The Current Precedent in Reform Judaism

The most recent Reform responsum that deals with miscarriage, stillbirth, and infant loss (before thirty days) is Contemporary American Reform Responsa no. 106; it is dated October 1983 and titled “Burial of Miscarriages, Stillbirth Children and Infants.” This responsum approaches the issue quite matter-of-factly and makes no reference to many of the sources I have cited in the second section above. The responsum begins by stating: “The child who dies before that time [before thirty days] is considered a *nefel* and for such a child (strictly speaking considered stillborn if he does not survive thirty days), no burial and no mourning rites are required.” It then summarizes the sources upon which it relies with the following statement: “All of this indicates that relatively little was made of infant deaths or abortions. They occurred frequently and the communities would have been in a constant state of mourning if rites had been required.”²⁷

In contrast to this final statement of the responsum, I have detailed key textual proofs that indicate that our Sages recognized the grief that accompanies these losses. It is in fact the case, however, that the rabbinic authorities did not, until the modern era, begin to adopt mourning rituals for such losses. The CCAR responsum does attempt to deal with the modern needs in the following manner:

In our time matters have, however, changed and most families have very few children, so all the events in a child’s life have become significant and magnified. That, of course, includes the tragic death of a young child, a still-birth, or miscarriage. We would, therefore, suggest that there be a simple burial of a still-born infant or a child who dies at an early age. This will provide a way for the family to overcome its grief. A miscarriage may, however, be disposed of by the hospital or clinic in accordance

with its usual procedures. No burial is necessary but it is also not prohibited; we would suggest it for infants and possibly for still-births.²⁸

Before concluding and summarizing this section, it is important to note the contemporary mourning practices in Reform communities. I should mention that while I have not undertaken a formal study of the mourning rituals Reform Jews are observing in practice, numerous conversations that I have had with colleagues and congregants suggest to me the following: aside from the lighting of a *Yizkor* candle, the recitation of *Kaddish* remains one of the most (if not *the* most) important and widely practiced acts of remembrance and mourning for Reform Jews.

While the 1983 CCAR responsum affirms the pain that accompanies miscarriages and stillbirths, it offers no further detail or guidance on how to honor that pain ritually. The guidance hews close to the traditional approach by recommending “disposal in the usual procedures” and the allowance that tradition permits burial of infants and stillbirths.

Conclusion

The personal experiences of those in our community who have suffered these terrible moments cry out for a response. I have sought the answer to this problem through analysis of our rich textual tradition, while also giving voice and equal weight to the aggadah and me-tahalachah (i.e., the painful stories of those who have been through these terrible moments, and the principles of our Reform tradition). My rhetorical approach (to borrow Rabbi Washofsky’s term for describing the halachic process) does not shy away from the need to embrace our liberal principles in searching for a halachic answer. On the contrary, the answer is strengthened and becomes truly worthy of submission to our communities by including the stories of their lives in this process. In the words of Rabbi Tucker: “if we fail to make meaningful halakhah, we will all be called to account for how we will have failed generations of Jews to come . . . [for] the compassion of God is still greater than any halakhic method.”²⁹

In light of all this, I conclude that in cases of *nefel* and stillbirth, *Kaddish* can be recited on the day of the burial as well as for a full period of shivah. Should the practice of reciting *Kaddish* be extended to the category of miscarriage as well? In my view, I do

believe that the stories of people today who live through this terrible loss force us to recognize the pain and suffering of those individuals and couples who experience it. Furthermore, it is clearly a metahalachic principle of Reform Judaism that we must provide comfort and healing to those in pain. Nevertheless, it pains me to conclude that we ought not expand the practice of reciting *Kaddish* to cases of miscarriage.

After exploring our textual tradition and giving careful consideration to the customs in our communities today, it is clear to me that the *Kaddish* is still something that ought to be said only for those who were born into this world. At the same time, this does not mean there is not room to innovate in our tradition. On the contrary, in light of (a) my intimate understanding of this pain and the stories of so many others who have experienced such loss, (b) the strain of halachic leniency that runs through the alternate view I cited above, and (c) our tradition's call to comfort those in need, I do believe that there should be a ritual (other than reciting *Kaddish*) for mourning a miscarriage. I would encourage the liturgists among us to set about creating a liturgy that can provide comfort to those who experience such a loss.

Finding

The ritual of reciting *Kaddish* should be expanded to include both the *nefel* (a child that died before thirty days of life) and a stillbirth. Though the practice of reciting *Kaddish* ought not be expanded to instances of miscarriage, an equally appropriate liturgical ritual should be created for those who suffer such a loss.

Notes

1. Such a loss before thirty days after birth is known as a *nefel*. I will occasionally switch between using the term *nefel* as well as the more specific terms of stillbirth and miscarriage, recognizing that the term is a "catchall" for any and all losses before thirty days of full life.
2. Rabbi Tucker's *t'shuvah* was adopted as a *takanah* and not a *t'shuvah* by the CJLS (Committee on Jewish Law and Standards) of the Conservative Movement.
3. Gordon Tucker, "Teshuvah on Homosexuality," pg. 254.
4. Mark Washofsky, "Against Method: Liberal Halakhah Between Theory and Practice," pg. 53.

5. *Ibid.*, 54–60.
6. Gordon Tucker, “God, the Good, and Halakhah,” pg. 369. In this article I have just cited here, Rabbi Tucker explores the legal theory of Ronald Dworkin, who is clearly an influence in the work of Rabbi Tucker, and has influenced my work as well.
7. Tucker, “God, the Good, and Halakhah,” 369.
8. In a discussion with Rabbi Jill Cozen-Harel, who has done extensive research on this topic (and cited later on in this essay), we discussed the aforementioned situations as well as the issue of fertility loss. It is quite clear that the “stigma” of discussion of these losses is becoming less, and the need to bring the conversation into the public sphere is of vital importance. This is especially true as we note the later-in-life births that are becoming more and more frequent in our communities, and the challenges and losses that accompany births at these ages. Furthermore, we also spoke about the gendered lens through which I am approaching this topic: a straight man, unable to bear and carry children. While I did in fact feel the pain of the loss, it is clearly different from the emotional and physical pain experienced by my wife. This of course opens up another strain of thought: the loss experienced by the supporting partner (if there is) and loss of a single woman who chooses to have children. All of these avenues of discussion open a need, I believe, for wider discussion and guidance within our Movement.
9. For this section, I am indebted to the extensive research from the following sources: Rahel Berkovitz, “A Daughter’s Recitation: Women and Mourner’s Kaddish,” in *Hilkhot Nashim*, ed. Rahel Berkovits (Jerusalem: Maggid Books, 2018) and Yisrael Ta-Shema, “*Ketsat Inyanie Kaddish Yatom Uminhagav*,” *Tarbitz* 53 (1984): 559–68.
10. For a Reform responsum that discusses the origins of the *Kaddish*, please see American Reform Responsa no. 118 titled “Kaddish.” This responsum, written in 1980, briefly traces the history of the *Kaddish* and the evolution of the observance and practice of the recitation of the *Kaddish*. <https://www.ccarnet.org/ccar-responsa/arr-377-379/>.
11. As discussed in lectures in Rabbi Larry Hoffman’s liturgy classes at HUC-JIR/New York, the midrash is a later addition and did not occur during the time of Rabbi Akiva. Rather, it is a midrash of medieval origin to help explain an already developed ritual practice.
12. Berkovits, “A Daughter’s Recitation,” 11. According to Yisrael Ta-Shema, this is already a practice and custom known in the twelfth century in Barcelona (Ta-Shema, “*Ketsat Inyanie*,” 559), however, he is in agreement with Rabbi Rahel Berkovits that *Machzor Vitry*

is the first source that explicitly connects recitation of the *Kaddish* with a mourner (Ta-Shema, “*Ketsat Inyanie*,” 568).

13. Berkovits, “A Daughter’s Recitation,” 11.
14. *Ibid* 12–13. See also the Rashba’s responsum no. 49 in *Responsa Harashba*, vol. 5. In that responsum, he teaches, based on BT *Sanhedrin* 104a (which possibly influences our customs of children in relation to their parents), that parents live on through the actions of their children, and not vice versa.
15. Yisrael Ta-Shema reminds us that since the *Kaddish* was recited at *Arvit*, which is in itself *r’shut* (optional), he rhetorically asks ‘how could it [*Kaddish*] be considered obligatory?’ Ta-Shema, “*Ketsat Inyanie*,” 567–68.
16. Berkovits, “A Daughter’s Recitation,” 16–17. This might seem arbitrary but Berkovits reminds us that this is based on BT *Sanhedrin* 104a, where we learn that “a son can earn merit for his father, but a father cannot earn merit for his son.”
17. See Berkovits, “A Daughter’s Recitation,” 20–30.
18. As is common practice in Reform communities, the entire congregation rises to recite *Kaddish* with the mourners. In regards to eleven or twelve months, some people recite *Kaddish* for eleven and others for twelve. The custom regarding reciting *Kaddish* for eleven and not for twelve months is due to the following teaching: according to one belief, the punishment for sinners in Geihenna lasts for twelve months. Therefore, one would not want to give the impression that one’s loved ones are in Geihenna by reciting *Kaddish* for twelve months, and so some recite *Kaddish* for eleven instead of twelve months.
19. For this section, I am particularly grateful for the article and research by Rabbi Jason Weiner in his article “Jewish Guidance on the Loss of a Baby or Fetus,” *Hakirah* 23 (2017): 93–111. As stated in the opening paragraphs, we will not look at the specific Reform responsa on this topic until section 4. I have chosen to organize the material in this manner so as to provide a clear and coherent Reform viewpoint.
20. For more examples, see BT *Shabbat* 136a and *Hilchot Aveil* 1:6 in Rambam.
21. Weiner, “Jewish Guidance,” 97.
22. In his essay “Against Method,” which I cited earlier, Rabbi Washofsky rejects the notion that one can separate the concepts of halachah and metahalachah (see p. 24 of his essay). At the time of this writing, I find my understanding of metahalachah differing from Rabbi Washofsky’s. Instead, like Rabbi Tucker, I believe that there is a set of material that we can define as metahalachah, which is separate from the normative halachic tradition.

23. Tucker, "God, the Good, and Halakhah," 371, 376.
24. As noted in the opening paragraphs, there is not enough space in this article to adequately address these issues and again, they call for greater discussion, perhaps even a journal issue, dedicated to fertility issues in the modern Jewish world.
25. Jill Cozen-Harel, "How Jewish Rituals Helped Me Mourn My Miscarriage," <https://forward.com/life/family/433663/how-jewish-rituals-helped-me-mourn-my-miscarriage/>.
26. Ibid.
27. <https://www.ccarnet.org/ccar-responsa/carr-167-168/>.
28. Ibid.
29. Tucker, "Teshuvah on Homosexuality," 47. Though Rabbi Tucker argued this point specifically in his *t'shuvah* on homosexuality, I believe that it may indeed be a fundamental part of the process of liberal halachic rhetoric, and I certainly apply it here in my halachic rhetorical process.

When Halachah Seems Silent: A Male Survivor in the *Mikveh*

Paul Jacobson

Trigger Warning

This article reflects aspects of the author's personal experience recovering from the surfacing of memories related to two episodes of childhood sexual assault. The author recognizes respectfully that each person's path toward healing is unique. A discussion regarding *mikveh* may be healing for some, but not for others.

Monday, March 26, 2018¹

4:45 AM

Nearly three-and-a-half weeks have passed since a memory of childhood sexual assault came back to me. Doubting my own truth and having conducted my own research I know that psychologists are divided regarding the accuracy of repressed memories.² Nevertheless, the vivid and visceral images, sounds, and sensations I am experiencing leave me needing to embrace and accept the trauma I have suffered, even though I do not want to. Beset intermittently by racking sobs, I begin to assemble the pieces of my personal narrative differently and come to understand that the poison held for decades in my body is finally being released.

I am keen to immerse in the *mikveh* as I believe that *mikveh* will help me in my healing journey. Dr. Rachel Adler once wrote about women immersing in the *mikveh* "to mark occurrences for which no ritual expression had existed . . . They began using the *mikveh* to purify themselves of events that had threatened their lives or left them feeling wounded or bereft or sullied as sexual beings: ovarian tumors, hysterectomies, mastectomies, miscarriages, incest, rape."³

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In this week before Passover, bearing my own hellish memories, I believe that by immersing on Monday, and going to shul on Thursday to *bentsch Gomel*,⁴ that on Friday, at the seder, I'll be ready to go out of Egypt with everyone else. How naïve. I do not yet understand that I will be carrying Joseph's bones with me for the rest of my life.⁵

Awakening at 3:45, I drive to the local men's *mikveh* in the hope that immersing early in the morning will guarantee me of being alone. The Chabad rabbi responsible for the *mikveh* would not confirm a time or reserve an appointment for me, since, as I will learn, immersion for men is only required in case of conversion to Judaism.⁶ As I enter the facility, the room in which I stand feels as sacred as a men's locker room beside a swimming pool. Much to my dismay, I see two men in various stages of undress, and another man immersing in the *mikveh*. Wanting to run away, I force myself to stay, shower, and wait my turn.

Standing 5'10" tall, weighing a lean and muscular 180 pounds, I look down at my body and am filled with shameful revulsion. I recall wanting the *mikveh* to rid me of my self-hatred, to remove the unseen wounds emblazoned into my tender flesh so very long ago. I feel dirty from head to toe. I cannot see any of my own strength, inner or outer beauty.

My throat closes and my heart palpitates as I walk down the steps and allow myself to be enveloped by the warm waters. Holding myself underwater, making sure no part of my body touches the floor or rises above the surface I pause for a few moments and then allow a splash to rupture my silence. My body shakes violently. Tears come pouring out. I am a snotty, dripping mess. I feel so very ugly, as if part of my soul has died.

I try to bring God into that moment with the traditional *al hat'vilah* blessing, but I will confess that I have never doubted God's existence more. *What God allows a child to be raped and molested by people responsible for his care?* Falling to pieces over and over again, I cannot bring myself to recite *Shehecheyanu*. On what grounds can I thank God for bringing me to *this* season? A few minutes later, I leave the waters, get dressed, and depart the *mikveh* silent and confused.

* * * * *

In the days between the surfacing of my memory and my immersion, I went searching for traditional texts related to male use of

the *mikveh*. I was hoping to locate a ritual for healing from childhood sexual assault and first-hand experiences of *mikveh* immersion written by men. I uncovered a few stories about husbands choosing to join their wives in the ritual of immersion to mark the cessation of menstruation,⁷ and recalled a story by Rabbi Steven Leder, who used the *mikveh* before the High Holy Days to find inner peace and calm and left the waters “ready for redemption.”⁸ I discovered that contemporary men had written very little on the subject of *mikveh*.

I will admit to associating *mikveh* with women. As such, immersion has never been a subject to which I have given great attention. Throughout my rabbinate I required *mikveh* for conversion and recommended *mikveh* for a bride prior to her wedding. I assumed that some of my female friends and colleagues were immersing on a monthly basis in accordance with the laws of *taharat hamishpacha* (family purity), but it was never my place to enquire about the personal and intimate habits of others.

Where I was unable to locate sufficient discussion of *mikveh* by contemporary men, I recognize that my understanding of *mikveh* had been formed from my own interpretation of male-authored biblical and Rabbinic text. Rabbinic tradition based its perspectives on the differentiation between *taharah* (ritual purity) and *tumah* (ritual impurity) on the laws of Leviticus, where a discharge of semen or blood could change the ritual status of an individual and affect the sanctity of the priests responsible for offering sacrifices to God. From the biblical and Rabbinic worldview, sexual intercourse and menstruation were aspects of life that needed to be addressed with the establishment of appropriate boundaries.⁹ Traditionally, men are obligated to observe all time-bound halachic practices. In contrast, only three time-bound observances—the lighting of Shabbat candles, the tithing of *challah*, and the observance of *nidah*—are reserved exclusively for women.¹⁰ The perspective that following immersion, a woman may resume sexual relations with her husband¹¹ is accompanied in Rabbinic text with descriptions about a woman’s body, even likening her physical development to that of a fig.¹²

These textual references provide perspective regarding some ways in which the male Rabbis of the Talmud objectify and impose their own determinations upon women. These Rabbis are not alone. In a more unaware phase of my life I would regularly offer

the words, “the ancient Rabbis say” with reverence, without truly questioning why men would say such things, or asking what gave men the right to speak about women’s bodies in such a fashion. Personal growth and the surfacing of my own wounds led me to ask different questions regarding our texts and their authorship.

One textual discussion I discovered in my ongoing study of *daf yomi*¹³ left me shattered. According to *Mishnah Kiddushin* 1:1, “A woman is acquired by money, a contract or by sexual intercourse.”¹⁴ Dr. Tirzah Meacham, writing for the Jewish Women’s Archive explains, “If the mode of acquisition in marriage is by sexual intercourse, she [the child] must be at least three years and a day old before her intercourse is considered legal.”¹⁵ Meacham adds, “The fact . . . that chapter 10 of *Mishnah Niddah* and Babylonian Talmud *Niddah* deal with marriage prior to menarche, [an individual’s first menstrual period], indicates that sexual relations were the expectation.”¹⁶ I do not know Dr. Meacham nor am I familiar with her scholarship, but for me, the term “sexual relations” describes the practice of two consenting adults. Given my own wounds, I can only regard the male acquisition of a female minor by means of sexual intercourse as *rape*.

Yet how could the ancient Rabbis condone and legalize the rape of a child? In turning to our tradition to help me heal from childhood sexual assault, I unearthed male voices presenting antithetical and intolerable perspectives. As I still found beauty in other aspects of Jewish tradition, I was deeply conflicted.

A passage reinforcing a woman’s agency elsewhere in BT *Kiddushin* altered my approach. Referencing the teaching of another rabbi, Rav Aha says to Rav Hisda, “It is prohibited for a man to betroth his daughter when she is a minor, until she grows up and says: I want [to marry] so-and-so.”¹⁷ Given this blaring contradiction between forms of acquisition and opportunities for refusal, I realized that I needed to accept the human limitations and inconsistencies of Rabbinic text and begin to recognize my own deeply held prejudices.

A further study of the halachah addressing *mikveh* immersion by men revealed a reason for the absence of the ritual I desired: customs for male immersion were never firmly established as laws. A *baraita* in the Talmud attributes ten ordinances to Ezra the priest, including that “Ezra further instituted the requirement of immersion for those who experienced a seminal emission.”¹⁸ A seminal

emission rendered a man as a *baal keri*, one who had ejaculated without cleansing himself of ritual impurity.¹⁹ In such an impure state, different opinions emerged regarding whether a man could recite prayers or study Torah without immersion.

A text study on Sefaria, posted by Rabbi Levi Haskelevich, demonstrates that practices regarding male immersion changed over time. Quoting Maimonides' *Mishneh Torah*:

Those who are ritually unclean *wash their hands* only—like those that are clean—and recite the prayers. Although they are able to take a ritual bath and so be rid of their ritual impurity, their omission to do so does not debar them from the recital of the prayers. We have already explained that Ezra instituted the rule that one who had had an emission should not read Torah alone till he had taken a ritual bath. Subsequent authorities extended the rule to the recital of prayers and ordained that such a person should not recite the prayers alone until he had ritually bathed. This rule has no connection with ritual cleanliness or uncleanness. Its purpose is to restrain scholars from uxoriousness.²⁰ Hence the limitation of the requirement of ritual bathing to those who had seminal emissions and whose case forms an exception to those otherwise unclean.²¹

From Maimonides' perspective, a man who was "ritually unclean" needed only to wash his hands in order to pray. Seminal emissions alone required immersion.

Further medieval commentaries reveal that male immersion²² became a relatively unpracticed phenomenon. Haskelevich explores the commentary of Rabbi Isaac ben Jacob Alfasi²³ who writes that, "*baalei keri* do not pray until they wash even if they do not have water."²⁴ However, by the time of Jonah ben Abraham Gerondi's²⁵ commentary on Alfasi two hundred years later, "the ordinance, however, has become obsolete, as it was never universally adopted by the Jewish people and was found too irksome."²⁶

Male immersion thus became a custom rather than a law. Rabbi Yosef Yeshaya Braun discusses "the prevailing *custom* among *chassidim*" is to use the *mikveh* to enhance purity in davening, to remember the *Kohen Gadol* who immersed every day, to engage in *t'shuva*, and finally, because "Daily immersion prevents others from knowing whether a person is going to the *mikveh* because he needs to purify himself."²⁷ Rabbi Braun adds that a man may

simply wish to immerse in order to achieve a *tosefet taharah*, “an additional measure of sanctity.”²⁸ According to these perspectives, immersion is strictly optional for a man. Shoshanna Lockshin highlights, “Because of their non-required nature, most men’s *mikva’ot* are more casual—some might not have a constant attendant, and most operate on a walk-in basis rather than scheduling in advance.”²⁹

Without any legal obligation on which to base a desired ritual, the male Rabbis of our tradition appeared unable to provide me with a pathway toward ritualistic healing and wholeness. Regarding a man using the *mikveh* to heal from childhood sexual assault, halachah seemed silent. Even though an alarming statistic suggests that one in six men³⁰ have suffered a form of sexual abuse or assault I could locate no stories or rituals of men healing themselves by using the *mikveh*.

There were, however, numerous perspectives, articles, and rituals created by women. For the first time in my life, I began reading and crying my way through women’s memoirs of rape.³¹ I learned that more than one billion women and girls throughout the world have been victims of sexual violence,³² and that lesbian, gay, bisexual, transgender, and queer people face far higher rates of sexual assault.³³ As a white, privileged, cisgender, heterosexual male, who had never encountered any sense of communal or self-stigma, these horrifying statistics became more than numbers; they became personal.

Each woman’s unique story was presented with exceptional bravery, courage, thoughtfulness, and openness. Risa Sugarman used the *mikveh* to heal from depression,³⁴ and Emma Lowe chose to immerse after being triggered by the words of the Trump administration and the testimony of Christine Blasey Ford during the hearings to confirm Justice Brett Kavanaugh.³⁵ Yonah Klem wrote a remarkable article on “Using the *Mikveh* to Heal from Incest,”³⁶ but save for one line addressing how and why men may choose to immerse, the rest of her study is focused only on women. On ritualwell.org, Tzeviya Rivka published, “A Ritual for Healing from Childhood Sexual Abuse,” acknowledging Stephanie’s healing journey from being a victim to “becoming a survivor.”³⁷ Rabbi Sara Luria, founder of ImmerseNYC,³⁸ and Lisa Berman, Executive Director of Mayyim Hayyim³⁹ provided numerous rituals to assist me in my healing journey.

I could have taken any of these salient, painstakingly crafted rituals and proceeded to immerse in the *mikveh*. But I wasn't ready. I was far too uncomfortable with myself. In order to heal, I first needed to discover my own voice.

Judith Lewis Herman writes, "The first task of consciousness-raising is simply calling rape by its true name."⁴⁰ Initially hesitant to share my story, I was terrified of using the words molestation and rape. Feeling unsafe and insecure in my own identity as a male survivor, I would request resources "for a congregant" rather than acknowledging my own suffering. It took months for me to openly say, "I was molested." It took me even longer to admit, "I was raped."

Rape is the ultimate violation of a human being's boundaries. Henry Cloud explains, "Victims of physical and sexual abuse often have a poor sense of boundaries. Early in life they were taught that their property did not really begin at their skin. Others could invade their property and do whatever they wanted."⁴¹ The surfacing of my memories, caused by my personal decision to break a long-held addiction and begin a program in mindfulness meditation one month apart,⁴² led to the collapse of a carapace that was firm, unforgiving, and rejecting of any attention or support. Through various forms of therapy, and regular conversations with my wife, friends, and colleagues, I learned how much I was loved, and I began to discover how worthy I was of my own love. Constructing my boundaries anew taught me that boundaries provide safety, by helping me to know what's mine, and what isn't.⁴³

Healing is an unbridled force that I have never previously encountered. It is not my business to know how others cope with their trauma. I can only own that as the violated child within me emerged, I became someone I did not know. My own behavior became erratic, accusatory, rife with projection, and at times, I was utterly inconsolable.

Even in my worst moments, those to whom I disclosed my story provided me with unconditional love and nonjudgmental acceptance in the form of the most genuine and gentle silence that I have ever known. They allowed me the space to talk, and most especially, in person or on the telephone, they provided me with a safe space in which to cry. Dr. Meira Polliack stresses:

[Judith] Lewis Herman describes this stage in the trauma victim's ordeal in very close terms: "the reconstruction of the trauma

requires immersion in a past experience of frozen time; the descent into mourning feels like a surrender to tears that are endless." Consistent and repetitive crying is widely documented in studies of traumatic recovery as an essential accompanying emotion of the recitation of the facts. If the recitation occurs without the accompanying emotions it is considered "a sterile exercise, without therapeutic effect."⁴⁴

To this point in my career, it did not matter how many people I had supported by being an empathetic, active, and silent listener when other people disclosed their stories to me. I only learned the importance of pastoral silence when it was my turn to receive it.

It took significant time for me to realize that I was speaking to some of the deepest violations that any human being could experience, let alone have suffered as a child. Other people admired my bravery and courage in stepping forward, expressing that they were sorry for what I had lived through as a child, and reassuring me that I needed to engage in this journey of healing *for myself*. I now know that I am the only person capable of rescuing the boy inside me. I was a defenseless, innocent child when I was raped and molested. While I bear responsibility for numerous flaws, having been raped and molested is *not my fault*.

In retrospect, my first immersion in the *mikveh* had provided me with exactly what I needed at that time—silence mixed with the space to sit and cry, over and over again. There were no words or ritual that halachah could provide in that moment, for my own grief was too immense to be expressed verbally.

Over many months, I considered the idea of revisiting the *mikveh* from a place of further strength. Still, I wanted permission from our tradition to create a ritual of my own through which I could mark my healing. Yonah Klem offered, "There is obviously almost no precedent for the use of *mikveh* for healing from incest and sexual abuse. This leaves open the door for creativity."⁴⁵ Similarly, Sherri Mandell⁴⁶ offers:

Creativity allows us to discover the light hidden in our pain, the possibility of insight and revelation . . . All of us are composed of the broken and the whole. We need not avoid or overlook the shattered parts of our psyche. Instead, our intimate experience of the shattering may be the very force that compels us to rebuild. When we create from our pain, when we recreate ourselves out of

both the whole and the broken pieces of our lives, perhaps we too can establish a sacred dwelling, a place of faith where the shattered can be given meaning, and where God is present in both our suffering and in our rebuilding.⁴⁷

In addition to these contemporary perspectives regarding the power and promise of creativity, Haskelevich offers another thought from Maimonides about the importance of changing one's mental focus. Maimonides taught, "Just as one who sets his mind on becoming clean becomes clean as soon as he has immersed himself, even though nothing new is produced in his physical being, so one who sets his mind on purifying himself from all the spiritual defilements, namely wrongful thoughts and evil traits, becomes clean as soon as he made up his mind to abstain from those notions and brought his soul into the waters of reason."⁴⁸ Taken together, Klem, Mandell, and Haskelevich offer that the permission to create a new ritual or one's self anew comes from our own willingness to discover ourselves and embrace new thoughts and perspectives regarding our lives.

We are the only ones who can own each facet of our existence, even what we perceive to be our most broken pieces. Our individual stories have the power to influence other people and effect significant change. In his *takanah* entitled "Arguments Concerning Judaism and Homosexuality," Rabbi Gordon Tucker references the words of columnist Anna Quindlen. Regarding Sergeant Jose Zuniga's prideful expression of being a soldier and a gay man, Quindlen writes:

Stereotypes fall in the face of humanity. You toodle along, thinking that all gay men wear leather after dark and should never, ever be permitted around a Little League field. And then one day your best friend from college, the one your kids adore, comes out to you . . . The numbers in Washington were not as important as the faces, the sheer humanity of one person after another stepping forward, saying: Look at me. I am a cop, a mother, a Catholic, a Republican, a soldier, an American. So the ice melts. The hate abates. The numbers, finally, all come down to one.⁴⁹

Taking Quindlen's words to heart, my lack of success in locating a male survivor ritual for *mikveh* immersion began to matter less. I alone needed to part the seemingly silent waters of our tradition

using my own words, expressing my own needs and cravings from the newly reborn portions of my soul. I needed to accept the depth and validity of my own narrative, wounds and all. Holding the belief that my story matters, I became able to carry myself once more into the waters of the *mikveh*. The numbers, as Quindlen suggests, came down to *me*.

Tuesday, November 20, 2018
11:30 AM

With two conversions scheduled at the Teaneck *Mikveh*, I politely ask the *mikveh* administrator to set aside a third preparation room that I can use after supporting my congregants through their immersions. In March, I had requested to use this facility for my immersion but was told that men could only use this *mikveh* for conversion. I claim that there is “a male survivor in my community” and explain that the lack of privacy at the men’s *mikveh* was problematic. When the administrator returns my phone call, I identify myself as the survivor, to which she acknowledges that I am welcome to immerse.

After concluding my professional responsibilities, I prepare to enter the *mikveh*. I shower, wrap myself in a towel, and pause on the edge of the steps. While I understand that my trauma will never fully leave me, in this moment, my mind-set now is widely different from that of my first immersion. Standing naked and alone, I quietly say with confidence, *gam ani barati b'tzalmo*, admitting that I know that I, too, was created in God’s image. The *gam ani* reference also serves as my acknowledgment that “men too” are part of “#MeToo” and that men and women remain forever responsible for each other’s wellness. I descend the steps and after pausing to immerse the first time, I offer the traditional *al ha-t’vilah* blessing linking myself with our tradition. I turn to the right,⁵⁰ immerse a second time, offer the traditional Hebrew opening for a blessing and say, *she-ozar li l’kabel et atzmi*, praising the God who helps me to accept myself. No one that I know of has ever given voice to this blessing, and where halachah did not have the words to help me heal my shame, I was able to find those words inside myself and offer them from a place of developing strength. I turn to face the back wall, immerse a third time, begin with *Baruch atah*, and finish with the words *she-asani yeled tov v’she-asani ish tov*, using

a blessing to accept the intrinsic goodness of that sweet little boy inside me and the very special man who that boy becomes. Finally, I turn to the left, immerse a fourth time, and only now, months after my memories have surfaced, I offer the words of *Shehecheyanu*, thanking God for bringing me to this time and place and season.

I pause in the waters, breathing calmly, and I let myself be at one with this beautiful moment. Smiling, I allow my tears to flow. Halachah's apparent silence on a particularly sensitive subject provided me with the space and the strength to find the words that I needed most—*my own*.

Notes

1. The two *mikveh* immersions related in this essay were recorded through journal entries and poetry. My research reflects an ongoing process of healing, recovery, and growth over the last two years through which I have navigated countless peaks and valleys.
2. A Google search on "validity of repressed memories" yields numerous articles.
3. Rachel Adler, "'In Your Blood, Live': Re-Visions of a Theology of Purity," *Lifecycles*, vol. 2, ed. Debra Orenstein and Jane Rachel Litman (Woodstock, VT: Jewish Lights, 1997), 197.
4. The *Gomel* blessing is often recited after recovering from illness, traveling overseas, being released from prison, or returning home after a challenging journey. More information on the *Gomel* blessing can be found at <https://www.myjewishlearning.com/article/birkat-hagomel-a-jewish-prayer-of-gratitude/>.
5. Gen. 50:25.
6. <https://www.mayyimhayyim.org/using-the-mikveh/men/>.
7. <https://www.jta.org/2015/12/13/united-states/more-men-making-monthly-mikvah-dunks-as-menstrual-rite>.
8. Steven Leder, *The Extraordinary Nature of Ordinary Things* (West Orange, NJ: Behrman House, 1999), 18–19. With thanks to Rabbi Rick Kellner for providing this resource.
9. Lev. 15:16–28. With gratitude to Rabbi Michal Loving for her perspective.
10. *Mishnah Shabbat* 2:6, *Mishnah Kiddushin* 1:7, BT *Kiddushin* 29a–34b, inclusive.
11. <http://www.yoatzot.org/becoming-tehorah/526/>.
12. <https://jwa.org/encyclopedia/article/legal-religious-status-of-female-according-to-age> (quoting *Mishnah Nidah* 6:12, BT *Nidah* 52b, *Mishnah Nidah* 6:1, BT *Nidah* 48a, *Mishnah Nidah* 5:7).

13. Learning a two-sided page of the Babylonian Talmud each day. More information can be found at <https://www.myjewishlearning.com/article/9-things-to-know-about-the-daf-yomi-daily-page-of-talmud/>.
14. *Mishnah Kiddushin* 1:1.
15. <https://jwa.org/encyclopedia/article/legal-religious-status-of-female-according-to-age>.
16. Ibid.
17. BT *Kiddushin* 81b, translation taken from <https://www.sefaria.org/Kiddushin.81b.15?lang=bi&with=all&lang2=en>.
18. BT *Bava Kama* 82a, addressed in Solomon Zeitlin, "Takkanot Ezra," https://www.jstor.org/stable/1451402?seq=1#metadata_info_tab_contents.
19. <https://en.wikipedia.org/wiki/Keri>.
20. Uxoriousness refers to the ways in which a man dotes on his wife or remains overly focused on or attentive to his wife's needs. It would seem here that ritual bathing was used to delineate between a man's focus on intimacy, and subsequently, his focus on prayer.
21. Maimonides, *Mishneh Torah, Hilchot T'filah U'Birkat Kohanim* 4:4–5, quoted at Rabbi Levi Haskelevich, "Mikvah Series: Conception, Construction, Controversy #4," <https://www.sefaria.org/sheets/99419?lang=bi>.
22. With the exception of a general practice in Spain and Iraq, per Haskelevich's inclusion of Maimonides' *Mishneh Torah, Hilchot T'filah* 4:6.
23. c. 1013–1103.
24. Haskelevich, "Mikvah Series," Rif, BT *B'rachot* 31b.
25. c. 1200–1263.
26. Haskelevich, "Mikvah Series."
27. <http://www.halacha2go.com/blog/tx00308/>.
28. <https://chabadinfo.com/beis-medrash/requirements-of-a-mens-mikvah/>.
29. <https://www.myjewishlearning.com/article/the-mikveh/>.
30. <https://1in6.org/get-information/the-1-in-6-statistic/>.
31. In addition to the articles quoted here, I read Ellen Bass's *The Courage to Heal* including the collection of more than twenty personal anecdotes written by women at the end of the text, Eve Ensler's *Vagina Monologues* and *The Apology*, Karyn Freedman's *One Hour in Paris*, Chessy Prout's *I Have the Right To*, and numerous other articles pertaining to the #MeToo movement and gender-based violence.

32. https://www.equalitynow.org/the_global_rape_epidemic_campaign?locale=en.
33. <https://www.hrc.org/resources/sexual-assault-and-the-lgbt-community>.
34. https://www.kveller.com/marking-my-recovery-in-the-mikveh/?_ga=2.126208014.284691014.1560441528-913526470.1560286674.
35. <https://www.heyalma.com/the-mikveh-helped-me-heal-from-sexual-assault/>.
36. <https://www.ritualwell.org/ritual/no-ordinary-bath-using-mikveh-heal-incest>.
37. <https://www.ritualwell.org/ritual/ritual-healing-childhood-sexual-abuse>.
38. <http://www.immersenyc.org/about-immersenyc>.
39. <https://www.mayyimhayyim.org>.
40. Judith Lewis Herman, *Trauma and Recovery: From Domestic Abuse to Political Terror* (London: Pandora, 2001), 67.
41. Henry Cloud and John Townsend, *Boundaries: When to Say Yes, How to Say No to Take Control of Your Life: Updated and Expanded Edition* (Grand Rapids, MI: Zondervan, 2017), Kindle locations 748–50.
42. Both addiction withdrawal and mindfulness meditation have the potential to cause flashbacks related to unresolved trauma. See <https://americanaddictioncenters.org/ptsd> and davidtreleaven.com.
43. Cloud and Townsend, *Boundaries*, Kindle locations 671–73.
44. Meira Polliack, “Joseph’s Trauma: Memory and Resolution,” in *Performing Memory in Biblical Narrative and Beyond*, ed. A. Brenner and F. H. Polak (Sheffield: Phoenix Press, 2009), 72–105, https://www.academia.edu/10052895/Josephs_Trauma_Memory_and_Resolution. Polliack quotes Judith Lewis Herman’s work *Trauma and Recovery: From Domestic Abuse to Political Terror*, including citations from pp. 177 and 195.
45. <https://www.ritualwell.org/ritual/no-ordinary-bath-using-mikveh-heal-incest>.
46. Palestinian terrorists killed Sherri and Rabbi Seth Mandell’s son Koby. They created the Koby Mandell Foundation, which runs therapeutic summer camp programs for bereaved children. At the time of the publication of Mandell’s book *The Road to Resilience*, more than six thousand children had benefited from their efforts (Kindle locations 67–68).
47. Sherri Mandell, *The Road to Resilience: From Chaos to Celebration* (New Milford, CT: Toby Press, 2015), Kindle locations 823–58.
48. Maimonides, *Mishneh Torah*, Immersion Pools 11:12, as quoted in Haskelevich, “Mikvah Series.”

49. http://www.rabbinicalassembly.org/sites/default/files/public/halakhah/teshuvot/20052010/tucker_homosexuality.pdf, quoting Anna Quindlen, "The Power of One," in the *New York Times* (OpEd Page), April 28, 1993. With thanks to Rabbi Brian Stoller for suggesting this reference.
50. The practice of turning in four directions is offered by Henrique Ozur Bass at <https://www.jta.org/2015/12/13/united-states/more-men-making-monthly-mikvah-dunks-as-menstrual-rite>.

Book Reviews

The Story of Dinah: Rape and Rape Myth in Jewish Tradition

by Gavi S. Ruit

(Lanham, MD: Lexington Books/Fortress Academic, 2019), 179 pp.

In *The Story of Dinah: Rape and Rape Myth in Jewish Tradition*, Rabbi Gavi Ruit expertly guides her readers on a journey that stretches from Judaism's ancient texts to our society's most recent crises. The success of Ruit's *Dinah* can be attributed to her meticulous research, her impressive skill at explaining obscure details and concepts in accessible ways, and her unique writing style, which is equal parts scholarly and fearless. *The Story of Dinah* is an extraordinarily detailed, incredibly relevant, and badly needed work that uses an ancient myth to explore more than two thousand years of Jewish perspectives on women's nature, roles, and experiences.

The Story of Dinah begins not with the eponymous biblical character but instead with stories of contemporary women: college students who were killed as they stood in front of their sorority house, actresses and employees who were harassed and assaulted by a famous movie producer, and a soft-spoken, courageous professor who testified in front of a committee of the United States Senate. By opening *The Story of Dinah* in this way, Ruit grounds her analysis in contemporary events that will resonate viscerally with most, if not all, of her readers. Ruit explains that her objective with *Dinah* is to "understand not only the beliefs and attitudes that underlie rape culture, but also to what extent Judaism has been complicit in fostering such beliefs" (p. 3). Ruit argues persuasively that "Dinah's neutrality makes the Dinah story the perfect vehicle by which to examine Jewish attitudes regarding women and violation across time. Because Dinah is mostly passive, entirely silent, and not referred to in the Torah outside of this story in any substantive way, the thoughts, feelings, and motivations ascribed to Dinah in the commentary on Genesis 34 are necessarily *interpretive projections* on the part of the commentator" (p. 6). Ruit explains that by framing Dinah's story in this way, it becomes "a kind of 'Biblical Rorschach

Test,' in that it serves to reflect the commentators' own attitudes, concerns, or anxieties, including those regarding women" (p. 6).

Before delving into millennia worth of commentary and interpretation, Ruit takes the time to establish exactly what happened to Dinah in the book of Genesis. *The Story of Dinah's* second chapter, called "Rape in the Hebrew Bible: Was Dinah Raped?" dives deeply into the biblical text, emphasizing both the story's granular details and overall import. Using linguistic connections between Genesis 34 and the other legal and narrative mentions of rape in the Hebrew Bible (Deuteronomy 22, Judges 19, and II Samuel 13), Ruit excavates a biblical definition of rape that will allow readers to avoid judging biblical stories by contemporary standards. She writes:

For our purposes here, the definition of rape incorporates—and is *restricted* to—the components seen in the three accounts of blatant rape in the Bible. That is: rape, as portrayed in the Hebrew Bible, is defined as when a woman is overpowered and forced to engage in a sexual encounter that leaves her violated. While this definition is too limited, and therefore inappropriate, as a modern definition of rape, it is its very limitations that make it applicable to ancient texts. (p. 19)

Ruit's emphasis conveys to her readers that it is critical that they understand it is possible both to reconstruct ancient social mores and to use them to judge the actions of similarly ancient characters. Her analysis of ancient traumas and her conclusions about their meanings are unflinchingly direct. She pushes her readers to consider that they, like the commentators she is analyzing, bring their own intellectual preconceptions and emotional baggage to Dinah's story.

Having established these methodological and linguistic foundations, Ruit begins the true work of *The Story of Dinah*—guiding her readers through nearly twenty-five hundred years of commentary on Genesis 34. Ruit presents this analysis in a clear, accessible way by assigning chapters to distinct eras and then further dividing some eras in order to allow for a broad spectrum of perspectives and genres. In each chapter, Ruit meticulously analyzes a variety of sources from the designated era, searching for both common themes and discordant voices. Structuring the book in this way was an inspired choice as each chapter builds on its predecessors,

allowing readers to feel increasingly expert on the subject of the Jewish textual tradition while also ably demonstrating the compounding nature of biblical commentary. That *The Story of Dinah* includes Ruit's impressively detailed analysis of everything from Theodotus's poem (written in the late third century to early second century B.C.E.) to Anita Diamont's *The Red Tent* is reason enough to warrant its purchase.

One of the most interesting revelations that emerges from Ruit's analysis is how frequently extreme attitudinal shifts appear in the textual tradition. Even from one era to its immediate successor, Dinah's story was, at times, completely reinterpreted to reflect the needs and values of the commentators. In the opening of Chapter 4 ("Rabbinic Period: The Introduction of Rape Myth"), Ruit writes, "While all the texts from the intertestamental period view Dinah as a righteous victim of an unwanted and violent attack, most of the rabbinic literature portrays her as a harlot, one who either sought out her encounter with Shechem, or who in some other way deserved the violation she experienced" (p. 51). Ruit explains that even more fascinating and troubling than the shift itself is how universal it appears to have been, "Given that the Rabbis of this period tended to disagree or argue about most matters, it is truly striking that not a single midrash or Talmudic tale defends Dinah or portrays her as a faultless victim" (p. 51). After introducing her readers to the commentaries of the Rabbinic Era, Ruit moves them through the medieval and then modern periods (subdividing modernity to facilitate an in-depth examination of both Orthodox and Progressive commentaries as well as modern midrash). In these chapters, Ruit makes clear just how often attitudes toward Dinah shift among rabbis and commentators. Again and again, her analysis confirms her original argument: that the story of Dinah is in fact a "Biblical Rorschach Test" that can be used to reveal the commentators' attitudes, anxieties, and concerns about women (amongst other things). Ruit's style and scholarship effectively convey just how widely and frequently the pendulum of opinion has swung over the course of twenty-five hundred years.

The only thing that could have made *The Story of Dinah* stronger is a chapter dedicated to defining and exploring the two concepts that Ruit employs throughout the book: "rape myth" and "rape culture." While there are a few, relatively brief explanations of these terms, *The Story of Dinah* would have benefited from a

chapter dedicated to ensuring that all readers understand exactly how Ruit defines and has used both concepts. After finishing *Dinah* and understanding exactly how critical the analysis of the second chapter (“Rape in the Hebrew Bible: Was Dinah Raped?”) was to the entirety of the work, it seems clear that a similar deep dive into these two, pervasively used, contemporary terms would have only added to *The Story of Dinah’s* impressive impact.

In *The Story of Dinah*, Gavi Ruit has created a remarkable work of scholarship. Readers will be inspired to ask critical and revealing questions about the role that both biblical texts and subsequent commentaries have had in shaping our current social norms and expectations. *The Story of Dinah* is an incredible resource that would be a fantastic addition to every rabbi and layperson’s bookshelf.

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A State at Any Cost (The Life of David Ben-Gurion)

by Tom Segev, translated by Haim Watzman

(New York: Farrar, Straus and Giroux, 2019), 817 pp.

A State at All Costs (David Ben-Gurion’s Life)

by Tom Segev

(Jerusalem: Keter-Books, 2018), 798 pp. (In Hebrew)

Distinguished Israeli historian and author Tom Segev was born in Jerusalem in 1945 and studied at the Hebrew University, earning his doctorate from Boston University. His previous seven books were translated into fourteen languages, receiving prizes and accolades. He has an uncanny talent to transmit history in a riveting way. His latest book on David Ben-Gurion’s tumultuous life in the context of fateful times for the Jewish people and humanity is based on a newly released treasure trove of archival material shedding more light on the interaction between complex times and a complex personality of significant contrasts, whose decisive and uncompromising leadership led to the 1948 creation of the State of Israel, shaping its future direction.

Ben-Gurion, Israel's first Prime Minister, was a politician-philosopher-poet, or equally the other way around, which he might have preferred. He was born in Plonsk, Poland, on October 16, 1886, as Daveed Yosef Green and died on December 1, 1973, in Tel Aviv, Israel, shortly following the traumatic Yom Kippur War. Indicative of his visionary and total attachment to realizing the Zionist dream of statehood in the ancestral homeland, he regarded the date of his arrival in Jaffa, Palestine, on Friday, September 7, 1906, from Odessa, as his preferred birthdate, which is so engraved on his stately grave besides his wife, Paula, in the Negev's desert.

Though both admired for his undeniable accomplishments as one of Israel's leading fathers, and reviled for his autocratic style as a "dictator," his finest hour, rightly identified by Segev, was his heroic decision to declare Israeli statehood on May 14, 1948, immediately following the British departure from Palestine and ending its Mandate of 1917. The British were caught between the powerful rise and antagonism of Jewish and Palestinian national movements. Ben-Gurion knew that a massive Arab attack would follow the Independence Declaration, but it was an eleventh-hour opportunity not to be missed.

Early on in his budding career as a Zionist politician in Poland, he proved to his benefit to be a highly organized master of details, thoroughly studying any given subject before him. He enjoyed statistical and economic information and recorded it. The author too is to be commended for his artful weaving of myriad and intriguing pieces into a coherent whole while retaining high suspense from beginning to end. The risk in a work of that magnitude is to lose sight of the forest for its multiple trees, which the author skillfully avoids while walking in a mine field of puzzling contradictions reflecting Ben-Gurion's complicated personality as well as the multilayered reality he faced. Ben-Gurion was known as a lover and obsessed collector of books, which he would ship home when abroad, amassing an impressive library. "The books could be a substitute for the friends he did not have, and could fulfil his urge to rule, perfectly lined up as soldiers" (p. 192).

He favored Plato though he copied in ancient Greek from Aristotle. He identified with Plato's model of philosopher-king, which might partially explain Ben-Gurion viewing himself as both a serious philosopher and a determined leader who expected obedience. He required the absolute need for statesmanship in the reborn

Jewish state, given the long lack of that essential *mamlachtiyut* in the exiled experience with a Jewish tradition celebrating argumentation and divisiveness going back to biblical times, which ironically Ben-Gurion longed to return to, detesting the lengthy Rabbinic period and trying to bypass it! The Zionist movement sought to turn Jews into followers and not only leaders. The late Professor Yigael Yadin, the famous Dead Sea Scrolls scholar, who also served as IDF chief of staff and deputy prime minister, is quoted saying that Ben-Gurion's passion for acquiring books was rooted in a "very strong inferiority complex toward people with academic education" (p. 192). Ben-Gurion's perceived archrival Dr. Chaim Weitzmann was a distinguished Zionist statesman and a noted chemical scientist whose invention aided the British World War I efforts and consequently contributed to the 1917 Balfour Declaration. Two more Zionist leaders, Arthur Rupin, who was associated with the B'rit Shalom group, and the murdered Chaim Arlozorov, held doctorates.

Ben-Gurion, claims Segev, who regarded the Jewish return to tilling the land as Zionism's hallmark, himself lacked interest in agriculture and engaged only briefly in it. Thus, displaying his inner contradictions and savvy political double-talk, which is also attested to in his attitude toward the significant Arab presence outnumbering the Jews in Palestine. While following the Zionist policy of "maximum land—minimum Arabs," he was caught up in the moral issues of how to respond to Arab violence and terrorism preceding the 1948 War of Independence, which became the Palestinian "Nekba." It is clearly revealed that Ben-Gurion supported action to expel Arab villagers, whereas in prior years when arguing with the B'rit Shalom members that stood for a bi-national Jewish and Arab state, he opined, "According to my moral perspective we do not have the right to discriminate against even one Arab child even if we may thus accomplish all that we want" (p. 212). Morality appears relative and subject to changing circumstances and immediate needs congruent with having a Jewish State, Ben-Gurion's paramount objective, given that the Arabs rejected the U.N. 1947 Partition Resolution. Segev emphasizes that after all Ben-Gurion was being faithful to his underlying assumption that "Hebrew Work" by Jews only was essential to a Jewish State, along with doubting that peace was attainable with the larger and hostile Arab population. The poet Chaim Guri reportedly saw on Ben-Gurion's desk the printed verses (Exod. 23, 29–30), of God's promise

that Israel will inherit the land, gradually expelling the peoples on it. Segev contends that "Often there was no need in operational expulsion orders. The commander's spirit was sufficient" (p. 398).

Officially, he testified prior to the 1947 U.N. Partition Resolution that co-existence was possible. Inner convictions and practical politics need not mix, and/or "The objective justifies the means." While emotionally he felt for the tragedy of the Arabs who became refugees, their hasty departure en masse without a fight led him to conclude, "History has now proven who is really connected to this land and for whom it is a mere luxury that can easily be given up" (p. 431). Obviously, it was more complicated than that, and the trying implications are still with us today. Segev offers an insightful observation, "He—whose life was dedicated to fulfill the Diasporic Jewish people's national vision—failed to appreciate the galvanizing power of exile and the Palestinians' national yearnings" (p. 432). However, did Ben-Gurion have a better alternative?

Ben-Gurion had a measure of guilt for not doing enough to save lives during the Holocaust. His encounter with the surviving remnant of European Jewry weighed heavily on him. The author concludes, "Saving Jews was not at the center of his activities" (p. 320). He could not even bring himself to visit Poland at war's end. Yet he was relentless for having the survivors leave Poland for Germany through the B'richa (Escape) Organization headquartered in Paris. My family and I were among the close to two hundred thousand Jewish refugees who were enabled to make it out of Poland. Ben-Gurion's goal was to bring them all to the emerging Jewish State, where my own family arrived in April 1949, as Israel was about to celebrate its first Yom HaAtzma-ut (Independence Day). Though Ben-Gurion was welcomed in the displaced persons camps with near messianic fervor, he could not reciprocate with a heartfelt warm embrace. "Many times, it seemed that what they missed most was a listening ear. Ben-Gurion could not demonstrate fatherly sympathy with their personal pain; he internalized the Shoah as a national disaster" (pp. 356, 357). In his meeting with General Eisenhower, he asked to create a temporary Jewish state in Bavaria for the Jewish refugees, which was denied; but the General agreed to settle in the American Zone a large number of fleeing East European Jews. I spent there with my own Polish family from 1947 to 1949 in Germany's Wetzlar Displaced Persons Camp, where I finally underwent *b'rit milah* (circumcision) at age two and a half. My father Yechiel served on

the camp's council. Ben-Gurion stated, "It is a Zionist interest that in the American Zone should be a large Jewish force" (p. 356).

Ben-Gurion bemoaned that the *Shoah* deprived the risen nation of its best human potential: "I see the awful historical meaning of the Nazi slaughter not in the terrifying number of the slaughtered Jews, but in the specific annihilation of that portion of our people that it alone from Jewry's segments, was capable and equipped with all the qualities and talents necessary for building a state . . . More than Hitler hurt the Jewish people, whom he knew and hated, he damaged the Jewish state whose emergence he did not foresee." On May 8, 1945, Ben-Gurion wrote in his journal: "Victory Day—sad, very sad" (p. 348). He regarded the Holocaust survivors and those Jewish refugees from Arab lands not to be on a cultural par with those who perished. This generalized, biased, and offensive assessment is not worthy of a Jewish leader though there were cultural differences between the European and Arab backgrounds. Ben-Gurion sought to create a new Israeli-Jewish society with emphasis on a European character and not Oriental, of pioneers-warriors, "New Jews" born in Israel.

Ben-Gurion credits the millions he received from very wealthy American Jews for making a critical difference in the 1948 War. Outside Jewish financial support also enabled the building of the nuclear facility in Dimona. But he was nonetheless ambivalent concerning American Jewry and did not feel at home in their midst. He disliked his role as a fundraiser when coming to the States, "I do not wish anyone to speak before an American audience while they were dining and wearing 'evening dress'" (p. 266). He did predict that following World War II the American influence would be global, helping out the realization of the Zionist dream: "The American military will be in all countries. I pray they will also come to Eretz Yisrael. They will have power. America can send ten million soldiers. And that is enough for peace. They will possess economic power" (p. 318). He deeply worried that a nuclear war between the United States and the Soviet Union during the Cold War might result in Israel's destruction. "There can be a slight shift, we are not a big country, it is enough to destroy greater Tel Aviv and we are almost gone" (p. 457). He was also concerned that a nuclear strike on New York will deprive Israel of Jewish support.

Ben-Gurion became convinced that Israel's precarious security dilemma necessitated acquiring a nuclear capability. "In spite of faith

in the progress and future of the Zionist enterprise, Ben-Gurion continued to live with a constant sense of annihilation's danger. It was a real fear; it was anchored in the Shoah. Like many Israelis he too used Jewish annihilation for political considerations, but in addition to the Shoah's manipulative use it had a central and growing presence among the components of Israeli identity. It reflected fatalistic pessimism; forever considering a second Shoah" (p. 575). Concurrently, he regarded nuclear energy as the key to developing Israel's Negev, foreseeing a great potential in conquering the large wilderness. When told that there were some sixty thousand Bedouins in the Negev, he dismissed it claiming they don't count since they keep moving. Ben-Gurion and his wife, Paula, spent their last years as pioneers in the Negev's kibbutz Sde Boker where they are buried. The Zionist assumption and dream of an empty land awaiting Jewish redemption would not correspond to reality.

Ben-Gurion considered a Zionist only one residing in Israel though appreciated the indispensable contribution of American Jewry. Thus, argues Segev, Israelis feel superior to Diaspora Jews. Ironically, Ben-Gurion's grandson Alon managed the Waldorf Astoria Hotel in New York and lives in the States. "Hebrew education" was the "Connecting thread" (p. 513) for Ben-Gurion's significant linkage between Israel and the Diaspora, viewing Israel as the only authentic Jewish center. When he was only fourteen in 1900, he established with two friends the Ezra Association in his Polish hometown of Plonsk, pledging to speak Hebrew only. He envisioned a solution to Israel's demographic Jewish challenge in millions of Jews' arrival from developed countries led by the United States, while pained over their lack of motivation. I wonder what he would opine on the massive immigration from the former Soviet Union in the decades following his death. The watershed 1967 War—which Ben-Gurion objected to—and its aftermath of soul-searching led him to announce, "If I had to choose between a small Israel with peace and a greater Israel without peace, I would prefer the small one" (p. 640), though he used this formula before. After a Ramat HaGolan visit, he exempted it from returning territories.

He thought of himself as a *Yehudi Acher* (a different kind of Jew) whose Jewish identity was biblically and not Rabbinically connected, primarily rooted in his "'Zionist faith,'" even speaking of the "'613 Commandments of Zionism'" (p. 648). He admired

Baruch Spinoza and demanded that the “‘Greatest of Jewish philosophers since the Bible’s canonization’” (p. 649) should have his writings translated into modern Hebrew to make up for the evil done to him. When Amos, Ben-Gurion’s son who was a British army officer in the 1940s, married Mary, a non-Jewish nurse in London, it upset his parents who opposed intermarriage. She was converted by Rabbi Joachim Prinz, who was Ben-Gurion’s friend and happened to be in London. In Israel she underwent an Orthodox conversion.

Segev offers us a plausible evaluation of Ben-Gurion’s leadership role, “He was among those of the world’s leaders who labored to lead their people toward historical redemption and trusted their ability to accomplish it; his ideological determination knew no bounds and his imagination had no boundaries: both taught him that everything was possible and almost every price was worthwhile. As a leader that was his main strength: people believed in him because he believed in himself” (p. 642). Indeed, Ben-Gurion’s single-mindedness and utter devotion to his cause of creating a Jewish state was his crowning glory of shining lights, as well as reflecting shadows of compromised human conduct, which was perhaps unavoidable given the magnitude of the challenges he faced and natural human flaws. The brilliant Tom Segev succeeds in offering us, while walking on a tightrope, a balanced perspective of a great and conflicted man.

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Doing Business in America

edited by Hasia R. Diner

(West Lafayette, IN: Purdue University Press, 2018), 232 pp.

Our tradition has an ambivalent view towards business. “Hillel used to say: Someone who engages too much in business will not become wise” (*Avot* 2:5). “Rabbi Yishmael said: One who wants to become wise should engage in the study of business, as there is no greater discipline in the Torah, and it is like a flowing spring” (*Bava Batra* 175b).

That ambivalence continues to this day. We are proud of those Jews who achieve monetary success. We are also quick to say that this is not the most important pursuit to have.

When shown in the light of antisemitism, our successes have been exaggerated and distorted to become causes of hatred of us. It is this trepidation that forms the soil out of which Hasia Diner's book *Doing Business in America* sprouts.

This is an academic book. That doesn't mean it is dry. It means that it is well documented. It is published by the USC Casden Institute for the Study of the Jewish Role in American Life and Purdue University Press, and is a compilation of essays by eight authors.

The introduction by the editor, Dr. Diner (an award-winning author and prominent scholar), is a fascinating read. It addresses the taboo of examining the aspects of reality behind the antisemitic stereotype of the greedy Jew who controls international commerce. Few dare to tread in this area. But, for those who do . . . treasures abound! There is a "deep bond between the business of Jews and the business of Jewish life" (p. 21).

There are stories of steamer ship tickets sold on credit, which created immigrant banks. The newly found great wealth was recklessly transferred to New York real estate for the construction of cheap tenements in the outer boroughs. When the Great War broke out, people ran on these banks and they collapsed.

These are amazing stories. They are the reason that New York looks the way it does and the reason that banks have regulations. It is eye-opening to see the origins of so many items we see as the foundation of our modern commerce.

There are great stories of how food establishments nourished many social needs. The kosher deli didn't just serve pastrami; it was layered between gatherings for gossip and communal interaction.

Who knew that it was a Jewish enterprise, with a stereotypical caricature, "Far Away Moses" (chap. 4), which fronted an import business that shaped the future of international trade? The authors' courage to explore "third rail" topics encourage us to shine light into places few do. If we do, we might find unexpected treasures, like *Doing Business in America*.

RABBI JEFFREY GLICKMAN (LA87) received his M.B.A. from UConn in 2009 and D.D. from HUC-JIR in 2012, and he serves Temple Beth Hillel in South Windsor, Connecticut. Jeff is the author of *Have You Heard?*, an adult book disguised as a children's book about the Ten Commandments, and several licensed board games.

He and his wife, Mindy, continue to be amazed by their seven children and their spouses.

To Dwell in Your House: Vignettes and Spiritual Reflections on Caregiving at Home

by Susan Freeman

(Eugene, OR: Resource Publications, 2017), 134 pp.

To Dwell in Your House: Vignettes and Spiritual Reflections on Caregiving at Home presents a delicate weave of actual chaplain encounters and the contemplations, affirmations, ancient words, and contemporary creative prayers that are born from the encounters. Susan Freeman creatively masters a style of writing that illuminates deeper listening skills to everyone: the chaplain, the student of chaplaincy, clinicians from all disciplines, caregivers, family members, and caring communities. This book sets a precedent in spiritual care and education showing that experts in the field and individuals who want to provide better care to their loved ones can learn from shared materials.

In her exploration of spiritual care as pain reduction, Freeman recalls an interaction with a hospice patient who first reported the highest level of pain, a 10 on a scale of 1 to 10. Noticing that the care seeker verbalized her pain with a calm demeanor without visible signs of physical pain in her expression, Freeman decided to engage her before “running down the hall for help” to alleviate her suffering through medication. After an hour visit, the woman revealed all the issues in her life that were causing her distress; her illness, concern about her family, mourning the need to leave her home, and other matters. When the visit was concluding, Freeman again inquired about the woman’s pain level, to which she responded, “Oh, I don’t have any pain.” Freeman remarks: “I imagine most of us can remember a time in our lives when someone really listened to us. Perhaps we can recall how the gift of being listened to helped alleviate our own pain and suffering—perhaps a little, or perhaps, like the hospice patient I describe, a great deal. Listening can be remarkably healing” (pp. 120–21).

In addition to vignettes, the book presents and explores accessible reflections and theories about spiritual pain, homebound

living, and the palliative impact of listening. Scientific concepts and inquiry of “emotional contagion,” the study of how and why human and all sentient beings establish emotional bonds, are cited (p. 105). Freeman also draws from anthropological (Christakis and Fowler), psychological (Yalom), and theological (Tillich) theorists. In an easily reached manner, and in less than thirty pages at the conclusion of the book, the reader receives enough initial exposure about spiritual distress and spiritual care to find bibliographical resources to become an autodidact on the subject.

One of the most outstanding accomplishments of *To Dwell in Your House* is Freeman’s application of theological reflection, the chaplain’s method of correlating and applying religious, spiritual, and meaningful texts to the hermeneutical and interpretive process of the person being served.

Theological reflection often eludes new spiritual care practitioners from all backgrounds. It requires facility with listening and reflective skills, behavioral sciences, cross-cultural and interfaith textual application, philosophy, and poetry. It also requires a degree of gumption to assess what traditional and/or other textual resources may speak to the person whom the chaplain is serving. The texts may not necessarily be shared with the care seeker, yet the chaplain draws from them to tap into a significant and often time-sustained concept echoed in most ancient traditions. It takes time, sometimes years, for the chaplain-in-training to gain facility with this exercise in order to expand his or her spiritual assessments of care seekers.

In the vignette entitled “Gracia: The Language of the Heart,” Freeman describes providing care to a woman who primarily spoke Spanish. The author and chaplain in this vignette, who maintains basic Spanish skills, and the care seeker, whose Spanish came across as garbled most likely due to her medical condition, together found a method through words and body language to experience a true Buberian “I-and-Thou” connection. Freeman, in this circumstance, relates the interaction to Exodus 4:10: “Moses said to God, ‘Pardon Your servant, God. I have never been a man of words, either in times past or now that You have spoken to Your servant. I am slow of speech and slow of tongue’” (pp. 51–52). Freeman grasps onto this text recalling that Moses himself stuttered and struggled to find his speech, as she

did in this spiritual care encounter. Yet the shared presence in the interaction overrode any concerns about common culture and language.

Theological reflection is a tricky clinical practice. While we often draw from our own traditions and/or the traditions of our care seekers, we seek interactive and relational parallels in them but are careful not to impose religious interpretation or agenda on those receiving our care. It is more of an extension of the sacred narrative of the person's story and shared encounter than it is a religious device. Freeman demonstrates her expertise in this realm in a simple yet not simplistic fashion. While she draws primarily from her own Jewish tradition and texts, she also demonstrates regularly throughout the book how this aspect of clinical reflection can appear in Hindu, Buddhist, and other traditional applications. Freeman shows that the sacredness of a real-life narrative brings new life and real-life interpretations to older communal texts and contexts.

Another outstanding contribution of the author is what she terms "Transcendent Integration." Freeman expresses, through her heartfelt reflections and analysis, that active listening and skilled communication with a suffering human being is potentially life altering. She explains it as "a concept I would posit as reflecting a universal aspiration. Focusing more on a derived connotation rather than a traditional definition, I see transcendence as intimating: perspective, the long view, possibility, hope, transformation, and connectedness to meaning beyond the constrictions of one's current circumstances. I understand personal integration to include: self-awareness, self-knowing, self-acceptance, self-love, settledness within, insight, and being centered within oneself" (p. 127). The chaplain, while concerned with functionality like all other clinicians, maintains the focus of meaning-making and the possibility of deeper self-understanding and the transcendent integration of care seekers.

Through her vignettes and her analysis of them, any reader who is involved in the care of someone who is homebound due to chronic or progressive illness will expand their understanding of this growing population's varying physical, social, emotional, and spiritual circumstances. No book better defines the art and clinical practice of spiritual care as expressed through real life scenarios. No book better introduces the art and practice of listening to

caregivers. *To Dwell in Your House* is a builder of knowledge, skills, and compassion for self and others.

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Opening Your Heart with Psalm 27: A Spiritual Practice for the Jewish New Year

by Debra J. Robbins

(New York: CCAR Press, 2019), 178 pp.

One does not **read** *Opening Your Heart with Psalm 27* as much as one **lives** with the book throughout the week of weeks that begins on the first of Elul and continues through Atzeret-Simchat Torah. Rabbi Debra Robbins invites us to discipline ourselves throughout this journey of the soul, to set aside time each day to read the appointed psalm, to take in Robbins's poetic response to a word or a phrase from one of its verses, and to devote "just five minutes" to writing one's own reflection, ending with another five minutes of quiet reflection.

The seven weeks remind us of the trek from bondage to Sinai, the fifty days of Omer-counting that take us from Passover to Shavuot. In the early fall, though, the voyage is for each individual human soul.

Robbins teaches us that the daily recitation of Psalm 27 at the appointed season is of unknown origin, a source of speculation and mystery. Yes, verse 5 asks that God "might hide me in Your sukka on a chaotic day"; and verse 6 makes reference to the shofar's "sound of *t'ruah*." Still, even with the magnificent translation by Rabbi Richard Levy, z"l,¹ the contemporary Jew struggles to find, in the words of the psalm itself, sufficient meaning and connection to the *chagim* to sustain more than a rote practice of daily recitation across seven weeks.

For those who would join her in this endeavor, Rabbi Robbins makes words and phrases come alive in ways that surprise and delight. As an example, consider three words that form the heart of the psalm's last verse: *chazak v'yaameitz libecha* ("let your heart be strong and of good courage"). For the week before Rosh HaShana, Robbins addresses the phrase twice. First, she focuses on the

word *chazak* in her poem “Strength” (pp. 66–67), inviting us into her own personal lifetime struggle to be strong:

Teaching grief to smile is a lifelong job
 because I learn differently at different stages of my life.
 I was strong as a child facing the death of my mother.
 I was strong when I became a mother without my mother.
 I was strong comforting a mother whose child died,
 a child whose mother died.

Next, she moves to *v’yaameitz libecha* in “Courage, Every Day” (pp. 68–69). Here, she struggles with translation:

The common translation:
 “Be strong and of good courage”
 is accessible but lacks “heart.”

Translation, she writes is “not easy.” In fact:

It might be easier to train for a marathon,
 which is what we do when it comes to being strong
 and courageous of heart.

Each person who lives *Opening Your Heart with Psalm 27* will react differently. Writing about “being courageous and strong of heart” will be one thing for a person with a heart condition, another for a person who struggles to stand up for herself; one thing for a long-distance runner and yet another for a person whose strength risks “lacking heart.”

Robbins returns to that phrase in her final entry, “Three Choices for the End of the Sacred Season” (pp. 122–23). “I think I finally understand the coda, the final verse,” she writes, offering resolution at the end of each year’s journey. Now, Robbins has translated for herself and for us:

Chazak. Be strong.
V’yaameitz. Be courageous.
Libecha. (Remember to use) your heart.

Don’t rush out to **read** *Opening Your Heart with Psalm 27*—and whatever you do, don’t buy an electronic version! Holding this

book, seeing the words on the page, is part of the practice as one writes one's own. Acquire the book and plan to journey through Elul and Tishri with Rabbi Robbins year after year. Like the verses of the psalm itself, and like the weekly Torah portions to which we return each year, Robbins's poetry will evoke the new responses whenever we confront it. Each year, her words will awaken whatever lurks at the forefront of one's mind or in the subconscious recesses of the soul as we return to the sacred season with Rabbi Robbins's composition as our companion.

Note

1. Richard N. Levy, *Songs Ascending: The Book of Psalms, A New Translation* (New York: CCAR Press, 2017).

RABBI BARRY H. BLOCK serves Congregation B'nai Israel in Little Rock, Arkansas. He is the editor of *The Mussar Torah Commentary*, published in 2020 by CCAR Press, and a member of the CCAR Board of Trustees.

Poetry

Shalom Bayit*

Roger Nash

At a wedding, isn't there something extra
in the air? Not the dab of a grandmother's
perfume behind the bride's trembling left
ear. But has a door, somewhere, been left
open, or a fence post left down?
Something unexpected might get in,
or disappear. Not unusual in life,
but the extra, at weddings, is, we're never sure *which*.

Weddings step out from the chuppah
into the broad daylight of a story-time
where opposites blend flawlessly together.
At the smashing of the glass, a goblet is broken.

Irrevocably. So a marriage can last forever.
Hyper-realism in a drafty synagogue,
drafty realism when you get home.
Even fragments, in marriages, can make things whole.

New wood in the fires of green
marriages spits and coughs under pots
hung from the long hooks of longing.
But soup thickens just the same.

*Peace in the home. (Hebrew)

ROGER NASH is a past-president of the League of Canadian Poets. Literary awards include the Canadian Jewish Book Award for Poetry. His most recent collection of poetry, *Climbing a Question*, was published by Quattro Press (Toronto).

Playing the Saw

By a synagogue in Prague, a small *badchen*,*
 with a large audience gathering around him,
 holds a saw upside down, delicately,
 by its tip. Our expectation is unshakable
 —as expectations usually are—that he’s about
 to saw something it’s not upside down for.
 He draws a horse-hair bow
 across his instrument: snick, snip, rasp,
 grind, high-pitched bray.
 Then—unmistakably an adolescent saw—
 its voice breaks to a harsh, brassy,
 embarrassed blare, even pimples in the air.
 Warmed up at last, a seraphic soprano
 —of the glittering rust-proofed kind—
 starts to trim the whole street into
 well-stacked log-piles of quarter-tones
 —as unexpectedly natural as stars twinkling
 at midday. Saw handle between his knees,
 the *badchen* shakes his left leg
 for vibratos of tone. Legs aren’t just
 for walking on, but for ululating around.
 As we ululate on our own way, rain puddles
 reveal our shoes clog-dancing
 among tobacco-spat cobblestones of clouds;
 that the sky is only ever pruned, not felled;
 that coins in a busker’s cap must never end.

*Wedding entertainer and clown (Yiddish)

Sitting Shivah

Diana Rosen

I take extra care today to make sure
 sheets are tucked underneath the mattress,
 the bedspread draped evenly all around,
 pillows fluffed upright at the headboard,
 the room ready for company.
 I supervise the kitchen like she did
 directing people to dishes
 in that cupboard
 silverware in this drawer
 napkins on the table over here.
 Food, plates, candlesticks
 at the ready on the buffet.
 Long-ago uncles mumble hellos,
 forever-aunts wander about, numb.
 Her still-shocked friends attempt comfort.
 I walk through the mournful throng,
 sit by my just-made friends whose duty
 brought them here wondering what to say.
 (It's okay, you don't have to stay.)
 The first night, and every night of shivah,
 the sunset—hot pink and gold—
 our diminished family pretends
 to eat dinner at the usual time.

DIANA ROSEN's forthcoming work will appear in *Words for the Wild*, *Existere Journal of Arts & Literature*, and the anthologies *Book of Sighs* and *Far Villages*. Redbird Chapbooks will publish her flash and poetry work, *Love & Irony*. Recent publications include a flash fiction in *The Jewish Literary Journal* and poems in *Poesis Journal* and *As It Ought To Be Magazine*.

Haiku for the Fashion Minded

Triangle Fire, sweat
shops, piece work for pennies a
pocket, the small change

job with long hours for
those who ask no questions, who
eye only the profits

earned. Yes, sweat shops still
exist; cheap labor for high
high profits. That never

goes out of style. Some
hire designers who can draw
but can't hem, attach

a sleeve or insert
a zipper on their own. Want
to avoid a wracked

conscience yet still make
money? Nothing new to learn:
just work hard, treat all

who work for you well
and know your craft and the art.
Remember: any

hack can copy. Take
chances, lead the way. Be you.
Be you. Only you.

To You

Sharon Dolin

In the despair of my depths
 In the snare of my faults
To you I call out

Out of wastes of time
 Out of deafened desire
You I summon

With eyes cast down
 With mouth unhasped
Help from you I call in

How with stoop of shoulders
 How with judder of nerve
To you a path find

How with guilt of heart
 How with throes my foes
Abandon not my faith

Through praise of song
 Through knee of bend
Hear my prayer / my doubt rend

Reject not these chants
 Renew this year my soul
Help me ascend

SHARON DOLIN is the award-winning author of six poetry collections, most recently *Manual for Living*. Her translation from Catalan of Gemma Gorga's *Book of Minutes* appeared in the Field Translation Series (Oberlin College Press, 2019). Her prose memoir *Hitchcock Blonde* is forthcoming from Terra Nova Press in spring 2020. She is associate editor of Barrow Street Press and director of Writing About Art in Barcelona.

**A dream that has not been
interpreted is like a letter that
has not been read**

—*Babylonian Talmud*

If I tell you my dream will you moisten it
on your tongue—dissolve or savor it—this
lozenge of light, this gyre of fire?

My fire-eater, here is what I dreamt:
by the sea with the sun crackling
on the salt of our bodies, we tumbled into
the waves / were buoyed up
by the tide of our sighs until
we ran the length of each other

like the length of the shore \ losing
direction—which way was in, which
way was out—our words (tangled-up

string of us) bound us together / spinning
on invisible wings a new Ezekiel's wheel.

Ruth 1:17

Julie R. Enszer

Where thou diest, will I die,
and there will I be buried

The commandment is not staying
or leave-taking
the commandment, not the decision
of a moment, not the
authoritative voice, the commandment
is process
to not leave in this moment
during these days
over a lifetime. The commandment
is in the gleaning
of the barley fields, already
harvested but some
food left behind. The commandment
more than hope, wish, desire
is in the daily tilling of fields
the repair of the toilets
before they leak, the new school
built next to the old.
The commandment is the endless
days repeating themselves
or changing, the years passing
minute by minute

JULIE R. ENSZER is the author of four poetry collections, *Avowed* (Sibling Rivalry Press, 2016), *Lilith's Demons* (A Midsummer Night's Press, 2015), *Sisterhood* (Sibling Rivalry Press, 2013), and *Handmade Love* (A Midsummer Night's Press, 2010). She is editor of *The Complete Works of Pat Parker* (Sinister Wisdom/A Midsummer Night's Press, 2016), which won the 2017 Lambda Literary Award for Lesbian Poetry and *Milk and Honey: A Celebration of Jewish Lesbian Poetry* (A Midsummer Night's Press, 2011), which was a finalist for the 2012 Lambda Literary Award for Lesbian Poetry. She has her M.F.A. and Ph.D. from the University of Maryland. Enszer edits and publishes *Sinister Wisdom*, a multicultural lesbian literary and art journal, and she is a regular book reviewer for the *The Rumpus* and *Calyx*.

The commandment is not the first
 or last moment
 not certainty, not prescience,
 it is the middle
 when we listen carefully,
 intently
 but cannot hear G-d.
 The commandment is
 all of these moments
 until a final breath.

Cake

In the final year of her life
 when my mother called nearly every day
 she complained about lesbians getting married
 specifically a couple in her congregation
 the sisterhood was cooking for the reception
*It is bad enough she said we are sanctioning this mess
 now I have to bake a cake too*
 I think about mother's indignities
 as I bake a cake for the potluck
 to meet the new rabbi
 Almond cake with all
 the ingredients she loved
 butter, sugar, flour, eggs
 Decorated with slivered almonds
 and chocolate sprinkles

I wonder about mother's lesbian wedding cake
 how it tasted
 She grumbled as she mixed each ingredient
 Was it bitter like her words? Or
 dry and bland from her attempt
 to deny queer joy?
 As I place my cake in Tupperware
 I imagine mother saying
*oh that is too nice for those people
 You should keep it for yourself*
 but I do not
 Dutifully I bring it to the congregation

POETRY

Every year for the holidays
my mother made delicious almond squares
I want to make them this year
in her memory but
I cannot find the recipe
I know she used eggs, butter, sugar, flour
I do not know exact proportions
She made the batter in a pot on the stove
boiling water and butter
mixing in flour with a wooden spoon
followed by yolk after yolk after yolk
incorporated over low heat to not fry them

Mother beat the batter
until it glistened yellow-orange
sweet and sticky she spread it
on a buttered cookie sheet
to bake golden brown

This is what I remember
I want to eat mother's sweet confections
I wonder what I can make
in this world from memory

My cake for the rabbi is a masterpiece
sweet and moist and light
I made it myself
like how lesbians make our lives
without a recipe to guide us
without the aid of master bakers
We make do with imagination

Not the End of the World

Paul Hostovsky

“Unhand her, vagabond,” was my one line
 in the school play. I had the part of the cop,
 a minor role compared to Beth Levine’s,
 the heroine, or Billy Wiesenkopf’s,
 the vagabond. Still, I took my part seriously.
 So although he forgot to *take* her hand, right on cue
 I yelled, “Unhand her, vagabond,” and it struck me
 and everyone else, that my line made no sense. Then I knew:
 this is the kind of mistake that will end the world.
 A question of bad timing will hang in the air
 like an empty trapeze swinging above the smoke
 of that final disaster. Someone will utter a word
 too late to take back, reach for a hand that’s not there,
 and “It’s not the end of the world” will not be spoken.

Yahrzeit

Today
 the hospital where you died
 twenty years ago
 loomed up
 with its one gray
 smokestack
 and its windowless square
 grayness
 and as quickly receded
 as I turned in my window seat
 on the commuter rail train
 and watched it go by

PAUL HOSTOVSKY is the author of ten books of poetry and five poetry chap-books. He has won a Pushcart Prize, two Best of the Net awards, the FutureCycle Poetry Book Prize, and has been featured on Poetry Daily, Verse Daily, and The Writer’s Almanac. He makes his living in Boston as a sign language interpreter and Braille instructor.

POETRY

and what I felt in that moment
more than anything
was a kind of nostalgia
for that ugly hospital
with its too-bright corridors
its crowded emergency
its single pay phone
in the waiting room
the glum cafeteria
with its sticky tables
and bad coffee
the tiny chapel
off the front lobby
where I didn't know how to pray
and prayed anyway
and those revolving doors
out to the street
where the fresh air
felt so good on my cheek
and the sound of a train
going by at that moment
was the sound of my life
still going on
hurtling toward
today

After Psalm 23

Charles Bernstein

You are my shepherd.
I shall not want.
You lead me from dark, turbulent waters
To sun-drenched meadows.
You bring my life back to me
Leading me on paths of splendor.
Though I walk in the shadows of death
Sick with fears, grief, and uncertainties
I know you are with me.
Your memory consoles.
You set out a feast before me
Softening, with care, life's blows
So that now my cup overflows.
Let kindness and truthfulness take hold of me
All the days of my life.
I shall dwell in your house
Forever.

A Mourner's *Kaddish*

let the memory
of the dead
be sanctified
even as flesh
decays
spirit stays
in memory
is body, soul

CHARLES BERNSTEIN is the winner of the 2019 Bollingen Prize from Yale, the premier American award for lifetime achievement in poetry. His most recent collections are *Near/Miss* (poems) and *Pitch of Poetry* (essays), both from University of Chicago Press.

POETRY

what's left
is loss
outlasts life
good, bad
rights, wrong
love, anger,
hopes, disappointment
care, neglect, communions and
disunion, sorrows, joy
the life lived
now holy
in memory
in tears in bitterness
gratitude delight
let the names of the dead
be exalted
& so may
[names of the those mourned]
be praised
honored, extolled
glorified, adored
beyond earthly cares
or songs of comfort
beyond blame or merit
let there now be
acknowledgment
in this transition
beyond blessing

Stars Bolt the Sky in Place

Patty Seyburn

fastening night to the ether.
 At dawn the archangel who
 pulled the short straw
 must wrench each bolt
 from the well-wrought dark.
 The strength required means
 said being will rest by day,
 leaving those in her custody
 to fend off sundry furies while
 dawn comes with whisk broom
 to sweep up fragments, shards
 of firmament and prepares for
 morning's assembly, applying
 a coat of light—primer—pale
 as thought awaiting a feeling
 to saturate the dye of day.

PATTY SEYBURN has published five collections of poems: *Threshold Delivery* (Finishing Line Press, 2019), *Perfecta* (What Books Press, Glass Table Collective, 2014), *Hilarity* (New Issues Press, 2009), *Mechanical Cluster* (Ohio State University Press, 2002), and *Diasporadic* (Helicon Nine Editions, 1998). She earned a B.S. and an M.S. in Journalism from Northwestern University, an M.F.A. in Poetry from University of California, Irvine, and a Ph.D. in Poetry and Literature from the University of Houston. She is a professor at California State University, Long Beach.

No, I'm the Boy's Mother

Patty Seyburn

... Say it soft and it's almost like praying.
—Stephen Sondheim

I did want to ask
if the Mariner's Christian School
production of *Fiddler on the Roof* had a Jewish
advisor/friend. If there were a practicing Jew
anywhere near
when the sweet children were learning to collect
spit in their throats
when pronouncing what would otherwise
be a crunchy, cheerful "ch."
My best best best friend
whom I have never been mad at—never—
as naysayers like to say, well, that's
a very long time—
grew up in a border town in northern Maine,
Catholic, speaking French. And there was one
Jewish family, represented, for our purposes,
by one Jew:
Harry Escovitz. Harry Escovitz. Harry Escovitz.
Harry's father: Jake—Jacob—potato farmer
and owner of Valley Motors.
Everyone's uncle bought their Chevys
there. Harry asked to "consult"
on their production, and I am certain
he did a fine job, accepting what could not
be changed—the Eastern-European darkness
hard to imitate, irony in the marrow
hard to teach, a shrug,
and so did they accept his
guidance, pretending
to be poor (they were) and hungry (they were),
so it's possible not much acting was required
but Harry taught them the countenance
of Jews who leave and settle, settle and leave:
resigned. Bemused. Though sometimes when rehearsing

POETRY

the scene when Cossacks destroy the wedding,
boys raised their fists, almost forgetting.
They passed very well. And one kid
studied the violin, brought in from Presque Isle,
sewing up his titular role. His parents took
a roll of Polaroids each night.
My friend Tzeitel was the best. Her head of hair
belongs on stage with her defined
face, grey eyes,
and she can actually sing
though you might have to cajole her,
a little. In our locale, near a border
diagonal and thousands of miles
away, decades
intervening, I buy
my son a cocoa and a cruller, which happens
to be my favorite word. It is Dutch, and German—
they eat them on Shrove Tuesday, to use up
fat before Lent—
and the French have their own version—
fluted, made from pastry dough.
A tasty architecture.
It's very light, I tell him.
He turns it over, perplexed. His hair,
a combination of sand and wave.
His eyes, green gray blue gray green blue: fair.
If needed, he could pass.
(My grandmother, in her grave, shifts.)
My hair, bark-brown with white
encroaching roots, curly on a good day.
Often, diffuse.
The denizens of this donut store
up at dawn to tend to dough
and filling, look
at him, at me, at me, at him, at at at at.
Now they tire of wondering.
Already, I tire of this century,
though we are so near the beginning
and have to remind myself
of Harry Escovitz, of friendship, dessert, of the earnest
attempts, how they are not so bad.

Haiku/Senryu

Bruce J. Pfeffer

the Holy City . . .
even in the garbage
so many cats



in van
Jerusalem police
play backgammon



Erev Shabbat
silent prayer—
the train whistle

RABBI BRUCE J. PFEFFER, BCC (C00), is a staff chaplain at IU Health, Indianapolis, Indiana, and leads High Holy Day services at the Mattoon Jewish Community Center, Mattoon, Illinois. He is a Board Certified Chaplain (Neshama: Association of Jewish Chaplains), and a member of the Haiku Society of America.

Call for Papers: *Maayanot*

The *CCAR Journal: The Reform Jewish Quarterly* is committed to serving its readers' professional, intellectual, and spiritual needs. In pursuit of that objective, the *Journal* created a new section known as *Maayanot* (Primary Sources), which made its debut in the Spring 2012 issue.

We continue to welcome proposals for *Maayanot*—translations of significant Jewish texts, accompanied by an introduction as well as annotations and/or commentary. *Maayanot* aims to present fresh approaches to materials from any period of Jewish life, including but not confined to the biblical or Rabbinic periods. When appropriate, it is possible to include the original document in the published presentation.

Please submit proposals, inquiries, and questions to *Maayanot* editor Rabbi Daniel F. Polish, dpolish@optonline.net.

Along with submissions for *Maayanot*, the *Journal* encourages the submission of scholarly articles in fields of Jewish studies, as well as other articles that fit within our Statement of Purpose.

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STATEMENT OF PURPOSE

The *CCAR Journal: The Reform Jewish Quarterly* seeks to explore ideas and issues of Judaism and Jewish life, primarily—but not exclusively—from a Reform Jewish perspective. To fulfill this objective, the *Journal* is designed to:

1. provide a forum to reflect the thinking of informed and concerned individuals—especially Reform rabbis—on issues of consequence to the Jewish people and the Reform movement;
2. increase awareness of developments taking place in fields of Jewish scholarship and the practical rabbinate, and to make additional contributions to these areas of study;
3. encourage creative and innovative approaches to Jewish thought and practice, based upon a thorough understanding of the traditional sources.

The views expressed in the *Journal* do not necessarily reflect the position of the Editorial Board or the Central Conference of American Rabbis.

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GUIDELINES FOR SUBMITTING MATERIAL

1. The *CCAR Journal* welcomes submissions that fulfill its Statement of Purpose whatever the author's background or identification. Inquiries regarding publishing in the *CCAR Journal* and submissions for possible publication (including poetry) should be sent to the editor, Rabbi Elaine Rose Glickman, journaleditor@ccarnet.org.
2. Other than commissioned articles, submissions to the *CCAR Journal* are sent out to a member of the editorial board for anonymous peer review. Thus submitted articles and poems should be sent to the editor with the author's name omitted. Please use MS Word format for the attachment. The message itself should contain the author's name, phone number, and e-mail address, as well as the submission's title and a brief author biography.
3. Books for review and inquiries regarding submitting a review should be sent directly to the book review editor, Rabbi Evan Moffic, at emoffic@gmail.com.
4. Inquiries concerning or submissions for *Maayanot* (Primary Sources) should be directed to the *Maayanot* editor, Rabbi Daniel F. Polish, at dpolish@optonline.net.
5. Based on Reform Judaism's commitment to egalitarianism, we request that articles be written in gender-inclusive language.
6. The *Journal* publishes reference notes at the end of articles, but submissions are easier to review when notes come at the bottom of each page. If possible, keep this in mind when submitting an article. Notes should conform to the following style:
 - a. Norman Lamm, *The Shema: Spirituality and Law in Judaism* (Philadelphia: Jewish Publication Society, 1998), 101–6. **[book]**
 - b. Lawrence A. Hoffman, "The Liturgical Message," in *Gates of Understanding*, ed. Lawrence A. Hoffman (New York: CCAR Press, 1977), 147–48, 162–63. **[chapter in a book]**
 - c. Richard Levy, "The God Puzzle," *Reform Judaism* 28 (Spring 2000): 18–22. **[article in a periodical]**
 - d. Lamm, *Shema*, 102. **[short form for subsequent reference]**
 - e. Levy, "God Puzzle," 20. **[short form for subsequent reference]**
 - f. *Ibid.*, 21. **[short form for subsequent reference]**
7. If Hebrew script is used, please include an English translation. If transliteration is used, follow the guidelines in the **Master Style Sheet**, available on the CCAR website at www.ccarnet.org.

