

PREFACE

I will dwell among the people of Israel and will be their God. And they shall know that I am the Lord their God who brought them forth out of the land of Egypt that I might dwell among them; I am the Lord their God.

Ex. 29:38–46

The Halakhah sets forth the norms for a society worthy of God's presence, the laws of the sanctification of the social order that God himself has revealed to Israel at Sinai in the Torah. That broadly recognized conception requires amplification: what is the Halakhah, and how does the Halakhah make it possible to achieve the goal of sanctification? What exactly does the Halakhah set forth to realize the conviction that if one follows its many carefully-crafted regulations for the many dimensions of life, God will dwell among Israel? Here we take up the specificities of the law in quest of the modes of realizing the divine imperative.

Besides the instructions of the Torah, particularly the Pentateuch, what, exactly, do I mean by "the Halakhah"? I refer to the formulation of the normative law of Judaism in its initial statement, set forth in the Mishnah (ca. 200 C.E.), in the Tosefta (ca. 300 C.E.), the Yerushalmi (ca. 400 C.E.) or the Bavli (ca. 600 C.E.). The four Halakhic documents of late antiquity, a law code, a supplement, and two commentaries to the law and its code and supplement, all together form the statement of the norms of behavior, realizing the norms of belief, set forth in the formative age of Judaism. These documents are held to record the originally-orally-formulated and orally-transmitted tradition given by God to Moses at Sinai along with the written-out part of the Torah. The Halakhah makes its statement in a continuous and harmonious form, each document establishing close ties to its predecessors,¹ so in this account, I focus not upon differentiating from one another the documentary media of the Halakhah and their

¹ With the qualification that the Bavli is not continuous with the Yerushalmi, but, along with the Yerushalmi, appeals to the Mishnah, Tosefta, and corpus of formally-formulated rules assigned to the same authorities but not included in the Mishnah and Tosefta called *Baraitot*. I have spent nearly twenty years differentiating

traits but upon synthesizing the single, unitary message of the Halakhah.²

The Halakhah takes over the rules of Scripture and transforms them into a cogent construction, a structure and a system, that is orderly, coherent, and purposive. In that way the Halakhah translates the narrative of the Written Torah into an account of the history and destiny of God's stake in humanity: the children of Abraham and Sarah and their continuators who at Sinai by reason of the Torah became Israel. For the Oral Torah, resting as it does upon deep foundations in the Written Torah, God created nature as the setting for his encounter with humanity. But with the sin of Man, the loss of Eden, and the advent of death began the long quest for the regeneration of Man. In the unfolding of generations, ten from Adam to Noah, ten from Noah to Abraham and thence to Sinai, it was only Israel that presented itself for the encounter. But then Israel too showed itself Man. For on the other side of Sinai came the celebration of the Golden Calf. Then God provided for Israel, surrogate of humanity, the commandments as a medium of sanctification for the reconciliation with God and renewal of Eden, the triumph over the grave. Freed of sin through offerings that signified obedience to God's will, by reason of repentance and atonement, signifying man's acceptance of God's will over his own, which to begin with had brought about the fall from Eden, man might meet God,

one document from another and in other studies on comparative hermeneutics continue to do so. But the Halakhah is set forth by all documents as unitary, harmonious, and consistent throughout — that forms the generative hermeneutics of all Halakhic discourse — and any account of Judaism that is other than narrowly historical must accommodate that fundamental principle of presentation. Hence the way taken here: I relate the Halakhah whole and complete, document by document, in a continuous, unfolding statement. As I shall explain, the shift from one type face to another accommodates the requirements of the documentary reading of Rabbinic Judaism for the present purpose.

² My commentary to the several media of the Halakhah and the Aggadah takes the form of annotated translations, with special interest in questions of form and structure. The several series, in many volumes, are as follows: *The Tosefta. Translated from the Hebrew*. N.Y., 1977–1985: Ktav; *The Talmud of the Land of Israel. An Academic Commentary to the Second, Third, and Fourth Divisions*. Atlanta, 1998: Scholars Press for USF Academic Commentary Series; and *The Talmud of Babylonia. An Academic Commentary*. Atlanta, 1994–6: Scholars Press for USF Academic Commentary Series. The translations of the Talmuds are my second go-around in each case, providing a commentary in semiotic form in to each Talmud. I have done the same for the Midrash-compilations of formative Judaism in *The Components of the Rabbinic Documents: From the Whole to the Parts*. Atlanta, 1997–8: Scholars Press for USF Academic Commentary Series.

the two in mutual and reciprocal commitment. Where Israel atoned for sin and presented itself as ready for the meeting, there God and Israel would found their Eden. The Halakhah then serves as the medium of sanctification of Israel in the here-and-now, in preparation for the salvation of Israel and its restoration to Eden.³

This account of the Halakhah is encyclopedic, in that it covers, rubric by rubric, all of the native category-formations that organize the diverse laws into a systematic and coherent structure. I introduce each category-formation with attention to its definition and foundations, if any, in Scripture. I then summarize the Halakhah of the Mishnah-Tosefta-Yerushalmi-Bavli, identifying what is fresh and well-focused in the two Talmuds. I then identify the problematics of the law, the questions that the framers bring to bear upon the topic and the data they have in hand. Finally, in each category-formation, I provide a religious commentary to the Halakhah of the Oral Torah, the first complete, encompassing one of its type ever undertaken. That commentary addresses to the law questions of religious logic: how the modes of thought concerning the facts of the Torah revealed at Sinai produce a coherent statement. Specifically, the commentary asks the topical program of the Halakhah and the detailed articulation thereof to signal the sages' plan for holy Israel's social structure and system. This structure and working system they produced in response to a very specific set of questions concerning God in relationship to the world: one and only God engaged in creating a perfect world-order based on justice.

A full Introduction to the entire project is set forth in Volume I. Let me briefly explain how this work is organized in its entirety. Volumes I and II address Israel in relationship to God. Volume III explains how holy Israel will restore and then maintain that society that comes into being when the Torah is realized by the kingdom of priests and the holy people. In Volumes IV and V of this study, we take up the life of the Israelite household in the encounter with God. So we move from regulating relationships between Israel and God to establishing stable and equitable relationships among Israelites and finally to nurturing in the household itself a realm of sanctification: Israel at home in space and time with God. It is the Halakhah,

³ That statement summarizes my *Theology of the Halakhah* (in press), and the basis for that statement is contained in this encyclopedic account of each of the native category-formations of the Halakhah.

and not the Aggadah, that sets forth all of these interior lines of order: the norms of the kingdom of priests and the holy people.

Each encyclopaedia entry, or chapter, follows the same outline, as the table of contents signals. I define the category-formation, summarize the principal components of the Halakhah, document by document, then identify the problematics of the Halakhah, and finally I propose what I conceive to be the systemic statement that the Halakhah makes through that particular category-formation. We can work our way back from [1] the topic to [2] the problematic to [3] the deeper statement of a religious character that sages wished to make through a given topic — here and not there, to say this and not to say that — we can claim to define the structure and system that sages composed and empowered through their exposition of the Halakhah. My account of matters therefore moves from

- [1] description of the law, to
- [2] the analysis of the problematics (where pertinent) that governs, and onward to
- [3] the interpretation of the religious convictions and conceptions that imparted energy to the enterprise throughout.

Sages made choices, just as those writing in the name of Moses in setting forth the Pentateuchal laws did things in one way rather than in some other: supplied for this topic, information of that sort, rather than some other; set forth in this context and sequence, and not in that. Since, here too, sages could have asked another range of questions altogether, we have at each topic to ask, for this topic, why this particular problematics? And the ultimate answer links the Halakhah in particular to the religious structure and system that animate the Halakhah in general.

I find the cogency of the Halakhah in its statement of religion, which I conceive to cohere in three dimensions, already adumbrated:

- [1] Israel's public life with God, thus relationships between Israel and God, Volumes One and Two,
- [2] in a holy community founded on the principles of justice that governed God's creation of the world, thus relationships among Israelites, Volume Three,
- [3] a society comprised of Israel's dwelling places, the households, viewed as counterparts to God's dwelling place in the Temple

in Jerusalem, thus relationships within the interiority of Israel's households (the "tents, tabernacles" of Balaam's blessing). Volumes Four and Five.

Now let us dwell on the work at hand, to discern the interior lines of order and composition and proportion that form of the Halakhah the cogent system sages have always insisted it is. As always, we commence by examining the data that reveal the governing category-formation: how, precisely, does the Halakhah organize and systematize the Torah's facts and rules of ordinary life?

In the presentation of the Halakhah by topics but in the documentary sequence, Mishnah, Tosefta, Yerushalmi, Bavli, I use **bold face type for the Mishnah**, regular type for the Tosefta, *italics for the Yerushalmi*, and LOWER CASE CAPS FOR THE BAVLI. I include in my outline of the topical representation only what is absolutely necessary for an account of the principal points that the Halakhah makes about a given topic. For the Tosefta, Yerushalmi, and Bavli, this involves only new details about the topic that carry forward the exposition, not that clarify received law in one way or another. Since I have already outlined both Talmuds and brought the two outlines into juxtaposition for the divisions of the Mishnah that are covered by both, no purpose would be served by citing more than details of a topic first occurring in the continuator-writings. My main goal is to demonstrate the seamless character of the Halakhah, to show how the Halakhic structure — topics, problematics — emerges nearly whole and complete in the Mishnah, to be refined and amplified and complemented later on, but never to be vastly reconstructed as to its generative categories.

I have made no effort to impose upon the sources "gender-neutral" language, which would violate their character, imputing an originally-exclusionary intent that is in fact rarely present. When sages wish to use "Adam" or "he" to refer only to men, they signal that intent in a loud and clear fashion.⁴ In any event, in Rabbinic literature,

⁴ That — as everyone knows — an implicit male bias pervades the whole forms a trivial banality. We accomplish no worthwhile intellectual mission by judging the second century by the standards of the twentieth, let alone the twentieth by the standards of the second.

“man/Adam/he” ordinarily stands for male and female, that is, “all of humanity,” as “he” and “mankind” in much contemporary usage and in the whole of historical usage of the English and American languages are deemed to encompass both genders. In these pages that usage governs throughout, and “he-or-she” and its persnickety variations and circumlocutions do not occur.

For the sake of clarity throughout, it is necessary to explain that, in conformity to the usage in the authoritative sources under discussion here, when I refer to “Israel” I mean, the holy Israel of which the Torah, written and oral, speaks, that is, a theological formulation, the social entity created within, and by, the theology of the Torah and defined solely in its terms. Sometimes in the Halakhic sources by “Israel” sages mean, individual Israelite, and I follow suit. I do not confuse “Israel” in the holy books with the Land of Israel, the State of Israel, the Jewish People defined as a secular or ethnic entity, or any of the other reference-points of the same word that today serve in common discourse. Prior research of mine has shown how the word “Israel” finds definition in the documents of the Oral Torah. The results are utilized here.⁵

All the translations from the documents of the Oral Torah are my own. Of some of the documents, I was the first translator, for example, Sifra, Sifré to Numbers, Tosefta, and the Talmud of the Land of Israel. Of others, I was the second, for instance, the Mishnah, Sifré to Deuteronomy, the Rabbah-Midrashim, and the Talmud of Babylonia. It was necessary to redo the work of others in my form-analytical translations, because I was the first (and to date remain the only) person to conduct systematic form-analysis, spilling over into form-history, of the entire literature. The consequent reference system, imposed consistently throughout these translations, is the first ever carried out systematically and uniformly for the entire corpus. Each item signals not only location in a given document but the formal role, within the construction of that document, of a given unit of thought.

I have treated certain Hebrew words, Aggadah, Halakhah, and the like, as naturalized to the American language and therefore I have not italicized them as words of a foreign language.

⁵ *Judaism and its Social Metaphors. Israel in the History of Jewish Thought*. N.Y., 1988: Cambridge University Press, and *The Theology of the Oral Torah*.

Thanks to go the University of South Florida for the Distinguished Research Professorship that sustains my research, and to Bard College for valued support and research assistance as well. I doubt that any academic scholar in any field of the humanities enjoys a more suitable setting for academic research than I do in my association with that University and that College and their respective Departments of Religious Studies.

It gives me special pleasure to publish this *Encyclopaedia* at Brill, and in the new series that Brill has asked me to organize and edit with my colleague Professor Alan J. Avery-Peck. I have worked with Brill, off and on, for nearly four decades. In 1962 Brill published my first book and many subsequent ones, and over time I have organized and edited a number of monograph series for the firm. The director for my first twenty years with Brill was Dr. F.C. Wieder, Jr., since gone on to his eternal reward and still missed by those fortunate enough to work with him. From his time and in his tradition I have found in Brill's editors understanding, respect, and support. In Elisabeth Venekamp and Julian Deahl I encounter the newest generation and find it fully worthy of the tradition of scholarly integrity and dignity embodied in Frits Wieder.

JACOB NEUSNER

Research Professor of Religion and Theology
Bard College
Annandale-on-Hudson, NY