

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.

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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.

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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.