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Report on the Rabbinic Dissertation Submitted by
Jonathan Kraus

in Partial Fulfillment of the Requirements for Ordination

Water and Ice: The Relationship Between Aggadah and Halachah

Jonathan Kraus's thesis, Water and Ice: The Relationship Between Aggadah and Halachah, is a study of how aggadic concepts and ideas affects, underpins, or influences the halakha. Kraus's work challenges the assumption that these two genre are totally distinct for those who created formative rabbinic judaism. His method is direct: when authorities speaking aggadically about a given subject are also the creators of that subject's halakha, Kraus assumes the intersection of the two. From there he tries to answer the questions: how might the aggadah have reinforced the halakha's development and/or how might it have shaped the contours of the law?

Mr. Kraus begins his thesis by defining aggadah and by categorizing various types of aggadot. Using Heinemann and Mielziner's works, he finally classified six categories of aggadah. The rest of the chapter cites aggadic examples for each type.

Mr. Kraus turns to the Bible for what he considers paradigms of aggadah/halakha intersections. Such laws as the prohibition on the sciatic sinew justified by reference to Jacob's injury while wrestling with the angel or predicating sabbath regulations on Creation or the Exodus provide examples for Kraus. He argues that the rabbinic world receiving these Biblical traditions might have been influenced by them in creating laws out of or influenced by myths, stories, and the like.

Chapter 3 analyzes the relationship between aggadot and aggadic motifs pertaining to honoring parents, especially the aggadic comparisons between honor and fear of God and that of parents. He shows how a great deal of "filial" halakha and laws regarding honoring and revering the Temple precincts share common characteristics and how both could have been influenced by the various aggadot about parents and their near parity with God. The chapter makes a very good case for the possibility of aggadah/halakhah intersection.

Kraus then takes up what might be called "sociological" aggadah. These are non-halakhic dicta about the nature of certain people or classes. Included are children, men, women, mothers, and fathers.

He shows how in some cases the rabbinic "sociology" affects the disposition of the law. For example, presumptions about women's desire to be married, presumed to be greater than men's, lead to allowing ketubah obligations payments out of the poorest land. The law governing burglars and one's right to kill them in self-defense distinguishes between fathers and sons. Rabbinic "sociology" and the aggadah which it generates holds that a father will never kill his child. The reverse is not considered to be the "sociological" reality.

Finally, Kraus investigates the typical cases of aggadah as case studies for the halakha and as supportive afterthought to an halakha. He notes that these forms of halakha/aggadah relationship do not represent intersections in their own times. Nevertheless, they frequently influence the comprehension and extension of the law in later Codes and responsa.

Kraus concludes 1) that there may be more connection between the worlds of halakha and aggadah than has been recognized or accepted in scholarly circles; 2) that aggadah may provide a key to the world-view and values which underpin the halakha and constitute a "meta-halakhah"; 3) that recognizing that the halakha often embodies a system of ideals and values makes it as important a corpus for study by liberal Jews as aggadah has been.

WATER AND ICE:
THE RELATIONSHIP BETWEEN AGGADAH AND HALACHAH

JONATHAN EMIL KRAUS

Thesis Submitted in Partial Fulfillment of
the Requirements for Ordination

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Graduate Rabbinic Program
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Referee: Dr. Michael Chernick

"But must we conclude--as many think--that Halachah and Aggadah are two irreconcilable opposites? Those who so conclude are confusing accident and form with substance: as who should declare the ice and the water in a river to be two different kinds of matter."

-Haim Nachman Bialik, Halachah and Aggadah

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My grateful thanks to my family, who supported me with patience, humor and enormous love on the emotional roller coaster that such a creative process engenders. A special thanks to my wife, Amy, for all the blessings which she continues to bring into my life. We made it!

I have been blessed with many precious teachers during my years of study. To the extent that this work reflects their dedication, care and insistence on excellence, it is certainly to their credit as much as to mine. They are not responsible, however, for its inevitable flaws. Among these teachers, I would make particular note of:

> Dr. Lewis Barth: whose incisive and careful analysis of Midrash taught me the joy of Jewish text study and who accompanied me upon my first ventures into the Talmud with great patience, curiosity and openness.
>
> Dr. Michael Signer: whose passion for text study has always been contagious and whose tremendous sensitivity to the written word is matched by the depth of his concern for his students' growth.
>
> Dr. Michael Chernick: whose patient guidance and enormous knowledge of this literature both inspired and humbled me and who has taught me a great deal about the human qualities to which a "Rav" should aspire.

It has been my privilege to learn with all of them and with many others whom I do not mention by name. May this work reflect the love and learning with which they have blessed me and may it, in some small way, repay them for their many gifts of Torah.

PREFACE

> Halachah and Aggadah are two things which are really one, two sides of a single shield. The relation between them is like that of speech to thought and emotion, or of action and sensible form to speech. Halachah is the crystallisation, the ultimate and inevitable quintessence, of Aggadah; Aggadah is the content of Halachah. Aggadah is the plaintive voice of the heart's yearning as it wings its way to its haven; Halachah is the resting-place, where for a moment the yearning is satisfied and stilled. As a dream seeks its fulfillment in interpretation, as will in action, as thought in speech, as flower in fruit--so Aggadah in Halachah. But in the heart of the fruit there lies hidden the seed from which a new flower will grow. The halachah which is sublimated into a symbol--and such halachah there is, as we shall find--becomes the mother of a new aggadah, which may be like it or unlike. A living and healthy halachah is an aggadah that has been or that will be. And the reverse is true also. The two are one in their beginning and their end.[1]

This thesis is an initial attempt to provide a scholarly backbone for Bialik's poetic vision. It seeks to catch the organic relationship between aggadah and halachah in the historical moment of transition. More specifically, the thesis will explore a series of examples which characterize a range of potential relationships between aggadic and halachic texts. The range stretches from aggadot which seem only a rhetorical flourish or a homiletical afterthought to aggadot which serve as critical "case studies" or which establish the conceptual foundation from which halachah arises.

Perhaps a post-Enlightenment infatuation with rationality led scholars to divide Jewish literature into overly strict categories. But contemporary literary theory has taught us to be wary of imposing such perceptions on a text. Under the guidance of many recent literary theorists, we have learned to be cautious about assuming that the relationship between a particular reader and a text is the only possible relationship--the only relationship which yields authentic meaning.

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[1]H.N. Bialik, Halachah and Aggadah, trans. Sir Leon Simon (London: Education Department of the Zionist Federation of Great Britain and Ireland, 1944), 9-10.

Thus, we acknowledge the traditional scholarly attitude which has characterized aggadah as relatively insignificant for Jewish law and practice from the days of the Jerusalem Talmud through the time of Sh'muel Ha'nagid and into much contemporary scholarship. But we reserve the right to examine for ourselves these aggadic texts and their potential relationships to halachah.

When we look at these texts, not with an eye towards identifying literary boundaries but in search of relationships, we discover the possibility of reading these texts quite differently. The pages that follow present a series of examples to suggest the possibility of reassessing the place of aggadah in rabbinic literature. More specifically, this thesis will suggest that aggadah and halachah are sometimes integrally related--that one cannot truly understand the halachah without the aggadah.

The method is relatively simple. When the authorities creating halachah for a given topic are also credited with aggadic passages on the topic, the thesis presumes that something of their world view pervades both creations. In each case, we then proceed to analyze the relationship between the two types of literature. How might the aggadah have influenced or reinforced the development of the halachah? Is there any evidence to suggest that the aggadah shaped the halachah or that it affected the ways in which the understanding of the halachah evolved? Our tentative responses to these questions will be found on the pages that follow.

However, a word more is in order about the meaning of this endeavor for contemporary Judaism. Bialik's article warned of the danger of separating the two genres, of a world which knew only aggadah. In the poet's words:

> 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.[2]

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[2]Bialik, Halachah and Aggadah, 28.

Taking Bialik's argument one step further, we would warn, as well, of a Judaism which knows only halachah. Either impulse, either literature, when studied in isolation, is incomplete and may lead to unproductive distortions. More than ever, contemporary Jews need to combine the iron commitment of halachah and the molten passion of aggadah.

Rav Kook stated this point quite powerfully in an article on the essential, spiritual unity of halachah and aggadah. Kook argues that by treating these two genres as separate entities, we deny ourselves the fulfillment and wisdom which result from recognizing their inherent connections. The article notes, in part:

> We are called to pave ways in methods of study, such as those through which the halachah and the aggadah will be joined in intimate connection.
>
> The idea of bringing distant worlds close, this is the foundation of the spiritual world and its improvement. It is the fundamental power which passes like a thread through each and every corner of all life's manifestations and it should be constantly revealed in an ever-widening manner. The analytical faculty, after it performs its dissection in order to clarify each subject according to its field, should leave room for the integrative faculty, to appear by the light of the unifying soul, in which all the sciences, all the spiritual subjects with their different nuances, will be seen as different organs in one strong and sculpted body, in which one strong, vital, sculpted soul, with manifold strengths, shines. . . .
>
> The work of education should reveal in an active form by a methodological manner that fundamental unity, whose rewards are quite enormous.
>
> Truly, aggadah always contains an halachic essence, and similarly, in halachah there is an inner aggadic content. For the most part, the aggadic content resides in the qualitative form of the halachah. And the halachic content in the quantitative description of the aggadah. Without investigation or special feeling, during the study of halachah, we are influenced by the hidden aggadic content of the halachah, and in studying aggadah, by that portion of halachah which is mixed into the aggadic material.[3]

Given these compelling perspectives, it is my hope that the present study will provide a small, initial step towards reconciling these impulses in our tradition and in our lives.

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[3]Ha'Rav Avraham Yitzchak Ha'Kohen Kook, "Ichud Ha'halachah V'ha'aggadah," in Orot Ha'qodesh, Vol. 1 (Jerusalem: Ha'agudah L'hotza'at Sifrei Ha'Rav Avraham Yitzchak Ha'Kohen Kook, 1938) 25-28 [this English translation is mine].

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CHAPTER 1

THE NATURE OF AGGADAH

The Etymology of "Aggadah"

To begin with, how should we understand the term, "aggadah?" Apparently, Wilhelm Bacher proposed that the term was derived from the expression, "maggid ha-katuv"--"scripture relates."[4] Insofar as the verbal form, "maggid," grows from the same root as the term "aggadah" ('nun-gimmel-dalet') and since this phrase frequently occurs in aggadic passages, Bacher proposed this etymological explanation.

However, Bacher's explanation has not met with widespread acceptance. For instance, Joseph Heinemann points out that the phrase occurs principally in "halachic" (not aggadic) midrashim. Furthermore, according to Heinemann, Bacher's explanation overemphasizes the exegetical aspect of aggadah and ignores the many examples of aggadah which are not related to the Bible (e.g. folk stories, anecdotes).[5]

Instead, Heinemann suggests a more literal explanation of the term's etymology:

> Perhaps the most convincing explanation of the name Aggadah is one that relates the name not to the contents of the Aggadah but rather to its method of transmission. While the Scripture was read aloud in the synagogue from a scroll, the aggadot were not read to the people in the context of the synagogue service. Rather, the aggadic tradition

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[4]Wilhelm Bacher, Die exegetische Terminologie der judischen Traditionsliteratur (Leipzig: J.C. Hinrichs, 1905), 33-37, quoted in Joseph Heinemann, "The Nature of the Aggadah," trans. Marc Bregman in Midrash and Literature, ed. Geoffrey H. Hartman and Sanford Budick (New Haven and London: Yale University Press, 1986), 41.

[5]Heinemann, 42.

> was transmitted chiefly by word of mouth, that is, by being related orally in the public sermon.[6]

While this explanation would more completely encompass the literature labelled "aggadah," it is not clear that all aggadic material was first transmitted orally in public sermons. Nonetheless, this understanding of "aggadah" as material transmitted through "telling" seems more convincing than Bacher's explanation. These two explanations of the etymology of "aggadah"--Bacher's "formulaic" explanation and Heinemann's "methodological" proposal--seem to be the primary theories on the subject.

Defining "Aggadah"

Even more elusive than an etymological explanation is a precise definition of "aggadah." Since the time of Sh'muel Ha'Nagid (993-1056 C.E.), most scholars have defined aggadah in negative terms--by what it is not. Heinemann cites Sh'muel Ha'Nagid's definition of "aggadah" from "Mevo Ha'Talmud" as follows: "Haggadah is all commentary in the Talmud that deals with something other than mitzvah (here in the sense of Jewish law) [parenthetical comment is Heinemann's]."[7] In other words, all the passages in the Talmud that are not "halachah," that are not characterized by the discussion or establishment of Jewish law, are considered "aggadah."

This negative definition is problematic for several reasons. First, as this thesis will suggest, at least in certain instances, the boundaries between the concerns of halachah and those of aggadah are not entirely distinct. Second, a negative definition of aggadah does not teach us much about the nature or contents of this literature.

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[6]Ibid., 41.

[7]Sh'muel Ha'Nagid, "Mevo Ha'Talmud," quoted in Heinemann, 42.

Having noted these difficulties, however, one is hard-pressed to propose a comprehensive, positive definition of aggadah. As we shall see, the material incorporated under this label is incredibly diverse in both form and content. By way of positive definition, the Encyclopedia Talmudit offers: "words of faith, wisdom and moral instruction, stories and analogies, which don't contain halachah."[8] Another scholar, after repeating the negative definition, suggests: ". . . all historical records, all legends and parables, all doctrinal and ethical teachings and all free and unrestrained interpretations of Scripture."[9] However, both of these "definitions" more closely approximate a list of aggadic categories than they do a formal definition of the properties shared by all aggadic texts.

A tentative attempt to combine positive and negative definitions of aggadah might be: "those non-legal Jewish texts which seek to provide the community with meaning, values and a world view in the form of midrashic interpretations, historical narratives, legends, parables, and aphorisms." While it may be difficult, other than by inference, to prove the didactic intention of every aggadic text, we shall see further on that some of the rabbis, themselves, had a similar understanding of the nature of aggadah.

The Historical Context

Before turning to the rabbinic understanding of aggadah, however, it is worthwhile to take a moment and briefly set this literature in its historical context. Most scholars agree that aggadah is, for the most part, the product of the Palestinian Jewish community[10] from the middle of the Second Temple period

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[8]Encyclopedia Talmudit, 1986, s.v. "Aggadah," 129 [Hebrew].

[9]Moses Mielziner, Introduction to the Talmud, with a new bibliography, 1925-1967 by Alexander Guttmann, 5th ed., (New York: Bloch Publishing Company, 1968), 56.

[10]"The contribution of Babylonian Jewry in the field of aggadah, though not negligible, is very limited" [Encyclopedia Judaica, s.v. "Aggadah," 356].

(after Alexander's conquest ca. 333 B.C.E.) through the Arab conquest of Palestine and the end of the Talmudic period (ca. 630 C.E.).[11] While some of the sages specialized in aggadah, most of them were masters of halachic literature, as well.[12]

As to the historical background of these texts, Heinemann notes that aggadic literature, particularly in the form of midrashim, represents a "creative reaction to the upheavals suffered by Israel in their land during this period."[13] In particular, Heinemann points to the need for a new interpretation of the Bible, given rapidly changing historical circumstances.[14] Heinemann's historical perspective lends support to the definition of aggadah proposed above. Faced with dramatic changes in the Jewish people's sociopolitical reality, aggadic literature may represent, at least in part, the rabbis' continuing attempts to provide a set of values, a world view and a sense of meaning for a community besieged by instability and profound changes.

In terms of its historical development, aggadic material seems to have emerged from a variety of sources--both Jewish and non-Jewish. The Encyclopedia Judaica notes:

> . . . in many instances it [the aggadah] merely adapted ancient materials to its needs. Ready at hand were myths dating back to biblical times, popular legends of national heroes, patriarchs, prophets and kings and fanciful stories, some the product of the Jewish imagination and 'wisdom,' and others remnants of the folklore treasury of nearby and faraway peoples, which had become judaized in the course of time.[15]

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[11]Heinemann, 42.

[12]Encyclopedia Judaica, s.v. "Aggadah," 363.

[13]Heinemann, 42.

[14]Ibid.

[15]Encyclopedia Judaica, s.v. "Aggadah," 356-7.

Similarly, contemporary, popular maxims and stories were sometimes incorporated into the aggadah, with the insertion of Jewish motifs and symbols, where appropriate.[16]

Much aggadic material, seems to have been drawn from either public sermons (as noted above by Joseph Heinemann), or from expositions of the rabbis in the academies. In fact, much of the aggadic material that has come down to us grew from an interplay between the public sermon and the private academy. Each forum provided material for and took material from the other--"obviously, the aggadic expositions of the sages in the academies were subsequently made use of by popular preachers, just as those of the public sermons found their way back to the academies."[17] In part, this diversity of sources accounts for the diversity which characterizes aggadic literature.

Such diversity of sources probably also played a role in shaping the rabbis' ambivalent attitude towards aggadah. On the one hand, we have statements about its spiritual power such as the one found in Sifrei Deuteronomy 49: "If you wish to get to know Him by whose words the world came into being, study the aggadah." On the other hand, for the rabbis, the aggadah clearly did not possess the authority given to halachah. The Jerusalem Talmud (TJ Pe'ah 2:6, 17a) explains that "no halacha may be derived from the aggadot," especially since the purpose of aggadah is "not to state of anything that it is forbidden or permitted, nor that it is impure or pure (TJ Hor. 3:8, 48c)."

Later authorities stated their concerns about the authority of aggadah in even more pointed terms. Sh'muel Ha'nagid accuses the aggadist of subjectivity and saying "whatever occurs to him and whatever he perceives in his mind."[18]

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[16]Ibid.

[17]Ibid., 359.

[18]Sh'muel Ha'nagid, "Mevo Ha'Talmud," quoted in Heinemann, 52.

Rabbi Samuel ben Chofni wrote: "halakhot and legal traditions, these are the fine flour (solet), and the words of the haggadot--refuse (pesolet)."[19] While the latter analogy does suggest an organic relationship between halachah and aggadah (cf. Bialik's water/ice metaphor), neither perspective holds aggadah in particularly high esteem.

In addition to the apparent subjectivity of aggadic literature, Heinemann suggests that some rabbinic authorities were troubled by contradictions between different aggadic interpretations, by the absence of any single, authoritative aggadic interpretation and by the fact that, unlike in halachic literature, there is not necessarily a line of authoritative transmission from earlier sages.[20] While some of these authorities probably recognized the spiritual and/or ethical power of certain aggadic passages, the literature's diverse contents and the wide-ranging freedom of its authors made them reluctant to grant it a measure of authority comparable to that given halachah.

Categories of Aggadah

The diverse contents of aggadah do not permit a simple, comprehensive categorization or typology. Nonetheless, some scholars have attempted to organize aggadic literature into characteristic types. These typologies range from extended lists of characteristic aggadic forms and mechanisms, to attempts at defining a concise set of aggadic categories. Among the former typologies, the Encyclopedia Judaica notes:

> It [aggadah] includes narrative, legends, doctrines, admonitions to ethical conduct and good behavior, words of encouragement and comfort, and expressions of hope for future redemption. . . . Parables and allegories, metaphors and terse maxims; lyrics, dirges, and prayers, biting satire and fierce polemic, idyllic tales and tense dramatic dialogues, hyperboles and plays on words, permutations of letters, calculations of their arithmetical values (gematria) or their

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[19]Quoted in Simcha Assaf, Tekufat ha-Ge'onim ve-Sifrutah (Jerusalem: Mossad Bialik, 1955), 283, quoted in Heinemann, 52.

[20]Heinemann, 52-3.

> employment as initials of other words (notarikon)--all are found in the aggadah.

While such a list highlights the diverse forms and mechanisms of aggadic texts, it does not provide much of a systematic, understanding by which to organize aggadic material. More helpful in this regard are two other "typologies," each of which presents a more concise sets of categories.

Joseph Heinemann proposes three, general categories of aggadah, arranged roughly according to content:

> 1) aggadot that are inextricably related to the biblical narrative--the bulk of the aggadot in talmudic-midrashic literature falls into this category; 2) "historical" aggadot which tell of post-biblical personalities and events, and 3)"ethical-didactic" aggadot which offer guidance and outline principles in the area of religious and ethical thought.[21]

Heinemann, himself, recognizes a few limitations in this typology. He places the term, 'historical,' in quotations marks to acknowledge that many of the tales regarding the sages should "be considered aggadic legend and not reliable historical information."[22] In addition, Heinemann notes that while all three types generally have some educational intent, "the uniqueness of the 'ethical-didactic' aggadot lies in the fact that the didactic message is stated explicitly rather than conveyed implicitly through a story or attached to a biblical verse by way of proof."[23]

Moses Mielziner proposes a similar but slightly more elaborate typology of aggadah. Mielziner's typology includes six categories, also arranged according to content:

> 1. Exegetical Agada [sic], giving plain or homiletical and allegorical explanations of Biblical passages.
>
> 2. Dogmatical Agada, treating of God's attributes and providence, of creation, of revelation, of reward and punishment, future life, of Messianic time, etc.

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[21]Ibid., 43.

[22]Ibid.

[23]Ibid., 44.

> 3. Ethical Agada, containing aphorisms, maxims, proverbs, fables, sayings intending to teach and illustrate certain moral duties.
>
> 4. Historical Agada, reporting traditions and legends concerning the lives of biblical and post-biblical persons or concerning national and general history.
>
> 5. Mystical Agada, refering [sic] to Cabala, angelology, demonology, astrology, magical cures, interpretation of dreams, etc.
>
> 6. Miscellaneous Agada, containing anecdotes, observations, practical advices, and occassional [sic] references to various branches of ancient knowledge and sciences.[24]

Both Heinemann and Mielziner identify categories of exegetical aggadah (midrash) and of "historical" aggadah. However, in place of Heinemann's "ethical-didactic" category, Mielziner specifies four separate rubrics ("dogmatical," "ethical," "mystical" and "miscellaneous").

While the boundaries that separate Mielziner's categories are more difficult to draw precisely, his typology strikes a more effective balance between describing the enormous diversity of this literature and suggesting a conceptual framework for organizing the material. Therefore, though neither typology is without its limitations, for the present effort, we shall utilize Mielziner's typology to offer some brief examples of each category of aggadah.

Exegetical Aggadah

"Exegetical" aggadot provide explanations of Biblical passages -- such explanations including the plain sense of the text and/or a homiletical or allegorical interpretation. The following aggadah provides an exegetical interpretation of Genesis 21:33:

> '. . . and he [Abraham] called there on the name of the Lord, the Everlasting God.' Resh-Laqish said: Do not read 'and he called' [va'yiqra], rather 'and he caused to call' [va'yaqri]. This teaches that Abraham, our father, caused every passer-by to call on the name of the Holy One, Blessed be He. How so? After they had eaten and drank, they rose to bless him. He said to them: Of whose bounty have you eaten? Of the bounty of the Everlasting God--they gave

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[24]Mielziner, 57.

> thanks and praise and blessing to the One Who spoke and the world came into being.[25]

While this text is clearly exegetical, few would argue that it also contains an implicit ethical/moral model regarding proper religious behavior. Despite this overlap of categories, however, since the passage grows from the interpretation of a Biblical verse, we place it in this first category.

Dogmatical Aggadah

The defining quality of "dogmatical" aggadot seems to be their attention to some aspect of Jewish belief or ideology (e.g. God's attributes and providence, creation, messianic time). The following aggadah is a reflection on God's nature in comparison with that of the human soul:

> As God fills the whole world, so also the soul fills the whole body. As God sees, but cannot be seen, so also the soul sees, but cannot be seen. As God nourishes the whole world, so also the soul nourishes the whole body. As God is pure, so also the soul is pure. As God dwells in the inmost part of the Universe, so also the soul dwells in the inmost part of the body.[26]

The previous example clearly belongs in the category of "dogmatical" aggadot. The following example, however, while similar in its content, is more difficult to categorize. It typifies aggadot which describe the legendary confrontations between a sage and a historical figure--in this case, Caesar.

> Caesar said to Rabban Gamliel: You [the Jews] say: any place in which ten [Jews] are gathered, the Divine Presence [shechinah] dwells--how many Divine Presences are there? Rabban Gamliel called to his attendant (Caesar's) and struck him on his neck. He [Caesar] said to him: For what [reason do you strike him]?--Because of the sun (which is entering) into Caesar's palace. Caesar said to him: The sun rests on all the world.--And if the sun, which is but one of the many millions which serves before the Holy One, Blessed be He--rests on all the

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[25]Sotah 10a. The translation is the present author's, making use of The Holy Scriptures (Philadelphia: The Jewish Publication Society of America, 1955).

[26]Berachot 10a, quoted in C(laude) G(oldsmid) Montefiore and H(erbert) Loewe, eds., A Rabbinic Anthology, with a prolegomenon by Raphael Loewe, 1st Schocken ed. (New York: Schocken Books, 1974), 22.

> world, the Divine Presence of the Holy One, Blessed be He, how much the more so![27]

While the content of this passage clearly belongs to the "dogmatical" category, the "historical" character of the story places it under that rubric of aggadot, as well.

Ethical Aggadah

Many, if not most aggadot, contain some ethical/moral lesson. However, as Heinemann observed in the passage cited above, one can distinguish some aggadic passages whose explicit purpose is to teach correct behavior or attitudes. These texts come under the rubric of "ethical" aggadot. For example, regarding the importance of humility, "Rabbi Johanan said: The words of the Torah abide only with him who regards himself as nothing."[28] Or, regarding the correct understanding and reification of certain values:

> Ben Zoma said: Who is wise? He who learns from all men, as it is said, 'From all my teachers I have gotten understanding' (Ps. CXIX, 99). Who is mighty? He who subdues his passions. Who is rich? He who rejoices in his portion. Who is honoured? He who honours others.[29]

On the importance of avoiding unseemly speech:

> R. Hanan b.Raba said: Everyone knows why a bride enters the bridal chamber. But if a man sullies his lips by speaking of it, then, even if seventy years' prosperity have been decreed for him, it is reversed.[30]

Insofar as all of the preceding aggadot explicitly suggest correct behavior and understanding, they come under the rubric of "ethical" aggadot.

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[27]Sanhedrin 39a, quoted in Haim Nachman Bialik and J.H. Rabinitzki, eds., Sefer Ha'aggadah, 3rd ed., (Tel-Aviv: D'vir Co. Ltd., 1975), 496a [the translation is by the present author].

[28]Sotah 21b, quoted in A Rabbinic Anthology, 472.

[29]Avot 4:1, quoted in A Rabbinic Anthology, 490.

[30]Shabbat 33a, quoted in A Rabbinic Anthology, 491.

Historical Aggadah

As we saw above, some aggadot which have a "historical" character may belong to other categories, as well. In fact, in almost every instance, the events reported by these passages have either an explicit or implicit didactic message. The following text from Makkot 24b is no exception:

> Once R. Gamaliel, R. Elazar, R. Joshua and R. Akiba were journeying, and they heard the tumult of the city of Rome from afar, and the first three wept, but Akiba laughed. They said, "Why do you laugh?" He said, "Why do you weep?" They said, "These heathen, who pray and burn incense to idols, dwell in peace and security, whereas in our case the house, which was the footstool of our God's feet, is burnt with fire; how should we not weep?" He replied, "That is why I laugh: if this is the lot of those who transgress His will, how much more glorious shall be the lot of those who perform His will."[31]

Entirely apart from the question of its historical veracity, the incident models a hopeful and uplifting perspective on Jewish suffering and the apparent ease of Israel's enemies.

The famous story about Johanan b. Zakkai's escape from Jerusalem during the siege of Jerusalem is another good example of this genre. The text elevates R. Johanan as a model of wisdom and foresight, even as it draws the character of Vespasian rather sympathetically. It also provides an "historical," narrative basis for the establishment of the academy at Yavneh.

> When Vespasian came to destroy Jerusalem, he said to them, "Fools, why do you seek to destroy this city and to burn the Temple? All I want is that you deliver up to me one single bow and arrow, and then I will raise the siege." They said, "As we repelled the first and second attacks, and slew your men, so we will repel the next attack, and slay them." When R. Johanan heard this, he sent for the men of Jerusalem and said to them, "Why would you lay waste this city and burn the Temple? All he seeks from you is one bow and arrow, and then he will retire." They replied, "As we repelled the first two attacks and killed his soldiers, so we will now go out against him and kill him." Vespasian had men who watched beside the walls, and whatever they heard, they wrote upon arrows and threw them over the wall. So they told Vespasian that R. Johanan was a friend of the Emperor. When R. Johanan urged them for three days, and they refused, he called his disciples, R. Eliezer and R. Joshua and said, "Up and carry me out of the city. Make a coffin and I will sleep in it." They did so, and R. Eliezer took up one side and R. Joshua the other, and at the setting of the sun they brought it to the gates of Jerusalem. The gatekeeper said, "What is

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[31]Makkot 24b, quoted in A Rabbinic Anthology, 212.

> this?" They said, "A corpse is in it, and, as you know, a corpse must not be left in the city overnight," so they said, "If it be a corpse, carry it forth." So they carried him forth, and brought him to Vespasian. Then they opened the coffin, and he stood before Vespasian. He said, "Are you R. Johanan b. Zakkai? What shall I give you?" He replied, "All I ask of you is that I may go to Jabneh, and teach my disciples there, and fix a place of prayer there, and carry out all the commandments." He answered, "Go, and all that it pleases you to do there, do."[32]

While this passage probably constitutes "revisionist history" by contemporary standards, it reflects rabbinic values (e.g., the reference to the prohibition against leaving a corpse in the city overnight) and the development of rabbinic historical-mythology (e.g., how R. Johanan b. Zakkai established his academy and saved Judaism).

A final example from this rubric also reflects the use of aggadah in interpreting and reframing contemporary, historical events. The following passage both recounts and explains the fall of Bethar, with which the Bar Kochba revolt ended.

> For three years and a half did Hadrian surround Bethar. R. Elazar of Modi'im sat in sackcloth and ashes, and prayed daily: "Sovereign of the Universe! Take not this day thy judgment seat." Hadrian desired to abandon the siege, but a Samaritan said to him, "Do not depart. For as long as the hen [i.e. R. Elazar] sits on her brood in sackcloth and ashes, you will not be able to take the city. But I see what needs to be done, and I will deliver the city to you." So he entered the city by means of a drain, and found R. Elazar standing in prayer. The Samaritan made as though he were whispering in Elazar's ear [but Elazar did not notice him]. The citizens saw the Samaritan, and brought him to Bar Koziba, and said to him, "Your uncle wishes to betray the city; we have seen this old man conversing with your uncle." Bar Koziba said to the Samaritan, "What did you say to him, and what did he say to you?" The Samaritan replied, "If I tell you, Hadrian will kill me: if I do not tell you, you will kill me. Better that Hadrian kill me than that you should." So he said, "Elazar told me that he wished to deliver the city to Hadrian." Then Bar Koziba went to Elazar, and asked what the Samaritan had said to him. He answered "Nothing." "What did you say to him?" "Nothing": so Bar Koziba trampled him to death. Instantly a heavenly voice went forth, saying, "Woe to the worthless shepherd that leaves the flock; the sword shall be upon his arm, and upon his right eye: his arm shall be clean dried up, and his right eye shall be utterly darkened (Zech. XI,17). Thou hast slain R. Elazar, the arm of all Israel and their

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[32]Avot de'Rabi Natan (vers. I), IV, 11b-12a, quoted in A Rabbinic Anthology, 266. Mielziner describes Avot de'Rabi Natan as "a kind of Tosephta to the Mishnic [sic] treatise 'Pirke Aboth,'" (Mielziner, 63).

> right eye, therefore shall thine arm be clean dried up, and thy right eye utterly darkened." At once Bethar was captured and Bar Koziba slain.[33]

This aggadah places the events that ended the Bar Kochba revolt in a context which is consistent with rabbinic theology. Only faith in God and the merit of a sage had the power to protect them. Without these, the Israelites were bound to suffer defeat. Thus, as with other examples of this type, the aggadah takes a historical event and frames it according to a rabbinic world view.

Mystical Aggadah

The "mystical" rubric is rather broadly defined in Mielziner's typology. He seems to include any aggadot that describe or relate to "supernatural" phenomena. Mindful of the contemporary perspective on mysticism as a respectable and even systematic stage in the history of religions, one must accept Mielziner's category definition with some caution.[34] At the same time, however, Gershon Scholem has acknowledged:

> From the beginning of its development, the Kabbalah embraced an esotericism . . . which was not restricted to instruction in the mystical path but also included ideas on cosmology, angelology and magic. Only later, and as a result of the contact with medieval Jewish philosophy, the Kabbalah became a Jewish "mystical theology" more or less systematically elaborated.[35]

Thus, during the rabbinic period (a relatively early stage in the development of Jewish mysticism) one might label as "mystical" aggadic passages which would later fall on or outside the periphery of formal, Jewish mysticism.

However, while we acknowledge the broad range of Jewish "mystical literature" at this early period, it will be useful to distinguish between aggadic material that contained the seeds of more formal mysticism and material that we

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[33]T.J. Ta'anit IV,8, quoted in A Rabbinic Anthology, 263.

[34]Here, it seems fair to note that Mielziner probably possessed a somewhat biased, "anti-mystical" perspective which was shared by many representatives of 19th century, German scholarship.

[35]Encyclopedia Judaica, s.v. "Kabbalah," 493.

will describe as "supernatural" or "magical." In drawing this distinction, the following, general definition of mysticism is useful:

> Mysticism is a direct and immediate communion of the soul with the divine. Mystics claim that their knowledge and experience of ultimate reality are attainable through a different kind of insight from that of ordinary sense perception and rational thought, a supraintellectual insight that comes only after a strenuous course of personal preparation.[36]

We shall describe as "mystical" only those aggadot which reflect an experience of "communion" or the type of esoteric "knowledge of ultimate reality" described above. The rest of the texts in this category will be placed in a separate rubric, the "supernatural/magical aggadot."

An example of this "magical" category would be the following confrontation between Rabi Meir and Satan:

> R. Me'ir used to mock at sinners. One day Satan appeared in the likeness of a woman on the other side of the river. As there was no ferry boat, he seized the rope bridge, and went across. When he was half-way, Satan vanished saying, 'If they had not called out from heaven, "Beware of R. Me'ir and his Torah," I would not have assessed your blood at two farthings.'[37]

It bears repeating that the categories of aggadah are not sharply separated. Nonetheless, the preceding aggadah describes a "supernatural" encounter with Satan. The following text describes the magical power which results from good deeds:

> An epidemic once broke out in Sura, but in the neighbourhood of Rab's residence the epidemic did not appear. The people thought that this was due to Rab's merits, but in a dream they were told that the miracle was too slight to be attributed to Rab's great merit, and that it happened because of the merits of a man who willingly lent hoe and shovel to a cemetery (for the digging of graves).[38]

Such revelatory dreams also frequently appear in aggadot which belong to the "magical/supernatural" rubric. Only to the extent that these dreams reflect a

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[36]Robert M. Seltzer, Jewish People, Jewish Thought: The Jewish Experience in History (New York, Macmillan Publishing Co., Inc., 1980), 419.

[37]Kiddushin 81a, quoted in A Rabbinic Anthology, 298.

[38]Ta'anit 21b, quoted in A Rabbinic Anthology, 182.

"mystical encounter" or reveal esoteric knowledge about God do we place them in the "mystical" category.

Moving on to that category, it should be noted that there are aggadot which contain the seeds of what later became the formal Jewish mystical system--"kabbalah." In this regard, Scholem, notes:

> Against the theories concerning Persian and Greek influences should be set the inner dynamism of the development taking place within Palestinian Judaism, which was in itself capable of producing movements of a mystical and esoteric nature. This kind of development can also be seen in those circles whose historical influence was crucial and decisive for the future of Judaism . . . that is to say, at the very heart of established rabbinic Judaism.[39]

More specifically, he observes:

> The Talmud speaks of sitrei Torah and razei Torah ('secrets of the Torah'), and parts of the secret tradition are called ma'aseh bereshit (literally, 'the work of creation') and ma'aseh merkabah ('the work of the chariot').[40]

According to these observations and the working definition proposed above, the following texts are examples of the "mystical" rubric.

Berachot 7a discusses the idea that God prays. The passage includes two elements of mystical aggadah. The first element is reflection about God's essential nature and, more particularly, God's defining attributes. As Jewish mysticism crystallized, an entire body of literature evolved around this subject. The second, more atypical, mystical element is the description of an actual encounter with the Divine.

> R. Johanan says in the name of R. Jose: How do we know that the Holy One, blessed be He, says prayers? Because it says: Even them will I bring to My holy mountain and make them joyful in My house of prayer.[5] It is not said, "their prayer", but "My prayer"; hence [you learn] that the Holy One, blessed be He, says prayers. What does He pray?--R. Zutra b. Tobi said in the name of Rab: "May it be My will that My mercy suppress My anger, and that My mercy may prevail over my [other] attributes, so that I may deal with My children in the attribute of mercy and, on their behalf, stop short of the limit of strict justice".[6] It was taught: R. Ishmael b. Elisha says: I once entered into the innermost part [of the Sanctuary] to offer incense and saw Akathriel Jah'7 the Lord of Hosts, seated upon a

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[39]Ibid., 496.

[40]Ibid., 494.

high and exalted throne. He said to me: Ishmael, My son, bless Me! I replied: May it be Thy will that Thy mercy may prevail over Thy other attributes, so that Thou mayest deal with Thy children according to the attribute of mercy and mayest, on their behalf, stop short of the limit of strict justice! And He nodded to me with His head.

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(5) Isaiah LVI, 7. Lit., "In the house of My prayer". (6) I.e., not exactly the full penalty from them. (7) Lit., "crown of God".

Again, it should be noted that the Talmud does not link any halachic discussion with this aggadic passage. There is no legislation regarding prayer, beliefs about God, or even the importance of pursuing similar encounters with God. Nonetheless, the passage presents a foundational concept for Jewish mystical thought. God experiences a constant struggle between the dialectical attributes of strict justice and mercy and desires to emphasize the latter in dealing with humanity.

Another common theme in mystical aggadah is speculation about the process of creation. The following passage, from Hagigah 12a, reflects both on God's attributes and the process of creation:

R. Zutra b. Tobiah said that Rab said: By ten things[1] was the world created: By wisdom[2] and by understanding[3] and by reason,[4] and by strength,[5] and by rebuke,[6] and by might,[7] by righteousness and by judgment,[8] by lovingkindness and by compassion.[9] . . . Rab Judah further said: At the time that the Holy One, blessed be He created the world, it went on expanding like two clues[17] of warp, until the Holy One, blessed be He, rebuked it and brought it to a standstill, for it is said: "The pillars of heaven were trembling, but they became astonished at His rebuke". And that, too, is what Resh Lakish said: What is the meaning of the verse, I am God Almighty?[18] [It means], I am He that said to the world: Enough![19]

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(1) I.e., potencies or agencies. . . . (2) I.e., the ability to understand what one learns. (3) I.e., deductive power. (4) I.e., deliberative contemplation. (5) I.e., physical strength. (6) I.e., the application of restraint or limitation. (7) I.e., moral power. (8) I.e.., the enforcement of justice. (9) I.e., the feeling which prompts the action of lovingkindness. . . . (17) A clue of thread, of rope, etc. (Jast.). (18) Gen. XVII, I; XXXV,II. (19) Shaddai[41] "Almighty", is explained as a compound of sh[38] "who (said)", dai,[38] "Enough".

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[41]This is rendered in Hebrew in the original.

As mentioned above, speculation about God's attributes eventually created a large, mystical literature. Similarly, speculation about the actions and qualities with which God created the universe eventually generated ideas about both cosmology and theology.[42] Though the later, mystical literature presented more formal systems of thought, the roots of many subsequent mystical concepts are found in Talmudic aggadah.

A final example reflects aggadic evidence of both general esoteric, mystical knowledge and the particular power associated with pronouncing God's name. Such powerful, secret knowledge is shared only with those who are worthy of it. In Kiddushin 71a, we read:

> Rabbah b. Bar Hanah said in R. Johanan's name: The [pronunciation of the Divine] Name of four letters the Sages confide to their disciples once a septennate--others state, twice a septennate. Said R. Nahman b. Isaac: Reason supports the view that it was once a septennate, for it is written, this is my name for ever [le'olam][4] which is written le'allem.[5] Raba thought to lecture upon it at the public sessions. Said a certain old man to him, It is written, le'allem [to be kept secret].

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(4) Ex. III, 15. (5) Defectively without a waw, hence to be read le'allem. To be kept secret.

Knowledge of the proper pronunciation of God's name is mystical knowledge--knowledge of the hidden realm of God and God's nature. Those who could invoke God's name, such as the High Priest on Yom Kippur, were vested with cosmic power and mystical insight. While there is no halachah in this particular passage, there are many halachic links with this idea. Later Jewish mystical thought would have a great deal to say about both the power and

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[42]As later examples of such mystical speculation about God's attributes and creation, one calls to mind the Lurianic concepts of the shattering of the vessels ["shevirat ha'kelim"] and Divine 'retraction' ["tzim'tzum"]. Similarly, many discussions in Jewish mysticism about the successive divine "emanations" which produced this universe come to mind.

character of God's names as well as various areas of secret knowledge about God and the Divine realm.[43]

Miscellaneous Aggadah

The inclusion of a "miscellaneous" category bespeaks the great diversity of aggadic material and the impossibility of creating an exhaustive typology. The following anecdote is aggadic and yet does not truly belong in any of the previous categories.

> There was once a pious man who was married to a pious woman, and they had no children. They said, 'We are no profit to God.' So they divorced one another. The man went and married a bad woman, and she made him bad; the woman went and married a bad man, and she made him good. So all depends upon the woman.[44]

A similar observation about the importance of women is the following:

> R. Johanan said: If a man's first wife dies, it is as if the Temple were destroyed in his day. R. Alexandri said: If a man's wife dies, the world becomes dark for him. R. Samuel b. Nahman said: For everything there is a substitute except for the wife of one's youth.[45]

The following observation about the nature of Torah study is also difficult to classify elsewhere:

> R. Banna'ah used to say: If one studies the Torah for its own sake, it becomes to him an elixir of life; but if one studies the Torah not for its own sake, it becomes to him a deadly poison.[46]

Clearly, such a category is necessary in order to take account of the enormous diversity of aggadah--allowing a place for those which do not quite fit in elsewhere.

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[43]In addition, one could point to the contemporary tendency among many Jewish communities to avoid pronouncing even euphemisms and replacements of the tetragrammaton (no one even knows how the tetragrammaton is pronounced anymore). While the idea of the power of God's name makes its way into mystical circles in the form of speculation about the power and significance of God's various names, it also entered mainstream, rabbinic Judaism.

[44]Genesis Rabbah, Bereshit 18:7, quoted in A Rabbinic Anthology, 509.

[45]Sanhedrin 22a, quoted in A Rabbinic Anthology, 511.

[46]Ta'anit 7a, quoted in A Rabbinic Anthology, 277.

Having examined a few examples of various aggadic rubrics, one better understands why this literature is not susceptible of simple definition or categorization. An "historical" legend that relates events in the life of a sage may, as we have seen, also contain a defense or explanation of "dogma" or a confrontation with a demon. Texts which should be classified in almost all of these categories may make reference to or include an exegetical interpretation of Biblical passages. This overlapping of form and content in varying degrees provides a good analogy to the relationship between aggadah and halachah proposed by this thesis.

As with the six categories of aggadah, the boundaries between aggadah and halachah may also be less sharply drawn than is often recognized. Clearly each has its dominant form and content. However, insofar as the aggadah provided the rabbis with a vehicle for expressing their world view and values system, it may well have overlapped with and had impact upon the development of halachah. After all, halachah represents the behavioral embodiment of Jewish values and the Jewish world view. In any case, the succeeding chapters will endeavor to provide some examples of a range of overlap and influence in the relationship of aggadah to halachah.

CHAPTER 2

BIBLICAL PARALLELS AND MODELS

"Aggadah" in the Bible

The terms aggadah and halachah are normally used only in reference to post-Biblical rabbinic literature. However, rabbinic Judaism is partially the product of an evolutionary and organic development of Biblical Judaism. Because of this relationship, one might expect to discover in the Bible at least antecedent and, perhaps, even analogous forms of these two categories of literature. One might also expect to find examples that characterize the range of relationships, which we have posited between aggadic and halachic literature. Focusing on these twin hypotheses, the present chapter explores a handful of Biblical examples which seem to have some correspondence with Mielziner's categories and which may reflect several significant points in the range of relationships between aggadah and halachah.[47]

Exegetical Aggadah in the Bible

In the Biblical context, parallels to Mielziner's "exegetical" aggadot would include those passages which provide interpretations or explanations of parts of the Biblical text. A relatively common example of this internal, Biblical exegesis is the etymology of names. Thus, in explaining Moses' name, Ex. 2:10 reports: ". . . And she [Pharaoh's daughter] called his name Moses, and said: 'Because I drew [mashah] him out of the water'."[48]

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[47]As acknowledged above, strictly speaking, these terms refer only to post-Biblical, rabbinic literature. In order to avoid the need for continual qualification, therefore, when the terms aggadah and halachah are used in reference to Biblical sources, the present chapter will place them in quotations.

[48]Unless otherwise noted, all Biblical citations are from The Holy Scriptures (Philadelphia, The Jewish Publication Society of America, 1955).

In addition to an explanation for the names of individuals, the Biblical author also provides a "historical"/etymological basis for the names given to locations, with which his audience would probably have been familiar. Gen. 16:13-14 explains:

> And she [Hagar] called the name of the LORD[49] that spoke unto her, Thou art a God of seeing [Elroi]; for she said: 'Have I even here seen Him that seeth me?' Wherefore the well was called Beer-lahai-roi; behold, it is between Kadesh and Bered.

It is worth noting that such passages also serve to incorporate the geography of the land into the Jewish people's narrative, mythic history.

The book of Deuteronomy, by its nature as a retrospective summary[50], contains frequent examples of a more complicated type of internal, Biblical exegesis. Deut. 25:17-19 provides the following statement about the events recorded in Ex. 17:8-16:

> Remember what Amalek did unto thee by the way as ye came forth out of Egypt; how he met thee by the way, and smote the hindmost of thee, all that were enfeebled in thy rear, when thou wast faint and weary; and he feared not God. Therefore it shall be, when the LORD thy God hath given thee rest from all thine enemies from all thine enemies round about, . . . that thou shalt blot out the remembrance of Amalek from under heaven; thou shalt not forget.

The earlier description of Amalek's attack found in Exodus does not contain some of the important details given here. For example, the Exodus text does not report that Amalek attacked in the rear and slaughtered the weakest and most vulnerable among the Israelites. Nor does the Exodus text make mention of the fact that the Israelites were "faint and weary" or that "he [Amalek] feared not God".

Both texts, on the other hand, do include the chronological context (shortly after the exodus from Egypt) and the discussion of blotting out Amalek from

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[49]This capitalization regularly occurs in the translation.

[50]Similarly, with 1st and 2nd Chronicles.

under heaven.[51] Given the probability that the Deuteronomy text followed the Exodus text, perhaps, the exegetical development in Deuteronomy is intended to provide a more detailed rationale for the instruction to "blot out" the Amalekites. After all, other than the fact of the attack itself, very little in the Exodus text accounts for the vehemence of the instruction to destroy Amalek.

This discussion, however, necessarily brings us into the slippery realm of speculation about the Biblical author's intent. For the present purpose, it is sufficient to point out the exegetical nature of the Deuteronomy text, as it interprets and expands on the events described in Exodus. At this point, we can only suggest the interesting possibility that this "aggadic" text also provides a rationale for a bit of Biblical legislation. Certainly, it could have been read that way by the rabbis.

Dogmatical Aggadah in the Bible

In considering Mielziner's second category, "dogmatical" aggadah, one finds an abundance of Biblical analogies. In Ex. 20:5-6, concerning the prohibition against idolatry, God says:

> Thou shalt not bow down unto them, nor serve them; for I the LORD thy God am a jealous God, visiting the iniquity of the fathers upon the children unto the third and fourth generation of them that hate Me; and showing mercy unto the thousandth generation of them that love Me and keep My commandments.

This theme of God's jealous nature regarding Israel's allegiance to and worship of other deities occurs several places in the Biblical text.[52] The relationship between the strictly legal prohibition and the description of God's nature that follows is striking. Clearly, the "aggadic" description stands as a rationale for and an

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[51]The Exodus text reports this blotting out as God's intention towards Amalek while the Deuteronomy text instructs the Israelites to blot out Amalek. However, the Bible regularly reports that Israel was the instrument of "God's wars" against various peoples [Encyclopedia Judaica, s.v. "Amalekites", 787].

[52]Cf. Ex. 34:14; Deut. 4:24, 5:9, 6:15.

inducement to adhere to the "halachic" legislation. In this example, at least, the relationship between aggadah and halachah is quite close. In the Bible, the vision of a jealous and vengeful God has been woven into the fabric of the prohibition against idolatry.[53]

Two further examples of "dogmatical aggadah" from the Bible will suffice. Perhaps the most famous text of Jewish liturgy, the "Shema," falls under this rubric. In Deut. 6:4, the text reads: "HEAR, O ISRAEL: THE LORD OUR GOD, THE LORD IS ONE." This Biblical statement of God's uniqueness is probably the one universally acknowledged dogma of Judaism. Yet, this text, too, is immediately followed by a series of legislative statements which seem to describe the proper behavior which follows from acceptance of this dogma.

Another famous example of Biblical dogma occurs in Ex. 34:6-7. As Moses stands in the cleft of the rock on Mt. Sinai, God reveals the so-called thirteen attributes:

> And the LORD passed by before him, and proclaimed: "The LORD, the LORD, God, merciful and gracious, long-suffering, and abundant in goodness and truth; keeping mercy unto the thousandth generation, forgiving iniquity and transgression and sin; and that will by no means clear the guilty; visiting the iniquity of the fathers upon the children, and upon the children's children, unto the third and unto the fourth generation."

In this instance, the statement of dogma is not immediately linked to any legislation. Yet, the text's central image is of a God who decides whether to exercise mercy or exact punishment.

Thus, while not directly connected to legislation, the passage provides a dogmatic foundation for the Biblical legislative system. This image of God as a merciful and/or severe judge accords well with the vision of a God who legislates behavior. Nonetheless, while this "aggadic" passage clearly supports a primary, Biblical concept of God, it must be repeated that the text has no immediate

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[53]Cf. Num. 25:10; Deut. 32:21; Ezek. 5:13; Ps. 78:58.

legislative referent. In other words, along the spectrum of relationships between aggadah and halachah that the present work proposes, we must include an end point at which there seems to be no direct relationship between them, except, implicitly, rhetorical reinforcement.

Ethical Aggadah in the Bible

As was noted in Chapter 1, almost all aggadic literature has some ethical, didactic intent. The category of "ethical" aggadah, however, is characterized by its self-conscious and overt agenda of ethical instruction. Such passages also appear in the Biblical text. For example, when one serves as judge, Ex. 23:8 warns: "And thou shalt take no gift; for a gift blindeth them that have sight, and perverteth the words of the righteous." In addition to avoidance of corruption and injustice, the Bible also contains instruction regarding humility. Prov. 3:5-7 teaches:

> Trust in the LORD with all thy heart, / And lean not upon thine own understanding. / In all thy ways acknowledge Him, / And He will direct thy paths. / Be not wise in thine own eyes; / Fear the LORD, and depart from evil.

These two passages of general, ethical instruction clearly have behavioral implications. However, the Bible also contains passages which might fall under this rubric but are much more closely intertwined with particular pieces of legislation.

The prohibition against eating blood occurs in several places in the book of Leviticus. In Lev. 7:26, the text says: "And ye shall eat no manner of blood, whether it be of fowl or of beast, in any of your dwellings." The legislative intent of this passage is clear enough. However, Lev. 17:10-14 adds an ethical framework and a rationale for this prohibition. Verse 10 essentially repeats the prohibition and describes God's response to those who violate it. But Lev. 17:11-12,14 continues:

> For the life of the flesh is in the blood; and I have given it to you upon the altar to make atonement for your souls; for it is the blood

> that maketh atonement by reason of the life. . . . For as to the life of all flesh, the blood thereof is all one with the life thereof; therefore I said unto the children of Israel: Ye shall eat the blood of no manner of flesh; for the life of all flesh is the blood thereof; whosoever eateth it shall be cut off.

These lines repeat the prohibition but they add several ethical insights as to why one should not eat blood. The primary reason seems to be that blood is understood to contain the property of life. As the text points out, this understanding of blood is also the reason for its power in the sacrifices of atonement. To eat the blood would somehow be equivalent to showing disregard for the life-giving power it contains. Thus, these "aggadic" passages, with their biological, spiritual and ethical insights, give meaning and shape to the legislation. Whether this perspective was the original, historical ground of the prohibition against eating blood is difficult to say. But, for the rabbis who later interpreted this text, it was probably irrelevant. As presented in the Bible which they inherited, these passages could be seen to provide a conceptual foundation for the law.

A similar but less complex relationship obtains in the ethical material surrounding the commandment to wear tzitzit. Num. 15:39-40 explains:

> And it shall be unto you for a fringe, that ye may look upon it, and remember all the commandments of the LORD, and do them; and that ye go not about after your own heart and your own eyes, after which ye use to go astray; that ye may remember and do all My commandments and be holy unto your God.

According to the text, human beings must avoid pursuing the desire of their "own heart" and their "own eyes", as they apparently have done in the past. By their nature, human beings tend to go astray if they are guided only by their own desires. The tzitzit become a sort of mnemonic device to remind them of that human reality and their ethical responsibility for obeying God's commandments.

Here is an example in which the "halachic" legislation seems to follow from the "aggadic," ethical concern. This passage teaches that left to their own devices, human beings tend to go astray and to violate God's precepts. As the text points

out, the legislated requirement to wear tzitzit is intended to remind the Jew of his responsibility for God's commandments and the constant human potential for going astray.

Historical Aggadah in the Bible

The Bible contains a tremendous amount of material that can be seen to anticipate the category of "historical" aggadah. In fact, most of the patriarchal narratives in Genesis and the dramatic account which opens the book of Exodus would fall under this rubric. Many of these historical accounts have no immediate legislative reference. But some of them are closely linked to the development of law.

Mandated festival observances that commemorate events in Israel's history are a clear example. Ex. 12:17 commands:

> And ye shall observe the feast of unleavened bread; for in this selfsame day have I brought your hosts out of the land of Egypt; therefore shall ye observe this day throughout your generations by an ordinance for ever.

The account of the exodus is almost purely "historical aggadah." Yet, that narrative clearly provides the basis for this piece of legislation. In fact, Passover is an especially apt example because the commandment to recount the historical narrative is the central act of the festival's observance. Thus, Ex. 13:8 ordains: "And thou shalt tell thy son in that day, saying: It is because of that which the LORD did for me when I came forth out of Egypt." The story is the foundation of the legislated observance.

The Biblical legislation regarding Shabbat also grows from "historical" roots. Deut. 5:15 links Shabbat observance with the Exodus:

> And thou shalt remember that thou was a servant in the land of Egypt, and the LORD thy God brought thee out thence by a mighty hand and by an outstretched arm; therefore the LORD thy God commanded thee to keep the sabbath day.

While Ex. 20:11, on the other hand, links Shabbat observance with a different "historical" narrative:

> For in six days, the LORD made heaven and earth, the sea, and all that in them is, and rested on the seventh day; wherefore the LORD blessed the sabbath day, and hallowed it.

In either case, the observance of the day of rest is linked with and premised upon an aspect of Biblical "history". But this relationship between mandated observance and historical aggadot is not limited to festival observances.

The end of Genesis 32 describes the famous encounter between Jacob and his mysterious opponent. Gen. 32:33 describes a piece of dietary legislation which, according to its interpretation, develops from a detail of this encounter:

> Therefore the children of Israel eat not the sinew of the thigh-vein which is upon the hollow of the thigh unto this day; because he touched the hollow of Jacob's thigh, even in the sinew of the thigh-vein.

The likelihood that this explanation was a later addition, intended to account for an existing practice, is not particularly germane here. With this passage, the Biblical text presented the rabbis with a literary model in which legislation is explained and justified on the basis of an "historical aggadah."

As mentioned earlier, not all such narrative descriptions are directly linked with legislation. Nor are all such passages explicitly didactic. Many examples merely seem to advance the narrative line. However, these texts frequently present an ideal character type or an implicit warning about going astray. Num. 25:6-10 contains the following vignette concerning idolatry and intermarriage:

> And, behold, one of the children of Israel came and brought unto his brethren a Midianitish woman in the sight of Moses, and in the sight of all the congregation of the children of Israel, while they were weeping at the door of the tent of meeting. And when Phineas, the son of Eleazar, the son of Aaron the priest, saw it, he rose up from the midst of the congregation, and took a spear in his hand. And he went after the man of Israel into the chamber, and thrust both of them through, the man of Israel, and the woman through her belly. . . . And the LORD spoke unto Moses, saying: "Phineas, the son of Eleazar, . . . hath turned My wrath away from the children of Israel, in that he was very jealous for My sake among them, so that I consumed not the children of Israel in My jealousy.

Clearly, this passage does not directly touch on any legislation. Nor does the passage explicitly presume to teach right conduct. Yet, the episode obviously does contain some important, implicit perspectives about proper and improper behavior.

Given God's response to the episode, Phineas is both a Biblical hero and a role-model.

For the Biblical author as for the rabbis, these stories and "histories," almost always served a moral, didactic purpose, even if only an implicit one. Consequently, it is not surprising to find examples of "aggadic" passages that cross category boundaries--for instance, ethical/historical aggadah. For instance, while the Israelites are still in the midst of the exodus experience, God uses recent "history" to teach the Israelites an ethical lesson. Ex. 22:20-23 proclaims:

> And a stranger shalt thou not wrong, neither shalt thou oppress him; for ye were strangers in the land of Egypt. Ye shall not afflict any widow, or fatherless child. If thou afflict them in any wise--for if they cry at all unto Me, I will surely hear their cry--My wrath shall wax hot, and I will kill you with the sword; and your wives shall be widows and your children fatherless.

In this passage, the historical context provides the philosophical basis for legislation against oppressing those who are vulnerable in society.

More specifically, the ethical injunction against oppressing the stranger, the widow or the orphan is premised on the empathy expected of past slaves. Having experienced oppression as vulnerable members of Egyptian society, the Israelites should be sensitized to the suffering of the weak and powerless. The "historical" tradition of Israelite slavery creates an ideological basis for the legal prohibition.

A more complex mix of categories occurs in the following passage. While the primary character of the text is ethical, the ethical injunction develops from both historical and dogmatical ideas. Chapter 18 of Leviticus lists prohibited incestuous relationships. Lev. 18:24-25 summarizes the chapter as follows:

> Defile not ye yourselves in any of these things; for in all these the nations are defiled, which I cast out from before you. And the land was defiled, therefore I did visit the iniquity thereof upon it, and the land vomited out her inhabitants.

The "historical" elements of the passage include the sexual depravity of the nations who inhabited the land of Canaan before the Israelites and God's expulsion of those nations from the land. Elements of dogma in the text include

the organic relationship between the "purity" of the land and the behavior of its inhabitants and also God as a power that punishes iniquity through the manipulation of events.

These "historical" and "dogmatical" ideas, in turn, give force to the warning of Lev. 18:28: ". . . that the land vomit not you out also, when ye defile it, as it vomited out the nation that was before you." In this brief passage, one sees a weaving of various aggadic and legal ideas to create an entire world view. History, dogma and ethics combine to create a powerful vision of how the world has worked in the past, how it will work in the future and how the Israelites ought to understand their place and experience in that world. As we shall see further on, such complex interweavings of "aggadah" and "halachah" may well have echoes in rabbinic literature.

A final example is of interest here, not because the passage belongs to the "historical" rubric, but because it reflects a special relationship between an historical, aggadic narrative and the development of Biblical legislation. Two elements of the example are particularly noteworthy. First, this legal passage contains an internal reference to another Biblical text. It is "self-referential." Second, insofar as the legal passage is probably later than the aggadah, it seems to reflect an evolution and an elevation in the perceived significance of an historical, aggadic narrative.[54]

More specifically, Deut. 6:16 contains the brief prohibition: "Ye shall not try the LORD your God, as ye tried Him in Massah." The reference is to events described in Ex. 17:1-7, wherein the children of Israel angrily confront Moses about the lack of water. Ex. 17:7 explains:

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[54]As we shall see, in its Biblical context, the aggadah did not possess explicit halachic significance.

> And the name of the place was called Massah [trying][55], and Meribah [strife], because of the striving of the children of Israel, and because they tried the LORD, saying: "Is the LORD among us, or not?"

The Deuteronomy text warns against a repetition of this episode in which the Israelites displayed their lack of faith in God's providence and care for the Jewish people.

The Deuteronomy passage is clearly a piece of Biblical legislation. What is of interest for the present study is the fact that this law uses a Biblical "historical" narrative as its primary example. To put it more boldly, with only slight exaggeration, one could argue that the incident described in Exodus has come to serve as a "case study" for the Deuteronomy legislation--a "legal precedent" of sorts. An "historical", "aggadic" passage has evolved into the definitive example of a legally prohibited activity.[56] As with the other texts discussed thus far, this passage presents a model of the relationship between Biblical "aggadic" and "halachic" texts which may be reflected in the Talmud, as well.

Mystical Aggadah in the Bible

In the last chapter, we outlined some of the difficulties inherent in Mielziner's "mystical" category. These difficulties are probably even more pronounced in the search for Biblical precursors of rabbinic, mystical texts. In seeking examples, however, it is important to remember that we are not particularly concerned with the historical question of whether or not Jewish

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[55]The bracketed translations are the present author's translations, based upon footnotes in The Holy Scriptures.

[56]For another example of this type of development, compare the rationale for excluding Moabites and Ammonites from the "assembly of the LORD (Deut. 23:4-5)" with the historical narrative in Num. 22.

mysticism existed in Biblical times.[57] For the purposes of this investigation, we are interested in whether or not there are Biblical texts which may have provided prototypes for rabbinic aggadot that we've labelled either "mystical" or "supernatural/magical."

There are many Biblical examples of magical and/or supernatural passages. For instance, Num. 5:11-31 describes an elaborate ritual for proving the guilt or innocence of a woman suspected of adultery. A brief selection from the passage will suffice to show the 'magical' quality of the ritual. Num. 5:26-28 reads:

> And the priest shall take a handful of the meal-offering, as the memorial-part thereof, and make it smoke upon the altar, and afterward shall make the woman drink the water. And when he hath made her drink the water, then it shall come to pass, if she be defiled, and have acted unfaithfully against her husband, that the water that causeth the curse shall enter into her and become bitter, and her belly shall swell, and her thigh shall fall away; and the woman shall be a curse among her people. And if the woman be not defiled, but be clean; then she shall be cleared, and shall conceive seed.

By Divine intervention, if the woman was guilty, then the water would cause her belly to swell and her thigh to fall away.[58] However, if she was innocent, this would not happen and she would conceive seed.[59]

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[57]With regard to this question, Scholem writes: "Some have sought to demonstrate the existence of mystical trends even in biblical times, . . . but it is almost certain that the phenomena which they connected with mysticism, like prophecy and the piety of certain psalms, belong to other strands in the history of religions" (Encyclopedia Judaica, s.v. "Kabbalah," 496).

[58]According to one commentary, the precise meaning of this result is unclear. "'Thigh' is probably a euphemism for the sexual organ (see Gen. 24:2). The expression might also refer to dropsy of the ovaries, thus implying the threat of sterility" [The Torah: A Modern Commentary, with commentaries to Genesis, Exodus, Numbers and Deuteronomy by W. Gunther Plaut, to Leviticus by Bernard J. Bamberger and essays on ancient near eastern literature by William W. Hallo (New York: Union of American Hebrew Congregations, 1981), 1052, n. 21].

[59]Without having been present, of course, one cannot know what actually did happen when this potion was administered to a woman. Brichto has proposed a comforting but somewhat tenuous hypothesis in this regard. First, he downplays the "magical" elements of the ordeal. Brichto writes: "Although the very notion of spell and fearsome potion have their roots in magical thinking, so too does sacrifice. And if the biblical understanding of an offering to God is not taken to be magical, then neither is such stricture to be applied to the potion . . . " [Herbert Chanan Brichto, "The Case of the Sota and a Reconsideration of Biblical 'Law'," Hebrew Union College Annual 46, Centennial Issue [1975]: 55-70]. Second, Brichto proposes that the

Num. 22:6 reflects a more purely narrative example of this supernatural rubric. Balak has just told Balaam of the Israelite threat that he perceives. He says to Balaam:

> 'Come now therefore, I pray thee, curse me this people; for they are too mighty for me; peradventure I shall prevail, that we may smite them, and that I may drive them out of the land; for I know that he whom thou blessest is blessed, and he whom thou cursest is cursed.'

The belief in the power of curses and blessings typifies this rubric. So do some of the events described further on in the Balaam narrative.

For instance, as Balaam rides his ass towards the Israelites in order to curse them, the angel of God appears in the road to block their progress. The ass sees the angel and stops, even though her rider does not see the angel and he hits the animal several times. In Num. 22:28-30, the narrative continues:

> And the LORD opened the mouth of the ass, and she said unto Balaam: "What have I done unto thee, that thou hast smitten me these three times?" And Balaam said unto the ass: "Because thou hast mocked me; I would there were a sword in my hand, for now I had killed thee." And the ass said unto Balaam: "Am not I thine ass, upon which thou hast ridden all thy life long unto this day? was I ever wont to do so unto thee?" And he said: "Nay."

The passage is remarkable for its considerable irony, but also because of its supernatural character.

It is neither surprising nor accidental, however, that such passages are rarely linked with Biblical legislation. By their very nature, the events and ideas presented in such passages are not easily translated into regulation, nor is that always desirable. These texts are noteworthy precisely because they are often irregular and outside of the laws of nature.

One can also locate Biblical examples of the "mystical rubric" (as we defined this category in Chapter 1). Especially with the benefit of historical hindsight,

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purpose of the supposed ordeal was to appease the jealous husband and to protect the wife. According to Brichto, the purpose of the ordeal was "to protect the woman in the disadvantaged position determined for her by the mores of ancient Israel's society. . . . the ritual for the susupected [sic] sota is a ploy in her favor . . . " [Brichto, 67].

one can easily identify Biblical examples, particularly in certain prophetic texts, which are quite suggestive of "mystical" ideas.

An obvious example occurs in the first chapter of Ezekiel--the stimulus for the later "ma'aseh ha'merkavah" literature. In Ezk. 1:1, the prophet reports: "the heavens were opened, and I saw visions of God." The details of this vision occupy the remainder of the first chapter and even a short excerpt (Ez. 1:4-6) reflects the mysterious, mystical feeling of the vision:

> And I looked, and, behold, a stormy wind came out of the north, a great cloud, with a fire flashing up, so that a brightness was round about it; and out of the midst thereof as the colour of electrum, out of the midst of the fire. And out of the midst thereof came the likeness of four living creatures. And this was their appearance: they had the likeness of a man. And every one had four faces, and every one of them had four wings.

This passage provides a Biblical example of the mystical experience that Seltzer described as "a direct and immediate communion of the soul with the divine."[60] These words are, after all, a description of the prophet's visions of God.

A similar and equally famous encounter is described in Isaiah 6:1-3:

> In the year that king Uzziah died I saw the Lord sitting upon a throne high and lifted up, and His train filled the temple. Above Him stood the seraphim; each one had six wings: with twain he covered his face, and with twain he covered his feet, and with twain he did fly. And one called unto another, and said:
> Holy, holy, holy, is the LORD of hosts;
> The whole earth is full of His glory.

Isaiah's vision is another example of the type of intimate and direct encounter with God which could easily give rise to mystical speculation.

The name of God and its mysterious power is another basic element in later, Jewish mystical thought. The esoteric, mysterious significance of that name is suggested by the Biblical description of Moses' encounter at the burning bush in Ex. 3:13-14:

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[60]Seltzer, 419. Though it should be noted that the "communion" described here does not involve what Scholem has described as the "annihilation of individuality" (Encyclopedia Judaica, s.v. "Kabbalah," 490) that characterizes some understandings of mystical experience.

> And Moses said unto God: "Behold, when I come unto the children of Israel, and shall say unto them: The God your fathers hath sent me unto you; and they shall say to me: What is His name? what shall I say unto them?" And God said unto Moses: "I AM THAT I AM"; and He said: "Thus shalt thou say unto the children of Israel: I AM hath sent me unto you."

In this case, both the description of the encounter, itself, and the knowledge imparted during that encounter anticipate later mystical ideas. For example, both the fact that Moses does not look at God (Ex. 3:6) and that he removes his shoes (Ex. 3:5) teach something about appropriate human behavior during a mystical encounter.

As stated above, whether or not these texts reflect a mysticism extant during the Biblical period, to the rabbis who inherited and interpreted the Bible, texts such as these probably provided a foundation for the elaboration of certain mystical ideas. These Biblical texts offered rudimentary paradigms for mystical experience and knowledge. Implicitly, they may also have given a certain amount of license for mystical speculation.

The present chapter has presented Biblical examples which seem to correspond with Mielziner's rubrics and which seem to reflect several significant points in the range of relationships between aggadah and halachah. Some of these aggadic texts had no direct relationship to Biblical legislation, while others seemed to serve, to varying degrees, as philosophical, ethical or historical foundations for the law. At least in one example, the historical narrative sometimes also appears to function as a sort of early "halachic" case-study.

The next chapter will begin an examination of several Talmudic examples. In exploring these examples, the aim again will be to demonstrate the various types of aggadic literature and to highlight several significant points in the range of relationships between aggadah and halachah. Where applicable, the discussion also will make reference to the Biblical examples just discussed. Given the central place of the Bible in rabbinic literature, texts such as the preceding

examples may have provided important paradigms for the rabbis--both in terms of their form and their function.

CHAPTER 3

AGGADAH AS A CONCEPTUAL FOUNDATION FOR HALACHAH

The Aggadic Concept

The following Talmudic text discusses a person's responsibility to "honor" and "fear" his parents. By type, this passage probably belongs in both the "exegetical" and the "ethical" categories discussed previously. Characteristic of aggadic exegesis, the text provides an interpretation of several Biblical passages. However, at the same time, the words also attempt to emphasize and provide a rationale for a person's moral duties towards his parents.

The text is from Kiddushin 30b:

> Our Rabbis taught: It is said, Honor thy father and thy mother;[1] and it is also said, Honour the Lord with thy substance;[2] thus the Writ assimilates the honour due to parents to that of the Omnipresent. It is said, "Ye shall fear every man his father, and his mother"; and it is also said, The Lord thy God thou shalt fear, and him thou shalt serve;[3] thus the Writ assimilates the fear of parents to the fear of God.[61] It is said, And he that curseth his father, or his mother, shall surely be put to death;[4] and it is also said, Whosoever curseth his God shall bear his sin;[5] thus the Writ assimilates the blessing[6] of parents to that of the Omnipresent. But in respect of striking, it is certainly impossible.[7] And that is but logical,[8] since the three[9] are partners in him [the son].
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> Our Rabbis taught: There are three partners in man, the Holy One, blessed be He, the father, and the mother. When a man honours his father and his mother, the Holy One, blessed be He, says, "I ascribe [merit] to them as though I had dwelt among them and they had honoured Me."[62]

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(1) Ex. XX,12. (2) Prov. III,9. (3) Deut. VI, 13. (4) Ex. XXI,17. (5) Lev. XXIV,15. (6) A euphemism for cursing. (7) To assimilate them, for the Almighty cannot be struck. (8) That parents should be likened to the Almighty. (9) God, father and mother.

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[61]Cf. Baba Kamma 41b, in which a somewhat similar analogy is made between the responsibility to fear God and to fear scholarly disciples.

[62]Unless otherwise noted, all Talmudic citations are quoted from The Babylonian Talmud, translated into English with notes, glossary and indices under the editorship of Rabbi Dr. I. Epstein (London: The Soncino Press, 1952).

This text draws an analogy between parents and God, based upon a similarity of Biblical wording. More specifically, the exegesis notes the similarity of the Biblical commandment to honor parents [kabed et avicha v'et imecha] as compared with the commandment to honor God [kabed et Y-H-V-H mei'ho-necha]. In this aggadic passage, the rabbis use this and similar textual prooftexts to argue that the Bible thereby equates the importance of honoring and fearing parents with the importance of honoring and fearing God.[63]

The passage goes on to provide a rationale for this equation. Since, the rabbis remind us, God and parents are partners in the creation of a human being, it is only natural that they merit comparable respect. Parents are "creators," in the most profound sense, and are, therefore, owed the respect that a Jew owes to the Creator. The passage, thereby, teaches an important lesson about the value and sacred meaning of parenthood. It underscores the profound responsibility that a child bears towards those who gave him life.

However, the present study will suggest the possibility that this aggadic passage possesses even greater significance. The rabbis, after all, were both preachers and legislators. Their task was not only to preach a particular values system but to provide behavioral regulations which would give living form to these values. They had to decide, for instance, what, if any, were the legal implications of this proposed equality between honoring parents and honoring God. They had to describe the required or prohibited actions which would define "honor" or "fear" of parents. And, the rabbis also had to determine what limitations, if any, should be placed on one's responsibilities towards parents.

If the Tannaitic authorities[64] who created the preceding aggadah were also

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[63]Making an exception for the prohibition against striking, since that would make no sense in reference to God.

[64]The Aramaic phrase, "Tannu rabbanan," which introduces this passage, is generally understood to signify attribution to the period of the Tannaim, the scholars who preceded Judah Ha'Nasi (ca. 90 C.E.). As Mielziner notes, "The term Tana, . . . generally applies only to the teachers mentioned in the Mishna and Baraitha

the ones that shaped the laws which reflected and defined "honor/fear" of parents and "honor/fear" of God, one could reasonably posit some relationship between their aggadic perspective and their halachic rulings. Specifically, the present chapter will suggest that the aggadic analogy discussed above between parents and God both provided the conceptual foundation for several important halachic discussions and influenced the development of somewhat analogous, halachic definitions for honor and fear of parents/God.

Application of the Concept in Halachic Discussions

Before moving to these analogous laws, however, we should identify a few examples of texts in which there is a direct connection between this aggadic idea and the development of halachah. For instance, immediately after the halachic discussion of the physical support that constitutes "honor," the rabbis raise the question of who shall bear the financial burden of this assistance. According to Kiddushin 31b-32a:

> The Scholars propounded: [32a] At whose expense?[2] Rab Judah said: The son's. R. Nahman b. Oshaia said: The father's. The Rabbis gave a ruling to R. Jeremiah--others state, to R. Jeremiah's son--in accordance with the view that it must be at the father's expense. An objection is raised: It is said, Honour thy father and thy mother;[3] and it is also said, Honour the Lord with thy substance;[4] just as the latter means at personal cost,[5] so the former too. But if you say, At the father's [expense], how does it affect him?[6]--Through loss of time.[7]
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> (2) Lit., "from whose"--must he feed him, etc. (3) Ex. XX,12. (4) Prov. III,9. (5) Lit., "defect in the purse". (6) His pocket--i.e., what personal loss is there? (7) Lit., "work".

Insofar as this discussion is attributed to Amoraic authorities (and not to the Tannaim to whom the aggadah is attributed), the evidence is only suggestive, at best. But given the general tendency of the Amoraim to study and make use of

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(Mielziner, 40, #1)." In the absence of contradictory evidence, the present study will accept such textual attributions as accurate.

earlier Tannaitic views, one may credibly argue that the Tannaitic analogy influenced this Amoraic discussion.

In any case, these rabbinic authorities clearly understand the analogy between honoring parents and honoring God to have halachic implications. Since, according to rabbinic exegesis of Prov. 3:9, honoring God requires some loss of property, honoring parents must similarly require a tangible sacrifice. At least for these Amoraim, therefore, the aggadic connection between God and parents provides a conceptual framework for determining halachic obligations.

Such a role for the aggadah is further supported by a few other halachic discussions. For example, Baba Metzia 32a discusses the responsibility to return lost property. In the context of that discussion, the Talmud raises the possibility of conflicting halachic obligations and the consequent need for determining priorities. As an illustration, the Talmud poses the following question: If a parent commands his child to engage in an activity which involves the violation of a mitzvah (e.g., not returning lost property; in the case of a kohen, defiling oneself by entering a cemetery) would the responsibility to "fear father and mother" take precedence over these other halachic obligations? In each case, which mitzvah would have a higher priority?

> IF IT[65] IS IN A CEMETERY, HE MUST NOT DEFILE HIMSELF FOR IT. Our Rabbis taught[66]: Whence do we know that if his father said to him, "Defile yourself", or "Do not return it", he must disobey him? Because it is written, Ye shall fear every man his mother, and his father, and keep my Sabbaths: I am the Lord your God[4]--ye are all bound to honour Me.[5]
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> Thus, the reason is that Scripture wrote, ye shall keep my Sabbaths;[1] otherwise, however, I would have said that he has to obey him.[2] But why so? One is a positive command, and the other is both a positive and a negative command,[3] and a positive command cannot supersede [combined] positive and negative commands!--It is necessary. I might think, Since the honour due to parents is equated to that due to the Omnipresent, for it is said, Honour thy father and they mother[4] while elsewhere it is said:

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[65]That is, "the lost property."

[66]The Aramaic text says, "Tannu Rabanan." As noted previously, this phrase indicates attribution of the following material to the authorities of the Tannaitic period.

Honour the Lord with thy substance;[5] therefore he must obey him. Hence we are informed that he must not obey him.

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(4)Lev. XIX,3. (5)I.e., though every man must fear--i.e. reverence and obey his parents--his duty to God overrides his duty to them. The verse is therefore rendered thus: Ye shall fear every man his mother and his father; nevertheless (should they order you to desecrate the Sabbath), ye shall keep my Sabbath, because I am the Lord your God.

(1) V. preceding note. (2) His father, when he tells him not to return lost property. (3) To obey one's parents is a positive command, as has just been quoted. To return lost property is a positive command--thou shalt surely restore it--and a negative injunction--thou mayest not hide thyself (Deut. XXII, 1,3). (4) Ex. XX,12. (5)Prov. III,9: the fact that the same language is used of both shews [sic] that they are likened to each other.

In this passage, the aggadic analogy between parents and God is assumed to be an established general principle. The honor due to parents and the honor due to God are of equal importance. Given that principle, one might think that it is just as important to honor parents by obeying their command, even to violate a mitzvah, as it is to honor God by obeying the mitzvah. Thus, the present text comes to explain that since child and parents share the obligation to honor God[67], in such a case, the obligation to honor God takes precedence and one ought to disobey one's parents. What is significant for this discussion is the fact that the same Tannaim who developed the aggadic principle seem to apply and clarify that principle in order to explain a halachic decision. However, one should note that the section of this passage which explains the aggadic basis for the question is of later origin. While this later explanation of the Tannaitic statement makes sense, it is not clear to what extent the Tannaim, themselves, identified their aggadic analogy as the basis for the problem.

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[67]The prooftext from Lev. 19:3 reads: "Ani Y-H-V-H Elohei'chem." The possessive plural suffix in the last word probably suggests the exegesis. As suggested by the notes cited from the passage, I am God for all of you--parents and children alike. Therefore, all of you share the responsibility to honor Me.

But one can clarify and strengthen the arguement using the text of Sifra Kedoshim 1:4-7, 10.[68] Sections 4-7 contain material which is essentially identical to that in Kiddushin 30b--providing the exegetical basis for the analogy between God and parents. Section 10 begins with a list of the behaviors that define "honor" and "fear" much like the one found on Kiddushin 31b. The section continues, however, with the following point:

> . . . "One should fear his mother and his father (Lev. 19:3)." It is possible[69] that if a person's father and mother said to transgress one of the commandments contained in the Torah, [he might conclude that] he should listen to them. [Therefore] the Torah says, "and you shall keep My sabbaths." All of you are obligated to honor Me.[70]

Having established a powerful and somewhat astonishing analogy in sections 1-4, the Sifra's Tannaitic authorities limit the potentially heretical applications of this analogy. Thus, the Sifra text provides an authentic Tannaitic source that both establishes the aggadic analogy and articulates this critical limitation in its application to halachah. We can therefore say with some sense of assurance that the later authorities who discuss this issue in Baba Mezia 32a are repeating authentic Tannaitic ideas.

A similar example is found in Sanhedrin 50a. While the text is Stammaitic[71]

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[68]Sifra, also known as "Torat Kohanim" is a halachic midrash on the book of Leviticus which is attributed to the disciple circle of Rabbi Akiba. Though probably compiled at a considerably later date, the Sifra contains material that is roughly contemporaneous with the period immediately prior and subsequent to that of the Mishnah. Thus, it is, in the main, a product of Tannaitic authorities (Mielziner, 17-20; Seltzer, 268).

[69]Presumably, based on the exegetical analogy drawn almost immediately prior to this passage in sections 4-7. The proposed equation between honoring and fearing God and parents provides the basis for the hypothetical problem of a conflict between these two, ostensibly equivalent obligations.

[70]This translation is mine.

[71]This phrase is used to describe those Babylonian scholars who came between the Amoraim and the Geonim (ca. 500 C.E.-ca. 560 C.E.). They are sometimes also known as, "Saboraim." "The savoraim completed the ordering of the Talmud, clarified certain unsettled halakhic decisions, introduced additional discussions and explanations of existing texts, and inserted brief technical guide phrases to facilitate study of the texts. Recent tendencies have been to increase the extent of their contribution to the Talmud, though this is still a subject of considerable controversy"

and, therefore, post-Amoraic, it too incorporates the Tannaitic, aggadic concept into an halachic discussion. The text discusses the relative severity of various forms of punishment. Once again, the text invokes the principle that honor of parents is equivalent to honor of God.

> Stoning is severer than strangulation, since it is the penalty of the blasphemer and the idol worshipper, the enormity of whose offence has already been stated. On the contrary, is not strangulation severer, since it is the punishment of one who smites his father or mother, the greater seriousness of whose offence lies in the fact that their honour is assimilated to that of the Omnipresent?[5]--Since the Divine law excluded an arusah[72], the daughter of an Israelite, from the general penalty of nesu'ah[73], the daughter of an Israelite, altering her punishment from strangulation to stoning, it follows that stoning is severer.[1]

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(5)Cf. Honour thy father and thy mother (Ex. XX,12) with Honour the Lord with thy substance (Prov. III,9).
(1) An arusah's sin is greater, because she destroys her virginity in addition to disgracing her family.

The discussion of which punishment is more severe turns on the perceived severity of the various offences. Striking mother and father involves an offence not only to the parents themselves, but, according to the aggadic principle in question, to God's honor, as well.[74] Because this action is an offence against

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[Encyclopedia Judaica, s.v. "Savoraim," 921].

[72]That is, the daughter of an Israelite who has undergone the betrothal ceremony. As a result of this ceremony, a woman becomes legally bound to her husband, sexually forbidden to other men, but does not yet live with her husband as wife. The text concerns the punishment for a violation of the sexual prohibitions incumbent upon a woman of this status.

[73]That is, the more general category of women who are fully and formally married, having undergone the ceremony known as "nesuin."

[74]Though, in terms of the original principle of equation, as articulated in Kiddushin 30b, it should be observed that the text makes a distinction about this particular offence. Kiddushin 30b notes: "But in respect of striking, it is certainly impossible" [to assimilate them, for the Almighty cannot be struck]. In the present context, perhaps that distinction is ignored or not known. Or, perhaps these authorities accept the point on physical grounds, but not on philosophical or logical ones. Despite the fact that one certainly cannot strike God, striking parents is, nevertheless, accounted as an offense whose severity is equal to treating God this way.

God's honor, one might think that the punishment for this offence, strangulation, would be the most severe possible.

However, the text goes on to explain, this is not the case. Since a sexual offence in the particular case of an arusah is perceived to be more severe than in the general case of a nesu'ah [see Note #1, cited above], the adjustment in punishment from strangulation to stoning must similarly reflect an increase in the severity of the penalty. Therefore, stoning is, in fact, the more severe penalty.

It should be noted that in this case, as in the previous case, the actual force of the passage is to limit the applied scope of this principle. Previously, we found that despite the perceived equality of the obligation to honor parents and to honor God, the obligation to honor God actually takes precedence. In the present case, we find that despite the perceived equality of these obligations, the resultant severity of an offence against God's honor does not call forth the most severe penalty. Regardless of the context, however, in both these cases, this aggadic concept provides the basis for a halachic discussion.

The Aggadic Concept as an Influence on Halachic Definitions

We have established that this aggadic concept [of the equal importance of honoring parents and God] is applied in halachic contexts, even by the same Tannaitic authorities who created it. The discussion turns now to the question of its possible influence on the process of defining what it means to honor and fear one's parents and God. More to the point, if the rabbis took the aggadic analogy between parents and God seriously, one might expect to find at least some similarities in their halachic definitions of one's obligations to honor/fear parents and to honor/fear God.

To begin with, an examination of the halachic discussion of one's responsibilities towards parents is in order. Kiddushin 31b says, in part:

> Our Rabbis taught: What is "fear" and what is "honour"?[7] "Fear" means that he [the son] must neither stand in his [the father's][75] place nor sit in his place, nor contradict his words, nor tip the scales against him.[1] "Honor" means that he must give him food and drink, clothe and cover him, lead him in and out.
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> (7) Referring to Lev. XIX,2: Ye shall fear every man his mother, and his father; and Ex. XX, 12: Honour thy father, etc. (1) Should his father be in dispute with another scholar, his son must not side with his opponent (Rashi). In J.D. 240,2, it is translated: he must not make a decision in deference to his view, i.e., if his father differs from another scholar, he must not even say, I agree with my father.--These last two, however, hold good only in the father's presence, but otherwise he may state his view freely; yet even then, it is preferable that he should avoid mentioning his father's name when refuting his view, if possible.

In this formulation, "fear" [Hebrew, "mora"] is defined by three basic rules: 1) not standing or sitting in a parent's place; 2) not contradicting a parent's words in a public discussion; and 3) not registering the deciding opinion in a debate in which a parent is involved.[76] The rabbis define "honor" [Hebrew, "kibud"], on the other hand, primarily in terms of the responsibility to provide for physical needs. These mandated activities include: 1)providing food and drink for the parent; 2) providing clothing and shelter; and 3)escorting the parent in and out. These are the halachic forms which define the values of "honor" and "fear."

But what is significant for the present discussion is the fact that some of these rules may have analogies in the legislation regarding a Jew's relationship to God and tangible objects associated with God. More specifically, one finds halachic rulings about appropriate behavior concerning God, in the Temple and in

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[75]Despite the fact that the Biblical commandments refer to both parents, this Gemara consistently refers only to the father.

[76]The syntax of the text leaves the precise meaning of the prohibition ambiguous. "V'lo machri'o" means something like "don't be the deciding factor [for?/against?] him." In the Hebrew, there is no preposition to clarify which role is prohibited. The syntax, itself, allows for the contradictory interpretations cited in the notes to the passage. However, given the value which is at stake here ["mora"], it seems more likely that we should accept Rashi's interpretation--"don't be the deciding factor against him." After all, as with publicly contradicting his words, "weighting" an argument against one's father would seem to be the more obvious, 'non-fearing,' disrespectful act.

transporting the ark, which bear some similarity to the regulations regarding honor and fear of parents.

As with a previous text that we discussed, Yevamot 6a-b discusses the proper assignment of priorities when confronted by two, conflicting halachic obligations. In the context of this discussion, Lev. 19:30 ["Ye shall keep My Sabbaths, and reverence My sanctuary"] is considered as a prooftext but eventually rejected. The passage goes on to say:

> What need, then, was there for the text, Ye shall keep My Sabbaths, and reverence My Sanctuary?[1][77]--It is required for the following deduction:[20][78] As it might have been imagined that a man should reverence the Sanctuary, it was explicitly stated in Scriptures, Ye shall keep My Sabbaths, and reverence My Sanctuary;[1] the expression of "keeping" was used in relation to Sabbath and [in the same verse] that of "reverence" in relation to the Sanctuary [in order that the following comparison may be made]; As in the case of "keeping" used in relation to the Sabbath [6b] one does not reverence the Sabbath but Him who ordered the observance of the Sabbath, so in the case of "reverence" used in relation to the Sanctuary, one is not to reverence the Sanctuary but Him who gave the commandment concerning the Sanctuary. And what is regarded as the "reverence of the Sanctuary"?--A man shall not enter the Temple mount[1] with his stick, shoes or money bag[2] or with dust upon his feet, nor may he use it for making a short cut;[3] and spitting [is there forbidden] by inference a minori ad majust.[4]
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> (1) Lev. XIX,30. . . . (20) Lit., "for as it was taught".
> (1) On which the Sanctuary stood. (2) Pundah, Lat. funda. Others, "a hollow girdle in which money is kept". (3) Q'fan'dar'ya, cf. compendiaria.
> (4) Ber. 54a. For an explanation of the inference, v. ibid. 62b.

This notion that the "reverence" of the Sanctuary, is, in fact, a form of reverence for God is quite significant for the present discussion.[79] According to this

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[77]In the translation, this Biblical citation has been quoted previously and the editor provided its source in note 1. Although the quote is repeated here, just prior to note 20, the editor has chosen not to provide a separate note but rather to refer the reader back to note 1. This fact accounts for the somewhat confusing sequence of note numbers. The second, note 1 begins a new page in the translation.

[78]As note 20 points out, a more literal translation would be "for as it was taught," based on the Aramaic phrase, "lich'd'tanya"--which, as previously, implies Tannaitic attribution for this teaching.

[79]A comparable case is made for the proper treatment of a Torah scroll. The text reads in part: "It is related that R. Eleazar once sat [unwittingly] on a bed on which lay a [Torah] scroll and [when he realized it] he jumped up as if a snake had bitten him. [Respect is shown for the Torah] because Scripture states, Ye shall keep

Tannaitic teaching, one shows reverence for God by virtue of how one acts around God's "place."

Similarly, we have observed that one mandated form of "fearing" (reverencing)[80] parents is to abstain from sitting or standing in a parent's "place." In both the case of parents and of God, therefore, how one treats the "place" associated with them is an important halachic element of "reverence." Since no explicit reference is made in the text, we certainly cannot prove that the Tannaim had their aggadic concept of equality [between God and parents] in mind when, in both cases, they defined "reverence" in terms of behavior associated with their "places." In fact, even if the particular details of that behavior are not identical, the parallel concern with "place" is suggestive, at least, of some relationship between the two.

But in actuality, there is an even more specific parallel between the two lists of mandated behaviors. Yoma 69a-b discusses the ritual procedure for the public Torah reading in the Temple. The following, tangential comment is of particular interest here.

> AND THE HIGH PRIEST STANDS. From this you can infer that he was sitting before, but surely we have learnt:[4][81] [69b] Nobody may sit down in the [Temple] Court except the kings of the house of David alone, as it is said: Then David the king went in and sat before the Lord?[5]

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(4)[Read with var. lec.: "A Master said", as what follows is no Mishnah]. (5) I Chron. XVII,16. Only the descendants of David who, through his son,

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My sabbaths, and reverence My sanctuary [Lev. 19:30]--it is not the sabbaths that one reverences but Him who commanded [to keep them], nor is one to reverence the sanctuary but Him who commanded [to make] it" (Soferim 36b).

[80]The Soncino translation of the Talmud uses the terms "reverence" and "fear" interchangeably in rendering the Hebrew "yirah".

[81]The Aramaic rendered here as, "we have learnt," is "t'nan." While note 4 cited above points out that there is no Mishnaic text of this sort, the Gemara clearly attributes this ruling to some Tannaitic source.

> built the Temple, are permitted to feel sufficiently at home there to be permitted to sit down in the Temple Court, as Scripture indicates.

In this case, one must proceed cautiously. The text neither makes explicit reference to the concept of "reverence" nor is any explanation given for the prohibition against sitting in the Temple. Nonetheless, it seems fair to hypothesize that as with the prohibitions noted above [no spitting, no dust on feet, etc.], the purpose was to prevent an overly casual attitude towards God's place (and, by association, towards God).[82]

However, both this explanation and its application here are necessarily speculative. What one can say with assurance is that, generally speaking, a person is not permitted to sit in God's place and a child is not permitted to sit in his parent's place. Once again, we are unable to prove that the parallel is a result of applying the aggadic concept of parallel importance of reverence for parents and God. Nonetheless, it is interesting that Tannaim developed the aggadic concept and Tannaim ruled that sitting is inappropriate behavior with respect to God's place and a parent's place.

Another pair of parallel rulings, though somewhat less direct in their similarity, will also be of value here. In addition to the passages cited earlier,

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[82]Maimonides cites another interesting parallel in Sefer Ha-Mitzvot. In his enumeration of negative commandments, number 68 reads: "By this prohibition the High Priest is forbidden to enter the Sanctuary at any and all times, because of the **respect due to the Sanctuary** [emphasis is mine] and the **awe** one should have **of the Divine Presence**. This prohibition is contained in His words (exalted be He), [Speak unto Aaron thy brother,] that he come not at all times into the holy place [with the veil, before the ark-cover which is upon the ark; that he die not] (Lev. 16:2)" [The Commandments: Sefer Ha-Mitzvoth of Maimonides in Two Volumes, trans. from the Hebrew with foreward, notes, glossary, appendices and indices by Rabbi Dr. Charles B. Chavel (London: The Soncino Press, 1967), 66-67]. One Hebrew translation renders "respect due to the Sanctuary" as, "k'vod ha'Miqdash" and "awe . . . of the Divine Presence" as "v'yirah v'pachad min ha'Shechinah" [Sefer Ha'Mitzvoth, Ibn Tibbon's translation, revised, enlarged and annotated with an introduction by Ch. Heller, 2nd ed. (Jerusalem: Mossad Ha'Rav Kook, 1946)]. At least for Maimonides, the prohibition against coming into God's sanctuary reflects "respect" and "awe" of God, much like the prohibition against sitting or standing in a parent's place reflects "awe" of a parent.

Kiddushin contains a further discussion of how one should honor a parent. Kiddushin 31b says, in part:

> Our Rabbis taught:[83] A Sage must change his father's name and his teacher's name, but the interpreter does not change his father's name and his teacher's name.[4] Whose father? Shall we say, the father of the interpreter?[5]--Is then the interpreter not obliged [to honour his parents]?--But, said Raba, [it means] the name of the Sage's father or the name of the Sage's teacher. As when Mar, son of R. Ashi lectured at the college sessions; he said [to the interpreter]: My father, my teacher [said thus], whereas his interpreter said: Thus did R. Ashi say.[6]

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(4) When scholars lectured, they did not speak directly to their audiences, but through the medium of interpreters, to whom they whispered their statements and who in turn spoke them aloud to the assembled congregations--frequently with embellishments of their own. Now, the Sage, when whispering to the interpreter a teaching he heard from his father, must not refer to his father by name but by the formula "my father and teacher"; but the interpreter need not do so. (5) If the Sage cites a dictum of the interpreter's father. (6) But not: Thus said the Sage's father.

Only the initial ruling is of Tannaitic origin. The ensuing interpretation is the creation of unnamed or Stammaitic authorities using Amoraic views. Nonetheless, for these authorities, the purpose of the Tannaitic prohibition against pronouncing one's father's name is clearly to "honor" the Sage's father.

It is interesting, therefore, that the Stammaim explain the prohibition against pronouncing God's name as the fulfillment of the commandment to "fear" (reverence) God. Sanhedrin 56a explores the precise description of a punishable, blasphemous act through several interpretations of Lev. 24:16. The exegesis turns on the Hebrew word, "nokeb," in that verse. One interpretation of the Leviticus verse is proposed, as follows:

> But perhaps it [the word, "nokeb"][84] refers to the pronunciation of the ineffable Name, as it is written, And Moses and Aaron took these men which are expressed [nikkebu][11] by their names;[12] the formal prohibition being contained in the verse, Thou shalt fear the Lord thy God?[13]

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[83]The Aramaic text reads: "Tannu rabbanan."

[84]This bracketed comment is mine.

(12) Num. I,17. (13) Deut. VI,13, which is interpreted as a prohibition against the unnecessary utterance of His Name.

For the present study, what is of interest is the assumption that the prohibition against pronouncing the Divine name reflects "fear" of God. While less compelling than the Tannaitic examples cited previously, these two Stammaitic discussions define both "honoring" parents and "fearing" God in terms of a prohibition against pronouncing their names. Given the previous examples, the parallel between these prohibitions and their respective rationales is at least interesting.[85]

The present chapter explored the aggadic concept that one's responsibilities to honor/fear parents and to honor/fear God are equivalent and perhaps, even synonymous.[86] This aggadic idea, in turn, provided a conceptual foundation for several halachic discussions in which these obligations (and violations of them) were equated. As we also have seen, this idea may have influenced the development of parallel definitions for these halachic obligations [not sitting in parents/God's place, not pronouncing their names, etc.]. At the very least, this chapter has demonstrated that an aggadic idea may sometimes serve as the conceptual foundation for the development of halachah. In the next chapter, we will explore several aggadic, "sociological" perspectives which seem to have influenced the development of halachah.

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[85]Another interesting parallel, though less convincing, is provided by the requirement to honor parents by escorting them in and out and the responsibility to transport the ark on the shoulders of the Levites (see Num. 7:9). Sotah 35a discusses David's violation of this law by virtue of placing the ark on a wagon instead. Given what was said previously about proper behavior in the Temple and proper treatment of the Torah as aspects of "fearing" God, it seems at least possible that this requirement should also be so interpreted. Perhaps, just as one should escort one's parents in order to honor them, one should transport the ark with great care and attention in order to honor God.

[86]Especially given the statement from Kiddushin 30b: "When a man honours his father and his mother, the Holy One, blessed be He, says, "I ascribe [merit] to them as though I had dwelt among them and they had honoured Me."

CHAPTER 4

"SOCIOLOGICAL" AGGADAH AND THE DEVELOPMENT OF HALACHAH

Rabbinic "Sociology" as Reflected in the Aggadah

To speak of rabbinic "sociology" is clearly an anachronism. The rabbis probably would have been mystified to hear their literature described with this term. In addition to their obvious lack of familiarity with the word, "sociology," the rabbis did not attempt to create a "systematic study" of the "structure," "function" or "underlying principles" of their society and its institutions.[87]

Nonetheless, in Talmudic literature, there are many passages which contain observations about subgroups within rabbinic society (e.g., fathers, mothers, sons, daughters, men, women, boys, girls, Jews, gentiles, etc.) and their interrelationships. While these rabbinic observations do not constitute formal sociology, they do reflect the rabbis' perspectives on various aspects of their society. These texts, therefore, have a sociological character. In addition, since these passages clearly do not belong in the category of "halachah," they must belong under the rubric of "aggadah." We should probably place them under Mielziner's category of "miscellaneous" aggadot.

Even more significant for the present discussion, however, the rabbis sometimes cite these sociological observations in order to clarify or define a halachic decision. In such cases, the aggadic observation provides the principle from which the halachah develops or upon which the halachah is justified. Similar to the example explored in the last chapter, therefore, sociological aggadot may sometimes provide the conceptual foundation for the development of halachah.

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[87]New Webster's Dictionary of the English Language, College Edition (1975), s.v. "sociology."

Sociological Aggadot: The Family

The first example does not have immediate halachic ramifications. Nonetheless, the passage provides a clear example of what is meant by "sociological" aggadah. The text is an exegesis of the respective commandments to honor and fear one's parents. The interpretation grows from the fact that the Biblical commandment regarding "honor" places the father first,[88] while the Biblical text concerning "fear" places the mother first.[89] In part, Kiddushin 30b-31a reads:

> It was taught: Rabbi[90] said: It is revealed and known to Him Who decreed and the world came into existence,[10] that a son honours his mother more than his father, [31a] because she sways him by words; therefore the Holy One, blessed be He, placed the honour of the father before that of the mother. It is revealed and known to Him Who decreed, and the world came into existence, that a son reverences his father more than his mother, because he teaches him Torah, therefore the Holy One, blessed be He, put the fear [reverence] of the mother before that of the father.
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> (10)Viz., God: this phrase is liturgical.

This exegesis illustrates Judah the Prince's understanding of the differences that characterize the relationship between a son and his mother or father. According to Rabbi, sons more readily honor their mothers and fear their fathers. God compensates for this sociological imbalance by placing the opposite parent first--thereby, emphasizing the importance of also honoring fathers and fearing mothers. The passage also exemplifies the willingness of an early rabbinic authority to justify halachah based on his perception of sociological realities. As we shall see, the use of aggadic sociology as a retrospective justification for

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[88]"Honour thy father and thy mother . . ." (Ex. 20:12).

[89]"Ye shall fear every man his mother, and his father . . ." (Leviticus 19:3).

[90]The simple designation, "Rabbi," is reserved for Rabbi Judah the Prince, the editor of the Mishnah.

halachah is just one point in the range of possible relationships between the two genres.

The next example also contains an observation about different relationships between family members. However, unlike the previous example, in this text, the sociological aggadah has direct and dramatic, halachic implications. The passage comes from Sanhedrin 72a-b. It discusses two, Tannaitic interpretations of the Biblical law that permits one to kill a thief who is found breaking in ("ba'mach'teret").

> Our Rabbis taught: [If a thief be found breaking up [sic][91], and be smitten that he die], there shall be no blood shed for him, if the sun be risen upon him.[4] Now, did the sun rise upon him only? But [this is the meaning: "If it is as clear to thee as the sun that his intentions are not peaceable, slay him; if not, do not slay him." Another [Baraitha] taught: If the sun be risen upon him, there shall be no blood shed for him. Now, did the sun rise upon him alone? But if it is as clear to thee as the sun that his intentions are peaceable, do not slay him; otherwise, slay him. These two unnamed [Baraithas] contradict each other.[1]--This is no difficulty: [72b] the first [Baraitha] refers to a father [robbing] his son, the second to a son [robbing] his father.[2]
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> Rab said: "Any man that broke into my house, I would kill, excepting R. Hanina b. Shila." Why? Shall we say because he is righteous [and therefore certain not to kill me]? Surely he has broken in![3]--But because I am assured that he would have pity upon me, like a father for his son.

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(4) Ex. XXII, I ff. The clauses are thus coupled in this Baraitha, the Massoretic [sic] punctuation being disregarded.
(1) The first implying that in doubt thou mayest not slay him; the second, that in doubt thou mayest. (2) A father has more compassion for his son than a son for his father. Hence, if a father robs his son, the latter must assume that he will not go to extremes if he defends his property. Consequently, he may kill him only if he is certain thereof. But if a son robs his father (and even more so, when one robs a stranger), he may assume that he is prepared to kill him, unless certain that he will not. Therefore, if he has any doubt, he may take his life. (3) Which disposes of his righteousness.

As note 2, cited above, explains, the apparent contradiction lies in whether one presumes that the thief intends harm or not. In the first baraitha's interpretation, the presumption is that the thief does not intend harm and therefore, one must be

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[91]Presumably, the translation should read "breaking in" and not "breaking up."

absolutely sure that he does intend violence before killing him. In the second interpretation, the presumption is that the thief does intend harm and therefore, must be absolutely sure that he does not intend violence in order not to kill him.

However, the Stammaim resolve this seeming contradiction between the Baraithas, probably based on the statement that the gemara attributes to Rav.[92] They explain that the former interpretation concerns a father breaking into his son's house and the latter interpretation, a son breaking into his father's house. Why does this distinction resolve the matter? Because as Rav explains in reference to R. Hanina b. Shila, a father is presumed to "have pity" upon his son and would, therefore, probably not harm him, even if caught breaking in to his son's house. However, a son is not presumed to have the same attitude towards his father and could, therefore, be presumed to have violent intentions if found breaking in to his father's house.

In this case, a piece of sociological aggadah is the basis for a halachic ruling with life and death implications. According to the Stammaim, probably based on Rav's statement, fathers tend to have pity upon their sons, while sons do not necessarily reciprocate that feeling. Based on this observation, the father who is caught breaking in becomes the legal model for a person whose intentions are presumed to be non-violent. The son who breaks in, on the other hand, becomes the legal model for a person who is presumed to be violent. And the aggadic basis of this distinction is an early rabbinic statement about the nature of fathers and sons in their society.

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[92]Rav was among the first generation of Babylonian, Amoraic authorities and was part of a "bridge" generation between the last Tannaim and the Amoraim. "He knew and entered into halakhic discussions with the greatest of the last generation of tannaim" [Encyclopedia Judaica, s.v. "Rav," 1576]." As such, not only did Rav's statements carry more authority for subsequent authorities, his statements may even reflect opinions that he learned from the last generation of Tannaim. To the extent that the latter supposition is true, it is possible that the same Tannaim who created these conflicting baraithot resolved them using the example of fathers and sons [For a brief biography of Rav, see Mielziner, 43 and the Encyclopedia Judaica article cited above].

Also in the realm of family life, Kiddushin 79b-80a contains an interesting but somewhat disturbing example of rabbinic views on the relationship between children and their mothers. The mishnah discusses various cases in which a man returns from overseas with children who were born while he was away. The mishnah's question is what circumstances would require one to provide proof of ancestry for either the children or their mother.[93] The mishnah presents a series of scenarios and the proper procedure to follow in each case.

The gemara begins with the following clarification:

> "Rabbah son of R. Huna said: And in all cases it means that they cling to her.[6]
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> (6) The children are minors, who cling to this woman. Then her motherhood does not require proof.

According to Rabbah,[94] at least, one may establish the presumption of motherhood on the basis of children's behavior--i.e., whether or not they "cling to" the woman in question. While this clarification is really part of the gemara's halachic discussion, it rests, nonetheless, on a sociological observation. Children tend to cling to their mothers. Therefore, according to Rabbah's explanation of the mishnah, if one observes children clinging to a woman, one may presume that she is their mother.

However, the rabbis derive an even more serious implication based on this sociological observation. Where questions of incest arise, the basis for determining

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[93]In the mother's case, the proof would show that she was of "pure birth" and, in the case of the children, that they were, in fact, born of that mother (Kiddushin 79b, 410, nn. 2-5). The fact that the mishnah does not specify the nature of this "proof" leads, in part, to the ensuing discussion in the gemara.

[94]Rabbah bar Rav Huna was among the third generation of Babylonian Amoraim. As such, while his explanation may reflect the inherited, original Tannaitic interpretation of the mishnah, there is no way to prove so from the gemara's opening statement. As far as one can tell from this statement, it may also be Rabbah's retrospective explanation of the undefined proof that the mishnah describes.

motherhood is a matter of life and death.[95] Kiddushin 80a records the continuation of the mishnaic discussion, including a consideration of the evidence required to justify the presumption of incest. In the course of that discussion, the following case is mentioned:

> R. Simeon b. Pazzi said in R. Joshua b. Levi's name on Bar Kappara's authority: It once happened that a woman came to Jerusalem carrying an infant on her back; she brought him up and he had intercourse with her, whereupon they were brought before [the][96] Beth din [sic] and stoned. Not because he was definitely her son, but because he clung to her.

In this case, a sociological observation about children's relationships with their mothers produced a halachic definition for establishing the presumption of motherhood. This definition, in turn, was used to determine a question of incest with the most serious result.[97] Thus, an essentially aggadic observation had critical impact on an halachic question.

Equally as interesting for the present discussion, the case is cited on the original authority of Bar Kappara. He was an early third century Palestinian Amora who, like Rav, lived in the transitional period between the Tannaim and the Amoraim.[98] As such, this text provides evidence that the use of children's "clinging" to establish the presumption of maternal relationship predates Rabbah. In fact, given Bar Kappara's historical context, this conception may even date to the Tannaitic period. However, one could not definitely prove this supposition based on the present passage.

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[95]Since the Bible prescribes death for such prohibited relationships. In his comments on Leviticus 18, Dr. Hertz notes, "In most of the offences mentioned, the penalty prescribed is death." [Pentateuch and Haftorahs, ed. Dr. J.H. Hertz, 2nd ed. (London: Soncino Press, 1971), 493, n. 29].

[96]The bracketed insertion is mine.

[97]This case clearly became authoritative for deciding issues of incest and the presumption of motherhood. Maimonides cites the case as support for the fact that even presumption of relationship is sufficient to elicit the punishment for prohibited incestuous relationships (Mishneh Torah, Hilchot Issurei Bi'ah 1:20).

[98]Encyclopedia Judaica, s.v. "Bar Kappara," 227.

A somewhat less dramatic example of this sociological, aggadic literature is found in Erubin 82a-b. The text explores the young child's dependence on and preference for his mother as well as the age through which these characteristics generally endure. The context, however, is a discussion about the communal establishment of an erub to extend the prescribed Shabbat boundaries and the age at which a child becomes obligated to participate in establishing such an erub.

> R. Assi[99] said: A child of the age of six may go out[4] by the 'erub of his mother.[5]
>
> An objection was raised:[100] A child who is dependent upon his mother goes out by his mother's 'erub but one who is not dependent upon his mother does not go out by her 'erub;[6] and[7] we also learned a similar ruling in respect of a sukkah;[8] "A child who is not dependent upon his mother is liable[9] to the obligations of sukkah",[10] and when the point was raised as to what child may be regarded as independent of his mother it was explained at the school of R. Jannai: Any child who, when attending to his needs, does not require his mother's assistance.[11] R. Simeon b. Lakish explained: Any child who, when awaking, does not cry mother. "Mother!" Is this[12] imaginable? Do not bigger children also cry mother? Rather say: Any child who, when he wakes, does not persistently cry mother.[13] And what [is the age of such a child]?[14] About four[15] or five![16] [82b]--R. Joshua son of R. Idi replied: What R. Assi spoke of was[1] a case, for instance, where the child's father prepared an 'erub for him in the north[2] and his mother in the south,[2] since[3] even a child of the age of six prefers his mother's company.

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(4) Beyond the Sabbath limits. (5) Even though she did not explicitly confer upon him the right of a share in it. A child of six is deemed to be entirely attached to, and dependent upon his mother and she is, therefore, tacitly assumed to have meant him to enjoy the same privileges of the 'erub as she herself. . . . (6) Why then did R. Assi draw no such distinction? (7) Were you to reply that a child of the age of six is deemed to be "dependent upon his mother". . . . (9) Rabbinically, as part of his religious training. Pentateuchally he is exempt. (10) Suk. 28a. (11) Lit., "does not clear him". (12) That impliedly a child that does cry mother must be regarded as dependent upon her. (13) Lit., "mother, mother". (14) Who may be regarded as independent of his mother. (15) If well developed. (16) If less developed. At any rate it follows that a child of the age of five at the latest is deemed to be independent of his mother. How then could R. Assi maintain that a child of six may go out by his mother's 'erub?
(1) Not of a child for whom no 'erub was specifically prepared. In such a case the child admittedly may not go out. (2) Of the town. (3) Sc. the

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[99]Rav Assi was among the first generation of Babylonian Amoraim.

[100]The Aramaic here is "metevei." As Mielziner points out, this phrase is invoked to acknowledge an objection to an Amoraic ruling based on "the higher authority of a Mishna or Baraitha" [Mielziner, 228].

reason why R. Assi ruled that the child "may go out by the 'erub of his mother" and not by that of his father.

The gemara cites an important Tannaitic qualification of R. Assi's statement and supports it with an analogous Tannaitic ruling that defines the age at which a child becomes responsible for constructing a sukkah. The objection points out that only a six year old boy who is still dependent upon his mother may fulfill the mitzvah vicariously. Otherwise, a child of six must be included independently in the establishment of the erub. However, the qualification leaves two important questions unanswered. First, what criteria should we use to establish a child's independence from his mother? Second, at approximately what age do most children achieve this independence? The gemara records the subsequent attempts of various authorities to answer these questions.

The various criteria by which the rabbis propose to define a child's independence from his mother, in and of themselves, make an interesting sociological discussion. Two of these authorities, however, certainly lived later than the time of the Tannaitic rulings and provided retrospective explanations.[101] On the other hand, one might argue somewhat more persuasively that the opinion attributed to the school of R. Yannai reflects an original Tannaitic answer to their own unanswered questions.[102] Regardless, however, these Tannaitic qualifications clearly reflect a willingness to premise halachic decisions on sociological realities. More specifically, the resolution of this halachah rests on the characteristics which define a child's independence from his mother and the rabbis' perception of the probable age at which this developmental change occurs.

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[101]Resh Lakish was a second generation Palestinian Amora and R. Joshua bar Idi was a fifth or sixth generation Babylonian Amora.

[102]The school of R. Yannai dates to the transitional period between the Tannaim and the Amoraim in Palestine. Thus, its opinion might reflect an inherited Tannaitic tradition. But this supposition is necessarily speculative. In fact, such a hypothesis is weakened by the very fact that later authorities such as Resh Lakish and Rav Joshua did not accept the opinion of Yannai's school as definitive.

As a result, later authorities such as Resh Lakish and Rav Yehoshua not only felt empowered to address these sociological questions, the Tannaim left them no choice but to attempt to answer them in order to determine the halachah.

Kethuboth 65b discusses a father's obligation to provide physical maintenance for his young children. As we shall see, in the gemara, R. Assi's statement from Eruvin 82a is used to define the upper boundary for this responsibility.

> R. 'Ulla the Great[103] made at the Prince's[3] door the following exposition: Although it was said:[4] "A man is under no obligation to maintain his sons and daughters when they are minors", he must maintain them while they are very young.[5] How long?[6]--Until the age of six; in accordance [with the view of] R. Assi, for R. Assi stated: A child of the age of six is exempt[7] by the 'erub[8] of his mother.
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> (3) The Exilarch. (4) Lit., "that they (sc. the Rabbis) said". (5) Lit., "the small of the small". (6) Must he maintain them. (7) yotzey, i.e., he does not require one specially prepared for himself (v. Golds). Rashi takes yotzey in the literal sense, "he goes out", i.e., should his father place an 'erub in one direction and his mother in the opposite direction he would be allowed to move only in the direction his mother had chosen. In any case it follows that a child of the age of six is entirely attached to and dependent upon his mother and, consequently, just as a man must provide for his wife so must he provide for the child who is entirely dependent upon her. (8) . . . .

The gemara does not explain precisely how R. Assi's statement resolves the matter of defining "very young." The text seems to assume that the reader will understand R. Assi's statement to establish six as a significant age of transition in a young child's development (one which marks the end of a father's formal responsibility to provide maintenance).

Perhaps, Ulla the Great assumed that his listeners would associate the Tannaitic qualifications about a child's dependence with Assi's statement. If that is the case, then in this instance, the halachic opinion is cited because of its sociological, aggadic foundation! In other words, if this reading is correct, Ulla cites Assi's earlier ruling because it proves that an early Amoraic authority saw

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[103]Ullah the Great was a third generation, Palestinian Amora.

six as the upper age through which a child is still dependent upon his parents and, thus, entitled to his father's maintenance.

Apparently, Rashi had a somewhat similar interpretation, as note 7 points out. However, Rashi applies R. Joshua's interpretation of Assi's statement in order to explain the rationale for the halachic decision. Since, according to R. Joshua and Rashi, Assi's statement proves the dependence of a six year old child on its mother, the father is responsible to support the children through age six, even as he is responsible to support the mother (the subject of the present halachic discussion).

At the very least, R. Joshua's sociological observation eventually has influence on the halachic thought of a commentator as important as Rashi. But it may even be fair to hypothesize that the sociological discussion of Erubin 82a-b has had impact upon the gemara, itself. As we have suggested, it is possible that Ulla the Great invokes R. Assi's statement in Kethuboth 65b to prove the upper age at which a boy might still be dependent and, consequently, deserving of paternal maintenance. As stated above, however, the Kethuboth text never makes this interpretation of Assi's statement explicit.

Baba Bathra 141a discusses whether fathers tend to hold their sons or their daughters more dearly. The halachic context is a mishnah that explores the case of a father who has bequeathed money to his unborn child--one hundred zuz[104] if it's a male child or two hundred zuz if it's a female child. The differential in the two amounts prompts the following discussion.

> IF A MAN SAID: SHOULD MY WIFE BEAR A MALE CHILD etc. Does this imply that a daughter is dearer to him than a son?[5] Surely R. Johanan said in the name of R. Simeon b. Yohai: The Holy One, blessed be He, is filled with wrath against anyone who does not leave a son to be his heir, for it is said, And you shall cause his inheritance to pass unto his daughter,[6] and by the expression of "causing to pass"[7] "wrath"[8] is implied, for it is said, That day is a day of wrath![9]--As regards succession, a son has preference;[10] as regards maintenance, a daughter is given preference.[11]

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[104]Literally, a "maneh," which, according to note 5, is the equivalent of one hundred zuz.

(5) Since the bequest to her was two hundred zuz, while to a son it was a maneh only (i.e., one hundred zuz). (6) Num. XXVII, 8. (7) ha'abara[105] (8) eb'ra[10] of the same root . . . as ha'abara . . . . (9) Zeph. I,15. Wrath, eb'ra[10] (10) Lit., "better to him", since he perpetuates the name of the tribe. (11) It is more difficult for a woman to earn her living, and a father would naturally desire to make provision for her maintenance rather than for that of a son.

The passage is disturbing from a variety of contemporary perspectives which we only mention in passing. We cite it here primarily because it is a striking example of later rabbinic authorities' willingness to justify a halachic distinction on the basis of a retrospective aggadic, sociological observation.

In this text, the Stammaim cite a Tannaitic midrash in order to argue that daughters are not more dear to their fathers than sons, but that a father is more concerned with a daughter's maintenance, given women's general status in rabbinic society. On the other hand, sons are more precious because of their responsibility for the continuity of the family line. This piece of aggadic sociology does not determine halachah--it explains extant halachah. Nonetheless, the passage demonstrates the extent to which the Stammaim assimilated their predecessors willingness to bring sociological perspectives to bear on halachic questions.

As we have seen, therefore, the rabbis' aggadic, sociological observations of family life and relationships had important halachic ramifications. At the very least, retrospective sociological observations shaped later authorities' understanding of existing halachah. But we have also found some evidence to suggest that earlier authorities actually based halachah on sociological observations. From incest, to child support, from bequests to children to determining when one may kill a thief in self-defense, the rabbis' ideas about the

[105]This was Hebrew in the original.

role and character of various family members seem to have influenced their halachic creations.

Sociological Aggadot: Gender Distinctions

Given some of our previous examples, it may not be surprising to find that in many of the cases in which sociological aggadot influenced halachah, the observations concerned matters of gender differences. For instance, in the following text, the rabbis search for an explanation as to why girls are held responsible for their vows at a younger age than boys. In developing their explanation, the rabbis draw an important distinction between male and female development at this age.

According to the mishnah that Niddah 45b discusses, beginning at the age of eleven years and a day, one must ascertain whether a girl should be held legally responsible for a vow that she made (if she fully understands its significance). Regarding a boy, however, the mishnaic text explains that one is not required to determine his legal responsibility for a vow until the age of twelve years and a day. The gemara discusses the differences in legislated ages.

> Our Rabbis taught: These[7] are the rulings of Rabbi. R. Simeon b. Eleazar stated, The age limits that were assigned to the girl apply to the boy while those assigned to the boy apply to the girl.[8] R. Hisda stated: What is Rabbi's reason? Because it is written in Scripture, And the Lord God built[9] the rib[10] which teaches that the Holy One, blessed be He, endowed the woman with more understanding[11] than the man. And the other?[12] . . . [106]-- R. Samuel son of R. Isaac replied: As a boy frequents the house of his teacher his subtlety[3] develops earlier.[4]

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(7) The statements on the respective age limits of a boy and a girl, according to which the latter matures earlier than the former. (8) The boy, in his opinion, maturing earlier. (9) Wayiben. (10) Gen. II,22. E.V., And the rib . . . made He. (11) Binah, of a root that is analogous to that of wa-yiben (prev. n. but one). (12) R. Simeon b. Eleazar; how in view of this deduction can he maintain his view?

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[106]The words that are elided here discuss R. Simeon b. Eleazar's alternative interpretation for Gen. 2:22. The citation resumes where his prooftext is brought to bear on the subject.

(3) Or "shrewdness". (4) Lit., "enters into him first".

In this passage, different aggadic, sociological perspectives seem to produce (or, at least, are brought in support of) different halachic conclusions. Each of the Amoraic authorities (R. Hisda and R. Samuel) provides the midrashic basis for one of the two, contradictory Tannaitic rulings (Rabbi vs. R. Simeon b. Eleazar).[107]

The defense of Rabbi's ruling (which holds a girl responsible for her vows at an earlier age than boys) involves an exegesis of Gen. 2:22 to demonstrate that from the moment of creation, God endowed women with more understanding than men. The rationale for R. Simeon b. Eleazar's opposite ruling (boys, not girls are held responsible for their vows earlier) is that boys develop extra understanding ("shrewdness") because they are required to study Torah. In either case, these Amoraic authorities have used an aggadic, sociological observation about child development and gender differences to justify a halachic position.[108]

A rather pragmatic, sociological observation about gender differences also motivates an halachic interpretation in Kethuboth 28a. The discussion concerns who should retain possession of property (lit., a "courtyard") in the event of a divorce.

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[107]R. Both Judah the Prince (referred to simply as, "Rabbi") and Simeon b. Eleazar were among the fifth generation of Tannaim. R. Hisda was among the third generation of Babylonian Amoraim while R. Samuel b. R. Isaac was among the third generation of Palestinian Amoraim.

[108]The exegesis of Gen. 2:22 only serves as support for the position that girls mature earlier than do boys. It is not an halachic proof for Rabbi's interpretation of the law. However, we should note that Genesis Rabbah 18:1 contains the same material quoted here, including the halachic discussion about the age of responsibility for vows. But the midrashic version ascribes this exegesis of Gen. 2:22 to Rabi Yosi ben Zimra, who was among the earliest generation of Palestinian Amoraim. In fact, the Encyclopedia Judaica explains that he was part of both the last generation of Tannaim and the first generation of Amoraim [Encyclopedia Judaica, s.v. "Yosi ben Zimra," 857]. Given Yosi's relatively early historical context, it is possible that this exegesis has an even earlier and more direct relationship to the halachic discussion than we have proposed. However, this hypothesis is necessarily speculative.

> Who must give way before whom?--Come and hear: It has been taught: She must give way before him, and not he before her, but if the court-yard[11] belonged to her, he must give way before her.
>
> The question was asked: If the court-yard belonged to both, what is [the law]? Come and hear: "She must give way before him." In what case?[12] If the court-yard belongs to him it is obvious; and if the court-yard belongs to her, has it not been taught: "If the court-yard belongs to her, he gives way before her"? Hence [it must be] in such a case![13]--[No.] Perhaps [it deals with a case] when they rented [the court-yard]. How is it then?[14]--Come and hear: [It is written]: The Lord will hurl thee away violently as a man,[15] and Rab said:[16] moving about[17] is harder for a man than for a woman.[18]

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(12) Lit., "of what case do we treat"? (13) Lit., "manner". When the court belongs to both. (14) What is the answer to the question? Lit., "what is with regard to it". (15) Isa. XXII,17. (16) Referring to the verse. (17) Lit., "hurlings about". (18) Hence, if the court-yard belonged to both, she must give way before him. By moving from place to place, a man loses the sphere of his livelihood, while a woman can assure hers by marriage.

According to Rab's sociological interpretation of Isa. 22:17, the loss of property would be harder on a man than on a woman. As note 18 explains, by being forced to move, a man might lose his business while a woman would need only to remarry to regain her security. This sociological assumption justifies the halachic ruling--following a divorce, if the property was jointly owned, the man should retain ownership.

Furthermore, as we have noted previously, Rav was part of the bridge generation between the Tannaim and the Amoraim. Since this particular interpretation is attributed to him, there is support for the hypothesis that such an aggadic, sociological perspective shaped the original Tannaitic ruling.[109] In fact, given all the evidence, one can reasonably argue that the Tannaitic decision, "she must give way before him," grew out of the Tannaitic, sociological perspective which Rav articulates.

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[109]The fact that Rav's opinion is introduced by the phrase, "Ta sh'ma" (lit., 'come and hear') lends further support to this notion. As Mielziner notes, when this phrase is used, "a Mishna or Baraitha is referred to in suport [sic] of the opinion of one, and as a refutation . . . of that of the other of the contesting Amoraim" [Mielziner, 233].

Kethuboth 64b discusses the respective penalties for a woman or a man who "rebels against" his/her spouse. As the gemara explains, the phrase "rebels against" is essentially a euphemism for refusing to engage in conjugal relations with one's spouse.[110] The mishnah reports that the penalty for a woman who "rebels" is a reduction in the value of her kethubah. In the case of a man who "rebels," one raises the kethubah's value (though by a smaller amount).

Kethuboth 64b discusses the reason for this distinction as follows:

> R. Hiyya b. Joseph [further] asked of Samuel: What [is the reason for the distinction] between a man who rebels [against his wife] and a woman who rebels [against her husband]?[1]--The other replied, "Go and learn it from the market of the harlots; who hires whom?"[2] Another explanation: [The manifestation of] his passions is external; hers in internal.
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> (1) I.e., why does the former lose only half a tropaic[111] a day while the latter loses a full tropaic each day? (2) The man naturally hires the woman; which shews that the male feels the deprivation more than the female. His compensation, therefore, must be proportionately higher.

This explanation rests on an interesting, sociological perception of the differences in the sexual identities of men and women. According to this aggadic explanation, the halachah reflects the fact that a man whose wife denies him conjugal relations suffers considerably more than a wife in a comparable situation.[112] In his response, Samuel explains to R. Hiyya that men's sexual needs are greater than are women's needs. Given Samuel's historical context, there is,

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[110]See the comment attributed to R. Huna at the outset of the gemara [Kethuboth 63a, 380].

[111]The amount of the penalty.

[112]Perhaps, this is also the force of the alternative explanation--because her "passions" manifest themselves "internally," she can more readily disguise her unfulfilled sexual needs and, thus, is less humiliated by her husband's refusal.

once again, reason to propose the possibility that this sociological perception guided the original ruling.[113]

Many of these ideas strike our contemporary sensibilities as sexist. They trouble anyone who embraces feminist thinking. However, it is also important to place them in their historical milieu. In the rabbis' cultural and historical setting, most women did not possess rights independent of their fathers or husbands. As with some of the discussions about the kethubah, precisely because the rabbis recognized the vulnerability of women in their society, they frequently enacted protective laws. Nonetheless, as the following section will demonstrate, the rabbis had many ideas about women, generally, ones which most contemporary minds would find problematic.[114]

Sociological Aggadot: Women

The rabbis premise several halachic rulings that are disadvantageous to women on the assumption that women desire to be married more than anything else (certainly, more than men!). The rabbis, themselves, also clearly believed that almost anything was better for a woman than remaining unmarried. Of course, in rabbinic society, given the limitations on a single woman's status and security, there may well have been some truth in the first observation and some wisdom in the second.

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[113]Samuel, like his friend and contemporary, Rav, is among the first generation of Babylonian Amoraim. As such, he lives rather close in time to the Tannaim who create the ruling about which R. Hiyya (2nd generation Babylonian Amora) inquires.

[114]Another interesting gender distinction is found in Baba Mezia 79b. The text concerns the rights of one who hires an ass and the rights of the ass owner. One section discusses the limitations on the burdens that each party may load upon the ass. Immediately following this section, the text notes: "Our Rabbis taught: If one hires an ass for a man to ride upon it, it may not be ridden by a woman" [Baba Mezia 79b, 458]. Presumably, the rabbis believed that women were generally heavier than men and, thus, it would be unfair to place a greater burden on the ass.

A typical example occurs in the text of Yebamoth 113a. The passage explores the right to a kethubah of a woman who marries a deaf man. Marriages in which one party is deaf or mute are not Biblically valid--they are only authorized rabbinically.[115] The preceding passage establishes that a man of "sound senses"[116] who marries a deaf woman must grant her a kethubah, only if he, himself, consented to provide one for her. Otherwise, the text points out, "men would abstain from marrying her" [a deaf woman][117], presumably because of the financial risk. Thus, a deaf woman is entitled to a kethubah only when there is explicit consent on the part of the husband.

Yebamoth 113a continues by considering the reverse case--in which a woman of sound senses married a deaf man:

> If so,[7] a kethubah should have been provided for a woman of sound senses who married a deaf man, since otherwise[8] [women] would abstain from marrying [deaf men]!--More than the man desires to marry does the woman desire to be taken in marriage.[9]

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(7) That eligibility to receive a kethubah is determined by the likelihood of the consent to marry the deaf person. (8) Cf. supra n. 5,[118] . . . . (9) The lack of a kethubah would not prevent a woman from marrying a man even if he was deaf.

According to the application of this sociological observation, women would much rather risk the economic insecurity of marriage without a kethubah than remain unmarried. Therefore, one need not fear that the decision not to provide a kethubah for the wife of a deaf man will make deaf men undesirable as

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[115]See Yebamoth 112b, 788, n. 1.

[116]The text presumes that one who is "deaf" or "an imbecile" is not of "sound senses." Such people, therefore, cannot be held responsible for their legal obligations (e.g., paying a kethubah) [see notes to Yebamoth 112b-113, 788-795].

[117]This bracketed insertion is mine.

[118]Note 5 points out that men would not tend to marry deaf women if they were automatically entitled to a kethubah. The present text deals with the opposite presumption--that without a kethubah, the potential economic insecurity would discourage women from marrying deaf men.

husbands. At least in this case, based on their perception of women's compelling desire to be married, the rabbis justify a decision which is, presumably, unfavorable for women.

The text of Gittin 49b, which also discusses an issue of kethubah, supports the assumption that this perspective was originally Tannaitic. The passage presents two different halachic rulings on the question of what quality land may be used to pay for a divorced woman's kethubah. In part, the discussion says:

> A woman's Kethubah can be collected only from land of the poorest quality. So R. Judah; R. Meir, however, says from medium land also. R. Simeon said: Why did they lay down that a woman's Kethubah is to be collected from poor land? Because the woman wants to be married more than the man wants to marry.

The gemara, itself, provides no explicit explanation of how the sociological statement cited by R. Simeon justifies the position attributed to R. Judah. Because of this, one must be cautious in explaining its significance here. Perhaps, reminiscent of the preceding example, the justification for R. Judah's position was the concern that men might not marry a woman whose kethubah could be paid from their best property. Since, women desire to be married above all other considerations, anyway, R. Judah's ruling would make marriage less economically threatening to men and increase the probability that women would achieve their desire.

In any case, the entire discussion is of Tannaitic provence. As such, this aggadic sociological perspective could well have influenced both this halachic decision and the previous decision from Yebamoth 113a, which cites it. In both cases, then, the same authorities who create Jewish law articulate an aggadic, sociological observation as the basis for the halachah.

Baba Bathra 174b contains an even more disturbing example of the same principle. The rabbis are discussing whether a guarantor is obliged to pay off a loan. According to one authority cited, the obligation exists only presuming the

debtor had property.[119] Another authority, however, disagrees and holds that the guarantor is always responsible. The text goes on to note:

> And the law [is that a guarantor] is responsible for payment in all[9] [cases],[10] with the exception of a guarantor for a kethubah who is not responsible for payment even though the husband possessed property. What is the reason?--He[11] was [merely] performing a religious act[12] and [the woman][13] had lost nothing.[14]

> (9) . . . . (10) Whether the debtor, has or has no property. (11) The guarantor. (12) By his guarantee he was helping to bring about the marriage of the parties. A guarantee in a matrimonial affair is not to be taken seriously as pledging actual payment, but as a mere expression of confidence in the honesty and integrity of the party concerned. (13) Who, it is assumed, always prefers married life to spinsterhood. (14) It is certain that even if she had known that her kethubah would not be paid, she would still have consented to the marriage. In the case of a loan, however, it is clear that had it not been for the guarantee, given by the guarantor, the creditor would not have risked his money. In the latter case, therefore, the guarantor is liable.

According to the notes 13 and 14, one who serves as guarantor for a kethubah is merely performing a symbolic act of faith in the groom. Since the woman would have married the man regardless, the guarantee is not "real." Presuming the notes provide a credible interpretation of the gemara, therefore, in this ruling, the rabbis effectively undermine the security which a woman receives from a kethubah. And we could cite still other, similar cases in which a woman's presumed desire to marry is used to justify a decision which seems to be to her disadvantage.[120]

In addition to women's attitudes about phenomena such as marriage, the rabbis also based halachic decisions on their perception of women's customary behavior. Yebamoth 76b explains that while Ammonite and Moabite men were

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[119]"Since, no one would guarantee a loan where it is known that the debtor has no means wherewith to meet his obligations. A guarantee in such a case must not, therefore, be taken seriously" [Baba Bathra 174b, 770, n. 8].

[120]Cf. the discussion in Kethuboth 75a: "A woman is satisfied with any sort [of husband] as Resh Lakish said. For Resh Lakish stated: 'It is preferable to live in grief than to dwell in widowhood'" [Kethuboth 75a, 469 and nn. 13-14].

forbidden to enter the "assembly of the Lord" (Deut. 23:4-5), the women of these peoples were not forbidden. The gemara explains:

> ". . . since the reason for the Scriptural text is explicitly stated: Because they met you not with bread and with water;[3] it is customary for a man to meet [wayfarers]; it is not, however, customary for a woman to meet [them]".[4]

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(3) Ibid.[121] 5. (4) The women were, therefore, excluded from the prohibition.

Since Ammonite and Moabite women would not customarily have provided sustenance for strangers, the halachah excludes them from this Biblical prohibition.[122] In addition, the fact that Sifre Deuteronomy contains the same explanation for this halachic exception shows that both this aggadic sociological interpretation and the halachic ruling were of Tannaitic origin.[123] As we have seen elsewhere, the same authorities who made this halachic distinction between men and women seem to have made this sociological distinction.

The present chapter has shown some examples in which a sociological, aggadic observation provided the principle from which halachah developed or from which the halachah was justified. As with the previous chapter, therefore, these were cases in which aggadah provided a conceptual foundation for the development of halachah. The following chapter will explore examples of aggadot with a different relationship to halachah. Either in their original Talmudic context or as they were later understood, these aggadot seem to serve as "case studies" for the development of halachah.

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[121]The previous reference is to Deuteronomy 23.

[122]It is interesting to note that the continuation of the gemara uses an exegesis of Gen. 18:9 to show that this was also customary for Jewish women, such as Sarah [Yebamoth 77a, 519].

[123]Sifre Deuteronomy is an halachic midrash of Tannaitic origins. For this reference, see Sifre Deuteronomy 249.

CHAPTER 5

AGGADAH AS HALACHIC CASE STUDY

The Evolution of Aggadic Stories

The Talmud contains many passages in which an illustrative, aggadic story follows the discussion of an halachic principle. However, frequently, one cannot easily assess the authority of these aggadic texts. In some instances, the aggadot relate to the preceding halachic discussion only by a tangential, associative link. In other places, the relationship between the aggadic example and the halachic principle is more direct but the aggadic example does not greatly clarify or alter one's understanding of the halachic material. Yet there are passages in which the aggadic material seems to clarify the proper interpretation of the halachic principle that precedes it.

To a large degree, we can only speculate about how the Talmudic editor(s) understood the authority of these aggadot in relation to the halachic material. However, we can make a somewhat more confident assessment of the authority that these aggadot came to possess over time. On occasion, later authoritative, halachic sources (e.g., the Mishneh Torah and the Shulchan Aruch) include elements of these aggadot in their codifications of Jewish law. To the extent that these legal sources do include originally aggadic material, we may argue that the material has evolved into a type of case study for the halachic principles in question.

Fathers, Sons and the Law of "Machteret"

In an earlier chapter, we explored the gemara's discussion about the proper interpretation of the law of machteret (one who breaks in to rob a house). Sanhedrin 72a-b presented two baraithot which seemed to recommend contradictory interpretations. The first baraitha suggested that one ought to

presume the non-violent intentions of the robber and kill him only in cases where it was clear that his intentions were violent. However, the second text suggested that one ought to presume the thief intended physical harm and refrain from killing him only in cases where it was absolutely clear that the thief's intentions were non-violent.

In its resolution of this apparent contradiction, the gemara proposed that the first interpretation concerned a case such as that of a father breaking into his son's house, while the second interpretation concerned the opposite situation--a son breaking into his father's home. The implication seems to be that whereas a father would not physically harm his son, the reverse is not true. As we noted earlier, the basis of this interpretation is an aggadic, sociological assumption about the respective attitudes of fathers and sons.

By the time of the Mishneh Torah (ca. 12th century), this interpretation has achieved halachic authority. Despite their essentially aggadic foundation, the respective cases of the father and son who break in to each other's houses have become the exemplars for interpreting this law. Thus, Mishneh Torah, Nezikin, Hilchot G'neva 9:10 says:

> If a householder is certain that a thief who has broken in will not kill him and has come only for property, he may not kill him, and if he does so he has committed murder, for Scripture says, If the sun be rise upon him (Exod. 22:2), which means, "If it is as clear as day to you that the thief's intentions towards you are peaceful, you may not kill him." Therefore, if a father breaks into his son's premises, he may not be killed, for the father will certainly not kill his son; but if a son breaks in to steal from his father, he may be killed.[124]

Despite its essentially aggadic basis, Maimonides treats the interpretation as authoritative, cites its aggadic, sociological assumption as rationale and assimilates the case examples to the law of machteret. But we can present several examples which draw on texts whose original, aggadic character was even more explicit.

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[124]The Code of Maimonides: Book Eleven: The Book of Torts, trans. Hyman Klein, Yale Judaica Series, vol. 9 (New Haven: Yale University Press, 1954), 87.

Reverence for Father and Correcting His Mistakes

Kiddushin 32a[125] contains an aggadic account of an halachic discussion between Rav Ezekiel and his son, Rav Judah. The latter corrects an halachic tradition that his father has reported. Rav Judah's understanding of the law seems to be correct. However, Judah's teacher, Samuel, admonishes him for the style in which he addresses his father.

> R. Ezekiel taught his son Rami: If criminals condemned to be burnt [become mixed up] with others sentenced to be stoned, R. Simeon said, They are executed[9] by stoning, because burning is severer. Thereupon Rab Judah his son said to him: Father, teach it not thus. For why state the reason because burning is severer? This follows from the fact that the majority are for stoning.[10] But teach it thus: If [criminals condemned] to be stoned are mixed up with [others sentenced] to burning. Said he to him, If so, consider the second clause: But the Sages say, They are executed by burning, because stoning is severer. But why particularly because stoning is severer: deduce it from the fact that the majority are to be burnt?--There, he answered him, the Rabbis oppose[11] R. Simeon: As to what you say that burning is severer, that is not so, stoning being severer. Said Samuel to Rab Judah: Keen scholar![12] speak not thus to your father. For it was taught: If one's father is [unwittingly] transgressing a precept of the Torah, he must not say to him, "Father, thou transgressest a Biblical precept", but, "Father, it is thus written in the Torah." "It is thus written in the Torah"--but he surely grieves him?[1] But he must say to him, "Father, such and such a verse is written in the Torah."[2]
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> (9) Lit., "judged". (10) For, "if criminals condemned to be burnt become mixed up with others sentenced to be stoned," implies that the latter are in the majority, as the smaller number is lost (i.e., mixed up) in the larger. (11) Lit., "say to". (12) Others translate: man of long teeth, v. B.K. (Sonc. ed.) p. 60, n. 1.
> (1) For this is the same as telling him that he is transgressing. (2) Not directly stating the law but leaving it for his father to understand. This does not shame him.

As with a previous example, the text discusses the relative severity of two forms of capital punishment. While the details of the halachic debate are important, for the present study, our primary interest is with the aggadic description in which

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[125]Cf. Sanhedrin 80b-81a in which the progression of the discussion is slightly more clear.

Rav Judah speaks to his father inappropriately. That interchange prompts Samuel to cite the baraitha regarding the appropriate manner to correct one's father.[126]

The Mishneh Torah, Shofetim, Hilchot Mam'rim 6:11 merely repeats the baraitha and adds that the son should speak to the father "as though he were consulting him, instead of admonishing him."[127] There is no direct allusion to the aggadic example provided by the story of Rav Judah. However, the Shulchan Aruch [ca. 16th century], Yore Deah, Hilchot Kibud Av V'em 240:11 does contain an allusion to this aggadic description:

> If one sees that his father transgresses words of Torah, he [the son] should not say to him [the father], "You have transgressed words of Torah." Rather, he should say to him, "Father, such and such is written in the Torah"--as though he were consulting him, instead of admonishing him. And he [the father] will understand the matter on his own and will not be embarrassed. **And if he [the father] errs in reporting a traditional halachic decision, he [the son] should not say to him, "Don't teach it thus."**[128]

The last, emphasized portion of the text represents the material that derives from the aggadic description of Rav Judah's behavior. The situation which the Shulchan Aruch describes is precisely the situation of our aggadic passage. Rav Judah's father, Rav Ezekiel, has misquoted an halachic tradition. Furthermore, the Shulchan Aruch repeats practically verbatim Rav Judah's first words to Rav Ezekiel, "Father, teach it not thus."[129] Thus, the Shulchan Aruch transforms the aggadic description of Rav Judah's interchange with his father into a case study of prohibited behavior.

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[126]Cf. Kiddushin 33b, in which Samuel similarly instructs Rav Judah about rising before his father, despite the fact that Rav Judah is his father's teacher.

[127]The Code of Maimonides: Book Fourteen: The Book of Judges, trans. Abraham M. Hershman, Yale Judaica Series, vol. 3 (New Haven: Yale University Press, 1949), 156.

[128]Both the translation and the emphasis are mine.

[129]In the Kiddushin passage, Rav Judah says, "Aba, lo titanya ha'chi" ['father, don't let it be taught thus']. In the Shulchan Aruch, the prohibited wording is rendered, "lo t'tani ha'chi" ['don't teach it thus'].

Honoring Father with Food and the Importance of Attitude

An aggadic passage from Kiddushin 31a-b and its parallel passage in the Jerusalem Talmud (Peah 1:1 [3b]) emphasize the importance of the manner in which a son fulfills the mandate to honor his father. According to the text, as much as his literal adherence to the law, the son's attitude and intention affects whether his actions are judged as reflecting honor towards his father. The Kiddushin passage says:

> Abimi, son of R. Abbahu recited: One may give his father pheasant as food, yet [this] drives him[130] from the world; whereas another may make him[131] grind in a mill [31b] and [this] brings him[7] to the world to come![2]

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(2) The Jerusalem Talmud amplifies this. A man once fed his father on pheasants (where were very expensive). On his father's asking him how he could afford them, he answered, "What business is it of yours, old man; grind (i.e., chew) and eat!" On another occasion it happened that a man was engaged in grinding in a mill, when his father was summoned for royal service. Said his son to him, "Do you grind for me, and I will go in your stead, the royal service being very hard."

Despite the ostensibly laudable practice of giving his father expensive food to eat, the first son relegates himself to eternal punishment because of his rude manner to his father. On the other hand, despite the ostensibly thoughtless act of setting his father to work at grinding, the second son relegates himself to eternal reward because of his intentions to save his father from even more difficult labor.

The Shulchan Aruch completely assimilates this aggadic example into its legal definition of the commandment to honor father and mother. According to Yore Deah, Hilchot Kibud Av V'em 240:4:

> What is "honor"? He [the son] gives him [the parent] food and drink, clothes and covers him, leads him in and out. And he must give it to him in a pleasant manner [lit., with the brightness of a pleasant face]. For even

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[130]The son.

[131]The father.

> if he feeds him stuffed [birds][132] every day, if he does in an angry manner [lit., shows him an angry face], he [the son] is punished on his account. (And the opposite is also true: If he causes his father to grind in a mill but his intention is for the good, in order to save his father from a more difficult task, he speaks appeasing words to his father's heart and shows him that his intention is for the good until his father is appeased to grind in a mill, [therefore] he [the son] merits the world to come.)[133]

The Shulchan Aruch clearly paraphrases and expands on the aggadic example from the Jerusalem Talmud. The particular scenarios described in Peah 1:1 serve as the paradigmatic cases for the attitude one should bring to honoring parents.[134] In this instance, the Shulchan Aruch has adapted and expanded an aggadic parable until that parable has achieved the status of an halachic case study.

The Extent of Honoring One's Parents

The final example is striking for a number of reasons. First, both the Mishneh Torah and the Shulchan Aruch assimilate this aggadic text to their halachic discussions of the obligation to honor one's parents. Second, while the original, Talmudic passage actually describes the exemplary behavior of a gentile, both of these later texts present the behavior as a mandate for Jewish sons and daughters. In other words, not only do both legal codes assimilate an aggadic description of a gentile's behavior, but they present it as a prescription for Jewish behavior.

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[132]The precise phrase in the Shulchan Aruch is "p'tumot" ('fattened animals'). It seems likely that the Shulchan Aruch draws here on the text from the Jerusalem Talmud. Whereas the Kiddushin text describes the meal as "p'siyonim" (pheasants), the text from Peah speaks of both "p'tumot," generally and "tar'nigolim p'tumim" (stuffed chickens or birds) specifically.

[133]The translation is mine. The portion in parenthesis is my translation of Isserles' gloss to this section.

[134]Karo generalizes from the example of speaking angry words in Peah to a prohibition against displaying an "angry manner." Similarly, instead of specifying that the son's "reward" will be life in Gehinnom, Karo says only that the son "will be punished." Isserles, on the other hand, fills in some additional details of behavior on the part of the son who causes his father to grind. Thus, in Isserles' account, this son appeases his father's heart and helps him to reconcile himself to grinding in a mill.

Kiddushin 31a discusses both the concept of honoring parents, generally, and the question of how far the duty extends. Probably in the latter context (though the gemara does not make any explicit connection), the following aggadic passage occurs:

> When R. Dimi came,[1] he said: He [Dama son of Nethinah] was once wearing a gold embroidered silken cloak and sitting among Roman nobles, when his mother came, tore it off from him, struck him on the head, and spat in his face, yet he did not shame her.

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(1) V. p. 46, n. 6.[135]

The preceding material on the same page contains another story of Dama's exemplary behavior towards his parents. In that context, we learn that Dama was a heathen who lived in Ashkelon. Thus, in several instances, this Talmudic text uses Dama's behavior to exhort Jews to fulfill their obligations. As the preceding material points out, both in terms of reward and responsibility, if one who has not been commanded to perform this mitzvah acts in this manner, how much the more so should Jews who have been commanded to behave in this manner!

The Mishneh Torah, Shofetim, Hilchot Mam'rim 6:7 reports the following legal responsibility:

> To what lengths should the duty of revering them go? Even if he is attired in costly garments, presiding over the congregation, and his parents come and rend his garments, strike him on the head, and spit in his face, he must not shame them. It behooves him to remain silent, to fear and revere the King, King of kings, who has thus decreed. For if a mortal king were to issue against him a decree, even more exasperating in character, he would be powerless to rebel against it, all the more so if the author of the decree

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[135]The note in question reports: "R. Dimi was a fourth century Amora of Palestine, who settled in Babylon on account of Constantine's decree of banishment against the Jewish teachers of Palestine. But even before this scholars regularly travelled to and fro between the Palestine and Babylonian academies, and R. Dimi and Rabina were specially designated for this task, to provide a cultural link between the two. . . ."

> is He who spoke and the world came into being in accordance with His will.[136]

While this passage is obviously not identical to the original aggadah, there are enough common elements to warrant the hypothesis of a relationship.[137]

Thus, in the hypothetical case described above, Dama's "gold embroidered silken cloak" is rendered as "he is attired in costly garments." Instead of "sitting among Roman nobles," the hypothetical Jewish person is "presiding over the congregation" (in either case, the person is in a social situation where the parents' behavior clearly would be embarrassing). The actions of the parents are also quite parallel: they rip the son's garment, hit him on the head and spit in his face. And in both cases, the son does not shame the parent(s).

We should note one relatively minor distinction. While the gemara cites this passage in the context of a discussion of "honor," both the Mishneh Torah and Shulchan Aruch cite this description to answer the question of the extent to which one is required to demonstrate "reverence" for parents. Both codifications, however, use a different text to answer the question of the extent to which one is required to demonstrate "honor" for parents.[138] Thus, this passage balances the discussion by supplying an analogous answer regarding the extent of the obligation for "reverence."

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[136]The Book of Judges, 155-156. The text of the Shulchan Aruch is identical except that it ends with the phrase, "who has thus decreed" (Cf. Shulchan Aruch, Yore Deah, Hilchot Kibud Av V'em 240:3).

[137]This contention receives further support from the fact that Be'er Ha'golah's commentary on this portion in the Shulchan Aruch refers the reader to the Kiddushin material.

[138]Kiddushin 32a contains the passage: "Come and hear: R. Eliezer was asked: How far does the honour of parents [extend]?--Said he: That he should take a purse, throw it in his presence into the sea, and not shame him" (Kiddushin 32a,155-156). However, Kiddushin 31a, contains a different response to the same question. At that point, the Talmud cites another story about Dama's refusal to awaken his sleeping father, despite obvious financial loss to himself.

These examples have shown that we can identify instances in which an originally aggadic passage evolves into an halachic case study. Some aggadic texts whose original link with halachic material was rather tenuous can become more closely associated with an halachic interpretation over the course of time. Even these few examples have proven that both Maimonides in the Mishneh Torah and Joseph Karo in the Shulchan Aruch were quite willing to adapt aggadic material in order to refine and extend their understanding of halachic legislation. Such a role for aggadic literature constitutes another important point in the range of relationships between aggadah and halachah. The next chapter will present a few examples which seem to reinforce the more normative hypothesis--that the Talmud brings in aggadah primarily as a non-authoritative, supportive afterthought for halachic discussions.

CHAPTER 6

AGGADAH AS A SUPPORTIVE AFTERTHOUGHT

The Relationship Between Aggadah and Halachah

We have outlined some suggestive examples, in which aggadic material appears to influence or even determine the nature of a halachic discussion. Nonetheless, it should be repeated that historically, most scholars have defined the relationship of aggadah to halachah in much less influential terms. In this regard, Mielziner's perspective on the role of aggadah typifies the general, scholarly perspective of the late 19th and early 20th centuries:

> Agadic passages are often, by the way, interspersed among matters of Halacha, as a kind of diversion and recreation after the mental exertion of a tiresome investigation or a minute discussion on a dry legal subject.[139]

According to scholars like Mielziner, the aggadah functions as a sort of light, textual "liqueur" that cleanses the intellectual palate between heavier and more substantial servings of halachic discussion. Aggadah is a "diversion," a form of "recreation."

Other, more recent scholars have proposed a slightly more substantial relationship between aggadah and halachah. Thus, the editors of the Encyclopedia Judaica write:

> The aggadah is for the most part an amplification of those portions of the Bible which include narrative, history, ethical maxims, and the reproofs and consolations of the prophets. Only insofar as it seeks to adduce reasons for the mitzvot does the aggadah concern itself with the legal portions of the Torah.[140]

According to these scholars, the aggadah sometimes "concerns itself" with halachic questions--when aggadah discusses the rationale behind various of the Torah's

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[139]Mielziner, 57.

[140]Encyclopedia Judaica, s.v. "Aggadah," 354.

laws. Otherwise, however, this perspective seems to echo Mielziner's position. The two genres of literature are, for the most part, unrelated.

As is certainly clear by now, the present study does not share this perspective. In most instances, the textual flow from aggadah to halachah and back again suggests some connection. Granted, in many cases, the bond between the two types of literature appears tangential and even tenuous. Nonetheless, there is usually some association of content, authorities or theme that seems to link the aggadic and halachic material together. Generally, the aggadic passage either reinforces the halachic text or else it moves in a new direction based on some connection with the halachic material. However, it should be pointed out that along the spectrum of potential relationships we have suggested, these examples occupy the point at which aggadah has the least influence on halachah.

Thus, the present chapter will present cases in which the Talmud seems to use aggadic material either to reinforce the halachah or to weave in texts that are somehow related to the halachah. In many cases, one can only speculate about the Talmudic editors' intentions and must exercise appropriate caution in proposing the connection. However, in some cases, the Talmud itself, will provide an explanation for the transition to aggadic material.

Aggadah that Supports Halachic Material

In the previous chapter, we suggested that aggadic stories sometimes evolve into definitive "case studies" for the halachah. However, there are many cases in which the Talmud will follow a halachic discussion with a related story which only reinforces the legal material or takes off from that material in an entirely different direction. Kiddushin 29b contains an example of the latter type:

> Our Rabbis taught: If he has himself to teach and his son to teach, he takes precedence over his son. R. Judah said: If his son is industrious, bright,[2] and retentive,[3] his son takes precedence over him. Thus R. Jacob, son of R. Aha b. Jacob, was once sent by his father [to study] under Abaye. On his return he [his father] saw that his learning was dull. "I am better

than you," said he to him; "do you [now] remain here, so that I can go". Abaye heard that he was coming. Now, a certain demon haunted Abaye's schoolhouse, so that when [only] two entered, even by day, they were injured. He [[Abaye] ordered, "Let no man afford him hospitality;[4] perhaps a mircale [sic] will happen [in his merit]." So he [R. Aha b. Jacob] entered and spent the night in that schoolhouse, during which it [the demon] appeared to him in the guise of a seven-headed dragon. Every time he [the Rabbi] fell on his knees [in prayer] one head fell off. The next day he reproached them: "Had not a miracle occurred, you would have endangered my life."

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(2) Var. lec. filled (with a desire to learn). (3) Lit., "his learning endures in his hand." (4) Lit., "lodging place", so that he might be compelled to spend the night in the academy.

The gemara has been discussing the obligations of a father towards his son, including the responsibility to teach him Torah. This passage raises the halachic question of a potential conflict between a father's own obligation to study and his responsibility to his son--who should take precedence? On the face of it, therefore, the aggadic narrative provides a supportive example, in which a rabbinic authority acted in accordance with the halachic decision.

However, for several reasons, one can question the supportive power of the example. First, unlike the examples in the previous chapter, no elements of this aggadic passage evolve into a definitive case study in later codified material. Second, upon closer examination, Rav Aha b. Jacob's actions do not conform strictly with the halachah.[141] After all the halachah seems to imply that the presumption of preference lies with the father. The halachah defers to the son only in those exceptional cases where he is a more talented student than his father. Therefore, strictly speaking, Rav Aha b. Jacob probably should have gone in his son's stead in the first place. Finally, the bulk of the aggadah, at least as

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[141]This observation was suggested by Dr. Michael Chernick, thesis conference with author, Teaneck, New Jersey, November, 1988.

cited in the gemara, deals with the matter of the demon in Abaye's academy, not with Rav Aha's decision to replace his son at the academy.[142]

Having said that, however, we should note that the Talmud does introduce this aggadah immediately after a discussion of whose obligation for Torah study should take precedence. Further, the gemara introduces this story with the Aramaic phrase, "Ki ha d'Rav Ya'akov . . . ." While the Soncino translation renders this phrase as, "Thus R. Jacob . . . ," a more literal translation might be, "Like this [story] of Rav Jacob." In other words, the Talmudic syntax itself suggests that the editor placed this aggadah here in order to provide a supportive example.

A later discussion in Kiddushin 29b exemplifies aggadah that reinforces an halachic discussion. The gemara explores the priority of the obligation to study Torah compared with the obligation to marry. Again, the question is which responsibility takes precedence. Following an halachic debate on this topic, the Talmud cites the following material:

> R. Hisda praised R. Hamnuna before R. Huna as a great man. Said he to him, "When he visits you, bring him to me." When he arrived, he saw that he wore no [head-]covering.[2] "Why have you no head-dress?" asked he. "Because I am not married," was the reply. Thereupon he [R. Huna] turned his face away from him. "See to it that you do not appear before me [again] before you are married," said he. R. Huna was thus in accordance with his views. For he said, He who is twenty years of age and is not married spends all his days in sin. "In sin"--can you really think so?--But say, spends all his days in sinful thoughts.
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> Raba said, and the School of R. Ishmael taught likewise: Until the age of twenty, the Holy One, blessed be He, sits and waits. When will he take a wife? As soon as one attains twenty and has not married, He exclaims, "Blasted be his bones!"[3]
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> R. Hisda said: The reason that I am superior to my colleagues is that I married at sixteen.[4] And had I married at fourteen, [30a] I would have said to Satan, An arrow in your eye.[5]

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[142]In fact, this material typifies an aggadic genre of "demon stories." Perhaps, the editors culled the story from that material because of the connection between its introductory narrative and the present halachic discussion (Dr. Michael Chernick, thesis conference with the author, Teaneck, New Jersey, November, 1988).

> (2) A sudarium with which married men used to cover their heads . . . . (4) So that my mind was entirely free for study. (5) I defy you! being absolutely free from impure thoughts . . . .

This aggadic material seems to serve two important purposes. First, with regard to the preceding discussion, it reinforces the importance of marriage as an halachic obligation. All three sections emphasize the importance of taking a wife. However, the Talmudic editor also uses these aggadic passages to shift the halachic focus of the discussion. According to the Stammaitic editor, the story demonstrates that Rav Huna's behavior was consistent with his halachic judgements (in this instance, that one should marry by age 20).[143] Having made that point, the subsequent aggadic material reinforces the critical importance of marriage by age 20 (if not at a younger age!).

In this manner, the Talmudic editors weave halachic passages and supportive aggadic material into a single, literary tapestry. In this case, the gemara moves from one genre to the other and back again with no formal acknowledgement. Other than the Stammaitic observation that R. Huna's actions were consistent with his previously articulated halachic opinion, there are no explicit statements of transition.

Kiddushin 31b continues the discussion of a child's obligation to honor father and mother, which we examined earlier. In that context, R. Abbahu praises the exemplary behavior of his son, Abimi. The Talmudic editor proceeds to fill in the details of Abimi's actions:

> R. Abbahu said, E.g., my son Abimi has fulfilled the precept of honour. Abimi had five ordained sons[3] in his father's lifetime, yet when R. Abbahu came and called out at the door, he himself speedily went and opened it for him, crying, "Yes, yes,"[4] until he reached it. One day he asked him, "Give me a drink of water." By the time he brought it he had fallen asleep. Thereupon he bent and stood over him until he awoke. It so happened that Abimi succeeded in interpreting, A song of Asaph.[5]

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[143]Though, the aggadic text makes no explicit statement about either R. Hamnuna's age or about R. Huna's concern with Hamnuna's age.

(3) Ordination (Heb. semichah, lit., "laying of the hands") was the conferment of authority to exercise Rabbinical functions. (4) I.e., I am coming to open it. (5) Ps. LXXIX,I. The whole psalm is a lament for the defilement of the Temple and a series of national disasters. Hence the question arises, surely the superscripture should have been, "A dirge of Asaph"? By divine inspiration Abimi explained it that Asaph uttered song because the Almighty had allowed His wrath to be appeased by the defilement and other indignities which the Temple had suffered. Otherwise, only the total destruction of His people would have sufficed. So Rashi, quoting some anonymous commentators. Tosaf., quoting the Midrash, explains it otherwise.

Despite Abimi's stature as a teacher, a scholar and a father of scholars, he, nonetheless, shows great honor to his own father by serving R. Abbahu himself. Additionally, the gemara seems to imply that Abimi was rewarded for this behavior by a Divinely inspired interpretation of Psalm 129.

Despite its praiseworthiness, however, Abimi's example does not determine the halachah regarding honor of mother and father. The aggadic description merely provides another proof that even the sages, themselves, fulfilled the obligation to honor their parents. However, this example leads to the succeeding halachic discussion about the relationship between a sage and his parents.

R. Jacob b. Abbahu asked Abaye: "I, for instance, for whom my father pours out a cup [of wine] and my mother mixes it[6] on my returning from the school, what am I to do"?[1]--"Accept it from your mother", he replied, "but not from your father; for since he is a scholar, he may feel affronted."[2]

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(6) Their wines are diluted, being too strong to be drunk neat. (1) Am I to permit it, or do I fail in the honour due to them? (2) Though he loves you and does it willingly, he may feel that his son should not permit a scholar to perform these services for him.

In the preceding example, Abimi honored his father, despite his own rabbinic stature. In the present case, R. Jacob asks Abaye whether or not it shows disrespect to his parents to accept their ministrations on his behalf. Abbaye responds that in the case of one's mother, it is not disrespectful to accept the wine. But in the case of one's father who is also a scholar, acceptance of the wine may be perceived as a failure to show sufficient honor.

At present, we are less concerned with the details of this halachic ruling. What seems more interesting is that a somewhat tangential association from the previous aggadic example probably leads the Talmudic editor to include this halachic question here. A son who is, himself, a scholar is entitled to honor. This implicit belief connects these two passages. Abimi's behavior becomes more striking because one might not think that a person of such stature would have to honor his father. R. Jacob's question derives from a conflict between his parent's desire to honor him and his responsibility to honor them as parents (and to honor his father as a scholar).

In all likelihood, Abaye's halachic distinction between honoring mothers and fathers, suggests the inclusion of the subsequent aggadic accounts regarding R. Tarfon and R. Joseph's behavior towards their mothers. Though neither aggadic passage directly informs the halachic definition of honoring parents, both reinforce the extent and importance of this responsibility.

> R. Tarfon had a mother for whom, whenever she wished to mount into bed, he would bend down to let her ascend;[3] (and when she wished to descend, she stepped down upon him).[4] He went and boasted thereof in the school. Said they to him, "You have not yet reached half the honour [due]: has she then thrown a purse before you into the sea without you shaming her?"
>
> When R. Joseph heard his mother's footsteps he would say, "I will arise before the approaching Shechinah."

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(3) By stepping upon him. (4) The passage between brackets is omitted in Asheri and Alfasi.

Interestingly, though neither passage determines halachah, both have connections with important halachic ideas. R. Joseph's reference to his mother as "Shechinah" echoes the analogy between honoring God and parents that we explored in Chapter 3. The narrative concerning R. Tarfon reinforces the ruling attributed to R. Eliezer (Kiddushin 32a) about the extent of the obligation to honor one's

parents.[144] Nonetheless, in their present context, these passage merely reinforce the importance of the obligation to honor one's parents.

With each example that we have explored thus far, the aggadic material has provided some sort of support for an halachic discussion. In none of these cases has the aggadic material been completely dissociated from halachic concerns--a mere "diversion." As with rabbinic literature more generally, the Talmud is characterized by a type of associative thinking that links ostensibly disparate material into a distinctive and striking literary whole.

Most of the examples cited above were aggadic accounts of the rabbis' behavior. However, as we noted in Chapter 1, this material is but one category of aggadic literature. Before concluding the present chapter, therefore, we should present a few cases of aggadic texts from other categories which provide reinforcement for halachic subject matter.

Earlier, we examined the "mystical" aggadic text from Berachot 7a which takes up the question of whether God prays. As you may recall, according to the gemara, God prays that the Divine attribute of mercy suppresses the attribute of anger. Perhaps based upon the reference to God's anger, immediately following that passage, the gemara explores the basis of the prohibition against attempting to placate a person in the time of his anger. The Talmud offers the following exegetical support for the prohibition:

> R. Johanan further said the name of R. Jose: How do you know that we must not try to placate a man in the time of his anger? For it is written: My face will go and I will give thee rest.[1] The Holy One, blessed be He, said to Moses: Wait till My countenance of wrath shall have passed away and then I shall give thee rest. But is anger then a mood of the Holy One, blessed be He--Yes. For it has been taught:[2] A God that hath indignation every day.[3] And how long does this indignation last? One

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[144]That text reads: "Come and hear: R. Eliezer was asked: How far does the honour of parents [extend]?--Said he: That he {the father}* should take a purse, throw it in his presence into the sea, and {the son should} not shame him" [Kiddusin 32a, 155-156].

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*These bracketed additions are mine.

> moment. And how long is one moment? One fifty-eight thousand eight hundred and eighty-eighth part of an hour.
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> (1) Ex. XXXIII,14. (2) V. A.Z. 4a. (3) Ps. VII,12.

The exegesis builds on the peculiar wording of God's response to Moses' request. The phrase, "my face will go" is taken to be prescriptive: 'Wait until My face shows that My anger has gone and then you may appease me of my anger.' The implication seems to be that just as Moses was instructed to respond to God's anger, one should respond towards an angry person. The subsequent exegesis of Psalm 7:12 reinforces the idea that God does, in fact, have attributes such as "anger."

As with the prior examples, the preceding, aggadic material does not determine the halachah. Nonetheless, as in those cases, this exegetical aggadah reinforces and undergirds the halachic prohibition against confronting someone in their moment of anger. However, the use of aggadah as support for halachah is not limited to the role of explaining the basis of the mitzvot. In some instances, the aggadah reinforces the law by celebrating the values which inform the halachic content.

Kiddushin 30a discusses a man's obligation to teach Torah to his grandson as well as his son. The importance of this halachic obligation is supported by the following exegesis:

> R. Joshua b. Levi said: He who teaches his grandson Torah, the Writ regards him as though he had received it [direct] from Mount Sinai, for it is said; "and thou shalt make them known unto your sons and your son's sons", which is followed by, that is the day that thou stoodest before the Lord thy God in Horeb.[9]
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> (9) Ibid. 10.[145]

[145]The cited reference is to Deuteronomy 4:10. However, the exegesis actually grows from an interpretation of the end of 4:9 and the beginning of 4:10.

Based on the exegesis of Deut. 4:9-10, this aggadah equates the act of transmitting Torah to one's grandson with the act of receiving Torah at Sinai. The text equates the honor and importance of the two experiences.[146] Clearly, the text reinforces the preceding halachic discussion about this obligation. However, at the same time, the aggadah elevates the value of teaching Torah to a higher level.

Other examples of aggadot that support halachah are found among the "ethical" and "dogmatic" aggadot of the Talmud. Tractate Avot contains almost exclusively aggadic texts. Yet, even many of these texts reinforce halachic material. For example Avot 2:4 cites this teaching of Rabban Gamaliel:

> Do God's will as you would do your own will, so that he may do your will as if it were his; sacrifice your will for the sake of his will, so that he may undo the will of others before yours.[147]

Insofar as all of halachah is understood to be God's will, this ethical-dogmatic aggadah reinforces the importance of obedience to Jewish law.

Many aggadic passages in Avot reinforce the value of Torah study. Thus, in a teaching attributed to Hillel: ". . . do not say: 'When I shall have leisure I shall study,' for you may never have leisure."[148] Or, in a teaching ascribed to Rabbi Meir:

> . . . Do rather less business and occupy yourself with the Torah; be humble before all men; if you neglect the Torah, you will have many disturbing causes in your way but if you toil in the Torah, God has abundant reward to give you.[149]

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[146]Though the interpretation is necessarily speculative, perhaps the text also recognizes a relationship between teaching Torah and the revelation at Sinai. In teaching Torah to a generation that will probably outlive him, a man participates in the eternal moment of revelation at Sinai. In other words, perhaps the aggadah does not only mean that a grandfather who teaches his grandson Torah merits the experience at Sinai. Perhaps, in some sense, the aggadah intends to point out that this behavior actually enables him to stand at Sinai.

[147]Quoted in Daily Prayer Book: Ha-siddur Ha-shalem, translated and annotated with an introduction by Philip Birnbaum (New York: Hebrew Publishing Company, 1949), 486.

[148]Avot 2:5, ibid.

[149]Avot 4:12, ibid., 506.

Or, similarly, in the following teaching ascribed to Rabbi Tarfon:

> . . . You are not called upon to complete the work [of Torah study], yet you are not free to evade it; if you have studied much Torah, much reward will be given you--your Employer can be trusted to pay you for your work; and know that the grant of reward to the righteous will be in the time to come.[150]

None of these texts are halachic nor do they even influence the development of halachah. Nevertheless, these ethical-dogmatical aggadot reinforce important halachic obligations such as obedience to God's will and Torah study.

This chapter has explored aggadot which reinforce and support halachic material in various ways. Though the bond between the two types of literature may be somewhat tangential, there is usually some association of content, authorities or theme that links the aggadic and halachic material together. However, as stated at the outset, within the spectrum of potential relationships we have suggested, these examples certainly occupy the point at which aggadah has the least influence on halachah. Nonetheless, as we have argued throughout, contrary to the position taken by some scholars, in these examples there almost always seems to be some relationship between aggadah and halachah. The former is seldom irrelevant to the latter.

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[150]Avot 2:21, ibid., 492.

CHAPTER 7

CONCLUSIONS AND IMPLICATIONS

We began by considering a definition and typology for aggadic literature. The thesis then moved to an exploration of Biblical antecedents, both for the various categories of aggadah and for the range of relationships between Jewish "lore" and "law." In the next chapter, the thesis demonstrated that the aggadic concept of parallel responsibilities to parents and God seems to have served as the foundation for halachic decision and definition. Following this discussion, we examined aggadic examples of rabbinic "sociology" as a conceptual foundation for halachah. The thesis turned next to examples of aggadic stories that come to function as "case studies" in later halachic literature. Finally, we looked at some examples of aggadic passages whose relationship to halachah is closer to the traditional understanding--a supportive afterthought to halachic discussion.

More generally speaking, this thesis has presented a series of suggestive examples to support the theory that there is often a closer relationship between aggadic and halachic texts than was traditionally recognized. The thesis proposes a range of relationships between aggadah and halachah that stretches from a minimal relationship, wherein aggadah merely reinforces or develops a tangential idea in halachah, to a maximal relationship, wherein aggadah seems to provide the conceptual foundation for halachah. Somewhere between the two extremes are those examples in which elements of an aggadic narrative evolve into the definitive, halachic case study for an area of Jewish law.

Presuming that one accepts the tentative findings of this study, one must begin to alter considerably the perception of the character of both aggadic and halachic literature. Since, in certain instances, the two genres may be inextricably related, to study either exclusively may be to ignore important evidence about the rabbinic world view and the nature of Jewish thought and practice.

Furthermore, in taking the claims of this thesis seriously, one must consider the possibility that scholarly insistence on an absolute distinction between these two literatures is both inaccurate and deceptive. As we noted in the introduction, Bialik's ice/water metaphor contains important insights about the organic relationship between these two literary phenomena. In addition, the syntax and arrangement of many Talmudic texts, themselves suggest that scholars may have overdrawn the distinction between aggadah and halachah. After all, the movement from one genre to the other is frequently accomplished with no explicit transition but, on the contrary, with an explicit attempt to weave the passages into some type of coherent whole.

At the very least, this thesis has found sufficient reason to explore the question of this relationship further. Whether one is totally convinced by them or not, the examples which we have assembled suggest that the relationship between aggadah and halachah is at least more complicated than is often claimed. Perhaps, further exploration will reveal that much of the aggadah contains fragments of a rabbinic "meta-halachah"--the underlying principles and world view which motivated halachic decision-making. Such a "discovery" would have critical ramifications for scholars of rabbinic literature as well as for contemporary Jews of every denomination.

The results of such a perspective might be particularly significant for adherents of liberal Judaism. Many liberal Jews have been more drawn to midrashic and aggadic literature than to the literature of halachah. The concern with individual autonomy and reason that characterizes post-enlightenment, liberal Judaism has made aggadah more appealing and less threatening than halachah. Paradoxically, the findings of this study may suggest an avenue by which liberal Jews can begin to consider halachah more seriously. To the extent that the aggadah does articulate the ideals and values from which halachah grows, liberal Jews may find halachic literature more accessible and desirable. In fact, to the

extent that both literatures reflect the same impulse and world view, no serious, religious Jew can afford to ignore either genre.

In closing, it is worth quoting the words of Bialik with which we began:

> Halachah and Aggadah are two things which are really one, two sides of a single shield. The relation between them is like that of speech to thought and emotion, or of action and sensible form to speech. Halachah is the crystallisation, the ultimate and inevitable quintessence, of Aggadah; Aggadah is the content of Halachah. Aggadah is the plaintive voice of the heart's yearning as it wings its way to its haven; Halachah is the resting-place, where for a moment the yearning is satisfied and stilled. As a dream seeks its fulfillment in interpretation, as will in action, as thought in speech, as flower in fruit--so Aggadah in Halachah. But in the heart of the fruit there lies hidden the seed from which a new flower will grow. The halachah which is sublimated into a symbol--and such halachah there is, as we shall find--becomes the mother of a new aggadah, which may be like it or unlike. A living and healthy halachah is an aggadah that has been or that will be. And the reverse is true also. The two are one in their beginning and their end.[151]

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[151]H.N. Bialik, Halachah and Aggadah, trans. Sir Leon Simon (London: Education Department of the Zionist Federation of Great Britain and Ireland, 1944), 9-10.

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