Finding Our Way: Creating Liberal Halakhah

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Table of Contents

Introduction

We live in profoundly uncertain times. The rapidity of change, the uprooting of cultures, shifting populations, and the economic and political upheavals of our era have led to feelings of disorientation, despair, and confusion about how we are to live. The distance between the promise of modernity and the outcomes– the escalating devastation of our planet; humanity's ongoing capacity for genocide and war; the continued exploitation, enslavement, and trafficking of the world's poor; and the 24/7 relentlessness of commerce and production – has led a growing number of moderns, among them Jews, to question our way of life in these times.

The answers given by unfettered market capitalism, rational choice theory, psychology and evolutionary biology are proving inadequate to address our moral and existential crisis. In response, an unprecedented number of Americans, and American Jews, are seeking a deeper sense of purpose and meaning in life: through spirituality; a relationship with God; and a constructive way to contribute their lives toward healing our world. The temple of modernity is crumbling, its rules and practices are no longer sufficient, and the question of how we should live is the central guiding question of our time.

Modern Jews who turn to liberal Judaism in search of a way to live out this question will be disappointed if they do not dig. In exchange for the invaluable contributions of individualism and voluntarism, modernity has done

damage to the rich and layered way of life that was Judaism. We have emerged from the last two centuries a thin culture, lacking substance and cohesion. We have become ambivalent about the authority and relevance of our sacred texts – Torah, Midrash, and Talmud. We are distanced by language, idiom, and belief from our liturgy. And perhaps most crippling, we share few sustaining Jewish practices. Without a shared narrative, language, and way of life, liberal Judaism can feel like a shell, a moth-eaten fabric.

Rachel Adler explains, "Modernity has punched holes in the thought and practice of Judaism, and its practitioners have had to improvise to stanch the resultant hemorrhage of Jewish meaning. ..The more seriously Jews think about their Judaisms, the more likely they are to find themselves wanting."[1] She quotes Arnold Eisen, who suggests that "the loss of sustaining experiences" in Judaism—shared practices by which we live out our stories and beliefs – makes the Jewish discourse on God and God's law unconvincing.[2] Without referents and a lived reality for the words we pray and learn, what is their meaning? Adler continues, "Without a means through which the stories and the values of Judaism can be embodied in communal praxis, how are they to be sustained by experiences? Values and stories are empty and meaningless if we lack ways to act upon them. Without concrete, sensuous, substantial experiences that bind us to live out our Judaisms together, there is nothing real to engender."[3]

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[1] Rachel Adler, *Engendering Judaism: An Inclusive Theology and Ethics* (Boston: Beacon Press, 1998), 23.
[2] Arnold Eisen, *The Chosen People in America: A Study in Jewish Religious Ideology* (Bloomington: Indiana University Press, 1983), in Adler, 23.
[3] Adler, 25.

All people on earth create worlds, normative universes in which they live. Human beings, in communities, naturally develop expectations for behavior, rules for engagement with others, and shared concepts by which we communicate. Language itself is only possible because it has rules. To the extent that this paper is intelligible to the reader, it is so because we've agreed to abide by certain expectations for structure and usage. These norms give the individual a meaning-laden framework within which (or against which) to make choices about how she will live.

Liberal Jews are already living according to a set of laws and norms. These have been absorbed from our surrounding culture. At one time, every Jew's surrounding culture was Judaism. That is no longer so. The question is not whether we should have rules. The question is whether the rules by which we are already living will get us where we need to go. Will they make us who we want to be? The question is whether the norms that shape our lives allow us to respond effectively to the moral and existential crises of our times. If the answer to these questions is no, then what rules would enable us to be who we are meant to be in the world?

One might say that Judaism is a 3,000 year old yearning on this very question: Given the commanding presence of YHVH, how should we live? Halakhah was born of this question. The halakhic conversation, as preserved in Rabbinic texts, demonstrates a creative and courageous approach to the question of how Jews ought to live. As this work will show, halakhah was originally designed to respond to the changing circumstances of the changing world.

Halakhah was originally designed to be reinterpreted and adapted by each generation. Unfortunately, halakhah became constricted to a narrow range of topics and ideas over the centuries, leaving important areas of Jewish life and significant portions of the Jewish people unaddressed. In addition, even with the responsa system, halakhah has been unable to expand or adapt enough to speak to the changing demands of our world, the changing challenges facing Jewish life, and the changing consciousness and values of the Jewish people.

Therefore, when liberal Jews hear the word halakhah, we tend to grimace, imagining a set of patriarchal and obsolete rules that we are supposed to feel guilty for not following. We may imagine members of our own families or of the larger Jewish people whom we feel estranged from over matters of Jewish observance. If we have an image of halakhah at all, it is usually one of restriction, of rigidity, perhaps illegitimate authority -- a demand that we relinquish our rational, conscientious selves for an unreflective obedience to tradition or group. Daniel Cederbaum, a Reconstructionist thinker, suggests that halakhah frightens Liberal Jews because "it invokes some dark presence coming out of the past to crush them with its oppressive weight."[4]

However, even the most liberal Jewish lives are influenced by halakhah. "Reform Judaism may indeed have dispensed with the 'rule of law,' the notion that every religious question must be submitted to rabbis for authoritative judgment, but it did not discard the law itself, the substance of halakhic

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[4] Daniel Goldman Cedarbaum, "The Role of Halakhah in Reconstructionist Decision Making," *The Reconstructionist* 65, no 2. (2001) 29.

observance as it has come down to us,"[5] Reform halakhist Mark Washofsky notes. "The very stuff of our religious life as Reform Jews, in other words, is halakhic. The way we pray, celebrate, commemorate, and mourn, even in our liberal and modern style, are modes of sacred action that we have inherited from the Rabbinic legal tradition. And it is to that tradition, to the Talmud and to the codes, the commentaries, and the responsa that we must turn if we wish to know this heritage and understand ourselves as Jews."[6]

Some parts of the received halakhah, those recorded in the Talmud and the codes, continue to have relevance, insight, and direction to offer contemporary life. Other parts of the received halakhah, when read literally as halakhah (not metaphorically, not creatively), violate contemporary liberal Jewish values by denigrating some part of humanity[7], and in this case they no longer apply. However, when we "turn it and turn it again," as advised by a sage in the Mishnah, some texts that appear irrelevant or problematic have a kernel of wisdom to offer the important questions we face today as Jews in the contemporary world. Perhaps most importantly, the halakhic conversation itself is a model for how we can conscientiously ask one another: Given the commanding presence of YHVH, how should we live in these times?

Halakhah is and ought to be ours, a conversation that we can enter and shape to address our most pressing questions. Through sensitive listening and

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[5] Mark Washofsky, *Jewish Living: A Guide to Contemporary Reform Practice* (New York: UAHC Press, 2001), xx.
[6] Ibid, xxi.
[7] This idea –that liberal Jews no longer adhere to the received halakhah when the halakhah denigrates some part of humanity – emerged from a conversation with Rabbi David Ellenson in February, 2009.

lively conversation with our tradition and each other, we can use the halakhah as a bridge that stretches from the world we live in to the world as it should be. Halakhah can be our means to make a new world, a redeemed world, through our commitments and our actions. It can be our way of life, a way of life that we consciously and conscientiously shape as we go.

Though for more than a century most Reform Jews have understood halakhah to be marginal or irrelevant to their lives, today increasing numbers of Reform and liberal Jews are seeking a Jewish path by which to live spiritually and responsibly in this time. Halakhah may just be the way.

Through this thesis I am attempting to lay the framework for a re-conceptualization of halakhah and a revaluation of what the halakhic process has to offer liberal Jews. In Chapter One, I ask a basic question: What is halakhah? To answer the question, we look at halakhah through a variety of metaphors. It is my hope that these metaphors – a fence, a world, a tree, a conversation, a bridge, a way -- expand the idea of halakhah and allow us to see afresh the purpose and merits of the halakhic process. In Chapter Two, we take up the real and significant challenges that halakhah poses for contemporary, liberal Jews, such as the tension between the self and the group; the meaning of revelation and the authority of Torah; the role of the rabbi; and what it is to be free. As these real tensions within liberal Judaism are explored in the thesis, a grassroots, liberal halakhic process emerges that is both responsive to the particular characteristics of contemporary liberal Jewry, and also calls upon us to stretch toward a more

intentional pattern of life. In Chapter Three we tackle two tasks. First, we imagine together what this grassroots, liberal halakhic process could look like on the ground. Second, we take up three pressing questions for contemporary Jews: work/life balance, the pay and treatment of workers, and how to live responsibly on the Earth. Through these questions, we explore how contemporary liberal Jews might use traditional texts as they develop their halakhah.

My highest hope is that my work will inspire liberal Jews to launch halakhic processes in their local communities, and that eventually we will grow a shared halakhic process held together through a virtual web network and operating in batei midrash and temple libraries throughout the Jewish world. At very least, I hope that it furthers the conversation among us about how we can support one another to fulfill our sense of obligation. Whether through this halakhic process or another means, ultimately liberal Jewry has a challenge before it: to translate our words into action to reweave a rich, meaning-laden way of Jewish life.

Chapter One: What is Halakhah?

What is halakhah? The Hebrew word halakhah is most often translated into English as "Jewish law," but the root of the word suggests that this translation is inadequate. Coming from the Hebrew root *H-L-Kh*, meaning to walk or to go, the word halakhah suggests motion. According to Biblical scholar Tikva Frymer-Kensky, the word halakhah does not have an original connotation of law. The Akkadian language, spoken by the Babylonians and Assyrians, has the word *tertu*, which is linked to the word Torah, and the word *alaktu*, which Frymer-Kensky identifies as the origin of the word halakhah. In Akkadian, *tertu* means "instruction from God," what God teaches. *Alaktu* means "the path of God," God's way. Frymer-Kensky explains: "The Halakhah shows the way of God in the world and the way of the world to God."[8]

Halakhah is a Fence

Moses received Torah from Sinai and passed it on to Joshua; Joshua to the elders, the elders to the prophets and the prophets passed it on to the Members of the Great Assembly. They said three things: Be moderate in judgment, create many students, and make a fence around the Torah.
Mishnah Avot 1:1

Though the Mishnah, the Talmud, the codes and the responsa literature contain thousands of pages articulating and defining questions and positions on particular cases of halakhah, they have remarkably little to say about the

[8] Tikva Frymer-Kensky, "Toward a Liberal Theory of Halakhah" *Tikkun* 10, no. 4 (July/August 1995)

definition or meaning of halakhah itself. One of the few images for halakhah in Rabbinic literature is found in the Talmud: "R. Hiyyah bar Abba said in the name of Ulla: From the time that the Temple was destroyed, the Holy One has had nothing in His world but the four cubits of the halakhah."[9]

Here we see halakhah as a limiting mechanism, not only for Jews but also for God. Before the *Hurban*, the destruction of the Temple, God and we had wide open spaces in which to dream and vision and communicate. God spoke with us directly through prophecy, and we communicated directly with God through sacrifices, *korbanot* (meaning drawing near), at the Temple. As a sovereign people on our own land, we could create our own society based on the principles of Torah. But between the Temple's destruction and the messianic era, God and we are limited to a small space, with boundaries imposed by the reality of exile, and boundaries erected for our own preservation.

We can imagine the great and grand *Beit Mikdash* (Temple), the largest-known building of its kind in the world at its time, opening up to the heavens, connecting each pilgrim in his finitude to the vast, unknowable universe of God. We can imagine the reaction when this center of the Jewish world was crushed into rubble. The feeling of being closed in, shut off, reduced. The feeling of needing to protect what's left, to both rein in and guard.

Dalet amot, four cubits, the demarcated boundary of the halakhah, is also associated in Rabbinic literature with an individual's personal space.[10] This evocative image of God confined to four cubits may also speak to the shift in

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[9] Babylonian Talmud, Berakhot 8a
[10] Babylonian Talmud, Eruvin 48a

focus away from the national to the personal. In the time of the Temple, God spoke to Israel as a nation, conceiving of individuals as part of the corporate whole. The Talmud, in contrast, is about persons, focused on the nuclear family, the home, the minyan. In exile, halakhah speaks to the individual Jew about how he ought to live.

In the first mishnah of Pirkei Avot the sages instruct us to make a fence around the Torah. Such a fence would ensure that in the absence of prophecy and sovereignty Jews do not stray from the rigid confines of behavior that would express God's will. In this image of halakhah, a fenced-in God and a fenced-in people are in a holding cell, a waiting dock, until redemption, when once again the world will open up.

If halakhah is a fence, it is not primarily concerned with the development of the Jewish people, who we are becoming. It is not primarily concerned with creating something new. Rather, its central concern is protecting and maintaining what is already within it against the temptations of surrounding cultures, against pressure to change, against meaninglessness.

For J. David Bleich, Rosh Yeshiva at the Theological Seminary at Yeshiva University, halakhah is a science.[11] Like science, halakhah is an objective enterprise, with immutable laws, established methods of inquiry, and clear outcomes. He quotes Masechet Peah in the Jerusalem Talmud, "Even that which a conscientious student will one day teach in the presence of his master was already revealed to Moses at Sinai"[12] interpreting it as follows:

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[11] David Bleich, *Contemporary Halakhic Problems, Vol IV*, (Jersey City: Ktav, 1995), xiii
[12] Jerusalem Talmud, Peah 2:4

"All of Halakhah is inherent in the original revelation at Mt. Sinai. Some portions of the Halakhah were fully formulated, others remain latent, awaiting investigation and analysis. Often it is the need of the hour, a specific query of problem which serves as the impetus to discover what has been inherent in the Halakhah from the moment of its inception."[13] For Bleich, halakhah is rigidly bounded. There is no room in halakhah for the subjectivity of interpreters, or for material extraneous to the system itself. The fences of halakhah were determined by God at Sinai, and it is our task only to live within its confines, seeking understanding only within its existing limits.

Halakhah is a World

The world stands on three things – Torah, Avodah, and Gemilut Chasadim. Mishnah Avot 1:2

In his landmark Harvard Law Review article "*Nomos* and Narrative," Robert Cover reads Mishnah Avot 1:2 not as a description of the natural world, but as a description of the world of meaning, the *nomos*.[14] Cover, a Jewish American legal scholar, understands the Rabbinic enterprise as world-making. He asserts that every people develops for itself a normative universe based in its narratives. Our stories, our narratives, describe our world for us, tell us who we are and give us images and a landscape through which to live our lives. *Nomos*, or law, emerges out of narrative as a shared expression of who we are, a translation of our stories into action. Thus conceived, law is not a product of the

[13] "Jewish Law: Eighteen Perspectives," *Judaism*, 29, no. 1 (Winter 1980)
[14] Robert Cover, "The Supreme Court 1986 Term: Forward: *Nomos* and Narrative," *Harvard Law Review* 97, no. 4 (1983), 11

state, but a communal expression of values and vision. Together, *nomos* and narrative create our world of meaning.

Out of the narratives of Israel, the Rabbis identified and created commonalities of meaning that made continued normative activity possible for the Jewish people after the destruction of the Temple. This exercise can be understood as erecting fences, marking what is in and what is out, but it can also be understood as the creation of a world. Fences emphasize the jurispathic, or the killing of law – the exclusion and annulment of rules and possibilities that are outside of the fence. World-creation emphasizes jurisgenesis, the creation of laws that structure and enact shared meaning. They are two views of the same enterprise.

Out of Torah, out of their interpretation of God's word and will, the Rabbis identified a "divinely ordained normative corpus, common ritual, and strong interpersonal obligations that ...combine to create precepts and principles enough to fill our lives, as well as to fit those precepts into the common narratives locating the social group in relation to the cosmos, to its neighbors, and to the natural world."[15] In the midst of the chaos after the destruction of the Temple, the Rabbis aimed to "distill some purer essence of unity, to create in our imaginations a *nomos* completely transparent," engaging in what Cover calls the *paidaic* mode. In the *paidaic* mode, "that which must be done, the meaning of that which must be done, and the sources of the common commitment to the doing of it stand bare, in need of no explication, no interpretation—obvious at once and to all."[16]

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[15] Ibid, 14
[16] Ibid, 14

We might say that the Mishnah is largely a product of the *paidaic* mode, in which the sages centered their activity on a glimpse of shared, unified meaning in Torah. Cover continues: "The unification of meaning that stands at its center exists only for an instant, and that instant is itself imaginary. Differences arise immediately...But even the imagined instant of unified meaning is itself like a seed....by which the imagined integration is the template for a thousand real integrations of corpus, discourse, and commitment."[17]

Once the unification of meaning breaks down, worlds are maintained through what Cover calls the imperial mode: "It is the problem of the multiplicity of meaning – the fact that never one only but always many worlds are created by the too fertile forces of jurisgenesis—that leads at once to the imperial virtues and the imperial mode of world maintenance."[18] The Gemara is largely a product of the imperial mode, in which multiple interpretations and perspectives co-exist in the flowering of meaning that comes out of the first spark of unity. Judaism and all enterprises of world creation and maintenance operate in a continual tension and interplay between the *paidaic* force of unity and the imperial forces of diversity.

In this view, halakhah has the potential to be a world –coherent, all-encompassing, woven with our stories and the patterns of our lives. We would move completely within this world, so much so that we would take it for granted, breathe it, swim in it, take it into ourselves. Such a world would describe and

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[17] Ibid, 16
[18] Ibid, 16

shape who we are and set forth the possibilities for our aspirations. It would make sense of our experience of being alive.

No modern Jew lives in such a totalizing world. We straddle multiple worlds, multiple *nomoi*. We might argue that this has been the case for Jews from the Rabbinic period until now. Never were we able to enclose ourselves completely within a single *nomos*.

In addition, we are born into worlds that we did not create. We inherit the worlds we live in and therefore it is our never-ending task to re-create the world in each generation, to become aware of the hegemonies in our *nomos* – all of the ways that it defines our answers and the questions themselves—so that we can listen with fresh ears for what God wants of us and envision our ideal world. Our halakhah, then, is the ever- responsive network of stories and norms that lead us from the world we inherit to the world as it should be.

Halakhah is a Tree

She is a tree of life to those who grasp her, and whoever holds on to her is happy. Proverbs 3:18

Louis Jacobs and Elliot Dorff both imagine halakhah as a tree. In his book *A Tree of Life: Diversity, Flexibility, and Creativity in Jewish Law*, Jacobs argues that halakhah has developed historically, organically, as the people who shaped it were influenced by their time and place. In rebuttal to the idea that halakhah is the rigid and static boundaries of a fence, Jacobs asserts, "There are no precise parameters of halakhic development."[19] Rather, the halakhic tree of life is firmly

[19] Louis Jacobs, *A Tree of Life: Diversity, Flexibility, and Creativity in Jewish Law* (London:

rooted in tradition, stationary even, but always growing outward and upward, in Dorff's words, to "embrace all that is valuable and worthwhile in life."[20]

In *Evolving Halakhah*, Moshe Zemer thoroughly and systematically demonstrates that halakhah is a continually evolving system. In example after example, Zemer shows that when faced with the problem of how to reconcile the halakhah they received with the conditions and needs of their own time, the Rabbis changed halakhah. He says, "many diverse approaches and methods ...were developed by the Rabbis in order to resolve this dilemma: acting in accordance with justice while preserving the framework of the Halakhah."[21]

Zemer provides textual evidence that the Rabbis were aware that they were changing the law. For example, he cites the oft-quoted *aggadah* describing Moses who, when visiting the academy of Rabbi Akiva, "did not understand their discourse and felt faint."[22] Rabbi Jose bar Hanina, a 3rd century Palestinian *amora*, interprets this story with a belief in continuing revelation when he says, "Matters that were not revealed to Moses were revealed to Rabbi Akiva and his colleagues."[23] In other words, halakhah changes because new matters are revealed to each generation.

Zemer identifies a number of specific principles and strategies used by the Rabbis to change halakhah. For example, he shows that Hillel ruled that a negative precept of Torah could be overridden in order to preserve human dignity,

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The Littman Library of Jewish Civilization, 2000), xv
[20] Elliott Dorff and Arthur Rosett, *A Living Tree: The Roots and Growth of Jewish Law* (Albany: State University of New York Press, 1988)
[21] Moshe Zemer, *Evolving Halakhah: A Progressive Approach to Traditional Jewish Law* (Woodstock, VT: Jewish Lights Publishing, 1999), xxiii
[22] Babylonian Talmud, Menahot 29b
[23] Exodus Rabbah 5:9

and that this precedent was taken up by rabbis in later generations.[24] Zemer also argues that the Talmudic sages acknowledged that conditions unknown to previous generations require new responses.[25] In addition, Zemer demonstrates that the Rabbis claimed the right to directly overturn a rule from the Torah.[26] Finally, he points out that the Rabbis reserved the right to change the law or not implement a law to prevent loss or suffering,[27] to prevent enmity, for the sake of peace between Jews and non-Jews, for the sake of *teshuva*,[28] and to allow a lesser

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[24] Zemer, 11. Zemer points to Hillel's use of the language of common folk from their ketubot as if their language were a legal condition, thereby liberating children from the status of *mamzerim*. In the Babylonian Talmud, Berakhot 19b, Hillel defends his ruling thus: "great is human dignity which takes precedence over a negative precept of the Torah." In a later generation, Rabbi Moses Isserles conducted a wedding on Shabbat to preserve the dignity of an orphan whose dowry could not be agreed upon until after nightfall. Of his decision, Isserless said: "Great indeed is human dignity, which takes precedence over a negative precept...The prohibition [against marriage on the Sabbath] is only a rabbinic decree, to keep us from writing the marriage contract on the Sabbath....In addition, we are concerned that the match might be broken off completely and there would be no marriage at all as a result of quarreling between the families, and "great is the value of peace between man and wife." (BT Hullin 141)

[25] Zemer, 13. Zemer's primary example is the prosbul, Hillel's adaptation of *shmita* law to encourage lenders to continue lending. Isserless interprets Hillel's actions: "Where something new has arisen that was unknown to earlier Sages, such as that there is reason to fear ruination or [the violation of] a prohibition, a fear that could not have existed in previous generations, it is certainly permissible to enact a rule, like all the enactments stated in the Talmud, because one can say that the earlier generations did not establish the prohibition with that situation in mind."

[26] Zemer, 14. Zemer points to the discussion of Gittin 4:2 in the Jerusalem Talmud, in which the *amoraim* defend the action of Rabban Gamaliel the Elder's overturning of a Torah provision arguing that the Torah can be uprooted when necessary. The *amoraim* even go so far as to say: "the rules [enacted by the Sages] abolish provisions of the Torah." In addition, Zemer shows that the verse "It is a time to act for the Lord; they have violated your Torah" (Psalms 119:126) was often quoted by the rabbis with reverse logic – We will violate Torah because it is time to act for the Lord. In other words, as Rashi explains, "when the time comes to do something for the sake of the Holy One, blessed be He, it is permissible to violate the Torah."

[27] Zemer, 15. "Where there would be suffering, the rabbis did not enact a prohibition...Where there would be loss, our rabbis did not prohibit" (BT Ketubot 60 a) Also, Rabbi Judah the Prince's ruled that in a time when the Jubilee year is not observed the sabbatical year is no longer mandated by the Torah so that he did not have to punish an indigent teacher who was suspected of using produce grown in the Sabbatical Year.

[28] Zemer, 25. Though the Torah says "He shall return the stolen object which he took" (Leviticus 5:23), Beit Hillel allowed a man who stole a wooden beam and put it in his mansion to pay its monetary value because of *takkanat hashavim*, the provision for the penitent. Rashi explains "For if you force him to destroy his dwelling and return the beam to its owner, he will avoid the act of repentance" (Rashi on Gittin 55a)

evil.[29] All of the examples Zemer identifies contribute to the same argument: namely, that the Rabbis changed halakhah to respond to the changing conditions and needs of their times.

In his book, titled *A Living Tree*, Dorff says, "The tree of Jewish law has many tangled branches, so many that sometimes one wonders how they can all be part of the same organism." New branches develop, new flowers appear, but these are always made of the same substance as the tree, one living organism growing out of the trunk and the roots. The Rabbis were able to hold their various inconsistent interpretations because all interpretations were derived from the same trunk, the same roots. Dorff says, "However much the interpretations of various rabbis vary, they are all interpretations of one document, the Torah, and they will all be cohesive because God, the Author of that document, can be presumed to be consistent."[30]

Dorff likens this fluidity of interpretation and the value of continuing interpretation to our experience of a good story – when we read a good story as children, we understand it one way. When we read it again later, as adults, we see completely new layers of meaning in it. "The text is the same, but it can say something new to us because we change as we grow, and we can relate the story to more areas of life," he says. However, there are limits to how much and how far a tree can grow or change in time. For Conservative Judaism, Dorff says, "In

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[29] Zemer, 27. "If a pregnant woman smelled the [forbidden] flesh of a sacrifice, or of pork [for which she has a morbid craving], we put a reed into the gravy and place it in her mouth. If she then feels that her craving has been satisfied, it is well; if not, she is fed the fat meat itself." (BT Yoma 82a) The gravy is forbidden but is a lesser evil to the meat itself. Another example: "It is better for Israel to eat the flesh of animals that were about to die, but were ritually slaughtered, than the flesh of animals that have perished" (BT Kiddushin 21b-22a)

[30] Dorff and Rosett, 32

all cases, in order to conserve the tradition, Conservative ideology places the burden of proof squarely on the shoulders of those who want to change Jewish law or practice, rather than on those who want to maintain what has come down to us as our ancestral ways of following God's will."[31]

For Dorff and Jacobs, the first priority is preserving the roots and trunk of the tree – tradition. The roots and the trunk are more important than the branches, than any growth or change in Judaism, because the tree could not live without them. Torah, the received halakhah, is what defines Jews as Jews. It is the purpose for our existence, our gift to the world, the purpose of our creation.[32] Dorff quotes Rabban Yohanan ben Zakkai: "If you have learned much Torah, do not take credit for yourself, for you were created for that purpose."[33]

Nonetheless, trees do not stop growing until they die. A healthy tree continually grows new branches and sprouts new leaves, and these too contribute to its health. Dorff concludes: "The Rabbis of the Talmud and Midrash, who were the framers of Judaism and gave it its distinctive cast, held unequivocally that a Jew must observe the Torah's laws. They also held, though, that the Torah was not given once and for all at Sinai but rather must be interpreted and applied anew in each generation. Only if that happens can the Torah continue to be an important concern for Jews, a program for living. The alternative is to let it petrify into a relic of history. Thus it is not so much 'tradition and change' as it is '*tradition, which mandates and includes change*'."[34]

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[31] Dorff, *The Unfolding Tradition: Jewish Law After Sinai* (New York: Aviv Press, 2005), 4
[32] Dorff and Rosett, 43
[33] Mishnah Avot 2:9
[34] Dorff and Rosett, 44

Halakhah is a Conversation

"These and those are the words of the living God."
Eruvin 13b, Babylonian Talmud

Imagine now halakhah not as a fence or a world or a tree, but instead as a conversation. Whereas a tree is stationary and solid, a conversation is dynamic, fluid, open. "In search for a single idea which expresses the nature of halakhah, however imperfectly, we might well settle upon the word *conversation*," says Mark Washofsky, a leading Reform halakhist. "Jewish law is a dialogue among scholars, a discourse over the meaning of our sacred texts...Halakhah is an arena of discussion in which the generations converse with one another, forward and backward in time, in a never-ending argument."[35] The word conversation is fitting given the name for the Rabbinic corpus, the Oral Torah. The Torah was spoken. Every reader of the Gemara or codes finds herself dropped in the midst of an ongoing conversation about one central question: how should we live as Jews?

Conversation is based in words which, as Genesis teaches and Abraham Joshua Heschel reminds us,[36] have the power to create worlds. Conversation is also based in listening: listening to our stories, listening to the other, and listening

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[35] Washofsky, *Jewish Living: A Guide to Contemporary Reform Practice* (New York: UAHC Press, 2001), xviii

[36] "Words, he often wrote, are themselves sacred, God's tool for creating the universe, and our tools for bringing holiness - or evil - into the world. He used to remind us that the Holocaust did not begin with the building of crematoria, and Hitler did not come to power with tanks and guns; it all began with uttering evil words, with defamation, with language and propaganda. Words create worlds, he used to tell me when I was a child. They must be used very carefully. Some words, once having been uttered, gain eternity and can never be withdrawn. The Book of Proverbs reminds us, he wrote, that death and life are in the power of the tongue." Susannah Heschel describing her father in her introduction to *Moral Grandeur and Spiritual Audacity.*

to God. While halakhah may be largely a conversation among human beings, it was God who spoke first. In his book, *A Vision of Holiness*, Richard Levy reminds us: "Before the Israelites were given the Torah as a physical object, individuals (Abraham and Sarah, Isaac and Jacob) heard the commanding voice of God. The Israelites heard that voice as they stood at Sinai...the meaning of the people's experience of hearing Torah at Sinai was not only the content of the mitzvot but the experience of God's holiness...Through encountering each of the mitzvot, we too can encounter the original voice of God." [37]

The conversation began when God spoke and we listened, agreeing to enter a covenant, an eternal dialogue. It continued when we argued with each other about what we heard. Washofsky says, "If there is no such thing as Rabbinic Judaism without the Oral Torah, there is no such thing as Oral Torah without *machloket*, argument and debate."[38] Washofsky continues:

> The argument never ends because there are few answers to questions of Jewish law which are so clearly and obviously "right" as to preclude objection and criticism. It never ends because there are no short-cuts in Jewish law; there is no way to arrive at the answers one seeks except by way of the path of conversation. To determine the 'correct' answers to questions of Torah is not a matter of rules and formulae, for halakhah knows of no automatic indices which can distinguish the right from the wrong interpretations. 'Correct' answers emerge out of the process of argument that fills the Talmud and all the books written to explain it. They are tentative conclusions whose rightness is based upon the ability of one school of thought to persuade the community of rabbinic scholars that its point of view represents the best understanding of Torah and of God's demands upon us.[39]

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[37] Richard Levy, *A Vision of Holiness: The Future of Reform Judaism* (New York: URJ Press, 2005), 48-9
[38] Washofsky, xv
[39] Washofsky, xviii-xix

The conversation did not end in the 6th century, when the Talmud was closed. It did not end in the 16th century with the publication of the Shulchan Arukh. We are in an ongoing conversation with God. God spoke, and then we spoke to one another and back to God. The conversation continues today in every branch of Judaism through *she'elot u'tshuvot,* the responsa system. It continues in liberal Judaism as we listen for what God wants of us, and as we talk with each other about how we ought to live as Jews.

Though prophecy may have ended with Malachi, God continues to speak. In the din of the modern world, many contemporary Jews listen all our lives for God's voice, to discern what is being asked of us. Many of us feel pulled to a sense of what we should do in the world. Sometimes we hide from the voice: sometimes we act on it. Sometimes we speak back, for we are unable or unwilling to do what our texts or others tell us the voice is asking of us. Sometimes we struggle to line up our own experiences of the voice with its record in Torah or Talmud. In this struggle, Franz Rosenzweig was convinced that mitzvot are subjective –Torah only becomes mitzvot when our internal experience confirms it, when we feel and know internally that we are obligated.

Richard Levy says, "The true issue in dialogue, Reform Judaism suggests, is not whether—and how—God responds to us, but how we respond to God."[40] Every new speaker in the conversation has the power to shape it, to expand it into new areas, to add ideas and questions and objections. Mark Washofsky adds, "To engage in halakhah, therefore, is to take one's part in the discourse of the

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[40] Levy, 32

generations, to add one's own voice to the chorus of conversation and argument that has for nearly two millenia been the form and substance of Jewish law."[41]

In an article entitled "Halakhah for Liberal Jews," David Ellenson suggests that it is the halakhic process, the dialogue itself as opposed to the norms of the halakhah, that is most useful for liberal Jews. "It is the framework of the halakhah, the dialectic between halakhic interpreter and text, and the implications this holds for the community, that are of import to us...the dynamism—as opposed to the substance—of the halakhic process, where text, community, and persons enter a dialogue with one another." [42] Ellenson sees tremendous potential for an application of the halakhic conversation for liberal Jews: "it is possible for liberal Jews, using halakhah as a resource, to form old/new identity." Because halakhah provides contexts and settings for Jewish discourse, and "because the norms of halakhah are not of primary import, its limits would not foreclose consideration of other factors." He continues: "It allows us liberals to confess our doubts about and dissent from halakhah while seeing it as a source for our lives and belief."[43]

Rachel Adler proposes: "we could open up a halakhic discourse and shape it to address the needs, desires, and obligations of diverse, gendered people inhabiting specific times and places." These conversations would include "[a] provision allowing for metadiscourse," a conversation about the rules, definitions and conditions that are presupposed, so that they, too, are open for consideration.

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[41] Washofsky, xviii-xix
[42] David Ellenson, "Halakhah for Liberal Jews," *The Reconstructionist* 58, no. 5 (Mar 1988), 30
[43] Ellenson, 32

In such an ideal halakhic conversation, Adler imagines, "any vital concern in the lives of community members could be articulated and heard."[44]

However, our response cannot only be in the form of words. Because the conversation itself is about how we ought to live, our response must move beyond words into commitments and action. The conversation becomes meaningful only when it is enacted, lived, tried out and practiced. We respond to God and to each other with words, yes, and we also respond with the pattern of our lives.

Halakhah is a Bridge

All of the world is a very narrow bridge, and the important thing is not to be afraid.
Nachman of Bratslav

Though halakhah is born of conversation, the conversation is not self-satisfied. It is pressing, urgent, and directed. It is aiming for a better world, a different reality. A number of Jewish thinkers describe halakhah and mitzvot as a bridge stretching between what is and what can be. Eliezer Berkovits describes halakhah as the bridge over which the Torah moves from the written word into the living deed.[45] This bridge moves us beyond conversation into action, beyond the abstract to the embodied, through vision to lived reality. As Rachel Adler describes it, this bridge is "dynamic rather than static, visionary rather than conservative, open to the outside rather than closed, arising communally,

[44] Adler, 43
[45] Eliezer Berkovits, *Not in Heaven: The Nature and Function of Halakha*, (New York: Ktav, 1983), 1

cooperatively, covenantally, rather than being externally imposed and passively obeyed."[46]

Robert Cover says, "Law may be viewed as a system of tension or a bridge linking a concept of a reality to an imagined alternative... the committed social behavior which constitutes the way a group of people will attempt to get from here to there."[47] Suzanne Stone, a legal scholar writing on the work of Robert Cover, observes that the halakhic system is ideal for Cover because it is a means of moral and social transformation aiming for visions of an alternative world that the community hopes to realize. She says that halakhah "gives the community's visions 'depth of field' by identifying which new normative worlds can and should be striven for immediately."[48] Cover says:

> Our concept of our normative selves and environment is in flux. But, as our concept of where we are (normatively) changes, so does our concept of the possible world to which our law impels us to go. The world with 'law' is a world in which there are a) particular processes (bridges) for getting to the future; b) particular kind of futures that one can get to, [and] c) always (new) future worlds that are held over against our current normative world with an implicit demand that they be striven toward.[49]

Through the development of halakhah, the Rabbis created a bridge leading from the world of the destroyed Temple, the world of rampant injustice, toward their vision and God's vision – the messianic vision—of how the world could be. This is the bridge from exile to redemption, from *olam hazeh* to *olam habah*. On this bridge, mitzvot are the work of partnership with the Holy One, the work of

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[46] Adler, 36
[47] Cover, 9
[48] Suzanne Stone, "The Jewish Legal Model," *Harvard Law Review*, Vol 106:813, 1993, 831
[49] Cover, *Messiah*, quoted in Stone, footnote 103, p. 831

completing Creation. Mitzvot do this by transforming the ordinary into the holy. Halakhah, therefore, is transformative -- transforming ordinary human lives into conduits for the redemption of the world.[50]

"Mitzvah transforms...: two small columns of wax become vessels for the presence of Shabbat; some leaves and a nubby citrus turn into a lulav and etrog, vessels for extending the fruitfulness of one harvest into another," Richard Levy says. "The transformative power of mitzvah is an echo of God's own transforming power: the Holy One took some sand and Reed Sea water and transformed them into a miracle, a place where God's holiness was revealed. God took a little mountain and transformed it into the place of Revelation."[51]

Halakhah as a bridge holds out to us a structure upon which to pursue our vision for the world: a Jewish vision shaped from the struggle and alignment between our own experience of what God and the world demand of us and the vision of Torah, between the conversation of the Rabbis and the conversations of our own time. We may find, after all, that these visions are not too distinct. Levy says, "The people need a vision to awaken them to the vision lying dormant in a scroll."[52] This is what halakhah offers – an invitation to commit to a vision through new and old ways of living, to move toward that vision and make it real.

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[50] Levy, 125
[51] Levy, 50
[52] Levy, x

Halakhah is a Path, a Way

"The Halakhah shows the way of God in the world and the way of the world to God."
Tikva Frymer-Kensky

We return now to the root of the word H-L-Kh—halakhah as a path, a way-making for all of one's life. While a bridge may be narrow, sided with guard rails, stretching as it does between where we were and where we are going, a path can be wide and open to the landscape that surrounds it. While a bridge is suspended above the place it crosses, a way or path is grounded in that place, influenced by it and influencing it. The direction and length of a bridge are set. A path or way can change in response to the landscape it traverses. A bridge gives us vision and the possibility of transformation. A path allows us to be flexible, open and responsive to where we find ourselves.

Halakhah takes us from one place to another. There are steps, each made possible by those that preceded it. Rachel Adler says that halakhah, "a path-making, translates the stories and values of Judaism into ongoing action." She describes halakhah as a praxis: "A praxis is a holistic embodiment in action at a particular time of the values and commitments inherent to a particular story."[53] Adler argues that Judaism's praxis has become fragmented and impoverished in the course of modernity. Rather than a grab bag of practices, she says, we need a coherent way of life as Jews, as citizens, as human beings. Eliezer Berkovits, Adler's teacher, suggests, "The Torah is all-inclusive. It comprehends the entire life of the Jewish people. Halakhah, therefore, has to interpret the intention of the

[53] Adler, 26

Torah for all the areas of Jewish existence, the spiritual, the ethical, the economic, the socio-practical."[54]

Though some Jews try to return to traditional halakhah in search of that coherence, Adler argues that we cannot resurrect the old praxis because it does not fit our modern lives. In order to fulfill traditional halakhah, we would need to split our religious lives from our secular lives, which would be unfaithful to the whole of who we are and who we have become. "To be faithful to the covenant requires that we infuse the whole of our existence with our religious commitments," she says.[55] As Abraham Joshua Heschel said it, each people has a pattern of living.[56] Halakhah is the Jew's pattern of living.

In the words of Eliezer Berkovits, halakhah renders Torah into *Torat Hayim*, a way of living out our Torah. Halakhah is not only religious. It is not only law. Halakhah affects all aspects of life, guiding its practitioners through the ordinary and extraordinary moments. Progressive Jews assume that halakhah belongs to Orthodoxy. Seen as a way of life, however, "Orthodoxy cannot have a monopoly on halakhah because no form of Judaism can endure without one; there would be no way to live it out...Halakhah belongs to liberal Jews no less than to Orthodox Jews because the stories of Judaism belong to us all. A halakhah is a communal praxis grounded in Jewish stories," argues Adler.[57] Liberal Jews urgently need to reclaim the term halakhah "because it is the authentic Jewish

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[54] Berkovits, 3
[55] Adler, 26
[56] Abraham Joshua Heschel, *Man is Not Alone: A Philosophy of Religion* (New York: Farrar, Straus and Giroux, 1951)
[57] Adler, 26

language for articulating the system of obligations that constitute the content of the covenant."[58]

A fence. A world. A tree. A conversation. A bridge. A path. A way. Halakhah is all of these. Rooted in the past, ever-growing and reaching out toward the future, creating a world of meaning based in open conversation about how we ought to live, halakhah is a way of life that we create with God in order to bridge the way things are to the way things could be.

And, yes, there are limits. Every people has boundaries by which we identify what behaviors and practices are not consonant with our vision for how we ought to live in the world. However, we may decide that our boundaries are different than those we have inherited, and if we engage in the conversation and way-making of the halakhic process, we are likely to ask new meta-questions, such as: How do we listen for and determine God's vision and our vision? What is the role of Torah, Oral and Written, in the development of our vision? What is the role of contemporary narrative and scholarship? Who can join the conversation? What is the relationship between the self and the people? What does it mean to be obligated if we are free? These are the questions that will shape a liberal, postmodern halakhah. These are the questions of our next chapter.

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[58] Adler, 25

Chapter Two: Challenges for Liberal Jews

Regardless of which metaphor one uses to discuss halakhah, its application to a liberal, post-modern setting is no simple matter. Liberal Jews in our era treasure our autonomy and are ambivalent about the authority of God and Torah. Though we want the benefits of community, we are wary of the demands it may place on us. Jews are as likely to feel a part of the larger human race as we are to feel a part of the Jewish people. Though we may look to our rabbis for insight and guidance, we do not look to our rabbis for judgments or rulings about how we are to live. Furthermore, we live in a society in which freedom is defined in direct contrast to obligation, instead of in partnership with it. Each of these presents a significant challenge to creating a liberal, postmodern halakhic system, but these challenges are not insurmountable. By addressing these challenges we have the opportunity to create a halakhic process that is appropriate and authentic for contemporary liberal Jewry.

Any postmodern conversation about halakhah must begin with the sovereign self. In our time and place, no external human authority can tell an individual what he or she must believe, or how to live out his or her Judaism. Until we collide with the state, individuals either create the rules for our moral and religious lives ourselves, or choose to abide by existing rules that are meaningful to us. As Eugene Borowitz acknowledges, "Despite the difficulty it engenders, the autonomy of the self must somehow be a foundation of any

contemporary theory of Jewish duty."[59] Reform Judaism has long championed the right of each individual to listen in his or her own way for how to live in the world. As Richard Levy says, "what characterizes a Reform approach to Torah is this insistence that Torah calls to each individual and that the individual responds out of the uniqueness of each one of our lives." [60]

Authority resides with the individual; however, the source of that authority, the basis upon which the individual chooses what is meaningful and determines what is right, originates beyond the individual. As Borowitz says, "Even we ordinary Jews know that now and again we stand in God's immediate presence and find ourselves specially obligated because of it."[61]

As Leo Baeck described it, human beings have moments in which we sense our infinitesimal stature in contrast with the transcendent Creator of the Universe, and moments in which we feel an intimate belonging to our Creator who made us too as creators.[62] This sense of transcendence and immanence is the foundation from which we believe ourselves capable of creating our world, our *nomos* and our narrative. This is revelation.

Franz Rosenzweig said that these moments of revelation awaken in the soul an awareness of being loved. As loved as we feel, as intimately known as we feel, we are also aware that we know nothing of God.[63] Though we might feel something, we know nothing. Nothing but presence; nothing but, as Martin

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[59] Eugene Borowitz, *Renewing the Covenant: A Theology for the Postmodern Jew* (Philadelphia: The Jewish Publication Society, 1991), 264
[60] Levy, 125
[61] Borowitz, 283
[62] Leo Baeck, "Mystery and Commandment" in *Judaism and Christianity* (Philadelphia: The Jewish Publication Society, 1958), 171-189
[63] Franz Rosenzweig, "The Builders: Concerning the Law" in *On Jewish Learning*, N.N. Glatzer, ed. (New York: Schocken Books, 1955)

Buber describes, relation itself.[64] Nothing but, as Abraham Joshua Heschel describes, mystery.[65]

For Emanuel Levinas, revelation begins with "*veahavta l'reacha kamocha*," the sense of being called to serve others. We are called both to do and to understand what it is that we're here to do: "*na'aseh v'nishmah*."[66] For Rosenzweig as well the experience of being commanded comes out of the experience of personal revelation. When we seek to understand God, we are looking for who it is who is calling us to service; we are seeking a conscious or felt relationship with our commander. [67]

Eugene Borowitz asserts that, "This consciousness of ongoing intimacy with God precedes, undergirds, and interfuses all the Jewish self's other relationships."[68] In other words, our relationship with God is the foundation of our existence. We are created out of the relationship, born into it, and as we grow we feel ourselves pulled, obligated by it. Revelation is the source of the question: How should we live in the world?

On Conscience and Revelation

Let us imagine that we can agree that human beings, that Jews, would benefit from sustained conversation on the question of how we should live in the modern world. Let us imagine that we begin to create an articulated vision for

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[64] Martin Buber, *I and Thou* (New York: Simon & Schuster, 1970)
[65] Abraham Joshua Heschel, *The Sabbath* (New York: Farrar, Straus, and Giroux, 1951)
[66] Emmanuel Levinas, *Ethics and Infinity,* Richard A. Cohen, transl. (Pittsburgh: Duquesne University Press, 1995)
[67] Rosenzweig, "The Builders"
[68] Borowitz, 289

how the world ought to be, and that we want to create a bridge that moves us from the world as it is to the world of our vision. Let us imagine that we could, together, craft a set of practices for our lives, a halakhah, that would serve as that bridge. By what authority would we turn to the Torah, written or oral? Why should these have any bearing on our choices or our ethics or our vision? Why not just create a new world from scratch, ourselves?

For Jews, suffused within the experience of personal revelation there is communal revelation, the experience of Sinai. Whereas personal revelation awakens our soul with God's presence and love, and is without content other than God's mystery and a sense of being obligated, our people's communal revelation is mediated through Torah and tradition. Each Jew who experiences personal revelation is called upon to contextualize and live out her or his personal revelation within the collective Sinai experience of the People Israel. Each Jew faces the choice of how and to what extent she or he will bind his or her personal revelation to the Jewish people's ongoing attempt to apply and live out our collective revelation.

This calls the question: what is the relationship between Torah, tradition, and revelation? If collective revelation has the content of commandment, is Torah that content? Is the Written Torah the word of God? Is the Oral Torah, the halakhah, the word of God? In a chapter entitled "Revelation and Tradition as Religious Categories in Judaism," Gershom Scholem argues that though revelation is originally understood as "concrete communication of positive,

substantive, and expressible content,"[69] it cannot survive long as such. Once given authority, preserved and passed down, revelation must be adapted and expanded to apply to new historical circumstances and changing conditions. In Scholem's words, this is the function of tradition, the process and conversation by which God's word is translated into action. Jewish tradition uses commentary as the form through which revelation is mediated and applied.

But as Jewish tradition flowers forth with various commentaries and contradictory interpretations of revelation, all of which are upheld or preserved, "the original meaning of revelation as a unique, positively established, and clearly delineated realm of propositions is put in doubt."[70] In Cover's words, the *paidaic* gives way to the imperial. Scholem continues, "What had originally been believed to be consistent, unified and self-enclosed now becomes diversified, multifold, and full of contradictions."[71] How is it possible that God's word, that truth itself, is multivocal and even contradictory?

Scholem relates that in the Kabbalistic notion of revelation, the Written Torah itself is an *arigah*, a weaving of God's name, a mediation through which the absolute word of God, the primordial Torah which is not comprehensible to us, is communicated. According to Kabbalah, the Written Torah is not a direct revelation of God's word; rather, once the primordial Torah is translated into the letters of the Written Torah it is already an interpretation. Eliezer Berkovits agrees. "God's revelation was

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[69] Gershom Scholem, "Revelation and Tradition as Religious Categories in Judaism" in *The Messianic Idea in Judaism* (New York: Schocken, 1971), 284
[70] Ibid, 28
[71] Ibid, 290

not the absolute word of God, which could not be received. The divine truth had to be poured into human vessels. Having left its heavenly abode, it had to be accommodated in the modest cottages of human uncertainty and inadequacy."[72] Louis Jacobs comments: "Long before the rise of modern criticism some of the Jewish teachers had a conception of revelation which leaves room for the idea of human cooperation with the divine."[73]

The Kabbalistic tradition also contains the idea that "the word of God carries infinite meaning" and is "infinitely interpretable." Scholem explains, "In every word there now shines an infinite multitude of lights. The primeval light of the Torah that shines in the holy letters refracts on the unending facets of 'meaning'."[74]

Furthermore, for Kabbalists the voice from Sinai sounds continually throughout time, and the Oral Torah is perpetually created with each Jew in every generation listening for his or her unique contribution. "The Torah turns a special face to every single Jew, meant only for him and apprehensible only by him, and a Jew therefore fulfills his true purpose only when he comes to see this face and is able to incorporate it into the tradition."[75] Scholem quotes Meir ben Gabbai, a 16th century Kabbalist of Turkey describing continuing revelation and the multiplicity and unity of revelation:

> If new teachings [regarding the understanding of Torah] are produced daily, this proves that the fountain ever gushes and that

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[72] Berkovits, 73
[73] Louis Jacobs, *Jewish Law* (West Orange, NJ: Behrman House, 1968), 118
[74] Scholem, 295
[75] Ibid, 297

> the great voice sounds forth without interruption. For that reason, the deliberations upon the Torah may not suffer any interruptions, nor the production of new teaching and laws and incisive discussion....
> For the differences and contradictions do not originate out of different realms, but out of the one place in which no difference and no contradiction is possible...these things appear contradictory and different to us, but only as seen from our own standpoint – for we are unable to penetrate to those points where the contradictions are resolved.[76]

This Kabbalistic theology opens the possibilities within and beyond the Written Torah and the written Oral Torah.[77] If the fountain of revelation is continually gushing forth, it not only permits but demands of us that we participate in continuing revelation, that we liberate the oral tradition from its written and bound form, and that we contribute to its ongoing development. Elliot Dorff quotes Midrash Tanhuma to support this point: "When God revealed His presence to the Israelites, He did not display all His goodness at once, because they could not have borne so much good; for had He revealed His goodness to them at one time they would have died...When Joseph made himself known to his brothers, they were unable to answer him because they were astounded by him. (Genesis 45:3) If God were to reveal Himself all at once, how much more powerful would be the effect. So He shows Himself little by little."[78] Moshe Zemer quotes fifteenth century Spanish Jewish philosopher Joseph Albo on this point:

> The Written Law cannot be understood except with the Oral Law; and the law of God cannot be perfect so as to be adequate for all

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[76] Ibid, 300
[77] I use the phrase "written Oral Torah" to mean the Oral Torah that has been canonized within the tradition.
[78] Tahuma Buber, Devarim 1a, in Dorff, *A Living Tree*, 38

> times, because the ever-new circumstances of human relations, their judgments and their actions, are too numerous to be embraced in a book. Therefore Moses was given orally certain general principles, only briefly alluded to in the Torah, by means of which the Sages may work out the newly emerging particulars in every generation.[79]

If both the Written Torah and the written Oral Torah are interpretations of the heavenly Torah, and only represent a subset of the infinite variety of interpretive choices available, there are many, many other Torahs waiting to be written and spoken. In addition to finding the infinite meanings available within each word and letter of Torah, it is theoretically possible (and perhaps even necessary) to approach God's truth with whole new paths beyond the confines of the Written and Oral Torah. In other words, there is collective revelation to be discovered on topics not yet addressed in either Torah or tradition; revelation by and for whole portions of the Jewish people whose voices have not yet been included.

If we are hesitant about expanding Torah to include entirely new questions, Mark Washofsky points out that the Rabbis also broadened the conversation to include completely new areas of life and law. Washofsky makes the point that the *Amoraim* discuss not only the Mishnah, but also the *tannaitic* material that Judah HaNasi excluded, and "institutions established by enactments (*takkanot*) or decrees (*gezerot*) of the ancient Rabbis as well as practices that originated in the custom (*minhag*) of the community." In other words, the *amoraic* conversation in the Gemara was not limited in scope by the topics that the Mishnah thought were important, but included additional topics triggered by

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[79] Joseph Albo, Sefer Ha-Ikkarim 3:23, in Zemer, *Evolving Halakhah*, 203

decisions and customs of the time. Washofsky also points out that the Gemara contains and is guided by *aggadah*, which includes not only commentaries on biblical narrative and stories about biblical figures and earlier sages, but also speculations about the world the Rabbis lived in.[80]

But do we really believe that there are an infinite variety of legitimate interpretations of the Written Torah or of God's heavenly Torah? Aren't there limitations? For example, would we argue that in addition to "*lo tirtsach*" (do not murder) Torah equally commands "*r'tsoch!*" (murder!)? Messianic Jews argue that their interpretation of Torah is legitimate, but most Jews do not agree. There *are* limits. The interpretive options are infinite, but they are also bounded. Just as there are an infinite number of numbers between 1 and 10, not including the number 11, there are an infinite number of authentic and true interpretations of God's revelation to the Jewish people. However, not every potential interpretation is authentically Jewish or true to God's heavenly Torah.

Even if there are infinite possibilities for interpreting Torah and making manifest the ever-gushing fountain of revelation, the Kabbalistic view is that the Written Torah in our possession is one (or many) faces of God's truth, a genuine reflection and interpretation of God's wisdom. Why, if this is so, is the comprehensible word of the Written Torah so problematic? Even if it is only to be read as a code, why does the *peshat,* the surface meaning, of Torah contain so many inconsistencies and duplications? Furthermore, if Torah is an eternally true interpretation of God's revelation, how can the *peshat* contain instructions that violate our current sense of truth, righteousness, and justice? If revelation is truly

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[80] Washofsky, xvi

continuous, then certainly our innate sense of justice is also a facet of revelation. How then, do we understand as a true interpretation of God's word the passage in Deuteronomy 13:13-17, in which we are commanded upon finding a town of Israelite idol worshippers to: "put the inhabitants of that town to the sword and put its cattle to the sword. Doom it and all that is in it to destruction: gather all its spoil as a holocaust to the Lord your God." How do we explain Leviticus 18:22: "Do not lie with a male as one lies with a woman; it is an abhorrence" as another true interpretation of God's word? How does a serious Jew respond to commands in Torah that conflict with our strongly-held, innate sense of justice and righteousness?

This brings us to Judith Plaskow's chapter "Torah: Reshaping Jewish Memory" in her book *Standing Again at Sinai*. In it, Plaskow begins with Exodus 19:15 in which Moses tells the people "Do not go near a woman," suggesting exclusion of women from the addressed, covenantal people. Plaskow notes that this is an example of the ways in which "the Otherness of women finds its way into the very center of Jewish experience."[81] Citing these same Kabbalistic ideas about revelation, Plaskow argues that Torah is "the partial record of the 'Godwrestling' of part of the Jewish people." Written by men for men, the Torah is missing the perspectives and interests of half of the Jewish people. For Plaskow, the Written Torah is a divinely inspired, human creation.

Plaskow's explanation of the relationship between collective revelation and Torah is as follows: "Again and again in the course of its existence, the Jewish people has felt itself called by and accountable to a power not of its own

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[81] Judith Plaskow, *Standing Again at Sinai* (San Francisco: Harper and Row, 1990), 25

making, a power that seemed to direct its destiny and give meaning to its life." These were "moments of profound experience; sometimes of illumination but also of mystery..." These moments "would need to be interpreted and applied, wrestled with and puzzled over, passed down and lived out before they came to us as the Torah of God." This interpretation and living out "occur within cultural frameworks that can never be escaped entirely."[82] In other words, Torah is divinely inspired and filtered through the cultural conventions, attitudes and limitations of the specific men who passed it down through the generations and wrote it down, producing the texts we have today.

The Written Torah and the Oral Torah are imperfect human renderings of the Jewish people's ancient encounters with God. However, despite the limitations and human imperfections in the *peshat* of Torah, when we turn it and turn it again the Torah miraculously unlocks and opens to whole worlds of revelation of God's heavenly Torah. These texts are richly, densely encoded with God's voice. Containing secrets and clues, hidden meanings and metaphors, mysteries enfolded in mysteries, they offer us lessons about who we are and how we ought to live in the world.

Only a fraction of God's revelation to the Jewish people has been heard, recorded, or interpreted. The fountain of revelation is continually flowing. It is our role and obligation to listen for and interpret more Torah as *aggadah* and new halakhah based on existing Written and Oral Torah, and in categories of Jewish life that were not of interest to, or in the consciousness of, the authors of the existing Written and Oral Torah.

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[82] Ibid, 33

But we still need the Written Torah and the written Oral Torah. Our own perceptions of revelation are also mediated by the culture and assumptions of our time; limited in the ways that we are limited. We can only hear what our ears know to listen for. There are questions that our ancestors knew to ask that we no longer know to ask. There are mysteries they knew that we have forgotten. The Jewish way to listen for God's voice is in dialectic between what our predecessors heard and what we hear. Sometimes our internal sense of God's will, our consciences, are truer representations of God's revelation than the Torah, written and oral. Sometimes the reverse is the case. These conflicts cannot be resolved easily or quickly, but require each of us as individuals, and as communities of Jews, to wrestle with our texts in honesty and integrity and a balance between a commitment to our consciences and a commitment to *klal Yisrael*, the People Israel.

How do we go about listening for continuing revelation and creating new interpretations of Torah? What are the rules of engagement and the limitations on our enterprise, and who decides? The Rabbinic tradition itself can be our model. Scholem asserts that for the Rabbis "there is... a striking contrast between the awe of the text... and the presumptuousness of imposing the truth upon ancient texts. The commentator, who is truly the biblical scholar, always combines both attitudes."[83]

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[83] Scholem, 290

On Self and Community

What is the relationship between the individual and the community in this liberal, postmodern halakhic enterprise? In these times, we tend to be wary of the power of groups to coerce individuals, and the tendency of individuals to lose themselves in groups. From the brown shirts to the People's Temple, the twentieth century has demonstrated that groups can be dangerous. Even without access to state violence or charismatic leaders, groups always retain the power to pressure individuals through shame and the threat of exclusion. Any effort to create a communal halakhic system must be certain to protect the individual, and to value minority opinions.

Eugene Borowitz argues that "for all the inalienable ethnicity of the Jewish self, it surrenders nothing of its individual personhood. In a given matter, the Covenant people may be inattentive to its present duty to God or, in a given situation, an individual Jew of certain talents and limitations may find it Covenantally more responsible to go an individual way."[84] This should not only be permitted of the individual, it should be expected.

Eliezer Berkovits points out that the Rabbis valued individual opinions. All interpretation, Berkovits says, is an activity of the intellect, based in logical thinking and common sense. The Rabbis use the word *S'bara* to refer to this innate human capacity, and "it is taken for granted that the *S'bara* is no less authoritative than the biblical text itself."[85] The Rabbis demonstrated again and again, he says, "that an opinion held by a majority of scholars is no proof that it is

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[84] Borowitz, 290
[85] Berkovits, 3

true. A majority may be no less mistaken than a minority."[86] We read in a mishnah:

> Why are the words of the individual sage mentioned along with those of the majority (who disagree with him)? After all, is not the halakhah decided according to the majority opinion? Because a court may some day be persuaded that the opinion of the individual sage is the better one and declare the halakhah in accordance with him.[87]

This mishnah demonstrates the importance of the individual in ascertaining the truth of Torah, as well as the expectation that halakhah will change over time. In his introduction to the *Mishneh Torah*, Maimonides says, "one follows the interpretation that one considers correct." No one is bound to interpret the sacred texts in a particular way simply because a preceding authority ruled that way.

For more than a century, the Reform movement has been publishing responsa on halakhah that it does not expect to impose upon the life of any individual Jew. Mark Washofsky says, "We do not regard halakhah as a process which yields mandatory conclusions." He explains:

> Reform responsa are not 'authoritative': the answers they reach are in no way binding or obligatory upon those who ask the questions, upon other Reform Jews, or upon the movement as a whole... We see halakhah as a discourse, an ongoing conversation through which we arrive at an understanding, however tentative, of what God and Torah require of us....this conversation cannot be brought to a premature end by some formal declaration that '*this* is the law; all conflicting answers are wrong.' We hold, rather, that a minority opinion in the halakhic literature, a view abandoned long ago by most rabbis, or a new reading of the old texts may offer a more persuasive interpretation of Jewish tradition to us today than does the 'accepted' halakhic ruling. We therefore assert our right of independence in halakhic judgment, to reach decisions *in the*

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[86] Ibid, 7
[87] Mishnah Eduyot 1:5

> *name of Jewish law* which, though they depart from the 'Orthodox' position, make the best Jewish religious sense to us.[88]

The group must not override the individual, but individuals cannot make halakhah alone. Community is essential not only for the creation of halakhah but for living it out. We need each other – to share our ideas with, to learn with, to make commitments with, to find a shared pattern of living with. Jewish tradition has long taught that our thinking is better and deeper in *chevruta*, in fellowship. The Mishnah teaches that when two or more Jews sit to study together, the Shechina dwells between them.[89]

The self may be sovereign, but it is not separate. Our selves are always in relation to others, defined by others. As Martin Buber taught, even self-knowledge derives from our relations with others. Even self-determination is premised upon mutuality. For Buber, the ideal in relationship is to glimpse each other whole, to behold the other in his or her entirety. These ideal, fleeting moments signify the presence of God. Buber defines community as a society which encourages people to reach out to one another, enabling these I-Thou encounters.[90] Suzanne Stone, summarizing the views of Robert Cover, writes, "the individual... itself exist[s] only in relation to a meaning-generating community."[91] Given that we are already shaped by our relations with others, any exploration about how to live in the world is necessarily a relational endeavor, necessarily a communal endeavor.

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[88] Washofsky, xxiii-xxiv
[89] Pirkei Avot 3:7
[90] Buber, *I and Thou*
[91] Stone, 824

On Self and People

The self may be sovereign, but it is not general. It is not universal; it is particular. The self arises and is shaped within a particular social and historical reality, a particular culture, a particular people. As Mordecai Kaplan points out, social science demonstrates that individuals naturally exist within social groups, expressing their autonomy through the civilization of a people. None of us are isolated. We are contextualized selves, in relation. Our selfhood is conditioned by our relations with others, and by our belonging to a people. In the words of Eugene Borowitz:

> Being a Jew may then be described...as having an individuality that is elementally structured by participation in the Jewish people's historical relationship with God.[92]

Many modern Jews grow up and are shaped in multiple, overlapping cultures, and find themselves loyal not only to Jewish identity but to many competing identities. Each modern Jew chooses his or her identification with the collective Sinai experience of revelation, and the history and living culture of the people Israel. Regardless of this choice, however, this history of the Jewish people is within the individual Jew, she is made of it; he is a manifestation of it. Therefore, we as Jewish individuals are obligated not only to the particular community with which we affiliate, but to the Jewish people, past and present.

Louis Jacobs believed, "The ultimate authority for determining which practices are binding upon the faithful Jew is the historical experience of the

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[92] Borowitz, 288

people Israel."[93] Mordecai Kaplan believed that the people Israel itself *is* the source of commandment. Jacobs argued instead that the will of God is revealed in the ways that the Jewish people, throughout history, have changed the halakhah, have made new patterns of living. Our participation in our people's history of finding its way is continuing revelation.[94]

Borowitz concludes:

> If Jews could confront their Judaism as Jewish selves and not as autonomous persons-in-general, I contend that they would find Jewish law and lore the single best source of guidance as to how they ought to live...they would want their lives substantially structured by their people's understanding of how its past, present, and future should shape daily existence. But as autonomous Jewish selves, they would personally establish the validity of every halakhic and communal prescription by their own conscientious deliberation. We would then judge their Jewish authenticity less by the extent of their observance than by the genuineness of their efforts to ground their lives, especially their actions, in Israel's ongoing Covenant with God.[95]

On Rabbis

Since the first century, rabbis have made Jewish law. They have interpreted it, they have discussed it, they have codified it, and wherever possible, they have enforced it. It is not known to what extent Jewish women, or men who were not rabbis, were able to influence the halakhic conversation. There is little evidence of this influence. As Rachel Adler says, "For most of Jewish history, the lives of Jewish women have been controlled by a legal system whose categories and concerns they have not helped to shape and from whose authority

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[93] Jacobs, 245
[94] Ibid, 245-6
[95] Borowitz, 294

structure they have been excluded."[96] Not only have women been excluded from the conversation, their absence and the absence of others has limited the very categories that are discussed and the questions that are asked. Adler argues that the system of halakhah is problematic, because "the presumptions select the questions. The categories shape them. Adjudication creates precedents that reinforce the form future questions must take... By this means, Torah, Mishnah, Gemara, codes, and responsa amass huge bodies of data on their favored topics, whereas other issues are condemned to haunt the outer darkness."[97]

Today, halakhah continues to be interpreted and created primarily by rabbis. And it continues, in every movement of Judaism, to work within the same categories and questions that the Rabbis of the first millenium used to organize their world. Adler argues: "If the source texts of halakhah are not timeless or absolute but shaped within social contexts, if its categories must exclude much of our gendered modern life experiences as non-data, and if its authority structure is neither democratic nor inclusive, then adapting its content to modernity is an inadequate solution."[98]

In *The Halakhic Process*, Joel Roth of the Conservative movement suggests a radical approach to halakhic development, based on the Rabbinic teaching *ein lo l'dayan mah she einav ro'ot,* arguing that a judge should be able to depart from precedent and change halakhah based on the real conditions of his time. However, in this argument Roth makes a point to reaffirm that only rabbis should be entitled to act as judges, only rabbis should be able to decide questions

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[96] Adler, 21
[97] Adler, 28-9
[98] Adler, 29

of halakhah in our time. Robert Cover claims that the very hierarchy of law is violent. "Judges are people of violence... judges characteristically do not create law, but kill it. Theirs is the jurispathic office. Confronting the luxuriant growth of a hundred legal traditions, they assert that *this* one is law and destroy or try to destroy the rest... The jurisgenerative impulse...is silenced."[99] Suzanne Stone, writing on Cover's work, continues: "Once we understand the jurispathic aspect of interpretation, we see that interpretation does not support authority; rather, authoritative interpretation kills law. It is the triumph of the hierarchical order over meaning."[100] Rachel Adler argues:

> The presumption liberal halakhists share is that modern halakhah must be a version of traditional halakhah adapted for a modern context by bringing formalist or positivist legal strategies to bear upon traditional texts. Decision making would remain in the hands of a rabbinical elite whose prescriptions are to be handed down to hypothetically obedient communities. The goal of liberal halakhah is to repair inadequacies of classical halakhah exposed by modernity while leaving the system basically intact.

Even Mark Washofsky, who acknowledges that "the authors of [Reform halakhic] literature do not regard themselves as judges; they do not seek to impose a particular standard of observance upon individuals or communities," defines Reform halakhah as a literature of Reform rabbis, the collection of Reform responsa written over the last century. [101] In Washofsky's own assessment there is a gap between the literature of the rabbis and the lived practice of Reform Jews. If, as Washofsky acknowledges, the movement and the halakhah

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[99] Cover, 56
[100] Stone, 825
[101] Washofsky, x

is non-authoritarian, but based on the individual and community's interpretation of what seems right, why would our primary way of negotiating this question be through rabbinic responsa?

If the conversation is to have authority, it needs to take place at the individual and communal level, where authority resides. The institutional structure for developing halakhah, namely the Responsa Committee, does not mirror the movement's ideology or culture. Cover continues, "The community's insistence upon living its own law or realizing its law within the larger social world...challenges the judge's implicit claim to authoritative interpretation."[102] Eugene Borowitz suggests:

> I do not believe any large number of Jews today will accept a nondemocratic theory of Jewish duty. Moreover, the act of passing substantial power from the rabbis to the community has, for all its weakening of community discipline, also produced unique human benefit.[103]

Suzanne Stone argues that the halakhic system is ideal for American legal theorists because it is "anarchistic in the strictest sense." Operating without a state, halakhah is a test case of a legal system lacking institutional hierarchy or authoritarian structure, in which law can be freed to be primarily a system of meaning."[104] Rachel Adler agrees that our halakhic system ought to be in our own hands: "The only attempt that has not yet been made is to exercise our own covenantal authority to redefine and refashion halakhah fundamentally so that contemporary Jewish women and men can live it out with integrity. Yet, if we define halakhah not as a closed system of obsolete and unjust rules, but as a way

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[102] Cover, 53
[103] Borowitz, Renewing the Covenant, 295
[104] Stone, 282

for communities of Jews to generate and embody their Jewish moral visions, that is exactly what we would do."[105]

A liberal, postmodern halakhic system would be based in the Jewish people. Communities of Jews would come together to "generate and embody their Jewish moral visions" by taking up the most pressing questions about how to live in the world, studying together, committing together, and living out their Jewish lives in relation to one another. By opening the halakhic conversation to all Jews, we create the possibility of closing the gap between halakhah on paper and halakhah that is lived, and of engaging all Jews in the most fundamental Jewish questions of our time. If we gave up our fear of new revelation, we might find that the Jewish people is attuned to God's will and prolific in new interpretations beyond our wildest expectations, and that the question of limits will take care of itself. That is, the Jewish people may naturally adopt, repeat, and gravitate toward those new expressions of revelation that are coherent and authentic.

The risk is that we invite Jews without significant knowledge about Jewish text and tradition to have the power to determine their own answers about how to live Jewishly in our time, and possibly to speak on behalf of Judaism. The risk is a changing role for the rabbi, who will serve less as an authority of Jewish living and more as a resource for learning about Jewish living. Rabbis and responsa committees, in addition to offering their own interpretations of halakhah, could provide study guides for communities of Jews engaged in their own exploration of the questions. Responsa would serve as roadmaps, guiding Jews to the sources

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[105] Adler, 21

and questions that the wisest and most learned rabbis of their time found most germane.

The individuals and communities engaged in this endeavor would need to approach it with humility, awareness that there is a great deal they do not know, and a spirit of experimentation. The purpose is not for any individual or community to decide halakhah for others, but to promulgate the full flowering of halakhic possibility for our time.

On Freedom and Obligation

What is freedom? For the founders of the American colonies, freedom was freedom *from* – freedom from the religious strictures of the societies they were fleeing, freedom from the oppression of the governments that required them to believe and to live according to the doctrines of the church. For the Israelites who crossed the Sea of Reeds, freedom was not only freedom *from* – freedom from Pharoah, from the oppression of slavery – but also freedom *to* – freedom to serve only God. Slaves cannot enter into obligation. Only free people can choose to commit themselves. Only free people can willingly enter into covenant.

For Jews, to be free also means to be obligated, to be responsible to others and to the ultimate Other: God. Free Jews are obligated to our people, obligated to humanity, obligated to our past and to our future, and obligated to God. Eugene Borowitz asks, "Does our present sense of non-Orthodox Jewish duty ever require us, under very special circumstances....to die for our Judaism? If not, if Judaism is not ever worth dying for, then it is hardly significant enough to

live by." But if it is worth dying for, Borowitz continues, we cannot be satisfied with a weak Jewish "ought." If we are willing to die to defend Judaism or the Jewish people, then shouldn't we create a Jewish practice worth living for? Borowitz concludes: "I seek a theology of serious non-Orthodox obligation that respects the self's autonomy."[106]

The self is still sovereign. No liberal Jew will ever be forced to participate in the creation or living out of halakhah. However, the sovereign self experiences itself as obligated, feels a pull to action in the world, to connect to a past, to understand what God is asking. Robert Cover says, "The transformation of interpretation into legal meaning begins when someone accepts the demands of interpretation and, through the personal act of commitment, affirms the position taken."[107] He continues, "Because the *nomos* is but the process of human action stretched between vision and reality, a legal interpretation cannot be valid unless one is prepared to live by it."[108]

Cover believes that the lack of violence in Jewish legal tradition derives from its conception as a system of reciprocal obligations rather than rights. A strong *nomos* is based on interpersonal commitment. Because each community member is obligated to others, the community member and not the state, or the movement, or the rabbinate, is the locus of the halakhah. Halakhah is active; it is what each community member does, not what any individual has or receives. Because people do halakhah, authority and institutions are largely irrelevant.

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[106] Borowitz, 256
[107] Cover, 45
[108] Cover, 44

Judges become teachers – rather than deciding law, they enable people to do halakhah by elucidating its deeper purposes.[109]

We must feel commanded beyond ourselves in order for halakhah to have meaning. We may, in community with others, create these obligations ourselves. We may feel pulled by obligations that already exist within the halakhah. Once we do either, we must objectify them as commands for some period of time, and live them out with commitment.

In order for the halakhah we create to be real, we have to stand for something, put our stake in the ground somewhere, and say "this is what I believe and therefore I am going to live this way." This requires discipline: the ability, when we have failed to do what we said we would do, to commit again, and again. For it ennobles us to follow through, to live our values, to walk the bridge to our vision, to make our world by living it. To create a way in the world through the way we live our lives. No one else can do it for us.

On Consensus

As the heavenly voice mediating between the Schools of Hillel and Shammai affirms, as the Kabbalistic theory about the infinite faces and gushing fountain contends, there is an endless diversity to the ways we hear and live Torah. In a liberal, postmodern halakhic system, we need room for a wide range of opinion and practice. As Gershom Scholem argues, "it is precisely the wealth of contradictions, of differing views, which is encompassed and unqualifiedly

[109] Stone, 830

affirmed by tradition."[110] Suzanne Stone agrees that the Rabbis were able to hold radically plural, sometimes contradictory interpretations of the law: "It [Jewish tradition] sees the filling of the legal universe with diverse laws of diverse communities as a creative and meaningful process."[111] She continues, "the challenge presented by the absence of a single, 'objective' interpretation is, instead, the need to maintain a sense of legal meaning despite the destruction of any pretense of superiority of one *nomos* over another."[112]

Rachel Adler points out that feminism has given us gifts that will help us to navigate these waters. Feminism redefined what it means to be human, teaching that we each have our own narrative which shapes who we are and how we see the world, that we each emerge and exist within a particular context, and that attempts at universalism often paper over real and valuable differences. Feminism taught us to see the spectrum of meaningful human differences as variation, not deviation.[113]

Mark Washofsky's book describing Reform Jewish practice opens with one word: diversity. "Each community...exercises independence in matters of practice. Diversity in approaches to observance is the inevitable result of the autonomy that each congregation enjoys. One cannot, therefore, identify a single standard, a single way of performing any ritual or ethical practice, as the correct standard for Reform Jews everywhere."[114]

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[110] Scholem, 282
[111] Stone, 828
[112] Stone 825
[113] Adler, 39-40
[114] Washofsky, ix

We have nothing to lose in encouraging the flowering of liberal Jewish practice, given Washofsky's description of the diversity that already exists. Eugene Borowitz imagines, "With autonomy then an integral part of Jewishness, some subjectivity will inevitably enter our Jewish practice, leading to a greatly expanded range of Covenantally acceptable ways of living as an authentic Jew." Even within a small community of Jews in the same synagogue, it is not necessary for the participants to agree on the same set of commitments. If they can agree, they will have the benefit of living the same practice together, of sharing the same rhythm and enjoying the camaraderie of their shared world. But if they cannot agree, if they cannot form a community of shared practice, they can form a community of obligation – in which each has made a significant commitment to a halakhah and is witness to the commitments of the others. In this case, it is not the content of the obligation, but the fact of it that binds them together and enables them to support one another in living out a halakhah, a Jewish way.

Ultimately, as more and more liberal Jews intentionally craft a halakhah, a pattern may emerge among their myriad commitments as they influence and are influenced by each other's interpretations of God's call. A web network, in which Jews can describe their halakhic commitments, what they understand God asking of them and why, will facilitate this communication and mutual influence. This may fulfill Eugene Borowitz's aspiration for "the day when enough Jewish selves choose to live in ways sufficiently similar that we can create common patterns

among us. A communal life-style, richly personal yet Jewishly grounded, would be the Jewish self's equivalent of halakhah."[115]

We, individual Jews of free conscience, are called by God to make of our lives a blessing. To do this, we have 3,000 years' record of our predecessors' striving toward the same goal, and we have each other. We have sages and teachers among us, we have congregations and centers through which we can gather to ask questions, study, commit to a way of life, and make our world by walking. There are dangers on our way. We may misread our Torah or misunderstand our God. We may become fixed on one interpretation and ostracize others for theirs. We may become so enamored with our own way that we lose track of the rest of our People. We may wander off in a thousand directions and have difficulty finding each other again. All of these are dangers.

However, the possibilities are even more compelling than the dangers. We may breathe new life into Judaism, and inhabit it again. We may reveal new Torah that helps us to understand who we are and who God is. We may find ourselves and each other as a Jewish people again, as we commit to each other, as the patterns of our lives coalesce and we find our way. We may even contribute to saving our earth, establishing justice, and bringing peace as we make, together, a new world.

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[115] Borowitz, 294

Chapter Three: Envisioning a Post-Modern, Liberal, Grassroots Halakhic Process

If halakhah is a conversation among Jews and God about how we ought to live in the world, what would a grassroots, liberal, postmodern version of that conversation look like in practice? We have learned from the second chapter that in a grassroots, liberal, postmodern halakhic process, Jews will make decisions for themselves, without coercion by any group or authority. Though individual Jews will not be obligated to agree to any halakhah generated by their community, they cannot develop halakhah alone. If they engage in the halakhic process, they will crave and be drawn to community. They will need other Jews with whom to think, to study, to dream, and to commit to a halakhah. They will also benefit from the guidance of rabbis and educators to help them navigate their texts and tradition, and they will need other Jews with whom to listen for God's voice and the Jewish people's voice through time.

In this final chapter we will delve into the process of developing post-modern, liberal halakhah. We will consider how Jews might move from a question to a halakhah or a set of halakhot. How might a Jew with a pressing question about how to live in the world today engage in sustained conversation with other Jews? How will they interact with rabbis, teachers, Torah, tradition, contemporary sources, and God to emerge with a halakhah, a path, a way of life

on that question? We will consider what steps a group might take as its participants explore an issue and make commitments to one another.

In addition, we will look at how a group might engage with traditional sources in this process. We will do this by sampling three questions to which liberal Jews might wish to respond through halakhah: Shabbat, the ethical treatment of workers, and how to live responsibly on the earth. Each of these issues differs in the amount of traditional Jewish source material that directly speaks to the question. Finally, we'll consider what kinds of outcomes we might expect such a process to provide.

There are many things that this chapter cannot be. It is not intended for use as a study guide on the three issues it considers, for it provides only a taste of texts on each question for the purpose of elucidating larger points about the ways that this halakhic process would use *aggadic* and halakhic material. It does not attempt to determine a halakhah on any of these questions, for its author has no desire or authority to do so, and an important point of the process is that the halakhah is fluid, variable and discerned, not imposed. Though the chapter will imagine a potential process for Jews endeavoring to develop halakhah, its imagined steps are by no means prescriptions. Just as each Jew will need to discern his or her own relationship to tradition, each Jew and each group will need to find their own way from question to halakhah, experimenting with what works best given their question, their conditions, and their goals.

A Grassroots, Liberal Halakhic Process

Let us imagine that a Jew has a pressing question. David is concerned about work/life balance -- his life feels rushed and crammed with work, without enough time to relax or enjoy his family and the rest of life. Sara's question is how to live responsibly on the earth. She has read about steps that she can take to reduce her carbon footprint and her contribution to the despoiling of our natural resources, and she wants to create an overall plan and commitment about how she will live. Jonah's question is related to sweatshops and ethical consumerism. What choices ought he make about what he buys with regard to how the workers are treated and paid? This is related to Nancy's question, which is about the fair treatment of workers – how much should she be paying the people who work for her, and what benefits should she offer? Is it good enough to do what the neighbors or competition does, or should she be aiming for a higher standard?

Let us imagine that our four Jews begin by talking to other people. Each has mentioned his or her pressing question to a few friends, and each finds a handful of people interested in exploring the question together. They've mentioned it to their rabbi, and the rabbi has agreed to serve as a guide to their little group, to help the group identify and interpret relevant traditional Jewish texts.

It may be useful for the group to use the six metaphors for halakhah that appeared in Chapter One as a guide as this process progresses. In chapter one, halakhah was described as: a fence, a tree, a world, a conversation, a bridge, and a way. The bridge metaphor might be the first that the group chooses to take up. If

halakhah is a bridge between a current reality and an envisioned future state, the first step is to understand the current reality. What is the current state? What is the problem behind the question?

Participants might want to begin by telling one another their stories. As we've learned from Congregation-Based Community Organizing, one-on-one storytelling brings each of us to the table, grounding our conversations for change in our real lives. For example, if the pressing question is work-life balance, at the very first meeting the group might begin by giving each person a chance to tell a story about the way their lives are rushed and out of balance right now. Out of the stories not only will the members of the group come to know one another better and see their shared motivation for making a change, they will also learn about the dimensions of the problem itself.

And that is the natural next step following storytelling – to write up together the current state of affairs on the given question – for the people in the room and for the larger "we" – the community, the Jewish people, the society, the world. This portrait of current affairs can be done in broad brush strokes, but it ought to have enough texture to provide a shared sense of what this side of the bridge looks like.

In order to build the bridge we need to know where it is leading, and that brings us to the next step and the next metaphor. Here the group will want to turn to the metaphor of halakhah as a world. If we believe that we make our world by the way that we live, the choices that this group makes for its halakhah on this question will help to shape our world. If that's so, then the group ought to think

very carefully about what kind of world it wants to create on this question. What would ideal work-life balance look like in their lives? What would it look like in society and the world? Just as the group painted a picture of the current state based on each person's own story, here too the group can ask each member to express a vision of the world he or she wants to create.

One of the benefits of community, of the encounter with others, is that it changes us. The conversation about vision ought not simply be a collection of individual visions, but a real conversation, whereby each person's ideas change in response to the expressions of all of the others. This may lead to one shared vision, or multiple related visions. Out of the visions expressed, the group can conjure a world (or, if the visions are disparate enough, multiple worlds) to which the bridge will lead.

Once the community has pictured its *nomos*, it can begin to identify some of the characteristics of its bridge. What kind of behaviors and commitments are going to move us from this state to our imagined future state? What takes us as we are and stretches us toward our ideal state? This brings us to the metaphor of the tree. As Jews consider how to get from here to there, the tree reminds us that the halakhic process itself is about growth. It is not necessary, or always possible, to leap in our behavior from current conditions to our vision. Rather, we must begin where we are and by reaching upward incrementally, we can grow over time to what we imagine becoming.

Throughout the process, it will be helpful for the group to keep its eye on the metaphor of halakhah as a fence: what kinds of actions would be out of

bounds for them as Jews on this question? What are the boundaries, where is the line separating acceptable and unacceptable Jewish behavior? It will be interesting to see how the initial answers of participants change over the course of study, to see whether the boundary moves or changes shape with more learning and reflection.

As the participants just start to engage in thinking about the bridge and the tree and the fence, it is time for halakhah as a conversation. The conversation is where a great deal of the work happens, for in the conversation contemporary Jews come face to face with their ancestors, their broader people, each other, and God as they inquire deeply about how to live. Here is where they will examine Torah and other texts, where they will engage in the nitty gritty of cases and scenarios with each other and their rabbi, and where they will begin to find the arc of their bridge, the shape of their tree and the outline of their fence.

After one or two sessions in which they set the stage, they'll be ready to delve into relevant texts. A good first step is to check Reform responsa, because they often contain an overview of Jewish texts on the question, which will provide a short-cut for at least the first round of text searches. These halakhists will want to start with Torah, looking both for stories and laws related to the question. On the verses they select, there'll be both midrash and Rabbinic commentary, both of which will be excellent sources to help discern meaning.

They'll also want to search the Mishnah and the Talmud, and this is where guidance from the rabbi will be invaluable. Maimonides's *Mishneh Torah* is a great place to start, as it condenses many of the halakhic conversations of Talmud

and organizes them by category. Similarly, for *aggadic* material it will be wise to check the index of *Sefer Aggadah*. They'll also want to check the codes literature, particularly the *Shulchan Aruch*. Finally, though not necessarily last in the course of their study, they'll want to be sure to check for contemporary writing on the question, whether Jewish or general. They can start by asking one another what they've read on the topic, from any source, that has been particularly meaningful, and they can also check journals and search library collections. Their exploration need not be limited to text – film, theater, the web, and other sources may prove useful.

Some may want to keep a journal throughout this process, a place to record conversations and ideas about meaning, about the experiments they'd like to try, about their visions, about their sense of obligation, about what they think God wants from them. Even if the participants do not keep personal journals, they ought to keep notes from the meetings in a central binder, so that each conversation builds on the one that preceded it and the learning progresses. The group may also choose to communicate more broadly to the larger congregation or community, to the local paper, or on a web network to other Jews with similar questions.

At any point in the process, beginning from day one, participants may want to experiment with a variety of potential commitments, to try on particular halakhot and to learn from the experience. Some may want to keep a journal about what they learn from these experiments, as these gleanings will likely prove useful months later when the group is ready to make commitments to one another.

Decisions do not need to be put off until the study is complete, for in some sense the study will never be complete, nor will decision-making. As Jews continue to learn and experience halakhic commitment, we continually adjust our commitments to stay true to our perception of our obligations to covenant and one another. We are always experimenting. At some point, though, it is time to identify specific commitments that the participants will make to themselves, to one another, and to God about how they will live for a stated period of time.

We will return to the moment of commitment toward the end of the chapter, but first let us look more closely at how this halakhic process would engage the tradition through text.

The Use of Traditional Texts

In this halakhic process, participants are studying texts to discern God's call: What is God asking of us in our covenantal relationship? Therefore, whether the texts are halakhic (prescribing Jewish practice) or *aggadic* (telling a story), we are delving into them to discern meaning. As Reform Jews, we can use halakhic texts without being bound by their decisions, much as we would use *aggadic* texts, as a fragment, a story that reveals some essence about what this Jewish practice means to those who wrote it, and perhaps what it means to God. Ultimately, it is meaning we are searching for. What does God want of us and why? What do the Jewish people, past and present, want of us and why? For example, what does this conversation or this story tell us about what Shabbat meant to the Rabbis, and why? Based on what it meant to them, what gleanings

can we derive about what it might mean to us? We will see, in the three cases that appear below, that every text unfolds into a multiplicity of meanings, and so it is where the text meets our consciences (as we listen with contemporary ears for what God asks of us) that each Jew will find her own way.

How ought liberal halakhic *halutzim* handle halakhic texts that do not speak to their experience of God, or their understanding of what God wants of them? Franz Rosenzweig argues that every mitzvah obligates us eventually, but that some of us are not ready yet for a given mitzvah. This might be an articulation of the tree metaphor. For now, this halakhah is beyond the reach of our branches, but when we grow, who knows? David Ellenson argues that some mitzvot are simply incongruous with our understanding of what God wants of us in the world –now or ever. He says, "while some efforts at hearing God's word have been admirable, others have been too blatantly human, not divine...Thus, to halakhah we must sometimes say 'No' and not merely 'Not yet.'"[116]

In this enterprise, there will be at least four types of reactions to texts:

- Texts that immediately, on their face, teach us and hold meaning for us, helping to illuminate an aspect of our lives, of God, of how we ought to live in covenant.
- Texts that at first seem strange, confusing, irrelevant, or overly demanding; and then, upon examination or with guidance, reveal a new facet of meaning about mitzvah or covenant, or how we ought to live in the world.

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[116] Ellenson, 29

- Texts that, despite significant study and effort to unlock God's voice within them, simply do not yet speak to us. They may seem to make unreasonable demands on us, or seem misaligned with our sense of covenant, of what God is asking. These fall into Rosenzweig's category of "not yet."
- Finally, there are texts that violate our sense of right and wrong, of God and covenant, that run counter to our understanding of how we ought to live as Jews. As Reform Jews, we can say "No," now and maybe forever, to these texts.

A distinction may arise between meaningful and commanding. Jews may come across halakhot that seem meaningful, but not yet commanding, as Rosenzweig describes. We could imagine if our lives looked a little bit different that we'd want to live those practices. We can sense the meaning within them, the call within them. But we know that we cannot commit to them today – that they are too big of a leap for us to succeed. This is where the metaphor of the tree will be particularly helpful. The development of one's halakhah can be a process – is always a process. No practice remains completely static. It is quite possible to approach this incrementally, a few steps at a time. Practitioners should begin with what feels compelling, begin where they feel themselves commanded, and build from there.

Three Cases for Illustration

Work/Life Balance: Shabbat

There are some pressing questions in our lives that were also on the minds of our ancestors, and about which there is a great deal of Jewish literature. For example, for those moderns struggling with a question of life-work balance – feeling the need for more rest, quiet time, time with family, time for one's spiritual life—Shabbat is a natural area of exploration. The Jewish tradition includes voluminous exposition on Shabbat and the myriad details of its observance. Jews seeking to develop a halakhah for Shabbat have ample opportunity for study in sources that span Jewish time, from Torah to Mishnah to Gemara to midrash to codes to responsa literature to contemporary guides on the practical observance of the Sabbath. The challenge for the question of Shabbat is not finding enough relevant texts. Rather, the challenge is two-fold: wading through the sheer volume of material, and interpreting the material, whether halakhic or *aggadic*, as liberal Jews.

It is the rare liberal Jewish community that will have the time to study the full body of literature on Shabbat. Most will need to select a small subset of texts that represent different aspects of the meaning and observance of Shabbat. There are many published guides to Shabbat, including a recent Union of Reform Judaism publication called *Embracing Shabbat*. The guide includes texts and

group exercises for understanding the meaning of Shabbat and identifying practices to incorporate – for individuals, for havurot, and for congregations.

One key awareness, then, as a group of liberal Jews makes its way through the wealth of Jewish text on Shabbat, is how much more there is to know and learn and encounter. Perhaps Shabbat will become a lifelong subject for study; as the group and the individuals within it grow and develop in their Shabbat practice they may find new questions about Shabbat that they wish to study, or they may find that they want to learn more about a question they've explored at one level—they are ready to go deeper. It is important is that wherever they stop they are aware of how much more there is; that there is a humility of not knowing, as well as an excitement for all that has been learned, explored, developed and begun.

Depending upon the familiarity of the group with Shabbat, the first step may be to read several introductions or overviews to the concepts of Shabbat, such as Maimonides's introduction to Shabbat in the *Mishneh Torah*, or Heschel's *The Sabbath*, or *A Shabbat Reader: Universe of Cosmic Joy*[117], or one of many other contemporary, liberal Shabbat guides. The idea is for participants to get a little *chush*, or feel, for what Shabbat is about. Out of this reading, participants might want to list together the central concepts and values of Shabbat. What does Shabbat mean? Why would God command us to *shamor* (observe/keep/guard) and to *zachor* (remember/make present) Shabbat? What is God saying to us through Shabbat?

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[117] Dov Peretz Elkins, *A Shabbat Reader: Universe of Cosmic Joy* (New York: URJ Press, 1999)

A great beginning text for a group looking at Shabbat practice is this short midrash from Genesis Rabbah:

"ויברך אלהים את יום השביעי ויקדש אותו"
ברכו באור פניו של אדם, קדשו באור פניו של אדם, לא דומה אור פניו של אדם כל ימות השבת, כמו שהוא דומה בשבת

"And God blessed the seventh day, and hallowed it." (Gen. 2:3)—blessed the Sabbath with radiance in a person's face; hallowed it with radiance in a person's face. The radiance in a person's face on weekdays is not like that on the Sabbath.[118]

Though traditional halakhists may find this piece irrelevant to their efforts, for liberal Jews this piece could be an excellent starting place to developing a halakhah. Those who study it may ask themselves: what would I need to do on Shabbat (and what would I need to *not* do on Shabbat) to create a radiance in my face different than on all other days? In other words, which *mitzvot aseh* (obligations) and which *mitzvot lo ta'aseh* (prohibitions) from the received tradition and from my own discernment are going to lead to the kind of *menuchah* (rest and replenishment) and *oneg* (joy and delight) that is conveyed through the radiance in my face? For some that may indicate clearly that the radiance of the computer screen would be turned off on Shabbat. For others, time in nature will bring this radiance. For others, study for its own sake. For others, play time with their children.

As groups of Jews begin to experiment with their own halakhah for Shabbat, they will quickly see why so much halakhic material for Shabbat is written in the negative. By setting boundaries but leaving the space open,

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[118] Genesis Rabbah 11:2

negative formulations actually give one more freedom. Though it may be lovely to play with one's children on Shabbat or go for a hike, and that may be a goal, should it be a commitment? What if one week the children are sick, or want to play with their friends instead? Perhaps the commitment is to turn the computer off so that – ah! – we discover our children waiting for us to play. Every person and every group will experiment with what articulations allow for both the consistency and flexibility desired.

This text from Maimonides's *Mishneh Torah* provides a halakhah and an interpretation that allows us to further explore this question of negative and positive commandments:

אסרו חכמים לטלטל מקצת דברים בשבת כדרך שהוא עושה בחול, ומפני מה נגעו באיסור זה, אמרו ומה אם הזהירו נביאים וצוו שלא יהיה הילוכך בשבת כהילוכך בחול ולא שיחת השבת כשיחת החול שנאמר ודבר דבר קל וחומר שלא יהיה טלטול בוא להגביה ולתקן כלים מפינהבשבת כטלטול בחול כדי שלא יהיה כיום חול בעיניו וי לפינה או מבית לבית או להצניע אבנים וכיוצא בהן שהרי הוא בטל ויושב בביתו ויבקש דבר שיתעסק בו ונמצא שלא שבת ובטל הטעם שנאמר בתורה למען ינוח.

The sages forbade the handling of certain articles on the Sabbath in the way they are handled on weekdays. Why did they enact such a prohibition? They reasoned as follows: Inasmuch as the prophets admonished us and charged us not to walk on the Sabbath in the manner we walk on weekdays, not to converse on the Sabbath in the manner we converse on weekdays, since it is written "nor speaking of it," so much the more should we refrain from handling articles on the Sabbath in the manner they are handled on weekdays, so that one should not regard the Sabbath as if it were a weekday and be led to lift and rearrange articles from one corner to another or from one room to another, or to put stones out of the way, or do similar things. Since one is at leisure and at home, he might look about for something to do; the result would be that he would not rest at all, thus disregarding what is written in the Torah, "that they may rest..." (Exodus 23:12)[119]

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[119] Maimonides, *Mishneh Torah*, Sabbath, Chapter 24, number 12

Maimonides is speaking to the halakhic category *muktzeh*, meaning "set aside." Objects are *muktzeh* if their weekday use is prohibited on Shabbat. For example, scissors are *muktzeh*, as they are used for cutting and cutting is prohibited on Shabbat. Pens are *muktzeh*, as writing is prohibited on Shabbat.

We can understand this text as a *siag la-Torah*, a fence around the Torah – that by prohibiting handling the objects, the halakhah is protecting us from doing something prohibited by Torah on Shabbat. We can also understand this text as elucidating the meaning of *menuchah* as a kind of rest that takes us beyond the mundane objects of our week, that removes us and elevates us beyond the material. We can also understand this text as pointing to *kedushah* (holiness), as it prevents us from handling all of the reminders of ordinary life. As it sets these symbols of ordinary life aside, it carves out a space for an elevated way of being that is free from the ordinary, in which we use our hands in a way separate and apart from how we use them in the week; we walk in a way separate and apart from how we walk during the week; and we speak in a way separate and apart from how we speak during the week. Through prohibition, through *lo ta'aseh*, we make room for something new to emerge: something separate, *kadosh*, something holy.

Some liberal readers may find meaning in the category of *muktzeh*, and may apply it in the way it is received by the tradition, or may use the principle of the *siag la Torah* to apply it to other objects, like cell phones or credit card bills, that remind them of the work week. Some readers, while not wanting to apply the halakhah directly, may take the underlying principles of *menuchah* and *kedushah*

and consider what boundaries they would like to apply to Shabbat to nurture a *menuchah* and *kedushah* in their lives.

If we step into halakhic texts as we would *aggadic*, looking for a story that reveals principle or meaning, we may find unexpected insights that lead us to new halakhah. As we negotiate our reactions to the received halakhah, all the while we also can tease out meaning from the texts by inhabiting them. The more we inhabit them, the greater our understanding of their meaning to their authors and to us. In order for a story to have meaning it is not necessary for the reader to share all of the attributes of the characters or the conditions of their lives. Stories speak in metaphor across differences of material reality. If we treat halakhah like this, we may find two levels of engagement – we may wish to adopt the halakhah itself, committing ourselves to live by its demands, or we may wish to absorb an underlying value or message that the halakhah is conveying. And in so doing, we may find alternative halakhic expressions of that value.

Next, let us look at a halakhic text that begs us to step inside. This text is the very first word that the Mishnah has to say about Shabbat:

א יְצִיאוֹת הַשַּׁבָּת. שְׁתַּיִם שֶׁהֵן אַרְבַּע בִּפְנִים, וּשְׁתַּיִם שֶׁהֵן אַרְבַּע בַּחוּץ. כֵּיצַד. הָעָנִי עוֹמֵד בַּחוּץ וּבַעַל הַבַּיִת בִּפְנִים, פָּשַׁט הָעָנִי אֶת יָדוֹ לִפְנִים וְנָתַן לְתוֹךְ יְדוֹ שֶׁל בַּעַל הַבַּיִת, אוֹ שֶׁנָּטַל מִתּוֹכָהּ וְהוֹצִיא, הָעָנִי חַיָּב וּבַעַל הַבַּיִת פָּטוּר. פָּשַׁט בַּעַל הַבַּיִת אֶת יָדוֹ לַחוּץ וְנָתַן לְתוֹךְ יְדוֹ שֶׁל עָנִי, אוֹ שֶׁנָּטַל מִתּוֹכָהּ וְהַכְנִיס, בַּעַל הַבַּיִת חַיָּב וְהָעָנִי פָּטוּר. פָּשַׁט הָעָנִי אֶת יָדוֹ לִפְנִים וְנָטַל בַּעַל הַבַּיִת מִתּוֹכָהּ, אוֹ שֶׁנָּתַן לְתוֹכָהּ וְהוֹצִיא, שְׁנֵיהֶם פְּטוּרִין. פָּשַׁט בַּעַל הַבַּיִת אֶת יָדוֹ לַחוּץ וְנָטַל הָעָנִי מִתּוֹכָהּ, אוֹ שֶׁנָּתַן לְתוֹכָהּ וְהִכְנִיס, שְׁנֵיהֶם פְּטוּרִין:

"[Acts of] transporting objects from one domain to another [which violate] the Sabbath are two, which [indeed] are four [for one who is] inside, and to which are four [for one who is] outside. How so? 1. [If on the Sabbath] the beggar stands outside and the householder inside, [and] the beggar stuck his hand inside and put [a beggar's bowl] into the hand of the householder, or if he took [something] from inside it and brought it out, the beggar is liable, the householder is exempt. 2. [If] the householder stuck his hand outside and put [something] into the hand of the beggar, or if he took something from it and brought it inside, the householder is

liable, and the beggar is exempt. 3. [If] the beggar stuck his hand inside, and the householder took [something] from it, or if [the householder] put something in it and he [the beggar] removed it, both of them are exempt. 4. [If] the householder put his hand outside and the beggar took [something] from it, or if [the beggar] put something into it and [the householder] brought it back inside, both of them are exempt."[120]

At first this text will seem to the grassroots readers utterly complex and confusing, and quite irrelevant to contemporary liberal Jewish lives. This is the kind of text that most groups will need a rabbi's help to understand, both in explanation of the *peshat* meaning, and in finding the text's potential implications for contemporary Jewish practice. The explanation may be as follows: the Torah lists 39 categories of *melachah* (loosely translated as work) that are prohibited on Shabbat. The last of these, but the first in the Mishnaic treatment of Shabbat, is carrying.

It is prohibited by Torah law, according to the Rabbis, to carry from the private to the public domain, from within a house to outside it or vice versa. According to the Rabbinic interpretation of Torah, one is liable for carrying if one does the complete act – removes the object from the private domain and places it down in the public domain or vice versa. According to Rabbinic law, however, the incomplete act of carrying is also prohibited, for example, if one removes an object from the public domain and brings it into the private domain without putting it down. In such a case, one is exempt (from the Torah liability of a sin offering if unintentional or the death penalty if intentional), but the act is still prohibited.

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[120] Mishnah Shabbat 1:1, Neusner translation

Technically, this mishnah is simply coming to teach the four permutations of liability and prohibition for carrying between the private and public domains on Shabbat. In the first case, the person in the public domain is doing all of the carrying (both removing the object and placing it) and is therefore liable, while the person in the private domain is doing none of the carrying, and is therefore exempt (and has done nothing prohibited by Rabbinic law either). In the second scenario, the person in the private domain is doing all of the carrying and is liable, while the person in the public domain is doing no carrying and is exempt (and has done nothing prohibited by Rabbinic law either). In the third and fourth scenarios, each person is doing half of the act of carrying – one does the removing from one domain and the other the placing in the second domain— and therefore neither is liable, but both do something prohibited.

It is possible that this mishnah is presented only to teach us about the specific implications of the differences between Torah law and Rabbinic law when it comes to the liability of carrying. And it is possible, as Kehati suggests in his commentary on this mishnah, that the beggar and the householder are used as the example simply because this was a common interaction.[121] But what if we step into this scenario and inhabit it? What if we were a householder, and a hungry person came to our door on Shabbat begging for sustenance. Not knowing who this is, we crack the door to see the person's face. Maybe we were just about to sit down at our beautiful Shabbat table with our family. Maybe this person's clothes are worn and dirty. Maybe we wonder if we can trust him or her. What would we do? What should we do?

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[121] Pinhas Kehati, Mishnah (Jerusalem: Feldheim, 1995)

The worst thing we could do, according to this mishnah, is stick our hand outside and put food into his bowl or make him feel around inside to grab some food and take it out. That makes us or him liable for the death penalty, and it also happens to be the least humane interaction. But even attempts to skirt the death penalty by working together across the open doorway are prohibited by Rabbinic law. And if you step outside with a bowl of food for this hungry person, you've clearly carried from private to public. The only real solution leads us to a question we might have asked from the beginning: why don't we invite this poor person in? If we do, no one violates the law of carrying on Shabbat, and in the bargain we perform the mitzvah of *hachnasat orchim*, welcoming guests. It seems that in this dilemma the Sages are providing only one real option for the householder: welcome the poor to your Shabbat table.[122]

Out of this seemingly convoluted and picayune text we get a weighty result. If someone comes knocking on your door on Shabbat in need of sustenance, let him or her inside. This is not a *mitzvah aseh*, an affirmative mitzvah. Nowhere does the text or God directly demand this of us. But this mishnah, firmly rooted in the reality of a householder opening his door just a crack to see the hungry person outside, seems to imagine the World to Come that Shabbat represents – a world in which we are not afraid of one another, but open our doors wide and invite each other in, a world in which we give freely to one another and therefore no one is hungry.

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[122] This interpretation of the mishnah was taught to me by Dr. Dvora Weisberg.

What is Shabbat according to this text? Shabbat is a taste of peace and justice and fellowship between human beings. Shabbat is a time of restrictions that force us to connect with one another and care for one another.

Some, in studying this text, will want to experiment with not carrying on Shabbat. They may find meaning in the symbolism of being unencumbered, unburdened on Shabbat. Those who do experiment with it may find that when visiting others, they can't feel obligated to bring anything, just themselves – a situation which leads to a hospitality that knows no exchange, no measuring of who contributed what. Others may not feel themselves obligated to observe the prohibition on carrying between the private and public domains. They may not find meaning in it; they may not hear God's voice in it, not yet, or maybe not ever.

What this text shows is that even halakhah to which we reserve the right to say "No" or "Not Yet" may still hold metaphoric meaning for us. For example, we might metaphorically interpret the prohibition on carrying to develop a halakhah that we cannot carry the worries of our work lives or the public space (the newspaper, the television) into our private homes on Shabbat.

With a liberal halakhic lens, every text is polysemic. There is not only one right way of reading it; there are layers of meaning within it. As we look at texts we ask ourselves, what values does this text come to teach? What are the principles or concepts that animate the halakhah or the *aggadah*? From these principles we may develop new halakhah that speaks more directly to our current conditions. We may expand the traditional halakhah or reapply it.

Let us now examine a midrash from Exodus Rabbah:

וירא בסבלותם ראה שאין להם מנוחה הלך ואמר לפרעה מי שיש לו עבד אם אחד בשבוע הוא מת, ואלו עבדיך אם אין אתה מניח להם יום אחד בשבוע אינו נח יום הם מתים, אמר לו לך ועשה להן כמו שתאמר, הלך משה ותקן להם את יום השבת לנוח

"Moses...saw their burdens" (Exod. 2:11). He saw that they had no rest whatever [from hard labor]. So he went off and told Pharaoh: "When a man has a slave and the slave gets no rest at least one day during the week, the slave will die. Now, these are your slaves. If you do not let them rest during the week, they will surely die." Pharaoh replied, "Go and do with them as you say." So Moses went and ordained the Sabbath day for them to rest.[123]

This midrash speaks directly to moderns who are struggling with overwork, who feel continually burdened by the pressures or physical demands of the workplace, who are perpetually sick or exhausted. More than as a spiritual or ethical or communal institution, this midrash understands Shabbat as a physical necessity.

According to the midrash, Shabbat is a means of survival. Shabbat is our weekly rest from enslavement. This text could lead participants to ask themselves: What do our bodies need after a full week of work? What kind of *menuchah* (rest) would give our bodies the strength to do our work the rest of the week? It may lead to questions that stretch beyond Shabbat to the work itself – am I working for God or for Pharaoh? Is my work contributing to the word I want to create?

This midrash could lead practitioners to a commitment to physical rest and a complete disengagement from work on Shabbat—for example, adequate sleep, a nap, and no work calls, meetings, or emails.

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[123] Exodus Rabbah 1:28

Finally, let us look at this difficult text from the Book of Numbers:

וַיִּהְיוּ בְנֵי־יִשְׂרָאֵל בַּמִּדְבָּר
וַיִּמְצְאוּ אִישׁ מְקֹשֵׁשׁ עֵצִים בְּיוֹם הַשַּׁבָּת: וַיַּקְרִיבוּ אֹתוֹ הַמֹּצְאִים אֹתוֹ
מְקֹשֵׁשׁ עֵצִים אֶל־מֹשֶׁה וְאֶל־אַהֲרֹן וְאֶל כָּל־הָעֵדָה: וַיַּנִּיחוּ אֹתוֹ
בַּמִּשְׁמָר כִּי לֹא פֹרַשׁ מַה־יֵּעָשֶׂה לוֹ: וַיֹּאמֶר יְהוָה אֶל־מֹשֶׁה מוֹת
יוּמַת הָאִישׁ רָגוֹם אֹתוֹ בָאֲבָנִים כָּל־הָעֵדָה מִחוּץ לַמַּחֲנֶה: וַיֹּצִיאוּ אֹתוֹ
כָּל־הָעֵדָה אֶל־מִחוּץ לַמַּחֲנֶה וַיִּרְגְּמוּ אֹתוֹ בָאֲבָנִים וַיָּמֹת כַּאֲשֶׁר צִוָּה יְהוָה
אֶת־מֹשֶׁה:

Once, when the Israelites were in the wilderness, they came upon a man gathering wood on the Sabbath day. Those who found him as he was gathering wood brought him before Moses, Aaron, and the whole community. He was placed in custody, for it had not been specified what should be done to him. Then the Eternal said to Moses, "The man shall be put to death: the whole community shall pelt him with stones outside the camp." So the whole community took him outside the camp and stoned him to death – as the Eternal had commanded Moses.[124]

There are several possible reactions to this text from our Torah. The first, which is clearly out of bounds, is to follow this law – that anyone caught violating Shabbat will be put to death. The second is to say, "This text violates my understanding of what God wants of us, of what it means to be in covenant, and of what Shabbat is about," and to move this text outside of the halakhic conversation. The third is to say "this text violates my understanding of what God wants of us, and of course we should not put people to death for violating Shabbat; however, is there something here that I can learn about what Shabbat does mean to me, to the Jewish people, to covenantal relationship, and to God?" And from there, many interpretations can emerge. Linking this text to the midrash about Moses instituting Shabbat for the people's survival, we might read

[124] Numbers 15:32-36

this text as saying that working seven days a week is like killing yourself, or at least is not good for your health. Some of us might read in this text obligation to stretch ourselves to hear God's voice as a commandment, not merely a request.

What does this text teach us about the relationship between the individual and the community when it comes to Shabbat observance? Given our parameters that the relationship should not be murderous, or even coercive, what should the relationship be? Which aspects of Shabbat should we decide together, and which aspects should I be able to decide for myself? Because Shabbat is all the more joyous and replenishing when celebrated with others, it is a fantastic laboratory for working out the relationship between the individual and the community. Many of the halakhic questions related to Shabbat can be delegated out to individuals without communal concern, but the more that individuals find a shared pattern for celebrating Shabbat, the more likely they are to emerge from the 25 hours with a different kind of radiance in their faces. Individuals and groups may use this text to challenge themselves to create a set of shared commitments about Shabbat, so that they can enjoy it together.

Shabbat is also a useful laboratory for finding the balance between flexibility and consistency, experimentation and rhythm. Part of the joy and delight of Shabbat is its predictability. After months and years of the same basic pattern, Shabbat shapes the rhythm of life. If one is trying something new each week, the rhythm cannot hold. However, there are many wonderful opportunities for observing Shabbat that are worth trying, and thus it behooves to not settle in too quickly to a routine without having experimented with a variety of options.

Jews who engage in this process will be working out their own balance between these two desirables – experimentation and rhythm.

For the overworked modern, the Shabbat texts ask: how would our lives be different if we arranged them around a day of rest, of joy, of freedom, of holiness? Study of these texts will point practitioners to several larger principles for Shabbat – sacred time, replenishment, joy, rest, refraining from work, and reaching out to others. Guided by the principles they find, the texture of the texts, the conditions of their lives, and the *nomos* they envision, liberal Jews will develop their own halakhah on Shabbat.

The Ethical Treatment of Workers

One of the central questions of our time is economic inequality, locally and globally. Unlike in previous eras when we were most likely to be low-wage workers, today American Jews are more likely to be decision-makers about the pay and treatment of poor and vulnerable populations. Many of us are in a position to shape and influence the quality of life for at least a handful of workers, and some of us are in a position to shape and influence industry standards. All of us make choices as consumers that either fund the severe exploitation of impoverished workers in other parts of the world, or fund companies striving, in the midst of a cutthroat market, to set a different, more humane standard. As members of the wealthiest economy in the world, our choices in this realm matter,

having the power not only to influence the workers whose lives we directly affect, but global patterns of buying and production.

What are our obligations to the people who work for us? As employers, should we set the pay and conditions of our workers by the common practice where our workers live, or by another standard? To what extent are we obligated for the welfare of our workers? Should we pay a living wage? What are our obligations as consumers to the people who produce the goods and clothing we buy, who grow and harvest and process our food? How well do the cases and principles in Jewish tradition translate to a globalized economy?

The issue of employer-employee relations is one of great import both in the Written and Oral Torah. However, unlike Shabbat, about which the literature expands in every generation, Jewish writing regarding the ethical treatment of workers has been sparse in the last several centuries. The issue is treated more prominently in Torah and Mishnah than in subsequent works, and over the last several centuries the responsa literature has not kept pace with the changing conditions of the global economy. The relationship between consumers and workers, which has also changed significantly in the last several centuries, has received precious little attention by halakhic authorities and thinkers.

With Shabbat, Jewish tradition is clear and specific. For almost any case, the tradition has an answer about what one should do or not do on Shabbat. The issue for the liberal Jew, then, is to decide which of these prescriptions and proscriptions she will follow, which he will interpret fluidly or metaphorically, which do not yet compel her, and which he finds contrary to his experience of

God and covenant. On worker issues, as we will see, it is not entirely clear from the texts where the obligations of contemporary Jewish employers begin and end, or how the cases in the Mishnah translate to contemporary conditions. There emerges a clear need to supplement the traditional texts with contemporary texts, responsa, positions of the liberal movements, other literature, and, most of all, our sense of what God is asking of us, of what it would look like to live in covenant on this question. Unlike Shabbat, in which an array of obligations and restrictions are spelled out to the last detail, these texts give us conflicting messages and an inadequate response to our questions.

But they do give us values and principles with which to ground our exploration. As a first example, let's look at a short *aggadic* piece from the Talmud:

ר' יהודה כד אזיל
לבי מדרשא שקיל גולפא על כתפיה, אמר: גדולה מלאכה שמכבדת את בעליה. רבי שמעון שקיל צנא על כתפיה, אמר: גדולה מלאכה שמכבדת את בעליה.

Rabbi Yehuda used to go into the Beit Midrash carrying a pitcher on his shoulder. He would say, 'Great is work, as it gives honor to the one who does it.' Rabbi Shimon would carry a basket on his shoulders and say, 'Great is work, as it gives honor to the one who does it.'"[125]

At first look, one might wonder what this text has to do with the treatment of workers. It does not describe an employer-employee relationship. But it does illustrate a Rabbinic attitude toward work – one expressed in numerous Rabbinic texts – namely that work itself is a value. To get a feel for what the text is

[125] Babylonian Talmud, Nedarim 49b

expressing, let's step into it, as we stepped into the texts about Shabbat. Rabbi Yehuda is walking to the Beit Midrash, presumably for a full day of study and teaching. His "work" is as a Torah scholar. Why would he carry a pitcher to the Beit Midrash? Water carrying was one of the least skilled, lowest ranking occupations in the ancient world. It is therefore somewhat surprising for a venerated rabbi to carry water. This may be the very point of his teaching. By doing the work himself, Rabbi Yehuda is saying that work itself is a value because it gives the worker honor; it bestows dignity upon human beings. Work is so valuable for this reason that Rabbi Yehuda and Rabbi Shimon make a point of working on their way to the Beit Midrash. One might think that to the Rabbinic mind nothing was as valuable as Torah study, but these rabbis are making a statement (as other texts also declare) that work is important even for Torah scholars.

Here we find a phenomenon that we see repeatedly with the study of Jewish texts: texts that seem to be peripheral to the central question (in this case, "How should we treat workers?") often lend a critical perspective to our question, helping us to identify a core value or principle. In this case, the text teaches that the value of work, its very purpose, is to bestow dignity on human beings. Our tradition is ingeniously creative in its application of seemingly irrelevant texts to an operative question. More often than not, the midrashic process uses texts that are clearly meant to make a different point in their context to speak to a halakhic question far afield. The liberal halakhic process can do this as well.

The most prominent Torah text on our question, from the Book of Deuteronomy, serves as the central focus of all subsequent Jewish labor law while also presenting a problem for the contemporary interpreter:

לֹא־תַעֲשֹׁק שָׂכִיר עָנִי וְאֶבְיוֹן מֵאַחֶיךָ אוֹ מִגֵּרְךָ אֲשֶׁר בְּאַרְצְךָ בִּשְׁעָרֶיךָ׃
בְּיוֹמוֹ תִתֵּן שְׂכָרוֹ וְלֹא־תָבוֹא עָלָיו הַשֶּׁמֶשׁ כִּי עָנִי הוּא וְאֵלָיו הוּא נֹשֵׂא
אֶת־נַפְשׁוֹ וְלֹא־יִקְרָא עָלֶיךָ אֶל־יְהוָה וְהָיָה בְךָ חֵטְא׃

Do not oppress the hired laborer who is poor and needy, whether he is one of your people or one of the sojourners in your land within your gates. Give him his wages in the daytime, and do not let the sun set on them, for he is poor, and his life depends on them, lest he cry out to God about you, for this will be counted as a sin for you.[126]

This text teaches that the central obligation of the employer is not to oppress the worker, even more so if that worker is poor or needy. This foundational obligation extends both to Jewish employees and non-Jewish employees, to the native born and the immigrant. This text, and the halakhah that grows out of it, places the primary onus on the employer, as the one with greater power, to be fair and righteous in his or her dealings with the employee.

The problem with this text and the body of halakhah that emerges from it is that its focus is on timely payment. Rabbinic and Medieval texts on this verse continue to center on the prohibition against late payment. While this is occasionally an issue in contemporary business practice, it has been replaced by questions such as pay rate and benefits – the question of whether employees should earn enough pay from one job to be able to sustain themselves. Nowhere in the Torah, the Mishnah, the Gemara, or the codes, does Jewish tradition

[126] Deuteronomy 24:14-15

provide principles for determining appropriate pay for workers other than *minhag hamakom*, the custom of the place.

Some contemporary scholars use the comment from Nahmanides on this verse to speak to the question of pay rate:

כי עני הוא, כרובי הנשכרים –
ואל השכר הזה הוא נושא נפשו שיקנה בו מזון להחיות נפשו.
שאם לא תפרענו בצאתו ממלאכתו מיד הנה ילך לביתו וישאר שכרו אתך עד בקר
וימות הוא ברעב בלילה.

For he is poor, like the majority of hired laborers, and he depends on the wages to buy food by which to live...if he does not collect the wages right away while leaving work, he will go home, and his wages will remain with you until morning, and he will die of hunger that night.[127]

Jill Jacobs, the author of a *teshuva* (responsum) recently adopted by the Conservative movement on the living wage, sees in this comment an assumption that the payment from the employer would be enough to sustain the worker and his family if it was paid on time.[128] If the worker's survival depends upon prompt payment, then presumably the payment is enough to sustain the worker. Though we rarely encounter situations today in which workers, even in the most brutal sweatshops, may die of starvation overnight without that day's payment, we can read Nahmanides's comment as we did the texts on Shabbat. Looking for the underlying principle that transcends historical detail, we find this text expressing the obligation of employers for their workers' well-being. Some may decide that this text obligates them to ensure that their workers earn enough to adequately feed, clothe, and house themselves and their families.

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[127] Nahmanides on Deuteronomy 24:15

[128] Jill Jacobs, "Work, Workers, and the Jewish Owner," Committee on Jewish Law and Standards, Rabbinical Assembly, HM 331:1.2008a

Another text, from the Tosefta, ostensibly about the obligation of the worker to the employer, is read by Jacobs and others as further evidence that the Rabbis assumed that employers would pay a living wage:

> אין הפועל רשיי לעשות מלאכתו בלילה ולהשכיר את עצמו ביום לחרוש בפרתו ערבית
> מפני גזל מלאכתו של בעל הבית ...ולהשכירה שחרית
> "Workers are prohibited from working day and night as taking a second job may interfere with the quality of the work in the first job... and this is viewed as stealing from the employer."[129]

Some readers might interpret this text as a balance against the weighty obligations placed on the employer. If an employer is obligated to ensure the welfare of his or her workers, then the worker is also obligated to give his or her best effort to the employer. Some readers may see within this text, as Jacobs does, an assumption that a single job would adequately provide for the needs of the worker, so that a second job would be optional. Given that the Tosefta is a compilation of material left out of the Mishnah, we might ask ourselves: Why didn't the Rabbis include this text in the Mishnah or the Gemara? Why did they not speak explicitly about adequate payment to workers? Could the Rabbis be assuming that the employers of their time paid workers adequately? Was it not an issue in their time, or did they determine that it was beyond the purview of the halakhah?

Some Jews seeking to forge new halakhah on the question of the ethical treatment of workers may find these texts, combined with contemporary studies about living wage ordinances and standards, as impetus to commit themselves to pay a living wage to their workers. Others may read here an even broader

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[129] Tosefta Baba Metzia 8:2

implication about employer obligations for worker well-being, including health care and family leave benefits. Still others may find in these texts little specific obligation, but a re-orientation to the employer-employee relationship as one of covenant, centered in mutual obligation and concern.

The effort to find texts that obligate us to pay a living wage raises an issue for this liberal halakhic process: do we need to find ancient texts that support our perspective? If Jews listening for God's voice believe that they are obligated to pay a living wage and wish to create a halakhah committing themselves to it, but find that the Rabbis don't seem to be focused on it, how important is it that they find grounding in traditional texts? We want to leave plenty of room for fluidity of interpretation, but we do not need to twist traditional texts out of shape to support our point.

An important freedom and power of the liberal halakhic process is continuing revelation. It is legitimate for us to hear God's call differently than our predecessors did. Though earlier texts tend to carry more weight in Jewish thought, with Torah the heaviest, followed by Mishnah and Gemara, the first two chapters gave ample documentation of later generations overturning the decisions of previous generations for us to know that this very enterprise has precedent. Specifically, Moshe Zemer's work clearly demonstrates that the Rabbis were willing to change halakhah in response to new issues that arose.

What do we do when the texts seem to indicate the opposite of our instincts today? Those concerned about sweatshops will be troubled by the

following text, which seems to justify and in fact value employers following the custom of the place, *minhag ha-makom*.

פרק ז

א הַשּׂוֹכֵר אֶת הַפּוֹעֲלִים וְאָמַר לָהֶם לְהַשְׁכִּים וּלְהַעֲרִיב, מָקוֹם שֶׁנָּהֲגוּ שֶׁלֹּא לְהַשְׁכִּים וְשֶׁלֹּא לְהַעֲרִיב, אֵינוֹ רַשַּׁאי לְכוֹפָן. מָקוֹם שֶׁנָּהֲגוּ לָזוּן, יָזוּן, לְסַפֵּק בְּמְתִיקָה, יְסַפֵּק. הַכֹּל כְּמִנְהַג הַמְּדִינָה. מַעֲשֶׂה בְּרַבִּי יוֹחָנָן בֶּן מַתְיָא שֶׁאָמַר לִבְנוֹ, צֵא שְׂכֹר לָנוּ פּוֹעֲלִים. הָלַךְ וּפָסַק לָהֶם מְזוֹנוֹת. וּכְשֶׁבָּא אֵצֶל אָבִיו, אָמַר לוֹ, בְּנִי, אֲפִלּוּ אִם אַתָּה עוֹשֶׂה לָהֶם כְּסְעוּדַת שְׁלֹמֹה בְּשָׁעָתוֹ, לֹא יָצָאתָ יְדֵי חוֹבָתְךָ עִמָּהֶן, שֶׁהֵן בְּנֵי אַבְרָהָם יִצְחָק וְיַעֲקֹב. אֶלָּא עַד שֶׁלֹּא יַתְחִילוּ בִּמְלָאכָה צֵא וֶאֱמֹר לָהֶם, עַל מְנָת שֶׁאֵין לָכֶם עָלַי אֶלָּא פַּת וְקִטְנִית בִּלְבָד. רַבָּן שִׁמְעוֹן בֶּן גַּמְלִיאֵל אוֹמֵר, לֹא הָיָה צָרִיךְ לוֹמַר, הַכֹּל כְּמִנְהַג הַמְּדִינָה:

One who hires workers and tells them to work early in the morning or late in the evening in a place where it is not customary to work early in the morning or late in the evening, he is not permitted to require this of them. In a place where it is custom to feed [the workers] he must feed [them], to supply them with sweets, he must supply [it]. Everything should be as the custom of the place. It once happened that Rabbi Yohanan ben Matya said to his son, "Go out and hire us some workers. He went and supplied them with some food. And when he came to his father, he said to him, "My son, even if you made for them like the meals of Solomon's in his time, you wouldn't have fulfilled your obligation, because they are the sons of Abraham, Isaac, and Jacob. Rather, as long as they haven't begun the work, go and say to them: '[You may work] on the condition that I have nothing more than bread and beans for you.'" Rabban Shimon ben Gamliel said "He didn't need to say that – everything is according to the custom of the place."[130]

This mishnah illustrates several important features of the early Rabbinic view of labor. First, labor standards are set by the community in each locale, and must be respected by employers. Laborers cannot be required to do anything beyond local standards, and employers are expected to provide for laborers' needs according to local custom. Second, standards and limits on the demands employers can place on workers indicate that the worker is a free person – that the employer rents the labor of the worker, but not the worker himself. The employer

[130] Mishnah Baba Metzia 7:1, translation mine

has no claim on the worker beyond the set time limits and beneath the minimum standards.

However, this text and the broader principle of *minhag ha-makom* that is elaborated in other texts lay the groundwork for employers hiring in locations where the custom is most advantageous for the employer –where working hours are longer, pay is lower, no food is offered, etc. This text and the larger concept of *minhag ha-makom* seem to support the choice of American companies to find the places with the lowest standards in the world – the least pay and the least obligation -- to hire their workers.

The story of Rabbi Yohanan ben Matya may come here to mitigate this implication, by reminding us of the Rabbinic view of the laborer as a person with great dignity, to be respected and honored as one would honor a king. The workers in this story are day laborers, most likely extremely poor, and the contrast between the first and second portions of the mishnah is striking. The halakhic part of the mishnah seems to support the employer in simply following the custom of the place, but the *aggadic* portion demands significantly more. As is often the case with Rabbinic texts, this one leaves us without a clear message about what standards contemporary employers ought to use in setting the pay and benefits of workers.

This oft-cited *aggadic* text from Baba Metzia in the Babylonian Talmud speaks to this conflict:

רבה בר בר חנן
תברו ליה הנהו שקולאי חביתא דחמרא. שקל לגלימייהו, אתו אמרו לרב.
אמר ליה: הב להו גלימייהו. – אמר ליה: דינא הכי? – אמר ליה: אין, (משלי
ב׳) למען תלך בדרך טובים. יהיב להו גלימייהו. אמרו ליה: עניי אנן, וטרחינן

כולה יומא, וכפינן, ולית לן מידי. אמר ליה: זיל הב אגרייהו. – אמר ליה: דינא הכי? – אמר ליה: אין, (משלי ב') וארחות צדיקים תשמר.

Some porters working for Raba bar bar Hanan broke a jug of wine. He seized their clothes. They came before Rav, and Rav said to Raba bar bar Hanan, "give them their clothing." Raba bar bar Hanan said "Is this the law?" and Rav said, "yes, because of the principle 'You should walk in the ways of the good' (Proverbs 2:20)." He gave them back their clothes. They said to him, "We are poor and we troubled ourselves to work all day – do we receive nothing?" Immediately, Rav said to Raba bar bar Hanan, "Go, give them their wages." He said to Rav, "Is this the law?" Rav said, "yes, 'You should keep the ways of the righteous (ibid)'"[131]

Imagine being in the position of Raba bar bar Hanan. You hear a crash, and find that the workers— perhaps through negligence, perhaps through an honest mistake— have broken a jug of wine incurring a loss for you not only of the jug but of the wine, which has spilled out over the floor. This may be a significant loss to you. You do not yell. You do not berate or shame the workers. But you do demand that they pay you for the damages. They have no money, so you accept their cloaks as a token for future payment. They leave, and when they return they've brought Rav, a major Rabbinic authority, with them. Rather than back you up, rather than demand anything of the workers, Rav tells you to give the workers their cloaks back. Incredulous that Jewish law could demand this of you, you ask. Rav essentially tells you that as an employer your responsibility extends beyond the law, beyond your actual contractual obligations, requiring not only that you return the men's coats but that you pay them for their time. What it means to be good and to be righteous, according to Rav, is to take responsibility

[131] Babylonian Talmud, Baba Metzia 83a

for the welfare of your needy workers,[132] regardless of what they owe you, regardless of the damage you have suffered from their mistake. Employers should recognize their privileged position in relation to low-wage workers, Rav is teaching, and hold themselves to a standard of righteousness, above the letter of the law.

How would we reconcile this text with the *mishnayot* valuing *minhag ha-makom*? Does this text have implications for our purchases as consumers in relation to sweatshops? Some Jews see in this *aggadah*, combined with information about sweatshop abuses, the obligation to restrict buying wherever possible to clothing or goods not made in sweatshops.

Though the textual tradition on the ethical treatment of workers does not directly address some of the most pressing questions we face today – are we obligated to pay a living wage, what are our obligations as consumers to the welfare of the workers who make the goods we buy, what level of benefits are we obligated to provide the people who work for us – the texts do give us some central principles. Among them are the dignity of work, the obligation not to oppress the worker, the importance of the custom of the place, our obligation to rise above the letter of the law in ensuring the dignity of the workers we hire, and that the payment we provide ought to meet the needs of the worker and his or her family such that a worker does not need to work a second job to meet these needs. Out of these values, their sense of what God and covenant demand of them, and contemporary scholarship on the issue, a group of thoughtful Jews in conversation

[132] Jacobs, 12

with one another would be equipped to develop a halakhah (or several different halakhot) on their obligations as employers and consumers.

Responsibility to the Earth

We have come to understand in our generation that we are facing an existential crisis – humanity is in danger of destroying life on earth. Few other questions are more pressing for Jews today than how we ought to live responsibly on the earth, and what steps we are obligated to take to minimize our damaging impact. These questions are far-reaching and complex. They touch upon what we buy, what we use, and what we throw away; our life at home and at work, and on the roads, rails and airways in between.

While those seeking to carve out a Shabbat halakhah have a tremendous quantity of traditional text with which to work, and those seeking a halakhah about the ethical treatment of workers have Torah law and halakhic texts directly on the topic in Mishnah and Gemara, those endeavoring to carve out a way to be responsible on the earth will find a dearth of halakhic material directly speaking to the question. Whereas with Shabbat we may choose to read the direct and clear halakhic material metaphorically, on our quest for a halakhah about the earth we are forced to read in metaphor. We are forced to apply halakhic material from other contexts, and to read underlying values out of narrative, poetry and blessings. When we do so, we are able to assemble quite an array of values and principles by which to develop an environmental halakhah.

Let's begin with our foundational text for the human relationship with the earth, an excellent example of the polysemic possibilities of Torah:

וַיֹּאמֶר אֱלֹהִים נַעֲשֶׂה
אָדָם בְּצַלְמֵנוּ כִּדְמוּתֵנוּ וְיִרְדּוּ בִדְגַת הַיָּם וּבְעוֹף הַשָּׁמַיִם וּבַבְּהֵמָה
וּבְכָל־הָאָרֶץ וּבְכָל־הָרֶמֶשׂ הָרֹמֵשׂ עַל־הָאָרֶץ׃ וַיִּבְרָא אֱלֹהִים
אֶת־הָאָדָם בְּצַלְמוֹ בְּצֶלֶם אֱלֹהִים בָּרָא אֹתוֹ זָכָר וּנְקֵבָה בָּרָא אֹתָם׃
וַיְבָרֶךְ אֹתָם אֱלֹהִים וַיֹּאמֶר לָהֶם אֱלֹהִים פְּרוּ וּרְבוּ וּמִלְאוּ אֶת־הָאָרֶץ
וְכִבְשֻׁהָ וּרְדוּ בִּדְגַת הַיָּם וּבְעוֹף הַשָּׁמַיִם וּבְכָל־חַיָּה הָרֹמֶשֶׂת עַל־הָאָרֶץ׃

וַיַּרְא אֱלֹהִים
אֶת־כָּל־אֲשֶׁר עָשָׂה וְהִנֵּה־טוֹב מְאֹד וַיְהִי־עֶרֶב וַיְהִי־בֹקֶר יוֹם הַשִּׁשִּׁי׃

And God said, "Let us make the human in our image, after our likeness. They shall rule over the fish of the sea, the birds of the sky, the cattle, the whole earth, and all the creeping things that creeps on earth." And God created the human in his image, in the image of God He created it; male and female He created them. And God blessed them and said, "Be fertile and increase, fill the earth and master it; and rule the fish of the sea, the birds of the sky, and all the living things that creep on earth." ... And God saw all that He had made, and found it very good. And there was evening and there was morning, the sixth day.[133]

This Genesis text has been read to justify the unlimited human use and exploitation of the earth and its creatures. It has been read to position humans apart from, and above, the earth; without vulnerability or obligation to it. It is read by others as an acknowledgement of humanity's power over the creatures of the earth, a power which especially obligates us. The word *m-sh-l*, rule, when applied to a king, contains the expectation of the use of power for the well-being of those ruled. Also within this text is the concept of humanity's creation in the divine image, leading to the Rabbinic teaching that every life is of infinite value[134], an idea which has important environmental implications. The text also says that God found all of creation, the earth and everything on it, to be "very

[133] Genesis 1:26-28, 31
[134] Mishnah Sanhedrin 4:5

good," which environmentalists read as divine investment in the ordered and harmonious way of the natural world.

In other words, this text could be read to say that human beings, fashioned in God's image unlike the rest of creation, are given authority to use, dominate and destroy the earth at will. Or it could be read to say that humans, created in God's image and given extraordinary power, are particularly obligated to be attuned to the value of life and to preserve and protect the order and harmony of the natural world as we oversee all of creation.

The following text from Maimonides's *Mishneh Torah* comments on and expands Deuteronomy 20:19, which is written about war:

כִּי־תָצוּר אֶל־עִיר
יָמִים רַבִּים לְהִלָּחֶם עָלֶיהָ לְתָפְשָׂהּ לֹא־תַשְׁחִית אֶת־עֵצָהּ לִנְדֹּחַ
עָלָיו גַּרְזֶן כִּי מִמֶּנּוּ תֹאכֵל וְאֹתוֹ לֹא תִכְרֹת כִּי הָאָדָם
עֵץ הַשָּׂדֶה לָבֹא מִפָּנֶיךָ בַּמָּצוֹר׃
(Deuteronomy 20:19)

It is forbidden to cut down fruit-bearing trees outside a besieged city, nor may a water channel be deflected from them so that they wither. Whoever cuts down a fruit-bearing tree is flogged. This penalty is imposed not only for cutting it down during a siege; whenever a fruit-yielding tree is cut down with destructive intent, flogging is incurred. It may be cut down, however, if it causes damage to other trees or to a field belonging to another man or if its value for other purposes is greater. The Law forbids only wanton destruction.... Not only one who cuts down trees, but also one who smashes household goods, tears clothes, demolishes a building, stops up a spring, or destroys articles of food with destructive intent transgresses the command "you must not destroy." Such a person is not flogged, but is administered a disciplinary beating imposed by the Rabbis.[135]

Maimonides expands the Torah text to speak to a general obligation not to destroy fruit trees or participate in wanton destruction. It does not seem that

[135] Maimonides, *Mishneh Torah*, Laws of Kings and Wars 6:8,10

Maimonides is speaking with environmental intent, but his words are often read as a statement about our obligations to the earth. Thus construed, the principle of *bal tashchit* (do not destroy) can apply both to human destruction of the natural world, and a repudiation of our "throw away society," in which we readily destroy and discard goods like computer and electronic equipment, clothing, and even cars. There are many possibilities for the application of *bal tashchit* for the development of halakhah on the environment. One might read this halakhic principle to develop a halakhah of minimum waste – to look for every possibility of re-use before discarding an object, to recycle whenever possible, and to minimize one's contribution to the landfill by choosing biodegradable products whenever possible. Another might read it to develop a halakhah of refraining from purchase of metals and stones that are extracted with damaging mining practices. Working with principle of *bal tashchit* others might want to do an environmental audit to identify the hidden ways they are participating in wanton destruction through their household purchases and waste.

We might find environmental significance in the *Birkot Hana'ah*, the blessings for the enjoyment of the smell of flowering trees, the sight of the ocean or a rainbow, the sound of thunder, or the sustenance of food. If we are obligated to say a blessing whenever enjoying the earth, we are obligated to remember God's role as creator of the earth and its pleasures, and God's presence within these.

כל פירות האילן מברכין עליהן בתחלה בורא פרי העץ ולבסוף בורא א נפשות רבות

ועל פירות הארץ והירקות מברכין עליהן בתחלה בורא ב פרי האדמה ולבסוף בורא נפשות רבות
דברים שאין גידולן מן הארץ כגון בשר וגבינה ודגים וביצים ומים וחלב ודבש בתחלה מברך שהכל ולבסוף בורא נפשות רבות וכיוצא בהן

Over fruits growing on trees the initial blessing is "who creates the fruit of the tree," and at the end, after the eating, "who creates many living beings and the things they need." ...Over fruit that grows on the ground and over green vegetables the initial blessing is "who creates the fruit of the earth," and at the end, "who creates many living beings." Over food that does not grow from the soil, such as meat, cheese, fish, eggs, water, milk, and honey, the initial blessing is "by whose word all things come into being," and at the end, "who creates many living beings."[136]

One might argue that *hilchot brachot* have nothing to do with a halakhah of responsible living on the earth. However, a commitment to follow this halakhah, to say these blessings before and after partaking of the bounty of the earth for one's sustenance, could be undertaken with the goal of living more responsibly on the earth. Saying these blessings with intention may be one way to increase mindfulness about what we put into our bodies, leading to choices about what foods we buy and eat. It could lead to, or be taken on in conjunction with, an eco-kashrut, a set of halakhic decisions to restrict one's consumption to foods that are grown and raised with the least negative impact on the earth and its creatures.

We saw with *bal tashchit* how a Torah law about war was expanded in a way that can now be applied to our responsibility not to destroy the earth. Similarly, the obligation to build a parapet on one's roof can be applied to our relationship to the environment.

כִּי תִבְנֶה בַּיִת חָדָשׁ וְעָשִׂית
מַעֲקֶה לְגַגֶּךָ וְלֹא־תָשִׂים דָּמִים בְּבֵיתֶךָ כִּי־יִפֹּל הַנֹּפֵל מִמֶּנּוּ׃
(Deuteronomy 22:8)

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[136] Maimonides, *Mishneh Torah*, Benedictions, 8:1

"When you build a new house you shall build a parapet for your roof, so you do not bring blood guilt on your house if anyone should fall from it."

כל דבר שיש בו סכנה וראוי שיכשל בו אדם וימות
וכן כל ג מכשול שיש בו סכנת נפשות מצות עשה להסירו ולהשמר ממנו ולהזהר בדבר יפה יפה
ואם לא הסיר, והניח המכשולות המביאין לידי סכנה, ביטל מצות עשה ועבר על לא תשים דמים.

"...so too for any case where there's a danger that a person may unwittingly die from...there is a positive obligation to remove the danger and to be extremely careful about it...and if he neglects to do so and leaves impediments that can cause danger he has negated a positive commandment and violated "he shall not place blood guilt on his house."[137]

The idea that one must act preventatively to protect other human beings from danger and potential death is applied by environmentalists to toxins in the food that a company grows or produces, to environmental workplace hazards, and even to global warming. According to groups like the Jewish Climate Initiative, if we know that driving our cars today is leading to the warming of the planet, and we know that this will lead to flooding, storms, and disease that will kill hundreds or thousands in the next year (not to speak of the long term deaths), we are placing blood guilt on our house.[138] Some might find in this text the obligation to reduce their carbon footprint by twenty, fifty, or even eighty percent. This is a second example of the creative application of halakhah from an area of Rabbinic interest (damages) to a pressing issue for contemporary Jews. Like the early Rabbis writing midrash, we can make associations across halakhic disciplines to bring meaning and insight to the questions that concern us.

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[137] Maimonides, *Mishneh Torah*, Homicide and Life Preservation 11:4
[138] Jewish Climate Initiative, http://climateofchange.wordpress.com/ August 27, 2008.

The following text is rarely quoted in relation to environmental concerns but has relevant application. It plays on the question of public and private domains, and ultimately asks us to consider a deeper question about the private ownership of land. Which is more ours, the text asks, private land that we own now but may have to sell later, or public land that can never be privately owned and therefore will always be there for our (and everyone else's) use?

ת"ר: לא יסקל אדם מרשותו לרה"ר. מעשה באדם אחד שהיה מסקל מרשותו לרה"ר, ומצאו חסיד אחד, אמר לו: ריקה, מפני מה אתה מסקל מרשות שאינה שלך לרשות שלך לגלג עליו. לימים נצרך למכור שדהו, והיה מהלך באותו רה"ר ונכשל באותן אבנים, אמר: יפה אמר לי אותו חסיד מפני מה אתה מסקל מרשות שאינה שלך לרשות שלך.

Our Sages taught: A person should not remove stones from personal property to public domain. A certain man was removing stones from his property to the public domain when a *chassid*, a pious man, found him doing so and said to him, "Fool! Why do you remove stones from a domain that is *not* yours to a domain that *is* yours!?" The man laughed at him. A while later, the man had to sell his field and was walking in the same public domain and he stumbled over those very same stones. He said to himself: The pious man was right when he said to me: "Why do you remove stones from a domain which is not yours to a domain which is yours?"[139]

The text begins with a halakhah. A person should not remove stones from his personal property to the public domain. Imagine that you are a farmer, and your land is rocky. Your first job is to clear the land of stones so that you can plow it and plant it. Where will you put these stones? You might naturally assume that you would clear them off your land onto neighboring public land. But those stones will be an equal nuisance to the public who pass by that land. They may even pose a danger, as the man in our story finds when he stumbles over the rocks

[139] Babylonian Talmud, Baba Kama 50b

after selling his land. Might this halakhah be applied to motor oil poured down public drains? Might it be applied to batteries and paints and other toxins dumped in the garbage? Might it lead to an expanded halakhah for contemporary Jews that one must not dispose of one's undesirable or dangerous items in the public domain?

The *aggadic* portion of the text is also very interesting for our purposes, for it calls into question the categories of private and public. What we think is ours – our land, our house, our belongings – none of these are actually ours. As the *birkot nehenim* remind us, everything that we enjoy, the land we live on and everything that sustains us comes from God and belongs to God. What we think is not ours, the public domain – the oceans, the air, the earth itself – is ours. We need it to live, we benefit from it and in some ways it is all that we really have. Therefore, we must take care of the public domain even more than we would our own home and garden. Ultimately, we are more dependent on the cleanness and the quality of the air, the water, and the earth than we are on the cleanness and quality of our own back yard. What an unexpectedly profound environmental statement from this text about moving stones!

Let us conclude this section with a psalm, for the Book of Psalms contains some of the most exuberant language about the natural world found anywhere in our tradition, and some might interpret it halakhically to demand of us that we not disrupt the splendor that it describes. The following text is from Psalm 104:

יִשְׂבְּעוּ עֲצֵי יְהוָה אַרְזֵי לְבָנוֹן אֲשֶׁר נָטָע׃ אֲשֶׁר־שָׁם
צִפֳּרִים יְקַנֵּנוּ חֲסִידָה בְּרוֹשִׁים בֵּיתָהּ׃ הָרִים הַגְּבֹהִים לַיְעֵלִים סְלָעִים
מַחְסֶה לַשְׁפַנִּים׃ עָשָׂה יָרֵחַ לְמוֹעֲדִים שֶׁמֶשׁ יָדַע מְבוֹאוֹ׃ תָּשֶׁת חֹשֶׁךְ
וְיְהִי לָיְלָה בּוֹ־תִרְמֹשׂ כָּל־חַיְתוֹ־יָעַר׃ הַכְּפִירִים שֹׁאֲגִים לַטָּרֶף וּלְבַקֵּשׁ

מֵאֵל אָכְלָם׃ תִּזְרַח הַשֶּׁמֶשׁ יֵאָסֵפוּן וְאֶל־מְעוֹנֹתָם יִרְבָּצוּן׃ יֵצֵא אָדָם
לְפָעֳלוֹ וְלַעֲבֹדָתוֹ עֲדֵי־עָרֶב׃ מָה־רַבּוּ מַעֲשֶׂיךָ יְהוָה כֻּלָּם בְּחָכְמָה עָשִׂיתָ
זֶה הַיָּם גָּדוֹל וּרְחַב יָדָיִם שָׁם רֶמֶשׂ וְאֵין מִסְפָּר
מָלְאָה הָאָרֶץ קִנְיָנֶךָ׃ חַיּוֹת קְטַנּוֹת עִם־גְּדֹלוֹת׃

The trees of the Eternal drink their fill; the cedars of Lebanon, which he has planted, where the birds make their nests; as for the stork, the cypress trees are her house. The high mountains are a refuge for the wild goats; and the rocks for the badgers. He appointed the moon for seasons; the sun knows its setting time. You make darkness, and it is night; when all the beasts of the forest creep forth. The young lions roar for their prey, and seek their food from God. The sun rises, they gather themselves together, and lie down in their dens. Man goes forth to his work and to his labor until the evening. O Lord, how manifold are your works! In wisdom you have made them all; the earth is full of your creatures. So is this great and wide sea, where there are innumerable creeping things, living things, both small and great.[140]

This psalm describes a perfect dance among the creatures of the world and the world itself, one that is rich with abundance and dazzling variety. Every creature has its place, its way, and its sustenance. None of these is without purpose, each providing for another and depending upon some other. The junipers host the stork, the mountains the wild goats, and even the crags in the mountain have a role to play, as home to the rock-badger. Awe at the number, variety, and purpose of God's creatures is perhaps best expressed by verse 24, which we pray each morning:

מָה־רַבּוּ מַעֲשֶׂיךָ יְהוָה כֻּלָּם בְּחָכְמָה עָשִׂיתָ מָלְאָה הָאָרֶץ קִנְיָנֶךָ׃

Verses 28-30 of the psalm remind us that this perfect world of God's creation is at once ordered and tenuous, vibrant and vulnerable.

All of them look to you
to give them their food when it is due.
Give it to them, they gather it up;

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[140] Psalm 104: 15-25

open Your hand, they are well satisfied;

This is a world emerging from God and resting upon God's continual provision of sustenance. Out of such poetry could emerge a halakhic principle to do no harm to this harmonious eco-system.

Environmental obligation is a prime example of a pressing question about which the Rabbis had little to say, but for which contemporary Jews need halakhah. Our survival depends upon our ability to find a thoughtful and radically different way to live. Though there is no law in Torah that speaks directly to our responsibility to the earth, and there is no order of Mishnah or tractate of Talmud on the topic (there is not even one halakhah specifically about our obligation!), we can create halakhot on our obligations to the earth. Through exegesis of biblical narrative and poetry, and application of halakhah in other areas, we are able to draw together a number of key principles with which to develop halakhah. These principles include: *bal tashchit* (do not destroy); our obligation to prevent damage or harm to all life; that the earth and the land we live on belong to God; that God's creatures are of infinite value; that human beings are to rule or master the earth; that one cannot remove undesirable or dangerous items from the private domain to the public domain; and that our daily sustenance and pleasure comes from God through the earth. Out of these principles, and in consultation with their consciences and contemporary scholarship, a group of thoughtful and committed contemporary Jews might be able to develop an environmental halakhah

obligating them to certain specific practices and prohibitions to minimize their damage to the earth.

Looking Beyond Traditional Texts

As the examples of work/life balance, the ethical treatment of workers, and responsibility to the earth indicate, traditional texts will not be enough to guide postmodern, liberal halakhah. Just as the Rabbis adapted halakhah to an understanding of the real and changing conditions of their time, we will want to expose ourselves to the latest scholarship and ideas as we develop our halakhah. On a question like Shabbat, for which we have ample textual material with which to work, there may be contemporary research about the benefits of rest on the human body, the health effects of overwork and continual rumination about work, or the impact of family time on children's development, for example.

On a question like the ethical treatment of workers, for which the traditional texts provide grounding but not a full halakhic picture, a group will want to supplement traditional texts with contemporary studies, for example about the ripple effects of a living wage on the local economy, the correlation between the minimum wage and hunger, or contemporary guidebooks about how to create environments that honor the dignity of the worker. On a question like our responsibility to the earth, a new dilemma emerging from contemporary reality to which we can adapt traditional texts, a group will need to ground itself in the

latest information about human impact on the earth and strategies for reducing our damage.

The contemporary material can include newspaper and magazine articles; scientific and social scientific studies; contemporary responsa and resolutions by Jewish movements; briefing papers by advocacy groups; film, theater, fiction, poetry – any sources that contextualize the issue in the contemporary moment, help participants listen for what their consciences and/or God wants of them on this question in this time, or resolve questions that have arisen about aspects of the received halakhah.

In our era of information overload, this process could feel overwhelming and endless. It is vital that the group not attempt to be exhaustive, and instead acknowledge that it is impossible to know everything there is to know, or to hear every opinion on the question. Imagining the halakhah as a lifelong path, continually open to new insights, may help participants move toward decision-making. As the group moves forward, it may be helpful to go back to the halakhic metaphors from the beginning of the process to see what has changed as a result of the study and the halakhic conversation.

Finding a Way

The final metaphor for halakhah is *a way*. The decision-making portion of the halakhic process is the moment when participants will find a way, their own

halakhah, on the pressing question that has provoked and animated their learning and conversation. When entering the decision-making conversation, the group should make a distinction between individual, communal, and congregational or organizational decisions. Most decisions are individual or family decisions. It will not always be necessary for a group to reach the same conclusion, to make the same commitments, for example, about how they as employers or consumers will treat workers, unless they manage a firm together, or if they are making policy for their congregation.

Similarly, one participant may read the texts about building a parapet as obligating him to switch to solar power and an electric car to minimize his contribution to global warming; while another may read the blessings over food as calling on her to purchase only organic food; while a third might read the blessings as compelling him to buy organic food whenever the option is available. Rarely is it necessary that these decisions align, and a plurality of commitments in no way weakens the power of the group to support one another in fulfilling those commitments. In fact, as the group members check in with one another about their joys and challenges meeting their commitments, members may learn from one another's experiences and be inspired to join in each other's commitments.

If decisions are communal, if the group is trying to agree together on a halakhah that it will share, they may want to use a consensus scale for decision-making. A consensus scale allows participants to express their position in relation to a proposal with degrees of endorsement, rather than just supporting or opposing an idea. If the group cannot arrive at a shared halakhah, it should explore what it

means to reach different conclusions, and how these different decisions and practices influence one another.

We make the path by walking. One of the qualities that is important about a way, or a path, is that it is shaped by the experience of the traveler and what or whom he or she encounters on the way. In a grassroots, liberal, postmodern halakhic process, no decision is final. One may choose to begin by simply deciding which experiments he wants to run, and which he wants to conduct first. For example, she may decide that she wants to turn off the television and computer on Shabbat, and that she wants to try this for four Shabbatot, to be revisited in one month at which point she may continue with this commitment, modify it, or decide that it does not pull her. Even when decisions feel final, it may be useful to identify a time when the group will review the decision, see how it is working for its members and their families, or the community, and give themselves room to adjust as needed. That way, the halakhah, while being consistent and reliable, will never become rigid, but will remain responsive to real and changing conditions as well as new insights.

It is difficult to make counter-cultural choices, difficult to live by a different pattern than the surrounding majority. Knowing that one has a group of friends who are also making thoughtful, considered choices about the pattern of their lives may prove helpful when we inevitably face obstacles, or a lapse of will, or a desire to throw in the towel. It will be helpful to make the commitments as specific as possible, with a timeline for each commitment. The commitments should be written as a contract, with copies for each member of the group and

benchmarks for checking in with one another and holding one another accountable to their halakhic commitments. This written record is halakhah. It is a sacred commitment to other Jews, to God, and to the Jewish people.

Participants should strive to fulfill their halakhic commitments in their entirety, and should be forthright in holding one another to their commitments. The quality and strength of the process will depend on the seriousness with which its participants take their commitments and their roles as one another's guarantors. Ultimately, as Robert Cover taught us, a *nomos* is only as strong as the commitments of its creators.

It may be helpful for these newly halakhic Jews to create a meeting schedule during the period of time of their commitments to check in on this new way of life. Perhaps they will design other methods for connecting with one another over the period of the contract, such as a web network. The more that the participants communicate with one another about their successes, and their failures, the more they will be building the muscle of discipline. Our capacity for discipline is strengthened each time we fail and recommit after failing. If we keep our shortfalls a secret we are likely to become discouraged and to stop trying. But if we tell each other when we fail, and we support each other to recommit again and again and again, we will ultimately succeed. Every time one of us recommits, every time one of us fulfills an obligation, the rest of us are inspired to do the same. Participants may ask one another: What's challenging about this? What are you loving about this new way of life? What are your questions now? What are you reconsidering about it?

At the end of the contract period, the group ought to gather again to review their experiences, and to make changes to their halakhah based on the ways they've been influenced by their efforts. Once they find that they are settled in to a new way of living, they may be ready to take on a new question, and begin the process again. This process can renew itself again and again, as participants explore new reaches of their lives and increasingly find themselves living as thoughtful and committed Jews.

A grassroots, liberal, halakhic process is an experiment. Everything about it, from the group process to the interface with texts, is to be tried with the expectation of learning as we go. No one knows what outcomes such a process will produce. The worst case scenario is that it produces very little – that the Jews who participate give up part way through, or do not keep their commitments to one another and do not change their ways of life. The best case scenario is that small groups of Jews all over the country and the world get excited about Jewish learning and living, and about finding new ways to be seriously Jewish in our time.

Conclusion

There has never been greater need for Halakha's creative wisdom of Torah-application to the daily realities of human existence than in our day. Maybe our generation has to learn that wisdom anew. Eliezer Berkovits[141]

It is my contention that we do not know how to live as Jews in our time. As the daily business of our society rushes around us, we do not know what our standards should be for myriad crucial matters: how we treat people in the workplace, what we buy, how we raise our children, how we relate to God. We do not know how to allocate our time, we do not know how to allocate our resources, we do not know how to live on the earth without destroying it.

Torah and Rabbinic literature have a great deal to say about these matters, but we do not know how to apply their teachings to our lives. We have ceded the halakhic system and thus given up the link between our tradition and our needs. In order to fill this gap, Jews have rushed into our society's thriving market of secular and spiritual self-help guides. Meanwhile, there is a treasure buried under our own house if only we would know how to find it.

In this work, we have seen that halakhah is much more than a fixed and archaic set of rules belonging only to Orthodox Jews. Halakhah is a process by which all Jews can find our way in the contemporary world. Halakhah can root us in Jewish tradition and allow us to grow into mature ways of living. It can help us

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[141] Berkovits, 2

to identify our boundaries. It can enable us to realize our envisioned world and to build a bridge from here to there. It can bring us into dialogue with each other, with our tradition, and with our God as we make a path of commitment and action.

No rabbi can do this for the liberal Jewish community. No congregation can impose it. And no individual can do it alone. Rabbis and congregations can create the forum and provide the guidance. But it is only free Jewish people, in community with one another, who can choose to be obligated; and can choose to support one another to make a path by walking. The voice of our tradition will guide us in this endeavor if we read our texts assuming layers of meaning; if we step inside halakhic texts looking for principles embedded within their details; if we include midrashic, *aggadic*, narrative, and poetic texts within our scope; and if we are willing, as the midrashists were, to create a conversation across the breadth of our textual tradition on a given question.

When we begin with the real questions of our lives, when we listen to each other's stories, when we are open to what our tradition has to say to our present concerns, when we are willing to commit to a specific practice, we will develop sometimes traditional, always thoughtful and creative paths for Jewish life. We will find out how to live in our world by doing it.

A Self-Organizing System

Scientists and social theorists have identified a phenomenon they call "self-organizing systems." In a self-organizing system, the pattern and structure of the global system is created by interactions among the components of the system without external leadership, guidance, or direction. Examples include the patterns on a sea shell, or the synchronous flashing that occurs among swarms of fireflies in Southeast Asia. (Though there is no known external guide, some of us may see within these phenomena evidence of God). Physicists have found self-organizing systems in crystallization, among many other phenomena; chemists in molecular self-assembly; biologists in homeostasis; economists in some market economies; and computer scientists and social theorists in the World Wide Web. Some self-organizing systems are also "emergent," meaning that the pattern that develops at the global level cannot be understood simply as an aggregate of the individual contributions.[142]

As Jews, one of the difficulties of our postmodern reality is that we are splintered: we do not have much coherence as a people. Without external authority dictating our actions, there is very little holding us together. In the grassroots, liberal halakhic process conceived within these pages, there is no guarantee that the liberal Jewish community will come closer together through its halakhic commitments. There is, in fact, risk that as Jews open themselves to finding a thousand different meanings in Torah and apply those meanings to their lives, they will move in a thousand different directions at once.

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[142] Scott Camazine, "Self-Organizing Systems," http://web.mac.com/camazine/Camazine/Self-organization_files/Self-organization.pdf. See also Camazine, Deneubourg, Franks, et al. *Self-Organization in Biological Systems*, (Princeton, NJ: Princeton University Press)

However, we have the unprecedented possibility in our era of forming a self-organizing system. The World Wide Web enables us to communicate with one another, and to organize ourselves into a community that spans place and time. If Jews around the world were to self-organize a web network to share their halakhic processes and outcomes, including text study, questions, conversation, and halakhic commitments, they would influence one another and over time a pattern of liberal Jewish halakhah might emerge.

On such a web network, Jews could blog about the challenges and benefits they are finding in their halakhic commitments. They could argue with one another, learn from one another, and support one another as they attempt to live committed Jewish lives. Through the web a larger consciousness may develop – a sense of peoplehood may emerge that is based in study, conversation, and halakhic commitment. If this were to happen in large numbers over the course of twenty years, fifty years, or a century, there may develop a *paidaic* moment in liberal Judaism, a moment of unity in which the nature of our world and the principles for how we are to live in it are clear and shared. Even if such a paidaic moment never comes (and we may not wish for it), the baseline level of Jewish learning and conversation would be elevated dramatically among our people.

Robert Gordis said, "What is needed is courage as well as knowledge, sensitivity as well as reverence, so that non-fundamentalists, building on the impressive evidence of dynamism in the Halakhah, may go forward."[143]

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[143] Robert Gordis in "Jewish Law: Eighteen Perspectives," *Judaism*, vol. 29, no. 1 (Winter 1980)

What do we have to lose? Our economy is in shambles, our people are disaffected, and our world is in danger. We have among us the vision, the insight, the learning, and the capacity to create new/old Jewish ways of life. We have in our tradition the seeds, the process, and the inspiration. As Suzanne Stone says, "We ought to stop circumscribing the *nomos*; we ought to invent new worlds."[144] Let us begin.

[144] Stone, 65

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Appendix
Potential Topics for Halakhic Development

This list is by no means exhaustive or full descriptive. It is intended only as a launching point for conversation.

How we organize our time
- Shabbat, work and rest
- Time allocation: work time, family time, leisure, volunteering

How we earn money
- Business ethics
- Pay and treatment of workers

How we use our money
- Buying: labor practices, environmental practices, waste
- Saving: how much is enough?
- Tzedakah: what percentage of our income, what priorities
- Investment: criteria for companies and insitutions we fund

How we relate to God
- Blessings and prayers
- Holy days
- Teshuva

How we relate to other people
- Responsibility to our children: Parenting halakhah
- Responsibility to our parents
- Responsibility to the sick
- Responsibility to the poor
- Responsibility to the dead and mourning
- Responsibility to our Jewish community
- Responsibility to our neighbors
- Responsibility to our friends
- Responsibility to the stranger
- Responsibility to the larger society
- Forgiveness and Teshuva

How we relate to the earth
- Water use and pollution
- Land use and pollution
- Waste
- Food - Kashrut
- Energy use
- Architecture and construction
- Consumption and commerce