

THE HUMILITY OF HYPOCRISY

On the Irenic Illiberalism of Jewish Law

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The summer of 2006—my summer in Lebanon—was not my first taste of military conflict, even if it was my first experience of full-scale war.¹ During the years that spread between my conscription into the IDF in 1987 and the second Lebanese war, I found myself in numerous situations of low-grade combat inside Lebanon, at the Lebanese border, and in the territories of Judea, Samaria, and Gaza.

I was patrolling the silent streets of the Jabalya refugee camp in 1987 when the first intifada erupted. The camp had been under curfew for days, and we had become accustomed to walking the empty streets as if Jabalya were a ghost town and not the most densely populated spot on the planet. Apart from the smells of burned refuse and cooking and the sounds of barking dogs and children playing behind walls and gates, it was hard for us to believe that anyone was there. I was completely blind to the lives that the Palestinian refugees were living. As a young soldier I felt too oppressed by the discipline of the army to imagine the oppression of others.

1. For an account of my experience in the second Lebanon war, see Isaacs, “Lebanon II,” *Common Knowledge* 15.1 (Winter 2009): 96–152. These two essays comprise parts

of a larger project, precipitated by my service in the war, of rethinking Jewish theology, philosophy, and law in terms conducive to peace.

Against the backdrop of this silence, the shock that I (along with the other members of my unit) experienced was all the more alarming when we turned a corner to find hundreds, if not thousands, of angry youths pouring out onto the streets—as if from nowhere—to pelt us with stones and broken bottles. It is amazing that we never heard them before we saw them. We were absolutely at a loss. There were only thirty of us and we had no idea what to do. We were carrying semiautomatic rifles and had enough live ammunition in our combat vests to gun them down in droves. But none of us even thought to lock and load our weapons. We just watched the crowd in disbelief.

Our commanding officer soon took control. He was quick to grasp how perilous our situation was. It was clear that his first priority was to get us out of there alive rather than disperse the crowd. I do not remember feeling afraid. The civilian population of the refugee camps had not yet established itself as a threat. We were astonished but did not panic. Our commander was resourceful and came up with a creative solution to our predicament. We were each instructed to empty one of the magazines in our set of all its bullets. With empty magazines in our guns we ran forward screaming, “*Esh, esh*” (“fire, fire”). We leveled our guns and charged the crowd without shooting a single round. As if by magic, the mob stopped in its tracks. With a strange mixture of incredulity and fear, they let us pass, dispersed, and then completely disappeared. In minutes we stood alone, once again, in the silent street. Whatever it was that had happened felt for a moment as if it had never happened at all. We continued our patrol in shocked silence.

When we returned to our base, we discovered that similar incidents had taken place all over Jabalya that day and throughout the Gaza Strip. We had been well led and lucky. But we knew *that* trick was only going to work once. Now what?

The army had no idea how to respond to the low-grade uprising of the first Intifada. It was the first time that the IDF had faced widespread civilian unrest. This was no war for soldiers to fight. We weren’t up against either soldiers or hardened terrorists. The enemy comprised teenagers and even small children with nothing to lose, throwing “stones of freedom” from behind the walls of their impoverished homes—from behind washing lines, trees, playgrounds, and hospitals. Sticks and stones can break bones, they can smash the windscreens of driving cars, knock out eyes, and shatter teeth. They can kill. But they are also only stones, thrown by incited children who have nothing to lose.

A few weeks later, my unit was positioned in Khan Unis. We slept near the greenhouses of Gadid—one of the settlements of the Katif bloc that was disbanded by Ariel Sharon in the summer of 2005. In 1987, Gadid was our refuge. We came there to sleep, pray, and eat, spending the bulk of our time in the huge refugee camp nearby. The people of Khan Unis had been involved in the unrest,

and the IDF had arrived in numbers. The Israeli government and the IDF were resisting calls from the political Right to gun down a few hundred of them in one go, to nip the Intifada in the bud before it got out of control. “This could go on for years,” they claimed, “thousands—not hundreds—could be killed on both sides,” they argued, “do you think the Egyptians or the Jordanians would look for humanitarian ways of handling this situation? The international community will scream for a while, but then they will forget. If we gun a few hundred of *them* down now, *they* will never forget it, and then there will be peace and quiet for years.” The government and the army had to find a way of dealing humanely with the uprising without succumbing to this pressure. They never did.

This was a very confusing time for me. As a young soldier, barely past basic training, I was not in a position to appreciate how unusually imprecise our orders were. Our officers told us that the instructions were coming from “very high up.” We were to patrol Khan Unis and “show the anger of the State of Israel.” How does one do that? The army seemed to have decided that the Palestinian uprising was “misbehavior” and that the culprits needed to be “taught a lesson.” The Intifada was to be subdued with corporal punishment. We were issued truncheons and eventually tear-gas canisters. Armed with these, and carrying the full weight of our (virtually redundant) combat gear, we launched an assault on the streets of Khan Unis. We stood on street corners for hours on end, waving our truncheons in the air and breathing in the stench of the overflowing sewers. We jeered at the muezzin who we heard on the PA system clearing his throat from the phlegm of sleep and swallowing a glass of water before calling believers to morning prayer. We eyed him again as he climbed the stairs of the tower time after time—five times—throughout the course of each day. We watched poverty and desolation with contempt. Sometimes we chatted too much and annoyed our commander. When he got angry with us, he would punish us by leading us on patrols of Khan Unis, at breakneck speed, carrying all our equipment. We would trail after him, gasping for breath, trying to keep up like naughty children. We dragged our feet through the streets for hours on end until our legs and shoulders ached. More experienced soldiers would watch us and jeer at our youth and misfortune.

Many seemed to understand “the anger of the State of Israel” in terms of the disciplinary measures typically dished out by NCOs to green military trainees like us. Palestinian civilians were timed as they ran around distant landmarks—trees or pylons—carrying heavy rocks and sandbags. They were forced to do push-ups and stand on all fours or to hold their hands in the air, to paint rocks with white plaster and lay them out on the ground in the shape of the Star of David. Objectionable graffiti were painted over by the nearest passerby who was given a sharp deadline to complete the task in the best tradition of IDF basic training. Some were forced to take all the furniture out of their houses and

then put it all back. Others had to unpack their bags or empty out their pockets in the streets on demand. The uprising brought every Palestinian civilian face to face with the kind of humane hostility a rebellious conscript meets at the hands of his superiors.

During these days in Khan Unis, I learned to bark in Arabic: *Jib el arweeya!* (Give me your ID card.) *Iftach el baab!* (Open the door.) *Saaker el motor!* (Turn off the car engine.) It is amazing how the selective use of another man's language can breed mutual contempt in place of communication. We barked our orders at the Palestinian population just as we had been barked at weeks previously in training. What could be more humane than that? "Do unto others as you have had done unto yourself." The contempt stored up by young conscripts for the ranks was unleashed on the perpetrators of the Intifada, in the stupid belief that peace among enemies and the good behavior of a well-trained platoon were much the same thing.

I spent several weeks in Khan Unis, but of all that time one day especially stands out. It began with a morning patrol in which we were ordered, once again, to manifest the anger and dissatisfaction of the Israeli government with the behavior of the Palestinians. However, this time the method of our madness was a little more prescribed. We made our way through Khan Unis with clear orders. A curfew was called, after which we patrolled the refugee camp slowly and deliberately, like a plague of locusts with a craving for glass. The platoon formed two long lines on either side of the road with two APCs driving between them. We moved forward with rocks, boulders, and truncheons, shattering every piece of glass we could find. We used our truncheons to shatter the windows of cars and buses and threw heavy rocks from the ground up to "receivers" who perched themselves on the APC from which second-floor windows were easy prey. Now and again, the officers took potshots with their guns at rooftop water tanks, but we were not allowed to join in the target practice. So we contented ourselves knocking out lightbulb after lightbulb, and we filled the streets with glass. As we approached the market—the notoriously dangerous casbah—we were pelted with iron pokers. I was standing inside the APC with my head up top, passing slabs of concrete to a friend who dropped them onto nearby solar panels, when one poker slid past my face and chest and smashed loudly on the iron floor of the vehicle, just barely missing the top of my black army-issue shoe.

Our outraged response was swift. We sprang from our patrol into a fierce chase. No one knew who had thrown the poker, but we saw roughly where it had come from. It was thrown from one of the third-floor balconies of a building overlooking the casbah. We darted forward and burst into all the houses on that floor. In minutes, the windows were shattered and the TV sets were thrown overboard, along with plates, dishes, and anything breakable we could put our hands on. My Arabic-speaking commander barked loud warnings at the families

inside as we pointed our guns at them menacingly (for his protection). After all the excitement was over, we returned with boiling blood and sweaty foreheads to the deliberate routine of our slow-moving path of destruction.

When the patrol was completed, we returned to Gadid, our boyish faces deceptively coarse with sand kicked up by the APC. We returned from our long day of destruction to news that a huge operation had been planned for that night and that we were to play a dramatic part in it. We were given a few hours to sleep in our tents and prepare for the grand action ahead. Again, the orders had come from “very high up.” Forces were gathering in Gadid from all over Gaza. The entire Givati Brigade moved in for the evening to our silent little field, along with hundreds of men from other units of military police, border guards, tanks, and infantry. Around 10 p.m. we piled into buses for the short drive to Khan Unis, where the forces made their final preparations. The first wave began with the Arabic-speaking border guards who sped through the streets of Khan Unis in jeeps, announcing on loudspeakers that all men between the ages of fifteen and thirty-five were to report to “the stadium” (a dilapidated football pitch) at midnight for detainment. The idea that someone “very high up” had was to keep the feisty youths in Khan Unis awake all night. A night without sleep would leave them too tired to throw stones the next day. With a drowsy day of inaction working against them, so the theory ran, the insurrection would lose its momentum and fizzle out. Somebody seems to have thought that all the Palestinians needed was to sleep it off for a day and the Intifada would go away.

After the jeeps had finished screeching their instructions, the foot soldiers were sent in. Flanked by tanks and APCs, we began to make our way through Khan Unis, banging on door after door, waking up family after family. Again my Arabic-speaking commander shouted orders at the civilians who were then supposed to know precisely where to go and what to do. Having been on the wrong end of his sharp tongue and gruff voice, I remember thinking: “Better them than me.” We waited for the streets to fill with young men, and when they did not we burst into houses, pointing our guns, gesticulating with our arms, and began pulling people indiscriminately from their beds. Again we waited for the streets to fill with neat files of clearheaded young men, heading purposefully for the stadium in an orderly fashion. But this is not what happened. The streets filled but not only with young men. Within a few moments, hundreds and probably thousands of people of all ages, men, women, and children, young and old, poured out into the drippy sewage that flowed in the pathways and alleys of Khan Unis. This was no planned insurrection. It was an unholy mess.

It now became my job to sort out the men from the women, the young from the old. Waving my gun in the air, I motioned to the hordes that stood before me to sit down. The alleys were wet with flowing sewage. The stink was horrible. But the hundreds of padded women, with flimsy white scarves over their heads and

coarse flowery patterns on their long black dresses, all complied. Kicking off their sandals, as is their wont, they crouched down on their haunches wailing. One woman came over to me and stroked my beard, speaking loudly in Arabic that I could not understand. She seemed to believe that facial hair was a sign of softness and compassion. Gently, I pushed her away and moved on. Finally, when the men had been separated from the women and were now sitting in a group at the other end of the road, my task was to send thousands of women back to their homes and to their beds. I signaled to them that they were to get up and go home. *Roch el beit*, I called out feebly and unconvincingly in my military Arabic. As they rose from the crouching position they had held unflinchingly for nearly an hour, it became clear that most of them had neglected to keep track of their sandals. I watched in horror as the streets and alleyways filled with hundreds of lost sandals and plastic shoes. Some of the women scrambled for their lost footwear, most moved away barefooted and disappeared. For weeks after that night, we patrolled the streets of Khan Unis kicking our way through piles and piles of lost shoes.

With the women back in bed, we now turned our attention to the men. Older men were to be sent home after inspection. We ruffled through ID cards, looking for anyone born before 1952. Everyone younger was sent off along the soldier-lined streets in the direction of the stadium. After a long and messy night, and after the last house in our zone had been either emptied or put back to bed, we began making our own way to the stadium. At the stadium we discovered just how huge the scale of this operation had been. The army had been in action all over Khan Unis that night, and the stadium was now packed with thousands of young men standing in rows with their hands tied behind their backs. High-ranking officers were marching to and fro with megaphones in their hands, shouting warnings at prisoners who stood accused of pissing off the Israeli government.

While I was impressed with the restraint I had seen and displayed that night—horrible as this ordeal had been, no one had been hurt, no bones broken—I was appalled to discover that some soldiers had behaved disgracefully, violating some basic standards of human decency. I found one Arab youth thrown into a pit that soldiers from another unit had been using as a crapper. I was young myself and in no position to rebuke them. I watched as they sat, hurling insults at him in Arabic from nearby bleachers. My Hebrew, while better than my Arabic, was still inadequate for my voice to carry authority, and my brogue was still so obvious that every unfamiliar soldier I addressed, mistaking me for an immigrant from the United States rather than the United Kingdom, responded by mimicking what I had said in an exaggerated American accent. I slunk away and rejoined the boys in my unit, who had at last received permission to curl up inside the bowels of the APC for a couple of minutes' sleep.

When the dawn broke, it was time to release all the detainees and send them on their way. "Surely," we reasoned, "they had learned their lesson from a night

like this. They don't want to go through this again." Neither did we. "Surely," we reasoned, "the stone-throwing would now come to an end." I was told to stand at one of the stadium's exits with a grimace on my face and a truncheon in my hand. My job was to make sure the boys went straight home with no further trouble. Minutes after I had assumed my position, they started flowing by. They came past me at a sprint and headed for home. I stood waving my truncheon in the air, shoving them on like a cowboy moving his herd.

Then I was joined by Ran.² Ran was a nonreligious NCO who had been "imported" from the Golani Brigade to guide my unit through basic training. I despised him. Weeks later I was detained, for mishandling a roadblock, by my brigade commander, who happened to drive by at the wrong time. The roadblock was overcrowded and disorderly, left in the hands of three inexperienced soldiers, while the NCO in command—Ran—spent the entire night sleeping on his own in his two-man tent. As it turned out, the division commander, Shai, who judged my case, gave me only a suspended punishment. He let Ran off scot-free. Both Ran and Shai were dead a few weeks later. Shai died heroically, leading a charge against terrorists at the Lebanese border, while Ran was killed with another of our NCOs, Aryeh, in a civilian car accident.

Standing at the exit of the stadium, I soon became the object of Ran's snide humor. I was too weak for his taste, too white-skinned, too dovish, too Ashkenazi. "Isaacs," he called out at me, "when are you going to understand that the only thing Arabs understand is force? What are you standing there for? When they run by, give it to them where it hurts." Fear ran through my veins and into my fingers—fear of Ran. I was a conscript and he was my sergeant. He could do what he liked with me. His spiteful humor was wrapped up in an order I could not ignore. I could resist and take the risk of complaining, or I could comply. But I could not ignore him. I froze on the spot, scared to speak for fear of being mocked. I looked at him, imploring him with my gaze to leave me alone to get on with the job as I saw fit. But he was not going anywhere: "Give me that truncheon and sit over there while I show you how it's done."

I sat down and watched as Ran took my position. With a cigarette hanging between his teeth, he smashed away at the continuous stream of youths who ran by. They stopped in their tracks, their eyes like wild hunted animals', as they spotted him. The shrewd ones timed their steps to slip by while Ran unleashed his wrath on the others. He smashed with my wooden truncheon at their skulls, their ankles, and their wrists; he forced hands to the ground so he could stamp on their fingers. "That will put an end to their stone-throwing," he jeered in my direction: "When will you understand that this is the Middle East, not Amer-

2. Army colleagues' names have been changed, but otherwise this account is, to my best recollection, accurate in detail.

ica?” (It didn’t seem to matter how many times I professed my Scottish birth and English childhood. The world was America for Ran, and all its children were pampered do-gooders who had no business serving in the Israeli army.) Less than twenty-four hours before, I had smashed windows and lightbulbs, thrown TV sets off third-story balconies, and even more recently pulled women and children from their beds in the middle of the night. Watching Ran, I began to feel the terrible sense of confusion that over the years would emerge into resentment, bitter loneliness, and deep shame. I watched him batter and smash and finally grab hold of clumps of hair, burning foreheads with the smoldering end of his cigarette stub. I watched him take hold of teenage children by the hair. I watched him yell at them as he burned them with his cigarette. I watched him burn their heads and their necks. I heard them screaming in pain. I could stand no more of it, I had to act.

But what was I to do? Actually stop him? Complain about him? Reason with him? What was I to do? Hit them? Burn them? Frighten them? Show them the anger of my new country? Show them the anger of Ran’s grandparents at their Arab neighbors in Morocco? What was I supposed to do? A voice inside me said, “Do nothing.” Leave Ran alone. It is his business. He is the sergeant. I am a private soldier with no experience in the country, not to mention the army. Another voice said, “You have to act.” But what did I know of such things? How was I to take on Ran? Since my arrival in Israel thirteen months before, I had spent almost all of my time studying legal precepts of the Talmud in a yeshiva. I had exerted all the intellectual energies I could muster trying to make up for my vastly inferior British Jewish education. I had learned almost from scratch how to read the slanted italic letters of Rashi script, how to decipher the sometimes cryptic and often telegraphic apologetics of talmudic reasoning. I had sweated over abstract legal concepts and binary distinctions whose comprehension required skills that I was only now encountering for the first time. The experience had been invigorating and stimulating but overwhelming. I had struggled to find religious meaning in it and had failed. Instead I focused my religious and ethical energies on a self-deprecating regime of penitence for the cardinal sins of time-wasting and sexual desire. The energies I had invested in both study and prayer stretched my soul to the limits of its capacity. I had studied and prayed but gained no wisdom. I stood now before Ran with sharpened powers of reason but without the character or experience to know how to act.

“Now I see how it’s done,” I said. “Give me the truncheon back. I want to have a turn.” Ran smiled approvingly as I returned to my position. Taking the truncheon from his hands, I began smashing away with all my strength at every man who ran past. I bashed and I smashed at backs, shoulders, and hips, trying to avoid contact with fragile bones, fingers, and heads. Some squealed with pain as I hit them. I made sure that the force of my blows was hard enough to keep Ran

at bay. One lad ran toward me with a hand held high as if he were trying to hit me. I landed my truncheon on his face. I think I broke his nose. I watched as he ran off, struggling with all my strength to keep my composure when I turned to hit the next guy in line. Ran stayed in his seat, smoking. Nobody else was burned that day. May God forgive me!

Reclaiming Ugliness

The decision I had to make in Khan Unis plunged me into deep confusion. It was four years since I had been attacked in Birmingham by English skinheads—beaten and humiliated for wearing a kippa in public. It was four years since, lying helpless on the ground as I was beaten, I had decided that I would migrate to Israel, join the army, learn martial arts, defend myself and my people from those who hate us. All too fast I was now discovering that my solution raised as many questions as it answered; maybe more. My encounters with Israeli youth had been as disturbing as my encounter with the Birmingham skinheads.

On the one hand, I had discovered in yeshiva that, by the time they completed their high school education, religious boys in Israel had acquired a depth and breadth of Jewish knowledge that I could hardly imagine or ever hope to equal. I revered them for it and naively believed them to hail from a higher caste of humanity. They were the new Jews, the children of good fortune whose childhoods had been forged in the realization of the Zionist myth—or, at least, a religious version of it. I idealized their culture and made every effort to join their society. On the other hand, I was deeply disappointed with their conduct in the army. I expected more of them than I did of myself. I thought their superior knowledge of Judaism and halakha should dictate a quality of behavior that I had never even aspired to. I lacked the perspective to see how disorienting the special circumstances of our service were, and I lacked the years to appreciate how young and inexperienced we all (including the officers, who seemed so tested and veteran) actually were. Still, as I saw it then . . . when faced with the challenge of behaving humanely in the face of adversity, my ideal Israelis had failed appallingly. My disappointment and anger were only made worse by the nagging awareness that I had failed too.

On completing my regular service, I discovered that I had been hurt by my experiences in the army and that it was the Israelis with whom I served who had hurt me the most. Like everyone else in basic training, I had been the object of insults and jeering. I had experienced extreme duress and physical exhaustion trying to meet absurd deadlines (thirty seconds . . . two minutes) for performing tasks that I could not have completed in an hour. Contrary to popular mythology, the tension that this method of training creates has a severely detrimental effect on social bonding. In my unit, we helped each other but, often, resentfully and

with openly expressed bitterness. Insults of the most personal nature flew around the tent. Hardly a day went by without my being told that I was “a nothing,” “a bastard,” or the son of all manner of nature’s females, human and animal.

Though only a small fraction of Israelis serve in the kind of unit I served in and experience the training I went through, when I completed my military service I felt sure that I had the key to unlock Israeli culture. Relatively speaking, I was still a newcomer, but I believed that I’d had a glimpse into the inner sanctuary of Israel and had found it filled with maggots. I saw the behavior of my comrades and our officers duplicated in the streets, in the conduct of policemen, shopkeepers, bus drivers, bank tellers, government officials, politicians, and journalists; everywhere I went, the rude, bitter, coarse familiarity with which Israelis often interact struck me as the product of a shared burden, a shared sense of national duress, and a collective resentment. Israeli society seemed like one big military base, full of exhausted, bitter, angry, selfish people, wrestling each other for a minute’s extra sleep. I could not put the army behind me. I felt misunderstood and guilty. I felt that I had become too Israeli to turn back and that I could not (or would not) become Israeli enough—martial enough—to fit in. I became impatient, arrogant, and lonely.

I returned to study in yeshiva with the same boys that had been in my IDF unit. They told army stories interminably at meals, laughing loudly at the same jokes over and over. They used military jargon in conversation and military metaphors for everything—even in their talmudic studies. They relished the opportunities they had to carry guns on guard duty at the yeshiva and regularly demonstrated their skills, dismantling them and putting them back together. In civilian life, they dressed like a regiment: flannel shirt and sandals with blue or gray trousers, pen in a buttonhole, small notebook in the chest pocket. I was neither mature nor wise enough to forgive them for reliving the most thrilling and meaningful experience of their lives during the years that followed their release. Instead I concluded, on scanty evidence, that the army—above all else—was responsible for forging the behavior of Jewish religious culture in Israel. I was wrong, though not entirely. I saw something, but not everything. I saw something, but not all of what I saw was there.

As long as my characterization of Israel’s religious society was founded on this set of observations, I connected its positive experience of military service with the militant politics that I believed was responsible for perpetuating violence in the territories. Moreover, I found myself torn between my own deep religious convictions and the secular view that religion was an obstacle to peace. I sought a balance between halakhic integrity and dovish liberalism and found myself gravitating toward Israel’s small and politically isolated religious Left. Yitzhak Rabin’s election, the early successes of the Oslo process, the horrific waves of terrorism that came in its wake, the assassination of Rabin (by a religious

Zionist), the tenures of Netanyahu and Barak, disillusionment with the philosophy of Oslo that followed the failure at Camp David, the disengagement from Gaza and the second Lebanon war—the impact of these on someone perched so precariously between English and Hebrew, Left and Right, secular and religious, was immense. The worst of it, though—the hardest part for me—was and remains that, even if there were no IDF and no Jewish state, the problem would not go away. The problem was and remains how religious passion and devotion to halakha could be made to inspire a passionate and specifically religious commitment among halakhic Jews to the cause of peace.

Akeda

The sacrifice of Isaac that took place on November 4, 1995, came as a great shock to me. My first thought was, “I hope the shooter isn’t Jewish.” I knew that if he were, this murder could potentially rip the soul of Israel in two. As it turned out, he was and it did. My second thought—“if he is Jewish, I hope he isn’t religious”—was perhaps even more disturbing. A religious assassin acting in the name of my religion could have torn *my* soul in two. Again, he was and he did.

The morning after Rabin was gunned down at a peace rally in Tel Aviv, I attended morning services at my local synagogue in Jerusalem. I was completely dumbfounded by what I heard in the chatter that preceded the service. I knew that most religious Jews in Israel opposed the Oslo Accords. But on my way to prayers that morning, I had not imagined I would hear things like, “He had it coming,” “Yigal Amir is God’s emissary,” “That’s what God does to you when you meddle with the Jewish hold on the Land of Israel,” “Now his soul will pay for his sins.” This uninhibited hatred astonished me. Maybe I was naive or out of touch, but after the shock of the night before I had not anticipated this response. Or at least, not so soon.

For the first time since settling in the State of Israel, I became uncomfortable with my kippa. As I walked through the streets, I felt newly visible and strangely watched. My kippa burned on my head in ways that were familiar from my Birmingham days. I felt implicated, if not guilty—as if I had to explain myself to everyone who looked at me. “Yes, I am wearing a kippa . . . but.”

A bit over a week later, my wife gave birth to our second son. We had been toying with names and had not yet found the one we wanted. My father had died only a few months previously, and we had been looking without success for creative ways of rendering his name, Bernard, into Hebrew. The dark events of that Saturday night gave us our solution. As we explained to family and friends gathered to celebrate with us, we chose the name Noam to reassert our faith that the ways of the Torah are pleasantness (*noam*) and all its paths are peace (Proverbs 3).

Given widespread opposition in the religious community to Rabin, Shimon Peres, and the peace process, the assumption that religion and peace are antithetical seemed well established in Israeli political reality. The resistance of the religious parties to each new peace initiative led me to wonder if it was not the very concept of peace (rather than the price in land or the risk to national security) that they objected to. I am still wondering if peace is understood as a religious regression — a temptation, enticing Israel to abandon its messianic destiny.

I recognize that there are ideological complexities motivating religious opposition to the peace proposals generated by Israel's political Left over the past two decades. I even empathize with many objections that have been raised by the religious Right. I also recognize, though, that a price has been paid for the opposition of religious people to a settlement with the Arabs: peace has ceased to function as a core religious value of Jews. The word *shalom* has been hijacked by a single political connotation and strategy. Conversely, the other wing of Israel's political culture has commandeered both Judaism and Zionism. The two camps have been in stalemate for years. When the assassination of Rabin sliced Israel in two, people like me were left belonging to neither slice. We ourselves were torn.

Factions of Israel's religious society have occasionally advanced the argument that Judaism bears a message of peace. This message, though perhaps not the heart of faith, would enable compromise over territory in return for national security. Bringing to bear the powerful halakhic principle of *pikuach nefesh* (protecting Jewish lives at the cost of breaking Jewish laws), it is argued that when politicians and military experts can demonstrate, beyond reasonable doubt, that a particular agreement will save Jewish lives, parts of the Promised Land can be ceded without violating the halakha.³ This halakhic argument is based on expediency, depends on the assessments made by suspect secular authorities, and is hardly the transcendent stuff out of which passionate religious ideologies are made. For those who advance the argument, peace is not understood as an organizing principle of religious life. My sense is that, in order for religion to play a role in making peace, it is the cantankerous side of religious belief that must be owned and then engaged.

3. This argument has been made most famously by Rabbi Ovadiah Yosef, spiritual head of the Shas party and former Sephardic chief rabbi of Israel. See his article, "Handing over Territory from the Land of Israel in Circumstances that Save Life" [in Hebrew], *T'chumim* 10 (1989): 34–47. While provisions for the preservation of life are generally thought to apply to all life, the category of *pikuach nefesh* is often applied preferentially to Jewish lives and as such has been used as a justification for acts of war performed on the Sabbath. See, for example, Rav Shlomo Goren's

article of 1958, "The Laws concerning War on Shabbat in Classical Jewish Sources" [in Hebrew], www.daat.ac.il/DAAT/kitveyet/shana/lehima-2.htm (accessed November 12, 2008).

Revenge

The chief rabbi of Safed not long ago addressed his followers in a flyer distributed among the congregants of synagogues throughout Israel. He called upon them to demand a policy of revenge for Palestinian terrorism. In his view, Jews who are committed to the Torah must press the “evil” secular government to exact cruel and bitter revenge on the Palestinians: “We must be as cruel to them as they are to us, so that they will fall on their faces and beg us to stop.” The spineless government of Israel, he wrote, is not Jewish enough to understand the ethics of revenge: “So great is revenge that it is mentioned betwixt two mentions of the name of God, *El Nekamot Hashem*.” “Liberals” and “lefties,” the rabbi warned, cannot and must not dictate what Jewish values are: “Don’t let those whose Judaism will soon fritter away deter your commitment to the values of the Torah. The Torah calls for Revenge. It might not be politically correct but it is an eternal truth and we should call it by its real name: Judaism believes in Revenge! Revenge! Revenge!”

How does one respond to such hatred, directed equally (it is important to observe) against Palestinians and secular Jews? Can one live in peace with it and with people who feel it? Rather than conclude that religion is by nature an obstacle to peace, I would prefer to find an irenic role for beliefs like those of the chief rabbi of Safed—beliefs that I find nothing but ugly—to play in the economy or ecology of Judaism. Consider the liberal alternative. For example, Jaroslav Pelikan’s view—that we can “rely upon the tradition to vindicate us . . . by how it manages to accord with our own deepest intuitions and highest aspirations (intuitions and aspirations which . . . are themselves imbedded in the tradition)” —incorrectly assumes a consensus about what is and is not ugly in the tradition itself.⁴ Articulation of faith in a tradition cannot afford the homogenization of its complexities. There can be no doubt that those on the dovish Left in Israel seem as ugly, pugnacious, and inauthentically Jewish to the chief rabbi of Safed as he does to them.

But the rabbi, *as* a rabbi, should recognize that peace is not a black-and-white affair in which white triumphs over black. I am being neither poetic nor original if I say—if I remind the rabbi, with due respect—that the colors of the rainbow, blended, produce the color white and that peace is the result of conflicting options blended. An inadequate spread of color produces an inadequate shade of white. A peace settlement that has the assent of the chief rabbi of Safed (and the leadership of Hamas) will be more peaceful than one that does not. There is nothing liberal about these remarks (despite echoes of “Rainbow Coalition” rhetoric, familiar to Americans). In making these observations, I have

4. Jaroslav Pelikan, *The Vindication of Tradition* (New Haven, CT: Yale University Press, 1984).

been paraphrasing A. I. Kook, who was the first Ashkenazi chief rabbi of British Palestine and the founder of a yeshiva that remains to this day the bulwark of hard-line religious Zionism. Here is Rav Kook, in his own words:

Some err to think world peace will be built only through one color, one quality of opinions and characteristics. Therefore when they see that as scholars research the wisdom and knowledge of the Torah through their research different opinion and points of view flourish, they think that causes strife, the opposite of peace. This is really not the case. Real peace can come about only through the value of the flourishing of peace.

The Lord will bless his people with peace. And the blessing of peace, which comes with the [blessing of] strength, is the peace that unites all opposites. But we must have opposites so that . . . something might be united, and the blessing is evident in the power of “these and these are words of the living God.”⁵

Rav Kook lived in the twentieth century, but his approach to the subject of peace was by no means innovatory in Jewish tradition—a point that he himself underscores by citing a phrase in Talmud Bavli *Eruvin* 13b. “These and these are the words of the living God” is the famous phrase by which the rabbis closed the *makhloket*—the intellectual battle—between the disciples of Hillel the Elder and the disciples of his colleague Shammai. They had agreed, in the course of a long, hard-fought campaign, about virtually nothing, and yet the words of both sides were ruled to be God’s own.

A ruling like this one of the rabbis would seem peculiar only in the context of religious traditions that value unity, certainty, and univocality. Rabbinic tradition emphasizes that the divine voice, because infinite, is multivocal and can be heard only through a multitude of interpretations. Peace is possible only where interpretations and interpretive systems flourish. The conflicts among them, regarded and valued properly, are expressions (to lift a phrase from the New Testament) of a peace that passes understanding. The only form of conflict unacceptable in this context is what the Zohar calls “conflict about peace” itself. In the passage of the Zohar that follows, the topic is the rebellion of Korach (Num. 16) against the leadership of his cousins Moses and Aaron:

whoever is in conflict about peace is in disagreement with His holy name, because His holy name is called “Peace”. . . . Come and behold: the world does not exist except through peace. When the Holy One, blessed be He, created the world, it could not endure until He came and

5. Abraham Isaac Kook, *Olat ba-Rayah*, vol. 1 (Jerusalem: Mossad Ha-Rav Kook, 1963), 331, cited and translated in Avi Sagi, *The Open Canon*, trans. Batya Stein (London: Continuum, 2007), 121.

made peace dwell upon them. What is it? It is the Sabbath, which is the peace of the upper and the lower grades. And then the world endured. Therefore, whoever creates dissension about peace will be lost from the world. Rabbi Yosi says that it is written “great peace have they who love your Torah” (Psalms 119:165). The Torah is peace, as it is written “and all her paths are peace” (Proverbs 3:17). And Korach came to blemish that peace above.⁶

The name of God is Peace, the Torah is peace, the Sabbath is peace, and peace is the prerequisite for existence: clearly, when the rabbis—whether talmudic, mystical, or modern—speak of peace, what they have in mind is not the peace spoken of by our politicians, diplomats, and professors of conflict resolution. Peace is, in the Zohar and Talmud, a religious (not a political) term. Thus, where conflict resolution requires obnubilation, compromise, and the perception or illusion of common ground, peace in Jewish tradition demands the production of more and more differences—differences that transcend the limits of toleration, let alone those of liberal pluralists.

Peace is reached by owning and reclaiming the intolerably ugly and unsavory. The process appears to require a disconcerting openness to the unexpected and indeed impossible. There are, for example, transgressions of Jewish law performed in the name of the law or of God—the relevant halakhic category, discussed especially in Talmud Bavli *Nazir* 23a–b and *Berachot* 61, is known as *avera lishma*. In such passages, the Talmud deals with topics such as the sexual intercourse between King Ahasuerus and Esther and the incestuous rape of Lot by his daughters. In these cases, the issue is survival. However, later rabbinic texts toy with the idea that some transgressions are of religious importance in their own right, since spirituality sometimes requires transcending halakha. In the twelfth-century *Sefer Hasidim*, for instance, some confessors approach a wise man to describe sins that they have committed with the sole aim of experiencing acquiescence to temptation. They say that their ultimate objective has been to overcome temptation and then repent. Logically, they would need to sin first.⁷ The rabbis in Talmud Bavli *Nazir* 23b reach the moralistic conclusion that such transgressions are accepted in the hope that they will lead to pious behavior eventually, and in this particular story the confessors are censured for their conduct. However, later Hasidic writers, such as Rabbi Tsadok Hakohen of Lublin, maintain paradoxically that the annulment of the Torah is also its foundation. God’s will is served when the law is transgressed in his name.

6. “Now Korach,” vol. 18 of *The Zohar*, ed. Rabbi Michael Berg (New York: Kabbalah Center, 2003), 225–26.

7. See Judah ben Samuel, *Sefer Hasidim*, ed. Jehuda Wistinetzki (Berlin: Mekitzei Nirdamim, 1891), secs. 52–53.

“The Most Common Thing”

The God in whose name the law speaks explicitly, and in whose place it implicitly stands, delivered a blow to religious moralizers forever when he commanded Abraham to sacrifice Isaac his son. From that point in the biblical narrative and forward, the law has to come to terms with its being the God of Genesis 22 who founded the law at the expense of intelligible morality. Mountains of explanation, theodicy, and justification are unequal to the task of getting God off the hook. The question raised by the binding of Isaac, the *akeda*, will always seem so much more compelling than its all too many answers. It seems impossible to move on without the law somehow reclaiming and living with this inexcusable ugliness. As Jacques Derrida writes of Abraham’s role in the *akeda*:

In order to assume his absolute responsibility with respect to absolute duty, to put his faith in God to work, or to the test, he [Abraham] must also in reality remain a hateful murderer, for he consents to put to death. In both general and abstract terms, the absoluteness of duty, of responsibility, and of obligation certainly demands that one transgress ethical duty, although in betraying it one belongs to it and at the same time recognizes it. . . . Abraham must assume absolute responsibility for sacrificing his son by sacrificing ethics, but in order for there to be a sacrifice, the ethical must retain all its value; the love for his son must remain intact, and the order of human duty must continue to insist on its rights.⁸

For the word of God to be the word of God, it may or must contradict all naturally arising and generalizing ideas about intelligible morality. In *Donner le mort*, Derrida argues indeed that only an ugly idea of God’s command to Abraham could demonstrate that law and justice are not confined by natural or philosophical ethics. We cannot trust or take comfort in our faith that God’s understanding of good and evil, kindness and cruelty, life and death, are the same as our own. Thus we tremble, as Derrida says, at the

dissymmetry that exists between the divine regard that sees me, and myself, who doesn’t see what is looking at me; it is the gift and endurance of death that exists in the irreplaceable, the disproportion between the infinite gift and my finitude, responsibility as culpability, sin, salvation, repentance and sacrifice. (56)

God commands Abraham to sacrifice his son but gives no reason. He speaks only to keep a secret. Something must be said if the fact of the secret is to be known,

8. Jacques Derrida, *The Gift of Death*, trans. David Willis (Chicago: University of Chicago Press, 1992), 66. Further references are given parenthetically in the text.

but what is said must be *nothing* in order for the secret to be kept. In Genesis 22, God speaks but is “absent, hidden, and silent, separate, secret, at the moment he has to be obeyed” (56). It is only *ex silentio* that the command is heard as God’s. His command is singular; it is directed to Abraham alone and reveals—though the command is from the universal God—no general principle or even purpose that Abraham might know or discern on his own. The command is indeed alien, “the most cruel, impossible, and untenable gesture” imaginable (58).

Abraham then duplicates this behavior with Isaac. The father speaks but reveals nothing: “God will provide the lamb for the burnt offering, my son.” Abraham does not tell Isaac the secret of why they are climbing Mount Moriah because he does not himself know what it is. Son and father share a secret—the secret that neither of them knows. Derrida’s point is that this secrecy is an act of betrayal. Abraham betrays Isaac, in that keeping the secret “is hardly designed to save or protect Isaac’s best interests.” The *akeda* shows that religion is not reducible to ethics, indeed “transgresses the ethical order” imagined by humans to be general, objective, or natural (61). Religion deconstructs, as it were, the illusion of ethics by exposing the everyday cruelties performed endlessly in the name of moral order. And so, Derrida continues:

Let us here insist upon what is too often forgotten by the moralizing moralists and good consciences who preach to us with assurance every morning and every week, in newspapers and magazines, on the radio and on television, about the sense of ethical or political responsibility. . . . what the knights of good conscience don’t realize is that, “the sacrifice of Isaac” illustrates—if that is the word in the case of such a nocturnal mystery—the most common and everyday experience of responsibility. The story is no doubt monstrous, outrageous, barely conceivable: a father is ready to put to death his beloved son, his irreplaceable loved one, and that because the Other, the great Other asks him or orders him without giving the slightest explanation. . . . But isn’t this also the most common thing? (67)

Cruelty is “the most common thing.” It is a direct result of every form of loyalty and ethical responsibility, the product of every law. Our every choice or norm is a rejection of another calling: “By preferring my work, simply by giving my time and attention. . . . I am perhaps fulfilling my duty. But I am sacrificing and betraying at every moment all my other obligations; my obligations to the others whom I know or don’t know” (71). Derrida’s list of “others” includes everyone from human beings dying of sickness or starvation in Africa to inner-city street cats. “How,” he asks, “would you ever justify the fact that you sacrifice all the cats in the world to the cat that you feed at home every morning for years, whereas other cats die of hunger at every instant. Not to mention other people?” (71). The *akeda* is, for Derrida, not an exception to the rule of religious morality;

it mirrors or exemplifies the normative laws of life. Cruelty and injustice cannot be wished or washed away by ethics. Derrida portrays the world as a landscape of “Mount Moriahs” in which—most poignantly—Mount Moriah itself is but another “Mount Moriah.” And of course, Moriah is today where the al-Aksa Mosque stands near the Dome of the Rock, where the sacrifice of Ishmael is supposed to have taken place and from which Muhammad mounted his horse for paradise. Here too, just above the Wailing Wall, not far from the Via Dolorosa, is the site of the destroyed Temple of Jerusalem. The place is both holy and under dispute, fought over rabidly by religions of the unique, transcendent, and absolute Other.

What the *akeda* clarifies is that religious law must be a system whose first loyalty is not to justice, compassion, reason, or intelligibility, but to living in peace with an unpredictable, unrestrainable God. Cruelty and ugliness are among the divine options with which humanity must find ways to live. As Derrida frames the problem: “Abraham must assume absolute responsibility for sacrificing his son by sacrificing ethics, but in order for there to be a sacrifice, the ethical must retain all its value” (66). Thus, Abraham’s situation is impossible: the right thing to do must be the wrong thing to do. If it is not wrong, it cannot be right. Only in this impossible situation can Abraham act selflessly for God and entrench the idea of serving God in the *tout autre* rather than the self. But having presented Abraham in seemingly Christological terms—the *akeda* as a pure gift to God—Derrida then acknowledges the reversibility of selflessness, exposing the aggressive self-indulgence that informs passive self-denial. In doing so, he exposes as well a way in which deconstruction is itself pharisaic.⁹ He grasps the ironic-comic tone of the rabbinic voice, which insists on the virtues of hypocrisy and the hypocrisy of sincerity. “The point of *Donner la mort*,” as John Caputo writes,

is not to undo faith but to insist on the an-economic character of faith, that faith is always a matter of the gift and giving, not a transaction between a creditor and a debtor. . . . The point of a “demystifying” analysis is to force out into the light of day the secret contract that allows one to do one thing under the cover of its opposite, e.g., to reap rewards under the cover of giving, to be pharisaical under the cover of a critique of the Pharisees.¹⁰

If Abraham was economically cruel and corrupt, that was because he *had to be* in order to give to and forgive God. Abraham was the one thing under cover of the other. According to Derrida, it is hypocrisy that distinguishes religion from mere ethics. Religious law *has to be* hypocritical, manipulative, and pharisaic; and

9. Cf. Shira Wolosky, “Pharisaic,” *Common Knowledge* 2.2 (Fall 1993): 66–80.

10. John D. Caputo, *The Prayers and Tears of Jacques Derrida: Religion without Religion* (Bloomington: Indiana University Press, 1997), 218–19.

the rabbis provide Derrida with his model of lawyers unashamed by their inevitable hypocrisies. Under the cover of hypocrisy, they are able to remain pure of heart. Their critics—in Derrida’s reading of Matthew’s Gospel—come off as holier-than-thou under the cover of holiness. There is no way out of this logic. Human service of the impossible, human toleration of the intolerable, are made possible only by hypocrisy. Closely related to humility, hypocrisy enables religion to contain the uncontainable and contend with God. Religion has to find ways beyond morality and law in order to make space for what A. J. Heschel calls “a private, secret realm of relationships between God and man.”¹¹ There, presumably, the law is “only the law,” ethics “only ethics,” and judgment “only judgment.” These are paths, at best, to the impossible, the uncontainable. And when the place is reached, the paths end.

But meanwhile, there is *nothing but* paths. The Hebrew word commonly translated as “law”—halakha—means more literally “the way” or “the path.” The rabbis who beat the beaten paths legislate without metaphysical pretensions. Endless generations of memorization and study, tireless dedication to minute details, limitless explication, deliberation, and dissent, all of which proliferates and ferments, filling pages and libraries of uninviting rabbinic texts that often have no applicability to the practice of explicit law—this is, as I understand it, the rabbinic pursuit of peace. The aspiration for peace implicitly animates the rabbinic project, while at the same time it imposes a damper of humility on the project and “the way.” The halakha is humbled by the impossibility of its ultimate implicit task and is cognizant of the foundational hypocrisy that undermines the claim of human beings to wield the word of God. It is a serious mistake to assume that the rabbis associate law and truth. Their assertion is rather that a Jew should follow their dicta even when they say that right is left and left is right.¹² But this dictum establishing the authority of dicta carries a slyly dual meaning. Explicitly, the principle of obedience to rabbinic authority is established, though the conditions of obedience undermine the idea or value of truth by institutionalizing a fictional truth and subjecting it to the authority of humanly fallible courts. As for the second meaning, the dictum (“left is right and right is left”) implies that what the rabbis do is generate contradictions, because there is no ultimate difference between supposed opposites. Each pole must connote the other, and a principle of reversibility between them is operative. The complexity of this implicit suggestion is compounded by the generic structure of the dictum itself. “Left is right and right is left” is an explicit statement about rabbinic power but made in language that undermines, overwhelms, or, at the very least, ironizes it. The upshot is that the authority of Jewish law is simultaneously established and undercut by

11. A. J. Heschel, *A Passion for Truth* (New York: Farrar, Straus, and Giroux, 1973), 322.

12. See Sifri Deuteronomy 17:11; also Talmud Yerushalmi *Horayot*, chap. 1, halakha 1.

rabbinic hermeneutics and by its typically ironic tone. It is these characteristics that most signally distinguish the halakha as a genre of religious law.

It is also these characteristics, or rather their results in practice, that historically have most annoyed the critics of halakhic Judaism. Orthodox Jews may condescend to coreligionists who keep and eat leavened products on Passover. Yet if the latter arrange to “sell” those products, through a rabbi, to non-Jews who will “sell” them back after the festival, that white lie makes it acceptable to have a case of Scotch or even a warehouse full of yeast on one’s property, if it is kept discretely out of view. In this and a host of similar cases, the rabbinate itself undermines Jewish law (and even respect for the law) in order to expose its deeper meaning—its mildness and its irenic openness to variety. Through its intimidating codifications—the *Shulchan Aruch* of Joseph Caro, the *Mishneh Torah* of Maimonides, and many others—the halakha has been able to pass for explicit law while actually it is a religious practice that rules variously and gently, and seems to lie beyond the control of even those who seem to master it. The price the rabbis pay for this achievement—for devising circumventions of the law that enhance its practice as a way of life—is the advertisement of halakhic incoherence and rabbinic hypocrisy. The price, put this another way, is legislative, judicial, and pedagogical humility. Rabbinic literature is filled to bursting with eagerly reported references to the flaws of its heroes, their failings and transgressions.¹³ The sole Jewish hypocrisy that cannot count as humility is the refusal—as a historian of the Jewish people has lately put it—to wash its “dirty laundry” in daylight.

Dirty Laundry

Elliott Horowitz is the author of a history of what he calls “Jewish violence.” The particular concerns of his controversial book are Jewish vengefulness in the book of Esther and events in the Jewish community, historically, on Purim, the annual festival when Esther is read publicly in synagogue rituals:

13. For a collection of rabbinic stories that fall into this category, see Admiel Kosman, *Men’s Tractate: Rav and the Butcher and other Stories* [in Hebrew] (Jerusalem: Keter, 2002). Kosman’s primary concern in this book is the reappraisal of Daniel Boyarin’s claim that rabbinic heroes are essentially effeminate and passive. Kosman’s close readings of a broad selection of rabbinic texts are designed to support the claim that the rabbis are active, “masculine” manipulators of power. The overwhelming impression that I received when reading this collection is that the stories that Kosman rallies to support his case expose the ugly, manipulative, and violent side of rabbinic conduct as much as (if not more than) the “masculinity” of the rabbis.

Arguably, stories that describe the ugly conduct of many great sages have the primary effect of calling into question the moral fabric of the rabbinic elite. The effect of this is decidedly “unheroic”—and hence disarmingly modest. See also Daniel Boyarin, *Unheroic Conduct: The Rise of Heterosexuality and the Invention of Jewish Man* (Berkeley: University of California Press, 1997).

Both Purim and the Book of Esther . . . are subjects that have impelled both apologists and anti-Semites to show their true colors, as they have impelled me to show mine. . . . Others [among my readers] may be upset that I am packing so much dirty laundry between the covers of an academic book instead of leaving it to fade on the pages of soon-to-be-forgotten newspapers or consigning it to the dreary darkness of the microfilm room. But in doing so I am following in the path of many worthy predecessors, including the biblical author of the book of Esther.¹⁴

Jewish tradition is a mansion of variously used and decorated chambers, only some of which suit current taste. Periodic rearrangements are made to draw attention to one item or another. Today, most visitors (and many residents) stick to passages where exhibits on charity, social justice, compromise and leniency, ceaseless study, the entitlement to rest, compassion for animals, attention to the needs of strangers, open-mindedness about other religions, respect for the environment, love of peace, and perhaps mystical spirituality are tastefully mounted and well lit. But the mansion also has dark corridors, hindquarters, laundry rooms, and store-rooms in which are kept the refuse furniture of days gone by—items for which, many believe, no one can ever have further use. There are, moreover, rumors of a functioning dungeon.

We do not know, in other words, what to do with disturbing and apparently obsolete elements of Jewish tradition: relentless persecution and annihilation of idolaters; excruciating capital, corporal, and collective punishments; the trial of allegedly adulterous women by humiliating ordeal; animal sacrifice; holy war; patrilineal inheritance; preferential treatment of the first-born male; male possession of women; polygamy; slavery; the classification of homosexuality as an abomination. Medieval and early-modern Judaism add to the list such customs as the exclusion of women from synagogue ritual and Torah study, the ritual cursing of Christians, communal oligarchy, and a range of ascetic practices. My list here is illustrative, not exhaustive. And so, we return year after year to passages in the Torah about the *sotah* (adulteress), the *eshet yephat to'ar* (beautiful woman captive), the *ben sorer umoreh* (rebellious child), and the *eved Cna'ani* (Canaanite slave), to try digesting, sublimating, or concealing them. In some cases—such as the rebellious child, whose biblically mandated execution by stoning is virtually erased by the Talmud—rabbinic interpretation chimes with post-Enlightenment values and we celebrate the rabbis' ethical sensitivity.¹⁵ But cel-

14. Elliott Horowitz, *Reckless Rites: Purim and the Legacy of Jewish Violence* (Princeton, NJ: Princeton University Press, 2006), 10–12.

15. The Mishna and Talmud in *Sanbedrin* marginalized and ultimately did away with the biblical injunction that a rebellious child must be brought to judgment by his par-

ents and stoned at the city gates. The idea that action is evidence of the importance of ethics to rabbinic readings of “troublesome” biblical texts has been explicated in detail in Moshe Halbertal, *Interpretive Revolutions in the Making: Values as Interpretive Considerations in Midrashe Halakha* [in Hebrew] (Jerusalem: Hebrew University Magnes Press, 1997), 42–67.

ebriation is not always possible and, even when it is, it may be misplaced.¹⁶ We find in the Mishna that, “regarding one who says while praying: You are so compassionate and gracious that Your mercy extends to the bird’s nest,” we must “silence him.” The Gemara asks, “What is the reason that we silence him?” Rabbi Yose bar Zevida answers, “Because he renders the commandments of the Holy One, Blessed be He, into acts of mercy while in truth they are nothing other than decrees [*gezerot*]” (Talmud Bavli *Berachot* 33b). The use of the portentous word *gezerot* to describe supposedly compassionate laws about mother birds stands out in this passage.¹⁷ While Rabbi Yose bar Zevida’s position seems less extreme in its context—a discussion about appropriate and inappropriate prayer—his warning against simplifying the connection between prophetic law and compassion-based ethics is imposing, clear, and hard to forget.

The attempt to align religious law with post-Enlightenment ethics has had a complex and ambiguous impact on modern Judaism. Despite its many merits and accomplishments, post-Enlightenment liberalism has had a disintegrative, perhaps even destructive, effect on Jewish life. Liberalism has entrenched the conviction among many Jews that the living resources of the tradition are those, and only those, that have a place on display in rooms of the mansion that are open to visitors. The problem emerges when space in the front rooms and glass cabinets is deemed scarce and when much of what is on display there can affect the public policies of a Jewish state. The struggle over what Judaism “stands for” has led to a social rift that on occasion has come alarmingly close to civil war—and a community at war with itself is in no position to make peace with other communities.¹⁸

Tyranny and Disarmament

I would like now to put aside my explicit metaphors—the mansion with wings closed to the public; the laundry washed clean in the darkness—and turn to an implicit metaphor so powerful that it tends to be understood literally. I mean

16. For an argument about the “organic” relations among cultural practices—including practices, like witch trials, abhorrent to post-Enlightenment mentality—see Robin Briggs, *The Witches of Lorraine* (Oxford: Oxford University Press, 2008). See also, on Briggs and the “unexpected” role of witches in the medical or “therapeutic system” of Lorraine: Stuart Clark, “In the Web,” *Times Literary Supplement*, September 19, 2008, [tts.timesonline.co.uk/article/0,,25362-2652605,00.html](https://www.timesonline.co.uk/article/0,,25362-2652605,00.html) (accessed November 10, 2008).

17. The Talmud here is referring to Deut. 22:6: “If a bird’s nest chance to be before thee in the way in any tree, or on the ground, whether they be young ones, or eggs, and the mother bird sitting upon the young, or upon the eggs, thou shalt not take the mother bird together with the young but thou shalt surely let the mother go, and take the young to thee.” The Talmud’s choice of the harsh word “decree” (*gezerah*) to describe the apparently compassionate commandment in this passage is striking.

18. For an argument that enemies must bring to the negotiating table everything that their “worlds” contain, see Bruno Latour, *War of the Worlds: What about Peace?* (Chicago: Prickly Paradigm Press, 2002).

the metaphor of rabbinic halakha as an authoritarian legal system. While the halakha is notoriously complex—offering multiple opinions about every sort of action, exploring the minutiae of meaning and application for every legal category, straight up to the boundaries of reason and the limits of possibility—the system is ultimately geared toward reaching legal outcomes. Those outcomes are inevitably limited and flawed. But because of the belief in its divine origins, Jewish law can barely endure its imperfections. The halakha must live up to its own claim to offer instruction in God’s name. In the halakhic system, truth-claims about the word of God—about revelation—are vested in a college of interpreters whose resourcefulness, exemplary human qualities, and incomparable scholarship are said to ensure the truthfulness of their rulings. Even so, the certainty or at least validity attributed explicitly to interpretive outcomes derives from prophetic revelation.

In Deuteronomy, interpretation is placed firmly above prophetic revelation like two bricks in a tower. Moses (Deut. 16:18) mandates a legal system where witnesses give testimony and judges rule. In chapter 16, the law is authoritarian and unequivocal in its struggle against idolatry—a struggle that is the context for many of the Bible’s most violent injunctions.¹⁹ But in Deuteronomy 17, the system is expanded to confront a broader span of legal challenges:

If there arise a matter too hard for thee in judgment between blood and blood, between plea and plea and between stroke and stroke, even matters of controversy within thy gates; then shalt thou arise, and get thee up unto the place which the Lord thy God shall choose. And thou shalt come unto the priests the Levites, and unto the judge that shall be in those days; and thou shalt inquire; and they shall declare unto thee the sentence of judgment. And thou shalt do according to the tenor of the sentence, which they shall declare unto thee . . . thou shalt not turn aside from the sentence which they shall declare unto thee, to the right hand nor to the left.

Moses gives to judges and to priests of the tribe of Levi the power to wield the word of God and rule on matters that span the full spectrum of Jewish law. They are empowered to punish anyone who rejects the authority of the court or deviates from the “tenor” of its sentence. A human institution with divine authority is thus established—a potential source of unthinkable tyranny.

Jewish tradition has much to be proud of in its history of handling this power. Rabbinic restraint, over all, has been remarkable. But once a gun is placed

19. It would seem that struggle against idolatry is an exception to the rules of biblical and rabbinic justice. The pursuit of idolators is atypically uncompromising and, as this passage suggests, judges are given extraordinary punitive power with respect to idolatry.

in a room where there are bullets, it takes more than a safety catch to prevent its being fired. There are various strategies of disarmament, some of which make matters worse. Before presenting my own ideas about how to separate gun from ammunition, I need to remark in some detail on the liberal strategy of disarmament, if only because it is the one that readers may expect me to endorse. Instead, I would like in this context to draw critical attention to the enduring commitment of liberalism to the metaphysics that makes legal tyranny possible. Liberal readings of classical rabbinic literature argue that its project is authentically progressive and pluralist. In *Rational Rabbis*, for example, Menachem Fisch offers an account of how the authority of prophetic revelation was replaced by rabbinic rationalism in the exposition of Jewish law. In Fisch's view, though there are two dispositions in rabbinic literature ("traditionalist" and "anti-traditionalist"), the former are merely "accomplices" of the latter. Following a formula that Karl Popper developed to describe rational progress in science, Fisch suggests that

Two different yet complementary traditions are required to ensure and perpetuate an ongoing rational inquiry. First, and obviously, the theories themselves need to be transmitted efficiently from one generation to the next, otherwise scientific work would be trivially terminated . . . but to avoid indoctrination, a second tradition—a critical tradition—is equally pertinent.²⁰

Fisch understands the traditionalists' program as basically educational. Able students must first be initiated into the relevant practices of critical inquiry and the conclusions reached, to date, in the halakhic process. But even for traditionalists, the Talmud is more a logbook than a textbook, let alone a catechism or a legal canon. According to Fisch, the contributors to Talmud Bavli were open-minded thinkers whose approach to law was "founded upon a sharp demarcation of divine and human authority. . . . And, within the hermeneutic space allocated to humans, not only is the force of tradition ruled un compelling, but the Almighty himself is [excluded]."²¹

Fisch alludes here to Rabbi Yehoshua's famous admonition of God for interfering in the halakhic process:

On that day R. Eliezer brought forward every imaginable argument, but they did not accept him. . . . He then said to them: "If the halakha agrees with me, let them prove it from the heavens," whereupon a heavenly voice issued forth and declared: "What have you against R. Eliezer, for the halakha agrees with him everywhere?" R. Yehoshua rose to his feet

20. Menachem Fisch, *Rational Rabbis: Science and Talmudic Culture* (Bloomington: Indiana University Press, 1997), 38.

21. Fisch, *Rational Rabbis*, 84.

and declared: “It is not in heaven!” (Deut. 30:12) What does it mean, “It is not in heaven”? Said R. Yermia: Since the Torah was given at Mount Sinai, we pay no heed to a heavenly voice.²²

Fisch understands Rabbi Yehoshua’s position as democratic in tendency, and Fisch himself proposes a view of halakha as an ever-evolving and innovative human composition that stands, or stands in, for the word of God. The rabbinic rethinks the law in light of each generation’s concerns, particularly in times of great historic change: this depiction of the rabbis’ role is as much a manifesto for the present and future management of halakha as an interpretation of its workings in the past. But “rational rabbis” are, as Fisch acknowledges they must be, an intellectual elite open to discourse with only the most highly skilled partners. However Fisch wants matters to be ideally, the rabbinic elite is at a loss when confronted by the needs of a “lay” community whose members are often oblivious to the complexities of the tradition. In order to follow the rabbis’ lead, knowledge and critical expertise are required at a level attained only by the most capable of students. Where this level of discourse is impossible, the rabbis have no choice but to establish a rule of law and then command obedience to their authority. Fisch admits that his “rational rabbinic” has a long history of failure. However progressive the halakhic ethos may be, its social results—given the extraordinary requirements for real participation—can be regressive and ugly. Beyond this sociopolitical or educational problem, which the book leaves unresolved, *Rational Rabbis* makes epistemological claims that overstretch the line connecting halakha to its theological context.

Just how does rabbinic rationalism discern the will of God? In what tone are the claims that it does so being made? Avi Sagi’s book *The Open Canon*, another liberal reading of the rabbinic tradition, raises and answers questions of this kind historically.²³ Sagi distinguishes among three varieties of answer—a “monist” type that “assumes only one correct solution for every normative dilemma,” a “pluralist type” that “acknowledges more than one option as possible,” and a “harmonic” type that allows for “contradictory positions [to] enjoy equal status.” A monist considers legal options that have been rejected to be “false, invalid and illegitimate, while the pluralist does not” do so. The harmonist argues “that the halakha rests on a unified foundation that binds the gamut of contradictory views into one truth,” which implies that it is halakhic literature in its entirety (rather than one or another opinion or approach) that can be regarded as expressing truth.

22. This much-cited passage, from Talmud Bavli *Baba Metzia* 59b, is usually referred to as “Akhnai’s Oven.”

23. Though the texts I am discussing here make use of contemporary interpretive models, and while those models carry ideological implications, neither Sagi nor Fisch writes purposefully with ideological intent. Both are scholars whose consistent aim is to foster understanding of rabbinic literature.

While *The Open Canon* describes all three of these models thoroughly, it is clear that Sagi thinks the pluralist model is best suited to describe rabbinic multivocalism. In Sagi's words, "Halakhic culture, unlike classical culture, not only recognized the existence of different truths but also ascribed deep religious value to this fact"—the religious value being that "God granted human beings the power to create and shape halakha according to their own understanding."²⁴ When addressing the possibility that an interpretive process, however rigorous and sincere, might yield many false though tolerable results, Sagi insists:

The picture is clear. We found no instances of typical toleration or even an approach close to toleration in halakhic tradition. We did not find attitudes of negation and contempt for rejected options and no one claimed them to be reprehensible deviations. Supporters of the accepted view were not required to practice self-restraint and refrain from action against the rejected option. We did find, however, several versions of weak and strong pluralism.²⁵

Pluralist views of the halakha struggle against the dogmatic limits of the system. Yet Sagi and Fisch share a conviction that the halakha seeks to determine the intent behind revelation—whether the "original" or the "current" intent—definitively. In other words, even for liberal pluralists in the halakhic tradition, a rejection of its authenticity and authority is unformulable. While it is clear to anyone opening almost any rabbinic text that it speaks multivocally, it is equally clear that freedom of interpretation is also self-avowedly limited. The halakhic system insists that legal precedents, once they are set—once they are established as complying with a divine command—should be extremely difficult to overturn. Pluralists agree with monists that the integrity of halakhic discourse is protected by belief that it surrounds an intractable core. Reinterpretation cannot penetrate it, and rabbinic injunction must be relied upon to defend it. But how the substance of this core is determined and how, in practice, the boundaries of legitimate dispute are drawn is not at all clear. Sagi is evasive about this question: though he recognizes that "the rabbis are aware of the potential limits concerning legitimate halakhic options," a precise characterization of these "bounds" is placed outside the confines of his "open canon."²⁶ Sagi's is no small omission. Determining the limits of halakhic pluralism is crucial in any attempt to model modern Jewish society on halakhic precedent. As long as the limits are unstated and undertheorized, the risk is run that the bounds of legitimate discourse will follow problematic or frivolous considerations. The dangers involved emerge with special force in the talmudic passage, already quoted in part, about the

24. Sagi, *Open Canon*, 210.

25. Sagi, *Open Canon*, 210.

26. Sagi, *Open Canon*, 88.

dispute between Rabbi Eliezer and Rabbi Yehoshua over the ritual purity of “Akhnai’s oven.”

This very famous narrative appears in the midst of a wider discussion about *ona’at devarim* (harmful or deceitful speech). When considered in that context, the narrative should be read, I believe, as a warning against the contamination of halakha by the irresponsibly extreme and frivolous positions that tend to emerge when combatants face each other. According to this reading, neither the conduct of Rabbi Eliezer nor that of Rabbi Yehoshua represents a talmudic ideal. Rabbi Eliezer performs miracles to prove that the halakhic position he is arguing for is God’s own, but his resorting to miracle disqualifies him as the hero of the story.²⁷ To the talmudic way of thinking, the Torah “is not in heaven” once Moses brings it down from his meeting with God—and the law passes from Moses’ hands to those of human beings: teachers trained in the oral tradition that begins with him. Rabbi Eliezer would never have resorted to working miracles had he not been provoked “in combat.” But his colleagues’ conduct is no better. Rabbi Eliezer’s attempts to make his case with rational arguments are simply brushed aside. He is said, indeed, to have rallied “every imaginable rational argument in the world,” while the rabbis “did not accept them from him.”²⁸ We may assume, I think, that “from him” means that the rabbis dismissed his arguments *ad hominem*. At this point in the proceedings, the debate spirals out of control. Rabbi Eliezer threatens to destroy food and water supplies by supernatural means, and the rabbis join ranks to oppose him. It seems anachronistic (and evidence of wishful thinking) to read the rabbis’ commitment here to majority rule as a harbinger of modern liberal democracy. It might be equally anachronistic, but more to the point, if we understand the rabbis’ conduct in terms of what Mill called “the tyranny of the majority.”²⁹

As the struggle reaches its climax, Rabbi Eliezer tears open the heavens to invoke direct intervention. A heavenly voice is heard, and it vindicates his position. This is a brief moment of triumph for Rabbi Eliezer, but not one for God. Immediately after the Talmud completes its account of Rabbi Yehoshua’s infamous reaction to the heavenly voice, a short story is told of a meeting between Rabbi Nathan and Elijah the prophet. As I understand Elijah’s report, God

27. Talmud Bavli *Baba Metzia* 59b. In the first of Rabbi Eliezer’s miracles, a carob tree is uprooted, which represents a threat to life since, elsewhere in talmudic lore (Talmud Bavli *Shabbat* 33b), the carob is a symbol of sustenance. In the second miracle, water flows upstream, thereby destroying the most crucial resource for agriculture and civilization. In the third miracle, Rabbi Yehoshua intervenes to prevent lethal damage from occurring, but the walls of the *beit midrash* are brought down on the scholars within.

28. The phrase *Lo kiblu heymano* (they did not accept from him) clearly suggests that it was the man who was being rejected—*ad hominem*—and not the substance of his arguments.

29. John Stuart Mill, *On Liberty and Other Essays* (1859; New York: Oxford University Press, 1991), chap. 1.

watched the dispute between Rabbi Eliezer and his colleagues deteriorate; then, smiling wryly, God said, “My sons have defeated me.”³⁰ However wry the smile, the story describes the defeat of God and not (as is sometimes said) his acquiescence. For the story does not end here. The Talmud relates how Rabbi Yehoshua and his disciples issued a ban, an anathema, on Rabbi Eliezer, and reversed all of his previous rulings on matters of ritual purity. Vessels whose purity he had authorized were publicly shattered along with Rabbi Eliezer’s scholarly reputation. The ban was a devastating blow to him. When Rabbi Akiva informed him of it, “tears streamed from his eyes and . . . the world was then smitten.” Like the humiliation of God that precedes it, the destruction of the crops suggests the cosmological import of the clash. This is the calamity about which Moses had warned the people of Israel—a time when “the Lord’s anger [will] be inflamed against you, and he shut up the heavens that there be no rain, and that the land yield not its fruit” (Deut. 11:17).

In the terms that Fisch proposes, Rabbi Yehoshua’s position is antitraditionalist: the law is “not in heaven” anymore. This passage is often read by halakhic pluralists as emblematically humanistic and liberal. My purpose here is less to disagree than to draw attention to the ways in which this story treats the notorious incapacity of pluralists to confront their adversaries. Pluralism makes room for multiple, varied, and conflicting points of view, but it lacks the capacity to abide anyone who does not accept its rules of engagement. Even at this late date, pluralism has quite limited resources for dealing with those—including God—whose dissent is understood as a threat to the autonomy of pluralist discourse. The conflict between Rabbi Eliezer and Rabbi Yehoshua demonstrates how easily a religious humanist may become violent when confronted with a religious fundamentalist. The narrative suggests how inadequate humanism, liberalism, and pluralism are to the task of making peace with unvanquished enemies. The story illustrates how dangerous taking comfort in numbers can be. And finally, the conflict, as the Talmud relates it, intimates how easily the façade of open-minded civility can melt away when the limits of its patience are tested seriously.

Clarity and Entanglement

I have spent most of my adult life identifying with a liberal approach to Orthodox Judaism, believing that liberalism might help contain the violence that religious law can produce when mixed with political or institutional power. Then I

30. God’s acceptance of this defeat is conventionally taken as an expression of his approval of Rabbi Yehoshua’s position. I want to propose this alternative on the grounds that the need for God’s approval undermines the whole point of the story. Ultimately, Rabbi Yehoshua’s claim that the

law can be wielded without divine intervention is enough to allow the story to end with his emphatic statement that the law is not in heaven.

observed how furious my disdain was at the protests of the religious Right against the Oslo process and the disengagement from Gaza. I was disturbed by my own incapacity to “make peace” and accept the beliefs of “others,” even when the vast majority of those others were members of the “religious camp” of which I too was, ostensibly, a member. Against the backdrop of these realizations, the fantasy that peaceful bridges can be built on a liberal middle ground that spreads between Israel and its enemies seemed to me less and less thinkable. What peace requires, it seems to me now, is a powerless openness and acceptance that liberal politics is too judgmental to supply. Peace seems to require an intensification (rather than a dilution) of religious commitment and, moreover, a commitment to the sanctity of the land as passionate as that of the settlers. But these commitments need separating from—redefining without reference to—absolutes of truth and justice presumed universal only by their adherents. One might hope, or even expect, to find humility in response to the mysteries of transcendence, but it is certainty that is more usually found.

The capacity of religious liberalism to preclude religious tyranny is limited by the understanding of revelation that liberals share with fundamentalists.³¹ Religious liberalism presupposes, as much as fundamentalism does, that the word of God is explicit—exoterically accessible to human understanding. Once that assumption is disrupted, it becomes much harder to demand obedience to rabbinic injunctions made in God’s name. The liberal strategy admittedly diversifies the idea of truth and softens the encounter with rabbinic authority, but it leaves the faithless epistemology of fundamentalism in tact. Faith is not required where certain knowledge has been or can be obtained and then expressed with univocal clarity. In the absence of certainty, faith experiences revelation as paradoxical and figural, pressing hard against the limitations and inadequacies of language, bound to fail and to conceal as much as it reveals. The complex and disorienting combination of apparently exoteric divine speech with the untransmissible experience of God that is found in prophetic literature ought to disarm the violent potential of prophecy. The unintelligibility of prophetic language undercuts its declarative force yet without rendering its pronouncements meaningless. Rabbinic literature, which often represents itself as superior to and at the opposite pole from prophecy, is similarly self-conscious and ambivalent in its language.³² The explicitness

31. Theories of revelation are, I think, crucial to any understanding of rabbinic interpretation. In his critique of the monist view of halakha, Sagi points to the maximalist theory of revelation that monism must presuppose: “Monism is presumably forced to assume a maximalist theory of revelation whereby the Torah given at Sinai includes, at least implicitly, the entire range of rulings appropriate to every situation. This theory of revelation appears to be the basic assumption of views supporting unconditioned objectivity . . . since all assume that, in

every state of affairs, only one halakhic decision is unconditionally right—the decision resting on revelation” (Sagi, *Open Canon*, 60). I here apply this criticism to the metaphysical idea of truth that even the most pluralistic attitudes toward halakha share with fundamentalism.

32. See, for a classic instance of this distinction, Talmud Bavli *Baba Batra* 12a–b: “Rabbi Avdimi of Haifa said: Since the day the Temple was destroyed, prophecy was lost to the prophets and given to the *hakhamim*. But

of prophetic language is only one axis in a paradox—and the same may be said about the metaphor of explicit law. For the explicitness of halakha is but a figure of rabbinic discourse. The figure of explicit law meets up frequently with an impulse to expose the limitations of halakha and undermine its authority.

Heschel describes this interplay as one between *halakha* and *agada*, and he argues that it is a main characteristic of rabbinic procedure.³³ *Agada* is more readily shown and analyzed than defined, but it is important to observe when reading agadic passages in the Talmud that *agada* is not the opposite, though perhaps it is the verso, of halakhic reasoning. In any case, agadic reasoning is often found connected with a point of law or with remarks on the philosophy of law—as in the following passage:

R. Aha bar Hanina said: It is revealed and known before Him, Who spoke and the world came into being, that there was none in the generation of R. Meir like him; why then did they not fix the Halakha according to his view? Because his colleagues could never fathom the depths of his reasoning. For he would assert that something unclean was clean and make it seem plausible, and he would assert that something clean was unclean and make it seem plausible. A Boraitha taught: his name was not actually R. Meir, rather Nehorai was his name. Why then was he called Meir? Because he made the eyes of the sages shine in the law. And similarly, Nehorai was not his name, rather R. Nehemiah, and others say R. Eliezer ben Arach. Then why was he called Nehorai? Because he lit up the eyes of the sages in the Law. (Talmud Bavli *Eruvin* 13b)

This passage is agadic but reflects upon methods of legal deliberation. Rabbi Aha begins by equating the general appreciation of Rabbi Meir's brilliance as a halakhic scholar with what is revealed before—or known to—God. "What God knows" can connote "common knowledge" in the Talmud, and the notion is especially significant in this context. Rabbi Aha seems to draw Rabbi Meir's genius into the open. Yet the phrase "what is known to God" simultaneously draws common knowledge into the realm of mystery. What God knows is really a secret. As Caputo puts the point: "'God knows what's going on!' we say with exasperation, by which we mean, 'who knows?' It's a secret!"³⁴

This irony leads tellingly to a curious account of Rabbi Meir's teachings. Rabbi Aha says that Rabbi Meir's teachings cannot be understood. Rabbi

are the *bakhamim* not themselves prophets? He means to say: Although prophecy was lost to the prophets, it was not lost to the *bakhamim*. Amemar added: Indeed, a *bakham* is superior to a prophet." This translation is taken from *Authority*, vol. 1 of *The Jewish Political Tradition*, ed. Michael Walzer, Menachem Lorberbaum, Noam Zohar, and Yair Lorberbaum (New Haven, CT: Yale University Press, 2000), 258.

33. A. J. Heschel, *God in Search of Man: A Philosophy of Judaism* (New York: Farrar, Straus, and Giroux, 1955), 336.

34. Caputo, *Prayers and Tears*, 220.

Meir is like none other in his generation: so much is obvious. But what Rabbi Meir teaches is a mystery and is appreciated only *as* a mystery. The brilliance of his study is known *because* no one understands it. His supportive articulation of conflicting legal premises could generate paradoxical combinations beyond the comprehension of his rabbinic colleagues, and it is these that they associate with the word of God. Rabbi Meir's insoluble puzzles—simultaneously concealing and revealing, explaining and deconstructing, the law until it can no longer be contained in a human mind—attests that they are divine. The paradox of simultaneous clarification (or revelation) and contradiction (or concealment) that wins Rabbi Aha's admiration is the organizing theme for the rest of this passage. Two names offered for Rabbi Meir—Meir and Nehorai—both mean “light.” But the unexplained and uncalled-for question about Rabbi Meir's *real* name suggests that something about him is a mystery. The Talmud continues with a mention of Symniachos, “who could give forty-eight reasons for the cleanness of unclean things and then the same number of reasons for the uncleanness of clean things.”³⁵ Though this description does not go into detail, it clearly refers to Symniachos' capacity in the rational and exoteric interpretation of the law. However, within the context of rational, which is to say conventional, legal discussion, Symniachos constructs contradictory and paradoxical arguments that presumably impede arrival at a halakhic ruling. Again, as with Rabbi Meir, it is this puzzling outcome that the rabbis revere. This passage as a whole seems to pit a *general* appreciation of explicit legal clarity against a *specific* approbation of those who confuse, complicate, entangle, and ultimately undermine the practical application of the law. The passage suggests that legal argumentation attains to sublimity and transcendence when rational interpretive techniques are used to hinder halakhic implementation.

It is in this context that the Talmud describes the sounding of a heavenly voice, saying of the greatest of all halakhic disputes: “These and these”—the two together, in their contradictory relationship—“are the words of the living God.”

Irrational Rabbis

The rabbis of the Talmud were not, however, the inventors of paradox in the Jewish tradition. The law itself, as it was passed to them (so the Mishna says) by the prophets, was then and remains now unfathomable, confounding, and self-contradictory. This inheritance from the Torah is perhaps best exemplified by the *chukim* (usually translated as “statutes”). *Chukim* are laws that, quite simply, cannot be understood but are nonetheless binding commandments. The laws that forbid *shatnez* (mixing linen and wool in the same garment) and *kilayim* (inter-

35. Talmud Bavli *Erubin* 13b.

breeding plants or animals) are called *chukim* by the Torah. Likewise the laws regarding *kasbrut* (permitted and forbidden foods) and the *para aduma* (the red heifer whose ashes bring ritual purity) are called *chukim*. There are any number of explanations possible for these statutes. Still, the rabbis insist that *chukim* are incomprehensible not because they are unexplained in the Torah but because, even after deep exploration of them, they remain inexplicable. The *chukim* are said to be paradoxical, self-contradictory, and unreasonable:

This is what the Torah states: Who will bring pure from impure, not one (Job 14:4). Like Abraham who was born of Terach, Chizkiah from Achaz, Yoshiah from Amon, Mordechai from Shim'i, Israel from idolaters, the world-to-come from this world. Who has done this? Who commanded this? Who ordered this? Is this not the work of the Only One? A spot on a man's skin is impure. If the rash spreads to his entire body, he is pure. Who has done this? Who commanded this? Who ordered this? Is this not the work of the Only One? A woman whose child dies in her womb, if the midwife reaches in and touches the body, she becomes impure for seven days while the mother is pure until the dead baby is delivered. If a man dies in a house the house is pure, when his body is removed it becomes impure. Who has done this? Who commanded this? Who ordered this? Is this not the work of the Only One? It was taught: Those who are occupied with the red heifer from beginning to end make their clothes unclean. It itself [contrarily] purifies defiled garments. God said: I set a statute, I decreed a decree, and you cannot transgress my decree. (Midrash *Bemidbar Rabba* 19:1 — my translation)

Each of the statutes described in this midrash involves a paradox. The red heifer both purifies and defiles. The impure mark of gonorrhea is purified by the spread of the disease. A dead body—the ultimate source of ritual impurity—defiles the house or womb in which it is held, but only after it has been removed. Despite the statement about obedience that brings this passage to its conclusion, the overall effect is to call attention to the paradoxical (which is not to say erratic) nature of divine commandment. One is not, through the *chukim*, brought to unthinking obedience of a kind compatible with arrogance or even pride. One is brought to a kind of obedience attendant upon wonder and awe. One is brought down—from whatever intellectual or social height—to humility. The deeper the explicator digs into a statute such as that of the red heifer, the more completely are his intellect and ingenuity humbled. As he considers how purity originates in the impure, how Israel originated in idolatry, he is exposed to divine transcendence of human limits, expectations, common sense, and categories.

The marvel, the spectacle, of the *chukim* is evoked in the following prayer, which was recited in medieval synagogues before public reading of Numbers 19:

We cannot speak of the force of your wonder; we cannot articulate the depths of your laws; we cannot fathom the logic of your actions; we cannot decipher the depths of your mysteries; we cannot explain your hidden qualities; we cannot explore the secrets of your riddles; we cannot fully praise your glory and we cannot reveal the secret of your testimony. What seems explicit is contradictory; what is revealed is concealed; what is explained is obscure . . . what is omitted is superfluous, what is forbidden is permitted; what seems black is white . . . what seems flexible is stringent . . . from the prohibition of eating lard we learn that we may eat the fat of the heart, from [the prohibition of drinking] blood we learn that we may eat the blood in the spleen. From meat comes milk, from the forbidden mixture of wool and linen in clothes we make *tzitzit*; levirate marriages are made between a man and his brother's wife . . . from the impurity of menstrual blood we learn that the blood of a virgin is pure, from what is permitted we learn what is forbidden and from what is forbidden we learn what is permitted, from what is impure we learn purity and from what is pure we learn impurity. . . . So we cannot understand the secrets of your Torah, distill clarity from the enigma of your sayings . . . and therefore we must observe the mystery of your Torah . . . and we cannot question the reasons for your laws for they were given thus in a kiss and all the wise will appreciate this.³⁶

This hymn is a product of the effort to make sense of the *chukim*. The outcome of the effort is admittedly not understanding. The outcome is an experience that attaches theological meaning to the rationalistic study of law, and mysticism to mystification.

The tying of legal scholarship to mystical theology is examined directly in the following passage from the Maharal of Prague (Rabbi Judah Loew ben Bezalel, 1525–1609). The passage concerns disputes that, the Talmud maintains, continue or “prevail” because they are conducted “for God’s sake”:

A dispute for God’s sake prevails even when it involves opposites because He, may He be exalted and blessed, unites the two opposites. Although they are divided and opposed from God’s perspective they are nevertheless united since God, who is one, is the cause of both opposites. As the cause of both opposites, He himself is unity because otherwise He would be the cause of only one of them. As if you were to say that He is the cause of fire and were to assume, God forbid, another cause for the opposite of fire, which is water. . . . Hence the controversy, which is for the sake of God: although the dispute is between intrinsic opposites

36. This prayer, here in my translation, is attributed to Rabbi Elazar Hakalir (sixth/seventh centuries). It was recited in medieval Ashkenazi Jewish communities on the Sabbath of “Parah” which falls immediately after the fes-

tival of Purim. On this Sabbath, the passage from Num. 19 dealing with the laws of the red heifer is read in the synagogue service.

that cannot coexist, for God, who is the cause of these opposites, both are one . . . because God is one and both are affected by the divine will as He wishes, may He be blessed.³⁷

According to Sagi, the virtue of the Maharal's approach is its ability to contain humanly generated variety in a structure of monotheistic unity. Sagi criticizes this and other such "harmonistic" approaches, however, because understanding various halakhic positions as "united and no longer in conflict is easy . . . while engaged in study, but poses a much harder challenge at the performative level."³⁸ In other words, the Maharal can account for rabbinic discussion and dispute but not for *pesika*—the halakhic ruling that emerges authoritatively from the process. Living in an increasingly diverse Jewish society, what Sagi wants is a definition of *truth* that is useful for mediating difference and dissent.

The Maharal, who lived in (to say the least) a different historical climate, had a different primary concern: maintaining the connection of Jewish law to its divine source. The intricacy of the law attests to its divine origin because its unity, like God's, is a mystery. The halakhic project, as the Maharal understood it, is to protect the law's connection to divinity by obstructing development of any legal transparency suggesting that the will of God is single, obvious, or fully explicable. Hence the intellect of the rabbis is put to virtuosic use in creating conundrums and irresolvable paradoxes that engender a combination of revelation and concealment like that found in the biblical genre of prophecy. Whereas we tend to think of the rabbis as engaged in explicating the meaning of prophetic texts in the most precise legal terms, it is more apt to think of them as duplicating and even intensifying the esoteric complexity of the prophets.³⁹ The Maharal is not alone in suggesting that the prophetic insights obtained through rabbinic hermeneutics are the main justification for the entire halakhic project.⁴⁰ In any

37. Judah Loew ben Bezalel, *Derekh Hayyim* (Jerusalem, 1971), 258–59, cited and translated in Sagi, *Open Canon*, 115.

38. Sagi, *Open Canon*, 124.

39. For examples of rabbinic proclamations about the prophetic status of scholarship, see the rabbinic sources collected under the subtitle "Beyond Prophecy" in *Jewish Political Tradition*, 257–63.

40. The most striking example appears in Talmud Bavli *Gittin* 56 a–b, where the founder of the Yavne academy, Rabbi Yohanan ben Zakkai, is caught in the Roman siege of Jerusalem. He makes a remarkable decision to give up on Jerusalem and make peace with the Romans. Symbolically, he exits the city in a coffin, suggesting that there is no living future for the Judaism of the Temple, and then

he offers a life of legal study and prayer as its replacement. The Judaism of the Temple symbolically dies and a new Judaism is born outside the city walls. When Rabbi Yohanan reaches the Roman encampment, he greets General Vespasian as if he were Caesar. For this impertinence, Vespasian tells him he must forfeit his life. Rabbi Yohanan responds by insisting that Vespasian must be Caesar since only an emperor could conquer Jerusalem. As Vespasian declares his death sentence, a messenger arrives proclaiming the death of Caesar in Rome and announcing Vespasian's ascent to the throne. The significance of this passage to our discussion lies in the hermeneutic or midrashic technique with which Rabbi Yohanan "divined" the future from an allegorical cross-referencing of biblical passages. His *rabbinic* reading is portrayed as *prophetic*. By confounding the independent or semantic independence and coherence of three distinctive and independent biblical

case, it should be uncontroversial to conclude that, in practice, the manipulation of logic and language in halakhic argument can easily confound expectations that scholarship can arrive at univocal truths and permanently valid legislation. Rabbinic hermeneutics is disarming, and it ought to disarm every form of certainty and zealotry. You can hardly regard yourself as an executor of the divine will if its expression on parchment appears to slide, slip, and deconstruct every time that you freshly study it under even the most rigorously orthodox guidance.

Humility and Scholarship

Contemporary concern with the “truth-claims” of halakha reflects an academic obsession with the truth-claims of scholarship. But truth is not intrinsic to the halakhic enterprise. Even imaginary, or if you like visionary, experience is closer to it: Eleazar ben Arakh, as he studied Torah, saw trees open their mouths and sing. While Torah study is indeed where religious beliefs, laws, and practices are best tested, then rejected or affirmed, the outcome should not be confused with truth. The student of Torah commentary stumbles inevitably on difficulties, incongruities, and paradoxes that are inexpressible as catechistic formulas; and the Talmud appeals to the humility of halakhic interpreters, rather than to the truth of their opinions, when accepting or rejecting their rulings. The explanation given in Talmud Bavli *Eruvin* 13b for preferring the halakhic opinions of Hillel over those of Shammai is that the disciples of Hillel were humbler: “Because of what reason did Bet Hillel merit to fix the Halakha according to their view? Because they were easy and forbearing.” When all other things—all the truth-claims—seemed equal, the rabbis broke the stalemate by turning to an apparently extraneous consideration.

On the other hand, humility can be understood as intrinsic to knowledge of the law:

It has been taught: R. Jose said: Originally there were not many disputes in Israel, but one *Beth din* of seventy-one members sat in the Hall of Hewn Stones, and two courts of twenty-three sat, one at the entrance of the Temple Mount and one at the door of the [Temple] court[yard], and other courts of twenty-three sat in all Jewish cities. . . . But since the disciples of Shammai and Hillel who had not adequately served their masters increased in number, quarrels were increased in Israel, and it seemed as if the law came from two different lawgivers. From the court of the Great Sanhedrin they used to write and send to all the cities of

passages, Rabbi Yohanan gains prophetic insight into the political circumstances. At this juncture, Caesar grants him a request. Instead of asking to save Jerusalem, Rabbi Yohanan asks permission to found the academy of Yavne.

This symbolic moment is among the rabbinic project’s most significant “foundation myths.”

Israel: Whosoever is wise, modest, and is liked in the eyes of his people may be a judge in his own city. And thereafter, if he deserved it, he was advanced to the court at the gate of the Temple Mount; and farther on, until he reached to be a member in the court of the Temple treasury. A message was sent from Palestine: Who is the man who has surely a share in the world to come? He who is modest, bends his head when he goes in, and the same when he goes out; is always studying the Torah, and does not become proud thereof. And the rabbis gave their attention to R. Ula b. Abba [who possessed all of these qualifications]. (Talmud Bavli *Sanhedrin* 88b)

The idea that there was once a single revealed law is expressed by the use of the word “originally” as the passage opens. This word establishes the presence of a mythical past internal to the time frame of the text. As we move into real time, the task at hand—or so it would seem—is the faithful preservation of that law, its reconstruction where possible, and its application. The text describes the students of Hillel and Shammai who failed in this task. They failed because they did not serve their masters adequately. This is a complaint that—though open to multiple interpretations—suggests connections among inattention, ignorance, and arrogance. The results were quarreling and confusion.

Despite an apparent concern for the loss of the Ur-law, it seems to be of little interest in the discussion that follows. Instead, a new typology of judges is offered, one in which humility is presented as a path to heavenly reward. Not just the Ur-law but legal erudition and legal reasoning altogether seem shadowy in comparison with this new ideal. Scholars who bow their heads, resist self-congratulation, and engage constantly in the study of Torah are favored. Men of humility such as Ula ben Abba are appealed to when there is conflict among legal scholars. Nothing is said of his knowledge, ingenuity, or genius. His rulings are never put to the test in any terms that could be deemed epistemological. No heavenly voice is heard to vindicate him. Instead, Ula and others like him are evaluated in what must be called soteriological language: “Who is the man who has surely a share in the world to come? He who is modest.”

Legal Fiction

Humility can be intrinsic to the law itself and not merely to its interpretation. I am not a legal philosopher, and I do not want to make broad claims in the context of that field. I want only to make a point confined to legal systems (such as those of religions in modern societies) whose participants have committed themselves voluntarily to protect and preserve a tradition that they could equally choose to abandon. A legal system of this kind is naturally judged on more (or other) than its practicability, since its capacity to regulate life and command authority depends

on prior acceptance of its purpose, rather than on law enforcement. The purpose of the law—or its “spirit,” as a Christian may prefer to put this—transcends the mechanisms by which it demands obedience, and it is the purpose or spirit to which compliance is actually forthcoming. The spirit of the law is inviolate even when the law itself is being bent. It is the assumption that a law stands only when its spirit is in tact that allows us to forgive the law its imperfections. When the letter of the law is exploited, our compliance is disturbed, and it is then that all kinds of incongruities planted and nurtured over years of changing tradition begin to jut out as eyesores. The goodwill that offers hospitality to legal fossils, remnants, relics, and vestiges dissipates; and thereafter, the law is effective only when those who uphold it know how to smile at its ironies and play with them. A legal system that makes allowances for play lifts a significant bulk of its own weight from the shoulders of its adherents. They comply with its semblance of authority in the way that a theater audience suspends disbelief voluntarily. Once the credibility of a performance has been established, a spectator no longer needs to think that he or she is just playing along when a soliloquy, acted well, elicits a tear.

Jewish legal tradition is remarkable for the extent of its conscious reliance on winks and nods. It is hard to imagine a tradition more dependent on legal fiction. The *American Law Encyclopedia* defines a legal fiction as “an assumption that something occurred or someone or something exists which, in fact, is not the case, but that is made in the law to enable a court to equitably resolve a matter before it.”⁴¹ The Hebrew word that is generally translated as “legal fiction” is *ba’arama*, which actually connotes something less dignified. *Ha’arama* suggests deceitful tomfoolery. The law, as it were, deceives itself—consciously turns a blind eye on its own shenanigans.⁴² Legal fictions in this key or tonality make loans on interest between Jews possible, allow certain uses of domestic electricity during Sabbath, permit the carrying of objects on Sabbath in public, weaken the injunction against the possession of leaven on Passover, allow one person to lend his *lulav* to another on Sukkot, annul marriages, rescind gifts—the list is, from the perspective of a law professor, staggeringly extensive.⁴³ The most famous classical example of *ba’arama* is probably Hillel’s *pruzbul*—a legal trick that resuscitated the practicability of financial loans by removing the threat of their being annulled during the *shmita* year.⁴⁴ My point is not just that tricks of this kind are

41. *American Law Encyclopedia*, vol. 6, law.jrank.org/pages/8149/Legal-Fiction.html (accessed September 14, 2008).

42. For fuller discussions of *ba’arama*, see Uri Desberg, “Ha’arama b’dinei torah uvetakanot chazal,” *Shana beShana* (1992): 215–18; Shmuel Shiloh, “Ha’arama B’Talmud,” *Shnaton Hamishpat Haivri* 8 (1991): 309–55; Christine Hayes, “Authority and Anxiety in the Talmuds: From

Legal Fiction to Legal Fact,” in *Jewish Religious Leadership: Image and Reality*, ed. Jack Wertheimer (New York: Jewish Theological Seminary Press, 2004).

43. Here *ba’aramah* is necessary to bypass the requirement to *purchase* a palm branch (*lulav*) on the festival of Succot.

44. *Shmita* is the seventh, fallow year in which all financial loans are automatically annulled by biblical injunction (Num. 25).

numerous but also, and more importantly, that they are well known and very widely used by the general public. They are in no way arcane mechanisms of the legal profession.

In a concise “bird’s-eye view” of talmudic legal theory, Moshe Zilberg, who was vice-president of the Israel Supreme Court from 1965 to 1970, dedicated a full chapter to *ba’arama*, which he understood in relation to the rabbinic idea that “the Lord [too] is a litigant.”⁴⁵ This idea, Zilberg assessed as the essential innovation of halakha, as compared with other legal systems. Halakhic discourse, he tried to show, employs the same legal categories to analyze obligations and transgressions in matters of religious ritual and prayer that it employs to determine guilt or responsibility in cases of civil damages. One result of this peculiarity is that the Talmud can make for dull—oppressive and insipid—reading when it discusses prayer; another result is that its handling of the technicalities of civil and criminal law can seem incongruously maudlin or bizarrely transcendental in tone. The key point, however, is that the Talmud, at some cost to its dignity, does what it takes to merge the spirit and letter of the law. The most technical aspects of civil litigation are oriented toward God, while the weight of the divine in matters of dogma is significantly lifted. This buoyant feature of Jewish law is brought into public view by the convention of *ba’arama*.

Ha’arama is distinctive, Zilberg noted, because its purpose is not simply “to enable a court to equitably resolve a matter before it.” *Ha’arama* is not a means of discretely bypassing the law or of utilizing a specific loophole. The direct object of the deceit is law itself. *Ha’arama* is so normative in Jewish law as to be characteristic of it, suggesting that the halakha is law without Law.⁴⁶ A proud legal system would not tolerate such outrages; the halakha encourages them. An entire tractate of Talmud Bavli (*Eruvin*) is dedicated to bypassing certain prohibitions pertaining to the Sabbath. The law of the Sabbath and its loopholes stand side by side—on equal footing—on the classical bookshelf of Judaism. The existence of *ba’arama* in such quantity and in public view attests to the imperfections of the law itself. Thus, the Jewish version of legal fiction is not based upon the ingenuity of the litigator but upon the inadequacy of the law, whose pretense at formalizing religion and rendering its most spiritual facets legalistic must be understood as a metaphor.

The self-conscious metaphorization of the law supplements and undercuts legal authority with irony and humor. Through the humility of the law about the law, the law points away from itself toward an incomprehensible transcendent mystery that is supposed—somehow, someday, “next year in Jerusalem”—

45. Moshe Zilberg, *Kach Darko Shel Talmud (Principia Talmudica)* [in Hebrew] (Jerusalem: Faculty of Law, Hebrew University, 1984), esp. 26–44.

46. This formulation echoes Derrida’s notion of “religion without religion” or “messianism without messianism,” suggesting the idea that specific concepts can exist without belonging to general or universal categories. For a fuller discussion, see Caputo, *Prayers and Tears*, 117–60.

to make sense of it all.⁴⁷ As scholars have made clear over the past several decades, the halakha is not held in place by a metaphysical superstructure. It is holy (“the word of God”) only insofar as it asks our forgiveness for its imperfections and its decided lack of majesty. The law thus reminds us that it is not God. It is a signpost or a clue with which we engage as part of our search for where he is hiding. This mechanism, by which the law exposes itself, allows the law to sanctify the mundane. It is also crucial to the limitless tolerance of the other—in this context, *le tout autre*—that is the law’s interface with both theology and peace. The halakha continues to exist, I suppose, after all this time, because it has made peace with God. And if it can make peace with him, it can make peace *with anyone*.

Epilogue and Practicum

I am told that, once upon a time, not so many years ago, an Oxford undergraduate raised a hand during finals to demand a keg of beer and a wedge of cheese from the university invigilator. When denied his refreshment, the student produced a copy of the *Statutes and Ordinances of the University of Oxford*. The letter of the relevant statute (set down in the seventeenth century) was unambiguous: an examinee was entitled to have refreshments brought on demand from a local inn to the Examination Schools. The invigilator was left with no choice but to comply. The beer and cheese were served at university expense, and the undergraduate believed the last laugh had been his. Several weeks later (after examination results had been posted), the undergraduate was called to a university office, where he was fined for turning up to finals *without his sword*.

The student, in this story, had failed to distinguish between the *application* of a law and its *exploitation*. When the letter of the law is exploited, justice is never done. But in the case at hand—which I presume is fictional—it was not because the university was reimbursed for the beer and cheese that justice may be said to have been done. The perception of justice done depended on a countermeasure, drawn from resources that traditions with long histories all possess, that brought observance of the statutes back to their status quo ante. If the examinee’s exploitation of a statutory vestige had been met by the university with enforcement of a regulation any less quaint, the countermeasure would not have accomplished its task. More to the point, it would not have been funny. To the indirectness of approach and the wry insouciant tone may be attributed the main accomplishment of the university officials, which was a voluntary return to a functional, though admittedly imperfect, legal order. No claim was made

47. Zilberg, *Kach Darko*, 40. See note 60 where Zilberg argues that the notion of *ba’arama* might account for the rabbinic statement, “every ordinance of the rabbis is like a law from the Torah.”

by any university official that Oxonian halakha was or had ever been coherent, right, and true.

The application of this model for problem solving or prevention takes ingenuity, erudition, and an appreciation for legal fiction. I have no doubt that there are rabbinic scholars in Israel—colleagues of the chief rabbi of Safed—who with a quotation and brief homily could undercut his call for “Revenge! Revenge! Revenge!” I have more doubt, but not much more, that within the diplomatic corps of Israel, the Palestinian Authority, and the United States of America could have been found, in the summer of 2000, someone to formulate an untoward but workable status, in international law, for the half block of paved road from Zion Gate through the Armenian Quarter to the Jewish Quarter of Jerusalem. I hesitate to say likewise for the hillock known as Temple Mount by Jews and as the Noble Sanctuary by Muslims. But as it is ingenuity, irrationality, and a frankly ugly legal fiction that got us all into trouble there to begin with, perhaps one day the same combination can get us out. Reconsider the *akeda* in this context, and you may wonder if *ha’arama* was a rabbinic, rather than divine, invention. You may wonder also in what tone to hear the protagonists of the *akeda* (Abraham, Isaac, the angel, and God) speaking their respective lines. Why is it an angel’s voice that halts the sacrifice, rather than the voice of God that set it in motion? Why does Abraham offer up the ram that is so fortuitously trapped, on Mount Moriah, by its horns? What vestige of whose law is being undercut in what tonality by which substitute or by what legal fiction?

Though the halakha clearly functions as the religious law observed by practicing Jews—for which purpose it is in constant search of strict and clear specifying legislation—even its most explicit legal impulses and demands remain open-ended. The halakhic voice says “take that life,” but then another voice, equally halakhic and divine in origin, says “you are forbidden to take it.” In the face of biblical, prophetic, and divine multivocality, the codifying instinct of the rabbis can only contribute to construction of a web of rulings that interchange and interrelate without resolving themselves into final and enforceable legal statements. As a result, the halakha is able to pass for religious law, while actually it is a religious *practice*, one whose tendency, because the halakha lies beyond the control of those who seem to master it, is to rule variously and gently. Defying system, consistency, and often logic, it thrives beyond their capacity to interpret it, pin it down, and legislate accordingly. Within the intricate web—the thicket—of halakha is every resource, I am confident, required for the “religious camp,” which now stands implacably against any move from the Left toward peace, to become the irenic engine of Israeli politics. The famous words of Talmud Bavli *Berachot* 64a, “the teachings of the sages spread peace throughout the world,” may have been uttered ironically or even humorously by Rabbi Hanina—but the difference between irony and what Israelis call “facts on the ground” is not one with much traction in the Holy Land.