

# LEHRHAUS

OVER  
SHABBOS  
HAYEI SARAH  
5779

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# NO LAW IN HEAVEN

MOSHE KOPPEL

The story is told of a well-known professor of Jewish Studies who, when asked if he had read a certain book written by a colleague, answered, “Read it? I haven’t even reviewed it!” So, for the purpose of full disclosure, I confess that I’m biased with regard to Chaim Saiman’s [book on Halakhah](#) because I’ve read it (or at least most of it – obsessiveness is no virtue). To cut straight to the bottom line, I like it, even a lot. I like it not because it has lots of clever ideas (it does) or because it is well-written with lots of illuminating examples (it is), but for a different reason altogether, having to do with its implicit purposes.

Here’s what I regard as its primary purpose: it is an attempt to explain to non-experts, even non-Jews, who have some understanding of legal systems and some respect for religion (for specificity, I’ll call this reader Robbie George), what Halakhah is all about and how it’s different from the kind of legal systems they’re used to. Saiman does a fine job of this – I’ll dig in a bit below – but that isn’t the main reason this book is satisfying.

What makes this book unique is that almost everybody who has ever tried this, or similar tasks, has yielded to one of two temptations. The first is the temptation to apologetics in which every one of Halakhah’s idiosyncrasies, in comparison to the material someone like Robbie George is accustomed to, is burdened with profound meaning that demonstrates Halakhah’s superiority. The second is the temptation to reverse apologetics in which the writer distances himself from Halakhah’s idiosyncrasies, as if to suggest that the halakhists under his knife were unreflective products of the ideological biases of their times, whereas the writer himself has magically achieved the view from nowhere.

Saiman yields to neither of these temptations. His explanation of Halakhah is unflinchingly honest, but without apology or arrogance. He explains in straightforward terms that Halakhah is often not especially practical. He notes rather dispassionately that halakhic texts, including codes that look like they actually mean business, often include discussions regarding what Halakhah has to say about a bewildering assortment of impossible cases. It includes regulations that are not now enforceable and never will be. It also includes regulations, like the standards of evidence required to prosecute criminals, that are theoretically implementable, but only at the price of total chaos.

The key point, as Saiman puts it, is that Halakhah slides back and forth along an axis connecting two poles: the pole of theoretical Torah study as a devotional act and the pole of regulation as part of an applied legal system. In the first part of the book, he focuses on the ways Halakhah tends to drift away from the latter pole, both in terms of its lack of relevant institutions and in terms of widespread disinterest in contending with impediments to its application. In the second part, he offers a number of helpful readings of selected *sugyot* to illustrate these points.

In the third, and final, part of the book, Saiman considers a number of topics that highlight the ways in which post-Talmudic literature moves along the axis between law and devotional study. He traces the development of distinct genres of literature – principally novellae, codes, and responsa – that reflect different segments along this axis. The Sefardic tradition initially emphasized practical Halakhah, as well as non-halakhic material, while the Ashkenazi tradition emphasized Halakhah as fodder for *lomdus*, study for its own sake. Eventually, this distinction softened and sometimes was even turned upside-down, as Maimonides' code became a favored basis for *lomdus* and Tosafot's *lomdus* became a basis for practical rulings. The former trend reached its apotheosis with the Briskers, to whom Saiman devotes an entire chapter.

Saiman's chapter on Brisk demonstrates very clearly his restraint and fairness. Drawing on several examples of the Brisker method and citing the somewhat idealized analysis of this method in Rav Soloveitchik's monograph [Halakhic Man](#), Saiman dryly notes that for Briskers, Halakhah crowds out other forms of human expression; that Briskers view all of reality only through a halakhic lens; and that they describe this reality using a private language of their own invention. If he is aware that he's describing some rather glaring eccentricities, Saiman keeps a perfect poker face throughout. To his credit, he doesn't even feel the need to balance out the picture, as has become the custom, by trotting out tales of the warm and fuzzy Reb Chaim down on the floor giving the grandchildren piggy-back rides.

Having said all that, I do have to fulfill the reviewer's duty to nitpick or, at the very least, to peddle my own theories at the author's expense.

A key organizing principle of the book is the comparison of Halakhah with law. Saiman notes at the outset that Halakhah is *less* than law in that it is neither legislated nor enforced by state institutions and hasn't been for at least two millennia. He also notes that it is *more* than law in that it engages its adherents much more thoroughly and intensely than a legal system engages its subjects; no layman goes to hear a lecture on financial regulation, though many go to *shiurim* on *Bava Kama*. All this is quite obviously true. In fact, this argument is so convincing that it suggests that, if one wishes to explain Halakhah to the uninitiated, perhaps law is not the most apt basis for comparison.

The correct basis for comparison, in my opinion, is a system of social norms, the set of informal rules that, though not enforced by any official bodies, govern our lives much more thoroughly than do laws: how to dress for the occasion, where to stand in conversation and what to say, when gifts are required and what is an appropriate gift, to whom to show deference and how, table manners, workplace interactions, phone etiquette, dating rules, and on and on.

Halakhah is a lot more like a system of social norms than like a system of law, along all the dimensions that Saiman mentions. Apart from the fact that such norms are neither legislated nor enforced by the state (for my purposes, by definition), they also engage people in much the way Halakhah does. The literature on social norms includes codes (Emily Post and wannabes), responsa (agony aunts and self-styled ethicists in newspapers) and learned novellae by legions of academics. And if people don't often flock to lectures on the ins and outs of social norms, it's only because such lectures are unnecessary. The pop culture they consume, from self-help books to Hollywood movies and TV sitcoms, already consists of

thinly-veiled morality tales designed precisely to instruct them in current standards of appropriate behavior and warn them of the consequences of failing to comply.

To be sure, I am not suggesting that Halakhah is simply another system of social norms and nothing more need be said. Obviously, committed Jews regard violating the laws of Shabbat as a more serious matter than belching at the dinner table. My point is only that had Saiman's basis of comparison been social norms instead of laws, there would be a lot less explaining to do; the comparison would be more natural.

Saiman would no doubt counter that there are important ways in which Halakhah is clearly more like law than like a system of social norms. In particular, as he illustrates at great length, the literature on Halakhah through the generations relates to Halakhah as if it were legislated and enforced, even if in fact the relevant institutions have been in abeyance for a few millennia. This literature typically speaks in terms of the forbidden and the obligatory, rather than of the inappropriate and customary. It sure sounds like law.

Quite right. But this might be true only of Halakhah as it appears in the literature – which is the focus of Saiman's attention – but not of Halakhah as it is actually lived. In some sense, then, Saiman is simply looking under the lamppost. If you read Emily Post, the fine points of cutlery placement sound like law. The available records of Halakhah are those found in books and Saiman's picture of Halakhah is drawn from these books. But books are written by a small number of highly committed scholars, who are naturally biased to a view of Halakhah that is more formal and legalistic than that of the bulk of Halakhah's adherents. For every Reb Chaim Brisker, there were 10,000 ordinary pious Jews who simply kept a kosher kitchen just as they saw their parents do and for whom these practices were sensible and satisfying and involved actual pots and pans, not Platonic ones.

In his introduction, Saiman notes that the great legal scholar Grant Gilmour writes in the concluding paragraph of his book on American legal history that “The better the society, the less law there will be. In heaven, there will be no law... In hell, there will be nothing but law.” Gilmour's point is that in good societies, social norms suffice; laws are unnecessary. But, because Saiman is locked in on the idea of Halakhah as (sort of) law rather than as a system of social norms, he concludes that “What for the Talmud is heaven, for Gilmore is hell.” I don't think so. In the Talmud's heaven, exactly as in Gilmour's heaven, unenforced social norms are enough, which is precisely why the righteous are free to spend their days in undisturbed study of Torah.

Nitpicks aside, Saiman's fine book achieves its goal; if I were going to give Robbie George one book on Halakhah, this would certainly be it. But I might remind him that it is a book about Halakhah as it appears to the scholars who wrote the books and not necessarily as it has been experienced by the vast majority of Jews who have lived by its rules. He'll understand.

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SAIMAN'S HALAKHAH:  
RABBINIC LAW AS CULTURE

SUZANNE LAST STONE

For all too brief a time, American legal scholars celebrated law as an integral part of culture: a principal way in which humans fashion a world of meaning. Borrowing from cultural anthropologists such as [Clifford Geertz](#) and phenomenologists such as [Ernst Cassirer](#), scholars focused their attention on how we express our values and communal aspirations through law, and how law fashions and organizes the basic categories, such as time and space, through which we experience human existence. Even as rule-focused, positivist orientations toward law, which emphasized law as social control, were increasingly dominating the American legal landscape, these scholars fought to retrieve an older view of law in which law is an inextricable combination of transcendent truth, tradition, and mission.

Robert Cover's breathtaking 1983 article, "[Nomos and Narrative](#)," which runs as a leitmotif through Chaim Saiman's extraordinarily erudite and elegant book, [Halakhah: The Rabbinic Idea of Law](#), was emblematic of this turn.<sup>1</sup> Cover juxtaposed two models of law: law as *paidea* versus law as imperial; he was at his most poetic in describing the former. In the paideic model, law is expressive, personal, and centered on communal aspirations. Legal interpretation is not about technique or even authority; it is about the striving of communities toward perfecting themselves and their world. In one of Cover's most enduring images, law is "the faithful other," a body of norms the community develops and then comes to see as a demanding object urging its adherents and especially its interpreters to realize the values embedded in its law as it marches into the future. In [Law as Culture](#), Lawrence Rosen pursued similar themes in a delightfully chatty (though far less poetic) style, inviting his readers to consider law's role in creating a sense of an orderly universe, which Rosen termed 'law as cosmology.'<sup>2</sup>

This turn to law-as-culture sparked the "Jewish moment" in the American legal academy. For one thing, law as culture rejected the Christian split of law and spirit into two different domains. For another, the law-as-culture literature often drew on religious metaphors and ideas as a means to retrieve the more transcendent aspects of law that the rise of a modern, bureaucratic state had buried. More to the point, Cover, Rosen, and others – though none particularly expert in rabbinic law – cited Halakhah as their prime example of 'law as *paidea*' or 'law as cosmology.' The Bible explicitly, and the Talmud implicitly, provided the building blocks of Cover's paideic conception of law.<sup>3</sup> The Mishnah was Rosen's example of law as cosmology. The Mishnah "starts from the supposition that it is the human power to create categories that fulfill God's intended purpose" (Rosen, 176). In such a culture, Rosen argued, legal reasoning operates by posing examples, assimilating facts to settled categories, because discerning the proper categories into which each example falls enacts the divine purpose of the law: to maintain a world in which things are true to their kind.

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<sup>1</sup> Robert M. Cover, "Nomos and Narrative," *Harvard Law Review* 97 (1982): 4-62.

<sup>2</sup> Lawrence Rosen, *Law as Culture: An Invitation* (Princeton, 2006).

<sup>3</sup> See Suzanne Last Stone, "In Pursuit of the Countertext: The Turn to the Jewish Legal Model in Contemporary American Legal Theory," *Harvard Law Review* 106 (1993): 813-894.

Chaim Saiman's *Halakhah: The Rabbinic Idea of Rabbinic*, is the next chapter in this story: the book is a deep and close investigation into the idea of rabbinic law-as-culture written by a master of the field of rabbinics, who combines Cover's attention to the transcendent aspects of law with Rosen's attention to styles of legal reasoning. As with Cover's "Nomos and Narrative," Saiman explores the paideic as well as imperial aspects of Halakhah – i.e., the way rabbinic law is both expressive, a means of spiritual and moral education, and a means of governance and maintaining social order. Part I of the book consists of extraordinarily well-chosen Talmudic *sugyot* illuminating, in turn, law as regulation, education, theology, and moral discourse. Saiman is clearly a master teacher, and he walks his readers through these examples with wit, grace, and analytic acuity. As with Rosen's *Law as Culture*, Saiman invites us to consider not only how the Talmud both educates and imposes order, but also its specific style of legal reasoning. In the intellectual activity called law, the closest analogue to the Talmudic style is that of the Anglo-American common law tradition. The most noteworthy feature of the common law as an intellectual tradition is its resistance to systematization, its focus on the case at hand, and its hostility to comprehensive, analytical statements of substantive rules and their presuppositions. The halakhic mind, like the 'common law mind' of the Anglo-American judge, also is distinctive in its attention to particulars and its preference for inductive and exemplary reasoning over deductive reasoning, on the one hand, and systematic abstractions, on the other.

But Saiman does far more than invite the novice into the world of rabbinic law-as-culture. Saiman also considerably raises the stakes for academics in the field by asking uncomfortable questions that we academics tend to set aside as too obvious to be deserving of extended consideration. In one of the best chapters of the book, "Thinking Legally," Saiman asks what precisely does it mean when the sorts of questions we are used to labeling moral, theological, ethical, political, and the like, are all subsumed under one project – the Halakhah – and approached through the distinctive lens of talmudic legal reasoning? In short, as Saiman puts it, what do we make of the fact that law is almost the entirety of the culture and "does the work other societies assign to art, literature, writing history, as well as theology and ethics?" (27)

Well, what do we make of it? We could simply concede that this near-exclusive focus on law and legal reasoning as a means to create meaning is impoverished. In one form or another, this has been a standard approach without – and even within – rabbinic circles, evidenced by attempts to strip the Halakhah down into a set of rules and locate meaning, instead, in the explanatory systems that accompanied the Halakhah, such as medieval philosophy, and Kabbalah, and the Jewish Enlightenment critique of the Talmud that echoed the Christian critique. An alternative is to try to more deeply understand how well the Talmud works as an art form and as theology. This is the phenomenological approach with which Saiman allies himself, and it bears considerable fruit. As Saiman points out, Talmudic discourse is a self-perpetuating mode of cultural discourse. Its genesis may remain shrouded in academic controversy, but, once launched, it engendered enormous commitment and has proved impossible to entirely dislodge. Accordingly, our task is to more fully understand how the Talmud was and still is experienced as both spiritually and aesthetically satisfying. Moreover, once we accept rabbinic commitment to maintaining this form of discourse, we also can ask what challenges this preferred style of legal discourse pose to the maintenance of an ongoing legal system. How precisely do religious meaning and attention to legal detail conjoin and also war with one another?

The chapter "Thinking Legally" is a thoughtful exploration of both the benefits and perils of combining religious meaning with the demands of law. On the one hand, Saiman draws our

attention to how elaborating the details of the law actually enhance the law's expressive quality. If we focus on the way part and whole are related, we can appreciate how precise performance of legal details becomes "a ritualistic affirmation of the larger conception of justice which the norms reflect."<sup>4</sup> On the other hand, as Saiman points out, the aggadic elaboration of values and larger themes that provide deeper meaning for the legal details creates dilemmas for post-talmudic jurists seeking to carve out rules of practice from the Talmud. The aggadic discussion is not only fluid and open-ended, it often evinces a commitment to explore two opposing concepts, such as justice and mercy, without ordering between them. How does one maintain this characteristically rabbinic stance about larger themes and also "create a rule when the ideas and the rule are intertwined?" Similarly, the line between the supererogatory and the obligatory becomes increasingly blurred when ethics and moral philosophy are entwined within a legal discussion.

It should be clear by now that, although the book is entitled *Halakha: The Rabbinic Idea of Law*, it is the Talmud and its distinctive discourse that Saiman singles out as the paradigm of the 'rabbinic' idea of law. The genres characteristic of later rabbinic intellectual legal activity, especially the codes, do not share the Talmud's abhorrence of systematization of legal rules and generally avoid the aggadic reflection that accompanied the Talmudic legal discussion. The codes, in differing degrees, are more concerned with centralizing practice. They seem to veer, to borrow Cover's terminology, toward the 'imperial' model of law as an intellectual activity concerned with rules of governance. What then becomes of the Talmudic project of law as *paideia*, of law as a form of divine worship full of religious meaning? Saiman argues that Talmudic discourse is never fully overcome and that even the most dry and detailed discourse occasionally "drift from governing regulations toward a body of knowledge to be studied." (184) Thus, the legal culture continues to be shaped by the Talmudic idea of law. Interestingly, we can see the same process at work in the American legal setting. From the perspective of genre, the Constitution is a text that superficially resembles a code. But in a legal culture that grew out of and is still educated in an older common law tradition, the Constitution is just as often read as a set of principles or body of knowledge and not as a body of regulations. Indeed, the argument over how to read the Constitution continues to divide the judiciary and prompted Cover's appeal to retrieve the paideic understanding of American constitutional law.

While I fully agree with Saiman that the Talmudic idea of Halakhah as a body of knowledge is maintained in later halakhic endeavors, including the codes, an interesting question remains whether there has been a change in the underlying religious sensibility from the Talmud through the codes to the modern halakhic setting that also fundamentally altered the idea of Halakhah. Saiman hints at such transformations when he notes the risks entailed by the lack of clear separation between moral and legal discourse in the Talmud. The "legal framing can push interpretation away from the Talmud's literary, moral, and conceptual possibilities and towards specific and exacting regulation." (130) That legal framing also may give rise to new forms of religiosity and new ideas of Halakhah in which rules play a crucial part. It is worth fleshing this out.

We can distinguish, for the sake of example, between two religious and, with it, legal sensibilities, the one emphasizing the connection between the Torah's commandments and human needs, values, and social organization and the other, focused almost exclusively on obedience to the divine will. Maimonides is a prime example of the first sensibility. The Torah's commandments, Maimonides writes in the [\*Guide of the Perplexed\*](#), aims at human political, spiritual, and intellectual perfection. Thus, Torah is concerned with shaping human character and social affairs. Yeshayahu Leibowitz's

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<sup>4</sup> Saiman, at 102.

[writings](#), in contrast, offer one contemporary example of the second religious sensibility. For Leibowitz, the Torah's laws are disconnected from human needs, values, and worldly affairs, and are exclusively a form of service. We can see a similar distinction drawn even in debates about non-religious law. Is law primarily about will and following the commands of the sovereign or is law primarily about promoting human values?

Saiman allies himself with the first sensibility. He offers a deeply humanist reading of the Talmudic project, in which, as he writes, "human exploration and self-actualization"<sup>5</sup> is achieved through studying and doing the law. To be sure, Torah study in the Talmud is a form of divine service, as Saiman writes, and performance of the *mitzvot* serves God's will. But the Talmudic idea of Halakhah, in Saiman's description, is far less about pinning down rules to obey and far more about educating people about values, shaping character and virtue, and addressing human needs. That religious sensibility and hence idea of Halakhah was not necessarily carried over throughout the later halakhic world, however.

In a series of important studies, [Yair Lorberbaum](#) traces the increased interest with rules in the medieval period, accompanied with an insistence that the purpose of the halakhic rules is largely unknowable. As Lorberbaum details, the turn away from the Maimonidean project of ascribing reasons for the commandments gave rise to new conceptions of Halakhah and new forms of religiosity. As Halakhah came to be seen as increasingly mysterious and halakhic rules were divorced from reasons, a 'halakhic religiosity of mystery and transcendence' or, in another version, 'a halakhic religiosity of obedience and servitude' emerged.<sup>6</sup> In short, the legal framing of the Talmud eventually gave rise to new forms of religiosity and new conceptions of law – only hints of which are occasionally seen in the Talmud itself. And the codes, rather than Talmudic discourse, would seem to be the more natural expression of these new forms of religiosity and new ideas of Halakhah.

In the final chapter of the book, Saiman looks with a critical eye at attempts to introduce rabbinic law into the public legal sphere of the modern state of Israel. While I sympathize with his critique of the original *Mishpat Ivri* movement, which claimed it was possible to separate out the religious elements of Halakhah from the purely legal elements and sought to strip the latter into doctrines easily taken up by modern secular codes and courts, I think he prematurely dismisses the role the talmudic idea of law might in fact play in a modern Jewish state. As Saiman himself carefully acknowledges, talmudic discourse is an extreme version of law but not unique (231). Cover may have used the rabbinic example to criticize and reconstruct modern state law, but Cover's predecessors and contemporaries write in much the same vein, calling for a revival of the Anglo-American common law spirit or the older Western idea of law that combined a search for transcendent truths and a sense of destiny and mission, with rules for dispute resolution. The fascinating debates in Israeli society today about the relevance of the Talmud as a cultural resource for the Israeli judiciary are not about incorporating the specific rules of Halakhah but about recapturing a certain humanistic idea of law that takes the culturally specific form of the Talmudic discourse Saiman so beautifully describes.<sup>7</sup>

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<sup>5</sup> Id. at 140.

<sup>6</sup> See Yair Lorberbaum, "Halakhic Religiosity of Mystery and Transcendence, Halakhic Religiosity of Obedience and Servitude, and Other Forms of Rejecting Reasons for the Commandments," *Dine Israel* 32 (2018): 69-114.

<sup>7</sup> See "[The Talmud: Only For The Learned?](#)" *Zehuyot: A Journal of Jewish Culture and Identity* 5 (2014).



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# HALAKHAH'S INSIDERS AND OUTSIDERS

SHMUEL HAIN

## Overview

As I read [\*Halakhah: The Rabbinic Idea of Law\*](#), Chaim Saiman's brilliant and rich new book, I found myself thinking about my mother-in-law. More specifically, about her dogged efforts to convince me to become a lawyer. Her essential argument to me was (is?) straightforward: You, my dear son-in-law, love studying Jewish law, so you would undoubtedly love studying American law, too. The prospects of earning a better living? Just a welcome bonus. And so, from the ages of 18 to 27, as I dated, married, and started a family with her daughter, my mother-in-law tried to coax me into pursuing a legal career, or, at the very least, to consider applying to law school.

When I secured my first full-fledged rabbinic position as Assistant Rabbi at The Jewish Center in Manhattan, I was hopeful the law school talk would cease. I was especially confident after I delivered a sermon in front of some five hundred people on my very first Shabbat. Surely now, my mother-in-law would realize that Jewish communal work was the right career choice for me.

As it turned out, my confidence was misplaced. That same Shabbat morning, during the announcements at the conclusion of services, I congratulated a *shul* member, David Schizer, who had been appointed the youngest dean in the history of Columbia Law School.

After services, I made a beeline to my mother-in-law, and asked for her impressions of the synagogue and of my sermon: "What do you think, Mom? Pretty impressive, no?" She did not pause before answering, "You know, Shmuel. That Dean Schizer *is* impressive. And now you have a real in at Columbia Law School!"

It is perhaps fitting, then, that *Halakhah: The Rabbinic Idea of Law*, written by a law professor, has provided a persuasive and panoramic response to what makes Halakhah sui generis. In *Halakhah*, Saiman argues that Jewish law, unlike other legal systems, is not primarily concerned with regulating conduct, but with the much larger project of *talmud Torah*. On the regulatory side, Saiman notes that Jewish law has rarely wielded the power to enforce its rules, nor has it ever been the actual law of any state. On the *talmud Torah* axis of the spectrum, Saiman traces how through its analysis of every detail, Halakhah explores essential questions of philosophy, political theory, education, spiritual guidance, theology, and ethics. Moreover, the study of Halakhah itself was viewed by the Talmudic rabbis as a religious endeavor: Torah study is described as the highest form of religious devotion that can bring a person close to God.

It is worth noting that by broadening Halakhah to include all disciplines, Saiman has restored the original meaning of the word Torah. While the Septuagint rendered *torah* as *nomos*, law, giving rise to the distorted view that Torah is unidimensionally and exclusively focused on nitty-gritty legal matters, Saiman shows how multifaceted Halakhah actually is, returning Jewish law into an all-encompassing category synonymous with Torah.

In doing so, this sprawling book, much like its subject matter, contains so much more than what appears on its surface. In the advanced copy I received, the book's subtitle is "An Introduction to Halakhah." But this book is much more than an introduction to Jewish law. Each chapter of the book is full of ideas, readings, and perspectives on a wide range of topics (from the *Brisker Derekh* to the (in)advisability of implementing Halakhah in the Jewish state) that are insightful, enriching, and stimulating.

On top of all of that, the book resonates deeply on a personal level given my own lifelong journey as a student of Torah. *Halakhah* is written with great passion for the subject matter, and really speaks for and to someone who loves to learn Torah. At long last, it helped me fully understand the richness and depth of halakhic study and even my attachment to *talmud Torah*. In a word, the book "shows how [H]alakhah is not just law, but an entire way of thinking, being and knowing" (from the book jacket). This gift of self-understanding is a remarkable achievement for an academic volume, even if I may not be able to explain it fully to my mother-in-law.

### **Pulpit and Educational Perspectives**

Which brings me to a lingering question about the book. For scholars of the halakhic system, *Halakhah* is undoubtedly an invaluable contribution as it demonstrates and articulates the transcendent depth of *talmud Torah*. But what about its impact beyond these "insiders?" Does *Halakhah* have utility for adult and high school educators in the broader Modern Orthodox community, and beyond?<sup>8</sup>

To be clear, there are insights in *Halakhah* which will catalyze the thinking of scholars and laypeople alike. In particular, Part II of the book is filled with close and penetrating Talmudic readings that can easily be adapted for classes and *shiurim*. But is the book's larger thesis compelling for, or even translatable to, outsiders uninitiated in and/or not committed to the halakhic system? Or to state it in another way: will reading this book facilitate uninitiated congregants' and students' appreciation of the transcendent qualities of *talmud Torah*?

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<sup>8</sup> For students and scholars of Western jurisprudence and legal theory, *Halakhah* is also a valuable work as an academically sophisticated overview of Jewish law, highlighting the contrast between Jewish law and other legal systems.

Saiman himself acknowledges this chasm between the novice and the insider. Especially noteworthy is that Saiman underscores this divide in different directions when it comes to the relationship between the abstractions of Talmud study and our lived realities.

For instance, Saiman, in his autobiographical preface, shares that the original idea for this book can be traced back to his first encounter with the *sugya* of *kiddushei bi'ah* - the laws of betrothal via sexual union - as a diligent, tenth grade yeshiva student. When reflecting back on the experience, Saiman writes (page xi), "...advanced students are quickly acculturated to the view that these lofty matters, which exist solely in the zone of analysis, are *divorced from time, space, or lived reality* (emphasis added)." But later on, in an important chapter entitled "Thinking Legally," Saiman highlights the real-world quality of halakhic thinking and its resemblance to literature, in contrast to the detached nature of analytic philosophy, "Talmudic thought, like its literary counterpart, *resists detached inquiry...*" (page 139). (emphasis added)<sup>9</sup>

While these descriptions seem to point in opposing directions, the context of each provides a resolution, which in turn sharpens the "outsider" challenge. In the preface, Saiman is referring to the need for insiders to eschew real-world, *baalebatish* questions. In the later chapter, Saiman is focusing on the insider's manifest sense of commandedness by Halakhah. As Saiman continues in that chapter, "The Talmud simply does not make sense outside of its 'plot'- the foundational claims of the world it inhabits. These include that God gave the Torah to the Jewish people and commanded them to perform mitzvot. Beyond these foundational beliefs, *the Talmud's arguments are generally inaccessible unless one is already invested in the enterprise of [H]alakhah and its study*" (page 139). (emphasis added)

Further on in that chapter, Saiman argues correctly that "the process of framing an issue in halakhic terms both depends on and generates buy-in to the system as a whole." Even more pointedly, "...the Talmud imparts a claim that is alternately maddening and compelling: that the starting point for human exploration and self-actualization is the fact that man stands commanded to live by God's Torah" (page 140).

What emerges from these passages is the following sobering realization: only committed *talmud Torah* insiders are fully capable of accessing the depth of minor halakhic details, thereby tapping into Halakhah in its fullest sense. This is because insiders are both completely attached to the halakhic system as a whole and to the importance of its every minor detail, while simultaneously capable of detached inquiry focusing on the conceptual underpinnings of the law rather than on its real-world practicality. No matter how articulately one expresses the beauty of *talmud Torah* to the uninitiated or outsider, accessing the depths of Halakhah will remain elusive.

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<sup>9</sup> Ilana Kurshan's recent memoir, [If All the Seas Were Ink](#), is a poignant paean of the Talmud's literary qualities.

And that's okay. Because this book is truly enlightening for those who are invested in the study of Halakhah, and especially those who have had significant exposure to the *Brisker Derekh*. But reflecting on *Halakhah* reinforced what I have learned in the pulpit and education: to be effective teachers we must encounter halakhic texts from our students' perspective, rather than our own. Specifically, instead of focusing primarily on the conceptually significant points, we must address the real-world questions posed by our students.

I identify with a story I have heard from SAR High School principal Rabbi Tully Harcsztark on a number of occasions. Rabbi Harcsztark's friend was studying a *masekhet* of Gemara with his child in advance of the child's bar mitzvah. When Rabbi Harcsztark asked his friend how the learning was going, the friend responded sincerely, "It is going a little bit slowly. I find I am having a hard time getting my kid to understand that the Gemara is not supposed to make sense!"

Indeed, the suspension of "making sense of the Gemara" is how so many insiders were trained in Gemara study. But in order to engage all others in the study of Halakhah, we must commit ourselves to really making sense of the Gemara. *Halakhah* will help insiders deepen their appreciation for transcendent *talmud Torah*. In order to get more of our congregants and students to engage Halakhah and Torah, there is more work to be done.<sup>10</sup>

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<sup>10</sup> I would recommend that those interested in learning more about the Talmud read *Halakhah*, along with the aforementioned memoir by Kurshan, as well as Barry Scott Wimpfheimer's excellent recent volume [The Talmud: A Biography](#). These three works together, in completely different ways, underscore the multi-faceted depth of serious Jewish learning of the Oral Law.

