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PHILOSOPHY OF HALAKHA: THE MANY WORLDS OF *MIKVE*¹

“**T**here is no water except Torah,” states the Talmud (*Bava Kamma* 82a), at once setting down a simplicity and opening a window on a staggering range of complexities. The simplicity is clear: water sustains life, even more than food, at least from the perspective of human consciousness and feeling. A severely malnourished person will not cry out for a steak or an omelet. He will beseech, “Anything for a glass of water,” and if he receives it he will cradle it in trembling hands. Thus, the Talmudic metaphor is clear. Torah sustains life. It is both this way and felt to be so. Without Torah, as without water, there is spiritual death. Entwined in this simplicity is another message, however. So basic is water that it is taken for granted, so elemental is it that it is taken to be unattractive. Humanity dresses up water in spirits, colas, juices, teas, liquids of all kinds. Humanity masks water until it yields elegance and sophistication of taste. Likewise, in matters of the spirit. Basic spiritual nutrients, contained in a dose of Torah, acquire every manner of garb and complexity: meditative technique, philosophic rationale, mystical transport, ethical analysis, and legalistic formulation. What are we left with? Beginning with a simplicity, we are left with an endless process. Beginning with water—with Torah—we end with a river passing by banks of time, streaming, by apt comparison, into the unfathomably vast “sea of the Talmud.”

This article is an exploration of water and its meaning in Judaism, specifically in one area of Talmudic law, of halakha. Water, with its penetration of physical life, gives its penetration of spiritual life, such as halakha, the status of more than a metaphor. Since water is everywhere, or, in societies or seasons of scarcity, the object of hope that it be everywhere, water so dominates human activity and perception that it seems to be more than itself. It invades the perception of psychology (a stream of consciousness), of history (a watershed development), of character (a serenity or callousness the like of water off a duck’s back), of economics

(a poring over facts and figures); at the very least, water shapes language, whose imagery is drawn indiscriminately from the ubiquitous qualities of water. The double status of water, a basic and therefore sometimes almost contemptible substance that is transfigured into sustenance of elegance and vigor—and into images of universal grasp—embeds itself firmly in spiritual perception. Water is protean. Water converts non-believer into believer; water changes defilement into purity; water, garbed as wine, sanctifies when imbibed at prescribed times; water unveils the spiritual status of a pray-er if his entreaties in parched fields yield rain. Water is wed to spiritual perception, growth, and stature. Indeed, water is under the intense gaze of the Hebrew Bible. All of the Bible's spiritual processes involve water in some sense. On general principle, Isaiah 43:3 notes: "Just as I [God] pour water on the thirsty land and streams on the dry ground, so shall I pour My spirit on your offspring and My blessing on your descendants." On social justice, Amos 5:24 foretells: "Justice will roll down like water and righteousness like a mighty stream." The Psalter (1:3) compares the righteous individual to "a tree planted by springs of water, whose fruit ripens in its proper time and whose leaves never wither." Isaiah 11:9 tells us that in Messianic times, the land "will be full of knowledge of God, as the waters covering the sea." At the beginning of time, Genesis depicts creation itself as a division of waters, one set in some heavenly place and the other constituting this, our very earth. The human being is mostly water, and God Himself is "the source of living waters" (Jeremiah 17:13). In biblical perspective, water penetrates, or vitally reflects, the cosmos, the society, and the individual.

In halakha, the Divine law, the complexities of water are still more intricate and differentiated. In Jewish law, water is more than protean, always more than itself. Water, I wish to argue, is a prism of truth, human and Divine, anthropological and theological. Water, properly collected and constituted as a *mikve*, refracts an almost limitless spectrum of knowledge, humanly and Divinely authored. This double focus—human and Divine—runs up and down this exploration. Specifically, by selecting one area of the Divine law—water law, so to speak—and by elaborating on the intricacies of this single area of halakha, I wish to demonstrate how God's law is a prism for the rest of His truth, and, even more, how God's law serves as a prism for ultimate human truths discovered by scholars and searchers over the ages.

Some of these truths begin with their own double focus. Some men—pioneers, explorers, or chosen instruments of Divine destiny—casting their eye on virgin vistas for the first time, see the plain, the

mountain, and the river threading between them, and wish to leave the undisciplined pattern alone. Others perceive a plan, a line and design that beg to be superimposed on virgin vistas. Some are not content to prize “vistas of natural scenery as seen by a naked eyeball [but prefer] to impose a grid of utilitarian considerations upon the landscape”² Their ideal is symbolized by the surveyor’s transit, embodied in the civil engineer, concretized in canals and dams, and conceptualized as “an architectonics of stability implying permanence” or as “reticulated devices of closure.”³ Most notably, for our purposes, their subordination of the natural vista, specifically the river running through it, to the goal of nurturing the likes of commerce and nation building, is accomplished by a certain irony: water is made to flow more freely by enclosing it.⁴ Transposing the object of this manmade design from nature to society, the parallel political enclosure is this irony: it is laws that make men free.

The Divine law, halakha, need make no transposition from nature to society. Halakha sees one truth underlying the two foci of freedom, water enclosed by walls and human will constrained by law. Halakha locates both in a single place: the *mikve*. Under halakhic definition, the *mikve* is water enclosed, and this enclosure makes man—and woman—free by making them pure. Their purity, imparted by immersion, liberates them jointly to resume marital relations, and singly to engage in spiritual acts tied to the ancient holy temples (acts then embracing the unmarried, too; and now, with the temples’ destruction, suspended for all).

Other men—pioneers, explorers, or poets—casting their eye on virgin vistas for the first time see a terrestrial paradise. To them, it is not laws that make men free but nature itself. Their ideal is not to impose technology on the landscape but to live in harmony with it. Water flows freely by flowing unimpeded, without enclosure—absent canals, dams, commerce, and national destiny. So, too, in the Divine law. As enclosed waters of a *mikve* purify and liberate, so, in reverse irony, do waters unenclosed, unfettered by human hands. The *ma’ayan*, or natural spring—including the river fueled by underground water sources—is, by halakhic definition, water not restricted, flowing pristinely as it once did primordially. This spring, too, is a Divine mandate, subsumed under the larger rubric of the laws of *mikve*. Immersion in a *ma’ayan* effectuates the same liberation *cum* spiritual elevation, the same purity, as the *mikve*.

God’s truth, in this case a twofold structure of *mikve* and *ma’ayan*, hints at a refraction of human truths: respectively, the first, controlled, neoclassical vision of nature, and the second, unfettered, Romantic vision of nature. The neoclassical vision, which channels, gathers, and controls water, hints at the *mikve*, while the Romantic vision, which

leaves waters unchanneled, hints at the *ma'ayan*—hints only. For halakha is more than a metaphor. In order for halakha to be a prism of human truth, disciplines of human knowledge must stretch beyond poetry, until their refraction in halakha is more refined and differentiated than two conceptions of nature or nation building. The human truth to which halakha serves as a prism must ascend to Truth, and to apprehend that, the halakha itself must be unfolded. To see how disciplines of human knowledge are refracted in halakha, human knowledge must be refined and halakha defined.

My purpose here is to realize an aspiration adumbrated since the beginning of traditional Jewish encounter with the modern world. Halakhists and theologians have stressed the importance of deriving Jewish thought from the detailed corpus of halakha. In Rabbi Joseph B. Soloveitchik's bald summation, "Out of the sources of Halakhah, a new world view awaits formulation."⁵ Franz Rosenzweig argued that efforts at Jewish theology

must remember that insofar as there was structure to Jewish religion over the centuries, it was provided by the halachah—and that was not mere speculation but the functioning norm of the autonomous Jewish community. Hence, explicating the theology implied in the halachah has long been a goal of students of Jewish thought. Those, however, who could make their way through the swirling currents of the law seemed unable to chart its movements in terms of comprehensive religious concepts, while those who knew what might be an acceptable structure of modern thought often did not know "the small letters" in which the development of the Jewish legal thinking must be traced.⁶

Perhaps the reason why the link between Jewish thought and halakha has proven elusive is that even those Jewish thinkers who have known "the small letters" of halakha have rarely used them, as opposed to their "implications," as sources of Jewish thought. My purpose here is to go beyond the implications of halakha in two senses. First, I wish to show that it is not the implications of halakha but the halakha itself, its "small letters"—its minutely detailed analyses, debates, and classifications—that yield comprehensive concepts. Second, I am concerned with a broad range of knowledge, not only Jewish thought but fields reaching beyond Judaism and even beyond religion. Used as a case study, one set of halakhot illustrates how halakhic discourse draws into its purview social and intellectual realities far beyond its apparent concerns. These halakhot unveil halakhic discourse as a determinant of social reality and a prism of true knowledge, human and Divine.

To set forth a philosophy of halakha that is not merely an internal discussion—halakhists talking to halakhists—one must show how halakha shapes reality beyond its own dictates; how, for example, when halakha prescribes a *mikve* for immersion, it shapes reality beyond the purity of the immersee. Thus, in Part I, I show how “The Laws of *Mikve* and Its Waters” yield a deep structure that determines the direction of a functioning norm in the Jewish community: conflict. In contrast to a common hermeneutic—that social reality shapes halakha—I show that laws of *mikve* shape social reality. Second, one must show that the laws of *mikve* have interdisciplinary resonance, both in other disciplines of Torah and in disciplines of human knowledge. Thus, in Part II, I select two segments from a larger study of which this is a part. The larger study shows how truths in aggada, psychology, quantum mechanics, ecology, and other disciplines are refracted in the laws of *mikve*. I illustrate here with one discipline of Divine knowledge and one of human knowledge: aggada and quantum mechanics, respectively.

The upshot of the analysis is this: a single area of halakha demonstrates that Judaism is more than a spiritual discipline and more than a perspective on the sacred. It is a prism of knowledge, human and Divine. In the conclusion (Part III), I draw paradigmatically on the data gleaned from that prism to trace a philosophy of halakha. Comprehensive concepts do flow from halakha when it is left to its own language, the language of exactitude. Exactitude animates the many worlds of *mikve*, all of which transfigure a shapeless substance “bound to man, indeed to life, by a long-lasting familiarity, by a relationship of multifarious necessity, due to which its uniqueness is hidden beneath the crust of habit.”⁷

I. SOCIAL CONTEXT

A. DEEP STRUCTURE: THE ELUSIVE PERFECT *MIKVE*—*ZERIA*

The deep structure of the laws of *mikve* reduces communal conflict. Jewish history is replete with bitter conflict over dietary laws⁸—but far less so with another ritual, *mikve*. There may be many reasons for this, not least that profit is frequently derived from the supervision of kosher food, but rarely from the supervision of *mikva'ot*. Without ignoring conflicts over *mikva'ot* that do take place, and without claiming exclusivity for the structure of the laws of *mikve* in reducing them, this structure does discourage communal conflict. Halakha shapes social reality.

Leviticus 11:36 reads, “But a spring (*ma’ayan*) and a pit, a gathering (*mikve*) of water, shall effectuate purity.” Exegesis in *Torat Kohanim* requires the translation of this verse in several ways. All of them identify two separate sources of purity: a *ma’ayan* and a *mikve*. As laid down in *Torat Kohanim* and unfolded in subsequent halakhic literature, a *mikve* is a pool in the earth, or in cement poured into the earth, or in hewn stone or wood found naturally in the earth, or in stone or wood hewn after having been placed in the earth; and consisting of at least 40 *se’a* (a liquid measurement, approximately 200 gallons).⁹ The water must reach the pit directly from the heavens, a river or the sea, without the use of any vessel capable of holding water and without any direct intervention by a human being (e.g., a person splashing water from a river into a nearby pit). As *Torat Kohanim* puts it, “Just as a spring is at the hands of Heaven, so is a *mikve* at the hands of Heaven.”¹⁰

While a *mikve* is intended to purify spiritually, not physically, concern for physical cleanliness has played *the* determinative role in the development of *mikve* design, which, coextensively, is the unfolding of the laws of *mikve*. Concern for cleanliness unveils the deep structure in *mikve*’s laws that reduces communal conflict.

Strictly speaking, the cleanliness of a *mikve*, or lack thereof, has no halakhic weight. The water of a *mikve* never need be changed. One may simply dig a hole or pour cement in the ground, wait for rain to fill it, and use it forever after. That it will eventually become discolored or emit a noxious effluvium is of no halakhic import.¹¹ Nonetheless, and needless to say, designers of *mikva’ot* needed to be sensitive to discoloration and stench; otherwise, at least some women would refuse to use them, or, as in antiquity, after immersion in a fetid *mikve*, people would rinse themselves and eventually regard the subsequent rinsing as the actual medium of purification and skip the *mikve* altogether (*Shabbat* 14a). Historically, the laws of *mikve* have responded to this question: how can one change the water in a *mikve* without violating the stricture against transporting water with a vessel? Obviously, it will not do just to empty a fetid *mikve* and wait for it to rain. Since women need to immerse each month in order to resume marital relations, what should they do before it rains?

One solution is the use of a *ma’ayan*. A natural spring that continuously replenishes itself often cleans itself. Further, one minority opinion, albeit never halakhically determinative, requires a woman to immerse in a *ma’ayan*, not a *mikve*.¹² The problem (here I adumbrate the deep structure of the laws of *mikve*) is that notwithstanding a spring’s advantages, it has counterbalancing disadvantages. Use of a *ma’ayan* can be dangerous; the history of *mikve* design includes springs

so far below ground level that women had to descend into caverns as many as five stories deep in order to reach them.¹³ A *ma'ayan* can be uncomfortable, as it often cannot be heated and is very cold. It can be embarrassing, if out in the open. All these conditions can encourage a woman to hurry her immersion and thus invalidate it—a self-defeating arrangement.¹⁴ Historically, however, there often was no alternative to a *ma'ayan*. Materials, money, suitable location, sufficient rainwater, or halakhic competence to build a *mikve* was lacking. A *ma'ayan* was used.

Alternatively, based on principles in *Torat Kohanim* and details in the Talmud, especially Tractate *Mikva'ot*, the halakhic masters developed two basic methods to keep a *mikve* clean: *zeria* (“seeding”) and *hashaka* (“kissing”). In some senses, both were found to be necessary, yet mutually exclusive. To adumbrate the structure of the laws of *mikve* with more specificity, *zeria* and *hashaka* each solve a halakhic problem, yet together unveil a paradox: each halakhic solution creates another halakhic problem. No one solution or even a combination thereof yields a halakhically perfect *mikve*. No matter how halakhically sophisticated, no *mikve* is without its halakhic disadvantages. In the laws of *mikve*, there is no simple, linear progression from minimally kosher to maximally kosher, no unequivocal delineation between *mitsvah* and *hiddur mitsvah*.

At this point, definitions of *zeria*, *hashaka*, and another term, *she'uvim*, become indispensable.

Zeria, “seeding,” begins with the law that a *mikve*, consisting of 40 *se'a* of kosher water—rain, river, or sea water—can never be rendered unkosher by the addition of *she'uvim*. *She'uvim* are “drawn waters”—water conveyed to a *mikve* by a vessel or a person—and are unfit to constitute a *mikve*.¹⁵ What is more, even a tiny quantity of *she'uvim* (three *lugim*) added to a *mikve* of less than 40 *se'a* disqualifies the *mikve* permanently, no matter how much kosher water may later fall into it.¹⁶ However, the addition of any quantity of *she'uvim* to an *already* kosher *mikve*—a *mikve* of 40 *se'a* of kosher water—cannot disqualify it. A kosher *mikve* is immune to ritual disqualification by the addition of any amount of *she'uvim*.¹⁷ The usual principle of *bittul*, which disqualifies a kosher substance when a non-kosher substance added to it amounts to more than 1/60 the volume of the kosher substance, is suspended. Not only is a kosher *mikve* immune to disqualification by the addition of any amount of *she'uvim*, but a kosher *mikve* also renders any amount of *she'uvim* added to it kosher. This is *zeria*, “seeding.” *She'uvim*, normally unkosher, are “seeded” in the water of a kosher *mikve*.¹⁸ The total mixture is kosher. The pit containing kosher water to which *she'uvim* are seeded is a *bor zeria*, a “seeding pit.”

Here, it seems, is a complete halakhic solution to the problem of cleanliness. Simply juxtapose two pits, one small, able to hold the minimum 40 *se'a*, and one much larger, able to hold enough water to comfortably immerse a human being. Then open an aperture near the top of each of the two pits and connect the two openings with, say, a pipe of concrete or plastic. The pipe rests horizontally between each of the apertures. Now, let 40 *se'a* of rainwater flow without interference into the small pit. It is a kosher *mikve* and will serve as the *bor zeria*. Any water added to it, even *she'uvim*, becomes seeded and thus kosher. Now open a nearby tap and let tap water (*she'uvim*) flow into the *bor zeria*. The *she'uvim* from the tap become seeded, i.e., kosher, and the tap keeps running. Eventually, the kosher water in the *bor zeria* rises to the level of the pipe connecting the *bor zeria* to the immersion pool. The kosher water flows through the pipe from the *bor zeria* into the immersion pool and fills it. It, too, is now a kosher *mikve*. Close the tap. Use the large pit for several immersions until it is about to become dirty. Then drain it. Then, refill it with clean water routed from the tap through the relatively small *bor zeria*, in which, again, the clean water becomes seeded, or kosher. In this way, both the cleanliness and the ritual fitness of the immersion pool are maintained.

Mikva'ot throughout the world operate on the principle of *zeria*. No halakhic authority would deem them invalid. But if space and money permit, most authorities would modify and complicate their design. This is because the principle of *zeria* is not universally accepted if a majority of the original 40 *se'a* of rainwater in the *bor zeria* flow out of it when *she'uvim* are added to it. In the two-pit *mikve* just described, it is likely that more than 20 *se'a* of the small *mikve* (the *bor zeria*) will flow into the larger immersion pool the very first time that tap water is added to the *bor zeria*. Rambam (1135-1204) finds this unacceptable because of *mar'it ayyin* ("appearances")—the wholesale addition of *she'uvim* to the *bor zeria* appears to obviate the need for kosher water altogether. Rabad (c. 1125-1198) finds this unacceptable in principle.¹⁹

Rambam and Rabad are minority opinions, not accepted as halakhically determinative. However, from time immemorial, the laws of *mikve* have been governed by a principle saliently articulated by Rashbets (1361-1444). To the extent possible, a *mikve* should fulfill the halakhic requirements even of minority opinions, even of every minority opinion. That is, a *mikve* should fulfill the requirements of every halakhic opinion.²⁰

Attempts to construct a halakhically perfect *mikve* have been heroic, enlisting every halakhic and architectural ingenuity. The ingenuity,

however, turns on itself. The attempt to make a *mikve* more acceptable according to one halakhic opinion makes it unacceptable to another. A *bor zeria*, acceptable to most opinions, is unacceptable to Rambam-Rabad; yet the compensatory attempt to design a *mikve* acceptable to Rambam-Rabad is itself unacceptable to another authority (below). One authority's *humra*, or stringency, is another's *pesul*, or disqualification. In the laws of *mikve*, there is no linear progression of stringencies, no ascending ladder of perfection, such that *mikve* A is built on the principle of *zeria*, *mikve* B adds a stringency, *mikve* C adds another stringency, and so on, until the "most stringent" *mikve* is built. There is no such entity. The addition of stringency B is, at the same time, the violation of stringency C. Stringencies in *mikve* are dialectical; not progressively more stringent, but simultaneously strict and invalid. Stringencies *exclude* each other. This is the deep structure of the laws of *mikve*: mutual exclusivity. *Giddulei Tahara* (1772-1842) summarizes: "It is impossible for a *mikve*, no matter its configuration, to be kosher according to all opinions."²¹

No other Jewish ritual works precisely this way. Take the *etrog* (citron), for example. An *etrog* with many flecks is less halakhically acceptable than an *etrog* with a few flecks; an *etrog* with a few flecks is less acceptable than one with no flecks. But an *etrog* with no flecks does not thereby become invalid on account of some other halakhic consideration in the laws of *etrog*. In contrast, a *mikve* to which a stringency is added may thereby become invalid. I have gathered a list of major mutual exclusivities in the laws of *mikve*.²² The following is a partial illustration of one of the simplest. It begins with a common way to meet Rambam-Rabad's objections to a *bor zeria*.

HASHAKA

According to Rambam-Rabad, *she'uvim* added to a *bor zeria*, which then flow into a large immersion pool, are not rendered kosher if half of the original water in the *bor zeria* flows into the immersion pool. According to Rabad, the added *she'uvim* remain *she'uvim*, while according to Rambam, there is a problem of *mar'it ayyin*. While the immersion pool is kosher according to almost all authorities, it is not kosher according to Rambam-Rabad. The way to render this *mikve* acceptable to Rambam-Rabad is to add a third pit, a *bor hashaka* (a "kissing pit"). It, like the *bor zeria*, is relatively small, containing 40 *se'a* of kosher water. The *bor hashaka*, like the *bor zeria*, is connected to the immer-

sion pool via an aperture. However, unlike the *bor zeria*, which renders the water in the immersion pool kosher by the addition of water to either itself or the immersion pool (*zeria*), the *bor hashaka* transforms the *she'uvim* through mere contact, via the aperture, between the small pit of 40 *se'a* and the larger immersion pool. The two pits “kiss.” Hence the name, *bor hashaka*.²³

The *bor zeria* satisfies most opinions; the *bor hashaka* satisfies Rambam-Rabad. This new three-pit *mikve* seems to be kosher according to every opinion. But it is not so. This seemingly perfect *mikve* unravels around this question: must the aperture between the *bor hashaka* and the immersion pool remain permanently open for the “kissing” to be efficacious? Shakh (1622-1663) is stringent, ruling that the aperture must remain permanently open.²⁴ A permanently open aperture between the immersion pool and the *bor hashaka*—inherently a stringency—entails a separate invalidation of this *mikve* in the view of Rambam-Rabad, the very authorities for whom this *mikve* was designed in the first place. By accommodating Rambam-Rabad—by adding a *bor hashaka*—one simultaneously creates a new condition that excludes Rambam-Rabad, according to Hazon Ish (1878-1953). It is beyond the present purview to elucidate Hazon Ish, but suffice it to say that precisely the stringency of Shakh—the open aperture between the *bor hashaka* and the immersion pool—cancels the stringency of Rambam-Rabad, originally accommodated by the additional third pit, the *bor hashaka*.²⁵ Given Hazon Ish’s view, it is impossible to construct a *mikve* in accord with every halakhic opinion. Hazon Ish and Shakh stand in a relation of mutual exclusivity.

It may be objected that since Hazon Ish died in 1953—relatively recently in the long history of *mikve* design—any *mikve* design based on his views is a curio, of limited historical import. The opposite is the case. The mutual exclusivity raised by Hazon Ish did not occur earlier because three-pit *mikva'ot* were not built before 1900. Even before then, however, Hazon Ish’s concern was addressed in principle by *Divrei Hayyim* and others. Further, a different *mikve* design, used in Jerusalem around 1900, yielded a different halakhic mutual exclusivity.²⁶ Without insisting on an immediate correlation between new halakhic methods of *mikve* design and new examples of mutual exclusivity in the laws of *mikve*, we may generalize: whatever the method of design, it sooner or later leads to a mutual exclusivity. While the natural spring is inherently free of all mutual exclusivities, even its use can generate a mutual exclusivity. A common way to obviate the dangers and discomforts of immersion in a natural spring is to reconfigure the spring in a

mikve-like fashion by lowering a perforated tub into the spring, filling it with warm water (*she'uvim*, rendered kosher by the spring through *hashaka*), then immersing in the tub. While the *kashrut* of such an immersion derives from the spring, the immersion takes place physically in the tub, and halakhic considerations in the construction and perforation of this tub entail a mutual exclusivity.²⁷ No matter the historical period, there was no perfect *mikve*.

B. DEEP STRUCTURE: THE REDUCTION OF COMMUNAL CONFLICT

Here is how the laws of *mikve* shape social reality, how their mutual exclusivity reduces communal conflict. A universal temptation in the religious life is self-righteousness. This expresses itself in halakhic Judaism through the lording of one's punctilious observance over another Jew. On the one hand, punctilious observance is a prime measure of piety, a type of religious devotion set forth by the Torah as an ideal. On the other hand, punctilious observance is subject to piety's perversion: self-righteousness. "My *etrog* is more *me-huddar* or acceptable than yours." "Unlike you, I eat only *glatt* kosher meat." "My *teffilin* (phylacteries) are made from *gassot* (the preferable hides of large kosher species), not, like yours, from *dakkot* (the hides of small kosher species)." "I wait 72 minutes, not your 42 minutes, after the conclusion of Shabbat before doing work." "I pray *Shemone Esrei* longer than you." "I use oil, not mere wax candles, for the Shabbat lights." "I wear larger *tsitsit* than yours." "I don't make do with *mezonot* for *shalosh se'udot*, I 'wash for bread.'" "I eat *matsa shemura* all of Passover, not just for the *seder*." "I remain awake the entire night of *Shavuot* studying Torah, not just an hour or two." On and on. Such self-righteousness is possible because stringencies in all these rituals are linear. One stringency adds to another. It is possible to be unequivocally superior in one's form of observance. This is facilitated precisely by the absence of any requirement that every stringency be fulfilled. Since there is a relatively limited number of stringencies, it is possible to identify oneself as fulfilling them.

In the laws of *mikve*, however, stringencies cancel one another. This structure blunts religious boastfulness and thus dilutes the potential for conflict. One simply cannot claim an absolutely superior *mikve*. This is accentuated precisely by the requirement in the laws of *mikve* that every stringency be fulfilled. Since it is impossible to do this, the

attempt to do so highlights mutual exclusivity in the laws of *mikve*. Therefore, the possibilities for self-righteousness about the ritual object of *mikve* are radically reduced; humility, rather than superiority, is nurtured. Self-righteousness is not eliminated, as some *mikva'ot* do fulfill more halakhic requirements than others, but no *mikve* can claim perfection. The temptation to lord a *mikve* in one's community over a *mikve* in another community (or in another part of the same community) is much reduced. The deep structure of the laws of *mikve* discourages communal conflict. Halakha shapes social reality.

A fresh look at the halakhic detail of *mikve* brings new shape to intellectual reality as well.

II. INTERDISCIPLINARY RESONANCE

A. AGGADA

Talmudic literature is traditionally classified as halakha and aggada. Halakha is Divine law, aggada is . . . what? To distinguish between halakha and aggada is, at first blush, without difficulty. Aggada is blatantly homiletical, halakha is literal-legal. In form, halakha and aggada are very dissimilar. True, aggada is Divine knowledge and in this sense indistinct from halakha, but aggada, like other disciplines of Divine, Torah knowledge, is sufficiently distinguished from halakha to have its own identity. One may ask whether aggada, like human knowledge, can also be reflected in halakha. The possibility seems remote. Halakha is technical and precise, while aggada leaves much to the imagination. Aggada, for example, will discuss the location of the Garden of Eden, and the discussion will begin with the color of the sun. I condense and smooth out the passage in *Bava Batra* 84a:

Is the sun red? There is brownish-red wheat and white wheat. Etymologically, "brownish-red wheat" is related to "sun." The sun, therefore, is red. Why, then, does it appear white during the day? Our eyes are too weak to absorb the full force of the sun's rays. Only when they diminish somewhat at sunrise and sunset does the sun appear in its true color, red.

But this is only the opinion of R. Papa. It is objected that the sun is white. Why, then, does it appear red at sunrise and sunset? At sunrise it passes over the roses of the Garden of Eden, and reflects them; at sun-

set it passes over the fires of Gehenna, and reflects them. Since the sun rises in the east, the Garden of Eden is in the east.

This clearly is aggada, not halakha, whose exact definitions (of, for example, *mikve* volume) leave nothing to the imagination. The difference between aggada and halakha seems so compelling that the burden of a student of the whole Talmud is to establish, in a predominantly legal book, the authority of its aggadic literature. It takes the form of interpretations of non-legal verses in the Hebrew Bible, astrological observations, riddles, parables, anecdotes, narratives, exhortations, and maxims, all of which may be fantastic, colorful, or bizarre. The substance of aggada consists of “historic narrative at a deeper level, perspectives on Providence, human character, Exile and Redemption, the secrets of God’s relation to His world, and the character and destiny of Israel.”²⁸

One might justify aggada by saying that halakha and aggada are dichotomous in form but complementary in intent. “Halacha deals with the law; agadah with the meaning of the law.”²⁹ One might say that halakha and aggada are contingently dichotomous, with aggada reflecting a level of mystical truth not found in halakha—but only now. Halakha contains aggada’s truth potentially, and this potential is actualized “the closer the Light of Messiah comes.”³⁰ One might draw the relationship between halakha and aggada more integrally, observing that aggada formulates, supports, or exemplifies Jewish philosophical, philological or ethical teachings, all of which sometimes interweave with halakhic texts.³¹ One might even take halakha metaphorically as a source of aggadic insights, or aggada metaphorically as a source of halakhic conclusions.³²

In the laws of *mikve*, one may do more.

One may observe an interweaving of halakha and aggada so inextricable that aggada is more than a mystical, instrumental, or metaphorical expression of halakha. In the laws of *mikve*, aggada becomes halakha, and vice-versa. The authority of one is the authority of the other. Aggada and halakha are different threads in one texture, now imaginative, now legalistic, much as light is one, now corpuscular, now wavelar. Put before aggada, halakha’s prism becomes transparent, a pane of glass. Let us return to the location of the Garden of Eden.

Unlike the aggada in Bava Batra, which locates the Garden in the east, an aggada in *Bekhorot* locates it the west. With this change, aggadic discussion takes a surprising turn. The context is the source of the world’s water. “And a river goes out of Eden, to water the garden; and from there it divides into four headwaters. The name of the first is

Pishon . . . And the name of the second river is Gihon . . . And the name of the third river is Hidekel . . . And the fourth river is Perat (Euphrates)” (Genesis 2:10-15). Talmudic exegesis derives from the Hebrew phraseology in Genesis the predominance of the Euphrates. It is the source of the other three rivers; they, in turn, are the source of all the world’s water. In other words, the Euphrates is the world’s water source. Why is it named Perat? Talmud answers: Because it is “fruitful and multiplying” (*peru u-revu*)—self-generating, deriving its waters from natural springs in the earth, not from clouds above. Suddenly, the Talmud interjects, “Let us say that this description of the Euphrates supports the view of Shmuel”—the halakhic view of Shmuel.³³ The aggadic discussion of the source of the world’s water shapes the halakhic discussion of the status of rivers. Aggada has straightforwardly legal ramifications. Halakha asks: whence the major source of river water, from the heavens above or the springs below? If from springs in the earth, a river is a *ma’ayan* and its flowing waters are fit for immersion. If from rainwater, a river’s flowing waters are not fit for immersion; they must be gathered in a *mikve*.³⁴ Let us say that this description of the Euphrates supports the view of Shmuel. Shmuel maintains that the major source of river water is natural springs.³⁵ Thus, in the absence of a *mikve*, a river may be used for immersion. Often in Jewish history a *mikve* was unavailable and a river was used—all based on Shmuel. Seemingly an unequivocally aggadic discussion about the world’s water source, originating in the Garden of Eden, becomes part and parcel of a halakhic discussion about whether one may immerse in a river. Aggada *is* halakha.

And vice-versa. The halakhic discussion in *Bekhorot* about the status of a river takes a surprising turn, resummoning the discussion of the location of the Garden of Eden. Shmuel is disputed by Rav, who maintains that the major source of river water is rain. Rav puts it this way: “When it rains in Palestine, the Euphrates gives weighty testimony.” (When it rains in Palestine, the Euphrates in Babylonia swells.) This means that the Euphrates flows eastward, from Palestine to Babylonia. Since, according to Genesis, the Euphrates originates in the Garden of Eden, the Garden must be in Palestine, i.e., vis-a-vis Babylonia, in the west—contrary to *Bava Batra*. And if the Garden is in the west (Palestine), while the sun rises in the east (Babylonia), how can the sun at sunrise reflect the roses of the Garden? Conversely, if the sun sets in the west—the location of the Garden—how can the sun at sunset reflect the fires of Gehenna? An aggadic problem!³⁶ It stems from Rav’s halakhic analysis of the status of the Euphrates. Seemingly an unequivocally halakhic discussion about the

