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REVIEW ESSAY

THE TALMUD'S LIFE AND HALAKHAH'S EMPIRE

Barry Scott Wimpfheimer, *The Talmud: A Biography, Lives of Great Religious Books* (Princeton University Press, 2018), 299 pages.

Chaim N. Saiman, *Halakhah: The Rabbinic Idea of Law*, Library of Jewish Ideas (Princeton University Press, 2018), 296 pages.

That a prestigious academic press at an Ivy League university published, within a single year, a book titled *The Talmud* and another named *Halakhah* is eloquent testimony to the position that rabbinic Judaism has achieved in the American intellectual arena. The study of Judaism occupied intellectuals in North America from Colonial times until at least the 1960s, but it was a biblical and ancient Judaism that interested them, not the religion molded by the sages of the Talmud and lived by centuries of medieval and modern Jews. The profound shift marked by the two books under review here reflects not only the ways in which American academia has changed over the past few decades, but also the evolution of traditional Judaism in the United States.

Barry Wimpfheimer has shouldered the formidable and important task of introducing the Talmud to a general audience. The term “Talmud” serves loosely here because, while his primary focus is the Babylonian Talmud, Wimpfheimer touches upon the full range of rabbinic literature – Mishna, Tosefta, Halakhic (Tanna’itic) midrashim, Aggadic midrashim, and the Jerusalem Talmud. Moreover, his is a moving target. In keeping with the goal of the series within which his book was published,

Wimpfheimer tells the “biography” of the Talmud by tracing the story of its interpretation and reinterpretation (or “enhancement,” to use his suggestive term), packaging and repackaging through the ages. He uses three adjectives to describe the differing ways in which his subject is defined and conceived:

Academic scholars of the Talmud are primarily interested in the essential Talmud. Traditional scholars of the Talmud engage the enhanced Talmud. Historians of all periods take a strong interest in the emblematic Talmud (3-4).

Accordingly, the book itself is divided into three main sections. Chapters 1 and 2 describe the Mishna, the Babylonian Talmud, and the rest of classic Rabbinic literature (“Essential Talmud”). Chapter 3 recounts the emergence of commentaries on the Talmud (“Enhanced Talmud”) during the Middle Ages and into the modern period, paying particular attention to Maimonides and Rabad of Posquières. Chapter 4 moves farther afield, considering the role that the Talmud has played as a metonymical expression of rabbinic Judaism (“Emblematic Talmud”) and, consequently, as a target for rhetorical and physical attacks from within the Jewish community and outside it. Chapter 5 describes the history of the Talmud as a physical artifact, starting with its appearance as a printed book in the fifteenth century and ultimately reaching its portrayal in twenty-first century art and culture.

Telling such a multivalent tale, spanning three continents and almost two millennia, is a daunting task. The attempt to tell it in a way that is both accurate and readable is awe-inspiring. Yet Wimpfheimer adds another level of virtuosity to his narrative by threading his “biography” through a unifying text – the discussions of fire damages in the second chapter of *Bava Kamma*. In keeping with his argument in his first book, *Narrating the Law: A Poetics of Talmudic Legal Stories* (University of Pennsylvania Press, 2011), about the interdependence of Halakhah and Aggada in the Talmud, Wimpfheimer complements each legal *sugya* of *nizke esh* (fire damages) with one or two stories or homilies from the Talmud. While the examples of Aggada included in the book are fairly well-known (Rabban Yohanan ben Zakai’s plea for Yavneh, Mount Sinai hanging over the People of Israel) and have been discussed innumerable times by academic scholars, Wimpfheimer’s treatment of the halakhic material is highly original. The very choice of these Talmudic sections, which exemplify the very features (elaborate casuistic analysis of hypothetical and unlikely situations) that have most often been singled out for ridicule

by opponents of rabbinic Judaism, reclaims their significance as intellectual texts. They are dense *sugyot* which even experienced students of Talmud find difficult to follow; it is hard to imagine that the intended readers of the book will understand them fully. Yet Wimpfheimer draws out their beauty through a combination of critical analysis, traditional commentaries, and his own fine literary skills. As the various cases of burning haystacks recur at each stage of the book's progress, shifting subtly with every iteration, their cumulative echo telegraphs the rhythm of myriad Jewish lives lived through the Talmud.

To take but one example, when Wimpfheimer describes how Rashi resolves the difficulties in a *sugya* (*Bava Kamma* 23a) "in one fell swoop" that "reimagine[s] the relationship between" its different sections (123), his prose conveys the beauty of Rashi's famously concise commentarial style even to readers who could not have followed Rashi's logic itself.

Overall, readers who have firsthand familiarity with the Talmud will not learn a great deal of new information from Wimpfheimer's book. Nor are they its intended audience. Nonetheless, the external perspective and long-range view through which Wimpfheimer portrays the Talmud should spur even its most dedicated students to fresh and unexpected thoughts about a work they know so intimately.

Although Chaim Saiman's book covers much of the same terrain as Barry Wimpfheimer's, it has a more focused argument: "While Halakhah is undoubtedly law, it is also something else" (8). Saiman's point of departure is that Halakhah (meaning the Talmud and the halakhic literature that follows in its wake) should most obviously be treated as a body of law. Against this "conventional" approach he proposes an alternative – but not contradictory – way of understanding the rabbinic project, which he terms "Halakhah-as-Torah." Halakhah is not only a legal system that ought to be applied and must be studied in order to facilitate its application; studying Halakhah is itself a religious ideal and a spiritual pursuit.

Saiman acknowledges that "Halakhah-as-Torah" is not the only approach found within the Talmudic tradition, nor is it necessarily the dominant one. However, it is the approach that has been championed by the Lithuanian yeshiva tradition with which Saiman himself identifies, and it is also the approach that is more surprising from the perspective of western legal scholarship.

"Halakhah-as-Torah" can be expressed by the claim that Halakhah is not *only* law, but also incorporates theology, ethics, and metaphysics into discussions that are ostensibly only legal. This point is illustrated in Part II of *Halakhah* through a series of close, rich readings of Talmudic *sugyot*.

Saiman argues that weaving abstract or moralistic ideas into the legal discussions of the Talmud renders them more effective and more practical than any focused analysis of those ideas could ever have been. However, Saiman claims further that “Halakhah-as-Torah,” in some important ways, is not law *at all*. Not only did it not function as an operative legal system during the period that the Talmud was formulated, but it could not have done so even under other historical circumstances, because of its inherent instability and embrace of unrealizable ideals: “Looking at the system as a whole, there is simply no way around the fact that the law did not work, the law does not work, and it’s hard to see how the law could ever work” (41).

Neither of these claims, when applied to the Talmud itself, is revolutionary. The first, for example, is laid out in detail in Wimpfheimer’s previous book *Narrating the Law*. Saiman’s innovative contribution, and the core of his argument, is found in Part III of the book: “Between Torah and Law: Halakhah in the Post-Talmudic Period.” Saiman argues that the two approaches to Halakhah that he posited – as law and as Torah – emerged clearly during the Middle Ages (144). The Babylonian Geonim exemplified the legal approach, filtering out all the non-legal and even the legal but non-authoritative passages in the Talmud. The Tosafists, according to Saiman, followed the “Halakhah-as-Torah” approach, immersing themselves in the multivocality of the Talmud and almost reenacting it themselves as they analyzed and discussed every line of the Talmud without immediate regard for its practical significance.

Yet Saiman concedes that even the Tosafists, whose enthusiasm for dense analysis of the Talmud applied equally to its non-legal passages as to its most practical instructions, were not “uninterested in halakhic practice” (151). “Halakhah-as-Torah” was, for them, inextricably tied to “Halakhah-as-law.” Indeed, the Tosafists produced several works of practical Halakhah, including Baruch ben Isaac’s *Sefer ha-Teruma*, which aimed explicitly to convert the insights of the Tosafot into applied law. Applying that law was easier said than done, but it was a task that medieval rabbis, judges, and regular Jews shouldered. Particularly in the realm of public and administrative law, Saiman explains, medieval Jewish courts exploited the gap between Talmudic theory and halakhic practice “to rely on the authority of the Talmud, even as they circumvented the specific rulings of the Talmud that proved too cumbersome for effective governance” (158).

The gap between theory and practice, and the tension between the two approaches towards Halakhah, came to a head in the halakhic codes, and specifically Rabbi Jacob ben Asher’s *Arba’^a Turim* and Rabbi Joseph

Karo's *Shulhan Arukh*. Saiman highlights sections of *Hoshen Mishpat*, dealing with commercial law, which make little effort to bridge the gap between halakhic theory and legal practice. This gap stemmed from the manifold difficulties inherent to the process of applying the principles of the Talmud in early modern society. Saiman argues brilliantly that this gap was not a failure of the system but a saving grace, since the codifiers believed "that the law God spoke to Moses at Sinai... is best served when avoided in judicial practice" (169-170). Unfettered by practical concerns and the messiness of human behavior, *Hoshen Mishpat* could rise freely to the highest religious ideals.

Even in regard to *she'elot u-teshuvot* (responsa) which – unlike codes – were usually written in relation to concrete situations, Saiman points to a gap between theory and practice. Some responsa contain declarations distancing them from legal application, while others were devoted to issues that were clearly theoretical. While acknowledging that such impractical responsa are the exception rather than the rule, Saiman emphasizes these outliers in order to demonstrate "the fluidity of the genre" (193).

The final chapters of the book describe modern movements that have chosen one pole of the dichotomy to the exclusion of the other. "Halakhah's Empire" (chapter 12, a nod to legal philosopher Ronald Dworkin's famous book, *Law's Empire*) presents the scholarly tradition identified most closely with the Soloveitchik family of Brisk as the fullest expression of the "Halakhah-as-Torah" approach. At the other extreme, chapter 13 critiques the attempts of Religious Zionist rabbis to formulate Halakhah that could function as "state law" in the modern State of Israel.

Saiman's frame of reference is explicitly the American legal system. He points to the similarities and differences between the *Shulhan Arukh* and the Uniform Commercial Code, *she'elot u-teshuvot* and case law, and *siyum ha-shas* celebrations to the ludicrous idea of "a stadium full of people celebrating the Constitution." This is a context that Saiman knows well, and using its conventions and culture as a foil has allowed *Halakhah* the book and Halakhah the idea to enter circles of discourse into which it would never otherwise have been invited.

Saiman emphasizes that his book is not historical but phenomenological (11-14). Yet, to my mind, historical context can only enrich the analysis. For example, throughout the book, Saiman compares and contrasts Halakhah to the American legal system, which is the law he teaches professionally. It is also the legal system most familiar to many of his readers, and likewise to the numerous interpreters and decisors of Halakhah currently active in the United States. How might the American legal

system be impacting the application and development of Halakhah in America? A far greater proportion of religiously observant Jews in the present generation is conversant with halakhic texts than in any previous age. What ramifications might this fact have for the shape of Halakhah to come?

Although Saiman admits time and again that halakhic sources move between the poles of theory and practice, Torah and law, the strong emphasis of his book stands squarely at the pole of “Halakhah-as-Torah.” Of course, an author is entitled to choose sides and to promote an idea that she or he believes in passionately, but to give such a book the subtitle “The Rabbinic Idea of Law” is to privilege one very particular “rabbinic idea of law” over all others. I hope that his highly readable and stimulating book will lead to more thought about the multiple ideas of law that course through rabbinic Judaism.

The authors of these two books were both trained in elite Orthodox yeshivot whose subsequent academic studies and professional work as professors in prestigious North American universities did not lead them to obscure their religious origins, as many people on their trajectory did in previous generations. Instead, each in his own way embraces and celebrates his yeshiva education as a crucial component in his intellectual identity. The books they have written and published demonstrate the viability of that trajectory, its complexity and its rich bounty. First, they serve as useful and articulate introductions for intelligent non-specialists seeking to understand the core texts and ideas of rabbinic Judaism. For people familiar with Gemara and *Posekim*, Wimpfheimer and Saiman provide a rich frame in which to think about the texts that they spend their time studying. Their translation of rabbinic literature into a contemporary intellectual and cultural language may allow a new generation to write its chapter of the Jewish tradition.