7 The legal language of everyday life in rabbinic religion

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Scripture teaches that when Moses opened [his oration], he did not mention the needs of Israel until after he opened with praise of God. A parable to a *rhetor* who was standing on the platform and was hired by one side to speak on his behalf. He did not mention the needs of his client until he opened with the praise: *Fortunate is the world for its king, fortunate is the world for its judge. The sun shines upon us, the moon shines upon us.* Others would also praise together with him. Only then did he argue the needs of his client, and then again close with praise of the king.

(*Sifre Deut Piska* 343)

Law and religion, in contemporary academic discourse, are generally seen as separate entities which may (often) conflict, (at times) overlap, or (at the very least) inhabit distinct spheres of the social order. For those of us who study what might be called nomic traditions, however, such as Judaism, Islam, or Hinduism, it is self-evident that law is a crucial and indeed central category of religion itself. Conventional categories in Religious Studies such as myth, ritual, or sacred space are all elements that are undoubtedly present in the early Jewish world, but something that we might call “law”—which I will define further below—is as rich a conceptual category, and in fact often mediates all of these different aspects of rabbinic religion.¹

Though scholars of rabbinic Judaism have long accepted law’s centrality, they have only more recently linked their work much more self-consciously to new concepts or trends in law and legal theory. Recent scholarship (Hayes 2015; Novick 2010; Steinmetz 2008) draws upon legal theory to explore how the rabbis justify their law; these scholars have found justifications that are explicitly religious (“commanded by God”) and as well as those that resonate with natural law, legal positivism, or ideas of virtue or the good life. Other recent scholarship (Fraade 2011; Wimpfheimer 2011; Simon-Shoshan 2013) looks at rabbinic law’s discursive contours, its ties to and affinity for narrative, making connections to modern scholars of “law and literature” like Robert Cover or Peter Brooks. Secular, contemporary legal thought or legal theory is, one might even say, a “hot topic” in the studies of Rabbinics now (as evidenced by a very well attended

2011 panel at the AJS on "Rabbinic Literature and Legal Theory"). This has occurred as the study of law has slowly been emerging from its confines in law schools—which are dedicated to training and initiating new professional lawyers and legislators—and has started permeating new corners of the academy throughout the humanities and social sciences.² It has certainly been exciting to think about rabbinic law through the lens that humanities-oriented legal scholarship has been able to provide, and the field of Rabbinics has even been able to make contributions to the study of law as well—filling in lacunae in comparative legal history and legal cultures, demonstrating different discursive patterns from those in contemporary legal literature, and providing alternate models of imaginative legal interpretation.

Illuminating as it is, this endeavor simultaneously pulls the study of Rabbinics, or at least rabbinic law, even farther away from the field of Religious Studies; since, as mentioned above, law and religion are generally thought of as distinct areas of inquiry. When the question arises, however, about how religious rabbinic law is, different strategies are employed in order to bring religion back into consideration. Some scholarship in the field treats Jewish law as a timeless whole, and is therefore able to stress the crucial discontinuities between modern legal categories (rights, jurisdiction, powers of enforcement) and Jewish jurists who reject or reframe these categories (Stone 1993; Jackson 1979); this move unfortunately does not help us much in trying to understand the specific conceptual world of early rabbinic legal discourse.

On a deeper level, however, the religious or sacred character of rabbinic law has been explored by focusing on basic, foundational issues—law as commandment, as divine will, as sacred scriptural hermeneutics. Questions asked to probe the nature of rabbinic law's religious character include: do the rabbis understand their legal interpretations of scripture as a human endeavor or a divinely-inspired enterprise (Shemesh 2009, 39–71)? Does rabbinic legal interpretation presume that revelation has a single meaning that produces a single true law (cf. Hayes 2008), or does it presume a polysemous revelation with multiple legal truths (cf. Hidary 2010)? In what sense do the rabbis understand the "divine" in divine law (Hayes 2015)?

As crucial as these questions are, these foundational questions are quite distinct from the everyday practice of the rabbinic legal enterprise. Much space in rabbinic literature is simply devoted to the tasks of interpreting law, making law, and making decisions, rather than reflecting on their meaning or their sacred authority. In other words, the rabbis have a way of turning even topics like prayer—undoubtedly a religious institution—into something apparently mundane and even tedious by dwelling on legal details such as whether a blessing must be repeated if one forgot to utter a particular word, what exact time of day the prayer should be uttered, or arguing about the exact language required for a particular occasion. In these conversations, the sacred does not interrupt the trivial details of everyday life with the presence of the numinous but is rather transmuted into these mundane details—it is clear, then, why secular law is such an appealing parallel, in which larger questions of state power and consent of the

governed percolate through legal decisions about more mundane issues, such as sentencing guidelines. It makes sense, then, to find the essential distinction between each system of law in the more overarching worldviews (religious or secular) in which these systems are grounded.

* But it is precisely here that we may turn to contemporary developments in both Religious Studies and law to help us understand how regular, everyday practices may be more definitive of social institutions (like religion and law) than the foundational ideas upon which they are based. To make this argument I will rely primarily on Robert Orsi's notion of (lived) religion as a "relationship between heaven and earth"; moreover, I will invoke two very different legal thinkers: James Boyd White's notion that law is best seen not as a set of authoritative commands, but as an "activity";³ and Pierre Bourdieu's view of law as a social practice. I posit simply that rabbinic law is as much religious as it is legal: it is a discursive activity that mediates a relationship between a human community and heaven. That it does so imperfectly, or through the creation of hierarchies or divisions or coercion or pain, does not set it apart from "religion" but makes it no different from many other imperfect religious institutions (Orsi 2005; Puett 2011). In order to illustrate how we may view law as a religious activity, I will follow up a brief discussion of Orsi with an exploration of a social institution from the ancient world which all view as religious: divination. If we understand the activity of divination as functionally analogous to the activity of ancient rabbinic law, it should help clarify how law, like divination, can serve as a mediating practice between our world and higher, supernatural beings.

I would like to propose as well that the study of nomic religions like rabbinic Judaism within the rubric of Religious Studies can and should articulate more concretely how law can be understood as a religious language; how *jurists* can be seen alongside more "typical" religious mediators like sorcerers, priests, shamans, soothsayers, and prophets. Legal activity—which includes interpretation, legislation, argumentation, decision-making, obedience, disobedience, and sanction—needs to be understood as a genuine way that human communities have sought to bring themselves into communion with the divine, to create a connection between heaven and earth.⁴

Religion is relational

In *Between Heaven and Earth*, Robert Orsi resists defining religion as "a medium for explaining, understanding, and modelling reality" (2005, 2). Orsi here is arguing against not a different theory of religion as much as a "common-place" idea that "sacred media are used to make and sustain the meaningfulness of the worlds in which humans find themselves" (2005, 143).⁵ Instead, Orsi offers religion "as a network of relationships between heaven and earth involving humans of all ages and many different sacred figures together" (2005, 2). A key concept for Orsi's relational model of religion is the idea of "sacred presence," which he understands in a variety of ways. While "sacred presence" is generally associated, by scholars of religion, with icons, images, or objects like

relics, which are external objects encountered primarily through vision and touch, according to Orsi, "presence" may be encountered in the body (internally) or in narrative (intangibly). Orsi sees the body as a *primary* vehicle for making the presence of the sacred "real," especially in the lives of children. He defines the "corporalization of the sacred" as:

the practice of rendering the invisible visible by constituting it as an experience in a body—in one's own body or in someone else's body—so that the experiencing body itself becomes the bearer of presence for oneself and for others.

(Orsi 2005, 74)

Occasional ritual is not enough to account for an ongoing experience of the bodily reality of religion, according to Orsi, but continual, everyday practices can accomplish it—practices such as prayer disciplines, regulation of postures and movements, or restriction of what can be eaten and when (such as no meat on Fridays; Orsi's context is an American, Catholic one, but the parallels to rabbinic Judaism, in this particular register, are clear and profound). Orsi tells a powerful story about a former nun who was trapped and frightened for her life, and at that moment, she heard old, memorized prayers "echoing in [her] body." Rather than the nun saying a prayer, Orsi observes, "[h]er childhood prayer was saying her" (2005, 108). So, for Orsi, in instances in which religion is focused on imparting various bodily and mental disciplines on initiates, "religious materiality or presence" manifests not "in things, but practice"—that is, again, in the body, the way it is made to move and to refrain from movement (2005, 75). Sacred presence was experienced both by the practitioner of these disciplines him or herself, as a reality that infringed on his or her bodily freedom and control, and also by those who observed those practitioners and saw them as literal conduits between "domains of the spirit and the earth" (Orsi 2005, 103).

Orsi concedes that the presence of religion or the sacred is not necessarily "benign." He admits that guilt and fear of punishment were chief motivating factors in the Catholic early childhood toolkit, and cites a psychologist who had spent decades hearing from victims about the "damages of pre-Vatican [II] practices." And thus Orsi concludes that the "religious reality achieved in children's bodies did not make the world safer for these children, more comforting, or even necessarily more meaningful. It made it real" (2005, 108). The reality of sacred presence in the bodies of practitioners connects the material realm with the spiritual one in an experiential, physical way, in a way that was often coercive and hierarchical. This coercion and hierarchy often relied on sets of rules or even casuistry (Orsi 2005, 82). Here, we may begin to see a parallel with legal discourse and practice of the rabbis. The inviolable rules of conduct imposed upon Catholic children are a kind of legal regime intended to effect religious discipline on the body. That they are felt at times as favorable and at other times painful does not set it apart, for Orsi, from other modes of being in the world, but rather aligns it with most other forms of relationship.

Narrative is also an important medium, according to Orsi, for forging relationships between heaven and earth. Orsi discusses the way that saints' hagiographies weave themselves into family narratives, as stories of relatives and the saints to whom they were particularly devoted mirror each other and are often told in one breath. He devotes an entire chapter to his own grandmother's devotion to St. Gemma, and the way memories of his grandmother are often recounted with reference to that saint; it is almost as though the departed relative is not remembered as an individual apart from her entwining with the life of the saint that shaped her life story. By telling stories of the saints, not simply as history or hagiography but specifically in relation to family stories, Catholics, according to Orsi, mediated sacred presence through storytelling.

As for those who were devoted to particular saints, and family members that honored them alongside the memories of their loved ones, they constructed:

lives in relation to sacred stories, ... [and they] came to knowledge ... about who they were, what was good and what was bad, what they might desire and what was forbidden, how they should behave and how they might love, and what they should endure.

(Orsi 2005, 113)

In other words, through the commonplace acts of hearing and telling stories about these saints, these individuals negotiate a host of normative issues as well: "what was good and what was bad"; "what they might desire and what was forbidden"; "how they should behave"; "what they should endure." According to Orsi this is done in both a straightforward way in which the saint is an exemplar, or in unconscious parallels made between the saint and the one who is devoted to her: storytelling thus is a religious discourse that facilitates a top-down imposition of heavenly demands on people (i.e., "the saint was a straightforward model of the good life"), but also facilitates relationships with the divine in "deeper and unnoticed ways," such as unconsciously identifying with "the most extraordinary [sacred] desire, pain and joy in a saint's life" (Orsi 2005, 113). An authoritative and norm-setting statement (here, the "official" story of the saint's life as exemplar) can be remade in relation to an individual's own life, and "unnoticed" implications of these stories can even subvert the original "prescriptive" intent of the official story.

In essence, much as with the creative interpretation and application of sacred law, here authoritative utterances are reconstructed for particular situations and made to apply to particular needs, sometimes in ways that are simple, and other times in ways that are surprising. In Orsi's narrative of Catholic immigrants' devotion to saints, there is no legal discourse; in these stories, the language of relationship between heaven and earth is one of "experience and emotion" (2005, 113). Nevertheless, in this instance it is language and speech that allow the sacred to commingle with the earthly, imposing heavenly demands on devotees or weaving sacred, miraculous events with the mundane realities of human life. Storytelling about saints interwoven with stories about specific family members

allows ordinary Catholics to live their lives inflected with divine aspirations; ordinary daily activities, as well as more unusual occurrences, are experienced in relation to the perceived reality of saints and the divine demands imposed upon them. And in this sense, we may observe a parallel with nomic religion, in which mundane, daily activities, as well as more unusual occurrences, are inflected with the sacred demands and aspirations of religious law which parallels the sacred story.

For Orsi, then, the “lived experience” of religion is a relational one. People encounter sacred presence in their daily lives, rather than (only) through periodic rituals or extraordinary visions. As people’s lives are restricted, expanded, hurt, or enlivened by religious discipline and sacred stories, these same people find themselves engaged in a relationship with heaven. The relationship is ongoing, borne by everyday, mundane activities that consistently negotiate with sacred duties or heavenly ambitions. And it is this understanding of the experience of religion that we may consider alongside early rabbinic legal practice.

Divining sacred presence

While Orsi’s understanding of religion is extremely suggestive in terms of finding a path toward locating sacred presence, rather than, say, rote legalism, in nomic religions, what remains an obstacle for the study of rabbinic legal culture of late antiquity is the fact that, unlike Orsi, we are unable to gather the kind of detailed ethnographies of the everyday experiences of rabbinic religious practitioners. Narratives about encounters with the divine in rabbinic literature are often highly edited, reworked, and reframed, and so they are hardly a straightforward source for gauging the kinds of stories people told about divine beings or the reality of their felt presence in the daily lives of late antique rabbinic Jews. Orsi’s methodology is not easily transferred to the study of rabbinic literature.

With that problem in mind, I would like to turn to the ancient world and to briefly explore a common practice, namely, divination, which is often presumed to have facilitated an encounter between humans and the gods, and thus may serve as a missing methodological link between Orsi’s ethnography, on the one hand, and presumptions we make about the function of rabbinic law in late antiquity, on the other. I explore it here because it is a practice whose express objective is mediation between human and divine, facilitating the kinds of “relationships between heaven and earth” that Orsi sees as the main feature of religious practice. Divination is also conventionally characterized as a feature of religion first and foremost, even though it certainly served important social purposes. And finally, the results of divination are most often normative or prescriptive, and they may often function to maintain social order (as we will see below), thus aligning divination with the practice of law in several key ways. Divination, then, is both a religious practice in conventional terms, a relational practice in Orsi’s sense, and a mundane procedure with prescriptive implications—like law.

The heavenly realm, transcendent and invisible, has long been made legible by the interpretation of divine will through words, signs, and symbols. The

practice of divination—consulting oracles, reading sheep’s livers or the stars or portents—was never simply or primarily about the quest for an encounter with the sacred realm. Rather, divination, as described by Michael Flower, was a “rational and coherent, as well as a socially useful, system of knowledge ... It was socially useful in that it aided decision making, circumvented indecision, and arbitrated disputes” (2009, 105).⁶ While divination is often related to prophecy and prediction of the future, in fact divination served more often to tease out “the personally binding realities and ... the ‘ought’ addressed specifically to the personal self or to a group” (Zuesse 2005, 2369)—elements which overlap a great deal with the discourse of law.

Is there “sacred presence” in the practice of divination, or was the technical skill of interpreting signs too far removed from the gods to bring them into a real relationship with humans? According to Flower, too much has been made of the distinction between “so-called natural divination (such as ecstatic prophecy and spirit possession) and technical, artificial divination (such as extispicy and augury)” (2009, 26)—with the former being thought of as “direct” (involving divine manifestation) and the latter as “indirect,” or removed from the sacred realm. Ancient writers give us descriptions of overwhelming, immediate encounters with the sacred as individuals consult oracles,⁷ but they were just as convinced that when it came to less “immediate” interpretation of natural signs and symbols, “the gods intervened directly. ... In the case of technical divination, it was the gods who directed the flight of the birds or implanted markings on the entrails of sacrificial victims” (Flower 2009, 89). There is communication here, through the language of divinatory science; diviners “bridge the gap” between gods and humans, as they read signs and perform before “an audience of mortals and gods” (Flower 2009, 72, 179). The presence of the gods is real, then, for ancient Greeks, even if their messages are at times indirect or in fact quite ordinary.

Comparisons between divination and textual hermeneutics (particularly at Qumran) have been made by scholars in the field of rabbinic literature (Fishbane 1977, 1988; Nissinen 2009; Broida 2012). Many of the exegetical techniques are similar; divination sciences may even have influenced early scriptural exegetes. However, the aspect of divination I am interested in here is not the interpretive practices themselves per se, but rather the function of divination. I am interested in the idea that people and communities, in divining what to do—how to act, what decisions to make, what was forbidden, “what to endure”—were brought into a relationship with heaven, as we saw in Orsi’s work. These relationships were often mundane and matter-of-fact, rather than mystical or transcendent, but they weren’t always easy; they did *not* always impose top-down “social order” as some theorists of religion might posit, or “meaning” or “consolation” to those whose lives were mediated through it. Oracles or sign-interpretation could be manipulated by elites to enhance their authority, and non-elites were well-aware of that possibility. Moreover, clients of diviners often felt anxiety about the accuracy of sign-interpretation or the qualifications of the particular seer, and about the fact that misreading signs and

making the wrong decision could lead to disastrous results.⁸ Given these parameters, we might certainly be led to ask: why was divination practiced as widely as it was, when it does not seem to have a clear-cut function? According to Flower, divinatory practices were simply part of the reality of the ancient Greek worldview, which held that "the gods are concerned for the welfare of humankind, that they know more than humans, and that they are willing to share some of that knowledge" (2009, 105). Ancient Greeks, then, saw divination as a medium to enable a relationship between gods and people—a hierarchical one, and one fraught with doubts and misunderstandings, one that at times even caused pain and death, but one that also revealed human activity to be infused with the reality of sacred presence.

Rabbinic legal relationships

The language of law, for the early rabbis, can thus be viewed, along similar lines, as a language of mediation, a method of bringing ordinary people into relationship with heaven. The idea that God is "present" in Torah has been remarked on by many scholars of midrash.⁹ At times, this idea is backed up either by reference to the famous rabbinic utterance "these and these are the words of the living God," taking it to mean that the divine will is in itself plural, or that divine authority rests on divergent, human interpretations of his will. In both cases, the plural interpretations of the sages are understood to be part of the original revelation, implying, in a sense, an ongoing (and immediately accessible) revelation through interpretation (Stone 1993, 837–838). However, I find this notion of divine presence *in Torah* a bit too abstract and intellectualized to really be a concept of sacred presence. God is not *actually* present in the Torah according to this formulation, but rather invoked as a transcendent authority.

Another way sacred presence in rabbinic Judaism has been formulated as a continuing revelation through the activity of scriptural interpretation emphasizes that even though Torah typically mediates a direct encounter between the human interpreter and God, in some cases interpretation may produce an unmediated sacred presence. Daniel Boyarin (2003, 22) cites the famous story of Ben Azzai to make this point:

Ben-Azzai was sitting and interpreting, and fire was all around him. They went and told Rabbi Akiva, "Rabbi, Ben-Azzai is sitting and interpreting, and fire is burning all around him." He went to him and said to him, "I heard that you were interpreting, and the fire burning all around you." He said, "Indeed." He said, "Perhaps you were engaged in the inner rooms of the Chariot [theosophical speculation]." He said, "No, I was sitting and stringing the words of the Torah [to each other], and the Torah to the Prophets and the Prophets to the Writings, and the words were as radiant/joyful as when they were given from Sinai, and they were as sweet as their original giving."

(Song of Songs Rabbah 1:10)

This is a riveting text, and there is no question that it invokes the immediacy of sacred presence. In Boyarin's words, "the essential moment of midrash is ... forming new linguistic strings out of the old, and *thereby recovering the originally moment of Revelation itself*" (2003, 22–23). Is this therefore what sacred presence looks like for the rabbis? If so, it renders the notion of sacred presence as an occasional, surprising, mystical event—albeit tied to an ordinary, daily activity of scriptural interpretation. The texts can be likened to Orsi's descriptions of manifestations of the image of the Virgin Mary in mundane places or household objects in contemporary Catholicism. That Ben Azzai's conjuring of sacred fire is occasional and surprising, rather than a usual outcome of scriptural interpretation, is encoded in the text through R. Akiva's reaction; R. Akiva, himself an avid interpreter of Scripture, is surprised by the sudden appearance of heavenly fire and even misreads it: he thinks that Ben Azzai has been engaged in theosophical speculation, in a deliberate attempt to facilitate an encounter with the divine. R. Akiva's reaction echoes the reader's surprise, affirming that miraculous fire was not a usual occurrence. In fact, the story itself is exceptional within rabbinic literature, a theophanic narrative that has few parallels in the entire midrashic and talmudic corpus. The exceptional quality of this story then only serves to underscore our sense that unlike this narrative, much of the rest of rabbinic literature—disputes over garments, deciding the correct times for prayer—is not really concerned with sacred presence at all. In other words, that the language of *law* is distinct from the religious language of theophany and sacred presence.

There is truth to the idea, as formulated by Steven Fraade, that the rabbis perceived themselves to be living in a period in which God was not immediately and directly available, and in which his presence was mediated by Torah. This idea then accounts for rabbinic literature's utopian impulses, or eschatological hopes, in which the encounter with God would once again be available directly, as it was in biblical times. Fraade writes:

Although Israel's hope for direct dialogue with God remains deferred, in the time-between we know ... that Israel is not so much suspended between heaven and earth as between God and his song [the Torah], with God being accessible to Israel in the here-and-now principally through their performative internalization of that song through the multivocal dialogue of its recitation and study.

(1991, 148)

We should not imagine the rabbinic present of Torah study—which was very often, if not most often, legal in form and content—to be just a pale shadow of divine presence, or to imagine that the rabbis assumed a proto-modernist mindset, making do with human law while palpably anxious over God's absence. Both Martin Jaffee and Rachel Neis, for instance, consider the visual encounter with the sacred that occurs in the interaction between Torah scholar and disciple as a manifestation of sacred presence in the rabbinic present. Jaffee argues that it

was only through human-to-human contact that *torah* (implying the sacred or the holy) was considered to be truly apprehended. Torah should not be studied from a written text, but via “the Sage, in whom torah was present as a mode of his embodied existence. For torah to be present, the Sage must be present as its *unmediated source and embodiment in word and deed*” (Jaffee 2001, 152, emphasis mine). Neis takes this idea one step further, referring to the sage as “an icon of the sacred” (2013, ch. 6, par. 1). She writes: “The sage as a teacher of Torah becomes the ultimate embodiment and visible manifestation of the divine word. ... Rabbinic bodies [were] visually perceptible containers of the word of God aflame with divine radiance” (Neis 2013, ch. 6, Conclusion, “Palestine and Babylonia”). So for Neis, the “torah” that becomes visible is one that is infused with the sacred; it is holiness itself. And although Neis very clearly points out that the rabbis nostalgically lamented a lost past in which temple pilgrims and God directly apprehended one another, face to face (2013, ch. 2), she nonetheless shows that the master-disciple relationship in rabbinic communities replicated some salient aspects of that encounter, particularly the ability to convey to the rabbinic disciple a real encounter with sacred presence.

I would like to suggest that while vision was undoubtedly an important medium in the rabbinic world for encounter with the divine and a sense of sacred presence, the language of law—the very substance of most Torah study—also served to bring rabbinic Jews into a relationship with heaven in a way that did not rely on the ocular. The everyday practice of law may have brought individuals toward an awareness of the reality of the sacred by placing bodily limitations on what they came into contact with (purity laws), what they ate (food laws), and how they worked (agricultural laws). We do not, however, have testimony in rabbinic literature to the impact of these daily practices on ordinary people except as refracted through rabbinic imagination. Rather than being able to address how law functioned as a medium for sacred presence in the ordinary lives of rabbinic Jews, we are instead only able to explore how the rabbis believed law *ought* to have functioned in the ordinary lives of rabbinic Jews.

For the rabbis, then, the framework of divine commandments was a reality that could quietly shape the religious practitioner’s thoughts and experiences and would offer resistance should the practitioner try to escape it. In one famous story, the legal framework of the ritual commandments reorients a rabbinic disciple away from the pleasures of this world toward heaven:

- ...
 [B] There once was a certain man who was punctilious with the commandment of the fringes. He heard that there was a prostitute in the cities by the sea who received 400 gold coins as her wage. He sent her 400 gold coins, and she set a time for him.
 [C] When his time arrived he went and sat at the entrance of her house. Her servant-girl entered and said to her, “That man for whom you set a time—behold, he is sitting at the entrance of the house.” She said to her, “Let him come in.”

- [D1] When he entered she prepared for him seven couches of silver and the top one was of gold.
 [D2] There were benches of silver between them all, and the top one was of gold.
 [D3] There were steps of silver between them all, and the top one was of gold.
 [E] When they came around to “that act” his four fringes came and appeared to him as four witnesses and they beat him on the face. Immediately he withdrew and sat on the ground. She too withdrew and sat on the ground.
 [F] She said to him, “By the Love-[Goddess] of Rome, I won’t leave you be until you tell me what blemish you saw in me.” He said to her, “By the [temple] service, I saw no blemish in you, for there is no beauty equal to yours in the whole world. But the Lord our God commanded us a minor commandment called ‘fringes,’ and he wrote about it—*I am the Lord your God ... I am the Lord your God* [Num 15:41]—two times. *I am the Lord your God—I will provide a reward in the future world. I am the Lord your God—I am the judge who will exact punishment.*”¹⁰

In the world of this story, the four fringes, worn not by choice but by the command of the Torah, restrain the wearer’s bodily movements. They are themselves a ritual object, but sacred presence does not actually inhere within them; rather, they facilitate what Orsi calls the “religious materiality [of] ... practice” (2005, 75). What this means for Orsi is that concrete experiences in the body—eating certain foods, adopting certain postures—are tied to the sacred and thus made real. The disciple in the story wears clothing that are not simply neutral bodily coverings, but are tied to divine instruction on right and wrong. The disciple is compelled to withdraw from his sexual encounter because he was reminded of this realm of the sacred—invisible, ignorable, but present.

He was also reminded in a distinctly *legal* fashion: the fringes did not appear as a divine icon but rather as *witnesses* to an act that would be registered within a heavenly structure of permission and prohibition, reward and punishment—a divine courtroom, of sorts. The fringes, in fact, did more than simply remind the disciple of the wrongness of his act: they threatened to testify against him.¹¹ Law is thus a medium of divine encounter, invoking a reality so powerful that it halts one of the most powerful human drives mid-act.

The story continues, and we learn that the student’s act of withdrawal, apparently unprecedented for the high-status sex worker, has a distinct effect on her as well:

- [G] She said to him, “By the [temple] service, I will not leave you be until you write down for me your name and the name of your city and the name of your study-house in which you study Torah.” And he wrote down for her his name and the name of his city and the name of his study-house in which he studied Torah.

- [H] She went forth and distributed all of her money, one-third to the monarchy, and one-third to the poor, and one-third she took with her, and she came and she stood in the study-house of R. Hiyya. She said to him, "My master, convert me." He said to her, "Perhaps you have set your eyes on one of these disciples?" She held out to him the note in her hand. He [R. Hiyya] said to him [the man], "Come forth and enjoy your acquisition."
- [I] Those beds which she prepared for him when prohibited, she now prepared for him as permitted. This is the giving of reward in this world. And in the world-to-come—I don't know how much! (*Sifre Num 115*).¹²

Orsi accounts for the impact of sacred presence not only on the self, but on others; "rendering the sacred corporally present" (2005, 93) makes the divine realm real not only for the ones whose bodies are circumscribed by religious prescription but also for onlookers. The bodies of the saints, of the disabled, or of children "give substance to religious meaning, [make] the sacred present and material, not only *for* [them] but *through* them too, for [others] in relation to them" (2005, 77). The disciple's bodily renunciation of the sex worker's charms allows his body to become a vessel of the sacred, which leads the sex worker not only to God or heaven, but to Torah, in which her world would be re-ordered along sacred lines of prohibition and permission.

It is along those legal lines that the story concludes, suggesting that pleasure mediated by divine law is just as great on this earth as illicit pleasure; permitted pleasure is then more than doubled by eternal bliss in the future as well. The description of the beds is elaborate; indeed, the configuration of the beds-plus-benches is strange, so much so that the version of the story in the later Babylonian Talmud amends the description for comprehensibility.¹³ Commentators have pointed out that the depiction of beds stacked high may have served to enhance the "woman's eroticism and desirability" as the disciple has to "travel both far horizontally, to the cities by the sea, and vertically, to the top of the stack of couches, in order to gratify his lust" (Rubenstein 2002, 186–187). Or, indeed, that there is "symbolic meaning to be found in ... the six silver beds and the one gold bed: do they represent the Six Days of Work and the Sabbath?" (Harvey 1986, 264). I would suggest that rather than suggesting the sacred order in time, they instead suggest the sacred order in space—the idea of seven heavens, with God and the ministering angels found in the topmost sphere, is common in Late Antique Jewish thought,¹⁴ and the seven stairs or ladders, leading literally upwards to the seven silver and gold couches, seem to me to invoke the "future" world of reward indicated by the disciple. Moreover, the bizarre and fantastic arrangement of the beds in the sex worker's chamber, almost impossible to imagine in physical space, may suggest that the worlds of the ordinary and extraordinary are not completely disconnected from each other: heaven and earth intermingle, a truth which is made apparent through divine law.

A rather different sense in which sacred presence is tied to law is through the notion that God is "present" in courtrooms. Commenting on the verse "Both parties to the dispute shall appear before the Lord" (Deut 19:17) the rabbis write:

The two men shall stand (Deut 19:17)—let the owner of the ox come and stand by his ox—*before the Lord*—they think that they are standing before creatures of flesh and blood, but they are really standing before God Himself.

(*Sifre Deut Piska 190*)

These statements on their own don't tell us much because the midrash may be more exhortatory than descriptive—does this midrash represent what the rabbis understand to be true, or what they think members of their community need to hear? Moreover, these overt references to God's presence may be there to allay anxiety about judgment, or paper over the felt reality of divine absence. Nevertheless, the midrash here is suggestive, as it specifically comments on a biblical verse about a subject we examined earlier: divination. In its biblical context, the reference in the verse to the two claimants "standing before the Lord" is intended to be understood in the sense of an oracle: in the case of a dispute a diviner can consult an oracle to see which claimant ought to win the case. The rabbis here re-imagine this biblical oracular procedure as one of as standing before human judges—human judges who are either placeholders for, or mediums of, divine judgment. Thus a mundane ("owner of the ox") trial becomes a moment of sacred encounter; it is not the judges but God Himself who redistributes property or sanctions wrongdoers; God's judgments are those that are made real by their real effects in the world of the claimant.

Law, then, in the rabbinic world, permeates the social world from the clothing worn daily to the occasional need for official, auratic judicial pronouncement. As this kind of social practice, it becomes a vehicle that may mediate the sacred as much as storytelling does, in Orsi's account, for contemporary Catholics. Sociologist Pierre Bourdieu understands the legal field primarily as a practice, one which has its own traditions, customs, and daily experiences, and one that is not exactly coterminous with the culture it inhabits. In fact, he explicitly compares the practice of law to the "practice of religion" (Bourdieu 1987, 841), and many of the metaphors he uses to describe the experience of law in society are derived from religion, such as magic, prophecy, and consecration. When parties are engaged in a petty dispute, he claims, the law is able to intercede and "magically" transform it: "a superior power appears before the litigants, one which transcends the confrontation of private world-views" (Bourdieu 1987, 831). Legal authority is important here not because it forces its will on people in a top-down sort of way, but rather because it appears to invoke a kind of wisdom or neutrality that always stays above the fray; that interrupts a dichotomous and binary he said/she said dispute with a third way whose clarity shines from on high. Now certainly for Bourdieu, the law itself is not in any way mystical; the transcendent power made manifest before the litigants, he asserts, "is nothing other than the structure

and the socially instituted space in which such confrontations are allowed to occur" (Bourdieu 1987, 831). Bourdieu here is analyzing a secular legal system supported by state power, but I think that we can nevertheless carry much of his characterization over into the late antique rabbinic world. For the rabbis, law was not a set of rules they occasionally encountered or obeyed or disobeyed: it was an entire field of activity, a *habitus*, a language through which they spoke their lives. And for them, legal decision-making did not just *appear* transcendent: it was, itself, a holy activity. At the same time, however, much like the stories of the saints, law was neither rigid nor uncompromising: law was a language in which the rabbis could resist authority, express loss or hope, or even transform reality. Another contemporary legal thinker, James Boyd White, puts it this way: "Both the lawyer and the lawyer's audience live in a world in which their language and community are not fixed and certain but fluid, constantly remade, as their possibilities and limits are tested" (1985, 690–691). Legal argumentation and interpretation, for the rabbis, provides legibility to the vague notion of "divine will," and law also mediates a whole host of bodily practices (cf. Orsi 2005, esp. 75–76). It provides, ultimately, a mode of intertwining the ordinary lives of humans (and rabbinic Jews in particular) with something sacred; it relates the heavenly realm to the earthly one in both a linguistic and a corporeal way.

I must distinguish this view of religious law, however, from much of what has been said before—that Jewish law renders all of human experience "sacred" and "holy" in some way. Or, as we have seen, the idea of religion as "meaning-making." In other words, the conception that things that seem ordinary are suddenly imbued with spiritual power, making it *meaningful*, or extraordinary. The reality of divine presence, according to Orsi, is mediated through a host of ordinary practices: prayer discipline, holy objects, casuistry, storytelling. The relationship with the divine is a continuing relationship—not a one-time mystical or dangerous experience, nor the abstract idea that God has "authorized" your decisions or practices at some point in history. For the rabbis, this *real* relationship is achieved in large part through the daily language of law, as the divine will is interpreted according to legal hermeneutics, and rabbis render judgments or derive legal interpretations, no matter how seemingly minor or irrelevant. Life is inflected through law and legal practices; the sacred and the holy are legally legible. Legal discourse, depending on how it was used, often helped consolidate privilege and power among the elite, subjugate women and the disabled, and authorize violent practices. It also, however, created a language for negotiation of all of these practices, a safe space¹⁵ in which those who are subjugated or oppressed could encounter and negotiate with heaven.

I would like to conclude with a profound if puzzling midrash that attempts to locate the origins of God's vexed relationship with humanity:

For I lift up my hand to Heaven [Deut 32:40]: When the Holy One, blessed be He created the world, He did so by spoken word alone, and not by oath. Who caused Him to swear an oath? Those who lacked faith were the ones who caused him to swear an oath, as it is said, *So He raised His hand in*

oath to make them fall in the wilderness [Ps 106:26] and *thus said the Lord God: I hereby swear that the nations which surround you shall, in their turn, suffer disgrace* [Ezek 36:7].

(*Sifre Deut* 330)

This midrash is not overtly legal—there is no mention of a trial, witnesses, rules, or precedent. But all the same, the midrash operates according to a kind of legal logic, in which a relationship between parties is forged by an initial transgression and a subsequent attempt at remedy. One of the great ironies of legal processes is the way in which they bind together disputants, the very people who would like to be rid of each other most. In this midrash, God and humanity, heaven and earth, are not bound through creation or nature—creation itself is neutral. It is an oath, a legal act, that binds God to humanity precisely at the point of transgression, precisely when God presumably would most like to be rid of humans—Israel as well as the nations—entirely. It is not really a consoling midrash, nor is it particularly hopeful, but it does reveal heaven and earth to be unambiguously if belatedly yoked together, bound by the legal logic of transgression and response. What legal forms like oath-taking provide here, then, is a way for transgression and broken faith to actually tie God and humans closer together in dispute, rather than as an impetus to push God and the fallen people farther and farther apart. Law thus provides a language in which this difficult relationship with heaven can be not just imagined, but lived and felt.

Notes

- 1 I am certainly aware of the difficulty of using the category of "religion" to understand the ancient world; see Nongbri 2013. Nevertheless, for the purposes of this chapter, which seeks to understand the intersections between the fields of Rabbinic literature and *Religious Studies* in particular, which takes "religion" as its subject, the category of religion is used in a heuristic way.
- 2 A simple Google search of "law and society" yields many pages of institutions that have law and society centers, majors, or minors. The Association of Law and Society was founded in 1964 and has grown exponentially since; its membership continues to grow. See entry for "Association of Law and Society" in Clark 2007.
- 3 I want to start by thinking of law not as an objective reality in an imagined social world, not as a part of a constructed cosmology, but from the point of view of those who actually engage in its processes, *as something we do and something we teach. This is a way of looking at law as an activity, and in particular as a rhetorical activity.*

(White 1985, 688, emphasis mine)

- 4 For work that has been done on this topic in Hinduism, see Davis 2007.
- 5 It is difficult to figure out exactly against whom Orsi is arguing here; however, he seems to be right that there is a general trend in Religious Studies to view religion this way. David Morgan notes: "The role of media as practices and forms of meaning making in the construction of a meaningful world characterizes much of the interest of scholars engaged in the study of religious uses of media over the last three decades" (2008, 3). Orsi also refers to Talal Asad's designation of "meaning-making" as a "modern, Western preoccupation and a distinctly post-Enlightenment

- and intellectualist approach to religion" (Orsi 2005, 144), but while Asad argues that Geertz was the main proponent of this widespread approach, Orsi actually defends Geertz from this charge, seeing in him a far more subtle thinker and theorist (Orsi 2013).
- 6 Flower is making these claims specifically about divination in ancient Greece, rather than as a universal definition of divination.
 - 7 See Pausanias 9.39 (Flower 2009, 95).
 - 8 See Flower 2009, especially Chapter 5, "Disbelief and Skepticism about Seers."
 - 9 See below.
 - 10 This text is paralleled in *b. Menah. 44a*. The translation here is taken (and modified slightly) from Rubenstein 2002 (187–189).
 - 11 The fringes here, compared to witnesses, may also reference a rabbinic legal idea that for a sin or crime to be punishable, witnesses need to actually warn a wrongdoer that he is about to commit a punishable act.
 - 12 This text is paralleled in *b. Menah. 44a*. The translation here is taken (and modified slightly) from Rubenstein 2002 (187–189).
 - 13 The talmudic version amends section [D1–3] above to: "When he came in she prepared for him seven beds, six of silver and one of gold; and between one bed and the other there were steps/ladders of silver, but the last were of gold" (*b. Menah. 44a*). For this and other variants, see Goshen Gottstein 1989 (47).
 - 14 See *b. Hag. 12b*. In 2 Enoch there are actually ten heavens, though the first seven are described in most detail.
 - 15 See Stone 2005, citing Johan Huizinga:

Law separates itself from the rest of society by retreating into a designated area that is sealed off from ordinary profane life and from social hierarchies. This enclave not only allows parties to meet as equals; it also allows them to meet in safety, covering over violence and aggression under the guise of authority. In this imaginative sacred space, the court is a circle, a protected enclave bounded off from the rest of the world.

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References

- Bourdieu, Pierre. 1987. "The Force of Law: Toward a Sociology of the Juridical Field." Translated by Richard Terdiman. *Hastings Law Journal* 38 (5): 805–853.
- Boyarin, Daniel. 2003. *Sparks of the Logos: Essays in Rabbinic Hermeneutics*. Leiden: Brill.
- Broida, M. 2012. "Textualizing Divination: The Writing on the Wall in Daniel 5:25." *Vetus Testamentum* 62 (1): 1–13.
- Clark, David Scott, ed. 2007. *Encyclopedia of Law and Society*. Thousand Oaks, CA: SAGE.
- Davis, Donald R. 2007. "Hinduism as a Legal Tradition." *Journal of the American Academy of Religion* 75 (2): 241–267.
- Fishbane, Michael. 1977. "The Qumran Peshar and Traits of Ancient Hermeneutics." Pages 97–114 in Volume 3 of *Proceedings of the Sixth World Congress of Jewish Studies Held at the Hebrew University of Jerusalem, August 13–19, 1973, under the Auspices of the Israel Academy of Sciences and Humanities*. Edited by Avigdor Shinan. Jerusalem: World Union of Jewish Studies.
- Fishbane, Michael. 1988. "Use, Authority and Interpretation of Mikra at Qumran." Pages 339–377 in *Mikra: Text, Translation, Reading and Interpretation of the Hebrew Bible in Ancient Judaism and Early Christianity*. Edited by M.J. Mulder. Assen: Van Gorcum.
- Flower, Michael A. 2009. *The Seer in Ancient Greece*. Berkeley: University of California Press.
- Fraade, Steven. 1991. *From Tradition to Commentary: Torah and Its Interpretation in the Midrash Sifre to Deuteronomy*. Albany: State University of New York Press.
- Fraade, Steven. 2011. *Legal Fictions Studies of Law and Narrative in the Discursive Worlds of Ancient Jewish Sectariness and Sages*. Volume 147 of Supplements to the Journal for the Study of Judaism. Leiden: Brill.
- Goshen Gottstein, Alon. 1989. "The Tzitzit Commandment, the Prostitute, and the Homiletical Tale." Pages 45–58 in *Rabbinic Thought: Proceedings of the First Conference on "Mahshevet Hazal"*. Edited by Tzvi Groner and Marc Hirshman. Haifa, Israel: University of Haifa Press.
- Harvey, Warren Zev. 1986. "The Pupil, the Harlot and the Fringe Benefits." *Prooftexts* 6 (3): 259–264.
- Hayes, Christine. 2008. "Legal Truth, Right Answers and Best Answers: Dworkin and the Rabbis." *Dine Israel* 25: 73–121.
- Hayes, Christine. 2015. *What's Divine About Divine Law?: Early Perspectives*. Princeton: Princeton University Press.
- Hidary, Richard. 2010. *Dispute for the Sake of Heaven: Legal Pluralism in the Talmud*. Providence: Brown Judaic Studies.
- Jackson, Bernard. 1979. "Religious Law in Judaism." *Aufstieg Und Niedergang Der Römischen Welt* 2 (19.1): 33–52.
- Jaffee, Martin. 2001. *Torah in the Mouth: Writing and Oral Tradition in Palestinian Judaism 200 BCE–400 CE*. New York: Oxford University Press.
- Morgan, David. 2008. *Key Words in Religion, Media and Culture*. New York: Routledge.
- Neis, Rachel. 2013. *The Sense of Sight in Rabbinic Culture: Jewish Ways of Seeing in Late Antiquity* [E-reader version]. New York: Cambridge University Press.
- Nissinen, Martti. 2009. "Pesharim as Divination: Qumran Exegesis, Omen Interpretation and Literary Prophecy." Pages 43–60 in *Prophecy after the Prophets?: The Contribution of the Dead Sea Scrolls to the Understanding of Biblical and Extra-Biblical Prophecy*. Edited by Kristin De Troyer and Armin Lange. Leuven: Peeters.
- Nongbri, Brent. 2013. *Before Religion: A History of a Modern Concept*. New Haven: Yale University Press.
- Novick, Tzvi. 2010. *What Is Good, and What God Demands*. Leiden: Brill.
- Orsi, Robert A. 2005. *Between Heaven and Earth: The Religious Worlds People Make and the Scholars Who Study Them*. Princeton: Princeton University Press.
- Orsi, Robert A. 2013. "Speaking the Impossible 'No.'" *Bulletin for the Study of Religion* 43 (1): 7–11.
- Puett, Michael. 2011. "Social Order or Social Chaos." Pages 109–129 in *The Cambridge Companion to Religious Studies*. Edited by Robert A. Orsi. New York: Cambridge University Press.
- Rubenstein, Jeffrey, L. 2002. *Rabbinic Stories*. New York: Paulist Press.
- Shemesh, Aharon. 2009. *Halakhah in the Making: The Development of Jewish Law from Qumran to the Rabbis*. Berkeley: University of California Press.
- Simon-Shoshan, Moshe. 2013. *Stories of the Law: Narrative Discourse and the Construction of Authority in the Mishnah*. New York: Oxford University Press.
- Steinmetz, Devora. 2008. *Punishment and Freedom: The Rabbinic Construction of Criminal Law*. Philadelphia: University of Pennsylvania Press.
- Stone, Suzanne Last. 1993. "In Pursuit of the Counter-Text: The Jewish Legal Model in Contemporary American Legal Theory." *Harvard Law Review* 106: 813–896.

- Stone, Suzanne Last. 2005. "Rabbinic Legal Magic: A New Look at Honi's Circle as the Construction of Law's Space." *Yale Journal of Law & Humanities* 17: 97–123.
- White, J.B. 1985. "Law as Rhetoric, Rhetoric as Law: The Arts of Cultural and Communal Life." *The University of Chicago Law Review* 52 (3): 684–702.
- Wimpfheimer, Barry Scott. 2011. *Narrating the Law: A Poetics of Talmudic Legal Stories*. Philadelphia: University of Pennsylvania Press.
- Zuesse, Evan. 2005. "Divination: Overview." Pages 2369–2375 in Vol. 4 of *The Encyclopedia of Religion*. 2nd edition. Edited by Lindsay Jones. Detroit: Macmillan Reference USA.

8 Time, gender, and ritual in rabbinic sources

Sarit Kattan Gribetz

One of the questions that has been at the heart of the field of Religious Studies since the nineteenth century is about the intersection of time and religion: what role do religious narratives, calendars, and rituals play in establishing rhythms of time and in developing individual and collective temporalities? In this chapter, I ask a question about the relationship between time, religion, and gender: if distinct rituals are performed by men and women within a single community, what impact does gender have on the structuring of time and on the orientation of values embedded within those divergent timescapes? In what follows, I put into conversation the work of sociologists of religion Émile Durkheim and Nancy Jay about ritual, time, and gender with a set of rabbinic sources from the first few centuries CE about time-bound rituals to show the effects of gendered rituals on a community's complex sense of time and meaning.

I hope that taking seriously a set of insights about time, gender, and ritual from the field of Religious Studies, and applying them to a constellation of rabbinic ritual laws, can be mutually illuminating for the way in which we think about the function of religious rituals in general, and for the way that we understand the development of a specific set of rabbinic rituals in particular. In other words, I intend to highlight two analytical pay-offs:

- 1 that introducing an example from rabbinic sources offers one possible answer to a problem posed in the theoretical literature on religious ritual, and,
- 2 that approaching rabbinic sources from the perspective of the field of Religious Studies allows us to shed new light on the consequences of rabbinic laws and the rituals they dictate.

My exploration is divided into two parts. In the first section, I explain the theoretical debates in the fields of philosophy and sociology of religion that result in an unanswered question about the role of gender in ritual practice. With this question in mind, I then turn, in the second section, to rabbinic sources about a series of rituals in order to suggest a possible answer.