Review Essay[*]

"Greeters of the Law"

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Among many possible interpretations, Franz Kafka's short story *Before the Law* describes the relationship of many modern Jews to *halakhah*, provisionally definable as Jewish norms and practices. The story begins, "Before the Law stands a doorkeeper. To this doorkeeper there comes a man from the country who begs for admittance to the Law."[1] Commentators have pointed out that "man from the country" is a possible translation of *'am ha-'areṣ*, the rabbinic term for one who is ignorant of Jewish learning.[2] The doorkeeper bars the man entry to the Law, though he initially indicates that eventually the man may be able to enter. The latter is a bit put off, since he had not anticipated such resistance, thinking that the Law "should be accessible to every man and at all times." Nonetheless, determined to be admitted, he waits for the doorkeeper to allow him entry. He waits for years and years, giving all that he had brought with him to the doorkeeper in the hopes of bribing him. As the man ages and his eyes dim, his desire for the Law does not: "He can now perceive a radiance that streams inextinguishably from the door of the Law." Before he dies, the man calls the doorkeeper to ask him a final question: "Everyone strives to attain the Law . . . how does it come about, then, that in all these years no one has come seeking admittance but me?" The doorkeeper responds: "No

[*] Chaim N. Saiman, *Halakhah: The Rabbinic Idea of Law* (Princeton: Princeton University Press, 2018) 320 pp., $29.95 hb, ISBN 9780691184364. Page references appear in parentheses within the text.

[1] Kafka's parable was originally published in 1915 in *Selbstwehr*, a Jewish weekly, and appears in several iterations. This translation is from the version embedded in Franz Kafka, *The Trial* (trans. Willa and Edwin Muir; New York: Vintage Books, 1969) 213–15.

[2] For a review of interpretations with a focus on the place of Judaism in them, see Vivian Liska, "'Before the Law Stands a Doorkeeper. To This Doorkeeper Comes a Man...': Kafka, Narrative, and the Law," *Naharaim* 6.2 (2012) 175–94.

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one but you could gain admittance through this door, since this door was intended for you. I am now going to shut it."

Modern Jews are alienated from Jewish Law and deeply desire to change that; they want to be admitted to Jewish Law and to attain it, perhaps learning about it or even obeying it. This desire is frustrated, however, by what we might call Jewish Law's "gatekeepers," rabbis and educators. They have different expectations of Jewish Law from ordinary Jews. While the latter expect it to be readily accessible to everyone, to the gatekeepers it is exclusive and hierarchical. The gatekeepers also give mixed messages. They indicate that eventually ordinary Jews may be granted entry to Jewish Law, but not yet. Though they do not force ordinary Jews to give up everything that they have gained from the world outside of Jewish Law, the "secular world," in order to reconcile with traditional Jewish religiosity, the authorities do not discourage them either. They allow ordinary Jews to waste their time waiting, in front but outside of Jewish Law, while still barring access to it. Finally, when it is clear that modern Jews have wasted their life in waiting, these gatekeepers reinforce their frustrated desire by emphasizing that ordinary Jews—both generally and personally—ought to have been able to fulfill it; the Jews and the Law belong together but are kept apart.

If Kafka in 1915 accurately depicted the alienation and frustration of the modern Jew's relationship with Jewish Law, in subsequent decades its doorkeepers have been replaced by greeters. Instead of barring entry, they invite disaffected Jews—as well as anyone else who is interested—into Jewish Law by offering compelling descriptions of it.

While Jewish apologetic literature has a long history, this specific genre, focused on the relationship between modern Jews and halakhah, begins with Joseph Soloveitchik's masterpiece *Halakhic Man*, which was first published in Hebrew in 1944 and translated into English in 1983. There Soloveitchik, the scion of a distinguished rabbinic family who had supplemented his traditional rabbinic learning with philosophical training, offers a phenomenology of a peculiar religious style that had been neglected by scholars of religion—the "halakhic man." His stated purpose in the work is "to defend the honor of the Halakhah and halakhic men, for both it and they have oftentimes been attacked by those who have not penetrated to the essence of Halakhah and have failed to understand the halakhic personality."[3] The halakhic man is difficult to understand, Soloveitchik claims, because he joins together, though does not resolve, features that are usually attributed separately to what Soloveitchik calls "homo religiosus" and "cognitive man." Like homo religiosus halakhic man yearns for transcendence; like cognitive man he focuses on comprehending this world. What allows him to do this is the halakhah. For "[t]he essence of the Halakhah, which was received from God, consists in creating an ideal world and cognizing the relationship between that ideal world and our

[3] Joseph B. Soloveitchik, *Halakhic Man* (trans. Lawrence Kaplan; Philadelphia: Jewish Publication Society of America, 1983) 137.

concrete environment in all its visible manifestations."[4] While, of course, halakhic man fulfills his religious obligations, his focus is on one: *talmud torah*, the study of Torah. Torah is understood by him as primarily comprised by its norms—the commandments. Halakhic man, however, is less concerned with the regulation of behavior than with the development of concepts: "The foundation of foundations and the pillar of halakhic thought is not the practical ruling but the determination of the theoretical halakhah."[5] This conception of halakhah is developed by Soloveitchik through an extended metaphor with mathematics. Both, to be sure, have practical application; but, essentially, they are a priori and ideal systems of knowledge. Halakhists, like mathematicians, according to Soloveitchik, devote themselves to exploring this system of knowledge, mapping its conceptual connections and creatively drawing their implications. They then view the empirical world through the prism of this system of knowledge. The often lack of correspondence between the empirical world and the halakhic system is a problem with the world and not with the system.

A different conception of halakhah and image of the halakhic man is offered by Eliezer Berkovits in *The Halakhah: Its Power and Function*, which was first published in Hebrew in 1981 and then abridged and translated into English also in 1983 as *Not in Heaven: The Nature and Function of Halakhah.* Instead of an a priori and ideal system, for Berkovits halakhah is eminently practical: "Halakha is the wisdom of the application of the written word of the Torah to the life and history of the Jewish people."[6] Consequently, reasoning about halakhah "is not theoretical reasoning. . . . It is practical reason in the sense that requires consistency in the halakhic endeavor to realize Halakha's two guiding ideas, as presented to it by the Torah: 'Thou shalt live by them [by God's commandments] and not die by them' [Lev. 18: 5 and *b*. *Sanhedrin* 74a], and 'All its ways are ways of pleasantness, and all its paths, paths of peace" [Proverbs 3:17]."[7] For Berkovits, then, halakhah is a method for implementing the commandments of the Torah, under changing historical conditions, in order to realize its overarching political and moral goals. Indeed, in keeping with this expansive vision of Torah, he views the goal of the halakhah as the realization of a morally ideal polity. His halakhic man, then, is the practical decisor who must take responsibility by issuing halakhic rulings, determining norms, in view of moral and political uncertainty.

Whereas for Soloveitchik halakhah is a system of knowledge and prism for viewing the world, for Berkovits it is a method of implementation and thus of changing it. Therefore, while for Soloveitchik reasoning about halakhah is deductive and autonomous, for Berkovits it is politically and morally purposive. Lastly,

[4] Ibid., 19–20.

[5] Ibid., 24.

[6] Eliezer Berkovits, *Not in Heaven: The Nature and Function of Halakha* (New York: Ktav, 1983) 71.

[7] Ibid., 81.

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whereas for Soloveitchik the halakhic man is an academic scholar, for Berkovits he is a practical decisor. Stated in this way, it seems as if Soloveitchik and Berkovits are not even offering descriptions of the same object. Though they both are inviting the "man of the country" into *something*, how can it be "the Law," in the singular?

Chaim N. Saiman, professor in the Charles Widger School of Law at Villanova University, shows how this is possible in his stimulating contribution to this genre, *Halakhah: The Rabbinic Idea of Law.* To be clear, Saiman's aim is not to intervene directly in the debate between Soloveitchik and Berkovits. As its subtitle suggests, his goal is more significant than that. Still, he provides an understanding of halakhah that encompasses the descriptions that they each present. Though he does not appear in the book, the initial position is that of Berkovits. Halakhah is often translated as "Jewish Law," which suggests that, like state law, it is primarily a system for regulating behavior, though, because it is religious, it would include both interpersonal and ritual norms. In view of this assumption, Saiman's primary argument is that "[h]alakhah is not only a body of regulations but a way, a path of thinking, being, and knowing" (8). Indeed, he shows how the classical rabbis "use concepts forged in a regulatory framework to do the work other societies assign to philosophy, political theory, theology, and ethics, and even to art, drama, and literature" (8).

Of course, the echoes of Soloveitchik are audible here, and Saiman is forthright about his influence. But a major advancement here is that, even as Saiman amplifies Soloveitchik's voice, he does not deny the others in the Jewish tradition that are represented by Berkovits. He argues that halakhic discourse is bipolar: One pole is halakhah-as-regulation, which does aim to regulate behavior. It thus approximates the conventional image of law, though with the important proviso that it is not established by any state (except in matters of personal status in the State of Israel) and so lacks the enforcement mechanisms of state law. The other pole is halakhah-as-Torah where Torah is a "catchall phrase to refer to religious teaching and instruction" (9). Here the aim is not regulation, but devotional study motivated by the assumption that the Torah is the word of God. In a more perspicuous contrast to halakhah-as-regulation, Saiman sometimes calls this "expression," that is, halakhic discourse is a medium for expressing thoughts on God, humanity, the good life, the just polity, and much more besides. Saiman insightfully shows how halakhic discourse moves "dialectically between its two poles, and that even when halakhah does tend towards the conventional [regulative] view, the force of the opposing [expressive] pole can be detected in the background" (10). In this, he draws on Robert Cover's description of law in his famous article "Nomos and Narrative" as containing both imperial and paideic or world-maintaining and world-creating moments, though, as will be suggested, Saiman does not draw the full implications of this view.[8]

[8] Robert M. Cover, "Nomos and Narrative," *Harvard Law Review* 97 (1983) 11–19.

After the introduction, which states the main claims and methodology, Saiman's thesis is advanced in three parts. The first part, entitled "The Nature of Halakhah," elaborates on the central claim by focusing on the complicated relation between applied and non-applied norms in the Mishnah and the Talmud. This compelling argument is that, in moving seamlessly between the discussion of norms that are assumed to be operative and those that are not, rabbinic literature oscillates between regulative and expressive modes.

The second part, entitled, "Talmudic Readings," effectively illustrates the workings of "halakhah-as-Torah" by showing how regulatory categories are marshalled for theological, educational, and literary expression in the Talmud. In a crucial chapter, it also considers challenges to "thinking legally" about such questions, which will be discussed below.

This part shows Saiman as a master teacher who is able to illustrate his point through striking examples, some of which are quite complex. To take a simpler one, as an illustration of how rabbinic literature uses no longer applicable regulatory concepts to reflect on enduring human questions, he offers its discussion of the *'eglah 'arufah*, the calf that is hacked as part of a ritual in response to an unsolved murder (61–63). As Deuteronomy 21 describes it, if a corpse is found murdered outside of a town and the killer is unknown, the elders of the closest town must come to a nearby riverbed, hack a calf's neck, and wash their hands as atonement for the death (vv. 1–9). The Mishnah (*Sotah* 9: 4), concerned with how to determine which town is closest to the corpse, records a debate between Rabbi Eliezer and Rabbi Akiva. In what Saiman suggests could "be seen as a parody of halakhic legalism," Rabbi Eliezer holds that one measures from the corpse's navel while Rabbi Akiva holds that one measures from its nostrils to the town. However, Saiman argues, this debate is not really about halakhah-as-regulation but about halakhah-as-Torah. He notes that, according to the rabbinic understanding, this ritual is only performed in exceedingly rare circumstances. Additionally, by the time that Rabbi Akiva and Rabbi Eliezer debated, the ritual was understood to have been abolished due to the destruction of the Jerusalem Temple. Lastly, their debate only concerns a very specific case in which a corpse is nearly equidistant between two towns. So what is at stake in their debate? To answer this question, Saiman turns to the talmudic discussion. In the *Babylonian Talmud* (*Sotah* 45b), the rationales for the opinions are explained as follows: "One master [Rabbi Akiva] holds: the primary element of life is in his nostrils. And one master [Rabbi Eliezer] holds: the primary element of life is in his navel." In the *Jerusalem Talmud* (*Sotah* 9:3), they are similarly explained: "Rabbi Eliezer says: from his navel—from the place that the fetus is created. Rabbi Akiva says: from his nostrils—from the place where the face is recognized." In Saiman's interpretation of these talmudic reflections on the mishnaic debate, "[t]he issue is not how we measure a man's corpse but how we measure the human essence. Both turn a superficially trifling legal question into a broadly

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philosophical one: is man a primarily physical being—created from the navel out? Or fundamentally a spiritual being—measured from the breathing passages" (62).

The third part, entitled "Between Torah and Law: Halakhah in the Post-Talmudic Period," perspicuously narrates how even when the halakhah-as-regulation pole is dominant, the effects of the halakhah-as-Torah pole are still felt. In addition to providing helpful thumbnail descriptions of major halakhic texts and figures, Saiman persuasively shows how even such texts as codes and responsa that are ostensibly focused on governing behavior, possess features that encourage their devotional study and expressive thought. This part also includes two chapters that might have deserved their own section because, though they also focus on historical developments, Saiman's treatment of them is more advocatory. Specifically, in the chapter entitled "Halakhah's Empire: The Yeshiva and the House of Brisk," he touts a contemporary rabbinic methodology as the "fullest expression" of the halakhah-as-Torah pole (212). And, in the chapter "The State of Halakhah and the Halakhah of the State," Saiman leverages his bipolar interpretation of halakhah in order to argue that it should not be established as state law in the State of Israel, though this does not preclude legislation that is framed and understood as "Jewish."

Because of the significance of Saiman's aim—to describe "the rabbinic idea of law," and thus the range of texts that he discusses, from the Mishnah, to medieval commentaries and codes, and on to modern responsa and novellae—there will likely be specialists of classical, medieval, and modern rabbinic literature who take issue with some of his readings and claims. But Saiman distinguishes his methodology from their historical or philological approaches by describing it as "conceptual" (8–14). This also differentiates it from doctrinal and historical introductions to Jewish Law like Menahem Elon's magisterial *Jewish Law: History, Sources, Principles* or *An Introduction to the History and Sources of Jewish Law*, edited by N. S. Hecht.[9] Instead, Saiman "aims to define the basic parameters of the concept of halakhah" (9). And he does so, by showing how it oscillates between the two poles of regulation and expression, how it is more than just "Jewish Law" but "Jewish Thought" as well.

Furthermore, Saiman focuses on expression or halakhah-as-Torah as opposed to halakhah-as regulation. To an extent, this results from the intervention that he is performing. As indicated, halakhah is often translated as "Jewish Law" and compared with state law, and so Saiman aims to show its other pole. He rightly acknowledges, though, that this can make his account seem one-sided. He writes that halakhah-as-Torah "is more dominant in later layers of the Talmud than earlier ones, and that in the medieval period it is more characteristic of northern Europe than North Africa, or that as modernity approaches it is more typical of the Lithuanian

[9] Menachem Elon, *Jewish Law: History, Sources, Principles* (4 vols.; Philadelphia: Jewish Publication Society, 1994); *An Introduction to the History and Sources of Jewish Law* (ed. N.S. Hecht et al.; Oxford: Clarendon Press, 1996).

school than of either hasidic masters or the worldview of Sephardic halakhists" (10). And so, he effectively inoculates his work from historical gotchas.

The relevant question, then, is what is at stake—what is illuminated and what is obscured—in the choice of this particular methodology? Saiman further defines his conceptual approach to halakhah as "legal and phenomenological" (11). He first appeals to Frederic W. Maitland to suggest that whereas historians are concerned with the past as past, "lawyers read the past as continuous with the precedents and principles of the present" (11). Moreover, he appeals to the two giants of Anglo-American legal theory, H. L. A. Hart and Ronald Dworkin, for the legitimacy of taking the "internal point view" on law and thus halakhah. That is, instead of explaining how law was shaped by external historical, social, economic, or political factors, the internal point of view is "committed to taking the law's categories seriously and offers an account that lives within the normative boundaries established by the legal system" (12).

However, there are significant differences between Hart and Dworkin. Of course, they differ in legal theories: Hart is the main proponent of legal positivism, the idea, roughly stated, that a law is a law because it has been positively enacted by the recognized legal institutions whether the sovereign or the legislature.[10] Dworkin, in contrast, promotes a post-positivist approach, according to which law results from a judge's constructive interpretation of statutes and precedents.[11] This has consequences for the relation between law and morality. While for Hart it is always possible for what the law actually is to differ from what the law ought to be, for Dworkin legal interpretation involves both descriptive and normative moments, and so in determining what the law is the judge is also reflecting on what the law ought to be. In rendering a decision, the judge is both describing and justifying the law.

But—and here is the significance for Saiman's methodology—Hart and Dworkin differ not only concerning legal theory, in their accounts of law, but also legal *theorizing*, that is, what is involved in *offering* an account of law. In this, Hart is also a positivist. One can simply offer a descriptive account of the concept of law and legal practice without weighing-in normatively on the value of this concept and practice. Dworkin, in contrast, is also a post-positivist about legal theorizing. For him, all legal theories, not just his own, involve constructive interpretation: "they try to show legal practice as a whole in its best light, to achieve equilibrium between legal practice as they find it and the best justification of that practice."[12] Indeed, this is an instance of Dworkin's general claim that "a participant interpreting a social practice . . . proposes value for the practice by describing some scheme of interests or goals or principles the practice can be taken to serve or express or

[10] H. L. A. Hart, *The Concept of Law* (2nd ed.; Oxford: Oxford University Press, 1994).

[11] Ronald Dworkin, *Law's Empire* (Cambridge: Belknap Press of Harvard University Press, 1986; repr., Oxford: Hart Publishing, 1998).

[12] Ibid., 90, page numbers taken from the reprinted edition.

exemplify."[13] On this basis, Dworkin restates the debate between himself and Hart, not as an abstract clash over the correct description of law and legal interpretation, but as a normative debate about the political legitimacy of law. Which account would better describe as well as justify law as framework for governing our collective life?

So then, given that Saiman appeals to both Hart and Dworkin in describing his methodology, which of them does he more closely follow? In concluding his introduction, he writes that "the goal is . . . to offer a constructive account of the interpretive and conceptual practices presented within [halakhah]" (14). This, along with the teleological story that Saiman tells, from the later stages of the Talmud, to Northern Europe, to Lithuania, leaving behind earlier stages of the Talmud, North Africa, Hasidic masters and Sephardic halakhists, supports reading him as offering a constructive interpretation of the rabbinic idea of law in the post-positivist mode of Dworkin. Note well: the claim is not that Saiman attributes to the rabbis a post-positivist account of law. Nowhere does he claim that they thought that legal interpretation involved both description and justification. Rather, the claim is that Saiman, in interpreting halakhah, "proposes value" for it by "describing some scheme of interests or goals or principles" it "can be taken to serve or express or exemplify." Saiman's interpretation is, thus, as normative as it is descriptive, which is why it is better situated in a genre with Soloveitchik and Berkovits than with Elon or Hecht. This is also what distinguishes it from scholarship in rabbinic literature such as Christine Haye's definitive recent monograph *What's Divine about Divine Law? Early Perspectives* or her comprehensive edited volume *Cambridge Companion to Judaism and Law.*[14] It is what makes him "a greeter of the Law." He both describes and justifies it, as the mission statement of the series in which the book appears puts it, to "general readers who are curious about Jewish treatments of key areas of human thought and experience." Or, in other words, the "man from the country."

Viewed from this perspective, Saiman's intervention is better understood. Most directly, he is arguing that, if one starts with the assumption that the goal of halakhah is exclusively to regulate behavior, one both misses key aspects of it and fails to see its value. However, by proposing that it serves both regulative and expressive functions, one can capture those aspects of it and see its value. And so just as a Dworkinian judge must highlight some precedents and statutes while downplaying and even excluding others in order to render a ruling that both describes and justifies the law, Saiman tells a teleological story of the rabbinic idea of law that culminates in the Lithuanian conceptual approach to Talmud as well as a moderate religion-state settlement in the State of Israel. Saiman both describes and justifies the halakhah.

[13] Ibid., 52.

[14] Christine Hayes, *What's Divine about Divine Law? Early Perspectives* (Princeton: Princeton University Press, 2017); *The Cambridge Companion to Judaism and Law* (ed. Christine Hayes; New York: Cambridge University Press, 2017). Full Disclosure: I am a contributor to the latter volume.

This also makes clear the appearance, at crucial points in the book, of "Jesus's Critique of Halakhah" and responses to it. In Saiman's telling, the critique of halakhah ascribed to Jesus—but also somewhat present in the Hebrew prophets as well as medieval and modern Jews and non-Jews—is that "by emphasizing the legal particular, halakhah inevitably blinds itself to the more relevant ethical, philosophical, and theological dimensions of God's revelation"—to the "weightier matters of the law" (Matt 23:23) (24). To this charge, Saiman responds that "[p]recisely because halakhah loomed so large in the rabbinic consciousness, it became the medium through which the rabbis did in fact engage the weightier matters of the law," such as theology, philosophy, and ethics (28).

But even after the intertwining of regulation and expression is masterfully illustrated in chapters five through seven, aspects of this critique of the rabbinic idea of law remain. Indeed, problems arise precisely because regulation and expression are conducted in the same discourse. It is to his credit that Saiman highlights these problems: The first problem is that, because the regulation of behavior requires more determinative answers than the expression of ideas, framing philosophical, theological, or ethical issues in the language of law may "encourage the notion that they can be resolved with the finality of a legal verdict" (127). What Saiman calls "thinking legally" can be, to adapt Richard Rorty's notion, a "conversation-stopper."[15] The second and third problems are, in some sense, mirrors of each other. On the one hand, there can be a focus on regulation to the exclusion of expression. This breeds formalism, where the final legal rules are detached from the skein of theological, philosophical, and ethical reflections that surround them in rabbinic literature. On the other hand, there can be a narrowing of expression to regulation. Such reductionism results in what could likely be supererogatory suggestions, edificatory exhortations, or ascetic practices in rabbinic literature being promulgated as binding halakhic norms.

Saiman illustrates the latter two problems with examples concerning gender that have roots in classical rabbinic texts but that also have contemporary import for Jewish life. Specifically, in the case of formalism, he shows how the Talmud's discussion (*b. Berakhot* 24a) of women's voices and hair as '*ervah*, which signifies both forbidden sexual relationships as well as genitalia, leads to halakhic rulings concerning women's behavior and dress that focus on legal formalities as opposed to moral or prudential substance. While there are decisors who are more sensitive to such considerations, due to the legal framing of the issue, Saiman notes, they "face the uphill task of arguing for exceptions to a generally applicable legal rule" (132). Similarly, in the case of reductionism, he describes how the Talmud's discussion (*b. Sanhedrin* 75a) of a man who claims he will die if he does not have sex with a woman and the rabbis' refusal to allow him to relieve his urge even by speaking with her from behind a fence has given rise to rulings by rabbis mandating the separation of the sexes, even, for example, on public transportation.

[15] Richard Rorty, "Religion as Conversation-Stopper," *Common Knowledge* 3.1 (1994) 1–6.

Saiman is astute to refract the problems of "thinking legally" about everything, or using regulatory language for expressive purposes, through the lens of gender. Women are always object and never subject of the rabbinic idea of law. He would have been aided in this discussion, however, by recourse to feminist theories of halakhah, specifically Rachel Adler's *Engendering Judaism: An Inclusive Theology and Ethics* and Tamar Ross's *Expanding the Palace of Torah: Orthodoxy and Feminism*.[16] Indeed, these theorists, like Saiman, also draw on the legal thought of Robert Cover, and they might have allowed him to draw the full and destabilizing implications of the conjoining of imperial and paideic moments or regulation and expression in law. For, according to Cover, this means that institutions conventionally understood as authorities within a legal system, like courts, legislatures, and legal scholars, do not have a monopoly on the interpretation of legal meaning and thus of its normative entailments. Communities within the state, like Bob Jones University or the Church of God in Christ, Mennonite, have just as much right to stake a claim to legal meaning and norms as the Supreme Court. Conflicts over legal meaning and norms are not settled, then, by appeal to settled authorities like the Supreme Court. The Court's view, in principle, is just one claim among others. Rather, such conflicts are settled by communities living out their commitments, their vision, in practice.[17]

Now, in the case of state law, the Supreme Court has a major practical advantage over other communities in determining legal meaning and norms—an effective monopoly on the use of force within the territory of the state. However, as Saiman stresses throughout, there is no similarly effective enforcement mechanism in halakhah. And so, the full force of Cover's legal thought can take hold—his anarchism.[18] Institutions conventionally understood as authorities within the "Jewish legal system," like rabbis, rabbinical courts, and decisors, do not have a monopoly on halakhic meaning—its expression—and its normative entailments—its regulation. "Heterodox" groups within the Jewish community, like feminists, transgender advocates, and proponents of eco-kashrut, have just as much right to stake a claim to halakhic meaning and norms as them. Conflicts between them, here in both principle and practice, can only be settled in practice itself; by different communities living out their halakhic commitments and vision.

What then results is a complete collapse of "Jewish law" as an independently existing object, as Rachel Adler makes clear in her (re)definition of halakhah: "A halakhah is a communal praxis grounded in Jewish stories," and she explains a praxis as "a holistic embodiment in action at a particular time of the values and

[16] Rachel Adler, *Engendering Judaism: An Inclusive Theology and Ethics* (Boston: Beacon Press, 1999); Tamar Ross, *Expanding the Palace of Torah: Orthodoxy and Feminism* (Hanover, MA: Brandeis University Press, 2004).

[17] Cover, "Nomos and Narrative," 44–60.

[18] Robert M. Cover, *Narrative, Violence, and the Law: The Essays of Robert Cover* (ed. Martha Minow, et al.; Ann Arbor: University of Michigan Press, 1995) 175.

commitments inherent to a particular story."[19] And though Tamar Ross suggests that there are more limits on halakhic change than Adler recognizes, Ross does so on the basis of the social constraints involved in being a member of a particular Jewish interpretive community and not because of anything inherent to the rabbinic idea of law.[20]

Drawing the complete implications of the conjoining of regulative and expressive functions in halakhic discourse, as Ross and Adler allow us to do, dismantles the image in Kafka's parable. Instead of simply exchanging doorkeepers for greeters, whether Soloveitchik, Berkovits, or Saiman, "the man from the country" may realize that he had never been alienated from "the Law" after all.

[19] Adler, *Engendering Judaism*, 25–26.
[20] Ross, *Expanding the Palace of Torah*, 145–83.

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