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Volume 64 | Issue 5

Article 4

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1-30-2020

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### Recommended Citation

Kevin L. Hughes, *The Challenge of Halakhah*, 64 Vill. L. Rev. 687 (2020).

Available at: <https://digitalcommons.law.villanova.edu/vlr/vol64/iss5/4>

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2019]

## THE CHALLENGE OF HALAKHAH

KEVIN L. HUGHES\*

AS a participant in Christian-Jewish dialogue, both formal and informal, for many years, one of the common *truisms* that I have encountered often serves as a point of departure: that Christianity is concerned with belief, and so with doctrine and creed, whereas Judaism is concerned with *mitzvah*, with “God’s call to action,” as Chaim says.<sup>1</sup> Some Jews have said to me, “For Jews, it doesn’t really matter what one believes at all.” Whether *that’s* fair or not, Chaim says, “The Talmud offers a profoundly different way of thinking. Its starting point is the mitzvah—God’s call to action—and its core intellectual tool is interpretation, be it of the Bible, the Mishnah, or its own earlier material.”<sup>2</sup> As a Christian theologian, I have always wondered about the implications of the starker forms of this basic contrast. In a post-Kantian, late-modern world, this characterization of Judaism as fundamentally ethical AND NOT metaphysical seems to lend itself too easily to a kind of secularity that, while claiming a kind of open agnosticism with respect to God, in effect dismisses the question of God altogether. And, in a similar way, from a philosophical point of view, it becomes quite difficult to think about how one should act without a sense of the whole that one would have to call “metaphysical,” whether that “metaphysics” is implicit or explicit. That is, the only way one can decide what it is good for a human being to do is if you have some significant sense of what a human being is and therefore what the human good is, and to consider the human good is, implicitly or explicitly, to consider how humans fit within the larger world in which they live, etc. So, from my perspective, in at least this limited and attenuated sense, action is impossible without a metaphysical judgment.

One of the significant benefits of Chaim’s book is the clear demonstration, in multiple places throughout the book, that halakhic discussion in the Talmud is not the *refusal* or *dismissal* of fundamental philosophical and theological questions of, e.g., the nature of humanity, “how we measure the human essence.”<sup>3</sup> Instead, halakhah offers a radically different angle of approach to these sorts of questions. As Chaim says,

What is beauty? What is truth? What is the best political ordering? The Talmud anchors such macro-questions in the context of a specific mitzvah and its obligations . . . . In brief, what the

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1. CHAIM N. SAIMAN, HALAKHAH: THE RABBINIC IDEA OF LAW 71 (2018).

2. *Id.*

3. *Id.* at 62.

Greeks pursued through reflective and speculative philosophy, the rabbis read into, out of, and through halakhah.<sup>4</sup>

To be clear, here we still have a clear difference in approach. But Chaim's detailed discussion of halakhah brings a better understanding of the differences into focus.

In an effort to clarify these differences even further, let me take a moment to reflect upon Chaim's characterization of Western theological traditions, because I am convinced that the re-engagement of Western Christian thinkers with the Jewish tradition of Talmud Torah has helped bring to light tensions within that very Western Christian tradition. To illustrate his contrast, Chaim says, "The Western tradition values structure and systematic thinking. Its model for communicating ideas is a single individual positing a thesis supported by arguments that flow from premise to claims to conclusions."<sup>5</sup> Chaim notes that pre-rabbinic Jewish writers such as Philo and Josephus reflect this sensibility, but "*none* of these characteristics are true of the Mishnah, Tosefta, Babylonian Talmud, Jerusalem Talmud, midrash-halakhah, midrash-aggada—or *any* classical text of Jewish law or thought."<sup>6</sup>

It is hard to argue with Chaim's characterization of Western thinking, at least as we encounter it today. But I want to suggest that this characterization reflects a specifically modern sensibility, and the elevation of "structure and systematic thinking" in this way is not quite characteristic of "Western" or "Greek" thought as such, but of a narrowed and constrained modern Western rationality that has managed skillfully to *misremember* its own past and so to *forget* some of the modes of thinking that have been and (perhaps) still ought to be part of the Western tradition. That is, the contrast that Chaim rightly sees between rabbinic halakhic rationality and Western reasoning highlights a tension that has been present within Western rationality itself, and the dimensions of Western reasoning (at least in philosophy and theology) that bore the greatest kinship to the halakhic reasoning Chaim so ably describes have been eclipsed, forgotten, or dismissed.

In the early Middle Ages, after the collapse of the western Roman Empire, Christian education moved in and through the network of monasteries established throughout the Empire's ruins. In what once was characterized as "the Dark Ages," this monastic form of learning was snickered at by the self-proclaimed "Enlightenment" as "mere transmission." The image of the monastic copyroom is still lodged somewhere in the wider social imaginary as the model of medieval intellectual life—blindly passing on what they themselves perhaps did not even understand. But, beginning from the mid-twentieth century, medievalists such as Dom Jean Leclercq, OSB began to transform our understanding of the early medie-

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4. *Id.* at 71–72.

5. *Id.* at 70.

6. *Id.*

val religious intellect. Monastic education focuses upon scriptural interpretation, and its method of proceeding gathered the comments of authoritative figures such as Augustine and Ambrose and Jerome and Athanasius around a particular passage of scripture. But this practice was far more than cataloging. Instead, early medieval scholars engaged in a textual practice of reading, reception, and argumentation, across the long tradition, that looks . . . and whose logic works . . . very much like Talmud. Opinions are offset, arranged, in such a way that they converse with each other, in the text, over the scriptures. The student of these glossed texts learns to do theology not by learning propositions but by entering into the conversation. What Stephen Fraade said of Midrash *Sifre* applies in kind to this kind of study:

This collective nature of the *Sifre's* commentary gives the impression not of a single commentator standing face to face with the text of Scripture in the unmediated work of interpretation (as if such were ever fully possible), but of a collector and subtle shaper of received *traditions* who creates a commentary out of such traditions by configuring them not only in relation to the atomized texts of Deuteronomy but also in relation to one another. . . . This is the dialectic of continuity of innovation that characterizes the stance of sociohistorically grounded traditional-ity . . . the multivocality of a received yet restless tradition.<sup>7</sup>

It is this “restless traditionality” that characterized the practice of Christian theology from the early Middle Ages up until the mid-twelfth century. With the birth of the University of Paris and the systematization and professionalization of theology in the “scholastic” period, this earlier mode of theological reflection was less equipped for an era increasingly concerned with scientific precision in definition and anxious about religious conformity, and it was harder to teach (as it required more apprenticeship than instruction) in a world in which pastoral need demanded a higher turnover. But so much was lost in the transition. My friend Rabbi Michael Signer (may his memory be a blessing), one of the great scholars of twelfth century Jewish and Christian biblical interpretation, could barely say the name of Peter Lombard, one of the first great scholastic theologians, without a hiss, because, for Michael, this scholastic shift signaled the end of a great theological conversation among medieval Christians and Jews, due to this fundamental affinity of method.

So *part* of the gift of Chaim’s book to me, as a Christian theologian, is in the way it encourages my own tradition toward the recovery, the remembering, of this affinity for an explicitly *traditioned* form of discourse, study, education, and formation, of theological reading with in a multivocal “re-

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7. STEVEN D. FRAADE, FROM TRADITION TO COMMENTARY: TORAH AND ITS INTERPRETATION IN THE MIDRASH SIFRE TO DEUTERONOMY 17–18 (1991).

ceived yet restless tradition,” that can enter into better conversations with Jewish religious thinkers, beyond the reductions of too-simple contrasts.<sup>8</sup>

Having said that, I do need to acknowledge that this is only *part* of the gift of the book, and another part has to do with a clearer articulation of the real *differences* that persist in the midst of this recovering affinity. The heart of these differences is this: halakhah is not just about “traditioned” thinking, but it is most especially about the tradition of “thinking legally.” That is, Chaim demonstrates, as I have pointed to above, that halakhah gets at philosophical and theological questions differently, from the specific root in *mitzvot*, and this is a dimension of rabbinic thought that finds fewer and thinner Christian parallels. Christians do not, naturally, “think legally.” Not that Christians do not think about law, or that Christian lawyers do not think legally. Rather, when Christians are doing that intellectual activity that is, in part, constitutive of their identity *as Christians*, when they are doing “faith seeking understanding,” in Anselm’s classic phrase, they do not do it by “thinking legally.”

It is easy to trace this back to Jesus himself. As Chaim notes, “Jesus scoffed at the Pharisees’ legal obsessions, arguing that their edifice of technicalities inevitably distracts the believer from the ‘weightier matters of the law[,]’” whereas, “[f]rom the rabbinic perspective . . . those same technicalities are the prism through which weightier matters obtain religious significance.”<sup>9</sup> And certainly Saint Paul’s great sense of liberation from the law, “For the letter kills, but the spirit gives life” establishes one of the master tropes of Christian discourse.<sup>10</sup> But these initial points of departure are confirmed and extended during the spread and establishment of Christianity. The early text of the *Epistle to Diognetus*, dating somewhere between 150 and 190 CE, contains a snapshot of Christian self-understanding in relation to law and identity, even before the Constantinian establishment, that points to this deepening different sensibility of what it meant to inhabit one’s religious identity within an empire of alien gods:

For Christians are not distinguished from the rest of mankind either in locality or in speech or in customs. For they dwell not somewhere in cities of their own, neither do they use some different language, nor practise an extraordinary kind of life. . . . But while they dwell in cities of Greeks and barbarians as the lot of each is cast, and follow the native customs in dress and food and the other arrangements of life, yet the constitution of their own citizenship, which they set forth, is marvellous, and confessedly contradicts expectation. They dwell in their own countries, but only as sojourners; they bear their share in all things as citizens, and they endure all hardships as strangers. Every foreign country is a fatherland to them, and every fatherland is foreign. . . . Their

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8. *Id.* at 18.

9. SAIMAN, *supra* note 1, at 125.

10. 2 *Corinthians* 3:6.

existence is on earth, but their citizenship is in heaven. They obey the established laws, and they surpass the laws in their own lives.<sup>11</sup>

As the last line suggests, the dialectical sense of Christian identity entails a different attitude toward law, which here is local and contingent. Their citizenship is in heaven.

The gradual establishment of Christianity, first as permissible and then eventually as “official,” made it easy—and indeed necessary—for Christian bishops and judges to take up and make use of the well-established Roman law traditions in practical and civic matters; such that no particular “Christian” tradition of law needed to develop in an integral way within the life and practice of Christian faith.

The later canon law tradition would seem to change that, but even there, we see very clearly a division between theology and law. The great founding figure in Western canon law tradition, Gratian, compiled and edited his *Decretum* in the twelfth century, and our intellectual historians recognize in it a new kind of synthesis: “Gratian brought theology into law again and law into theology.”<sup>12</sup> This is true as far as it goes, because Gratian does draw upon theological sources in the *Decretum*, but canon law is still quite distinct, already, from theology, spirituality and liturgy in medieval Christianity. The medieval school legend that Gratian and Peter Lombard, one of those early scholastic systematizers of the discipline of theology, were brothers, conjures up images both of close kinship and of rivalry, and this is a fair characterization of the relationship of canon law and theology. All this is to say that it becomes impossible to conceive, in Western Christian discourse and practice, from very early on, a single locus that could serve, as Chaim tells us halakhah does, as “concurrently a system of governing rules and practices, a forum for legal analysis, a platform of religious expression, and an object of devotional study.”<sup>13</sup> In our present era, haunted as we are, I think, by the fragmentation and specialization of many of our discourses, and so by the increasing difficulty in communicating across boundaries, and in a time when Christian theology and spirituality hungers for a kind of holistic integration, which brings certain temptations to both conservatives and liberals, the presence of this pliable, integrative space of halakhah, created by the discipline of generations of study can be something of an object of envy.

One last moment of possible convergence, however. I was struck in my first reading by Chaim’s discussion of galut, of the theological condi-

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11. *Epistle of Mathetes to Diognetus*, EARLY CHRISTIAN WRITINGS, <http://www.earlychristianwritings.com/text/diognetus-lightfoot.html> [https://perma.cc/25JA-W92Z] (last visited Feb. 13, 2019).

12. Peter Landau, *Gratian and the Decretum Gratiani*, in *THE HISTORY OF MEDIEVAL CANON LAW IN THE CLASSICAL PERIOD, 1140–1234: FROM GRATIAN TO THE DECRETALS OF POPE GREGORY IX* 22, 53 (2008).

13. SAIMAN, *supra* note 1, at 194.

tion of exile in the wake of the destruction of the Temple, as the fundamental context for the development of halakhah.<sup>14</sup> This absence of a homeland in which to “enact” or “enforce” law, and yet the persistent attention to every piece of non-applied law, is for Chaim an indication that *halakhah* is “not only about regulation but about expression. . . . [A]s creating a web of interrelated concepts—or extended metaphors—that communicate social and religious meaning.”<sup>15</sup> As I read this, I wondered what exactly this “expression” was of? What the social and religious meaning that such practices create? And I wonder, in that light, if it might be described (in theological terms) as eschatological. In Christian theology, eschatology is understood to be fundamentally about the dialectical relationship between the “already” and the “not yet.” Again for Christians, the sense is that the “already” of the kingdom is present in the coming of Christ and in the Church, but the “not yet” is the awaiting its final completion at the end of days. For Christians this is felt palpably in the liturgy, but not only there—that our practice in the here and now is a partial performative participation in and anticipation of the fullness of the kingdom of God to come. And, as I say, in common Christian discourse, this is considered distinctively Christian, because, after all, Christians are those who believe that the Messiah has already come and will come again. And yet, too often and for too long, Christians have lost any real sense of galut; Christians have all too often felt entirely too comfortable in the world of the now. So, to end with a question, is it fair to say that, in the condition of galut, of exile, the study of the law even in the sort of detail that could never be put into practice in the here and now, is a kind of eschatological intellectual participation, an *already* and a *not yet*, of when God’s kingdom will come, when God’s law in all its fullness will govern (and will be studied)? And so, in this way, study of halakhah becomes an act not just of devotion or expression or meaning, but both of mystical encounter with the presence of God and of the longing hope for its fullness? I hope so. And I hope so for Christian theology as well.

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14. *Id.* at 214–16, 224–20 (discussing galut).

15. *Id.* at 43.