ENGLISH ABSTRACTS
OF THE HEBREW SECTION

Vered Noam | **The Halakhah: From Poetry to Sorcery –**
A Century of Bialik's "Halakhah and Aggadah"

In his famous essay "Halakhah and Aggadah," written a century ago, Bialik sought to cast the halakhah in a positive light. Ostensibly harsh, cruel, and onerous, Bialik asserted that halakhah creates a framework into which the illustrious substance of the Jewish lifestyle ("aggadah") can be poured, and he contended that rabbinic halakhic texts reflect the colorful realia of our ancestors' lives in antiquity.

This essay seeks to underscore the intrinsic beauty of the halakhah, both in its function as a normative system and as a constitutive element of the texts in which it is contained, not just as a means of shaping an exemplary lifestyle. Embodied in the halakhah itself is an abstract, meaningful spiritual foundation that shares elements with poetry and philosophy. Halakhic discourse reveals hidden dimensions of the world, heightens the ability of humans and language to shape reality, and articulates theological longing.

Yair Furstenberg | **From Competition to Integration:**
The Laws of the Nations in Early Rabbinic Literature
Within Its Roman Context

This article traces the changing attitudes of the rabbis in Palestine of the second and third centuries toward the "Laws of the Nations" associated with Roman jurisdiction. While early rabbinic sources tend to ignore Roman jurisdiction and present themselves as an appropriate alternative to the Roman system, later rabbinic decrees and interpretations reflect rabbinic acknowledgement of the legal pluralism in the province and of the need to conform to Roman administration of law. Considering the lack of any

direct information concerning Roman legal administration in Palestine, rabbinic responses shed light both on the nature of Roman legal presence in the province and on the ways local elites such as the rabbis sought to make space for local law and practice.

Rabbinic statements of the early second century assume that Roman courts were accepting cases according to local law. Such a practice is well known from the Roman courts in Egypt, which were willing to judge according to the 'Laws of the Egyptians'. The rabbis resisted such a system, in fear of Roman appropriation of local practice, and as an alternative, offered their own legal arbitration services according to both Jewish and foreign law. Other sources of the period reflect rabbinic objections to Roman property laws, as in the case of "Sikarikon" concerning land confiscated by the fiscus. However, Judah the Patriarch diverged from previous assumptions and legislated a new decree that was set to complement Roman land laws. Finally, while early rabbinic sources assume gentiles under Jewish sovereignty are subject to Jewish criminal law, these sources were reinterpreted in the Palestinian Talmud, which refers the disputing sides to gentile courts. This development reflects the legal situation after 212 CE, when all inhabitants of the Empire were brought under direct Roman jurisdiction.

Yonatan Feintuch | The Story of Rav Kahana: A New Reading of the Talmudic Sugya of b. B. Qam. 117

This article discusses the story of Rav Kahana in the Babylonian Talmud, Bava Qamma 117a. This story, which was transmitted in two different versions contained in two textual branches, was given various interpretations, all of which ignored its wider halakhic context in the BT *sugya*. This article suggests a new reading of the story in light of its wider halakhic context, which deals with damages caused indirectly by people who 'point out' ('*aḥvey*') Jewish property, which is later stolen forcefully by gentiles. Following the proposed reading the article discusses the influence of the wider literary context on the interpretation of the story and the contribution of the story to that wider halakhic context.

Yair Lorberbaum | **Halakhic Religiosity of Mystery
and Transcendence, Halakhic Religiosity of Obedience
and Servitude, and Other Forms of Rejecting Reasons
of the Commandments**

The purpose of this study is to distinguish between different objections to
those who seek reasons for the commandments, and to comment on their
history. At its center stands the view that the reasons for the commandments
are beyond the limits of human comprehension. I will call this conception
"Halakhic Religiosity of Mystery and Transcendence." The first section of
the article analyzes its features, and the second section describes its different
versions: "tip of the iceberg," flashes (or opaque images), *le-sabber et ha-ozen*
(soothe the ear), and decline of the generations. The third section of the
article distinguishes between the view that reasons for the commandments
are transcendent and a halakhic religiosity that I'll label "Obedience and
Servitude." Halakhic religiosity of obedience and servitude is the view that
the very essence of the halakhic life is "the acceptance of the yoke of Heaven,"
i.e., the ultimate service of God. According to this religious ideal the reasons
for the commandments are an obstacle, and those who seek such reasons
must regard them as irrelevant for the fulfillment of the commandment. In
the last portions of the third section, I will distinguish between these two
religiosities and two other bases for the rejection of reasons: theological
voluntarism, according to which all the commandments stem from God's
absolute free will, and jurisprudence of rules, a view that diminishes the
weight of reasons due to normative-jurisprudential considerations.

The second part of the article offers comments on the history of these
four different rejections of reasons for the commandments. Its main argument
is that halakhic religiosity of mystery and transcendence is absent from the
Jewish tradition until the end of the thirteenth century. Early and medieval
Jewish literature lack also theological voluntarism. The reigning view in
the Hebrew Bible and in talmudic literature is the opposite: the book of
Deuteronomy emphasizes the excellent reasons of all commandments, and
the talmudic sages maintain that the *mitsvot* are rich of rationales and that
one should seek them. In talmudic literature and among central writers of
the Middle Ages one could find manifestations of both halakhic religiosity
of obedience and servitude, and of jurisprudence of rules, yet these two
should not be confused with the view that the reasons for the commandments

are beyond apprehension. An elaborated version of halakhic religiosity of mystery and transcendence appears, for the first time, only in the writings of R. Shlomo ibn Adreth (Rashba, Barcelona 1235–1310). I hope to substantiate this claim in a different study.

Oded Yisraeli | Law, Science, and Secrecy: Kabbalah and its Place in Naḥmanides' Halakhic Works

Rabbi Moshe ben Naḥman (Naḥmanides) was undoubtedly the most influential halakhic figure in the thirteenth century on the Iberian peninsula. On the other hand, he was one of the most important kabbalists in Catalonia at the time of the emergence of the kabbalistic center in Girona. His varied writings include both halakhic and kabbalistic works. Naḥmanides, however, consistently maintains a separation between these two literary genres. This article seeks to explain the absence of any imprint of Naḥmanides' kabbalistic world on his halakhic works. The conclusion of the article is that the distinction between kabbalah and halakhah in Naḥmanides' teachings derives from the way in which he perceived kabbalah. Unlike other kabbalists of his time, Naḥmanides didn't regard kabbalah as a necessary tool for performing religious duties, such as prayer or observance, but rather a kind of lofty and sublime science. The kabbalah had thus been separated from religious practice, and, as a result, Naḥmanides' traditional-halakhic world had been conserved.

Aviram Ravitsky | Concealed Legal Positions in Talmudic Literature: Their Meaning and Methods of Transmission

In this article I analyze several legal positions in Talmudic literature which the sages concealed. I discuss the reasons for hiding legal knowledge from the public as these reasons are expressed in the Talmudic texts, and I suggest that this methodology of concealment was, among others, a source that nourished the medieval trend of hiding secrets, mainly in the realm of theology.

Israel Ori Meitlis | **"Sudden Change" and "Gradual Change":**
From Medieval Commentaries on The Guide for the
Perplexed to Halakhic Methodology in the
Twentieth Century

Rabbi Yosef Rozin (the Rogochover), in one of his halakhic correspondences, sought to elucidate the difference between two kinds of halakhic change mentioned in the Talmud, which he did by invoking two terms which he attributed to *the Guide for the Perplexed*, "sudden change" and "gradual change." And yet, a reading of the *Guide for the Perplexed* reveals that while this philosophical idea is mentioned there, the pair of concepts which the Rogochover invokes only appears in the commentaries on the *Guide*. This paper deals with the influence that the commentators on the Guide – and not just the *Guide for the Perplexed* itself – had on the Rogochover's halakhic writings.

In this paper I trace the evolution of this pair of concepts from the commentarial works on the *Guide for the Perplexed* through their usage by the Rogochover and seek to read the Rogochover's halakhic writings in light of the philosophical writings of the commentators on the *Guide*. I investigate the range and ways that the Rogochover used this pair of concepts and show how he used them not only to elucidate an early talmudic *sugya*, but through them created a new halakhic ruling that departed from the previously accepted ruling. Additionally, I show how these concepts found their way into the halakhic writings of other rabbis through the influence of the Rogochover. Ultimately, I highlight that while until the eighteenth century the central usage of this pair of concepts was in the realm of commentaries on the *Guide for the Perplexed*, their main usage in the twentieth century was in the context of halakhic methodology. Finally, I outline the implications of this paper for the broader investigation of the philosophical sources underlying the Rogochover's halakhic methodology.

Arye Edrei | Multi-Culturalism in Early Ultra-Orthodox Doctrine: Yitshak Breuer – From the Torah State to the Torah Community

The article deals with Yitshak Breuer's idea of the "Torah State". Breuer was an Ultra-Orthodox leader who defined himself as a "Jewish nationalist" but refused to cooperate with secular Zionists. He called on Ultra-Orthodox Jews to heed "the voice of God", i.e., the Balfour Declaration, and to immigrate to the Land of Israel in order to establish a "Torah state" – a Jewish state conducted according to halakhic standards. Breuer viewed Jewish nationalism as a value and Jewish sovereignty as a prerequisite for divine service. He held that Judaism cannot be complete without a political and communal existence that creates a society in which all areas of life are conducted in accordance with the Torah.

The article demonstrates that Breuer understood that the establishment of the "Torah state" would require innovative exegesis and halakhic creativity, a reality that did not worry him. It was clear to him that the contemporary halakhah was not equipped to serve as the guideline for a state to conduct all areas of life. Nevertheless, Breuer did not sufficiently address this issue, a point that we try to explain.

The second thesis of the article relates to the constitution for the State of Israel proposed by Breuer in 1947 through Agudath Israel in New York. It was then clear to him that a Jewish state would be established but that it would be a secular state. Given that reality, Breuer proposed the establishment of autonomous "Torah communities" within the State. It would appear that he returned to the model of separate communities promoted in Frankfurt by his grandfather, Rabbi Samson Raphael Hirsch. Yet, Breuer's conception was fundamentally different from that of Hirsch. Hirsch sought to separate from the Reform community and establish a religious community that would be free to practice its religious rituals in accordance with the halakhah, leaving all other areas of governance to the host country, i.e., the German state. In contrast, Breuer wished to establish a community with legal and political autonomy. He was thus true to his belief that the halakhah and Judaism cannot be fully realized without control over political and communal areas of governance. He sought to establish Ultra-Orthodox communities under the patronage of the Jewish state that would include autonomous courts, as well as legislative and administrative bodies to oversee many areas of internal

communal life. In essence, Breuer wanted to restore the medieval model of the autonomous Jewish community, which he considered a better model for promoting authentic Torah life than the modern Jewish community that exclusively governs communal religious ritual.

Amihai Radzyner | **Halakhah, Power Struggle, and the 'Angle of Deflection': Recourse to Civil Court as Grounds for Divorce**

The system of Israeli rabbinical courts has been recognized in Israeli law as an official judicial system of the state, and it has special authority to litigate matters of marriage and divorce for all Jewish residents of Israel. This reality, in which a halakhic institution operates by virtue of a secular law, has far-reaching consequences for the manner in which the rabbinical courts operate. In addition to clear advantages, there are also complex problems.

Over the years, a substantial portion of issues related to family law have not been left within the exclusive jurisdiction of rabbinical courts. It appears that in recent years a backlash of a new type has been developing by the rabbinical courts. Some of the rabbinical judges are adopting problematic halakhic positions in order to restore to the rabbinical courts' authorities that have been denied to them by Israeli law or by the civilian courts.

In the present paper, I show a critical examination of one halakhic tool of this type. Simply put, according to some *dayyanim,* if the wife takes the entirely legal step of approaching a civil rather a rabbinical court regarding a matter having to do with her rights in a dispute, this will result in her being deemed obligated to be divorced. I show that the arguments adduced by the *dayyanim* indicate that their rulings are agenda-driven: they are, to a significant degree, innovative, and their use of the halakhic sources they cite is quite problematic.

Ronit Irshai | Between a Feminist and Gender Analysis in the Study of Rabbinics (Ḥazal) and Modern Halakhah (Jewish Law): Homosexuality and the Construction of Masculinity as a Case Study

This article seeks, in its first part, to make sense of what has been termed "feminist research in Judaic studies" and proposes differentiating between four types of feminist research: critical feminist research, gendered feminist research, mediating feminist research, and research with a "feminist sensitivity." In light of these distinctions, the article will seek to delineate the similarities and differences between feminist research in rabbinics and feminist research in the literature pertaining to modern halakhah.

These distinctions are not just conceptual and are intended to be used as an analytical tool, an awareness of which could lead to new avenues of research. Therefore, the second part of the article will demonstrate, through a case study of Orthodox legal reactions to male homosexuality, how gendered feminist research in the field of modern halakhah produces new knowledge regarding the manner in which masculine identities are constituted and what they entail. This knowledge will expand critical feminist research, adding dimensions of depth over and above its intrinsic value in and of itself.

Michael Wygoda | Should a Participant in a Street Race Be Charged with Manslaughter?: The Use of Jewish Law in the Israeli Supreme Court

In a tragic case involving a 17-year old driver who participated in an illegal street race, the drivers of the other car were killed on site. Though no contact occurred between the vehicles, the Supreme Court overturned a district court decision and, by a majority of 2-1, found the young man guilty of manslaughter. The majority found that there was a legal causal connection between participation in the race and the fatalities. The dissenting opinion (Justice Hendel) held that no such link exists, since each person decided autonomously to participate in the race.

The defendant appealed and I was asked by the public defender's office to write a position paper based on Jewish law as part of the brief for the defense, upon which this article is based. The second appeal was heard by

an expanded panel of seven justices; some utilized Jewish law precedent in forming their decision.

Jewish criminal law consists of two parallel systems. One is a formal system in which the crime of manslaughter is punishable only if there was direct contact between the killer and the victim, hence inapplicable in this case in which the cars never touched. The parallel system of "the king's law" maintains law and order and punishes criminals that do not fall within the formalistic system.

The central question I address is whether under this system of "the king's law" one should view the events in this case as creating a legal causal chain of events. While in Jewish law, one is morally enjoined against creating a risk that endangers life, and one is obligated to save another person from life-threatening situations, we critique Justice Rubenstein's argument that not doing so amounts to manslaughter. Based on a different Talmudic precedent, I find backing for the argument presented by Justice Hendel that contributory autonomous behavior breaks the legal causal chain.

Although reprehensible and guilty of the crime of "endangering human life in a transportation lane," the court ultimately held that the defendant's behavior did not amount to manslaughter and Jewish law precedent played a role in reaching that conclusion.