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"Taking Responsibility for Torah"

"If you will it, it is no aggada" – but does that make it halakhah?

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Many rabbinic texts cannot be categorized neatly as either "Halakhah" and "Aggada". Some are hybrids, such as legal analyses that treat fantastical narratives as formal legal precedents, or narratives whose plot revolves around a legal claim or dispute. Others live at the margins, incorporating only superficial characteristics of the other basic type, or deliberately establishing and then flouting expectations.

None of this means that the underlying binary is useless or false. Deliberately flouting expectations works artistically only because there are expectations. As T.S. Eliot argued, creativity in the absence of tradition is meaningless meandering maunder.

"Purely hypothetical law" seems likely to be one of those marginal types. The Torah discusses the law of the *bayit hamenuga* ('leprous' house) in the same apparent tone and texture as the leprous person and the leprous garment. The Sifra extracts legal detail from the relevant Torah text (Vayikra 14:33-57) in a manner that seems fully compatible with its analysis of the texts relating to the other forms of *tzora'at*, and Tractate Negaim devotes two chapters that seem pretty typical of Mishnah to the *bayit hamenuga*. So when a beraita on Sanhedrin 71a (also found in Tosefta Negaim 6:1) declares that "the law of the *bayit hamenuga* never was and never will be, and why was it written? Expound and receive reward", it certainly flouts expectations. Should we classify the standard-form legal analysis of a purely hypothetical law as *aggada*?

Let's put this discussion in a context where the boundary between halakhah and aggada seems clear.

Vayikra 14:34-35 read:

כִּי תָבֹאוּ אֶל־אֶרֶץ כְּנַעַן אֲשֶׁר אֲנִי נֹתֵן לָכֶם לַאֲחֻזָּה
וְנָתַתִּי נֶגַע צָרַעַת בְּבֵית אֶרֶץ אֲחֻזַּתְכֶם:
וּבָא אֲשֶׁר־לוֹ הַבַּיִת וְהִגִּיד לַכֹּהֵן לֵאמֹר:
"כְּנֶגַע נִרְאָה לִי בַּבָּיִת":

When you arrive in Canaan, which I am giving you as a homestead
I will place a tzora'at plague in the house of theland of your homestead.
The one to whom the house belongs will come, and say to the priest as follows:
"Something like a plague-stain appears to me to be in the house".

Several elements of this verse seem anomalous. "House" is singular – one would expect 'houses'. One would also expect "house in the land" rather than "of" the land, which seems to identify the house with the land. Finally, why is "homestead" repeated?

Vayikra Rabbah 17:7 provides a beautiful and comprehensive answer.

בבית ארץ אחוזתכם - זה בהמ"ק . . .
ובא אשר לו הבית - זה הקדוש ברוך הוא
In the house of the land of your homestead – this refers to the Holy Temple . . .
The one to whom the house belongs will come – this refers to the Holy Blessed One . . .

The *bayit hamenuga* is an allegory for G-d's awareness that He will eventually feel compelled to destroy His own house, when it is irretrievably defiled by idolatry. The destruction of the Temple is also a metonymy for exile =the loss of the Jewish homestead.

Talmud Yoma 11b – 12a offers a very different approach.

. . . וְהָתַנְיָא:
יָכוֹל יִהְיוּ בָּתֵּי כְנֵסִיּוֹת וּבָתֵּי מִדְרָשׁוֹת מְטַמְּאִין בִּנְגָעִים?
תַּלְמוּד לוֹמַר: וּבָא אֲשֶׁר לוֹ הַבַּיִת —
מִי שֶׁמְּיוּחָד לוֹ, יָצְאוּ אֵלּוּ שֶׁאֵין מְיוּחָדִין לוֹ.
. . . והתניא:
אחוזתכם –
אחוזתכם מטמאה בנגעים, ואין ירושלים מטמאה בנגעים.
אמר רבי יהודה: אני לא שמעתי אלא מקום מקדש בלבד.
הא בתי כנסיות ובתי מדרשות - מטמאין בנגעים . . .
אימא:
אמר רבי יהודה: אני לא שמעתי אלא מקום מקודש בלבד.
במאי קא מיפלגי?
תנא קמא סבר: ירושלים לא נתחלקה לשבטים; ורבי יהודה סבר: ירושלים נתחלקה לשבטים . . .

. . . But we learned in a beraita:
It would have been possible that synagogues and study halls were subject to house-*tzora'at* –
so Scripture teaches: *The one to whom the house belongs will come* –
meaning one that is reserved to someone, excluding these that are not reserved to someone.
. . . But we learned in a beraita:
***of your homestead* –**
your homestead is subject to house-*tzora'at*, but Jerusalem is not subject to house-*tzora'at*.
Said Rabbi Yehudah:
I only heard that about the place of the Holy Temple.

This implies that synagogues and study halls are subject to house-*tzora'at*!?
Emend Rabbi Yehuda's statement to read:
'Said Rabbi Yehuda: I only heard this about sanctified places.'
What is the basis of their disagreement?
The initial position in the beraita held that Jerusalem was not divided (into homesteads) among the tribes;
Rabbi Yehudah held that Jerusalem was divided among the tribes.

The upshot is that according to all legal positions, the Holy Temple is not subject to house-tzora'at, whether because it was never assigned as a homestead to any tribe, or because house-tzora'at does not apply to buildings dedicated to Divine purposes. Talmud Yoma is thus diametrically opposed to the allegory in Vayikra Rabbah. The one building we can be absolutely certain cannot become a *bayit hamenuga* is the Temple.

We might suggest that Talmud Yoma is engaged in *halakhah*, whereas Vayikra Rabbah is engaged in *aggada*. A common technique of *aggada* is what I call "willing suspension of halakhic disbelief"- one is allowed to create a literary world in which one halakhic law in order to make an aggadic narrative work. This would resolve the contradiction. But this technique may be legitimate only when it plays off established *halakhah*. Is Talmud Yoma really engaged in *halakhah* if the *bayit hamenuga* is already a legal fantasy?

Here we must note that the position that the *bayit hamenuga* "never happened and never will" is challenged in both the Tosefta and the Talmud by eyewitness reports of locations marked as the remains of such houses. Perhaps Vayikra Rabbah assumes that the *bayit hamenuga* has been and will be. Or perhaps those who regard the entire category as hypothetical see themselves as even freer to offer allegories that contradict the law. Or more radically, they see the category as beyond the reach of law.

The problem with this last proposal is that Talmud Sanhedrin identifies the "never was and never will be" camp with the most restrictive position in a halakhic dispute about the physical appearance of the plague-stain. The Tosefta may not agree with this connection, and neither Sifri nor the Mishnah mention the possibility that the *bayit hamenuga* is purely hypothetical. But Talmud Sanhedrin seems to view the author of this position as engaged in the same kind of legal analysis and taking the same kind of legal positions as his interlocutors. In other words, the Talmud indicates that the authors of this position see themselves as engaged in the intellectual discipline of *halakhah*. Many other Talmudic discussions also use legal positions taken with regard to *bayit hamenuga* as precedent for discussions of legal areas. For example, houses that are excluded from *bayit hamenuga* are presumptively also excluded from the obligation of placing a *mezuzah*.

I will venture to say that, in the hope that someone will prove me wrong, that there is nothing whatsoever that makes discussions of the *bayit hamenuga* distinctive within Torah, in either form or content, other than the claim that "it never was and never will be".

Until I am proven wrong, I see two basic options.

One is to say that the hypotheticality position is a Masoretic epiphenomenon, an interesting footnote to halakhic history mentioned and considered only once in the Babylonian Talmud (and not at all in the Yerushalmi) and then largely ignored until the publication of Ish HaHalakhah.

The other is to say, along with the Ish HaHalakhah, that the intellectual discipline of halakhah is not essentially related to halakhic practice. A separate pragmatic discipline of *psak* covers that. This position argues that we should not expect the fact that the law is purely hypothetical to have any practical effect on the way we study it.

The motto of the Center for Modern Torah Leadership is "Taking Responsibility for Torah". It was formulated to oppose the claim that halakhah can be discussed in the beit midrash without considering its real-world consequences. Those consequences exist, so what justifies us in ignoring them? So if there are only two options, I would have to choose the first.

There might however be hybrid options. For example, we might say that because some *poskim* use the *bayit hamenuga* as legal precedent in other areas, even those who hold that it is purely hypothetical have an ethical responsibility to consider the practical consequences of their positions. Halakhic scholars must always consider not only the utopian world where everyone accepts their *psak*, but also what will happen if not everyone *paskens* like them, for example if their correct ruling that a woman is no longer married nonetheless leads a significant part of the community to treat her subsequent children as *mamzerim*.

This hybrid changes nothing directly in practice. But maybe there is a general value and effect in recognizing that even the most practically necessary binaries are not full descriptions of reality, and conversely, that sometimes it is practically necessary to reduce exquisitely nuanced realities to crude binaries.