

Radical Rabbis and Other Serendipities

CHRISTINE HAYES

Christine Hayes is Sterling Professor Emerita of Religious Studies and Jewish Studies,
Yale University.

christine.hayes@yale.edu

I would like to thank Dean Borgehammar and the Faculty of the School of Theology for bestowing upon me an honorary doctorate. It is a tremendous honor indeed, and I am both grateful and humbled to be recognized in this way. I use the word “recognized” for a reason. Such honors recognize, that is, they acknowledge the existence and importance, of academic work and that is no small thing when the academy, and the humanities in particular, are under attack in so many parts of the world, including in the United States where I teach and study. There are undoubtedly several reasons for this situation, but I would like to focus on what I see as a particularly potent contributor to the declining recognition of the value of the Humanities, and that is the uncertainty and fear that can arise from what the Humanities offer us – an encounter with that which is different or unknown. I would like to unpack that statement and point us toward a better future by sharing with you something of my own academic path and the serendipitous discoveries that have enlivened my intellectual journey until now.

First, my academic path. That a person of my background should become a scholar of ancient Judaism – of the Talmud and related literature in particular – is admittedly surprising. By “my background” I am referring to the fact that I am a non-Jewish female – named Christine no less – who came of age in Australia but left the Antipodes to pursue an academic dream in America, though I had no idea at the time that Jewish Studies, and particu-

larly the study of the Talmud, lay in my future. But that alone attests to the power and promise of the Humanities, that can infuse us with a passion for the unknown and a desire to make it our own.

From an early age I was fascinated by what I like to call “the big questions” – why am I here? Why are other people here? And how are we to occupy ourselves in the passage from cradle to grave? Some attempt to answer these questions by employing the tools of reason to construct static and rational explanatory systems. Others, unconstrained by the demands of rational argumentation and unwilling to abstract from lived experience, tell stories to make sense of this world and our place and purpose within it. While I saw the value of both approaches to the big questions, I was drawn to the storytellers, to the dynamic tales, myths, cosmic and national histories people tell to explain why we are here, why the world is as it is, and what we are to do with the life we’ve been given.

At 19, I traveled halfway around the globe to attend Harvard University, convinced I would major in Philosophy. But after a few weeks in the prerequisite logic course, I decided – with the impatience of a teenager – that “if p then q” was not going to help me understand how humans have grappled with the big questions. For a few months I considered the study of History, in which I had a consuming interest, or literature which also captivated me, but I finally realized that it was the study of world religions that brought together all of my interests: because the study of religion is the study of human beings as they have grappled throughout history with the big questions of human existence through story and philosophy, song and poetry, ritual and art, cosmic myths and national histories, law and ethics. I had found the intellectual home that encompassed all my interests, but I was still unaware of the serendipitous discoveries that awaited me.

I was fascinated by the diversity and complexity of the world’s religious communities and cultures, but I soon discovered that I was inexplicably ignited by my Jewish Studies classes and my encounter with Jewish texts, ideas, and culture. Such passions – like tastes in music, art, or food – defy explanation but one moment is etched in my memory as the moment that would set my path into this unknown and unfamiliar world. It was my sophomore year at Harvard and it was shopping period, when students visit the opening classes of many courses before finalizing their choices. Although a course on Jewish history from late antiquity to the Enlightenment was rather low on the long list of exciting courses I wanted to take that semester, I decided to attend the introductory lecture delivered by the late and very great Professor Isadore Twersky (1930–1997). Professor Twersky said, and I paraphrase: if you have taken a course in western history, you will have

been presented with a canonical account of the history of the west arranged as a coherent narrative detailing a sequence of significant events in a chain of cause and effect. If you learned anything about the Jews along the way it was as an aside, an episodic footnote, not an integral part of the otherwise coherent narrative, for example – during the Crusades many Jews were killed. But in this class, you will be presented with an account of the history of the Jews arranged as a coherent narrative with its own causal sequence of events, and from this perspective, central the events of western history may appear differently, and some may become episodic footnotes. After taking this course, for example, the year “1492” will take on new meaning for you. What he meant of course was that the year most American students associated with Columbus’ “discovery” of America would take on a different importance as the year of the expulsion of the Jews from the Iberian Peninsula, that set up a wave of immigration throughout Europe and the Mediterranean that would have significant consequence for both Jews and Europe more broadly.

I have said this on many occasions, and I repeat it here: Sitting in that classroom that day I felt as if Professor Twersky had lifted my head from my shoulders, turned it around, and set it back down. I suddenly saw something I had never seen. My universe flipped inside out, and I, so certain of my perception of the course of western history, was suddenly unmoored and uncertain. And I loved the feeling. The intellectual rush I experienced upon realizing not just that I didn’t know everything – that was obvious – but that there was an entirely other way of viewing and narrating the sweep of human history, an entirely other way of evaluating the impact of events and persons, of perceiving, understanding, and experiencing the world was both humbling and exhilarating. And I knew in a flash that stepping fully into that alternative perspective and understanding it from the inside out as if it were and always had been mine, was the desire of my heart and mind. And I wanted it to be the labor of my life.

How serendipitous that I walked into that Jewish Studies class that day to find something I didn’t even know I was missing. That’s what education in the Humanities is all about. It’s a simple fact that humankind in all its diversity and complexity far outstrips the natural and narrow existence of any one of us; and that means that the study of the Humanities will always bring us face to face with the other, indeed many others – a destabilizing and for that very reason exhilarating moment without which there is no hope of understanding, connecting with, respecting, embracing, and even loving all that is different from or simply unknown to us.

But that was only the first of many serendipitous discoveries I would experience as I plunged deeper and farther into the study of Jewish civilization, beginning with the Hebrew Bible and moving on to the emergence of Judaism in the 1st to 7th centuries of the Common Era. This was the period that saw the rise of the rabbinic movement and, over the course of more than half a millennium, the formation of rabbinic literature, a massive body of originally oral teachings, traditions, and debates, elaborating the meaning of the written Torah (or Hebrew Bible). As I threw myself into these texts, the second unexpected, or serendipitous discovery I made was that the notion of a single united Judeo-Christian tradition carried very little historical or theological validity. As Arthur Cohen (1928–1986) pointed out, the notion of a Judeo-Christian tradition was a political invention of the Cold War era, asserted in the attempt to forge a united American identity against perceived common enemies – atheism and communism.¹ What became apparent to me as my study of late antiquity continued was that the idea of a single Judeo-Christian tradition asserted sameness where there was difference and stifled our ability to see the crucial and generative role that Jewish difference has played throughout human history. Indeed, it obscured what I was beginning to see as the radical and profoundly countercultural voice of both the Hebrew Bible and the rabbinic movement.

Let's consider the Hebrew Bible's countercultural conception of the divine. The origin myths in Genesis broke with a long-standing Ancient Near Eastern tradition that identified gods with various natural forces (such as the storm or the sea) and that posited evil as a metaphysical demonic reality. Instead, Genesis presented a single deity distinct from and sovereign over nature, a deity unopposed by a metaphysically real evil, who created the cosmos not by defeating other divine powers but by organizing inert and demythologized natural elements through an act of will. The Hebrew Bible adopted the creation myths of its neighbors and transformed them to convey a radically different conception of the divine, of the natural world, and of the value and purpose of morally free humans.

The Bible's radical counterculturalism and its expression through stories that appropriated and subverted the ideas, norms, and literary conventions of surrounding cultures, was mothers' milk to the rabbis. It is to the rabbis' further development of the Bible's countercultural conception of the divine and especially of divine law that I now turn. For it is my belief that the conception of divine law developed by the talmudic rabbis, has much to teach us about the value of difference in the face of sameness, the value of uncertainty in the face of dangerous absolutisms, and the promise of Jewish

¹ Arthur Cohen, *The Myth of the Judeo-Christian Tradition*, New York 1969.

Studies, and the Humanities more broadly, in an age of fear and polarization.² The conception of divine law that prevailed in Mediterranean late antiquity, a conception that the rabbis encountered and resisted, was a popular version of ideas innovated by the Stoics some centuries earlier. Prior to the Stoics, most Greek writers and philosophers, with some exceptions, saw nature (*physis*) as chaotic and disordered, a dog eat dog world of competing powers. But the Stoics, for whom nature was coextensive with the divine, asserted that nature was ordered and governed by reason, or *logos*, which is itself divine. Thus, they referred to the rational order or *logos* governing divine nature as the natural law (*nomos physis*) or the divine law (*theios nomos*).³ This natural or divine law, this unwritten reason or *logos*, intelligible to the rational sage and the source of true virtue, is eternal, universal, immutable rational truth.

In Greek thought, this unwritten divine law of nature, can be contrasted with the laws posited by humans. Human positive legislation consists of rules and prohibitions that are grounded in the will of a sovereign entity. They are not necessarily true or rational (I don't stop at a red light because stopping at redness is a universal rational truth but because some humans arbitrarily picked red to be the color for stopping). Human laws are not universal but particular to the society they seek to order. They are not immutable but contingent on historical circumstances, differing from place to place and time to time and requiring updating, modification, and sometimes annulment. And they can be written down (unlike the divine law

² The following discussion distills the major thesis of my monograph *What's Divine about Divine Law: Early Perspectives*, Princeton 2015, <https://doi.org/10.23943/princeton/9780691165196.001.0001>. Some of the ideas in this paper were refined with the support of a fellowship at the Maimonides Centre for Advanced Studies, DFG-FOR 2311.

³ The term natural law (*nomos phuseos*) appears only six times in Greek literature before its appearance in Cicero's descriptions of the Stoics (in Latin, *lex naturae*) and in Philo. For a survey and genealogy of the uses of the words *nómōs* and *nomós* and the family of words to which they belong in the archaic period, see Thanos Zartaloudis, *The Birth of Nomos*, Edinburgh, 2021, <https://doi.org/10.3366/edinburgh/9781474442008.001.0001>. Zartaloudis shows (xxi-xxii) that "the words *nómōs* and *nomós*, in their numerous uses, are (among other places) prevalent in the normalcy-setting and *éthos*-transmitting Greek poetry and thought from at least Hesiod onwards" and that "in the most ancient literary sources the words *nómōs* and *nomós* mean many things other than 'law' (and for the most part they do not mean 'law' at all)". In the fragments of Heraclitus (6th c BCE) "[t]here is a relation between the divine (or the divine *nómōs*) and the mortal *nómōi* of the polis". However, although Heraclitus states in B114 that all human laws (*anthropeioi nomoi*) are nourished by one that is divine (*theios nomos*), the interpretation of that relationship remains a complex question. It is the Stoics who will conceive of the divine law as the highest and genuinely normative norm of the cosmos (a natural law). For the Stoics' revolutionary co-ordination of law, nature and the divine in a single concept of divine, or natural, law, see John W. Martens, *One God, One Law: Philo of Alexandria on the Mosaic and Greco-Roman Law*, Boston 2003, 13–18, <https://doi.org/10.1163/9789047400080>.

which is the unwritten logos). Positive human laws, unlike the divine law or reason, are coercively enforced, producing merely obedient bodies rather than virtuous souls.

The Stoic conception of the divine law – an unwritten logos or reason embedded in nature, universal, true, and unchanging – which would predominate in the Hellenistic east, differed dramatically from the biblical conception of divine law. In the Bible, divine law is the covenantal legislation given to the Israelites through Moses at Mount Sinai and recorded in the Torah. Biblical divine law is not an unwritten rational order embedded in nature, but a detailed body of written legislation expressing the divine lawgiver's will for a particular people, Israel. It contains both rational and non-rational commandments. Some laws of the Torah are rational but some, such as the dietary prohibitions and purity taboos, are said to set the Israelites apart from other peoples as YHWH's covenant partner. In fact, it is precisely because they are not universally recognized rational principles observed by all peoples that they have the power to set Israel apart. Moreover, the positive laws detailed in this divine covenant are not static and unchanging but dynamic and responsive; already in Moses's own day some laws were updated, supplemented or modified to meet new historical contingencies. When the daughters of Zelophehad argue in Numbers 27 that they should be allowed to inherit their dead father, God agrees and instructs Moses to change the law so that daughters will inherit when there are no sons. New situations require new rules and Deuteronomy 17 institutes a process whereby the law can be updated to accommodate new situations even after the death of Moses.

It should be immediately apparent that there is a severe mismatch between the Stoic and the biblical conceptions of divine law. Biblical divine law possesses most of the features that according to Stoic thought, and Hellenistic thought more broadly, were the traits of human law – it is particular to one community in one place, it is grounded in a sovereign will rather than universal reason, it is not necessarily aligned with truth, and it is subject to change. Finally, it is written – an impossibility for the Stoic divine law which is unwritten logos, or reason, itself.

Ancient Jews could not help but be aware of the incongruity between the biblical and Hellenistic conceptions of divine law. It made them uncertain of the value and divinity of their own tradition, but they responded to that uncertainty in different ways. For some, the uncertainty generated by the encounter with a different conception of divine law was distressing and they wanted to make it disappear. These Jews admired Hellenistic culture and the philosophical conception of divine law and were eager to prove that

the divine law of biblical tradition aligned with it. Against the evidence of the biblical text itself, they claimed that the law given to Moses was divine according to the standards of the Hellenistic culture they so admired and emulated – which meant it was rational, universal, true and immutable. We see these claims in the Letter of Aristeas (written by a Hellenistic Jewish author in the 2nd c BCE) which asserts that the Mosaic law was not “laid down at random [...] but with a view to *truth (aletheia)* and as a token of *right reason (orthos logos)* [...] (161–162) and that the dietary laws and purity laws – which appear unnatural and irrational – are in fact allegories for rational truths that lead to moral virtue (143–150)”.

Similar claims are made by the author of 4th Maccabees (1st–2nd c BCE) who seeks to identify the Mosaic legislation with “wisdom-loving reason” or *philosophos logos* (5:35). In this work, the Jewish protagonist defends the dietary laws against the attacks of a mocking Greek tyrant saying: “You scoff at our philosophy (*philosophia*), as though our living by it were not sensible [*eulogistia, rational*] [...] [but] believing that the law is divine, we know that the creator of the world shows us sympathy by imposing a law that is in accordance with nature” (5:22, 25). But as is well known, it is the 1st century Jewish philosopher Philo of Alexandria (c. 25 BCE–c. 50 CE) who goes the farthest in repackaging the positive legislation of the biblical covenant as the Stoic natural law. Philo declares that the divine laws delivered through Moses “seek to attain to the harmony of the universe and are in agreement with the principles of eternal nature” (*Life of Moses* 2:52), that “in every respect the Holy Writings are true” (*QA on Gen* 1:12), and that the laws and statutes are nothing “but the sacred words of Nature” (*Special Laws* 2.13). He maintains that the Torah is not particular but universal and that “some day each nation will abandon its particular ways, and [...] turn to honoring our laws alone” (*Life of Moses* 2:44). He asserts that the laws of Moses are immovable and unchanging like nature itself (*Life of Moses* II.14–17); and most surprisingly that the Torah is actually unwritten; the written text we possess is just a copy of the true unwritten Torah which can be discerned in nature (*On Abraham* I.3–6).⁴ In short, some ancient Jewish writers, unsettled by the uncertainty generated by the incongruity between classical and biblical conceptions of divine law attempted to end the uncertainty by bridging the two and erasing their difference.

⁴ For more on Philo’s reconciliation of Torah and Stoic thought, see Adele Reinhartz, “The meaning of *nomos* in Philo’s *Exposition of the Law*”, *Sciences Religieuses/Studies in Religion* 15:3 (1983), 337–345; Martens, op. cit.; Hindy Najman, “A Written Copy of the Law of Nature: An Unthinkable Paradox?”, *Studia Philonica Annual* 15 (2003), 51–56; Maren Niehof, *Jewish Exegesis and Homeric Scholarship in Alexandria*, Cambridge 2011, <https://doi.org/10.1017/cbo9780511732324>; and Hayes, *What’s Divine*, op. cit., 111–124.

A second ancient Jewish response to the unsettling encounter with the Hellenistic conception of divine law is found in various writings of the New Testament. In these writings also, the Torah is evaluated against the philosophical definition of divine law and deemed partly or almost wholly incongruous. Biblical or biblically derived laws that do not meet the Hellenistic criteria of divine law (because they are non-rational, particular, against the natural order, time-delimited, etc.) are rendered suspect or dismissed, while those that do meet these criteria are championed as the true divine law. We see this, for example, in Matthew 19:4–9, where Jesus rejects the law of divorce set forth by Moses in Deuteronomy 24:1–4 as a human modification of the union described in Gen 2. According to Jesus, Moses's law was introduced at a specific juncture in time (it is time-delimited, not eternal) in response to the specific condition of the ancient Israelites (it is particular, not universal), and does not align with Gen 2's presentation of marriage as a divinely ordained institution grounded in the order of creation.⁵

Paul was a 1st c Pharisaic Jew who also evaluated his native constitution, the Torah, against the Hellenistic understanding of divine law. But where Philo resolved the incongruity by simply attributing to the Mosaic Torah the qualities of Stoic divine law, Paul attributed to the Law as a whole – and not merely individual laws within it as Jesus does in Matthew 19 – the characteristic features of human positive law on the Stoic definition. He describes it as a law particular to the Israelite people and discourages gentile observance, which he would not do were it a universal natural law. As I have argued at length elsewhere, I believe that Paul's characterization of

⁵ According to which a marriage is ended only by sexual infidelity. Similarly, in Mark 7:1–23, Jesus uses the Greco-Roman dichotomy between divine law and human law to differentiate and dismiss a Jewish traditional practice as mere human law. When the Pharisees and scribes ask Jesus why he and his disciples do not follow tradition and wash their hands before eating, he rebukes the Pharisees for following mere human law and abandoning divine law, specifically Mosaic commandments regarding the honor due to one's parents. Adela Yarbro Collins (*Mark: A Commentary*, Minneapolis, 2007) contrasts the view attributed to Jesus with that of rabbinic Judaism: Whereas the mishnaic tractate “The Fathers” assumes identity, or at least strong continuity, between the Law given on Sinai and the tradition of the elders, the Markan Jesus drives a wedge between the two by equating Isaiah's “commandments of human beings” with “the tradition of the elders” (350). See further, Steven D. Fraade, “Moses and the Commandments: Can Hermeneutics, History, and Rhetoric Be Distinguished?”, in *The Idea of Biblical Interpretation: Essays in Honor of James Kugel*, eds. Hindy Najman & Judith H. Newman, JSJSup 83; Leiden 2004, 388–422, https://doi.org/10.1163/9789047402855_021; and Shaye J. D. Cohen, “Antipodal Texts: B. Eruvin 21b–22a and Mark 7:1–23 on the Tradition of the Elders and the Commandment of God”, in *Envisioning Judaism – Studies in Honor of Peter Schäfer on the Occasion of his 70th Birthday*, eds. Ra'anan S. Boustan, et al., Tübingen 2013, 965–983. Here too, we may speculate that Jesus's selection of parental respect as an example of divine law is not random; it is chosen because it is consonant with common Hellenistic conceptions of divine law (rational, natural, and of universal application).

the Mosaic Law was a strategic accommodation to his audience in service of his eschatological goal. Paul's goal was to hasten the kingdom of God by bringing gentiles to the recognition of the God of Israel. He relied on biblical prophecies that described the messianic era as a time when the nations would join with Israel in the worship of God, but not in the observance of the Law, which in Paul's view, is the privilege and reserve of God's covenantal partner Israel.⁶

To persuade his gentile audience to join with Israel without joining Israel Paul drew on the distinction between divine law and human law that would have been familiar to them. If the Mosaic Law is the particular legislation of the Jewish people, then it does not obligate gentiles, whose entry into God's community – required if the end-time visions of the prophets are to be fulfilled – is accomplished through faith alone. In line with some recent scholarship from the Paul within Judaism school, a school that has flourished in particular here at Lund University, I've argued that Paul's eschatological vision is a paradoxical blend of inclusivism and exclusivism.⁷ Gentiles are included in the messianic era and promises, but they are excluded from the Law observance that in Paul's view was proper to Israel alone. To discourage gentiles from adopting the Law to which he believed they had no right, Paul characterized the Torah as particular and temporary (time-delimited) legislation (Gal 3:16–26) conducive to external obedience only but not true moral virtue i.e., salvation from sin (Gal 3:11). Salvation, of both non-Torah observing gentiles and Torah observing Jews, is achieved through faith (Romans 3:28–30).⁸ Paul's strategic but nevertheless negative characterization

6 For a review of diverse views of the place of gentiles in Israel's redemption narrative, ranging from destruction (Isa 49:23; Mic 5:9, 15; 7:16f; Zeph 2:1–3:8; T. Mos 10:7; Jub 15:25–26) to rehabilitation and inclusion (see Isa 2:2–4, 25:6; Zech 8:23; 1 Enoch 91:14) see Paula Frederiksen, "Judaism, the Circumcision of the Gentiles, and Apocalyptic Hope; Another look at Galatians 1 and 2", *JTS* 42 (1991), 532–64, esp. 453–458. For the view of Paul as an exclusivist who rejected the possibility of gentile "conversion" and limited gentiles to membership within "Israel according to the spirit" and not "Israel according to the flesh," see Hayes, *Gentile Impurities and Jewish Identities*, New York, 2003, chapter 5, <https://doi.org/10.1093/0195151208.001.0001>; Matthew Thiessen, *Contesting Conversion*, New York, 2011, 147–148, <https://doi.org/10.1093/acprof:oso/9780199793563.001.0001>.

7 Lund University faculty Magnus Zetterholm and Karin Hedner Zetterholm have played a significant role in producing, convening, promoting, and publishing scholarship in the "Paul within Judaism" school. See for example, Mark Nanos & Magnus Zetterholm (eds), *Paul Within Judaism: Restoring the First-Century Context to the Apostle*, Minneapolis 2015, <https://doi.org/10.2307/j.ctt9m0vn7>; and Karin Hedner & Anders Runesson (eds), *Within Judaism? Interpretive Trajectories in Judaism, Christianity, and Islam from the First to the Twenty-First Century*, Lanham 2024, <https://doi.org/10.5771/9781978715073>. See also, Mark Nanos, *Reading Paul Within Judaism: The Collected Essays of Mark Nanos vol I*, Eugene 2017; Michael Bird, et al. (eds), *Paul within Judaism: Perspectives on Paul and Jewish Identity*, Tübingen, 2023.

8 For a full discussion of Paul's rhetorical presentation of the Law and his deployment of the negative tropes applied to positive human law in Hellenistic philosophical traditions,

of the Law would later be misunderstood as an outright rejection of the Law for both gentiles and Jews. This would then set the stage for a more full-throated Christian denigration and delegitimization of the Mosaic Law in toto and for the antinomian Law-spirit dichotomy at the heart of early Christianity.⁹ But since that is a story that has been told by others more expert than I, I turn to the third response to the uncertainty generated by the incongruity between biblical and Stoic conceptions of divine law – the response of the Talmudic rabbis.

It turns out that not all Jews were distressed by the incongruity between the Hellenistic and the biblical conceptions of divine law. Not all sought to deny the incongruity by turning Mosaic Law into natural law, like Philo, or to affirm it in a way that denigrated or dismissed the Mosaic Law as mere human law, like some New Testament and early Christian writings. The rabbis who flourished from the late 1st to the 7th c in both Palestine and then Babylonia, saw the incongruity and were, generally speaking, neither alarmed nor apologetic but exhilarated by the uncertainty engendered by this encounter with the other.¹⁰ Let me explain.

Although there are exceptions as one would expect in a vast anthological corpus containing sources across 6 centuries, the rabbis by and large resisted the attempt to shoehorn the Torah given at Sinai into the Hellenistic definition of divine law, as Philo did by claiming that it is universal, immutable, utterly rational truth. But neither did they conclude that it was mere human law as some early Christians did. The rabbis simply rejected the Hellenistic definition of divine law as a static and universal *logos* and doubled down on the biblical conception of divine law as a written body of legislation for a particular community, grounded in the will of a sovereign divine being, containing both rational and non-rational commandments, subject to modification as needed, and by no means corresponding to a single, abstract, unchanging rational truth. They did this through legal rulings, legal debates and stories – many overtly humorous – that depict the divine Torah as not necessarily conforming to truth, not necessarily rational, and not immutable. Some brief examples must suffice.

The Torah is not consistently represented in rabbinic texts as intrinsically and necessarily rational or universally accessible by reason. Indeed, in hund-

see Hayes, *What's Divine about Divine Law*, chapter 4.

⁹ Christianity's posture towards the law ranges from annulment to abrogation to supersession and while there are specific doctrinal differences among these views, for our purposes they all assume a stark dichotomy according to which the Mosaic Law is not only not identified with the universal divine law, it is entirely distinct from if not antithetical to it.

¹⁰ There are of course countervailing voices, as documented in Hayes, *What's Divine about Divine Law*, part II, but the predominant voice is as described in the ensuing pages.

reds of texts early and late, Palestinian and Babylonian, the Mosaic Law is portrayed as a divine decree containing some commandments that run counter to human nature or are so illogical as to inspire mockery on the part of other nations (*Sifra Aharei Mot* 9:13), heretics (Jerusalem Talmud, Sanhedrin 10:2, 27d-28a) and sectarians (Jerusalem Talmud Eruvin 1:1, 18c). The rabbis often delight in pointing to laws that could not be derived by logic and had to be given as commands of the divine sovereign.¹¹ One particularly striking text, *Pesiqta deRav Kahana* 4, consists of an extended celebration of the irrationality of the law of the red heifer – the ritual that purifies persons from corpse impurity. The paradoxical and irrational nature of the ritual law is hailed as proof of its divinity – a stark contrast to the apologetic and rationalistic approach of Hellenistic Jewish sources (the *Letter of Aristeus*, Philo's works) that divinized reason and felt compelled therefore to prove the rationality of even the purity laws. But for the rabbis, to declare reason divine is tantamount to idolatry; for the rabbis, divine law can neither be reduced to nor exhausted by reason.¹²

Nor do the rabbis insist that the Torah's rulings align with various standards of truth, such as, for example, factual truth. We see this when the rabbis determine the law over and against empirical realities, tolerating legal fictions and contrary-to-fact rulings if doing so will achieve humane and compassionate goals. In Mishnah Niddah 2:4, women are presumed to be in a state of ritual purity when their husbands return from a journey even though this will not always be factually true, but the facts are less important than promoting marital intimacy after separation, and procreation.¹³ In another Mishnah Rosh HaShanah 2:9-12, the rabbinic court sets the calendar and holy days in defiance of astronomical reality. Human adjustment of the calendar would have been anathema to the community at Qumran whose members took an oath to follow the divinely established 364-day calendar so as not “to advance or delay” the dates of the festivals (Community

¹¹ See for example, Jerusalem Talmud Sanhedrin 8:1, 26a concerning the law of the stubborn and rebellious son in Deuteronomy 21:18–21. A significant portion of the 3rd c CE *Sifra* is dedicated to the proposition that various biblical laws could not have been derived from reason and had to be revealed as decrees.

¹² For a full discussion of these and many other examples, see Hayes, *What's Divine about Divine Law*, chapter 6.

¹³ Various rabbinic texts suggest that the motivation for adopting lenient presumptions in cases of menstrual impurity is connected with the value placed upon marital intimacy and the positive commandment of sexual reproduction (b. Yev 62b; b. BM 84b; b. Nid 31b). The rabbinic approach in this case is typical of a nominalist orientation in which objective facts – especially when those facts are uncertain – are not consistently privileged when determining the law. Other considerations and values are allowed to trump objective facts, even more so when these facts are only likely but not certain. For a survey of the way in which this particular “legal fiction” is eroded in the sources, see Hayes, *What's Divine about Divine Law*, 219–221.

Rule 1:14-15) – that is, the objectively real dates of the festivals as determined by the 52-week pattern that they believed had been fixed in nature by God at the time of the creation and was observed by the citizens of heaven.¹⁴

Similarly, in judicial contexts, an uncompromising adherence to “truth” (assigning guilt and innocence by strict standards of justice without moderation by other values) is depicted in several texts as dangerous. It is said that Jerusalem was destroyed because people gave judgments according to strict or formal law (*din haTorah*), when they should have stopped short of the strict or formal law (*lifnim mishurat hadin*) and exercised compassion (Babylonian Talmud Bava Metsia 30b). Another rabbinic source (Tosefta Sanhedrin 1:2-3) notes that Torah judges who render justice in a formally correct way that ignores particular circumstances are destructive – cutting through mountains, as the rabbis say. A pious judge will contextualize the law, balancing strict justice with other important values. Compassion, modesty, peace, charity and other virtues must sometimes trump the formal legal truth.¹⁵ God himself is depicted as defeating truth in favor of mercy and compassion in the heavenly court.¹⁶

As for the Law’s static immutability, the rabbis resist the prevailing definition of divine law as something static and unchanging. Mishnah Gittin 4 and 5 contain numerous rulings that adjust the divine law “for the sake of the social order or the public welfare”. For example, although according to Torah law a husband is empowered to annul a divorce document without his wife’s knowledge, the rabbis ruled that he may not do so, for the sake of the social order; similarly, if a slave is freed by one of his two masters he is technically half-free, but the rabbis compel his other master to free him too, for the sake of the social order since the man cannot otherwise marry. On literally hundreds of occasions the rabbis debate and explicitly modify the law in a deliberative response to changing historical, social, ethical, and ideological circumstances.¹⁷ In some instances, humans are God’s essential

¹⁴ For a full discussion of these and many other examples of rabbinic determinations of the law that run counter to logical and empirical truth or employ legal fictions see Hayes, *What’s Divine about Divine Law*, chapter 6.

¹⁵ For further examples and discussion, see Hayes, “Legal Truth, Right Answers and Best Answers: Dworkin and the Rabbis”, *Dine Yisrael: Studies in Halakhah and Jewish Law* 25 (2008), 73–121.

¹⁶ For a thorough and entertaining survey of sources addressing this theme, see Richard Hidary, *Rabbis and Classical Rhetoric: Sophistic Education and Oratory in the Talmud and Midrash*, New York 2018, chapter 7, <https://doi.org/10.1017/9781316822722>.

¹⁷ For a full treatment of rabbinic innovations and modifications that adapt the law to changing circumstances, see Panken, *The Rhetoric of Innovation*, Lanham 2005. Rabbinic texts vacillate between an earlier rhetoric of disclosure that does not hide these innovations and modifications, and a later rhetoric of concealment that reframes them as continuous with earlier tradition. See Hayes, “The Abrogation of Torah Law: Rabbinic Taqqanah and

partners in the development and modification of the Torah; they critique provisions of the Law based on their experience as embodied beings living in an uncertain world. As Dov Weiss (b. 1973) has shown, Palestinian rabbinic works contain more than a hundred instances in which humans are depicted as advancing criticism of divine decrees.¹⁸ Sometimes, the deity concedes, even declaring on three occasions, “[b]y your life, you have taught me something” before revising the divine law or principle in question. These often humorous texts depict a God in need of information, feedback, and moral instruction by humans. Indeed, in an oft-quoted text from the Babylonian Talmud, God is said to take delight in the rabbis’ ability to defeat him in legal disputation (*b. Bava Metzia* 59a).¹⁹

The idea of a morally evolving divine being who gives a morally evolving law that is test-driven by humans, subjected to moral scrutiny, and modified if necessary stands at a great distance from Hellenistic conceptions according to which the perfect natural, or divine, law is an expression of a universally valid and immutable rational order. For a Stoic or for Philo, the idea of adjusting the divine law would make as much sense as repealing the law of gravity. But for the rabbis, the responsive flexibility of the divine legislation of God’s Torah is not a weakness but a strength, not a bug but a feature, and an indicator of its origin in a dynamic and responsive divine will. This was a truly radical and counter-cultural position and its dialogic engagement with Hellenistic ideas animates theological, legal, and ethical debates that shape our world today.

One question remains: why did the majority of the Talmudic rabbis refuse to attribute to the Torah the qualities that the surrounding culture deemed to be the defining characteristics of divine law, particularly its claim to a single and absolute, rational truth? After years of swimming in the ocean of talmudic argumentation, I have come to the conclusion that the rabbis were suspicious – if not downright skeptical – of dogmatic claims of absolute moral truth. I do not mean that the rabbis did not value truthfulness. They frequently and explicitly condemn prevarication and deceit, but they understood that there are some pursuits to which the categories “true” and “false” do not apply. In this respect they resemble Aristotle who noted that while universal, exception-less, “truth” may be attainable in purely rational

“Praetorian Edict”, in *The Talmud Yerushalmi and Graeco-Roman Culture*, ed. P. Schäfer, Tübingen 1998, 643–674.

18 Dov Weiss, *Pious Irreverence: Confronting God in Rabbinic Judaism*, Philadelphia 2017, <https://doi.org/10.9783/9780812293050>.

19 It should be noted that the less cited finale to this story concerning R. Eliezer and the oven of Akhnai underscores the dangers that arise when the rabbis fail to display towards those who disagree with them (R. Eliezer), the same magnanimity and tolerance that God displayed towards the rabbis when they adopted a legal position contrary to his own.

domains, like logic and geometry, it is unattainable in the realm of practical and moral affairs.

When deliberating over the morality of an action, we appeal not to concepts of truth and falsehood, but to concepts of good and bad which are not easily universalized and absolutized. However good a general rule or law might be in theory, and however well a previous moral decision may have served us in the past, it is entirely possible that it is not the best course of action in a new and slightly different circumstances. We must ask: do the demands of the hour indicate that a modification of the earlier rule or decision would be a better course of action? To determine what it is best to do in any given situation requires a particularized judgment through moral reasoning. Moral reasoning does not prove that something is immutably true; it argues that something is, after consideration of all relevant factors, good – today, and maybe often, and if we deliberated well then maybe for a very long time, but never absolutely and immutably, because the circumstances of life are ever shifting, and we can never imagine them all or take all possibilities into account. With apologies to the Stoics, wouldn't a truly divine law – one that can support human flourishing now and in the future – have to be dynamic and responsive rather than absolute and immutable? Wouldn't it have to be open to moral critique and revision as new situations, new challenges, new information, and new moral insights arise?

The rabbis' refusal to absolutize any one value, such as truth or rationality, should not be confused with the refusal of all values or with relativism. The rabbis' position is not a value-less position but a value rich position. Rabbinic sources eulogize many virtues and values (especially truthfulness, compassion, and modesty) and they even hierarchize them on occasion, but they refuse to install any one value as permanently and absolutely supreme. They recognize that each moment of moral judgment requires the dynamic activation, weighing and balancing, of those strongly held values to determine the morally best course of action while avoiding a dogmatic absolutism. To put it another way, the antidote for dogmatic absolutism, or a too rigid certainty, is epistemological humility which embraces and even celebrates a healthy degree of uncertainty or skepticism. Recognizing that one has many good ideas and answers but not all possible good ideas and answers is the beginning of epistemological humility. And we are led to the recognition that we do not have all ideas and answers through the many disciplines of the Humanities which expose us to human diversity of all kinds. This is why we need the Humanities, and especially disciplines like Jewish Studies and Islamic Studies: to inspire a healthy and exhilarating uncertainty.

inty, and to foster an epistemological humility that is the best antidote for rising intolerance and dogmatic absolutism.

Now, it may surprise you to hear that epistemological humility, the antidote for dogmatic absolutism, is enacted and inculcated on nearly every page of the Babylonian Talmud, since it is popularly believed to be a book of law. To understand the anti-dogmatism of talmudic argumentation it helps to think of the Talmud as a kind of ‘play’ that cautions us against becoming too certain of ourselves. Some play theorists define play as a structured activity with an undetermined outcome, with some forms of play actively avoiding a final conclusion.²⁰ The play of talmudic argumentation about divine law and what divine law requires of us meets this description of play as a structured activity with an undetermined outcome, generating provisional meanings rather than unveiling a final and static absolute truth.

One technique for avoiding a fixed and final conclusion in talmudic argumentation is the endless multiplication of detail. Here’s what Moses Mendelssohn, an 18th century Jewish thinker, had to say about detail. Take any proposition you please and talk, write or argue about it – for or against it, often and long enough – and you can be sure that it will continue to lose more and more of whatever clearness it may once have possessed. Too much detail obstructs the view of the whole.²¹

I suggest that talmudic argumentation can be seen as a kind of play that employs an ever-increasing level of detail in a concerted effort to defer final answers and to keep the game going so that it doesn’t freeze in a dogmatic rigidity. A demonstration of this claim would require a detailed analysis of a Talmudic passage which is not possible here; a summary description of one of literally thousands of cases will have to suffice. In one Talmudic discussion (Babylonian Talmud Sukkah 23a–b), a certain rabbi says that a *sukkah* – the ceremonial hut constructed for the observance of the festival of Sukkot – may be constructed using an animal for one of the three required walls. Another sage, R. Meir, prohibits this. The Talmud explores two possible reasons for R. Meir’s prohibition noting that these different rationales for R. Meir’s prohibition could lead to different rulings in particular cases. But which cases and how? And the game is afoot.

The lengthy discussion of various animal walls that follows evinces a spirit of play, not only because imagining elephants or cows serving as a wall and

²⁰ Johan Huizinga, *Homo Ludens* [1938], New York 1971, 9–12. Psychologists are inclined to define play as an activity that meets certain criteria. See for example, J. M. Zosh, et al., “Accessing the Inaccessible: Redefining Play as a Spectrum”, *Frontiers in Psychology* 9 (2018), doi:10.3389/fpsyg.2018.01124. Huizinga also refer to the play-element as a disposition rather than an activity. We will return to this point below.

²¹ Moses Mendelssohn, *Jerusalem or On Religious Power and Judaism*, trans. Allan Arkush, Hanover 1983, 89.

inconveniently wandering away is humorous, but because of certain formal features that we see in every extended talmudic discussion: the endless “what if’s” that propose increasingly detailed and specific situations: what if R. Meir’s prohibition was limited to a certain kind of animal in a certain situation? What if the animal runs away, dies, or has such large gaps between its legs that it doesn’t meet the legal definition of a wall? The what-ifs go on and on. The game continues because as is true of any game, the real fun, the real purpose, is in the playing, the exploration of possibilities. Although the Talmud’s discussion stops where it stops, there is no genuine sense of closure (we never find out which reason for R. Meir’s prohibition is correct), and there’s nothing to prevent us from coming up with yet another possible reason or contingent detail. The debate is potentially endless, because new particulars and contingencies are always possible.

More important, the detailed objections and hypothetical applications, reshape what we thought we knew. We thought that all animal-walled sukkahs were categorically prohibited by R. Meir and categorically permitted by R. Yehuda. But it turns out that that may not be so. Exploring the reason behind R. Meir’s prohibition we see that he might make an exception in some cases – indeed, nearly all cases – and suddenly we’re a little less certain of ourselves. The Talmud doesn’t press to determine which view of R. Meir’s reason is right. It’s interested only in which views are possible.

I deliberately chose a humorous and almost self-parodying example, but these same techniques are applied to every imaginable topic. Repeatedly we find that what we thought was clear at the beginning of a legal discussion is decidedly less clear at the end and were we to consider a few more details and hypothetical cases, things would look different again! The lesson? Think, reason, argue, to reach the best decision for the community today, but retain a modicum of uncertainty, an epistemological humility, because a new detail stimulating a better argument and a more moral outcome might be waiting just around the corner.

Most scholars assume that the Talmud’s excessive argumentation and endless piling up of detailed distinctions is driven by a desire to achieve certainty, to uncover a single truth; but I disagree. The Greek philosophers certainly understood that a preoccupation with detail is an impediment to the acquisition of true and certain knowledge. Aristotle said that if you want to know what a horse is you must ignore the particular details of particular horses – their different colors, sizes, speeds, degrees of strength, and so on; instead, you must abstract from these particulars the ideal form or essence of “horseness” that is shared by and defines all individual horses. If you get bogged down in the concrete material details (this one is lame, this one has

a long tail), you will never see the abstract unity that transcends the diversity of material forms, and you will never have certain knowledge of horses.

By contrast, the Talmud is committed to detail. I believe it is designed to bring less certainty because, as I've argued, the rabbis believed God and God's Law were not static, but dynamic and responsive to the details of human existence that arise anew each day. Therefore, even as they arrive at legal decisions because communal life requires it, in a deep sense these decisions are never so final as to be immune to exception or even revision. The Talmud's style of argumentation reflects and enacts that belief.

This, it seems to me, explains the Talmud's commitment to detail. Indeed, we might say that where the Greek philosophers sought to stabilize knowledge and certainty through abstraction from detail, the talmudic rabbis sought to destabilize knowledge and certainty through distraction with detail, reminding us that when it comes to elaboration of the divine law, certainty is a dangerous illusion and that the quest for "truth" refers not to an instantaneous unveiling of the transcendent one, but to a continuous, historically-embedded and generative process of contingent interpretation. Thomas Malaby describes play not as an activity but as a dispositional stance toward the indeterminate, an disposition that "draws ultimately on the pragmatist philosophers' portrayal of the world as irreducibly contingent", or "an attitude characterized by a readiness to improvise in the face of an ever-changing world".²² He cites Johan Huizinga (1872–1945) who wrote that the play-element "is marked by an interest in uncertainty".²³ We might add that play depends upon uncertainty. Play is "a disposition toward the world in all its possibility",²⁴ a disposition that recognizes the contingency of events and the compelling mix of constraint and open-endedness that imbues all of our actions, decisions, and social processes; a disposition that views uncertainty not as a terrifying abyss but a promising realm of possibility, and is ready to improvise in novel circumstances as the hour demands.²⁵

Talmudic argumentation can be seen as this kind of play, introducing into the divine law an edifying element of uncertainty and contingency that unlocks a world of possibility. The Talmud employs an ever-increasing level of detail and "what ifs" in a concerted effort to defer final answers and to keep the game going so that it doesn't freeze in a dogmatic rigidity.

In this age of increasing extremism and dangerous absolutisms of all kinds, we have much to learn from disciplines like Jewish Studies that bring

²² Thomas Malaby, "Anthropology and Play: The Contours of Playful Experience", *New Literary History* 40:1 (2009), 205–218, <https://doi.org/10.1353/nlh.0.0079>.

²³ Malaby, op. cit., 210, citing Huizinga, op. cit., 173.

²⁴ Malaby, op. cit., 211.

²⁵ See ibid., 206.

us face to face with countercultural possibilities, and much to learn from the ancient rabbis specifically – their skepticism, their epistemological humility, their refusal to sacrifice the particular to the universal, their embrace of uncertainty. The Babylonian Talmud's famously convoluted legal discussions remind its audience: that just as our God is not the static unmoved mover of the philosophers, but a dynamic living presence, so this God's divine law is likewise dynamic, always in process; that no interpretation of the Law is absolutely final; that every answer is provisional because there is always the possibility of a new circumstance, an unanticipated detail, that might demand revision; that when applying the Law in any new situation we cannot be lazy and whip out a fixed, pre-set answer; we must roll up our sleeves, pay attention to the details, and figure out all over again what justice and equity look like in this case not; and that no position however well-argued and supported is completely immune to further thought and inquiry; that everything is always, always in play. ▲

SUMMARY

Recent attacks on the academy and especially the Humanities are driven in part by a generalized fear and uncertainty inspired by encounters with difference. This essay argues that the importance of the Humanities lies in its very ability to counter this fear by fostering the epistemological humility necessary for a comprehension and celebration of the diversity and complexity of human difference. The author's academic journey into the field of Jewish Studies is offered as an example of the transformative and enlivening power of an encounter with unfamiliar ideas. These ideas include the Hebrew Bible's countercultural conception of the divine as a dynamic living presence, and the Talmudic rabbis' countercultural conception of divine law as likewise dynamic and responsive to the contingent details of human existence. Resisting characterizations of divine law as a universal, immutable, rational truth, Talmudic argumentation proceeds from a posture of epistemological humility. As a form of anti-dogmatic play, it reinforces the edifying element of uncertainty and contingency in divine law and unlocks a world of possibility. The essay concludes that in an age of increasing extremism and dangerous absolutisms of all kinds, we have much to learn from disciplines like Jewish Studies that bring us face to face with countercultural possibilities, and much to learn from the ancient rabbis specifically – their skepticism, their epistemological humility, their refusal to sacrifice the particular to the universal, and their embrace of uncertainty as the vital seedbed of unending possibility.