Closing Reflections II: Halakhah and Community

By Rabbi Ethan Tucker

I. Introduction: A broad, inclusive vision of halakhic community

Among the many phrases used by the male lover in Shir Ha-Shirim to describe his beloved is the following: ריקתך הרמון כפלח “Your temple is like a section of pomegranate” (Shir Ha-Shirim 4:3, 6:7). Playing off of the fact that the Hebrew root פלח—used here to refer to a section or a slice—looks identical to the Aramaic root פלח—which is used to denote worship—Reish Lakish offers the following creative midrash:¹

The verse, on its surface, seems to be praise for the beautiful face of the man’s female lover. Instead, in the eyes of Reish Lakish, it becomes God’s praise for the Jewish people, whose members are so worshipful of God that even the emptiest among them are full of mitzvot like a pomegranate (is full of seeds).

This verse, on its surface, seems to be praise for the beautiful face of the man’s female lover. Instead, in the eyes of Reish Lakish, it becomes God’s praise for the Jewish people, whose members are so worshipful of God that even the emptiest among them are full of mitzvot. Two critical points emerge from the allegorization of this verse in the Shir Ha-Shirim. First is the remarkable fact proffered here that all Jews, even those who appear to the rabbinic elite as empty and worthless, are in fact practicing and committed. Even the least sophisticated Jew, says Reish Lakish, is overflowing with Jewish practice and thus commands God’s praise in this love song between an eternal people and their loving God. Jews do mitzvot; they don’t always do so with enthusiasm, with understanding, with the correct intention, but they live in a culture of mitzvot that even the most critical eye ought to be able to recognize.

¹ I am grateful to my colleague, Dena Weiss, for pointing out to me this philological basis for this midrash, which had eluded me for years.
But even more remarkable than this fact of practice and commitment is Reish Lakish’s ability to see it. Reish Lakish projects a sense of confidence in the average Jew: Even when such a person is falling short of rabbinic ideals, they are still real and meaningful contributors to the matrix of committed Jewish life. And this, after describing such people as empty and worthless! He recognizes the ways in which even the apparently empty Jew forms the backbone of the Jewish community and fills out a picture of practice that no elite can totally bear on one’s own.

In short, this statement of Reish Lakish overflows with trust and respect: trust of the people by rabbis, and respect of the people for their tradition.

Could anything be further from our contemporary reality and from the current state of the discourse and practice of halakhah? We live in a world in which most rabbinic participants in halakhic conversation view most of the Jewish world (rightly) to be hostile to their project. We live in a Jewish world that is commonly bifurcated into the observant and the non-observant, the halakhic and the non-halakhic, a world in which perhaps the greatest spiritual deficits that we face are those of trust and respect. Most rabbis engaged with halakhah don’t trust the average contemporary Jew, seeing emptiness, worthlessness, laziness, and a lack of commitment that inspires fear rather than praise. And most contemporary Jews don’t really respect the tradition they have inherited and, whether for reasons of ignorance or ideology, can often hardly be said to be as full of mitzvot as a pomegranate is of seeds.

How did we take leave of the world of Reish Lakish and end up in our present moment? And is there any way for us to get back to that world of trust and respect? As we bring the year of Torah reading to a close in this final essay, we will explore this question, striving to understand the genesis of our present moment and begin to chart a way forward.

II. A recurring dilemma

The 21st century is hardly the first time that many Jews have abandoned Jewish practice, nor the inaugural epicenter of rabbinic mistrust of the wayward. Our earliest memories preserve a picture of normative expectations imperfectly fulfilled and a deep struggle on the part of leaders as to how to respond to that imperfection. As in all things related to leadership, Moshe Rabbeinu
serves as our central paradigm for thinking through this question. In Shemot 32, Moshe finds himself confronted by a community that has completely abandoned the covenant and its most basic elements of committed practice.

This scene features the most staggering abandonment of the basic pact between God and Israel, emphasized repeatedly throughout the Torah: God promises to be Israel’s God, and they promise to be loyal, worshipping no other power, force or physical form. The story of the Golden Calf represents the total rejection of the framework of mitzvot, of any sense of respect for the way of life that God began to communicate to the Jewish people on Mount Sinai.

And, in this moment of crisis, in the face of a colossal breach in the spiritual and religious edifice of the emerging Jewish nation, Moshe is conflicted: When speaking with God, he pleads for perspective: ‘Please, don’t be angry with them! They are your people, not just mine! You took them out of Egypt! They are the descendents of your beloved patriarchs! They are the ones to whom you have promised an eternal grant of land!” And implicitly: “You must find a way to interpret the current situation such that they will survive.” There must be a reading of this apparent sin that does not leave them completely culpable.

But then, just a few verses later, Moshe is completely uncompromising: ‘Whoever is for the Lord, come to me! Each of you put sword on thigh, go back and forth from gate to gate throughout the camp, and slay brother, neighbor, and kin!” (Shemot 32:26-7) Instead of defending the people, he attacks them, calling on others to help him kill them. After seeing the picture of complete collapse of the people’s exclusive relationship with God—‘he saw the calf and the dancing”—Moshe loses control and decides that nothing but separation from and annihilation of the sinners will suffice. It is time for those who stand with God to stand apart, even from those who are their brothers, relatives and friends.
And so has been the challenge of Jewish leadership in many generations. When to take a broad view and to engage all of the people, even those who seem to be deviating from tradition, and when to batten down the hatches and ride out a storm whose raw power cannot possibly be resisted? When to adopt a broader perspective of inclusion and tolerance, and when to purge the dead weight?

III. The origins of modern, secessionist halakhah

Of all the different times in Jewish history when this dilemma has presented itself, modernity’s challenge to European Jews was particularly stark. Throughout the middle ages, rabbinic authorities and Jewish communities were responsible for all Jews. With the exception of those who actively converted out or those who actively took steps to separate themselves from the community, even Jews who might not have bought fully into rabbinic halakhah were nonetheless under the purview of the political structure in which rabbis played a critical role. Sometimes, this was aided by the small sizes of Jewish communities; it was always abetted by Gentile power structures that empowered rabbis to have privileged roles in governing their Jewish constituents. As a result, halakhah was bound to the entire Jewish community and responsible to it. Emancipation allowed Jews, for the first time since the crystallization of rabbinic authority in the middle ages, to leave the Jewish community without serious consequences. Instead of being consigned to membership in vassal rabbinic states embedded within their European hosts, Jews were now invited to be citizens of the general society. Jewish political authority largely disappeared, though Jewish communities still administered funds distributed by the state to the various religious communities. But Jews in Europe steadily acculturated and assimilated, adopting patterns of living much more similar to their Gentile neighbors than to those of their ancestors. And rabbis and Jewish communities lost control over Jews, and thus lost formal responsibility for them as well.

---

2 At the end of Moshe’s life, as told in Devarim 31, we find him predicting mass apostasy in future generations. In the time of Ezra and Nehemiah, the Bible tells how a host of basic mitzvot were completely forgotten by the Jewish people. The Mishnah’s division of the world into חברים (those scrupulous in following rabbinic laws) and הארץ עמי (unlettered masses uneven in their observance) reveals yet another generation’s struggle with these sorts of issues.
This dynamic would quickly present rabbis with a fateful choice: To what extent would they continue to live out the medieval model, imagining themselves to lead the entire population of Jews, despite the fact that the gulf between rabbinic expectations and common practice continued to widen? Or would they instead retreat into a smaller slice of the Jewish community, those who actively and publicly elected to sign onto the rabbinic project in their daily lives, speaking only to the audience that seemed keen to hear what they had to say?

One day stands out as the focal point of this process: July 28th, 1876. On that date, the Prussian government passed the Austrittgesetz, the law permitting elements of a religious community to secede and form their own sub-community, and to receive their share of government funding for religious institutions. This law was the moment of truth for those German Jews who wanted to resist the forces of religious Reform: Would they work within the larger Jewish community to advance their own agenda—even as Jewish institutions were increasingly controlled by advocates of Reform—or would they secede and form their own Orthodox community, essentially separating politically and communally from their co-religionists.

R. Shimshon Raphael Hirsch, who had advocated fiercely for the Austrittgesetz, jumped at the chance to secede and formed his own Orthodox Jewish community. Not only did Hirsch want the right to secede, he saw it as an obligation. Effectively the first to espouse the idea that there is a mitzvah to be Orthodox, he declared that the religious Reformers were heretics who were destroying the fundamentals of Torah and it was an obligation to do whatever one could to remove oneself from this sort of religiously compromised community and its authority. As Hirsch saw it, anyone who would try to perpetuate the medieval model in the face of the post-Emancipation collapse of traditional religious practice was a fool at best and a traitor at worst.

But even as Hirsch charged into secession, there were others who resisted him, both in his own community and beyond. R. Yitzhak Dov Bamberger of Wurzburg emerged as his fiercest critic, asserting in a series of public letters that there was absolutely no obligation to secede as long as the Jewish communal organizations were willing to facilitate traditional religious observance for those who chose it (as was the case in Hirsch’s community). Bamberger also attributed importance to having a presence of Torah and mitzvot in a Jewish community that might be influenced in a more traditional direction.
Does the discourse of halakhah and the community it is attached to need to stay in dialogue with those who are potentially leaving it? Hirsch answered no; Bamberger answered yes.3

Ultimately, the European communities that grappled with these difficult issues, in Germany and elsewhere, were washed away by the flood of the Sho’ah. But the core questions remain with us until today. Indeed, Hirsch, in his time, launched the model of a truly secessionist, independent Orthodoxy that remains with us as the dominant form of Orthodoxy until today. While America’s strict separation of church and state makes religion a highly voluntaristic affair, Hirsch’s notion that Orthodoxy must look out for Orthodoxy, and that its halakhah must look out for Orthodox Jews and largely ignore those outside of that political grouping, deeply defines the contours of halakhic discourse in the United States up until the present. Even in Israel, where there is a Jewish government responsible for all Jewish citizens and where religion and state remain intertwined, the dynamics of secessionist halakhah remain very strong and preserve a discourse where halakhah looks out for the needs and assumptions of “religious” Jews, who are presumed to be halakhah’s main relevant audience. This leads to crises on issues of marriage, divorce, and burial, to name just a few, where the entire population is subject to decisions formulated from a religious stance that is foreign and alien to them.4

The raison d’être of a secessionist halakhah is fairly obvious: It hopes to preserve religious commitment and integrity in the face of overwhelming apathy and antipathy. How can halakhah engage with those who don’t care about it or who scorn it? And if it did engage with those people, wouldn’t it be hopelessly compromised, always shifting in the wind in order to make fair-weather fans and destroying itself in the process? Hirsch confronted a community that he felt was out to destroy the core principles that grounded his Jewish life. Wasn’t this a moment to stand up, like Moshe, and say Aliy’i le’mi “Whoever is for the Lord, come to me”?5

It is very hard to judge these things in hindsight. Far be it from me to judge what the best response was in 19th century Germany. Perhaps R. Hirsch’s response was right and necessary for his time. Perhaps a secessionist halakhah was the only way to ride out the storm of modernity as it hit with full force. It could be that R. Yitzhak Dov Bamberger was rearranging deck chairs as

---

3 For some summary and analysis of the entire period, albeit with an eye to later events, see M. Morgenstern, From Frankfurt to Jerusalem: Isaac Breuer and the History of the Secession Dispute in Modern Jewish Orthodoxy, Leiden 2002.

4 Interestingly, in recent years, the dynamic in Israel shows signs of changing. A deeper connection to religious practices and Jewish identity among a greater percentage of Israeli Jews may, in time, lead to a less secessionist religious reality.
the Titanic went down. We are all certainly sensitive to the notion that, at times, building coalitions with the opposition turns out to be a Trojan horse for appeasement.

But a charitable agnosticism regarding past decisions does not excuse us from reevaluating their continued application in a later time and place. We must conduct precisely this sort of reevaluation with respect to the model of secessionist halakhah. And a close examination reveals that secessionist halakhah has serious drawbacks as well, drawbacks that, today, outweigh any of its benefits.

IV. The dangers of secessionist halakhah

A. Halakhic myopia

First, in its quest for survival, secessionist halakhah becomes distorted. Because it only engages with the self-selected community of the halakhically faithful, it narrows its field of vision and highly limits the scope of issues it will deal with. When you see your constituency as made exclusively of those who already buy into a robust commitment to mitzvot, the scope of vision...
inevitably narrows. Isn’t it amazing, given all of the endless numbers of teshuvot written by contemporary poskim, how relatively few of them address some of the toughest and cutting edge issues that are religiously consuming for huge numbers of contemporary Jews? Where are the detailed teshuvot from the scholarly giants of the day that can really help people navigate issues of gender, sexuality, consumer responsibility, and fundamental questions of Jewish-Gentile boundaries? The relative quiet, or even silence, on these issues can be deafening, and reveals the ways in which halakhah has largely been blindfolded and had one—if not two—hands tied behind its back as it is largely shielded from serious engagement with the most difficult issues of the day.

B. Scaling down the covenant

A second problem with secessionist halakhah is that, in its quest for survival, it abandons its covenantal relationship with most Jews. By writing off most Jews as irrelevant to the conversation, poskim stop looking for ways to understand their behavior and simply move to a stance of despair. It is a short step from there to giving up altogether on the Torah’s mission to all Jews and the broader covenant of mitzvot and its claim on the entire Jewish people is thus compromised.

One brief example illustrates well how the same data can produce different responses depending on how a posek understands his relationship with the larger Jewish community. The Mishnah establishes unambiguously that women and men have an identical obligation in the Amidah, the fixed, daily prayer, and there is no hint anywhere in Talmudic literature that women and men should pray the Amidah any differently from one another. And yet, throughout history, there have been many communities in which women and men did pray differently, in seeming contravention of rabbincic rules.

For instance, the Talmud seems to conclude that whereas the public Amidah can be done in other languages, the private Amidah must be done in Hebrew. This elicits the following

---

6 See Mishnah Berakhot 3:3 and Talmud Bavli Berakhot 20b.
comment from R. Yonah Gerondi, in 13th century Spain, who notes that women did not observe this stricture and attempts to explain why this might have been justified: 

מהuguay על ח"פ" ק"מ
כוןweise דאהפסא דתפילת ביהודא אינא סמיה אלא בלשון הקדוש תוהא או לע תמנה בשמה בלכל תשלות
שהנסתע מתפילתו באשר לשתוע שקיבות תבירה אלא היה לה להתחפל אלא בלשון הקדוש ורוב
וצרף רזית לה תנה・・・・・・・・・・・・・・・・・・・・・・・・・・・・・・・・・・・・・・・・・・・・・・・・・・・・・・・・・・・・・・・・・・・・・・・・・・・・・・・・・・・・・・・・・・・・・・・・・・・・・・・・・・・・・・・・・・היה
תפילת העibir ייינין lah יוהל לאמרה יוהי בלשון אחרא אינא דאמר רב רוזיה הלעלול או ישוא אד רכבי
בלשון ארמי והשמשלאר עברין כנין שמתפלל על התחלא וא על שומ עהעיש ולבחי חכימו בחא אבל
תפילת שיינה יוהע לעברין אפיפי שמתפלל אחוה הבא לתפילת בברכי דמיה אינא יוהע בלשון הקדוש
ירוכל לצבת בלכל לושן

Rabbeinu Yonah on the Rif s.v. Gemara, Spain, 13th c.
Since we have concluded that private tefillah (i.e. Amidah) can only be said in Hebrew, I am deeply puzzled by the universal custom of women to pray in other languages, since by virtue of their obligation in prayer, they should have to pray in Hebrew [like everyone else]. The rabbis of France try to justify this practice by saying that when an individual prays the same tefillah that is recited in public, [that private prayer] is considered “public”, and one can say it in another language. And that which Rav Yehudah said, “One should never ask for one’s needs in Aramaic,” applies when one asks for one’s private needs, such as praying for a sick person or regarding any other problem in one’s home; but tefillah, which is known by the whole community, even when one prays it in one’s own home, it is as if it is being prayed in public, and if one does not know Hebrew, one may fulfill one’s obligation in any language.

What happens in this passage is not a small thing. The French rabbis quoted here confront a deviant practice and, instead of rushing to condemn it, they search for another reading of the Talmudic sugya in question in an effort to justify these women. The bond linking the posek and the community is very strong here, so strong that a deviant practice is presumed to contain some heretofore undiscovered insight into the canonical legal text!

7 We explored this source in the essay on Parashat Noah 5776, “Praying in Languages Other Than Hebrew”, available here.
This sort of trusting dynamic is even more boldly on display in an early modern Polish text, this time the R. Avraham Gombiner’s commentary on the Shulhan Arukh, the Magen Avraham. Here, the Magen Avraham is confronting an even more dramatic breach: women are not praying the Amidah at all! No Talmudic passage or medieval commentary ever suggested that the obligation in the Amidah was gendered in any way (as evidenced by the passage in R. Yonah we just read, who does not resort to a gendered resolution to his problem). We would expect the Magen Avraham to condemn these non-praying women. But instead we get this, as a comment on the Shulhan Arukh’s description of daily prayer as a positive commandment:

Magen Avraham 106:2, R. Avraham Gombiner, Poland, 17th c.

“A positive commandment”—So wrote the Rambam, who thinks that tefillah is a positive biblical commandment, as it is written, “and to serve God with all of your heart…” But biblically, it is sufficient to recite one prayer a day, in any formulation that one wishes. Therefore, most women have the practice of not praying regularly, because immediately after washing their hands in the morning they say some request, and this is biblically sufficient, and it is possible that the sages did not extend their obligation any further. But the Ramban thinks that tefillah is rabbinic, and this is the opinion of most poskim...

The legal details of this Magen Avraham are beyond the scope of our discussion here. But, suffice it to say that the Magen Avraham effectively invents an entire new model of tefillah that never existed before, borrowing a conceptual model present in the Rambam in order to create an unprecedented notion that the obligation in the Amidah might be gendered, all in order to avoid suggesting that the women in question are deviant! For the record, the Magen Avraham backs off of this suggestion at the end of this passage and elsewhere, searching instead for other types of justification for women’s failure to pray. But what should interest us here is the halakhic
relationship at work: Here is a posek who deeply trusts his community and who therefore views their practice as a “text” in light of which other written, canonical texts must be reexamined.

This dynamic is very difficult to find in our own day, and just a few centuries later, we see a significant shift as R. Yisrael Meir Ha-Kohen addresses this same issue of women and prayer in his Mishnah Berurah. Here we find a more familiar halakhic dynamic: a failure of faith in the community and an exhortation to change their practice:

Mishnah Berurah on Shulhan Arukh 106:1, R. Yisrael Meir Ha-Kohen, Poland, 19th-20th c.

"Because it is a positive commandment"—This is all according to the Rambam’s opinion that only the times of tefillah are rabbinic but that the essence of the commandment of tefillah is biblical… and the Magen Avraham wrote that based on this reasoning, most women do not have the practice to pray the Amidah regularly… but Ramban’s opinion is that the essence of the commandment of tefillah is from the sages… And even though [Amidah] is a positive time-bound commandment, and women are exempt from all such commandments… [the sages] obligated them in Shaharit and Minhah just like men since tefillah is a request for mercy. And this opinion is correct, for this is the opinion of most authorities… therefore, women should be instructed to pray the Amidah…

Again, the precise contours of the legal argument need not concern us here. What is noteworthy is how the relationship between posek and community has changed. The Mishnah Berurah assumes that a deviant practice is a deviant practice and needs to be corrected. Gone is the faith in the community’s commitment and religious insight. The received wisdom of the text is fixed; Jews either will or will not orbit around it. This is the dynamic of a secessionist halakhah, one that is no longer really in dialogue with the diversity of practice in the community but rather judges the worthiness of the community based on how much it is in line with assumed,
unidimensional halakhic norms. Any student of the Mishnah Berurah is familiar with its repetitive usage of “people commonly falter on this point” and “people commonly are cavalier about this” to introduce popular practices that are sadly at odds with black-letter law. Equally common in the Mishnah Berurah are phrases like “one should warn people about this”, and “one should protest this practice” designed to work against the status quo. These phrases all underscore the gap between some idealized, fixed halakhah and a community that fails and refuses to live up to it. These words and phrases are strikingly rare or completely absent in the Magen Avraham.

It is a small step from this posture of lack of trust and alienation to writing off the plausibility of engaging these sections of the Jewish community altogether. And once that final step is taken, God’s covenant of mitzvot with the entire Jewish people has been decimated.

C. Freeing people from the covenant; unmooring halakhah from its constituents

Finally, the last weakness of secessionist halakhah, which is essentially a cousin of the previous weakness, is the way in which secular Jews buy their freedom from the halakhic conversation at the price of losing any input over its content. On a surface level, Jews who describe themselves as secular, non-halakhic, or non-observant love secessionist halakhah, which claims only to look out for halakhic Jews and largely leaves them alone. Hirsch was not interested in making Reforming German Jews be Orthodox, he just wanted to preserve the possibility of being Orthodox. Much like the voices in antebellum America who advocated letting the South go her sinful way and continuing on with a smaller, purer Republic, so too Orthodox secessionists are generally uninterested in bringing secular Jews back to Jewish practice. And secular Jews are, for this reason, often fans of the dynamics of Austritt, which offers them the benefit of being left alone. Indeed, many Jews would fight tooth and nail any sort of halakhic regime that made a claim on them as imperialist and coercive.

In reality, however, it rarely works out that way. Jews end up confronting the legacy of halakhic choices and dynamics in one way or another, whether it be through the State of Israel, through relatives, or through the people their children fall in love with, and thus end up returning
to the table of halakhic conversation in one way or another. Secessionist halakhah conspires to leave them out of that conversation and deprives them of any internal voice in shaping it. Which more deeply respects autonomy, to exempt someone from taxes, or to grant them representation in Congress? It is really more respecting of a given Jew’s religious choices to grant them freedom while writing them out of the halakhic language of covenant? Or is it actually more respectful to articulate expectations and obligations of all Jews and therefore assume that their questions and concerns must shape the kinds of issues poskim must grapple with. Paradoxically, making a more imperialistic claim of the obligatory scope of halakhah makes it more responsive and gives it a broader constituency.

This often plays out dramatically in terms of communal food practices in Jewish communities. In most American communities, no one trusts anyone else’s kashrut, because everyone’s right to make their own religious choices with respect to food is held sacrosanct. As a result, I cannot assume anything about what my neighbor may or may not eat in her house. And therefore, if I want to eat food prepared by others, my choices are either to throw up my hands in compromise, allowing for laxity in the name of community, or I can choose only to eat in the homes of some members of my community, or I can insist that all meals must be catered. All of these solutions share in common a basic mistrust the flows from an unwillingness to articulate expectations that apply to the entire community. By contrast, one of the most striking things I encountered while living on a religious kibbutz in Israel was the way in which everyone brought food to communal gatherings without any questions being asked. Why? Because there was a clearly articulated expectation that everyone was observant of kashrut. And once that value was articulated and that assumption was made, the doors of community and trust were thrown wide open, and everyone was included.

And this is in fact a weakness of any pluralistic community that places a premium on ambivalence and even principled agnosticism when it comes to Jewish observance. It is obvious what is gained in such communities—the barriers to entry are low and a culture of free debate and discussion is guaranteed. But we might also consider what is lost and what is gained by asserting, at least in many communal spaces, that our communities stand for something. Yes, many communities are committed to mitzvot as a fulfillment of the Jewish people’s covenant...
with God and perform mitzvot out of a conviction that Jewish observance is a deeply compelling way of life that we ought to model and strengthen. But there are potentially important communal benefits for placing mitzvot at the center of Jewish life: Only by making this assertion and expectation of all Jews can create a community that can move away from dynamics of mistrust and towards a sense of unified purpose. Austritt militates against this and buys freedom for secular Jews on the cheap, with a very high deferred cost.

For all these reasons, the cost of a secessionist halakhah are high and the benefits are no longer warranted. The fact is this: Jewish religious practice survived the trauma of modernity. At the end of the day, Emancipation drastically reduced the number of Jews who self-identify as religiously observant, but a sizable number have freely chosen religious practice without any external coercion. Therefore, the argument for secession in the name of preserving the world of mitzvot is no longer nearly as compelling as it might once have been. Moreover, Jews who wanted to leave religious practice have done so. The Emancipation is complete. The relevant conversation today is not about keeping Jews in the fold of observance, it is rather about engaging all Jews in a meaningful halakhic conversation and giving them the language of meaning and purpose that so many desperately crave. And modern Jews, for whom the facts of the modern world are not conscious choices, but the given details of their lives, will by and large never enter a conversation that demands of them to secede from themselves.

V. The current state of halakhah and how to fix it

For all these reasons and others, the current state of halakhah is in trouble. The discourse of halakhah has become unmoored from the people it is trying to guide, and most Jews are not sufficiently committed to make a claim on halakhah and to expect that it ought to respond to their reality. Or, to put both of these points together in a single thought: Halakhah and the Jewish people have become deeply, mutually alienated one from the other. We must move away from the secessionist halakhah that has reinforced these dynamics and find a way to return to the world of Reish Lakish, in which mitzvot are ubiquitous, and those engaged with the language of halakhah can see that reality and take it seriously. How do we do that?
I want to suggest six critical steps for making this a reality: Three devoted to ways in which we reimagine the halakhic enterprise, and three devoted to ways in which we reimagine our expectations of the Jewish community. Let’s begin with the ways in which our halakhic discourse must change:

A. A halakhah that is real, not just ideal

For too long now, in an effort to preserve an idealized vision of the past and in the name of riding out the storm of modernity, halakhic sources have been used to construct an abstract ideal space of practice and commitment into which the messy details of the real world must be shoehorned. Too many contemporary thinkers advocate applying halakhic strictures to the world from behind a veil of ignorance. Rather than see the world and life as a mere shadow of the idyllic space of Torah, we must return to Torah to its rightful place as the guide for navigating the lives we actually lead. Halakhic sources should respond directly to our challenges and our realities, pushing us to advance the cause of Torah within that world. Teachers and preachers of halakhah must abandon the world of forms and speak to the world as it is.

This is nothing more and nothing less thanxFFFFFFFF , the revival of what Torah always was for Hazal and their spiritual descendants. As we explored in an earlier essay, 9 Rabbinic literature teems with laws that distinguish between ideal, ab initio, and coping strategies for addressing unexpected, post facto, situations. There, I argued at length that the ideal rabbinic Jew inhabits a religious world that emphasizes rigorous ab initio requirements even as it acknowledges flexibility in certain post facto circumstances. Rather than allowing the religious personality to flounder in the face of a world not entirely of her making, this approach gives structure and meaning to all circumstances in a person’s life, specifying when minimal standards have been met and when further diligence is required. Rabbinic interest in—indeed, one might say obsession with—the tension between how one ought to live life לכתחליל and how one does so with integrity בדיעבד is undoubtedly a product of a worldview that

---
9 Mattot-Mas’ei 5776, “Between Real and Ideal: ab initio and as Central Notions in Jewish Law and Life”, available here.
seeks to make the law eternal, ubiquitous, and also livable. But perhaps even more important is
the way in which this dynamic binds poskim to even the difficult scenarios presented by their
constituents. If someone is living through a situation and looking for normative guidance as to
how to deal with it, Torah must have something to say about it.

Rabbinic sources repeatedly display such tendencies. Mishnah and Tosefta Demai are full
of regulations that ensure that one can fulfill one’s tithing obligations while still interacting with
those who may be less punctilious about this task. Consider the following text:

Mishnah Demai 7:1
If one receives a Shabbat invitation from someone is untrustworthy with respect to
tithes, one can say the following before Shabbat, “That which I will separate out
tomorrow is ma’aser and the rest of the required amount of ma’aser will be right
next to it. The part that I will have separated out will be terumat ma’aser and the
ma’aser sheni will be located either in the northern or southern end of the food and
is redeemed with currency I have set aside for that purpose.”

The scene here involves a dilemma: It is forbidden to designate tithes on Shabbat and yet, one
anticipates being in a situation on Shabbat when one will be served potentially untithed produce.
The Mishnah comes up with a way to designate the tithes in advance, leaving only the physical
separation to be done on Shabbat, thus resolving the dilemma. But think about what this text
does not say, but could have: “Why are you friends with someone who is untrustworthy about
tithing? Why are you accepting a Shabbat invitation to his house? Why don’t you say, ‘Jewish
law forbids me to eat with you on Shabbat?’” This mishnah, and Rabbinic sources in general,
don’t evade difficult situations and don’t deny the real and complex social interactions that often
drive our normative deliberations. Encoded in this text is respect for the fact that friendship and
social ties transcend communities of observance. It is not the Mishnah’s job to rebel against that
reality; it is the Mishnah’s job to provide guidance to the God-fearing about how to respond to it.
So too, our *halakhah* must return to this posture, allowing the Torah to speak forcefully and nimbly to our lives.

B. Learning to respect religious instincts

Many years ago, one of my wife’s friends related to us how she once lied on Shabbat and felt awful about it. I, with the smug wisdom of a young twenty-something, mocked this story. Here was a woman who did not observe Shabbat in any rabbinically conventional way, suggesting that lying—not a *melakhah* last I checked—was somehow more problematic on Shabbat than during the rest of the week and worthy of an extra measure of guilt when done on the seventh day. I chalked this story up as yet another instance of the contemptible ignorance of so many contemporary Jews.

I soon ate my words. A few weeks later, I was learning Mishnah Demai 4:1, which, like the text we just saw above, talks about how one who properly tithes his produce can interact with one who does not. Specifically, the Mishnah addresses the question of when a generally untrustworthy person might be trustworthy with respect to tithes, and it says the following: הלוקח פיו על יאכל בשבת ושואלו לעשרן ושכח החומש על מנאם שיאכל לע פיר “One who purchases produce from an untrustworthy person and then forgot to tithe the produce himself may ask the provider on Shabbat if it has been tithed and rely on his word to eat it.” In the Talmud Yerushalmi, Rabbi Beivai explains the basis for this Mishnah in the name of R. Hanina: “The fear of Shabbat is upon this generally untrustworthy person and he tells the truth.”

Not only had I been unacceptably contemptuous of another human being, but my wife’s friend’s practice was hardly her own fanciful invention: Here was guilt with a two-thousand year-old pedigree! From that day forward, I promised myself to take seriously the religious assumptions and instincts of any sincere person. Why? Well, for starters, they are often grounded in something real, a kernel of wisdom that might at first be overlooked but, upon second inspection, unlocks a deeper truth heretofore unrevealed. Not lying on Shabbat is part of a quest to create a more perfect space in time, one in which deception takes a break for a day along with all the other toils of the week. To ignore those gems of wisdom and insight is to be religiously and halakhically impoverished. But even more centrally: If we hope to recapture a
world in which all Jews are full of *mitzvot*, we must begin in part by seeking out the halakhic instincts of average Jews. Those instincts must be engaged, probed and often challenged, but also used as fulcrums with which to leverage a deeper investigation of halakhic discourse. 

All Jews are the disciples of prophets; their religious insights are thus *ipso facto* commanding of our attention and respect.

C. Avoiding sectarianism

A healthy *halakhah* that seeks a broad base of support will cultivate an allergy to legal formulations that leave too many people comprehensively shut out of the conversation. Religious leaders surely must work to inspire deeper commitment and to change behaviors, but there is a wide gap between increasing and intensifying observance and constructing a *halakhah* that could only ever plausibly be followed by a tiny minority of the Jewish people.

Zvi Zohar documents a few examples of what he calls “teleological *pesak*”, where the legal authority in question consciously pursues a specific analysis in the aim of a certain halakhic end. Zohar cites one example where the *posek* argues that he *must* decree that it is only rabbinically forbidden to transport items on Shabbat through the main thoroughfares of Mumbai, since otherwise, the masses of Jews who routinely carry parasols and snuff with them on Shabbat would be violating biblical law. This is a particularly extreme example of bending the interpretation of the law to common practice and it is often difficult and perhaps unwise to accomplish. But the overarching goal in this text is of enduring value: No *halakhah* should be glibly satisfied with drawing lines that will write most of the community completely out of its purview.

One of the major tasks of contemporary *poskim* is to think through the ways in which the *halakhot* that they advocate for could integrate into the lives of contemporary Jews who live modern lives integrated into the larger society. In an increasingly gender-egalitarian society, any *halakhah* that does not have something meaningful to say about gendered *halakhot* in our

---

time—other than to affirm old forms in apologetic language—is consigning itself to short-term a sectarian existence and long-term religious irrelevance. For those of us who care deeply about Torah and its influence on the world, that sort of model is unacceptable. We must always ask of ourselves and of the halakhah we teach: Can I say about this heritage "This is the inheritance of the community of Ya’akov"? Could the Jewish community of today truly own this halakhah and practice it with a straight face? The student and teacher of halakhah should never rest until the answer to that question is yes.

But we began not only with Reish Lakish’s ability to see mitzvot and religious commitment everywhere, we also began with actual presence of that commitment in the Jewish community. And this is the tougher part to hear, but it is critical to restoring halakhic health. Even if practitioners of halakhah reorient themselves along the lines I have suggested so far, the contemporary Jewish community must do three things. The first relates to questions of tone, the second relates to curriculum, and the third relates to self-respect and integrity.

D. Embracing normativity

The Jewish community, particularly in North America, would be strengthened by coming to terms with the fact that we are all free individuals who are at liberty to lead whatever kind of life we want. The Emancipation is complete and there is no real obstacle to the fullest expressions of individual autonomy. Against that backdrop, it should always be assumed that anyone has the right, and more importantly the power, to disagree with any rabbinic or communal pronouncement on any topic without any real consequences other than those that are self-imposed. And therefore, given that there is no vestige of medieval coercive power—at least in the Diaspora—it is responsible and necessary to build communities that unapologetically embrace and advocate knowledge and observance of mitzvot. If you want halakhah to be healthy, responsive, and vibrant, it must be allowed a space to be articulated without irony and without apology. The notion that I can only protect individual autonomy by censoring the notion of normativity is toxic to reviving a normative language that can guide us through life’s challenges. I desperately want to live in a world where I never hear someone express discomfort
about the fact that someone offered a normative opinion. That energy and discomfort, to the extent it exists, should be channeled into discussing the substance of the norms in question. Too many, too often assume that normative statements are cudgels wielded against deviant Jews, labeling them as bad, guilty, or unfaithful. We could be so much stronger as a community if we could embrace the notion of norms as articulated and projected expectations that in fact take people seriously and invite them to aspire to more thoughtful and directed forms of behavior. Rules need not be seen as an opportunity for rebellion. Instead, in an autonomous culture, they are invitations to step into Jewish normative discourse, into halakhah, as full citizens and participants in its conversation.

E. Reviving halakhah by teaching it

It is uncomfortable to say it, but it is undeniably true: Outside many—though not all—Orthodox institutions, the North American Jewish community simply does not teach halakhah, whether to its congregants, to its school children, to its educators, or, sadly, even to its rabbis. Curricula and competence are stubborn facts that are not easily evaded. Most North American rabbis have never been trained to read sources like the Beit Yosef, the Shakh, the Pithei Teshuvah, or a responsum of R. Ovadiah Yosef with confidence and fluency. Their voices are thus sadly excluded from the deeper aspects of halakhic conversation and they have not been empowered to say something creative in its rich language. We don’t expect those who are beginning their second year of French to compose a French poem. Nor can we really imagine what contemporary American literature would look like if 90% of its authors were immigrants who had only started speaking and writing English five years prior. And yet, this is sadly not a highly inaccurate parallel to the culture of rabbinic learning and teaching around halakhah for the vast majority of North American rabbis. This obviously reflects nothing about abilities. It reflects curricular choices that assume that the discourse of halakhah is for someone else and therefore not worth investing in.

I want to challenge us to recognize that at least some of the reason that halakhah seems to many today to be in a crippled state, incapable of addressing the broad challenges of the day through a traditional, normative lens is related to the fact that we have thrown in the towel on
training people to be deeply fluent in it. Who will produce the halakhic language that could speak to broad swaths of the Jewish community if those broad swaths of the Jewish community don’t really have institutions that train them to do so?

If you long, as I do, for a world in which the best and brightest minds and souls will engage with our rich tradition and find pearls of wisdom and insight that both connect us to our past and offer direction in the present, then we must act. We must dramatically raise our standards when it comes to the knowledge of and teaching of halakhah. If a community is to be guided by halakhic sources, then it must learn those sources regularly, through a directive, normative lens. If a school aims to make mitzvot a part of its students lives, then it must teach the sources that explain how to play those mitzvot out in practice. And if rabbinical schools—whatever their ideology or orientation towards modernity—aim to train the next generation of Jewish leaders, their graduates must include true talmidei hakhamim of the first order, who can swim in the language of pesak and contribute their own voices to that conversation such that someone might read their writings hundreds of years from now.

F. Taking Jewish life seriously

Finally, and this is where all of us play a critical role, we must vote with our feet and restore through our actions the omnipresence of mitzvot in the Jewish community. If we expect halakhah to respond to our lives as lived, those lives need to be full of commitment and worthy of respect. We are all constantly called upon to answer the charge of the prophet Malakhi (1:8): המריהמה אפ lakham הערץ ו motherboard� הוא פנק כדי “Offer [this sacrifice] to your local governor! Would he accept it? Would he show you favor [on its account]?” We must honestly ask ourselves: Would we put the quality and intensity of our Jewish lives on a par with what would pass for excellence in the secular world? Don’t we need to meet that standard if we expect generations past—as embodied in halakhic sources—to take us seriously enough to admit us into their timeless conversation?

Contemporary Jews disagree on a host of ideological points. But we ought to be able to be honest about what levels of commitment exude a sense of bearing the weight of Jewish culture and practice in a way that would be respected in hindsight generations from now. Can my
community point to a strong prayer space that functions on a daily basis? Can my community provide a home for someone seeking peer reinforcement for consistent, weekly observance of Shabbat? Do those who lead services in my community know their craft and inspire confidence and religious aspiration? Do people punctiliously tithe their incomes for tzedakah, understanding, as did all prior generations, that their income is not truly theirs? Is my community a sustainable model of religious commitment, whether by training true scholars or by baking matzah, such that I would be confident for the future of Judaism if it were up to me and those in my community? In short, can I look yourself in the mirror and honestly say when compared to committed Jews and Jewish communities of the past, “Yes, I measure up. I am a proud member of this storied community of history.” Because only if we can answer these questions in the affirmative will we ever be able to have the self-respect to demand respect from those who preceded us.¹¹ We must aspire to a level of integrity that we would expect others to be able to see. We can only fairly demand things of the conversation of the ages if we take full ownership of our place within it.

VI. Conclusion

These are the standards that motivate me. As a contributing member of Jewish communities, and as a parent, I am always asking myself whether I am measuring up. And when I make my contributions to halakhic discourse, I do so with the goal of advancing a halakhah that can match Reish Lakish’s vision of Jewish community. Throughout this year, we have explored so many different texts and issues. My hope is that this final essay has offered some second-order reflection on why so many of those texts were important to me and how we might think of them in ways that implicitly advance a vision of Jewish community as well. No question is too tough,

¹¹ Haym Soloveitchik, in his seminal essay, “Religious Law and Change”, reminds us why some communities merit having their religious instincts respected and why others do not: “The Franco-German community was permeated by a profound sense of its own religiosity, of the rightness of its traditions, and could not imagine any sharp difference between its practices and the law which its members studied and observed with such devotion. The Provencal Jewish community and the Spanish ones, on the other hand, wrestling as they were with, or with what they perceived to be, widespread religious laxity, had no such self-image, and it never occurred to the scholars of these communities, many of whom were in every sense the intellectual heirs of the French tosafists, to seek to align their people’s practices with the written word. Or, more accurately, they never imagined that contemporary conduct was informative of Talmudic Law, that the deeds of the common folk were revelatory of the Divine intent.”
no text is too far afield, no personal instinct too idiosyncratic not to demand our attention. We are accountable to our texts: To read them precisely, to answer to their demands and, to the extent we think about something differently than they seem to, to ask ourselves why that is so and to craft a narrative that will account both for what we have inherited and what we experience. And we have always placed values at the center, insisting that our foray into halakhah is always a quest for a life of meaning. All of these commitments are in fact implicit corollaries of a commitment to a covenental vision of Jewish community. All Jews are commanded, and therefore all texts are accountable to them. There is no easy evasion of religious obligation, just as their is no avoiding the Torah’s accountability to all Jews. I firmly believe that this is the pathway forward to a world in which mitzvot once again are the unifying anchor of our people. Let us work hard towards a vision of community where even seemingly empty places are full. Full of values, full of purpose, full of integrity, and full of commitment.

12 As we wind down this series, I encourage you to join us on Responsa Radio (www.responsaradio.org), where Rabbi Avi Killip and I have created a forum for doing precisely this sort of work, in partnership with Jewish Public Media.