

CHAPTER 12



FROM HISTORY TO HERMENEUTICS: THE TALMUD AS A HISTORICAL SOURCE

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I met Kent Brown when I was teaching at Brown University and he came as a graduate student. He was the second Mormon I ever knew; the first ones, Richard and Claudia Bushman, predisposed me to like and respect Mormons and to expect great things from them. I was not disappointed. Kent's combination of intelligence and erudition and high personal ideals quickly won for him a place in the lives of everyone who knew him, and a lifelong friendship between us followed. Many times I was drawn to BYU to renew my acquaintance with that splendid community represented by Kent.

This paper solves a problem of historical knowledge deriving from religious texts that occupies Latter-day Saints scholars and scholars of Judaism: How are we to learn the historical lessons set forth by the revealed documents of sacred scripture? What sort of history can we derive?

How a culture organizes the social order forms a problem on which the Talmud supplies absolutely dependable data. We can reconstruct the hypothetical thought processes that produced the rabbinic system for Israelite culture. Let me explain.

In the beginning is the chaos of data, vast clouds of information bearing no intelligible shape, deriving we know not whence,

traveling we know not whither. Out of chaos comes order, in the case of the halakhic sector of the rabbinic canon effected through sorting matters out by subject matter. The principal categories of a given cultural system organize all data in one structure rather than in some other, with one consequence for meaning, rather than another. The intrinsic, inherent traits of the facts then bring about their own ordering. These categories, fixed by the authoritative formulations of a culture, require interpretation. They demand an account of how the categories cohere, the components of which they are comprised, and the inner principles and rules of logic that permit the categories to be augmented and reconfigured. Then the interpretive process works through the traits of things—their common task or purpose or point of coherence—and appeals to their nature, their teleology. What is interpreted is the artifacts of culture, a vast corpus of established facts, some deriving from scripture, some from nature, some from logic. How these are to be interpreted—organized into intelligible constructions and compositions and recast, then, into structures and composites—forms the issue of hermeneutics. And it is to the hermeneutical task that the end of narrative history and the advent of cultural analysis in the past tense points us.

How to Identify the Category-Formations

We have first to describe and then to analyze the successive topical treatments of the Mishnah, Tosefta, Yerushalmi, and Bavli—all in dialogue with scripture. The Mishnah as a matter of fact forms the source of the fifty-nine category-formations of the norms of conduct that order the Halakha and that classify all of its data. The Mishnah's mode of organization governs the Tosefta's, Yerushalmi's, and Bavli's presentation of the same topics. When we understand how these category-formations work, we can make provision for fresh data and extend the system.

The Halakha of formative Rabbinic Judaism is organized by topical-analytical category-formations, roughly three score of them,

corresponding in general terms to Mishnah-Tosefta-Yerushalmi-Bavli tractates. Nearly all the facts of the law are grouped by the subject that they treat. More important, these facts are rarely random. They are assembled not only to give episodic information about the topic, but also to conduct a systematic analysis of the topic or of entire problems that transcend topical limits. I call the hermeneutics of the former kind the particular hermeneutics of a category-formation, the latter, the generic hermeneutics of the Halakha.

By “particular hermeneutics of a category-formation,” therefore, I mean the theory of interpretation—selection of data, interpretation thereof—that is generated by the distinctive traits of the topic of a given category-formation. The halakhic hermeneutics is formed within an encompassing theory of analogy and contrast that identifies, within a given subject, a question of special interest. That hermeneutics will be particular to the subject matter of the category-formation. It follows that the facts are not inert but respond, in organization and focus, to the requirements of the question about those facts that analogical-contrastive analysis has identified. So, in accord with the way that was taken, each of the category-formations of the Halakha undertakes a particular inquiry into the facts at hand with a distinctive question in mind, which I have characterized as a particular hermeneutics.

All of the topical-analytical category-formations, furthermore, are animated by a generic hermeneutics. By generic hermeneutics I mean the body of interpretative issues *common* to the halakhic category-formations viewed in the aggregate. Generic hermeneutics in the Halakha, by contrast, asks many topics to contribute to a limited analytical program that transcends the specifics of the topics. It thus selects data and interprets them so as to say the same thing about many things. It aims to show how abstract principles come to expression in concrete details. In the category-formations of the Halakha, the particularization of abstract questions addresses five specific issues of general intelligibility: (1) interstitiality, (2) mixture

and (3) connection, (4) the rational resolution of problems of doubt, and (5) the demonstration of how many things come from one thing, how one thing encompasses many things.

Each type of hermeneutics undertakes its distinctive work, and the two types complement one another. The one particularizes the general, and the other generalizes the particular. Specifically, the hermeneutics particular to the several halakhic category-formations, respectively, transforms details of that topical category-formation into an account of a large and general matter. It treats the detail as exemplary in its quest for generalization. The particular hermeneutics, given pride of place in the category-formations, and the generic hermeneutics, framing in order the second and subsidiary range of questions within a given category-formation or its principal parts, account for most of the halakhic program of the category-formations; the remainder consists of facts that are necessary to a full account of matters, and these facts are inert and usually are given at the end of the intellectually active presentation. In these three exercises—particular hermeneutics, generic hermeneutics, and repertoire of facts—all of the compositions and composites of the several halakhic category-formations in our hands take their place.

I propose to extrapolate the rejected alternatives: theories of category-formation that can have served but were not utilized in the halakhic construction that defines the norm. Of a theoretically unlimited number of topics available for category-formations, the Halakha set forth in the Mishnah chose three score, and the successor documents added remarkably few to that number. To state matters simply, of topics available for a religious theory of the social order to address, there is in theory no necessary limit. But the halakhic category-formations actually number, at the end, not a great many more than at the outset.

Unrealized Theories of Category-Formation

Besides the Mishnah's normative theory of topical-analytical category-formation, I identify three other theories that account for

anomalous composites. These turn out to form variations on the initial theory, and not very influential ones at that.

The Mishnah's Anomalous Tractates

- Organize halakhic materials by the names of cited authorities: *Eduyyot*.
- Organize halakhic materials topically, so that they cohere in a narrative of how things are done: *Tamid*, *Middot*.
- Organize halakhic materials circumstantially, for example, by the occasion on which rulings were adopted: *m. Yadayim* 4:1-4.

The topical-not-analytical tractates tell the story of the divine service of the temple and the building itself. What we learn in *Eduyyot* is how the preferred approach to category-formation would not be carried out; but the Talmuds, particularly the Bavli, would find useful the collection of composites around attributive formulas, whether or not limited to a particular halakhic topic or problem. The collection of halakhic compositions into composites identified by a common circumstance defined matters only episodically. Laws were not linked to events because the entire institutional foundation of the legal system—as it is portrayed by the documents themselves—did not frame the presentation of the law. Where a law was set forth mattered little, which authority sponsored it mattered still less. What made a law normative was the power of logic, not the legislative body behind it or the sponsorship of a prominent legal authority.

The Mishnah's Anomalous Composites

- Topical-not-analytical (narrative of how things are done): *m. Sheqalim* 3:1-4; *m. Yoma* 1:1-7:5; *m. Sukkah* 5:1-7; *m. Rosh Hashanah* 2:3-7; *m. Ta'anit* 2:1-4; *m. Nazir* 6:7-9; *m. Sotah* 1:4-2:5; *m. Nega'im* 14:1-10; *m. Parah* 3:1-10.
- Analytical-not-topical (organize halakhic materials around an analytical problem, without a uniform topical core): *m. Pesahim* 4:4; *m. Megillah* 1:4-11; *m. Gittin* 4:1-5:9;

m. Menahot 10:3; *m. Hullin* 1:5-7; *m. Arakhin* 2:1-3:5; *m. Parah* 8:2-7.

The topical-not-analytical approach to category-formation in the Mishnah limited its interest to matters having to do with the cult; the use of narrative to convey the Halakha through a description of how things are done served for a particular subject. But no other rhetorical convention took over in presenting any other particular subject.

The Tosefta's Anomalous Composites

- Topical-not-analytical: *t. Berakhot* 4:8-11; 5:6; *t. Shabbat* 6:1-7:18; *t. Sanhedrin* 2:2-13.
- Analytical-not-topical: *t. Shevi'it* 7:2-8; *t. Bava Qamma* 6:29-31; *t. Shevu'ot* 4:1-5; *t. Shehitat Hullin* 1:12-25; *t. Menahot* 1:2-4; *t. Temurah* 1:18-22; *t. Zavim* 3:1-5:1; *t. Tevul Yom* 1:4-7.

The division of the topical-analytical method of category-formation into its components characterizes the Tosefta's anomalous composites.

The Yerushalmi's Anomalous Composites

- Topical-not-analytical: *y. Berakhot* 2:2-3 II:2-3; *y. Nazir* 9:2 I.3-7.
- Analytical-not-topical: *y. Shevi'it* 3:1 I-IV.

The Yerushalmi's contribution proves negligible.

The Bavli's Anomalous Composites

- Topical-not-analytical: *b. Berakhot* 2:1-2 I:2-11; [*b. Berakhot* 3:4 II:2-13;] *b. Berakhot* 7:1-2 I:16-24; *b. Berakhot* 7:1-2 XII:8-24; *b. Shabbat* 2:1 IX:6-36; *b. Shabbat* 2:1 X:3-6; *b. Pesahim* 3:7-8 I:3-17; *b. Yoma* 1:1 IV:3-7; *b. Rosh Hashanah* 1:1 II:2-9; *b. Megillah* 3:1-2 I:13-44; II:7-19, 20-49; *b. Ketubbot* 6:5 I:2-17; *b. Gittin* 4:4A-D I:8-24; *b. Bava Qamma* 7:7 I:12-55; *b. Bava Batra* 1:5 IV:4-48; *b. Sanhedrin* 7:5 I:2-22; *b. Zevahim*

2:1A-C VI:3-13; *b. Menahot* 3:7 II:5-52; *b. Menahot* 3:7 I:2-11, *b. Menahot* 3:7 III:2-39; *b. Menahot* 4:1 I:10-69.

- (Propositional or) analytical-not-topical: *b. Zevahim* 5:1 IV:2-14; *b. Menahot* 1:1 I:5-13.

The Bavli proves remarkably fecund in the presentation of topical-not-analytical composites, an observation that takes on meaning when we examine the topical program that the Bavli realizes.

The Four Plausible Theories of Category-Formation and the One that Was Chosen

The halakhic hermeneutics of comparison and contrast governed the definition of the fifty-nine topical-analytical category-formations set forth by the Mishnah, adopted by the Tosefta, and adapted by the two Talmuds. Four other theories episodically surfaced in the Mishnah and the Tosefta: (1) select and organize data topically, without imposing a purposeful set of questions upon the presentation of those data; (2) select and organize data to investigate an abstract theory or proposition of Halakha, without restriction as to the topics that instantiate that theory or proposition; (3) collect laws that cohere by reason of the authority behind them or the event that precipitated their promulgation (a given occasion or session, comparable to a given document!); (4) select laws of a common subject and order them in a narrative, with a beginning, middle, and end—a variation of the first option. The first, second, and fourth alternatives simply represent variations on the established theory of category-formation, the topical-analytical one. The third produced negligible results. The first with its variations accounts for the category-formations of an other-than topical-analytical character. It follows that the normative theory of category-formation is to choose data deemed to constitute a single subject, where possible forming the data into answers to theoretical questions, where necessary simply gathering data deemed to cohere as a topic.

The present mode of thought is so familiar as to obscure a perfectly plausible past. Scripture, in the Pentateuchal law, set forth

alternative approaches to the selection and interpretation of established rules and the construction of those rules into compositions deemed to cohere. Other collections and arrangements of laws into large conglomerates were produced by other Israelite heirs of scripture, exemplified by the law codes of the Dead Sea Scrolls, Elephantine papyri, and the like. But in fact nothing comparable to the Mishnah-Tosefta-Yerushalmi-Bavli, either in analytical character or—all the more so—in sheer scope, volume, and coverage, emerges out of any other Judaic system and its writings. We look in vain to scripture, to the Dead Sea library, and to the writings of Philo for compositions of equivalent comprehensiveness. Let me state with appropriate emphasis: *in the Judaic corpus of antiquity, from Moses to Muhammad, the Mishnah-Tosefta-Yerushalmi-Bavli are unique, both severally and jointly.* The Halakha, the continuous statement of law formed by the foundation-documents of Judaism, is altogether unique; to its grandeur no other legal system among ancient Judaic writings aspires, to its comprehensive reformation of Israelite society none presents a counterpart, not the laws of the Dead Sea library read as a coherent composite, nor the adumbration of the laws set forth by Philo, nor, self-evidently, the lesser compilations.

The Halakha not only asks a set of questions that scripture does not address, but also follows its own familiar program, entirely outside of scripture's framework, which transforms scripture's facts into data for analysis along lines of inquiry pertinent to all manner of data. The particular is made exemplary, the case transformed and transcended. Thus questions of mixtures of types of materials or colors, cases of doubt as to the status of the fabric, the minimal measures, the point at which various fabrics are susceptible, changes in the status and condition of the cloth, the status of cloth of various classifications—all of these issues of an abstract character are investigated in the particular context at hand, vastly expanding the limits of scripture's account of the matter.

To state the point simply: here, even where the Halakha builds symmetrically upon scripture's own foundations, the Halakha brings to bear a set of analytical questions that vastly transcend scripture's factual account of matters. Where, dealing with the same topic—category-formation—scripture gives information particular to the subject at hand and unsusceptible of translation into principles to animate other subjects, the Halakha has its own theory of the Halakha. The singular is made exemplary, the rule is turned into a case, and laws form data in the statement of transcendent, encompassing law. The Halakha brings to the topic a completely autonomous program of its own. It is possessed of its own integrity—and that means, in particular, the Mishnah.

The Halakha represents a labor not only of recapitulation and reformation of scripture's law, but also of reconstruction and systematization and renewal. The purpose of the sages, as revealed through the shape and structure of their work in the Halakha of the Mishnah-Tosefta-Yerushalmi-Bavli, is to translate the narratives, case law, stories, and sayings and rules of scripture into a coherent, cogent statement: a system meant to realize God's grand design for Israel's social order. Take the case before us, for instance. In the movement from scripture's statement of the uncleanness of garments to the Halakha's analysis of theoretical problems of mixtures, such as are embodied in this law as much as in any other, that transformation of cases into rules, of laws into jurisprudence, takes place.

Why the Topical-Analytical Theory of Category Formation?

If the intent of the Halakha, from the Mishnah forward, is to systematize and concretize the received laws of scripture and to transform them into a coherent design of the Israelite social order (whether in theory, whether in actuality), how were the sages to turn laws into jurisprudence and cases into rules—and effectively to present the results as a paradigm? Scripture offered no model, with its tight adherence to the mythic mode of presenting law.

Scripture's law cohered by reason of God's instruction to Moses. It was never recast into a coherent topical exposition. How, for example, someone can have turned the laws of Deuteronomy 12 through 26 into a design for the social architecture of Israel I cannot say. Scripture's heaviest emphasis lies in the origin of the laws with God, not in demonstrating the proportion, balance, coherence, and rationality of the laws. Moses left that task for his successors in the Oral Torah. His sole category-formation, the one thing that holds together many things and imparts to the whole coherence, lies in his language, "The Lord spoke to Moses saying, speak to the children of Israel and say to them," and the counterpart allegations, both formulaic and narrative, that altogether characterize the law of the Written Torah and endow it with cogency.

Moses left open the task undertaken by the sages who framed the Halakha by the theory of analogical-contrastive analysis yielding topical-analytical category-formations. Beyond the closure of scripture, once people determined to carry forward the halakhic enterprise, to provide Israel with God's plan for the social order of a kingdom of priests and a holy people, the design of God's dominion, what to do? At issue now was not the origin and authority of the law; those questions were settled by the Pentateuchal portrait. The question now was, how do the rules derive from cases, whence the logic and the order of the system seen as a whole? It was for the solution of precisely that problem, the sifting of discrete facts in quest of their proper position and proportion in the order of things, that natural history undertook its work of classification through comparison and contrast, through the identification of a genus and the species thereof.

The raw data—whether the facts of the natural world or the Torah's rules, commandments, and cases that altogether comprise an account of the social world—give way to that process of taxic ordering. Specifically it is through the identification of the variables that speciate data and form of the species a genus, a process to make its way, to bring order, as God brought order in creation, out of the

chaos, the unformed void of discrete facts, across all of the categories and classifications of nature or of the social order. Then, as I said, cases turn exemplary, data fall into place, rules emerge, and laws accommodate actualities and impose order upon them. That is why the Halakha is recapitulated, reformed to make blatant the lines of structure and order that the category-formations indicate.

We see how the Halakha solved that problem of rendering scripture (and tradition) into a systematic statement from the very fundamental trait of the Halakha, its organization into its six divisions and fifty-nine topical-analytical subdivisions. Were we to ask the framers of such law codes as Exodus 20-23, Leviticus 1-15, or Deuteronomy 12-26, for a table of contents to their codes, the list of topics would show, for Exodus 20-23 and Deuteronomy 12-26, no accessible logic to account for the choice and sequence of subjects, just this and that and the other thing—in no apparent order. Considerations of narrative may play a role, but no logic intrinsic to the laws and attentive to their details enters in. The snippets of laws in the former, the wildly diverse program of the latter—these exercise no power of organization and effect no coherence among their data at all. And even Leviticus 1-15, which does produce a logical sequence of well-executed category-formations, proves truncated and insufficient to the task of yielding generalizations for the Israelite social order in all its dimensions. The Pentateuch provides the data for the social task undertaken by the sages but no model to guide them in their work. And from this perspective, we are able to answer the question, why this, not that: why the topical-analytical approach to halakhic category-formation?

The answer comes in response to the question, how then were they to proceed? Once we recognize their purpose, the question answers itself. If we wish to know the law that a case exemplifies, the rule that governs diverse cases, we have no choice but to ask the analytical questions of taxonomic logic: What species encompass the cases? What genus accommodates the species? Natural history defined the sole solution to the sages' assignment: a logical, not a

mythic, re-presentation of the Halakha. The species embody the law for like things; the genus sets down the rule to hold together, to control for, the variables between and among the species thereof. Then the taxic indicators, the variables that we require, present themselves as signals of an inner order, a logic of the social order to be specific. In that context, the purpose of the halakhic enterprise dictates the available theories of the halakhic category-formation. For that labor of turning scripture's commandments, in their narrative setting, into a design for Israel's social order, such as the sages accomplished in the Halakha as we know it, only one theory of category-formation can have served. Analogical-contrastive analysis yielded the hermeneutics of selection and interpretation of data that produced these category-formations. The Mishnah recast the givens of scripture into its category-formations, working from the whole to the parts, because the framers of the category-formations that are realized in the Mishnah found in the logic of natural history the medium for accomplishing God's purpose in setting forth the Pentateuchal laws.

That logic—identify the data that constitute a topic, form of the data a species alike but unlike another (hypothetical) species to form a common genus, sustaining a process of analogy and contrast to set forth an analytical program of problems and their solution—produced what God's purpose required: the order, the rationality, that turned of the bits and pieces, the discrete parts, a transcendent whole. In secular language, when from two received bits of information, sages could generate a fresh point, when two cases produced a rule encompassing many more cases, sages accomplished their purpose. And the only way to accomplish that wonder of intellect lay through the topical-analytical path through the lush fields of Pentateuchal cases, laws, and commandments. Once we know *why this*, we realize there is *no that*.

The Rules of Choosing Topics

We can now answer our question about halakhic hermeneutics. A culture in theory may identify an unlimited range of category-formations, but in practice chooses to build with a finite number of building blocks. But these, then, are refined in a vast range of variations. This fact may be expressed in terms of food. A given culture selects from a long menu of possible sources of nourishment the few items it wishes to utilize, but then prepares those items in a singularly broad selection of pots and pans. A few types of grain yield bread, but bread comes in variations without limit. Once we realize that the entire corpus of new topics fits into the large divisions of the received ones, we recognize the primary position of the Mishnah's formulation of the halakhic category-formations. What we see is an item treated casually in the Mishnah may attract attention later on; rules for a familiar topic take shape and come together. But I cannot point to a single case of a new topic that falls entirely outside of the topical repertoire of the Mishnah. Not only so, but, as to the identification of a category-formation that selects data and interprets them in the way in which the Mishnah's category-formations do, the topics added beyond the Mishnah's program present exactly one instance. The Mishnah defined all the topical-analytical category-formations conventionally spun out, from the whole to the parts.

What about the new topical-not-analytical category-formations of the Bavli? Let us take up the formidable catalog and ask, where do we move beyond the limits of the Mishnah's topical program? In my catalog I specify in parentheses the tractate that encompasses the topic. We eliminate forthwith the following items, which simply develop topics treated in the Mishnah's category-formations in the context defined thereby. These all are matters to which the Mishnah makes casual reference but to which the continuator-documents, particularly the Bavli, supply a sizable body of laws:

- rules on the recitation of the Shema' (*Berakhot*);
- rules and regulations of a meal (*Berakhot*);

rules on saying grace (*Berakhot*);
 improperly postponing the fulfillment of vows beyond the
 passage of the year in which they are taken (*Nedarim/Rosh
 Hashanah*);
 the laws that govern the mourner (*Mo'ed Qatan*);
 marrying off orphans (*Ketubbot*);
 support of the poor (*Pe'ah*);
 freeing slaves (*Gittin*);
 rules on correct management of the land of Israel (*Bava
 Qamma*);
 the rules of philanthropy: Who contributes? Who receives
 (*Pe'ah*)?
 religious duty of sanctifying hands and feet by washing
 (*Yadayim*);
 the unlettered person and the disciple of the sage (*Horayot*).

Most of the new topics then find a place within an established
 category-formation, and what the continuator-documents do, par-
 ticularly the Bavli, is enrich the corpus of data, not recast its main
 lines of structure and order. The hermeneutics of comparison
 and contrast encompass these items within the larger exercise of
 analogical-contrastive analysis. That reduces the list of genuinely
 new items to a handful.

In all, I find these freestanding and essentially inert topics, each
 of them autonomous and lacking counterparts:

the Torah scroll
 the lampstand and candlestick
 tefillin, siset, mezuzah
 Hanukkah

The first three are holy objects, each accorded a full halakhic
 account. Hanukkah is the one holy day that the Mishnah's program
 of category-formations omits but that requires attention in its own
 terms. That is because it is unlike the pilgrim festivals, the Days of

Awe, the Sabbath, and so on; like Purim, it produces no occasion for temple offerings, but on other bases it is readily differentiated from Purim. So it is *sui generis*. And that provides a key to the other new topics of the Bavli.

Anyone can concur that the holy objects (or the holiday) demand legal definition and regularization. *But a second glance tells us that they all are sui generis, not species of a common genus. Each is unique in categorical context.*

What other species forms a common genus with the Torah scroll or tefillin or siset or the mezuzah? None affords the opportunity hypothetically to designate a counterpart species for the formation of a common genus and a process of analogical-contrastive analysis. The Torah scroll stands for them all, and having said that, nothing more is needed. It is unique; the rules for writing and protecting it have no analogue. Tefillin, siset, and the mezuzah bear no counterparts that sages would acknowledge, for example, among the ways of the Amorites!

The rules of choosing topics therefore are two: the new topic will be an established fact in Israel's holy life (1) that is not accommodated by the Mishnah's category-formations, and (2) that is *sui generis* and not accessible to analogical-contrastive analysis.

So we can answer the two critical questions that together frame the rule for selecting new topics. That is, we explain both *why not that*, meaning, (1) the omission of these items from the Mishnah's categorical foci, and *why this*, meaning, (2) their identification and inclusion later on.

And that yields these generalizations: (1) None of them can have generated a category-formation by the criteria that govern in the Mishnah: a topic bearing a counterpart-species of a common genus, therefore, susceptible of hermeneutical development through analogical-contrastive analysis. And none of them, as a matter of fact, does sustain analogical-contrastive analysis. But (2) all of them form components of the system, indeed of the holy objects of the

system, data that are treated tangentially by the Mishnah's category-formations (for the reasons just now spelled out).

But they are then endowed with a rich factual amplification by the continuator-documents, particularly the Bavli. That explains why each of them is comprised by inert information, presented in random order, not focused on the solution of a theoretical problem, and not animated by an issue that transcends the facts and imparts consequence to them. The very character of the Bavli's representation of the new topics conforms to the rule: not coherent and logically well-ordered but merely miscellaneous laws, stories, precedents, exegeses, about a required topic.

Here is our answer to the question—*why this, not that*—both in particular and in general.

In general, those topics of scripture that invite speciation and analogical-contrastive analysis will yield category-formations through the hermeneutics now fully exposed; and those topics of the Pentateuch that do not will find their place within the Halakha, within the framework of those that generate category-formations.

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