AT THE CROSSROADS OF HALAKHA AND NARRATIVE

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The question of how to reconcile the narrative portions of the Torah with its sometimes contradictory legal segments has absorbed scholars, rabbis, and laymen for generations. How could Abraham lie about his relationship to Sarah? How could Jacob marry two sisters? Was Judah's visit to a prostitute normative behavior? Examples abound, and they mark a confrontational relationship between the legal corpus of the Torah and the behavior of its greatest heroes.

Traditionally, Jews have resorted to apologetics such as those commonly found in midrashic literature to resolve these conflicts. Though this type of learning has an important place, it proceeds from an underlying assumption that the two bodies of material, the legal and the narrative, are not a unity. Though they reside in the same Torah that Jewish tradition traces back to the singular Divine Author of Sinai, this mode of study finds few synergies, reflections, or connections between the lives of the patriarchs and the desert wanderings of Moses, on the one hand, and the legal codes of the Books of Exodus and Deuteronomy and the intricacies of the Temple service described in Leviticus, on the other hand.

This is not to say that narrative and law are always in conflict. There are etiological stories in the Torah that establish a link between a later practice and an earlier tale. The prohibition against eating the *gid hanashe* [sinew of the thigh-vein], for example, is connected to the story of Jacob's night encounter with an angel who injures his hip (Gen. 32).[1] In other instances, acts of characters are based upon halachic norms that are not sourced within that same story.

The best-known examples of this come from the Book of Ruth, where all the characters are well familiar with the Mosaic laws of levirate marriage and of allowing poor persons to glean among the sheaves in a field not their own.

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King Amaziah of Judah was well acquainted with the Book of Deuteronomy. He executed the courtiers who had assassinated his father King Joash,

> *But he did not put to death the children of the assassins, in accordance with what is written in the Book of the Teaching of Moses, where the Lord commanded, 'Parents shall not be put to death for children, nor children be put to death for parents' a person shall be put to death only for his own crime'* (II Kg. 14:6).

Another salient example of this kind of connection between law and narrative is the story of the vineyard of Naboth the Jezreelite (I Kg. 21). Naboth owned a vineyard bordering on the residence of King Ahab, who desired to purchase the vineyard. When Naboth refuses to sell, Jezebel, Ahab's wife, arranges for Naboth to be killed through a judicial proceeding. She arranges for two false witnesses to accuse Naboth of cursing God and the King, and on the strength of their testimony, Naboth is slain. The judicial norm of two witnesses, which appears in a few places in the Pentateuch, is clearly known to Jezebel. [2]

The tightest type of connection between law and narrative occurs when narrative leads to law. Generally speaking, many laws could fall into this category, because God is often depicted as giving law within a narrative (for example, commanding Abraham to circumcise himself and his household, commanding Moses and Aaron on the paschal sacrifice, et cetera). More unusual is when a narrative leads to a reconsideration or modification of an extant legal provision. This type of connection between law and narrative can be seen in the case of the daughters of Zelophehad, who appealed to be allowed to inherit their father's portion in the land of Canaan. Zelophehad had died without a son, and his land-rights would normally have passed to his closest male kin. God not only sides with the daughters of Zelophehad in this instance, He also declares that henceforth, in the absence of sons, daughters shall inherit from their fathers. [3]

These connections between law and narrative are all explicit. They show that narrative and legal material can and do interface with one another in harmonious ways, but they do not answer for why so many narratives are in opposition to so many legal texts. What follows is an example of an alternate approach that seeks to fold the laws over onto the stories in a place where the connection is not explicit, and emerge with a richer understanding of both.

The verses of Exodus 21:22-25 are among the most well known in the Torah as they contain the Lex Talionis [Law of Retaliation]:

> *And if men strive together, and hurt a woman with child, so that her fruit depart, and yet no harm follow, he shall surely be fined, according as the woman's husband shall lay upon him; and he shall pay as the judges determine. But if any harm follow, then thou shalt give life for life, eye for eye, tooth for tooth, hand for hand, foot for foot, burning for burning, wound for wound, stripe for stripe* (Ex. 21:22-25).

Before going on, it is worth noting the difficulties in the original Hebrew text. We shall list them here briefly first, and explore them more fully a bit later on. First, the phrase *so that her fruit depart* is written in the plural form [*veyatzu yeladeah*], rather than the expected singular form. Second, though the verse initially blames both combatants for the harm done to the pregnant woman by using the plural *venagfu*, when it comes time to assign a judgment the verse turns singular, indicating that only one of the combatants should be punished; ostensibly not the woman's husband. Finally, the verses describe two possible cases, one in which no harm follows and another in which there is some harm. The Hebrew word that is here translated as "harm" is "*ason*," and it is alternately translated as mischief or damage in different editions of the Jewish Publication Society's translation. In modern Hebrew, the word is common enough, and has taken the meaning of catastrophe, but in the Bible it is a rare word, whose appearance in other contexts we will explore.

Rabbinic tradition interprets the phrase *veyatzu yeladeah* to mean that in both cases a miscarriage has occurred. The harm [*ason*] that may or may not follow is not harm to the child, but to the mother – in one case, the blow she suffers proves fatal to her and the child she carries, while in the other case, she survives but the fetus does not. Even in the case where the mother is killed, however, the Talmud (BT Sanhedrin 79a-b) explains that the penalty of a life for a life is not meant literally, and that monetary compensation is in fact the punishment to be carried out.

This interpretation does not offer a satisfying answer to why both men initially are to blame for striking the pregnant woman, only to have the verse shift into singular form – even as it does not precisely specify which of the men is actually to blame. An additional point to consider is that this seems an

unusual case, and as such an odd place to state so fundamental a rule as Lex Talionis. Moreover, how exactly are we to draw the conclusion that the sages of the Talmud arrive at that this law is not meant to be applied literally?

These verses are highly suggestive of and might be applicable to a narrative in Genesis. After 20 years in Laban's household, Jacob flees under cover of night. He takes with him his flocks, his children, and his wives and concubines – including his beloved Rachel, who may have then been pregnant with Benjamin. Laban mounts up a posse and runs Jacob down in order to confront him over the loss of his *terafim* – idols representing household gods – that, unbeknownst to Jacob, Rachel had pilfered. In the ensuing confrontation, an exasperated Jacob takes an oath, swearing that *'With whomsoever thou findest thy gods, he shall not live'* (Gen. 31:32).

Let us turn back to the verses in Exodus and understand them fully. *And if men strive together* – this is Jacob and Laban – *And hurt a woman with child* – this is Rachel[4] – *So that her fruit depart* – these are Joseph and Benjamin. Now the reason for the plural form of this phrase is clear; it refers not to a single fetus, but to Rachel's two children, one born and one not yet born. *And yet no harm follow* – though the halachic meaning speaks of harm to the woman, our narrative overlay indicates that this equivocal phrase be applied to the children, Joseph and Benjamin. *He shall surely be fined* – the translation here suggests monetary restitution, but the Hebrew word is best translated as punished, and in our case, it refers not to Laban but to Jacob himself, who strikes Rachel inadvertently through his oath.

Suddenly our picture is in sharp focus. The two men striving against one another are Laban and Jacob. The pregnant woman who is struck is Rachel. But what are we to make of the rest of the verses? Rachel dies in childbirth a short while later, but both of her children, Joseph and Benjamin, go on to live long lives and have many children of their own. To understand these verses truly we must tackle the meaning of the word *ason.*

Isaiah Horowitz writes in his book *Shnei Luchot HaBrit* that in order to uncover the meaning of a word in the Torah, one must examine it in its first appearance in the Torah. The word *ason* actually appears in the Torah in only two contexts; the present one, and in connection with the story of Joseph and his brothers. When Joseph encounters his brothers in Egypt, he hides his identity from them, jails Simeon, and tells the brothers that Simeon will go

free and the brothers will be able to purchase food only if Benjamin is with them on their next trip to Egypt. The brothers return to Jacob in Canaan and they appeal to him to allow them to take Benjamin to Egypt. Jacob had previously held Benjamin back from traveling with his brothers to Egypt *'lest peradventure* ason *befall him'* (42:2). The nature of this *ason* is revealed when Jacob responds to the requests of his other sons to bring Benjamin with them to Egypt: *And Jacob their father said unto them: 'Me have ye bereaved of my children: Joseph is not, and Simeon is not, and ye will take Benjamin away; upon me are all these things come'* (Gen. 42:36). The word for "bereaved" in Hebrew is "*shikaltem*," a word whose root is "miscarriage." The *ason* that Jacob seeks to avoid is childlessness; that is, the end of Rachel's line.

Now the remaining verses in the Exodus section can be clarified. *According as the woman's husband shall lay upon him* – the punishment that Jacob calls down is death*; and he shall pay as the judges determine* – these judges are in our case the one and only Judge, who mitigates Jacob's oath by allowing Rachel to live long enough to bring Benjamin into the world. *But if any harm follow, then thou shalt give life for life* – this final line is Jacob's concern. Should Rachel have died and her children not survived either, then Jacob would know that he was in fact responsible for her death, and that his life was required in restitution.

Joseph's brothers had, while in Egypt, taken upon themselves responsibility for selling Joseph, as they say '*We are verily guilty concerning our brother, in that we saw the distress of his soul, when he besought us, and we would not hear; therefore is this distress come upon us'* (42:21). Reuben understood this responsibility literally: *And Reuben answered them, saying: 'Spoke I not unto you, saying: Do not sin against the child; and ye would not hear? therefore also, behold, his blood is required'* (42:22).

It is no surprise then that Reuben, who prevented his brothers from killing Joseph on that fateful day so many years prior, appeals to Jacob with the same literal understanding when he attempts to secure custody of Benjamin: *And Reuben spoke unto his father, saying: 'Thou shalt slay my two sons, if I bring him not to thee; deliver him into my hand, and I will bring him back to thee'* (42:37). Reuben offers two sons, one in payment for Joseph, and the other for Benjamin. Jacob rejects Reuben's petition, stating *'My son shall not*

go down with you; for his brother is dead, and he only is left; if harm befall him by the way in which ye go, then will ye bring down my gray hairs with sorrow to the grave' (42:38).

Some time later, as the famine intensifies and the food that the brothers brought from Egypt has run out, Judah approaches his father and asks to take Benjamin with him to Egypt to purchase more food. In contrast to Reuben's offer of the lives of two of his sons, Judah offers compensation of a different sort. He says: *'Send the lad with me, and we will arise and go, that we may live, and not die, both we, and thou, and also our little ones. I will be surety for him; of my hand shalt thou require him; if I bring him not unto thee, and set him before thee, then let me bear the blame for ever.'* (43:8-9). Rashi, citing the Midrash, says that Judah was offering his portion in the World-to-Come as surety for Benjamin, and it is this offer that makes Jacob relent and allow Benjamin to travel to Egypt with his brothers, in the trust of Judah.

Perhaps the sages of the Talmud found in Jacob's accession to Judah the indication that a literal interpretation of the Lex Talionis was incorrect. In Jacob's rejection of Reuben's surety, the sages saw the futility of vengeance as means of punishment, and perhaps they even glimpsed the greater truth that the possibility of reforming one's character as Judah did, is largely extinguished when vengeance is the mode of punishment for character failings.

This method of overlaying halakhic and narrative material has the potential to produce dramatic insights into both parts. It remains to be seen whether this approach can be systematically applied, and further pairs of laws and tales identified, but the possibility is tantalizing.

NOTES

1. All translations not specifically attributed to the author are taken from the JPS Tanakh 1917 edition.

2. The story of the vineyard of Naboth appears to be most closely connected to the text of *eidim zommemim* [conspiring witnesses] in Deuteronomy 19:15-21. That text prescribes that a witness who testifies falsely should receive the same punishment he sought to have inflicted against the defendant. This variation on Lex Talionis is then followed up in verse 21 by a restatement of that law. Indeed, in the Naboth story, Elijah foretells to Ahab that *'in the very place where the dogs lapped up Naboth's blood, the dogs will lap up your blood too'* (I Kg. 21:19).

3. Deuteronomy 27:8-11

4. Even if Rachel was not actually pregnant at that moment, to the reader, who knows that eleven of Jacob's twelve sons have been born, and only Rachel will give birth again, Rachel qualifies as the pregnant woman.