

Law, Halakhah and The Emperor's New Clothes  
Friday, July 20, 2007  
To: Ravnet@JTSA.edu

Friends and Colleagues;

In light of the ongoing discussion within this Conservative Rabbis list (Ravnet) on issues of Law, Halakhah and Commandedness, I'm taking the liberty of sharing a piece I wrote as a Letter to the Editor of Conservative Judaism, following the edition entitled "The Aggadah of the Conservative Movement." The letter did not reach publication possibly due to space constraints.

The letter follows; (and includes two footnotes).

N.B. The reader should know that I am a full member of the Rabbinical Assembly (Conservative) and the Central Conference of American Rabbis (Reform), and would have been a full member of the RRA, Reconstructionist Rabbinical Association, if that were feasible.

Dear Editor;

According to Merriam-Websters 11th Collegiate Dictionary Law is "(1): a binding custom or practice of a community: a rule of conduct or action prescribed or formally recognized as binding or enforced by a controlling authority."

Reading the wonderful edition of Conservative Judaism entitled; The Aggadah of the Conservative Movement, and the superb article by my lifelong friend Neil Gillman, my attention was once again drawn to the truth of the Italian saying "Traduttore Traditore The translator is a traitor,"(-and my own addendum to that-)“the

only question is degree.” The use of the word Law as the English translation of halakhah is such a traitorous example.

I am struck by how repetitively and with little awareness, Law is used as the English translation of halakhah. Even the name of the Rabbinical Assembly committee chosen to determine issues of halakhic practice is the Committee on Jewish Law and Standards.

Is halakhah law and therefore binding or is it simply a regimen that a Jew chooses to do to improve one’s Jewish life?

For the more fundamentalistically oriented among us, the reason to behave in accordance with halakhah is that God commanded us to do so. Even though we recognize that God’s command may have been mediated through the Jewish people and Jewish tradition, as God’s command, it is obligatory upon us! In the end, God is the commander and enforcer, though we hope and pray that if God’s mercy emerges triumphant, God will “pass” on enforcing our lack of proper observance. We may get away with nonobservance for a while, but if halakhah remains God’s will, which we disobey at our own risk. God will enforce or alternately show mercy in God’s own way and time.

The stance of a non-fundamentalist reading of Jewish tradition, no matter how personally observant one chooses to be, has to agree with Gillman; (p.35) that

“Torah, and by implication, Jewish religion, is the way it is because, for complex historical, sociological, or cultural reasons, our ancestors determined that it should be this way. Judaism, then, is the creation of the Jewish people.”

For the non-fundamentalists among us, halakhah is at best a suggested regimen as to how to live one’s life as a Jew. When it is obeyed that is done voluntarily. When it is made use of i.e. in

Shabbat observance or in matters of marital status, or the convening of a “bet din” to determine something according to halakhah, that too is voluntary. The participants agree to obey the decision of a court subject to a “Higher Authority” as it were. Halakhah unlike Law is not binding by an outside force, communal or theological. And that is significantly different than having to obey the “law of the land”, legislated by other humans and decided by the courts of the land. Law is enforced by an outside authority, whether human or God. A driver arrested for driving while impaired would be laughed out of court if he or she suggested, “let’s set up a Bet Din to establish the degree to which I was impaired and what the punishment should be”.

When the non-fundamentalists among us use the word law to talk about halakhah, we are making a significant mistake. Being our creation, halakhah is not binding in the way that general law is. Observance of halakhah may be a set of practices and behaviors, a regimen for “walking on the way”, as our colleague Ed Feld elegantly puts it, that we undertake completely or partially or choose not to undertake, to be the Jews we wish to be. But it is and remains our creation; not binding in the sense that law is binding, nor enforceable as law is enforceable.

This mistranslation has and does lead to serious confusion in the Conservative movement. A confusion elegantly described by Hans C. Anderson's piece about “The Emperor’s New Clothes”. Anderson tells of an entire populace adoring the Emperor’s new clothes when a little child suddenly gasps out,

"But the Emperor hasn't got anything on."

As a matter of fact the Emperor was clearly as naked as a jaybird.

No wonder our other non-fundamentalist partners; the Reform and Reconstructionist movements have an edge. Knowing that most

American Jews do not experience God as the author and enforcer of halakhah, yet with a firm allegiance to God and the Jewish people and committed to a profound Jewish life, they are free to explore and borrow portions of our Jewish tradition to experiment with and to help Jewish life become once again a living entity with integrity. They can experiment and explore modes of being Jewish which lead to growth and excitement and varied regimens for living as a Jew, And they do not have to pretend that the emperor has clothes on when he does not. Nor does the Conservative movement need to twist and turn struggling to assert vigorously that it is a halakhic movement, if by halakhic it means Jewish Law. It is a naked untruth and sloppy scholarship unworthy of a glorious history.

<sup>1</sup>Rabbi Edward Feld personal conversation and correspondence

<sup>2</sup>The Emperor's New Clothes is a Danish fairy tale written by Hans Christian Andersen; first published in 1837.

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