

# Nomos and Narrative Before *Nomos and Narrative*

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I imagine that when Robert Cover's *Nomos and Narrative* essay<sup>1</sup> first reached the editors of the *Harvard Law Review*, their befuddlement derived not so much from Cover's framing of his review of the 1982 Supreme Court term with a philosophically opaque discussion of the interdependence of law and narrative, but from the illustrations that he drew from biblical and rabbinic texts of ancient and medieval times. For Cover, both intellectually and as a matter of personal commitment, these ancient texts evoke a "nomian world," rooted more in communally shared stories of legal origins and utopian ends than in the brutalities of institutional enforcement, one from which modern legal theory and practice have much to learn and to emulate. Since my own head is buried most often in such ancient texts, rather than in modern courts, I thought it appropriate to reflect, by way of offering more such texts for our consideration, on the long-standing preoccupation with the intersection and interdependency of the discursive modes of law and narrative in Hebrew biblical and rabbinic literature, without, I hope, romanticizing them. Indeed, I wish to demonstrate that what we might think of as a particularly modern tendency to separate law from narrative, has itself an ancient history, and to show how that tendency, while recurrent, was as recurrently resisted from within Jewish tradition. In particular, at those cultural turning points in which laws are extracted or codified from previous narrative settings, I hope to show that they are also renarrativized (or remythologized) so as to address, both ideologically and rhetorically, changed socio-historical settings.<sup>2</sup> I will do so through admittedly

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1. Robert M. Cover, *The Supreme Court, 1982 Term -- Foreword: Nomos and Narrative*, 97 HARV. L. REV. 4 (1983).

2. To the extent that such renarrativizing of biblical law is also a form of remythologizing see MICHAEL FISHBANE, *BIBLICAL MYTH AND RABBINIC MYTHMAKING* (2003).

selective, yet telling, examples.

Let me begin not at the historical beginning, but with a well known comment—well known at least among students of rabbinic learning—which marks roughly a midpoint in the history of “nomos and narrative,” even as it attends to the opening words of the Torah’s account of creation. While this comment is usually credited to the medieval rabbinic commentator Rashi,<sup>3</sup> whom I cite, Rashi in turn credits a third-fourth century rabbinic sage for its origins:

Said Rabbi Isaac: There was no reason to begin the Torah, but from “This month shall be to you” (*Exodus* 12:2, introducing the laws of Passover), which is the first commandment with which Israel was [collectively] commanded. So why did he open with “In the beginning”?<sup>4</sup>

Rashi’s answer to this question is, in effect, that it was necessary first to establish God’s creator credentials as justification for having given to the people of Israel the land of other nations.<sup>5</sup> I am less interested in (or sympathetic to) Rashi’s answer than to his (and R. Isaac’s) question, or rather, to what the question assumes: If the Torah (Pentateuch) is primarily and fundamentally a collection of commandments, that is, of laws, why delay by all of the *Book of Genesis* and the first eleven chapters of the *Book of Exodus* before getting to the legal heart of the matter? In this view, the narrative framework of the Torah, if not of the whole Hebrew Bible, appears to be mere padding—which could easily be dispensed with—were it not for its value in establishing that the commander-in-chief of Israel, in particular, is the universal creator of the whole world and its peoples. Whatever the justificatory value of Rashi’s opening comment, it hardly does justice to the richness of the biblical narrative that follows, or, for that matter, to the great learning, insight, and sensitivity that Rashi himself displays in elucidating almost every detail of that biblical narrative. Certainly, the lengthy narrative prologue to the biblical laws must do more than simply set the stage for their revelation and reception.

Indeed, unlike Rashi, most critical scholars of the Hebrew Bible today, especially those with literary sensitivities, would characterize it not as a law book enclosed in a narrative wrapper, but as a grand narrative of God’s relationship with humanity and, at its center, with Israel in

3. Rashi is an acronym for Rabbi Solomon ben Isaac (1040-1105), a French commentator on the Hebrew Bible and Talmud.

4. SOLOMON BEN ISAAC, RASHI `AL HATTORAH 1 (A. Berliner ed., 1969). Rabbi Isaac is most likely of the late third/early fourth century, mainly in Palestine, but also in Babylonia. Rabbi Isaac’s view is first cited in TANHUMA BERE`SHIT 11 (S. Buber ed., 1885), but in briefer form. For a similar idea, see MEKHILTA OF RABBI ISHMAEL BAHODESH 5; GENESIS RABBA 1:2. Here and below, unless otherwise noted, English translations are my own.

5. In the continuation to his commentary to *Genesis* 1:1 Rashi (and his source) cites *Psalms* 111:6: “He revealed to his people his powerful works, in giving them the heritage of nations.”

particular. This relationship, or covenant, revolves around the reciprocity of divine beneficence and human response, principally through the divine giving of commandments and the human obligatory practice thereof. From this perspective, in its present composite form, the laws and narratives of the Bible are both literarily and theologically inextricable from one another. Divine bestowal of the commandments occurs at a critical junction in the covenantal narrative, in the wilderness interim between liberation from slavery in a strange land and settlement in the Promised Land. Conversely, Israel's acceptance and fulfillment of its covenantal obligations is the primary condition for the eventual completion of that narrative through the divine bestowal of divine blessings in the coming "end of days."<sup>6</sup> In other words, the divine commandments are themselves central events in the biblical soteriological narrative, while that narrative confers both historical and teleological meaning upon the commandments. In Cover's terms, then, the commandments serve as a "bridge" not just between an unredeemed present and a redemptive future, but also between a perpetual present and an originary, law-giving past, or, perhaps more aptly, as a shuttle line between all three. To employ David Damrosch's phrase, the Bible in form, content, and meaning is a "narrative covenant."<sup>7</sup>

When and how was it that what might be read by moderns as a grand sacro-historical narrative was viewed principally as a law book? It is principally in the period following the Babylonian exile and Persian conquest (sixth-fifth centuries B.C.E.) that the canonical Torah as a whole is regarded as a law book in an authoritative, juridical sense. This was partly the result of Persian imperialism.<sup>8</sup> Here I wish to stress that a consequential stage in, and long-lasting influence of, the process of post-exilic "legalization" of the Torah occurs with a curious choice of interlingual translation. Beginning in the mid-third century B.C.E., in

6. *Deuteronomy* 4:30; 31:29.

7. DAVID DAMROSCH, *THE NARRATIVE COVENANT: TRANSFORMATION OF GENRE IN THE GROWTH OF BIBLICAL LITERATURE* (1987); see also CALUM M. CARMICHAEL, *LAW AND NARRATIVE IN THE BIBLE: THE EVIDENCE OF THE DEUTERONOMIC LAWS AND THE DECALOGUE* (1985); VICTOR AVIGDOR HUROWITZ, *INU ANUM SIRUM: LITERARY STRUCTURES IN THE NON-JURIDICAL SECTIONS OF CODEX HAMMURABI* (1994) (discussing the role of narrative in ancient Near Eastern law); NANETTE STAHL, *LAW AND LIMINALITY IN THE BIBLE* (1995); David Damrosch, *Leviticus*, in *THE LITERARY GUIDE TO THE BIBLE* 66-77 (Robert Alter & Frank Kermode eds., 1987).

8. See SETH SCHWARTZ, *IMPERIALISM AND JEWISH SOCIETY: 200 B.C.E.-640 C.E.* 19-22 (2001). However, unlike Schwartz, I would stress that external factors did not operate in isolation from internal propellants, especially the lessons learned from the experience of exile as understood via the teachings of the Prophets: that Israel needed to recommit itself to the fulfillment of its covenantal obligations in order to restore its covenantal fortunes, which required the teaching of its self-defining laws and narratives by one generation to the next. However, although the prophets repeatedly "prosecute" Israel for its covenantal failings, they are not presented as legal experts per se, nor do they make explicit reference to the Torah text as a legal code for practice. It is only in the post-exilic, post-prophetic period that scribes and the Torah text assume these roles. See, e.g., *Ezra* 7:11-26; *Nehemiah* 8:13-18.

Alexandria, Egypt, bilingual Jews translate—in what comes to be called the *Septuagint*—the biblical Hebrew word *torah*, in a wide range of meanings and usages, with the Greek word *nomos*. The noun *torah*, meaning literally “directive,” includes within its early range of usages something akin to law writ small, especially in the sense of cultic, ritual, and judicial directions and procedures, and is frequently used (often in the plural) in conjunction with such other biblical terms for law as *mitsvah*, *hoq*, and *mishpat*. However, it expands in meaning to denote within the Hebrew Bible much more, including: divine teaching, prophetic preaching, moral exhortation, and wise living more broadly. Eventually it becomes synonymous with revelation or Scripture as a whole, encompassing as it does the entire covenantal narrative of Israel’s history and obligations. Especially in its Deuteronomic, prophetic, and post-exilic contexts, *torah* overlaps only partly with the range of meanings of *nomos*, and might more suitably have been translated with a Greek term closer in meaning to teaching writ large as, to conjure up another of Cover’s favorite Greek terms, *paideia* (cultural instruction and discipline).<sup>9</sup>

The price these ancient biblical translators paid for their consistency in translating *torah* as *nomos* (200 times out of 220) was the unintended consequence of characterizing the Torah (Pentateuch) and the Hebrew Bible overall as “The Law,” as the Septuagint’s *nomos* and the Vulgate’s *lex* are translated, in turn, by most modern English translations of the Bible. As long ago noted by C. H. Dodd: “Thus over a wide range the rendering of *torah* by *nomos* is thoroughly misleading, and it is to be regretted that the English versions followed the Septuagint (via the Vulgate) in so many cases,” thereby “giving a misleading legalistic tone to much of the Old Testament.”<sup>10</sup> Once the Torah and the Hebrew Bible are represented as “The Law,” then the isolation of its narratives from its laws, and the reductionist dichotomization of Old Testament Law (and “legalism”) vs. New Testament Spirit are not far to follow. It is precisely this terminological dis-integration of the laws and narratives of the Bible that permitted the former to be largely abrogated while the latter to be typologized in what came to be the dominant, supersessionist narrative of Christianity—with grave historical consequences for the fate of Jews at

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9. See THE THEOLOGICAL DICTIONARY OF THE NEW TESTAMENT 4:1022-91 (Gerhard Kittel & Gerhard Friedrich eds., Geoffrey W. Bromiley trans., 1967); see also Adele Reinhartz, *The Meaning of Nomos in Philo's Exposition of the Law*, 15 STUDIES IN RELIGION/ SCIENCES RELIGIEUSES 337 (1986); PETER RICHARDSON, ET AL., LAW IN RELIGIOUS COMMUNITIES IN THE ROMAN PERIOD: THE DISPUTE OVER “TORAH” AND “NOMOS” IN POST-BIBLICAL JUDAISM AND EARLY CHRISTIANITY (1991); ALAN SEGAL, *Torah and Nomos in Recent Scholarly Discussion, in THE OTHER JUDAISM OF LATE ANTIQUITY* 131 (1987); Stephen Westerholm, *Torah, Nomos and Law: A Question of Meaning*, 15 STUDIES IN RELIGION/SCIENCES RELIGIEUSES 194 (1986). On *paideia*, see THE THEOLOGICAL DICTIONARY OF THE NEW TESTAMENT 5:596-625 (Gerhard Kittel & Gerhard Friedrich eds., Geoffrey W. Bromiley trans., 1967).

10. C. H. DODD, THE BIBLE AND THE GREEKS 33, 41 (1935).

Christian hands.

Returning to our own story, the difficulty post-exilic Jews must have faced in relating to the Torah's laws as Law, is precisely the manner in which they are intermingled with and scattered throughout the Torah's grand covenantal narrative. They are not organized according to any overarching taxonomic logic or structure that would readily facilitate their pedagogical acquisition or juridical application. Furthermore, whole areas of law are presumed but only thinly represented, being, as the later rabbinic teachers metaphorically conceded, "like mountains hanging by a hair."<sup>11</sup> Nor, for that matter, does the Torah present, except in a very fragmentary manner, the judicial structures and procedures necessary for the application of its laws. Thus, we find, not long after the Torah's canonization, a variety of attempts, partial at first, to gather the Torah's laws from their various scriptural narrative settings, to fill in their gaps, resolve their inconsistencies, and to group them under imposed topical rubrics. I intend to demonstrate that each such effort at legal extraction, supplementation, and redaction involves a degree of renarrativization, as the extracted and regrouped laws are both interwoven with new or reworked micro-narratives and set within a reformulated macro-narrative spanning covenantal origins and ends.<sup>12</sup>

The second-century B.C.E. *Book of Jubilees*, presenting itself as an esoteric, angelic revelation to Moses from heavenly tablets, repeatedly weaves legal traditions into its retelling of the narratives of the *Book of Genesis* and the beginning of the *Book of Exodus*, structured according to fifty-year cycles of time. It thereby asserts that the early patriarchs knew and observed, as if according to a predetermined cosmic plan, the Torah's laws long before their more public revelation at Mt. Sinai. After narrating the story of the Exodus from Egypt, *Jubilees* gathers laws of Passover from a variety of biblical locations, adds some biblically unattested Passover rules, and presents them as a coherent unit,<sup>13</sup> followed by a similar grouping and expansion of Sabbath laws<sup>14</sup> on the occasion of the Israelites' arrival at the Wilderness of Sin (one stop before Mt. Sinai).<sup>15</sup>

11. See MISHNAH HAGIGAH 1:8; SIFRE DEUTERONOMY 335 at 385 (Louis Finkelstein ed., 1939).

12. Space does not allow a demonstration here of how this process already is evidenced inner-biblically, most notably in the *Book of Deuteronomy*, or "seconded *nomos*," which was to have great influence in the narrative reconstructions of biblical law in post-biblical times. See BERNARD M. LEVINSON, *DEUTERONOMY AND THE HERMENEUTICS OF LEGAL INNOVATION* (1997).

13. *Jubilees* 49:1-23.

14. *Jubilees* 50:1-13.

15. Note that an earlier discussion of the significance of the Sabbath and some rules for its observance is incorporated into the *Book of Jubilees*' recounting of the narrative of creation (2:17-33). See JAMES C. VANDERKAM, *THE BOOK OF JUBILEES* (2001) (providing a recent introduction to this pseudepigraphic work); see also Michael Segal, *The Relationship Between the Legal and Narrative Passages in Jubilees (Reuben and Bilhah/Judah and Tamar)*, in *REWRITING THE BIBLE: PROCEEDINGS OF THE SEVENTH INTERNATIONAL CONFERENCE OF THE ORION CENTER FOR THE STUDY OF THE DEAD SEA SCROLLS AND ASSOCIATED LITERATURE* (Devorah Dimant & Esther Chazon eds., 2005); Michael

Thus, even as *Jubilees* extracts laws from their biblical contexts so as to gather them topically, it also inserts laws into new narrative contexts so as to restructure the scriptural narrative according to continuous cycles of time and revelation. It thereby demonstrates that the knowledge and observance of divinely revealed law—at least for the spiritual elite—extends back to the very beginnings of sacred history and is continuous with its rhythmic progression.

An even more extensive extraction and rearrangement of biblical laws can be found in the work of the first-century C.E. Jewish philosopher and biblical commentator Philo of Alexandria. After devoting a separate treatise to an allegorical interpretation of each of the Ten Commandments, Philo collects and orders the remaining laws of the Torah into a treatise called *The Special Laws*, taking the Ten Commandments to represent ten legal (and philosophical) rubrics under which all of the other laws could be topically organized and allegorically explained.<sup>16</sup> However, Philo's extraction and reordering of the biblical laws serves much more than simply a need to render them more accessible or applicable. Through his allegorizing interpretations of the laws, Philo effectively removes them from the "horizontal" narrative of biblical history and repositions them within an overarching "vertical" narrative of the individual soul's perfection and ultimate ascension to reunion with its divine, heavenly source, which similarly pervades his allegorical interpretations of the biblical narratives and personalities.

By contrast, the first-century C.E. Jewish historian Josephus, in his twenty-book history the *Jewish Antiquities*, retells the biblical history from the creation of the world and extends it chronologically down to his own day, largely excising the corpora of biblical laws so as to allow a more continuous narrative, while leaving anecdotal references to Jewish practices along the way. At several points in his narrative, however, he promises to produce a sustained and detailed treatment of the Jewish laws, along with their reasons, to be called "On Customs and Causes," which he appears never to have written or completed.<sup>17</sup> However, at one point in his history Josephus makes an exception, interrupting the narrative. In Book 4 of his *Jewish Antiquities*, at the end of Moses' life, Josephus relates how Moses gave the people "these laws and this constitution (*politeia*) recorded in a book."<sup>18</sup> But before continuing his narrative, he wishes to present this "constitution":

Segal, *The Book of Jubilees: Rewritten Bible, Redaction, Ideology and Theology* (2004) (unpublished Ph.D. dissertation, Hebrew University) (on file with author).

16. See PHILO, DE DECALAGO 154-174.

17. See JEWISH ANTIQUITIES 1.25, 192; 3.94, 143, 218, 230, 257, 205, 259; 4.198, 302; 20.268.

18. JEWISH ANTIQUITIES 4.194. Translations are from the Loeb Classical Library. On Josephus' use of *politeia* for torah, see S. Dean McBride, Jr., *Polity of the Covenant People: The Book of Deuteronomy*, 41 INTERPRETATION 229, 229-233 (1987).

But here I am fain first to describe this constitution, consonant as it was with the reputation of the virtue of Moses, and withal to enable my readers thereby to learn what was the nature of our laws from the first, and then to revert to the rest of the narrative.<sup>19</sup>

Josephus modestly (but falsely) claims that he is simply passing on, without added embellishment, what Moses bequeathed to the people. However, he admits to having made one “innovation,” so as to make the Mosaic “constitution” more readily accessible to his readers: “to classify the several subjects; for [Moses] left what he wrote in a scattered (*sporadēn*) condition, just as he received each several instruction from God.”<sup>20</sup> Josephus’ presentation of the Mosaic constitution includes such matters as: proper worship, the public reading of the Torah, the proper administration of justice, the place of the king within the theocracy, the rights of the poor, widows, and orphans, marriage and family laws, burial of criminals, usury, loans and pledges, theft, slavery and emancipation, restitution of lost property, laws of injury and damages, deposits, sexual aberrance, wages, and the proper conduct of war. However, beyond the details of the legal interpretations implicit in Josephus’ reformulation and elaboration of biblical laws, it is most striking that Josephus needs to apologize in advance for breaking the narrative flow of his history, and for topically rearranging the laws so as to form a coherent “constitution,” in contrast to the “scattered” manner in which they appear in the divinely revealed Torah. Josephus’ reconstituting of biblical laws into a “constitution,” however, fits well within a recurring apologetic theme of Josephus’ overall narrative history: the superiority of the Mosaic theocratic constitution to other forms of government current in the Greco-Roman world of his time, and the attribution of Israel’s national woes to that constitution having been compromised, especially by the institution of monarchy.<sup>21</sup>

19. JEWISH ANTIQUITIES 4.196.

20. JEWISH ANTIQUITIES 4.197. See similar statements by Josephus in JEWISH ANTIQUITIES 1.17; 2.234; 4.196-98; 10.218; 20.261; and compare them to JEWISH ANTIQUITIES 9.242; 12.109; 14.2-3 and AGAINST APION 1.42. Josephus appears to be cognizant of the Deuteronomic injunction (4:2; 12:32), neither to add to nor subtract from God’s word. But if he takes *Deuteronomy* as his model, he is in good company in his additions and subtractions, as well as his regroupings, of the Torah he wishes to convey. Also see Philo’s admiration for this Deuteronomic principle in ON THE SPECIAL LAWS 4.143; and compare it to LETTER OF ARISTEAS 311. It remains to be asked why Josephus includes his major rewriting of Jewish law here, at the point of Moses’ death, rather than earlier at the point of the revelation at Mt. Sinai. Cf. JEWISH ANTIQUITIES 3.94. Perhaps this arises from Josephus’ identification of his own reworking of biblical law and narrative in his later years with Moses’ in the *Book of Deuteronomy*, narratively framed by the end of Moses’ life. For discussion of this topic, see LOUIS FELDMAN, FLAVIUS JOSEPHUS: TRANSLATION AND COMMENTARY, JUDEAN ANTIQUITIES 1-4, 7-8 (Steve Mason ed., 2000).

21. See AGAINST APION 2.164-165, 184-188; JEWISH ANTIQUITIES 4.223; 6.35-44; 11.111; 14.41, 91; 20.229, 251; JEWISH WAR 1.169-170. Cf. HERODOTUS 3.80-83. For Josephus’ retelling of biblical narratives so as to introduce or emphasize the priests’ governing role, see HAROLD W. ATTRIDGE, THE INTERPRETATION OF BIBLICAL HISTORY IN THE ANTIQUITATES JUDAICAE OF FLAVIUS JOSEPHUS 176-

The most extensive corpus of reworked and reintegrated biblical law and narrative from the second temple period is now to be found in the veritable time capsule of the Dead Sea Scrolls, much of which, especially its legal texts, were not yet published at the time of Cover's *Nomos and Narrative*. Indeed, the *yahad* (Cover's "strong community") of the Qumran scrolls could have provided him with another "case study" of "bringing the messiah through the law," or of "legal apocalypticism," that is, a commitment to law as a "jurisgenerative" bridge between the unredeemed present and the eagerly anticipated messianic future that is so strong as to envision the "suffer[ing] and/or inflict[ing] of violence for its 'law.'"<sup>22</sup> Several central texts of the Dead Sea Scrolls display the extraction of biblical laws from their biblical narrative settings, their exegetical amplification, regrouping according to topical rubrics, and rhetorical reconstitution within the new settings of the Qumran community's own self-defining narrative of exilic remnant origins, esoteric revelation, and eschatological restoration.

This process of legal renarrativization can be seen especially in the Damascus Document, the Community Rule, the Messianic Rule, the Temple Scroll, the War Scroll, and 4QMMT ("Some Torah Precepts").<sup>23</sup> For example, the Damascus Document contains a substantial core of laws, organized as *serakhim*, or topically grouped collections of rules, including both biblical laws and sectarian rules for communal organization and judicial and penal procedures. One of the longest of these *serakhim* contains twenty-six rules concerning prohibited activities on the Sabbath, gathered from throughout the Torah and organized under the heading, "Concerning the Sabbath to observe it according to its law."<sup>24</sup> Other legal headings in the Damascus Document include: "This is the rule for the

77 (1976).

22. See Robert M. Cover, *Bringing the Messiah Through Law: A Case Study*, in RELIGION, MORALITY, AND THE LAW 201, 203-204 (J. Roland Pennock & John W. Chapman eds., 1988).

23. I have written several studies on these texts from this perspective, such as: Steven D. Fraade, *Interpretive Authority in the Studying Community at Qumran*, 44 J. JEWISH STUD. 46 (1993); Steven D. Fraade, *Looking for Legal Midrash at Qumran*, in BIBLICAL PERSPECTIVES: EARLY USE AND INTERPRETATION OF THE BIBLE IN LIGHT OF THE DEAD SEA SCROLLS, 59 (Michael E. Stone & Esther G. Chazon eds., 1998); Steven D. Fraade, *Looking for Narrative Midrash at Qumran*, in RABBINICAL PERSPECTIVES: RABBINIC LITERATURE AND THE DEAD SEA SCROLLS (Steven D. Fraade & Aharon Shemesh eds., forthcoming 2006); Steven D. Fraade, *Mabbat hadash 'al hammidrash hahashva'ati: megillot yam hammelekh umidreshei haza"l* ('Comparative Midrash' Revisited: *The Case of the Dead Sea Scrolls and Rabbinic Midrash*), in MINCHAT YONAH: Festschrift for Prof. Yonah Fraenkel (Yaakov Elbaum, et al. eds., 2005); Steven D. Fraade, *Rhetoric and Hermeneutics*, in *Miqsat Ma'ase Ha-Torah (4QMMT): The Case of the Blessings and Curses*, 10 DEAD SEA DISCOVERIES 150-61 (2003) [hereinafter Fraade, *Rhetoric*]; Steven D. Fraade, *Shifting from Priestly to Non-Priestly Legal Authority: A Comparison of the Damascus Document and the Midrash Sifra*, 6 DEAD SEA DISCOVERIES 109 (1999); Steven D. Fraade, *The 'Torah of the King' (Deut. 17:14-20) in the Temple Scroll and Early Rabbinic Law*, in THE DEAD SEA SCROLLS AS BACKGROUND TO POSTBIBLICAL JUDAISM AND EARLY CHRISTIANITY 25 (James R. Davila ed., 2003); Steven D. Fraade, *To Whom It May Concern: 4QMMT and Its Addressee(s)*, 19 REVUE DE QUMRAN 507 (2000).

24. CD 10:14.

Judges of the Congregation;” “This is the rule for the Guardian of the camp;” and “This is the rule for the Congregation by which it shall provide for all its needs.” With a few exceptions, these rules are stated without explicit recourse to biblical citation and explication. All of these topically grouped rules are set within a larger hortatory frame which begins with a narrative history encompassing the community’s origins and eschatological expectations.<sup>25</sup> Along the way, several elements of a retold narrative of biblical history are integrated into the hortatory admonitions, thereby reinforcing the community’s self-understanding as being the chosen successors to the “covenant of the first ones,” who had gone astray.<sup>26</sup> The text, we now know from fragments found at Qumran, concludes with reference to an annual covenantal ceremony, in which blessings and curses were invoked upon those who obeyed and disobeyed, respectively, the community’s laws, and in which the community collectively accepted and rededicated itself to the foregoing rules and principles of communal discipline, “in accordance with the final interpretation of the Torah.”<sup>27</sup> Thus, the combination of the hortatory admonitions, with their implanting of sectarian historical origins within a retold biblical narrative, and the extracted and regrouped laws is mutually reinforcing: the laws which are observed and adjudicated by the sectarian community confirm the community’s elite status within the broader retold narrative of the history of Israel, which in turn confers teleological significance upon those laws.

Up until now, the post-biblical texts of legal extraction and renarrativization have displayed little self-awareness of this interrelation of law and narrative. It is only in rabbinic texts, first taking shape about a century after the destruction of the Jerusalem temple in 70 C.E., that we find in Judaism the first terminological designation of and differentiation between law and narrative, as *halakhah* and *aggadah* respectively, and with it, the first self-conscious reflection on their interconnection. The nominalization of the verbs *halakh* (to walk, or conduct oneself) and *higgid* (to narrate) as *halakhah* (law) and *haggadah/aggadah* (narrative), signals their reification as separable phenomena, thereby facilitating a discourse concerning their interrelation. Thus, we find in our earliest rabbinic texts the delineation of a pedagogic curriculum that differentiates between written Scripture (*miqra*’) with oral teaching (*mishnah*), the latter comprising *midrash* (scriptural interpretation), *halakhah* (law), and

25. CD 1-8.

26. CD 1:4; 3:10; 4:9; 6:2; cf. 8:17; 19:29.

27. See 4Q266 frg. 11; 4Q269 frg. 16; 4Q270 frg. 7; Fraade, *Rhetoric*, *supra* note 23; see also Paul Mandel, *Siyym bemah sheppatah: ‘al siyyum shel megillat berit dammesek umashma’o hassifrut* [Inclusio: *On the Final Section of the Damascus Document and Its Literary Significance*], 2 MEGHILLOT: STUDIES IN THE DEAD SEA SCROLLS 57 (2004).

*aggadah* (narrative).<sup>28</sup>

To give an example with semantic connections to the name Cover (from *haver*, “friend, colleague”), in commenting on *Pirqe ’Avot* (1:6), ‘*aseh lekha rav uqeneh lekha haver* (“Provide yourself with a teacher, and get yourself a colleague”), the *Fathers According to Rabbi Nathan* attends to the *singular* form of the word “teacher” as follows:

Provide yourself with a teacher: how so? This teaches that one should provide himself with a single teacher and study with him Scripture and Mishnah — Midrash, Halakha, and Agada. Then the interpretation which the teacher neglected to tell him in the study of Scripture he will eventually tell him in the study of Mishnah; the interpretation which he neglected to tell him in the study of Mishnah he will eventually tell him in the study of Midrash; the interpretation which he neglected to tell him in the study of Midrash he will eventually tell him in the study of Halakha; the interpretation which he neglected to tell him in the study of Halakha he will eventually tell him in the study of Agada. Thus the man remains in one place and is filled with good and blessing.<sup>29</sup>

Thus, while exegesis, law, and narrative are differentiable as modes of study, they are not to be isolated from one another by assignment to specialized teachers, but rather integrated in the *paideic* performance of the single master teacher in sustained relation to his student.<sup>30</sup>

Similarly, the *Sifre* commentary to the *Book of Deuteronomy* interprets the opening of Moses’ final oration to the Israelites prior to his death and

28. Louis Finkelstein, *Midrash, halakhot vehaggadot*, in YITZHAK F. BAER JUBILEE VOLUME ON THE OCCASION OF HIS SEVENTIETH BIRTHDAY 28 (S. W. Baron et al. eds., 1960), reprinted in LOUIS FINKELSTEIN, 5 SIFRA ON LEVITICUS 100-19 (1991); Judah Goldin, *The Freedom and Restraint of Haggadah*, in MIDRASH AND LITERATURE 57 (Geoffrey H. Hartman & Sanford Budick eds., 1986); MENAHEM KISTER, ‘IYYUNIM BE’AVOT DERABBI NATAN: NUSAH ‘ARIKHAH UPARSHANUT [STUDIES IN AVOT DE-RABBI NATHAN: TEXT, REDACTION, AND INTERPRETATION] 42 (1998). It should be noted that the following examples are drawn from rabbinic texts of varied provenance, both chronological and geographical, and therefore my discussion, due to limits of space, will of necessity be only schematic, failing to draw distinctions across time and place.

29. The text continues:

R. Me’ir used to say: He that studies Torah with a single teacher, to whom may he be likened? To one who had a single field, part of which he sowed with wheat and part with barley, and planted part with olives and part with oak trees. Now that man is full of good and blessing. But when one studies with two or three teachers he is like him who has many fields: one he sows with wheat and one he sows with barley, and plants one with olives and one with oak trees. Now this man’s (attention) is divided among many pieces of land, without good or blessing.

THE FATHERS ACCORDING TO RABBI NATHAN 8, at 49-50 (Judah Goldin trans., 1955).

30. Contrast the metaphorical description of R. Akiba, generally thought to have given an earlier version of the Mishnah its topical structure:

Rabbi Eleazar ben Shammua’ says: There are three types of scholars: the hewn stone, the cornerstone, the polished stone. . . . The polished stone: for example, the disciple who has studied Midrash, Halakhah, Agada, and Tosephta: when a scholar comes to him and asks about Midrash, he answers him; about Halakha, he answers him; about Tosephta, he answers him; about Agada, he answers him. And that is a polished stone, for it has all its four sides exposed.

THE FATHERS ACCORDING TO RABBI NATHAN 28, at 117-18 (Judah Goldin trans., 1955).

their entry into the land of Canaan:

“May my discourse come down as rain” (*Deuteronomy* 32:2): Just as rain falls on trees and infuses each type with its distinctive flavor — the grapevine with its flavor, the olive tree with its flavor, the fig tree with its flavor — so too words of Torah are all one, but they comprise *miqra*’ (Scripture) and *mishnah* (oral teaching): *midrash* (interpretation),<sup>31</sup> *halakhot* (laws), and *haggadot* (narratives) .... Another interpretation: Just as rain cannot be anticipated until it arrives, as it says, “And after a while the sky grew black with clouds [and there was wind and a heavy downpour]” (1 *Kings* 18:45),<sup>32</sup> so too you cannot know what a disciple of the sages is until he teaches: *mishnah* (oral teaching), *halakhot* (laws), and *haggadot* (narratives);<sup>33</sup> or until he is appointed administrator (*parnas*) over the public.<sup>34</sup>

According to this comment, the interpretations, laws, and narratives of Torah teaching “are all one,”<sup>35</sup> not only because, like the rain, they derive from a single heavenly, divine source, but equally, through a subtle exegetical slippage, because they are taught by, and hence integrated within, a single earthly, human sage. Thus, the diversity of rabbinic pedagogic discourse, legal as well as narrative, has a single origin and is integrated within the ideal teacher/sage who masters them all and imparts them to his students.

Such repeated emphasis on the integration of legal and narrative teaching, we must assume, masks its opposite: that there was (as there continues to be) a scholarly tendency to specialization, to a division of labor and turf, with a consequent dis-integration of legal and narrative modes of scholarly discourse, which the above texts seek to thwart. In short, rabbinic literature strongly resists, but thereby acknowledges, the intellectual tendency toward, in Peter Brooks’s terms, legal autonomy and hermeticism.<sup>36</sup>

Indeed, we know that among early rabbinic sages there was some degree of competition between teachers of law and of narrative, with each group of specialists claiming for itself superior knowledge and importance. For example, legal teachers might think that their legal expertise was sufficient and that the study of narratives was superfluous:

“If, then, you carefully keep all this commandment” (*Deuteronomy*

31. This is the reading in the London and Oxford manuscripts, as well as the reading in YALQUT SHIM’ONI. The Berlin manuscript has *talmud*, while the *Editio Princeps* (1546) and MIDRASH HAKHAMIM have neither.

32. The prophet Elijah sent his servant seven times to look for signs of rain until on the seventh try he spotted a small cloud in the distance. The rain storm then came suddenly.

33. This is the reading in the London and Oxford manuscripts, the *Editio Princeps*, and YALQUT SHIM’ONI. MIDRASH HAKHAMIM has *midrash*, *haggadot*, and *halakhot*.

34. SIFRE DEUTERONOMY 306, at 339 (Louis Finkelstein ed., 1939).

35. *Id.*

36. See Peter Brooks, *Narrativity of the Law*, 14 LAW & LITERATURE 1, 2, 9 (2002).

11:22)... For you should not say, it is enough for me that I have studied laws (*halakhot*). Scripture teaches, "commandment," "the commandment," "all this commandment"<sup>37</sup>: study *midrash*, *halakhot*, and *haggadot*.<sup>38</sup>

Even though legal scholars may have thought their subject to be more weighty, they also realized that narratives had greater popular appeal, as reflected in the following talmudic story:

R. Abbahu and R. Hiyya b. Abba once came to a certain place. R. Abbahu expounded '*aggadah* and R. Hiyya b. Abba expounded law (*shem'ata*). All the people left R. Hiyya b. Abba and went to hear R. Abbahu, so that the former was depressed. [R. Abbahu] said to him: "I will give you a parable. To what can this be compared? To two men, one of whom was selling precious stones and the other various kinds of small ware. To whom will the people hurry? Is it not to the seller of various kinds of small ware?"<sup>39</sup>

Yet notwithstanding, or perhaps to counter, the centrifugal force of this competition, rabbinic texts stress the interdependence of Torah laws and narratives, as in the following early midrash:

"[He suckled him] with the kidney fat of wheat" (*Deuteronomy* 32:14): This refers to the laws (*halakhot*), which are the body of the Torah. "And the blood of grapes you drank for wine" (*ibid.*): This refers to the narratives (*haggadot*), which draw the heart of a person like wine.<sup>40</sup>

The wheat (i.e., bread) and wine that God fed to Israel are here understood as metaphors for the laws and narratives of the Torah, which, as it were, Israel continues to ingest for its physical and spiritual sustenance. The laws may be more substantive, but it is the narratives that have the greater emotional draw, and are, therefore, necessary to sustain the laws. Indeed,

37. The expression *kol hammitsvah* is understood to contain three levels or layers of meaning, corresponding to the three stages in which the expression is built up: the indefinite noun *mitsvah* alone, the same noun with the addition of the definite article, and the definite noun with the addition of the inclusive particle *kol*.

38. SIFRE DEUTERONOMY 48, at 113 (Finkelstein ed., 1939), with more of the same in the continuation. For teachers of narratives, see SIFRE DEUTERONOMY 49, at 115: "The expounders of *haggadot* say: If you desire to come to know the one who spoke and the world came into being, study *haggadah*, for thereby you will come to know the one who spoke and the world came into being and cling to His ways." The Vatican, London, and Berlin manuscripts, as well as YALQUT SHIM'ONI (Salonika) have *doresh* *haggadot* (or '*aggadot*). However, the *Editio Princeps*, MIDRASH HAGGADOL, AND YALQUT SHIM'ONI (Oxford manuscript) have instead, *doresh* *reshumot* ("expounders of traces"). Strictly on text-critical grounds, the former is the superior reading, even if the latter is the more difficult. On the latter, see Daniel Boyarin, *On the Identification of the Dorshei Reshumot: A Lexicographical Study*, 3 BEER-SHEVA 23 (1988). For the deprecation of narrative tradition and study by rabbinic legal scholars in late antique and medieval times, see Goldin, *supra* note 28, at 59-63.

39. BABYLONIAN TALMUD, *Sotah* 40a. For a similar story of competition between preferences for *halakhah* and *aggadah*, see BABYLONIAN TALMUD, *Baba Qamma* 60b.

40. SIFRE DEUTERONOMY 317, at 359 (Finkelstein ed., 1939).

midrashic commentary often serves up a medley of the two, reading law into biblical narrative and narrative into biblical law in order for the one to reinforce the other.

The pattern that we saw in second temple Jewish literature—of reconstituting biblical laws by extracting them from their biblical narrative contexts so as to topically gather and rearrange them—is carried very much further in the Mishnah (commonly attributed to R. Judah the Patriarch of the early third century), than in any of its antecedents. There, biblical and post-biblical laws are combined and organized according to topical, non-biblical rubrics: six orders, divided into sixty-three tractates, subdivided into 523 chapters, into which individual mishnaic rulings are arranged. But to conceive of this simply as an ideologically innocent editorial reordering would be a gross simplification, since the Mishnah fundamentally *transforms* received laws according to its own mishnaic language, oral syntax, and dialogical rhetoric.<sup>41</sup>

Although mishnaic law is generally presented independently of any biblical or rabbinic continuous narrative context, the Mishnah renarrativizes Torah law, written and oral, in at least four significant, but largely unacknowledged, ways. First, the Mishnah provides, at the beginning of tractate *Avot*, what might be regarded as its master narrative, in which a “chain of tradition” is traced from Sinai through exile and return to the early generations of rabbinic sages, the most recent links whereby Torah, written and oral, is received and transmitted, but also augmented. Thus, to the extent that the Mishnah extends the biblical narrative into its own historical present, it does so not as a succession of events, institutions, or personalities, but in terms of the transmission of revealed and received Torah teaching, through the successive generations of sages and their disciples. It is thereby making a powerful claim for its own legal authority.<sup>42</sup>

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41. As we saw with Josephus, the claim to be only rearranging, may itself be a conceit of false modesty. For discussion of Josephus, see *supra* note 20. Compare this to the metaphorical description of R. Akiba, generally thought to have given an earlier version of the Mishnah its topical structure:

To what might R. Akiba be likened? To a laborer who took his basket and went forth. When he found wheat, he put some in the basket; when he found barley, he put that in; spelt, he put that in; lentils, he put them in. Upon returning home he sorted out the wheat by itself, the barley by itself, the beans by themselves, the lentils by themselves. This is how Rabbi Akiba acted, and he arranged the whole Torah in rings.

THE FATHERS ACCORDING TO RABBI NATHAN, *supra* note 29, 18, at 90.

42. Note, in this regard, the extensions of biblical history down to the time of the author in Josephus' JEWISH ANTIQUITIES, Ben Sira's "Praise of the Ancestors" (44:1-50:24), the "Animal Apocalypse" (1 *Enoch* 85-90), and the opening of the DAMASCUS DOCUMENT (CD 1:1-2:1). Even if, as many scholars hold, Mishnah *Avot*, in its present form, is later than the other tractates of the Mishnah, its ideological function as part of the Mishnah as a whole remains the same. On the "chain of tradition" of Mishnah *Avot*, see most recently AMRAM D. TROPPER, WISDOM, POLITICS, AND HISTORIOGRAPHY: TRACTATE AVOT IN THE CONTEXT OF THE GRAECO-ROMAN NEAR EAST (2004); Amram D. Tropper, *The Fate of Jewish Historiography after the Bible: A New Interpretation*, 43 *HIS. & THEORY* 179 (2004).

Second, the Mishnah, while not framing its rules in a continuous narrative, includes many narrative anecdotes (*ma'asim*) to exemplify, but also to problematize, its rules. These stories are peopled mainly not by biblical characters, but by late second temple and early rabbinic figures and their contemporaries. Thus, to the extent that the Mishnah extracts biblical laws from biblical narrative time, it renarrativizes them in contemporaneous rabbinic time, thereby providing an implicit transmissional and authority-bearing bridge between the two, otherwise separate chronological contexts.

Third, Mishnaic rules are commonly formulated in dialogical rhetoric, whether between named or anonymous rabbinic opinions within the text, or whether, through rhetorical question and answer, between the text and its implied audience of rabbinic teachers and students. It thereby creates by its own dialogical rhetoric a dynamic of legal and narrative transaction, into which it draws its auditors in complicitous engagement as textual practitioners and players.

Fourth, the Mishnah commonly presents cultic, ritual, judicial, and penal procedures in dramatically narrativized form, being described more than prescribed. Though these legal practices are often performatively inoperable in the historical context of mishnaic times, through their narrativization they become perpetually present and accessible via the portals of mishnaic study.<sup>43</sup>

By these means (and others) the Mishnah constructs a nomian world of “words of Torah” which is both legal and narrative in mutually authorizing ways. Through its dialogically engaging textual practices, the Mishnah draws its auditors in to inhabit a nomo-narrative world which is continually under construction. Such “narrativity of law,” as Peter Brooks terms it, or, to modify Cover, “nomos as narrative,” has only recently received its analytical due with respect to the Mishnah.<sup>44</sup> While at first blush we might consider the Mishnah’s “codification” as representing the segregation of law from narrative, or *halakhah* from *aggadah*, a more fluid understanding of these terms would allow us to recognize in the Mishnah their dynamic re-integration, with significant paideic reverberations. Space does not permit a consideration of the ways in which the two talmuds, but especially the Babylonian, as well as the later midrashic compilations, further expand and deepen this renarrativizing of

43. For example, this aspect is prominent in such Mishnaic tractates as *Tamid*, *Ta'anit*, *Sanhedrin-Makkot*, but many others as well.

44. See Brooks, *supra* note 36. For recent studies of mishnaic law that have been attentive to its narrativity, see BETH A. BERKOWITZ, EXECUTION AND INVENTION: DEATH PENALTY DISCOURSE IN EARLY RABBINIC AND CHRISTIAN CULTURES (forthcoming 2005); Chaya T. Halberstam, Rabbinic Responsibility for Evil: Evidence and Uncertainty (2004) (unpublished Ph.D. dissertation, Yale University) (on file with author); Moshe Simon-Shoshan, Halachah Lema'aseh: Narrative and Legal Discourse in the Mishnah (2005) (unpublished Ph.D. dissertation, University of Pennsylvania) (on file with author).

*halakhah*, and vice versa.<sup>45</sup>

This telegraphic history of “nomos and narrative” in biblical and post-biblical antiquity could and should be continued through late antique, medieval, and modern times. Then we would see even more clearly that the dynamic process whereby law is extracted from one narrative setting only to be renarrativized in another is inextricably bound to the ongoing process of legal reception, interpretation, and transmission. Stated differently, while each stage of legal codification produces the next stage of legal commentary, it also necessitates the reframing of received laws in new (or renewed) narratives of historical, ideological, and teleological signification.

At the outset of his essay, Cover stated:

In this normative world, law and narrative are inseparably related. Every prescription is insistent in its demand to be located in discourse—to be supplied with history and destiny, beginning and end, explanation and purpose. And every narrative is insistent in its demand for its prescriptive point, its moral.<sup>46</sup>

I hope to have demonstrated that this interrelation is as old as the Torah and as persistent as its millennia of interpretation. But I hope also to have shown that to the extent that law and narrative are “inseparably related,” their interrelation is best viewed in the recurring attempts to extract law from narrative, which in turn has enabled its renarrativization. Stated differently, this dynamic interrelation is one in which law does not simply “demand” its supporting narrative of “history and destiny,” but becomes itself a narrative of possible worlds of ends and means; not simply *nomos and narrative*, but *nomos as narrative*. This ongoing dialectical process of law and narrative becoming, as it were, one another, is captured in the words of the great modern Hebrew poet Hayim Nahman Bialik, who wrote in 1916, in an essay titled *Halakhah ve-Aggadah*: “A living and healthy *halachah* is an *aggadah* that has been or that will be. And the reverse is true also. The two are one in their beginning and end.”<sup>47</sup> I do not mean to

45. On the interrelation of talmudic law and narrative, see JEFFREY L. RUBENSTEIN, *TALMUDIC STORIES: NARRATIVE ART, COMPOSITION, AND CULTURE* (1999); Barry Wimpheimer, “*But It Is Not So*”: *Toward a Poetics of Legal Narrative in the Talmud*, 24 *PROOFTEXTS* 51 (2004).

46. Cover, *supra* note 1, at 5.

47. Bialik’s essay was originally published in Hebrew in a journal called *Knesset* in 1917. It was translated into English by Sir Leon Simon and published in London in 1944 (by the Education Department of the Zionist Federation of Great Britain and Ireland). Simon’s translation has been reissued in HAIM NAHMAN BIALIK, *REVELMENT AND CONCEALMENT: FIVE ESSAYS* 47 (2000). A similarly mystical conception of the interconnection of *halakhah* and *aggadah* runs through the writings of another major modern Jewish/Zionist thinker, Rabbi Abraham Isaac Kook (1865-1935). See, e.g., Abraham Isaac Kook, *’Ihud hahalakhah veva’aggadah* [*The Unification of Halakha and Aggadah*], in 1 *OROT HAKODESH*, 25-27 (David Cohen ed., 1963); English translation in *THE LIGHTS OF PENITENCE, THE MORAL PRINCIPLES, LIGHTS OF HOLINESS, ESSAYS, LETTERS, AND POEMS* 196 (Ben Zion Bokser trans., 1978); ABRAHAM ISAAC KOOK ’IGGROT HARAYAH 1:123 (letter 103) (1961). For a fuller treatment, see Avinoam Rosenak, *Haphilosopiyah shel hahalakhah bemishnato shel harav ’avraham yitzhak hakkohen kuk* [Philosophy of Halakha in the Works of Rabbi A. I. H. Kook] 87-145,

suggest (nor did Bialik mean) that legal and narrative discourses are one and the same, or that the differences in their features and functions can be effaced, but rather, that in the complex vitality of their recurring intersection, they are engaged together in the building and inhabiting of shared worlds, both real and fictive, both present and anticipated.