

REFLECTIONS ON RELIGION & LAW

Law, the Sacred, & a Nosh

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“The sacred cannot be made; it must be encountered.”

My mentor, sociologist of religion Phil Hammond, used to say this to me (and his other students) all the time.¹ Now I share it with my own students, but they generally understand it differently from the way Phil meant it. They approach it from the viewpoint of the believer; of course the sacred cannot be made—as Joyce Kilmer put it (1913: 160), “... only God can make a tree.” But Phil meant it entirely differently, and it is his meaning that I seek to convey to my students: that the sacred *is* made by humans—in the sense that we posit the notion of the sacred into a thing, or a place, or an idea, or whatever, that before such investment was wholly profane, and as such continues to be so for those who do not believe it to be sacred. For something to be considered sacred by those who see it as such, however, they must believe that it *was not* made sacred by humans, but by some divine source.

Phil was fascinated by transitions from that which was not sacred into that which is. As his career progressed his interests with regard to the sacred moved from the “bricks and mortar” locations of religion, like congregations and religious institutions (Hammond 1966; Demerath & Hammond 1969; Hammond & Johnson 1970) to the role of ideas in religious identity formation (Hammond 1980), to the elevation of those ideas themselves to the level of the sacred, free of institutional mooring (Bellah & Hammond 1980; Hammond 1985; Hammond 1992a; Hammond 1992b), and finally to law and the courts as the arena in which the sacred—whatever it was—was expressed, contested, negotiated, and possibly resolved (Hammond 1998; Hammond et al. 2004). Phil noted in 1994 that he had been fascinated by the idea of what we might now call “the sacred in society” during his graduate school years in the 1950s, and that, by the time Robert Bellah’s article “Civil Religion in America” was published in 1967, he was already “on board” with the idea (Hammond et al. 1994; see also Bellah 1967).

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¹ Phil had a profound effect on my professional development, not only as a teacher and mentor but also as a friend. It is to his memory, and in honor of my fellow “Hammonders,” his graduate students at the University of California, Santa Barbara—Sara (Karesh) Coxe, David Machacek, Mark Shibley, and Jon Stone—that I exercise a bit of personal privilege and dedicate this essay.

As far as the intersection of American constitutional law and the sacred, I suspect that Phil was particularly motivated by something he read in Sanford Levinson's *Constitutional Faith* (1988), for which he wrote a review (1989; see also 1992c). Levinson's entire volume is well worth reading, and is as wonderfully rich in ideas for those who work at the intersection of religion and law as was Harold Berman's *The Interaction of Law and Religion* (1974) a generation or two earlier. As Phil concluded in his review, Levinson's work addressed "matters of profound importance" because it dealt with "civic issues that must be understood as having religious significance" (1989: 391). Phil took the liberty, however, to focus on an aspect of the work—found articulated in various places throughout—that for him was the most fertile. Reflecting that "the law and the sacred are intimately related" (379), Phil sought to understand the central question posed by Levinson early in his work; given the authority of the U.S. Constitution as an outline for our public (that is to say, civic) culture, must those who work with it—federal judges, constitutional lawyers, and law school professors—actually *believe* in it (Levinson 1988: 4-7)? This led Phil to ponder again the issue of "civil religion," rejecting it as a term (and respectfully taking issue with Levinson) because it seemed to ask about one's level of belief (as in "Do you believe in it?"). Instead, he suggested the concept of "legitimizing myths"—the foundational narratives that stand behind a civil religion, giving it cogence—because it was unconcerned with whether one believes it or not, but rather asks *how* one believes it.

Phil understood that the social entity in whose service myths function—be it a religion or a legal system—is a social construction, and (unlike Tinker Bell) exists whether or not an individual believes in it. The son and grandson of clergy, he knew that when someone asks you "Do you believe in the Bible?" he isn't asking if you believe that such a book—with pages, ink, binding, and cover—actually exists in the drawer of a hotel nightstand, but rather how you believe in the authority that he and his particular faith community know lives behind the Book that is represented therein. The real heart of the matter, then, is how one understands the myths that undergirded that entity, that socially constructed reality. The myths are that which individual members of a society encounter when they encounter that which precedes their own individual existence, but for which they can point to no founder, no obvious first cause. Phil related this to what he called the "radical lesson of sociology": as he put it, sociology—the study of human social organization—was motivated by the notion that "there are products of social life which no particular person, nor any particular set of persons, can be said to have produced" (Hammond 1989: 381). He used the example of language, which is clearly a human creation but for which we can point to "no particular person, nor any particular set of persons" as the creators. But as he noted early in his Levinson review, the reason that law and the sacred are so intimately related is because—at least in law-based societies—there must be something larger, something transcending the human, behind the "rule of law" to make such a social order not only authoritative, but livable, and maybe even admirable to its adherents. Peter Berger (1967) referred to this transcendent reality as the "sacred canopy" that provides societal stability in the face of incomprehensible threat. For Berger, that canopy was religion; for Phil, it was civil society.

Needless to say, I was schooled—without even realizing it—on the notion of legitimizing myths. I say "without even realizing it" because it was not until years later that I saw that my own dissertation—which I had considered to be an original idea at the time—was built upon a foundation of Phil's writing on legitimizing myths. Initially, I was drawn to what seemed to me to be a periodization of 1st Amendment religious liberty

litigation for specific groups, the most obvious (to me) being the ones experienced by members of the Church of Jesus Christ of Latter-Day Saints (roughly speaking, the 1870s through the 1910s) and the Jehovah's Witnesses (again, approximately the 1930s through the 1960s). In my research, I focused on these two groups, and as a kind of "control" I also investigated the encounter with the American constitutional order experienced by adherents to traditional Native American religions for whom, at the Supreme Court level, there seemed to be no corresponding period of litigation (Mazur 1999; see also Mazur 1997; Mazur 1996). I came to the conclusion that there were several important factors that determined the nature of contact with what I called the "American constitutional order"—which was not the Supreme Court, but was the institutional and mythic power structures of the federal government embodied and empowered by the Constitution, including but not limited to the Supreme Court. Factors influencing the nature of the contact (and thus, the appearance of "periodization") included the group's proximity to "typical" (that is to say, broadly defined, mainstream) Protestantism, (Jehovah's Witnesses = most; Mormonism = not quite as much, at first; traditional Native American religions = hardly any), the timing of the encounter with the Order (earlier = bad; later = better), and spatial/land claims inherent in the conflict (Jehovah's Witnesses = minimal; Mormons = higher, but of limited duration; traditional Native American religions = highest).

At the heart of all of this research was a working presumption on my part that one of the elements tying it all together was the ability of those groups that assimilated into the American constitutional order to come to see the order as transcending the mere political and becoming (for them, even if only subconsciously) an authority greater than their specific tradition-based religious conceptions of the Divine. By definition, the mere act of participating in constitutional litigation over an aspect of religion—particularly religious behavior—introduces the possibility of failure and, subsequently, the need to reconcile that failure with the dictates of the religious mandate that require now-illegal activity. Communities may resist after losing their battle in the highest court in the land, but the fact that most do not suggests that the transcending authority of the (constitutional) Order has come to supersede the (scriptural) Law, whether that is acknowledged by the communities or not. In other words, for Jehovah's Witnesses and Mormons (and others), the shift in their understanding of the legitimating myths of the American constitutional order was the catalyst for their re-alignment within the power dynamic of the dominant culture, and the concomitant end to their period of religious freedom litigation.

What I find most interesting now, however, is that I don't really use this approach when I teach the course on religion and American constitutional law. Or if I do, it is with a very light touch. My goal in the class is not to replicate a course that students might one day encounter in law school, or even (on the undergraduate level) in a political science department, where legal precedents related to the "Free Exercise" and "No Establishment" clauses drive the organization of the class. But I also can't make it too theoretical; it is, after all, an undergraduate-level course with no pre-requisites (religious studies, political science, or otherwise). We approach the material historically, which permits me to begin with the narrative that privileged the dominant culture (that is to say, Euro-American Protestants) as expressed in foundational documents, and then we move chronologically through decisions to illuminate the struggle between that narrative and the evolution of constitutional pluralism, and the various reactions to it. There is little explicit discussion of "civil religion," legitimating myths, or "constitutional order" here.

However, embarrassingly recently I realized that I was using Phil's notions of legitimating myths as the foundation for my introductory class on Judaism. For most people, I suppose, this might seem odd—conversations about Judaism and American civil religion don't often overlap (however, see Sarna 1990). Most introductory courses in Judaism are taught in seemingly discreet units: God, Torah, Land, Peoplehood, History. Early in my career I inherited such a course, called "Understanding Judaism" until I joked with my colleagues that *no one* fully understood Judaism. After a few years of using the traditional model, I decided that my predominantly non-Jewish student population needed a different approach. In part this was motivated by low enrollment numbers for a course honestly labeled "Introduction to Judaism," and in part because of the high enrollment numbers of film-illiterate students in the first course revision (labeled "Judaism Through Film"). I decided to abandon the traditional model and approach the topic through an understanding of *mitzvot* and *halakhah*, the commandments and Jewish law that are the foundation of traditional Judaism, but which have led Christians for centuries to see Judaism as a "religion of laws," and Jews as "legalistic."

I knew the risks. I grew up being told regularly that Judaism was a religion of laws, while Christianity was a religion of love—a comparison hardly ambiguous in its privileging. Regardless of the rhetorical imbalance, it was also a gibe that rang hollow to me, not only because of the nature of the "love" that was shown to Jews by non-Jews across Europe for more than one thousand years, but also because of the way in which that "love" was empowered through laws that created institutions meant to marginalize, ghettoize, or brutalize local Jewish communities. It also contradicted my own personal experience: as a child I was struck by how many laws were rooted in Christianity, from the "blue laws" (still enforced in the Virginia of my youth) that restricted what could be sold on Sundays (whether or not the merchant or customer was Christian) to the civic ritual calendar that privileged Sundays and Christmas over Saturdays and Yom Kippur.

Realizing that my twin challenges for the course were the introduction of an unfamiliar religious tradition coupled with a need to correct a latent anti-Semitic bias regarding "Jewish legalism," I organized the course around food, food-ways, and the role of foods (and fasting) in Jewish ritual and ethno-historical identity. "Everyone eats," I regularly remind the students at the opening of the semester, and almost everyone on the planet has some religious notion about what, when, and how to eat; "food rules," as I call them.² I make comparisons with other religious, cultural, demographic, and ethnic groups and subgroups wherever possible. But I also try to instill in the students a lesson that is often lost to those who view a religious tradition from the outside: most people who follow rules do so either by habit or by devotion to that which they believe is behind the rules, and not because they believe the rules *in and of themselves* are worthy of devotion.

I was reminded of the need for this lesson recently when I heard someone state (quite confidently) that so many American Catholics were leaving the Church—more than any other religious identity in the United States, the speaker claimed—and becoming

² Professor Rodger Kamenetz, author, poet, and retired Distinguished Professor and Sternberg Honors Chair Professor in English and religious studies at Louisiana State University, once reminded me that Judaism isn't odd for having food rules; Protestantism is odd for not having them. (Special thanks to Claudia Isler, who let me sit in on her interview of Kamentez that led to this insight; for the published interview, see Isler 2011).

atheists because of the Church's "atmosphere of legalism." I was a bit shocked by this rather bold assertion; having spent a career studying the history and sociology of American religion, I was nowhere near as confident of the demise of American Catholicism as was the overheard speaker. I also was a bit surprised because I had not encountered such accusations leveled against Catholicism in the world outside of textbook accounts of the Reformation. But most of all, having spent a career studying issues at the intersection of religion and law, I was surprised by the ease with which the speaker connected "legalism" to "atheism."

We can dispatch quickly with the variety of assumptions made by the speaker. Is Catholicism losing adherents at a rate greater than any other American religious community? Maybe, but maybe not—the Roman Catholic Church in the U.S. is growing from immigration, and its numbers worldwide remain stable (see "America's Changing Religious Landscape" 2015; Lipka 2015; Lipka 2014; "The Global Catholic Population" 2013; "'Nones' on the Rise" 2012; Kosmin et al. 2009). Is Catholicism sending former members fleeing into "atheism"? Again, maybe, but maybe not; if it is the case, it is the case at a rate no greater than that which is being experienced by other religious traditions, all of whom are shedding adherents in numbers directly related to the decreasing age of the cohort measured (see Hopfensperger 2018; "America's Changing Religious Landscape" 2015; Kosmin et al. 2009). And do folks even agree on what "atheism" means? Well, no, they don't; sometimes it means non-theism (see Smart 1996), sometimes it means anti-Theism (see Hitchens 2007, Dawkins 2006, or Harris 2005), and sometimes it means "spiritual but not religious" (see Roof 1993) or "Nones" (as in "None of the above" or "I have no religious preference; my preference is none" (see Vernon 1968).

But even if we were to grant the speaker any of these points, we could not overlook a recent survey of former Catholics between the ages of 15 and 25 (the so-called "Young Millennials") which reported that—while nearly half of those who left the Church did so because they were searching for another affiliation to better express their sense of the spiritual, and more than a third who did so indicated that they still believed in God but were no longer interested in maintaining any institutional affiliation—only one in five of those who left the Church did so because they did not believe in God (Bourbon 2018; Hopfensperger 2018), and none identified "legalism" as their reason for the leaving the Church. Not one.

Kent Yinger acknowledges that, despite what he calls its "widespread use," legalism is not a term whose definition has received "a great deal of attention." It is a label "[n]o one wants," one that is "resoundingly negative," and one that is "used in polemics solely of others, never of oneself"—in other words, a term used as an accusation, to convey "a strong social opprobrium" (2008:91, 96). He traces its theological roots to the Reformation and early Protestants who used it to condemn Catholicism (like my overheard speaker) for its alleged empty adherence to (Canon) law absent sincere faith. But, as these things go, it is a label that has not been limited just to the Church. Observes Yinger:

Puritans have been viewed as legalistic by non-Puritans due to the former's stringent Sabbath rules. Protestant Fundamentalists appear to make adherence to strict rules of doctrine and behavior a saving necessity (e.g., no dancing, smoking, or card-playing) and thus receive this epithet from non-Fundamentalists. Liberal Protestants appeared legalistic to some Lutherans since the former seemed to require certain social or political behavior of those

who would be genuine followers of Christ. Even the call to repent and believe might be termed "legalistic" by some who advocate *sola gratia* and *sola fide*, since it makes not only faith in Jesus Christ but also repentance a requirement for salvation. (2008:96-97)

Yinger suggests that, within a religious context, the concept of legalism might best be used as a value-neutral term, applied soteriologically, to describe how a religious tradition understands the path to salvation. In this sense, it would be "the belief that salvation is obtained by human obedience" (2008:101). Many Protestants—who may prohibit dancing, the use of cosmetics, the wearing of immodest clothing, engaging in same-sex sexual relations, or having an abortion—are, by maintaining these prohibitions, obeying their own conception of Divine rules of "human obedience." Some may parse the foundation of these laws—moral versus ritualistic—but if those who adhere to them see their origin as Divine, these rules are no less divine (to those adherents) than the prohibition against eating shrimp is to the observant Jew (see Deuteronomy 14:3-21), or the prohibition against eating pork is to the observant Muslim (see Al-Baqarah 2:173). The decision of the early Church to reject Gnosticism meant that there would always be a place in Christianity for the Hebrew scripture—albeit reorganized a bit, and interpreted differently—and its "rules." It would seem, then, that many who view other religious traditions as an empty scaffolding of mere legalism—who see its practices as manifestations of a world-view in which the Divine has been entirely replaced by blind rule-following that has itself become the object of devotion—rarely check the soteriological mirror. What the different forms of Christianity have chosen to do with the rules they have inherited is their way of expressing (as Phil would put it) "how they believe" the rules in their relationship with the Divine, and not "whether they believe" in the relationship. Put another way, it is a difference in the understanding of the legitimating myths of Christianity—many of which are shared with Judaism.

A personal experience while auditing a class at a local Christian law school further illuminated the issue for me. One day, the discussion turned to the relationship between various categories of law—divine, revealed, natural, human—and the question came up of whether there was a proper and just human law that was not in some way also reflected in revealed law. One student suggested cannibalism, and the other students in the class agreed that, to their knowledge, there was no actual prohibition of such a horrific practice recorded in revealed law. Sensitive to the fact that I was the only non-Christian in the class, I raised my hand and noted that the Torah was quite clear: "humans aren't kosher." The students were aghast; I suppose some of them feared that, if non-Jews had split hooves and ruminated (see Leviticus 11:3), Jews would be busy cooking them up in *timmis* with *schmaltz*. I didn't have the heart to point out to them that these prohibitions meant that only tradition-observing Jews can't be cannibals; Christians, forsaking *kashrut* as they have (see Matthew 15:11; John 6:53-57), might very well be. Alas, my response was dismissed, as I should have predicted, as reflecting that element of the "Mosaic law" that was not considered binding in Christianity.

Regardless of the humor I now derive remembering the spectacle of a classroom full of young law students worrying that such a slight evolutionary deviation was keeping them from being the main course on my dinner table, I still feel that it is an important point. Most Jews would locate the prohibition of cannibalism not in the verses describing what is kosher and what is *treyf* (that is, not kosher), but on *pikuakh nefesh* (literally, "saving a life";

better understood as the sanctification of life). This notion is not explicitly stated in the Torah, but has been derived by rabbis over the centuries from clues in the text.³ Twelfth century Talmud scholar Rabbi Moses ben Maimon (often identified by the acronym “Rambam,” but best known as Maimonides) argued that the foundation for the justification could be found in Leviticus 18:5 (“You shall keep My laws and My rules, by the pursuit of which man shall live: I am the Lord”), and applied only to Jews (that is, those who kept “My laws and My rules”) who might be required to violate Shabbat-related *mitzvot* in order to save a life. Thirteenth-century Talmud scholar Rabbi Moses ben Nahman (often identified by the acronym “Ramban,” but best known as Nahmanides) also located the justification to violate most of the Shabbat-related *mitzvot* in Leviticus, and understood the justification to apply to non-Jews (“the stranger”) as well (see Lopatin 2019).⁴ It is considered by the rabbis to be such a powerful force that it is accepted as justification for violating almost all of the *mitzvot*.⁵

Almost all. There are situations in which it would be inappropriate to violate the

³ By the time of the second destruction of the Holy Temple in Jerusalem (70 CE), a class of textual interpreters had emerged (known as the Pharisees) whose argument that Moses received two versions of the Torah on Mt. Sinai has served as the foundation of Rabbinic Judaism for the past two millennia. The first, the *Torah she b'khtav* (trans.: “Torah in writing,” better known as the Written Torah, or simply Torah), is the *Chumash* (trans.: “Five Books [of Moses],” better known in the Christian world as the Books of Genesis, Exodus, Leviticus, Numbers, and Deuteronomy), which is physically expressed in scroll form (and, in the more modern period, bound in traditional book format); the second is the *Torah she b'al peh* (literally, “Torah from in the mouth,” better known as the Oral Torah), the vast project of interpretation of Torah whose meaning would be obvious to the Divine but which is slowly understood by the limited mind of humans, and has been recorded in such works as the Mishnah (lit.: “from second” or “secondary”; it is the organization of the *mitzvot* from the Written Torah, compiled in the late second / early third century, CE) and Talmud (lit.: “study”; multivolume corpus combining the Mishnah with commentaries and discussions, completed in two different versions, the “Jerusalem” Talmud [compiled in what today would be northern Israel in the late fourth / early fifth century, CE], and the “Babylonian” Talmud [compiled in what today is Iraq in the late fifth / early sixth century, CE]). Because of historical and sociological changes within the Jewish world, while the project of interpretation—that is, the effort to understand the depth of the Divine revelation at Mt. Sinai—continues, the authority of works subsequent to the Talmud (and a very few medieval rabbis) has diminished and fractured into different parts of the Jewish world.

⁴ Several times in Leviticus the text refers to the “stranger” living within a Jewish community (Lev. 19:33, 34); according to the interpretation, the stranger cannot live if permitted to die.

⁵ Other situations in which it is acceptable to violate *mitzvot* include eating or taking medications during a commanded fast (such as on Yom Kippur) if doing so is required for health maintenance (for example, to regulate blood sugar for diabetes) or if you are pregnant or nursing. If you are starving, you are permitted to violate the *mitzvot* regarding *kashrut* (even if it means eating *treif*).

mitzvot, even in cases that would result in death. The rabbis argue it is preferable to choose to die than to consent to commit adultery or idolatry. They also argue that it is better to choose death than to consent to violating any of the *mitzvot* if such an act of violating the *mitzvot* is compelled for the purpose of a public display of Jewish weakness of faith. These situations that privilege death fall under the category of acts known as *kiddush ha'Shem* ("sanctification of the Name [of God]"), similar to acts of martyrdom in other religious traditions. As such, they are concerned with choosing one's own death to avoid violating one of the *mitzvot*.

But the debate over cannibalism is not about killing oneself (or letting oneself be killed); it is (usually) about eating another person, presumably after killing that person. It might also include the possibility of volunteering to die so that others might be nourished, but that possibility was anticipated by Rabbi Akiva, who argued in the second century that it is better to save your own life than to trade your life for someone else's (prefiguring by centuries the advice given aboard commercial airliners to "secure your own oxygen mask before attempting to assist others"). It seems reasonable to presume that Rabbi Akiva would frown upon volunteering to die to feed others.

One might argue that the act of killing someone else is prohibited by the Ten Commandments, making cannibalism impossible, but Jews and Christians disagree (with each other and amongst themselves) about whether the Ten Commandments prohibit killing, or just murder (Exodus 20:13).⁶ There are passages in the Torah and the Tanakh in which killing is described not only as necessary but, at times, proper (on self-defense, see Exodus 22:1; on capital punishment, see Leviticus 20:9-16; and on warfare, see I Kings 2:5-6). Yet even though the Torah describes with great clarity what crimes are deserving of capital punishment, based on the notion of *pikuah nefesh* the rules for its use were so limited by the rabbis that it is doubtful it was ever applied during the years of Jewish self-governance before the Roman conquest (see Mishnah Makkot 1:10).⁷

One can find discussions of cannibalism in the Tanakh (see Leviticus 26:29; Deuteronomy 28:53-57; Jeremiah 19:9; Ezekiel 5:10; and Lamentations 4:10), but in each of these cases, the context makes clear that such behavior is a warning (or a vision) of punishment for disobeying God's *mitzvot*. In one reference (II Kings 6:28-29) the practice is tolerated—during the siege of Samaria. In such a situation—or likewise, one in which observant Jews were stranded at sea or on a frozen mountaintop—one could argue that, in order to survive, members of the group would be justified eating one who was already dead (despite the prohibition implied in verses like Leviticus 17:15-16). But one cannot justify killing someone to be consumed. With the justification being the sanctification of

⁶ The passages often referred to as the Ten Commandments (Exodus 20: 2-14) nowhere contain the word *mitzvot* in the original Hebrew, but instead use the word *d'varim* (literally: "words"; see Exodus 20:1). Traditional Jews understood there to be 613 *mitzvot* articulated in the Torah; those identified as the Ten Commandments are considered to be more akin to statements of foundational pious behavior.

⁷ The modern State of Israel has used capital punishment only twice since it was founded: in 1948, shortly after it won its independence, after Meir Tobianski was court-martialed for treason, and in 1962, after former Nazi bureaucrat Adolf Eichmann was convicted of war crimes. Tobianski was later exonerated, exhumed, and accorded a full military burial (Lim 2016: 315).

human life (for example, see Genesis 4:9-15), Jewish texts clearly identify the practice as aberrant and abhorrent (compare John 6:53-56).

The point is that, as Phil was arguing with his discussion of “legitimizing myths,” accusations of mere and slavish adherence to law explains almost nothing. In Judaism, the “black letter” law may seem clear, but the interpretation of the meaning behind the law is often more authoritative.⁸ It is not a matter of whether a law exists; if one identifies as a Jew (or a Catholic, or a Muslim, or really, as a member of any social grouping based on a shared mythos), it is a matter of how one understands that law. Some Jews see the *mitzvot* (and *halakhah* generally) as evidence of the binding commitment Jews made to God; others don’t. Those who do not, but who still identify as Jews, would still say that there is something beyond the *mitzvot*—something that is the spirit behind the *halakhah*—that does exist (even if they don’t believe it is the Divine Presence). And some of those who do see the *mitzvot* as evidence of the binding commitment Jews made to God may not always think about why they are doing something, or not doing something. But in moments of deeper reflection, nonetheless they would be likely to be dissatisfied simply explaining it as “because that’s the rule.” They might say “The Law commands it,” but of course that, to them, is not nearly the same thing; it isn’t a law that demands it, it is the authority *behind* the Law that commands it. Reflects David Novak (2000:278), “Many Christians have assumed that Jews believe that the successful keeping of the commandments of the Torah automatically leads to salvation, to full reconciliation with God in the world-to-come,” leading them to equate Judaism with law, and thus to “legalism.” But for those within the tradition, “the central Jewish concern with keeping the *mitzvot*, including the very legally oriented tradition (*halakhah*) that so carefully structures that practice, is not legalism but, rather, a genuinely theological enterprise from beginning to end” (2000:279). One does not avoid *treif* because that’s the rule; one avoids it because God said so; if you believe that God is God, it is reasonable to believe that you would not only do what is expected by the Divine Presence, but that you would do it also out of respect for the vow your ancestors made (twice: see Exodus 24:3 and 24:7) to God.⁹

Thus the critic can’t have it both ways. If Jews are “legalists” they cannot be imagined to deviate from their own Law—which (with regard to cannibalism) not only prohibits murder, and the eating of that which is already dead, and the eating of animals that neither ruminate nor have split hooves, but also prohibits the use of blood in food (see Leviticus

⁸ The Karaites, a form of Judaism that arose in ninth century Iraq, Israel, and Egypt, renounced the Oral Torah, the process of interpretation, and “Rabbanite” (that is, Rabbinic) Judaism. Not surprisingly, the rabbis condemned them as heretics (see Polliack 2006). The Talmud contains a story of Moses going with God to hear Rabbi Akiva expound on Torah, and while disheartened when he hears things he did not understand about the text he had brought down from Mt. Sinai, he is relieved to learn that the second century rabbi is still grounding his teaching on what was revealed to Moses (Menachot 29b).

⁹ The Jewish notion of the *mitzvot* is that they are built upon doing, not just believing; when Moses read the newly revealed Law at the base of Mt. Sinai, the Hebrew people responded “All the things that the LORD has commanded we will do!” (Exodus 24:3), and “All that the LORD has spoken we will faithfully do!” (Exodus 24:7). Text translations here and elsewhere taken from the online resource *Sefaria: A Living Library of Jewish Texts* (<<https://www.sefaria.org/?home>>).

17:10-14)—regardless of the situation. Historically, this has been the conundrum of those accusing Jews of the “blood libel”—the accusation leveled against Jews for the murder of a non-Jew (usually a child) to use his blood in rites and ritual foods (like *matzah*). Without getting into what David Fraser (2016) implies is an honoring of the accusation by disputing it on its merits, it is worth highlighting our point here: either Jews are legalists and cannot—by dint of their own law—eat a human, or they are not legalists, and justify their refusal to consent to ritual sacrifice on Talmudic interpretation, placing the sanctification of human life above the *mitzvot*. It is, in the end, a largely Christian view of Judaism that ignores the Jewish tradition of treating scriptural revelation from the Divine as being as limitless as the Divine, and therefore in constant need of exploration and examination; it is a Protestant view of Judaism that sees it as tied to the written word and ignores the role of the meaning behind (or, according to Jewish mysticism, between) the words.¹⁰

In a sense, all of this comes together in Jewish food rules. By introducing my students to the beliefs behind the Law—and also a bit of *matzah*—I am teaching my students a wide variety of lessons all at once while using the scaffolding of the food rules and food practices to access a great many disciplinary options. In my class, we have explored Jewish anthropology by taking class trips to synagogue (for Shabbat services with *kiddush* lunch), a local supermarket (in search of kosher foods), and a local kosher-style deli (for a “traditional” American Jewish dining experience); Jewish ethnicity through the regular class presentation of Ashkenazi, Sephardi, and Mizrahi foods; Jewish folklore through discussions of family practices, traditional (and modern) gender roles, and the *latke/hamantashn* debate (see Eaton 2014; Cernea 2006); and (of course) Jewish liturgy and history by experiencing the foods (liturgical and traditional) connected to the annual and life cycles—culminating in a Pesah seder.¹¹

But in the end, it is my hope that the students will come to see that one of the better known but lesser understood aspects of Judaism—*kashrut*—is not just a crazy diet of unexplained rules about what to eat or not eat. At the heart of all of this is what may be the most important element in teaching Judaism to a class made up almost entirely of non-Jews at a Wesleyan University—on a campus that is only seven miles from Pat Robertson’s Regent University and only two hundred ten miles from Jerry Falwell’s Liberty University: that traditional Judaism (and its approach to food, as well as almost every other aspect of life represented in the *mitzvot*) is guided not by a blind adherence to a law or set of laws, but to the Law, and that which—to use the phrasing of my former professor and mentor Phil Hammond—makes those laws (and the myths behind them) legitimate. Like adherents of the other monotheistic traditions, Jews understand these myths one way or another, but it is that which is behind the myths—and the Law—that makes them Jews.

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¹⁰ This approach to biblical text explains why the ritual of reading just a few lines from the Bible—without commentary—in the public school, ruled unconstitutional by the Supreme Court in *Abington School District v. Schempp* (374 U.S. 203, 1963), was fundamentally Protestant in practice.

¹¹ Funds for class-related foods and meals have been graciously provided by the Center for Innovative Teaching & Engaged Learning (INTEL), Virginia Wesleyan University.

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