

“Judaism without Ordinary Law: Toward a Broader View of Sanctification”

In the second chapter of *Judaism as a Civilization*, Rabbi Mordecai M. Kaplan makes a remarkable assertion: “[T]he elimination of the civil code from Jewish life has, in fact, administered as severe a blow to Judaism as the destruction of the Jewish commonwealth.”¹ The political emancipation of the Jew, beginning in France in 1791 and then spreading elsewhere, both gave and took. With the granting of full civil rights to Jews came the loss of much of Jewish law as a functioning legal system, for the secular legal system replaced the Jewish legal system for most ordinary disputes. Functionally speaking, the basic law-in-practice as known by most Diaspora Jews, including American Jews, became the secular law. If a neighbor damages your property, or if a business partner breaches a contract, you must sue them in the civil court to recover. Whether the neighbor or the business partner are fellow Jews is essentially irrelevant. The operative law and legal system that will address the dispute is the secular one. As a by-product of political emancipation, Jewish law-in-function was essentially relegated to the ritual realm. This applied not simply to progressive or liberal branches of Judaism but to traditional ones too. As Kaplan wrote, “[T]he most important elements of Jewish law are as obsolete in Neo-Orthodoxy as they are in Reformism. We learn that Neo-Orthodoxy accepts with equanimity the elimination of the whole civil code of Jewish law, and is

¹ Mordecai M. Kaplan, *Judaism as a Civilization: Toward a Reconstruction of American-Jewish Life* (Philadelphia: Jewish Publication Society, 1934, 1994), p. 17 (*emphasis original*).

content to confine the scope of Jewish law to ritual observance.”² Kaplan’s insight has certainly proved prescient. Many of the subjects most contested between various branches of contemporary American Judaism (e.g., patrilineal descent, gay marriage, conflicting approaches to kashrut) concern matters of *ritual* law. No great internecine battles are being waged over criminal penalties, tort damages, and so forth.

Upon first reading Kaplan’s statements, I reacted strongly. While I suspected some hyperbole (could the replacement of much operative Jewish law with civil law really compare to the destruction of the Jewish commonwealth?), Kaplan’s words struck a deep chord. Before entering rabbinical school, I worked first as a lawyer and then for many years as a law professor, and I know how different the functioning of “real” law can feel from that of ritual law. Let me give two examples. My wife and I have had numerous discussions about kashrut, addressing “legal” questions such as what level of hecksher to require of foods, what to say to dinner guests who wish to bring a dish to our home, and so on. By contrast, I recall when serving as a law clerk to an appellate judge discussing with that judge whether a defendant’s conviction should be overturned for evidentiary error, a decision that would determine whether that person would spend the next decade in prison. My wife and I consider our kashrut decisions carefully. We attempt to articulate general principles underlying our decisions rather than deciding cases *ad hoc*. Yet no matter how seriously we take them, the gravity of our kashrut decisions is simply of a different order of magnitude than a decision controlling whether a human being will remain incarcerated for much of his life.

²*Judaism as Civilization*. p. 157 (*emphasis original*).

As I pondered Kaplan's words, numerous questions went through my mind. Here, I shall address single one: how has the restriction of operative Jewish law to the ritual realm influenced our understanding of sanctification? In response, I suggest that restricting operative Jewish law to the ritual realm may have brought with it a narrowing of how we understand sanctification, a narrowing that we should attempt to undo. To see this, it is help to begin by identifying two different, though not unrelated, visions of sanctification (kedushah).

The first vision is sanctification as *separation from the ordinary*, that is, as *kodesh* versus *hol*. In the words of the Orthodox Union, "The basic meaning [of kedushah] is separation from the 'general' and dedication to the particular."³ This is the sense of holiness we usually have in mind when we think of Shabbat (as different from ordinary days), of kashrut (as dividing the kosher from the treif), and even of marriage (as removing that couple from sexual relations with all others through kedushin). Separation lies at the core of such fundamental Jewish ritual building blocks. The second vision is sanctification as *elevating or improving*. When we announce in the Kedushah, "Holy, Holy, Holy is the Lord of Hosts, the whole world is full of God's Glory," it is not that we are seeing God as separate from our world. Rather we are seeing God as permeating and elevating our world. Sanctification, in other words, can be viewed as a direction.

Often the first vision of sanctification as separation and the second vision of sanctification as elevation exist simultaneously. Shabbat is a holy day not merely because it is a separate day, but because that separation is in the direction of elevation toward greater joy, fulfillment and rest. Even the solemn Yom Kippur – the holiest of

³ See <http://www.ou.org/about/judaism/jl.htm>.

days – is ultimately oriented toward elevation through teshuvah. However, this second vision of sanctification need not be tied to that of separation. It is possible to improve or elevate something without separating from it.

As mentioned, in the ritual realm Jewish law centrally concerns itself with promoting sanctification through the process of separation. Jewish ritual law seeks to construct a binarized world dividing the holy from the ordinary. Moreover, the fact that Jewish *law* provides the parameters of such ritualized activity helps to authenticate the religiosity of such activity. Part of what helps the ordinary Jew to feel holiness through such rituals such as lighting candles to begin Shabbat or smelling spices to end it is that Jewish law provides for these rituals.

By contrast, in the non-ritual realm separation is not the hallmark of sanctification. Though analysis and classification are of course important to non-ritual Jewish law, separation *per se* is not especially so. If one's ox gores a neighbor's ox, the central legal issue is not whether an ox is or is not a kosher animal. Rather, as with most types of ordinary law, the central legal question is what remedy should ensue. Ordinary Jewish law does not pursue the construction of binary categories. Yet this does not mean that there is no sanctification to be found. Quite the reverse. For people in the midst of conflict, often great sanctity is experienced when that conflict is resolved, whether by mutual agreement or by a legal award. The critical point is that such sanctification – as with much of the sanctification in our world – is to be found not by separating off from ordinary life, but *by going through it*. Indeed, were a comparison to be made, I suspect that such *sanctification through* ordinary life “exceeds” *sanctification versus* ordinary life

in importance. What we do on the six days of the week ultimately has more to say about whether we lead a sanctified life than what we do on Shabbat.

We can now see a root problem that may have arisen with the restriction of operative Jewish law to the ritual realm. Both because the basic forms of sanctification are different, and because the imprimatur of Jewish legal authority no longer attaches to the ordinary realm, many Jews no longer recognize ordinary life as sacred, or at least sanctifiable, activity. For many Jews, the non-ritual realm has lost much of its religious significance.

Perhaps an example will help convey this. A number of years ago I was speaking with a friend, a mother whose daughter was six. For several years her daughter had attended our community's Jewish pre-school, but had switched that year to public school. After several weeks in public school, the daughter asked her mother (I paraphrase), "What does it mean to be Jewish in public school? Does being Jewish in public school mean keeping kosher and keeping Shabbat?" The girl's questions focused on ritual Jewish life. In one sense, no doubt she was right: kashrut and Shabbat are critical *distinctive* aspects of being Jewish in the multicultural world of public school. Yet what about a subject such as how one treats others? Is not that central to being Jewish as well? Was not "Thou shalt not steal" (a commandment quite relevant to children) among the Ten Commandments along with keeping Shabbat? My point is that the girl's questions may reflect a view of Judaism as restricted to ritual Judaism. If so, what a loss this is. If we cannot see the sacred in ordinary life, much of our vision of the sacred has been lost.

Let me close with three observations.

First, acclaiming the value of the sacred in ordinary life – the sacred-through – is not to denigrate the importance of the ritual sacred. Sanctification through separation – the sacred-versus – is often sadly neglected. The pursuit of the sacred-through should not come at the expense of the sacred-versus. Indeed, ideally the two are complementary. Experiencing the sanctity of Shabbat can help us pursue sanctity in the other days of the week, and vice versa.

Second, much of the ritual sacred concerns either emotionally-powerful life-cycle events, such as birth, bar/bat mitzvah, marriage, divorce, and death, or emotionally-powerful Jewish calendar events, such as holidays and Shabbat. Further, many but not all of these events are uplifting experiences. By contrast, the sacred-through is often *much more mundane*. It concerns the challenges of ordinary life. Life can be unpleasant. Life can be boring. The sacred-through focuses not upon the liminal *but upon the typical*. Yet that is precisely why it is so important. It is easy to sense holiness at the moment of a child’s birth. It is harder when changing diapers. However, for every one birth there are thousands of diapers to change. That is why finding holiness in the ordinary is essential.

Third, and finally, broadening our vision of the sanctification may help Jews who live in a largely secular world have a greater sense of religiosity, and perhaps even integration, in their lives. In one of his final orations, Moses declares to the children of Israel, “This Instruction (*mitzvah*) which I enjoin upon you this day is not hidden from you, nor is it far off. It is not in the heavens (*lo bashamayim hi*), that you should say, ‘Who shall go up for us to heaven, and bring it to us, that we may hear it, and do it?’”⁴ There are many lessons to be found in these lines. The rabbis, of course, used it as a

⁴ Deut. 30: 11-12.

proof-text for their power to interpret and determine Jewish law, for the Torah was “not in the heavens” but here on earth.⁵ Perhaps the simplest reading is that of rebuttal: were Jews to assert that they could not follow the Jewish law because they could not obtain or understand it, such a claim would be false. Let me suggest a third reading, namely, that a life of Torah (and here I mean Torah in the broadest sense) can be *all-enveloping* – it is not “hidden” or “far off”, but can guide and infuse life throughout, from birth to death, from things large to small.

In conclusion, with the functional constriction of Jewish law to the ritual, it is easy to relegate Torah, and with it our sense of sanctification, to the ritual. Such is a great loss. Recognizing sanctification as not only separation but also as elevation may help us see the possibility of pursuing sanctification throughout our lives. The legal constriction produced by history should not become a spiritual one as well. Sanctification is an ideal we can pursue – an ideal we as Jews are obligated to pursue – not only by separating from ordinary life, but by going through it.

⁵ Babylonian Talmud, *Bava Metzi* 59b.