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The Case of the Disappearing Ritual: Theology, History, and Halakhah*

LISA J. GRUSHCOW

Years ago, when I interviewed for the rabbinical school at JTS, Rabbi Gillman asked me about my essay on theology and practice. “I see a lot about practice here,” he commented, astutely. “Could you tell me more about your theology?” Although my own path took me away from JTS, Rabbi Gillman’s question stayed with me. This article, while not a precise response, is an attempt to explore the intersection of theology, history, and halakhah. I offer it in tribute to a great thinker and a great *mensch*, whom I am privileged to call teacher and friend.

In his article, “A New Aggadah for the Conservative Movement,” Rabbi Gillman suggests a new approach to the Conservative movement’s self-understanding regarding halakhah and aggadah. Posing the problem, he writes: “When the culture changes, halakhah changes in response. . . . My sense is that this is an accurate description of how our movement makes its halakhic decisions. But it raises significant questions regarding the authority for halakhah as we understand it.”¹ Gillman goes on to ask why halakhah is indispensable to Conservative Judaism’s self-understanding, and what the theological basis for its authority may be.²

* *Much of the research on which this article relies is discussed from a different vantage point in my book, Writing the Wayward Wife: Rabbinic Interpretations of Sotah (Brill: Leiden, 2006).*

The current article addresses halakhic change, focusing on the question of how change itself is approached. In keeping with Gillman's emphasis on tension, I will discuss the tension inherent within the rabbinic system, and its modern liberal heirs, regarding change. As a case study, I use the disappearance of the *sotah* ritual, the ritual for the wife who is suspected of adultery. Finally, I will argue that exploring not just particular changes, but the very *paradigms* of change, leads to important implications for modern Jewish life.

The *sotah* ritual is described in Numbers 5:11–31, and later discussed in its own tractate of the Mishnah, Tosefta, and Talmuds, as well as in Midrash Aggadah.³ The basic outline of the biblical ritual is as follows: a man suspects his wife of adultery, but has no witnesses against her. He brings her to the priest, along with an offering. The priest puts the offering in the woman's hands, uncovers her head, and makes her swear that she will be cleared if she is innocent, but that if she is guilty, her thigh will fall and her belly will swell. The priest then dissolves the words of this imprecation in holy water, combined with dust from the Tabernacle floor. The woman drinks the solution and, if she is guilty, suffers the consequences described, but if she is innocent, is cleared and conceives.

Rabbinic literature elaborates upon the ritual in many ways. Elsewhere, I have argued that there are two major themes which shape the rabbinic interpretations of the *sotah* ritual: the development of legal procedures and the condemnation of adultery. These approaches sometimes are in tension with each other. Whereas the legal procedures added by the rabbis, such as the requirement for warnings and witnesses, delimit the ordeal, the moral condemnation of adultery leads to increased humiliation of the woman undergoing the ordeal.⁴

Despite these tensions, the rabbinic writings on *sotah* all agree that the ritual came to an end.⁵ Although the ritual was connected to the Temple, it did not depend upon it. Moreover, its disappearance is not attributed to the destruction. Rather, the Mishnaic explanation of the ritual's disappearance in Sotah 9:9 reads as follows:

When murderers increased in number, [the ritual of] breaking the heifer's neck was nullified. When Eleazar ben Dinai came—and he was [also] called ben Perishah—they began to call him

Son of the Murderer. When adulterers increased in number, [the ritual of] the bitter water stopped; and R. Yohanan ben Zakkai stopped it, as it is said, *I will not punish your daughters when they commit harlotry nor your daughters-in-law when they commit adultery; for they themselves [turn aside to harlots, and sacrifice with prostitutes, and the nation which has no sense must stumble]* . . . (Hos. 4:14).

What is clear from this passage is that the ritual of *sotah*—like the ritual of the *eglah arufah*, the heifer whose neck is to be broken in a case of unsolved homicide—has disappeared from practice. The change is attributed to Yoḥanan ben Zakkai, though in the toseftan parallel (Tosefta Sotah 14:1–2), Yoḥanan ben Zakkai is simply cited as the one who teaches that the ritual was stopped, rather than the originator of the change. The key question here, however, is how the change is explained.

On its own, the proof-text from Hosea might suggest that the fundamental issue is equality: men are committing acts of sexual immorality, so women's sexual immorality will not be punished. In context, however, a broader pattern becomes clear. The central issue is not equality, but decline—from the perspective of the Mishnah, the implication seems to be that if the men were behaving better, the women would be appropriately punished. What stands in the way of the ritual being observed is the perception that wrongdoing is widespread.

The description of the ritual's disappearance is the first of a series of statements about decline. In the Mishnah, Sotah 9:9 leads into the rest of that tractate's final chapter.⁶ Here, decline is related either to historical changes, or to the deaths of sages. The basic literary pattern is 'When X, then Y' (where both X and Y are negative), as at the beginning of M. Sotah 9:9. Some positive changes are described (M. Sotah 9:10), but then Mishnah Sotah concludes with a litany of decline. Tosefta Sotah does not end with this litany, but it too, in its final passages, elaborates upon the Mishnaic discussion of decline.

Comparison with other rabbinic texts on change suggests that m.Sot. 9:9 is a unique hybrid between two forms of explanation: the *takkanah*, in which a change is attributed to a significant figure (often Yoḥanan ben Zakkai, and often connected to the destruction of the Temple), and the *mi-*

sherabbu formula ('When X, then Y'), which attributes change not to a single figure or event, but to a broader societal shift.⁷ The vast majority of these explanations of change are negative; change in law or custom is reactionary, in response to something that has gone wrong. The rabbis had a variety of tools to explain any given change, including some more positive explanations based on new teachings or expertise. The passages in the tannaic texts surrounding *sotah*, however, became the paradigm for change related to decline.

It is worth asking why this is the paradigm which is used. To some extent, the connection between change and decline is inherent in any traditional system, especially a legal one. If the source of the traditions and laws is valued, then changes to those traditions and laws may be seen as negative. How much more so when the source is seen to be God! As Gillman notes, the question of revelation is crucial.⁸ But it would also be possible to imagine an approach similar to that which Gillman proposes: one in which God's will is transmitted through community, and "authority in matters of belief and practice lies within the hands of the committed Jews of every generation."⁹ Such an approach need not be connected to decline.

Although this human-centered mode of authority may seem antithetical to traditional understandings, such an approach can be found within rabbinic teachings, in which human beings do change the plain meaning of the Torah. These teachings are well-known, and oft-utilized, in liberal Jewish circles. One example to which Gillman refers is the passage in which Rabbi Akiva's interpretations are shown to be from Sinai, even though Moses does not understand them (B. Menahot 29b); another is the story of Rabbi Eliezer being supported by God but overruled by the rabbis in the case of the oven of Akhnai (B. Bava Metzia 59b).¹⁰ Why is it that these stories do not determine the rabbinic self-understanding of halakhah?

Here, historical context is crucial: not just the historical context for particular changes, but also the context for approaching the very concept of change. If we look at the first two centuries of the Common Era in which the rabbinic paradigm was formed, we see an environment which might explain the classic rabbinic approach. Martin Goodman argues that Judaism at that time was weighted towards conservatism and averse to acknowledging change, just like the other religions of the time:

Religions in the ancient world were generally conservative, for good theological and social reasons. It was a commonplace to argue, as did Romans in their appeals to *mos maiorum*, that traditional behaviour must be correct simply because it has gone on for a long time . . . Josephus in the *Antiquities* claimed to transmit the Torah in the form received from Moses: ‘All is here written as he left it: nothing we have added for the sake of embellishment, nothing which has not been bequeathed by Moses’ (*Antiquities of the Jews*, 4.196), an attitude of principled conservatism close to the later rabbinic notions of *Torah min haShamayim*.¹¹

In this context, change is best explained either by acting as if no change has occurred, or by relying upon the precedent of earlier leaders or decisions.¹² It is worth noting that in the context of first-century Rome, Judaism was upheld as a paradigm of traditionalism, in contrast with the dangerous innovations of the Christians.

If traditionalism is good, the corollary is that change is bad. What is striking is that the negative descriptions of change which we have from the Greco-Roman world are so similar to the descriptions of decline that we find in rabbinic teachings. Direct influence is impossible to ascertain, but the following examples suggest that the parallels are significant.

In the first century CE, the decline of Roman oratory was much lamented. Seneca the Elder and Seneca the Younger comment on the decline in oratory. The following passage by Seneca the Elder refers to license and decline:

Moreover, you can by these means judge how sharply standards are falling every day, how far some grudge on nature’s part has sent eloquence downhill. Everything that Roman oratory has to match the arrogant Greeks (or even outdo them) reached its peak in Cicero’s day; all the geniuses who brought distinction to our subject were born then. Since that time things have got worse daily . . . Look how lazy and sleepy-minded our young men are; no one can stay awake at night to work at one honest pursuit. Sleep, languor, and an activity for evil that is more shameful than either have seized holds of their minds. Libidinous delight in song and dance transfixes these effeminate. Waving the hair, raising the tone of voice till it is as caressing as

a woman's, competing in bodily softness with women, beautifying themselves with indecent cosmetics—this is the pattern our youth set themselves! (*Controversiae* I, Preface)¹³

Seneca the Younger wrote about many of the same themes in his explanation of the perceived decline in oratory:

Now just as each man's actions are like his style of speaking, so style in oratory sometimes apes the *mores* of society—if the community's standards have slipped and it has given itself over to dissoluteness . . . Thus, wherever you see that a corrupt style of speech finds favour, you may be sure that morals too have gone astray. Luxury in feasting and clothes are signs of an ailing society; so, too, licentious speech, where widely spread, shows the degeneracy of the minds from which it proceeds. (*Letter 114*)¹⁴

For the Romans, decline was not just a concern in the area of oratory. Sexual immorality and decline was also of serious concern, as demonstrated in this passage from Horace, in the first century BCE:

Generations pregnant with guilt stained first marriages, then families and homes; disaster springing from this source flooded over our fatherland and people. The adult girl, trained in bad ways, loves to learn eastern dances. Already she thrills to the tips of her fingers at the thought of forbidden love. Soon she is seeking younger lovers among her husband's guests. She isn't choosy but gives illicit pleasure to anyone, hastily in the darkness. Her husband looks on as she rises from her place at any man's bidding, tradesman or captain of a Spanish ship—whoever will pay cash for her disgrace. (*Odes* 3.6.17–32)¹⁵

In *Odes* 4:5, Horace paints the opposite picture in his description of an ideal society: "Households are chaste, polluted by no adulteries. Custom and law vanquish guilty wrongdoing. New mothers are praised, whose infants resemble their fathers. Punishment follows close on crime."¹⁶

The Romans also were deeply concerned about the destruction of political and/or religious institutions, and the decline which followed. In the wake of the destruction of Rome in the first century CE, Tacitus wrote:

The history on which I am entering is that of a period rich in disasters, terrible with battles, torn by civil struggles, horrible even in peace . . . Rome was devastated by conflagrations, in which her most ancient shrines were consumed, and the very Capitol fired by citizens' hands. Sacred rites were defiled; there were adulteries in high places; the sea was filled with exiles, its cliffs made foul with the bodies of the dead. (*Histories* i.2)¹⁷

Tacitus' writings are paralleled in the next generation by Appian (c. 90–140 CE), in his discussion of the conflict surrounding the Gracchi:

The sword was never carried into the assembly, and there was no civil butchery, until Tiberius Gracchus, while serving as tribune and bringing forward new laws, was the first to fall a victim to internal commotion; and with him many others, who were crowded together at the Capitol round the temple, were also slain. Sedition did not end with this abominable deed. (Introduction ii)

Hitherto the murders and seditions had been internal and fragmentary. Afterward the chiefs of factions assailed each other with great armies, according to the usage of war, and their country lay as a prize between them. (vii.55)

Thus the seditions proceeded from strife and contention to murder, and from murder to open war, and now the first army of her own citizens had invaded Rome as a hostile country. Henceforth there was no restraint upon violence either from the sense of shame, or regard for law, institutions or country. (vii. 60) (*The Civil Wars, Book One*)¹⁸

Both passages suggest that political disaster leads to societal disaster, marked by violence and overall decline.

Finally, Josephus, who drew on both Jewish and Greco-Roman culture in the first century CE, was focused on the negative changes leading up to the Jewish revolt against Rome in 66 CE. Describing an assassination, he launches into a graphic description of decline:

As the murder remained unpunished, from that time forth the brigands with perfect impunity used to go to the city during the festivals and, with their weapons similarly concealed, mingle

with the crowds. In this way they slew some because they were private enemies, and others because they were paid to do so by someone else. They committed these murders not only in other parts of the city but even in some cases in the temple; for there too they made bold to slaughter their victims, for they did not regard even this as a desecration. (*A.J.* xx. 165–66)

Here too, an act of violence is seen as a slippery slope leading to full abandonment of the moral and political order.

I cite these examples at length because they are, from the perspective of those schooled in rabbinics, both foreign and familiar. The parallels between the Greco-Roman texts, Josephus, and the tannaitic passages are striking. Similar phrases are used, and the themes are essentially the same. All of them describe decline stemming from a specific act or acts. As a result, normal morality is abandoned, and people no longer feel the need to hide their wrongdoing. Societal degeneration, sexual immorality and violence, and political and religious collapse all are interconnected. All create unwelcome change, in which the disappearance of beloved institutions and values can be both cause and effect.

This brief historical comparison has a profound implication for how one might approach halakhah and the question of change. It seems entirely possible that the negative approach to change which is predominant in rabbinic Judaism was shaped by the Greco-Roman context in which our predecessors lived. In other words, there is a traditional bias toward attributing change to decline. This inclination stems from the beginnings of the halakhic system, and that it may well have been shaped by a non-Jewish, Greco-Roman context. The very inception of the halakhic system, with its aversion to explicit change, may have the influence of Rome at least as much as Sinai.¹⁹ Certainly, we see this from a modern vantage point, one which is shaped by the legacy of the Emancipation and the Enlightenment, and a bias toward the notion that change can be good. This contrast—between ancient negative paradigms of change and modern positive ones—creates a very real tension.

We find the focus on negative explanations permeating modern rhetoric about halakhah. Gillman, in giving examples of contemporary Conservative explanations for change, encapsulates this approach: “The feminist rev-

olution is now a hard reality and we have to acknowledge it in our ritual life. Demographical changes demand that we permit driving to the synagogue on Shabbat. And our new scientific understanding of sexual orientation suggests that it is genetic and therefore unchangeable.”²⁰ This list is a modern litany of decline, explaining halakhic change as a reluctant response to the negative condition of contemporary Jewish life. The feminist revolution has to be acknowledged; demographic changes demand that driving be permitted; the immutability of sexual orientation requires a different halakhic response.

Knowing that this bias toward negative explanations is historically-based, we might suggest an alternate, more positive paradigm: one in which the feminist revolution gave us the gift of full participation of women; one in which the flourishing of American Judaism has led to integration and geographical dispersion; and one in which sexual orientation, whatever its origin, is a precious part of what makes us holy and whole. Not all change is good, but to acknowledge the positive aspects of changes that *are* good allows us to approach the whole notion of change with more honesty.

It is impossible for us to know whether our ancestors were relieved at the disappearance of the *sotah* ritual, and saw it as a sign of progress. From an historical perspective, this is unlikely; as discussed above, the *tannaim* were not enthusiasts of change. However, if such a change were to be made today, a positive approach would be a paradigm much more in keeping with our own context, and also our own convictions. Just as the rabbis were shaped by Greco-Roman perspectives which linked change with decline, it seems that our role is to be informed by our own content in which change and transformation are explicitly valued. If particular changes can be made based on particular historical contexts and conditions, can we not approach change itself on the same basis? This would be in keeping with Gillman’s statement that, “we must then articulate a theology of revelation that maintains a role for God in revelation and yet accords the substantive role to the human community.”²¹

The struggle to define this theology is a crucial task for modern liberal Jews. Although the movements position themselves differently in terms of practice, the meta-issue of change seems to be part of a theological approach that is shared among liberal Jews.²² The disappearance of the

sotah ritual, and how it is explained, is one piece of evidence in a larger conversation about the human role in revelation. How we define and determine our practice is informed by our beliefs about our relationship with God.

Perhaps because of this shared theological struggle, I would argue that all liberal movements, not just Conservative Judaism, live the tension between belief and practice. Both movements also have their checks and balances. In the Reform movement, there is a long history of conversation about to what extent we are engaged with halakhah; certainly many early Reformers saw their changes as being well within its parameters, and for decades our Responsa Committee has looked seriously at traditional halakhic precedent.²³ The current ‘turn to tradition’ has raised many questions about ritual practice anew, though one could argue that this ‘turn’ actually is a creative tension which has existed since the Reform movement’s beginnings. Within the Conservative movement, there has been a recent groundswell of voices about moral issues related to, for example, the ordination of gay and lesbian Jews. Moreover, Gillman articulates what many have felt: that there are serious questions about Conservative Judaism’s claim to be a ‘halakhic movement’, and that different realities—and theologies—are being lived by clergy and congregants.²⁴

Historically, the question of how change is approached has been a dividing line between denominations. Writing as someone who was raised as a Conservative Jew but was ordained by, and serves within, the Reform movement, I respectfully submit that as much as some Conservative Jews are concerned about moving too close to the Reform movement, some Reform Jews fear that their movement is becoming too Conservative. For those of us who have experience in both movements, however, the differences still remain clear, in our liturgies, institutions, and emphases. As Gillman writes, “No one who has *davened* in a Reform or in a Conservative synagogue could possibly confuse the two . . . were you to blindfold me and lead me into five Reform and five Conservative synagogues, I would identify the movement in less than a minute.”²⁵

Knowing that these delineations exist, we can turn to what is shared. Perhaps it is a challenge to Gillman’s idea that living with tension could be a distinctive hallmark of Conservative Judaism to suggest that this tension

is shared by all liberal Jews.²⁶ We each struggle with different questions as to how the balance between tradition and modernity plays out, and the different answers which we give will continue to define us. Ultimately, though, our theology *is* shared: we are not literalists regarding revelations, yet we look for a connection to God in how we live our lives. This God, for me, is *Ehyeh Asher Ehyeh*: the God of possibility, redemption and change.

NOTES

1. Neil Gillman, “A New Aggadah for the Conservative Movement,” *Conservative Judaism* 58:2–3 (Winter/Spring, 2006), p. 32.

2. Ibid., pp. 34–35.

3. For a full discussion of this ritual and its rabbinic interpretations, see Grushcow (2006), *Writing the Wayward Wife*.

4. Grushcow, pp. 264–72.

5. Whether the ritual was ever applied is a separate question; there are only two Mishnaic references to specific historical details or cases (M.Yoma 3:10 and M.Eduy. 5:6–7). See Grushcow, p. 2. There is also one intriguing reference in the Cairo Geniza to a medieval continuation of the practice; see Grushcow pp. 297–300.

6. The question of transmission around the end of m.Sot. 9 is a difficult one. The reference to the death of Rabbi may be an anomalous interpolation, or the entire passage may have been a later addition. The second half of m.Sot. 9:15, beginning with an attribution to Phinehas ben Yair, certainly is a later addition, as it is not commented upon by the PT, the BT, or Maimonides in his commentary on the Mishnah.

7. Grushcow, pp. 250–56. There is a growing body of work on the topic of halakhic change throughout Jewish history. See L. Jacobs, *A Tree of Life* (London: Littman, 2000), M. Zemer, *Evolving Halakhah* (Woodstock, VT: Jewish Lights, 1999), D. Hartman, *A Living Covenant* (Woodstock, VT: Jewish Lights, 1998), M. Halbertal, *Sources and Traditions* (Jerusalem: Magnes, 1997) and others. This section also draws upon Martin Goodman, “Explaining Change in Judaism in Late Antiquity,” in A. Houtman, A. deJong, and M. Misset-van de Weg (eds.), *Empsychoi Logoi—Innovations in Antiquity. Studies in honour of Pieter Willem van der Horst* (Brill: Leiden, 1008), pp. 19–27, and Aaron Panken’s, *The Rhetoric of Innovation* (Lanham, MD: University Press, 2005).

8. Gillman, pp. 34–38.

9. Ibid., p. 41.

10. Ibid., p. 31.

11. Goodman (forthcoming), *op. cit.* Panken expresses something similar when he writes, “Theirs was, in the end, a well-founded fear: after all, in any system with a core belief in divinely-granted initial law, any change may well be perceived as betrayal of God’s divine instruction.”

12. Goodman, emphasizing how the rabbis made changes while claiming to transmit an unchanging tradition, writes: “Ancient Jews used these rationalisations as a sort of plaster, smoothing over the cracks so that they and their co-religionists could continue to think of their Torah as perfect and fixed even as it evolved, sometimes quite considerably, to adapt to the new conditions in which they lived.” Panken (p. 334) notes the problem which Goodman also discusses, and calls it the ‘anxiety of innovation’: “Theirs was, in the end, a well-founded fear: after all, in any system with a core belief in divinely-granted initial law, any change may well be perceived as betrayal of God’s divine instruction.” But, he goes on to suggest, “While they utilized a rhetoric of disclosure, admitting that the law was changing, they did not always admit that it was *their* decision to alter law. They often retrojected or demurred in other ways, bolstering and supplementing their own power with the weight of prior history and the authority of prior leadership.”

13. Trans. in D.A. Russell and M. Winterbottom in *Ancient Literary Criticism* (Oxford: Oxford University Press, 1972), p. 360.

14. Ibid., pp. 362–63.

15. Translated in Catharine Edwards, *The Politics of Immorality in Ancient Rome* (Cambridge, Cambridge University Press, 2002), pp. 45–46.

16. Ibid., p. 58. Some specific themes here are shared with rabbinic interpretations of *sotah*: the question of whether an infant resembles its father, and whether punishment occurs immediately after a crime.

17. Tacitus, *Histories*, trans. C.H. Moore (1996), pp. 5–6.

18. Appian, *Roman History*, trans. H. White (1995), pp. 5, 101, 111.

19. Rachel Adler, in *Engendering Judaism* (Philadelphia: Jewish Publication Society, 1998), pp. 27–34, offers an important analysis and critique of traditional approaches to halakhah, as well as liberal halakhic theories of jurisprudence. Not unlike Gillman, she argues: “To be truly progressive, however, a halakhah would have to be *proactive*. The place to begin is not with the principles we need to preserve or the content we may need to adapt but by what we mean by halakhah altogether” (p. 34). This argument is in keeping with the current article, which reinforces the importance of questioning the assumptions inherent within the halakhic system itself.

20. Gillman, p. 31.

21. Ibid., p. 36.

22. Ibid.

23. See, for example, Mark Washofsky’s introduction to *Jewish Living: A Guide to Contemporary Reform Practice* (New York: UAHC Press, 2006), as well as his

article, “Taking Precedent Seriously: On Halakhah as a Rhetorical Practice,” in *Re-Examining Progressive Halkhah*, ed. Walter Jacob and Moshe Zemel (Herndon, VA: Berghahn, 2002), pp. 1–70.

24. Gillman, pp. 33–34.

25. *Ibid.*, p. 42.

26. *Ibid.*, p. 44.

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