

LAW AND THEOLOGY IN THE MISHNAH: THE CASE OF MISHNAH-TRACTATE HULLIN

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The Mishnah's Halakhic account of the laws of preparing meat for domestic consumption is so framed as to plumb the depths of post-70 theology, asking whether Israel, the people, is still holy without the Temple and responding that it is. A program of sanctification of Israel's life is explicitly situated in relationship to the loss of the Temple and even exile from the Land. The Halakhah in all its abstraction turns out to embody in deed the results of profound deliberation about fundamental issues of theology.¹

I THE HALAKHAH

The Halakhic exposition concerns the laws for slaughtering animals for domestic consumption, that is, for use in the Israelite household. To understand how the Halakhah addresses the issue of whether or not Israel the people retains its sanctity beyond 70 and loss of the Temple is made easy by the framing of the law. A sequence of rules is cited, and in each case, a single formula is applied to them. The recurrent formula, the law of such and such applies "(1) in the Land and outside the Land, (2) in the time of the Temple and not in the time of the Temple, (3) in the case of unconsecrated beasts and in the case of consecrated beasts," insists that these rules transcend boundaries of space, time, and circumstance.

¹ For a systematic account, see my *The Theology of the Halakhah*. (Brill Reference Library of Ancient Judaism.) Leiden: E. J. Brill, 2001.

Mishnah-tractate Hullin 5:1

[The prohibition against slaughtering on the same day] “it and its young” (Lev. 22:28) applies (1) in the Land and outside the Land, (2) in the time of the Temple and not in the time of the Temple, (3) in the case of unconsecrated beasts and in the case of consecrated beasts. How so? He who slaughters it and its offspring, (1) which are unconsecrated, (2) outside [the Temple courtyard] – both of them are valid. And [for slaughtering] the second he incurs forty stripes. [He who slaughters] (1) Holy Things (2) outside – [for] the first is he liable to extirpation, and both of them are invalid, and [for] both of them he incurs forty stripes. [He who slaughters] (1) unconsecrated beasts (2) inside [the Temple courtyard] – both of them are invalid, and [for] the second he incurs forty stripes. [He who slaughters] (1) Holy Things (2) inside – the first is valid, and he is exempt [from any punishment], and [for] the second he incurs forty stripes, and it is invalid.

The pattern is established by speaking specifically of the holiness of the Land, the time of the Temple, and consecrated beasts, and insisting that the Israelite table at home takes priority in the level of sanctification over the Land, Temple-times, and beasts sanctified for the altar. What is the upshot of this affirmation? It is that the eternity of Israel transcends the ephemerality of the Temple; Israel’s table remains sanctified and therefore subject to the rules of cultic slaughter, even after God’s table has been desecrated. Where is the theology in all this? It lies right at the surface. *Israel is God’s abode even when there is no Temple.* The Mishnah makes that statement in so many words when it says that the laws that apply to the altar and the table apply to the table even when the altar is destroyed. Here is the language of the laws that say so.

Mishnah-tractate Hullin 6:1

[The requirement to] cover up the blood (Lev. 17:13–14) applies in the Land and abroad, (2) in the time of the Temple and not in the time of the Temple, (3) in the case of unconsecrated beasts, but not in the case of Holy Things. And it applies (4) to a wild beast and a bird, (5) to that which is captive and to that which is not captive. And it applies (6) to a *koy*, because it is a matter of doubt [whether it is wild or domesticated]. And they do not slaughter it [a *koy*] on the festival. But if one has slaughtered it, they do not cover up its blood.

Now the issue is covering up the blood, and the outcome is the same. The other items are self-evident.

Mishnah-tractate Hullin 7:1, 8:1, 10:1–2, 11:1, 12:1

M. 7:1 [The prohibition of] the sinew of the hip [sciatic nerve, Gen. 32:32] applies (1) in the Land [of Israel] and outside of the Land, (2) in the time of the Temple and not in the time of the Temple, (3) to unconsecrated animals and to Holy Things. It applies (1) to domesticated cattle and to wild beasts, (2) to the right hip and to the left hip. But it does not apply (3) to a bird, because it has no hollow [of the thigh or spoon-shaped hip

And its fat is permitted. Butchers are believed (1) concerning it and (2) concerning the [forbidden] fat (Lev. 3:17, 7:23).

M. 8:1 [As to the separation of milk and meat (Ex. 23:19, 34:26, Dt. 12:21)]: Every [kind of] flesh [i.e., meat, of cattle, wild beast, and fowl] is it prohibited to cook in milk, except for the flesh of fish and locusts. And it is prohibited to serve it up onto the table with cheese, except for the flesh of fish and locusts. He who vows [to abstain] from flesh is permitted [to make use of] the flesh of fish and locusts.

M. 10:1 [The requirement to give to the priests] the shoulder, the two cheeks, and the maw (Deut. 18:3) applies (1) in the Land and outside of the Land, (2) in the time of the Temple and not in the time of the Temple, (3) to unconsecrated beasts, but not to consecrated beasts. For it [the contrary] might have appeared logical: Now, if unconsecrated animals, which are not liable for the breast and thigh [which are taken from peace offerings for the priests, (Lev. 7:31)], are liable for the [priestly] gifts [of the shoulder, cheeks, and maw], Holy Things, which *are* liable for the breast and thigh, logically should be liable to the priestly gifts. Scripture therefore states, "And I have given them to Aaron the priest and to his sons as a due for ever" (Lev. 7:34) – he has a right [in consecrated beasts] only to that which is explicitly stated [namely, the breast and thigh].

M. 11:1–2 [The laws concerning the obligation to donate to the priest] the first shearings [of wool from the sheep of one's flock (Deut. 18:4)] apply both inside the Land of Israel and outside the Land of Israel, in the time the Temple [in Jerusalem stands] and in the time the Temple does not [stand]. [And the laws apply] to [the fleece of] unconsecrated [animals] but not to [the fleece of animals that were] consecrated [to the Temple]. A stricter rule applies to [the obligation to give to the priest] the shoulder, the two cheeks and the maw [of one's animals] than to [the obligation to give to the priest] the first shearings [of wool from the sheep of one's flock]. For [the obligation to give to the priest] the shoulder, the two cheeks and the maw [of one's animals] applies both to the [large] animals of one's herd and to the [small] animals of one's flock.

M. 12:1 [The requirement to] let [the dam] go from the nest [Deut. 22:6–7] applies (1) in the Land and outside of the Land, (2) in the time of the Temple and not in the time of the Temple, (3) to unconsecrated [birds] but not to consecrated ones. A more strict rule applies to covering up the blood than to letting [the dam] go from the nest: For the requirement of covering up the blood applies (1) to a wild beast and to fowl, (2) to that which is captive and to that which is not captive. But letting [the dam] go from the nest applies only (1) to fowl and applies only (2) to that which is not captive. What is that which is not captive? For example, geese and fowl which make their nest in an orchard. But if they make their nest in the house (and so Herodian doves), one is free of the requirement of letting the dam go.

The law asks whether [1] the destruction of the Temple and cessation of the offerings, [2] the degradation of the Land of Israel – its loss of its Israelite residents – and [3] the exile of the holy people, Israel, from the Holy Land, affect the rules of sustenance in the model of the nourishment of God, The question pertains to three venues: [1] in the Temple, [2] in the Land, [3] among the holy people. The answer is, whatever the condition of the Temple and its altar, whatever the source – the Holy Land or unclean gentile lands – of animals, and whatever the location of the people Israel – whether in the Holy Land or not – one thing persists. And that is the sanctification of Israel, the people. That status of holiness imputed to the

social entity (Israel) and to each individual (Israelite) therein – endures [1] in the absence of the cult and [2] in alien, unclean territory and [3] whatever the source of the food that Israel eats. *Israel's sanctity is eternal, unconditional, absolute. The sanctification that inheres in Israel, the people, transcends the Land and outlives the Temple and its cult.*

Since the sanctity of Israel, the people, persists beyond the Temple and outside of the Land, that sanctity stands at a higher point in the hierarchy of domains of the holy that ascend from earth to heaven and from humanity to God.² The status of Israel – in the Land or abroad, possessed of the Temple or excluded therefrom – in preparing meat, whether for God or for Israel itself address the condition of corporate Israel after 70. They represent an articulate response to the catastrophe of that year and its sequel, 132–135, which we shall meet in a moment. The law of the Mishnah, to make its statement about the eternal sanctification of the people, Israel, explicitly responds to three facts: [1] Israelites live not only in the holy land but abroad, in unclean lands; [2] the Temple has been destroyed and not yet rebuilt; [3] and, consequently, animals are slaughtered not only in the Temple in the Land but in unconsecrated space and abroad, and the meat is eaten not only in a cultic but in a profane circumstance.

The law is explicit on the theological question at hand. Holy, corporate Israel's sanctification endures beyond the Land, beyond the Temple, and beyond the age in which the active source of sanctification, the altar, functions. It continues when the others do not. How then do we hierarchize Temple, Land, and corporate Israel? The desuetude of the one, the abandonment of the other – neither ultimately affects the standing of the Israel. The Land and the Temple have lost that sanctity that infused them when Israel dwelt on the Land and the Temple altar was nourished by Israel's priesthood and produce. But the sanctification of Israel itself endures through history, eternal and untouched by time and change. And when Israel returns to the Land and rebuilds the Temple, the sanctification of the Land and the Temple will once more be realized.

Thus every meal at which the Israelite eats meat embodies that answer in a most active form: the menu itself. Although the sanctity of the Temple stands in abeyance, the sanctity of the Israelite table persists. Although Israel is in exile from the Holy Land, Israel remains holy. Although in the Temple rules of uncleanness are not now kept, they continue in force wherever Israelites may be. Birds and animals that flourish outside of the Land, when prepared for the Israelite table, are regulated by the same rules that apply in the Land and even (where relevant) at the altar. So Israel, the people, not only retains sanctity but

² Mishnah-tractate Kelim Chapter One and its Toseftan complement particularize the hierarchization of the holy. In the present context we do not require the details of uncleanness and holiness that are given there.

preserves it outside of the Land, and the sanctity of Israel transcends that of the Temple and its altar. Corporate Israel is endowed with a higher degree of sanctity than the Temple and the Land – and, in the hierarchy of the sacred, stands at the apex, closest to God.

II. WHY HULLIN IN PARTICULAR?

Why is it particularly the law of Mishnah-tractate Hullin that makes the statement that Israel – the person, the people – is holier than the Land and even than the Temple, even to endowing with sanctity the animals slaughtered to nourish the people? That theological proposition comes to the fore in particular here because the written Torah supplies the law that contains the entire message. It does so when it imposes the same requirements that pertain to slaughter of an animal sacrifice for the altar in Jerusalem and to killing an animal for the use of Israel at home, specifically, burying the blood or draining it. That means that the meat Israel eats is subject to the same regulations that apply to the meat that God receives on the altar-fires. That very law states that meat for those who are not holy, that is, for gentiles or idolaters, is not subject to the same rules (Ex. 22:30, Dt. 14:21). So, it is unmistakable: food for God and for Israel must be prepared in comparable manner, which rule does not apply to food for gentiles.

History enters in when we ask how that principle affects animals raised abroad. The laws of Hullin apply to them, because the laws apply to unconsecrated animals as much as consecrated ones. The purpose in nature – nourishing Israel – is alone what counts. The beast intended for Israelite consumption at the table even in a foreign country must be prepared as though for God on the altar in Jerusalem, and that can only mean, since the beast is intended (by the act of correct slaughter) for Israel, the use of the beast by Israel sanctifies the beast and necessitates conformity with the rules of slaughter for God in the Temple. Israel, even abroad, renders the food that it eats comparable to food for the altar.

III. WHAT ABOUT THE TEMPLE IN RUINS?

Then comes the matter of the Temple and its condition. We ask, What has food-preparation to do with the consideration of location? The rule that permits slaughter of meat outside of the Temple (Dt. 12:20–24) explicitly states that it speaks of corporate Israel outside of the Temple in Jerusalem. So, even if the act of slaughter does not take place in Jerusalem, the act must conform, because the focus is on Israel, wherever Israel is located – even far from Jerusalem (for so the law is formulated in Scripture). The law of the Mishnah before us simply carries

the same conception forward in a logical way: the same considerations govern even so far from Jerusalem as territory that to begin with is laden with corpse-uncleanness, that is, foreign soil; and even in an age in which Jerusalem is no more; and, it goes without saying, even in connection with a beast that has not been consecrated for the altar.

Since Scripture itself has separated the act of slaughter from the rite of sacrifice in the Temple, the law of the Mishnah has done little more than explore the consequences of that rule when it states that the requirements of slaughter in the cult pertain also outside of the cult, thus wherever Israelites are located, and whenever the act takes place – even outside of the Land altogether, even during the time that the Temple is no longer standing. If an Israel outside of Jerusalem is contained within the logic set forth by the Torah at Deuteronomy 12:20–24, then the next step, and it is not a giant step, is to contemplate an Israel outside of the Land altogether, not to say a Temple in ruins.

The integral connection of slaughter of animals and sacrifice at the altar having been broken when all cultic activity was focused by Deuteronomy within Jerusalem, all that the law of the Mishnah has done is to address in so many words the extreme consequences of that situation. If the rules apply even to unconsecrated beasts, and even to the Land beyond Jerusalem, and even outside of the Temple, then by the same token, logic dictates a utopian consequence. The same laws apply even when no animals are being consecrated at all, and they apply even once the Temple no longer stands, and they pertain even abroad.

So the Torah sets the stage by addressing the situation of slaughter not in behalf of the transaction at the altar and not in the setting of the holy place. And, consequently, the law of the Mishnah worked out in the critical details of the sustenance of life, the conviction that Israel the people forms the locus of sanctification. What follows is that this allegation about the enduring, ubiquitous sanctification inherent in Israel the people – even outside of the Land, even in the time of the Temple's destruction – pervades the exposition of the laws in detail. It is an amazing statement in its insistence upon the priority and permanence of the sanctity of Israel – whatever may become of the holiness of the altar and of the Land.

IV. LOCATION, OCCASION, THE CHARACTER OF THE ENCOUNTER, IN GOD'S CONTEXT, OF GOD AND THE ISRAELITE

Affirming the unique holiness of the Temple and the Land of Israel, Mishnah-tractate Hullin still wants to show how the holiness of the people, Israel, retains its own integrity. Israel's enduring sanctification transcends location and occasion because it is realized at the moment at which life-blood is spilled in the pre-

servation of life. Thus, the law of the Mishnah establishes in practical ways that Israel remains holy even outside of the Land, even in the age without the Temple. Meat prepared for Israel, wherever the meat has itself been nourished, even on gentile ground, must be prepared as though for the altar in Jerusalem. Then Israel's sanctity persists, even when that continuum in which it stood, the chain of continuity with the Temple altar in Jerusalem (as the formulation of Deuteronomy 12:20–24 framed matters), has been disrupted. Israel's sanctity endows with sanctity even animals raised in unclean ground, so powerful is the sanctification that transforms Israel.

