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Enchanting a Disenchanted Law: On Jewish Ritual and Secular History in Nineteenth-Century Germany

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The loss of the gods is a twofold process. On the one hand, the world picture is Christianized inasmuch as the cause of the world is posited as infinite, unconditional, absolute. On the other hand, Christendom transforms Christian doctrine into a world view (the Christian world view), and in that way makes itself modern and up to date.... But the loss of the gods is so far from excluding religiosity that rather only through the loss is the relation of the gods changed into mere "religious experience." When this occurs, then the gods have fled. The resultant void is compensated for by means of historiographical and psychological investigation of myth.

—Martin Heidegger, *The Age of the World Picture*¹

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1. MARTIN HEIDEGGER, *The Age of the World Picture*, in *THE QUESTION CONCERNING TECHNOLOGY* 115, 116 (William Lovitt trans., Harper & Row Publishers, Inc., 1977) (1954).

How might one “go about gaining new imaginative leverage to enliven the practice of legal history,” asks the call for papers, appealing for a paradigm shift. Presumably, a new perspective is needed not simply because “law and” has run its course, but because it was committed from the outset to an unimaginative, “realist” perception of law. Presumably, “law as . . .” is an attractive alternative not only for its novelty, but because it calls upon us to imagine. The turn to metaphor is offered as a way to free us from the bonds of empiricism, historicism and other isms. The disenchanting spell of the social sciences is to be complemented by a re-enchanted writing of legal history.

Indeed, the work of many legal historians and other “law and” scholars in recent years has been to disenchant law. These scholars, differences of theory and method notwithstanding, have questioned law’s high ideals and abstract concepts, replacing them with the mechanisms of worldly interests, social structures, cultural predispositions, and power dynamics. More recently, a countermovement has emerged, which is as critical of legal realism as it is of legal formalism; both are to blame for ignoring the true force of law, which lies beyond the reductions of law to either conceptual reason or empirical experience. This alternative line of scholarship seeks to unveil the specters that continue to haunt law’s domain. Following Benjamin, Schmitt, Derrida, and Agamben, it draws attention to the shades of a sacred past or of a transcendent future that lurk beneath the surface of rational-secularized law.

But how radical is this alternative? Perhaps not as radical as its adherents seem to imply. To begin with, one should recall that the tension between legal enchanters and disenchanters is, in fact, not all that new. It is evident in the differences between Weber and Durkheim, Kelsen and Schmitt, Kirschheimer and Benjamin, Arendt and Jonas, and many other writers of the late nineteenth century and the first half of the twentieth. This fact, in itself, suggests that despite their antagonism, a close affinity exists between the enchanters and the disenchanters of modern legal theory. But what precisely is the nature of this affinity?

The following paper will not directly address this fundamental question of legal theory.² It will rather pursue a parallel question in the field of legal history. Its aim is to think through the relationship between science, realism, and disenchantment on the one hand, and metaphor, imagination, and enchantment, on the other hand, as this relationship unfolds in the history of modern Jewish law. We will see how these two moments of disenchantment and enchantment, which often seem to exclude each other, are, in the final analysis, two complementary sides of modern law. Thus between the lines of the following study, one may find a Jewish parable about the “law and” and “law as . . .” of

2. For a recent discussion of similar questions, see Yishai Blank, *The Re-Enchantment of Law*, 96 CORNELL L. REV. 633 (2011).

modern legal history.

INTRODUCTION

In Germany, during the last decades of the eighteenth century and well into the nineteenth, several Jewish religious practices came into sharp conflict with emerging moral sensitivities and public health regulations.³ Burial of the dead, ritual bath, circumcision, and animal slaughter were criticized by experts and lay observers, Jews and non-Jews alike, for offending the moral sensitivities and legal standards of a *Kulturstaat*.⁴ These debates mark an important transformation in the relationship between state regulation and religious custom, and studying them may offer an opportunity to reexamine the secular foundations of modern law and politics.

Scholars of German-Jewish history have commonly examined the conflicts between state law and religious practice through the prism of the secularization thesis.⁵ As is well known, the thesis, first articulated by Weber, ascribed to modernity a tripartite process—a decline in religious belief and practice, the privatization of religion, and the separation of the life-world into autonomous spheres of rationality independent of religion. More recently, the revival of religion in the public sphere in and outside of the West has led scholars to question some of the assumptions of Weber's secularization thesis. To defend the thesis, however, continues to be the dominant trend in the literature, offering limited revisions to Weber's original claim.⁶

Most notably, Charles Taylor, in his recent *Secular Age*, identifies religion with belief and explains why religious beliefs, as prevalent as they may still be in the modern world, have lost their original foundation.⁷ Belief has become a matter of

3. See generally JACOB KATZ, *DIVINE LAW IN HUMAN HANDS: CASE STUDIES IN HALAKHIC FLEXIBILITY* (1998).

4. See discussion, *infra* Part II.

5. The Weberian paradigm was introduced to the study of German-Jewish history by Jacob Katz. See generally JACOB KATZ, *OUT OF THE GHETTO: THE SOCIAL BACKGROUND OF JEWISH EMANCIPATION, 1770–1870* (1973) [hereinafter KATZ, *OUT OF THE GHETTO*]. Whether implicitly or explicitly, many scholars have followed a similar path. See, e.g., MORDECHAI BREUER, *MODERNITY WITHIN TRADITION: THE SOCIAL HISTORY OF ORTHODOX JEWRY IN IMPERIAL GERMANY* (1992); JOHN M. EFRON, *MEDICINE AND THE GERMAN JEWS: A HISTORY* (2001). Most recently, see SHMUEL FEINER, *SHORSHEI HAHILON, THE ORIGINS OF JEWISH SECULARIZATION IN EIGHTEENTH-CENTURY EUROPE* (Chaya Naor trans., 2010).

6. Jose Casanova, for one, has argued that of the three tenets of the secularization thesis, only the third—the emergence of autonomous spheres of rationality—is essential for understanding the secularization of modern society. See generally JOSÉ CASANOVA, *PUBLIC RELIGIONS IN THE MODERN WORLD* (1994).

7. CHARLES TAYLOR, *A SECULAR AGE* (2007). Likewise, Jürgen Habermas has claimed that ours may be a postsecular age, but only in the sense that we must be open to the possibility that the processes of secularization, which have in fact taken place in Europe, are not necessarily universally valid. See, for example, Jürgen Habermas, *Notes on a Post-Secular Society* available at www.signandsight.com/features/1714.html.

individual choice and is in constant need of justification. Similarly, in one of the most recent contributions to the study of eighteenth-century German Jewry, Shmuel Feiner offers new evidence to support the secularization thesis. Feiner adds to the existing study of intellectual history a new inquiry into daily belief and practice, and yet he continues to identify religion with otherworldly beliefs, and secularization with their demise.⁸ Thus, despite their important contributions, Taylor and Feiner, along with other scholars of secularism, continue to work within the Weberian paradigm, which identifies religion with otherworldly beliefs and secularization with the undermining of such beliefs through processes of rationalization. I will refer to this prevalent discourse on religion and the secular age as “secularism.”⁹

The following study offers a more fundamental critique of the secularization thesis, one which goes to the heart of the secularist discourse. In it I return to the history of Jewish law in nineteenth-century Germany in order to critically examine some of the common tenets of secularism and their significance for understanding the relationship between Jewish religion and state law. The main thrust of the argument is that the Weberian paradigm of secularization offers a one-sided account of the processes of modernity, or at least of modern Judaism. It contrasts an enchanted religious past with a disenchanting secular present and remains blind to the ways in which its own characterization of religion has emerged together with the secular world. Contrary to the dominant Weberian paradigm, I will suggest that the secular age has simultaneously invented both itself and a very specific image of its “religious” past. “Religion,” as commonly employed today, is not the premodern antithesis of a secular present, but rather a modern understanding that emerged side by side with the secular age. Rather than an opposition between an enchanted past and a disenchanting presence, we should recognize two equally modern and complementary movements of disenchantment and enchantment.

A fundamental critique of secularism along these lines is important, first, to overcome the false identification of our present age with the secular and the rational, and second, to open new ways for understanding the past, and specifically the “religious” past, not merely as a mirror image of the present. Furthermore, the following is not limited to a critique of a prevalent discourse on religion. The modern conceptualization of the European religious past, and specifically its Jewish past, as “enchanted,” is not only a discursive construct, but captures a genuine and typically modern religious experience. It is this modern experience of religion as “enchantment” that is then also projected onto the past. Thus, my argument is that the enchantment and disenchantment of religion are equally

8. FEINER, *supra* note 5.

9. MAX WEBER, *Religious Rejections of the World and Their Directions*, in FROM MAX WEBER: ESSAYS IN SOCIOLOGY 323 (H.H. Gerth & C. Wright Mills eds. & trans., Oxford Univ. Press 2001) (1946).

modern and take place both outside the religious community as discourse, and from within the religious community as experience.

The term “enchantment” requires some further clarification and disambiguation. The term is used here in a broad sense to include all forms of intensifying and enlivening religious experience. The Weberian sense of “enchantment” is significantly narrower. For Weber, premodern religion is enchanted to the extent to which it fuses worldly and the otherworldly experiences, while the process of disenchantment is essentially the gradual separation of the supranatural from the worldly. Weber’s notion of enchantment is in fact only one among several ways of “enchanting” religion. In what follows, our interest lies in the way religious practice is enchanted in a variety of ways through the “ritualization” of religious practice.

In speaking of “ritualization” I am relying, in part, on Talal Asad’s work on the transformation of the concept of ritual, which took place during the eighteenth and nineteenth centuries.¹⁰ Asad documents the rise of a modern, “anthropological” conception of “ritual,” which views religious practice as symbolic interaction and suffuses traditional customs with webs of meaning and signification, intensifying and enlivening religious practice. According to Asad, the modern notion of ritual replaced a more traditional notion of ritual as a manual—a set of practices the importance of which lay not in their meaning, but rather in precise adherence to the detail of these well-prescribed rules of conduct. A more elaborate account of the notion of “ritualization” will unfold in what follows. My argument, to repeat, is that modernization consists not of a one-dimensional process of secularization understood as rationalization, but rather of a twofold process of rationalization and “ritualization” of religion.

The choice to explore the interplay of secularization and ritualization by examining traditional Jewish practices in eighteenth- and nineteenth-century Germany is significant. If the Jews are of special interest, it is not only for their privileged place in the history of modern Europe, but also due to their importance in understanding the transformation of “the law.” No European nation seems to have tied its fate to “the law” as the Jews have, and no Jewish community has undergone such a radical transformation as German Jewry at the turn of the nineteenth century. Indeed, as one scholar has noted, “German Jewry was the most visible of the modern European Jewries because in its history all of the hallmarks of modernity seemed to have converged in their fullest and most volatile forms.”¹¹

But the history of so-called Jewish rituals is not only a *locus classicus* for deciphering processes of modernization; it simultaneously offers an external

10. TALAL ASAD, *GENEALOGIES OF RELIGION: DISCIPLINE AND REASONS OF POWER IN CHRISTIANITY AND ISLAM* 55–82 (1993).

11. DAVID J. SORKIN, *THE TRANSFORMATION OF GERMAN JEWRY, 1780–1840*, at 3 (1987).

vantage point from which these processes can be critically observed. Theories of secularization emerged, at least in part, out of a specifically Christian understanding of religion and were applied to Jewish ritual without a proper appreciation of the unique characteristics of Jewish law. Consequently, an examination of Jewish history may provide an opportunity to question some of the taken-for-granted assumptions of secularization and to identify the accompanying process of ritualization.

Finally, though ours is a history of the Jewish-German past, it is important to bear in mind its possible implications for understanding the present, when Muslims have taken the place of Jews as the largest religious minority in Europe.¹² The comparison, which may seem speculative at first, has in fact a historical foundation. As we shall see, Jews and Jewish ritual were commonly identified as Oriental in nineteenth-century Germany. The comparison becomes unavoidable once we note that certain rituals, especially animal slaughter and circumcision, have direct parallels in the two religions and raise questions today similar to those they raised nearly two centuries ago in a very different context.¹³

The paper will proceed as follows: The first part will examine the way in which contemporary scholars have commonly sought to characterize the tension between Jewish religious practice and the modern state. The second part will point to the one-sidedness of the secularization thesis and juxtapose it with “ritualization” as a different and complementary perspective. The third and final part will explore the different ways in which ritualization processes have shaped the understanding, practice, and regulation of Jewish law, by focusing on the case study of animal slaughter.¹⁴

PART I: MODERNIZATION AS SECULARIZATION

Since Weber, the study of modern religion has been commonly associated with processes of rationalization, secularization, and the transformation of religion from an otherworldly to a worldly concern. Though it is clear that Weber developed his thinking within the context of Christian Europe, he and many of his followers extended the general approach to premodern societies and non-Western religions. Writing within a Weberian scheme, scholars of the Jewish Enlightenment concluded that Jewish society and Jewish religion had undergone similar transformations to those Weber ascribed to Christianity. First, scholars

12. See generally *Tel Aviver Jahrbuch für deutsche Geschichte*, JUDEN UND MUSLIME IN DEUTSCHLAND: RECHT, RELIGION, IDENTITÄT [JEWS AND MUSLIMS IN GERMANY: LAW, RELIGION AND IDENTITY] (José Brunner & Shai Lavi eds., 2009).

13. See discussion *infra* Part III.

14. This part of the Paper belongs to a larger project on the history of Jewish and Muslim animal slaughter in Germany. See Shai Lavi, *Animal Laws and the Politics of Life: Slaughterhouse Regulation in Germany, 1870–1917*, 8 THEORETICAL INQUIRIES L. 221 (2007); Shai Lavi, *Unequal Rites: Jews, Muslims and the History of Ritual Slaughter in Germany*, in JUDEN UND MUSLIME IN DEUTSCHLAND: RECHT, RELIGION, IDENTITÄT, *supra* note 12.

interpreted Jewish emancipation and the subsiding autonomy of the Jewish community as the retreat of religion from the public sphere to the private domain. Religion, and specifically Christianity, no longer provided the overarching framework of law and politics; Jews, like Christians, became members of a religiously neutral (or semi-neutral) society, and religion was relegated to the private sphere.¹⁵

Second, and consequently, religious institutions and customs, which were at odds with the emerging neutral public sphere, had to be reformed or abolished.¹⁶ Religious practices could be carried on in the private domain, through voluntary associations and personal belief. Religious ritual and religious ceremony could continue only on the condition that they were adapted to the new understanding of religion as a personal and spiritual concern.¹⁷ Third, even marginal religious groups, such as Jewish Orthodoxy, which seemingly rejected these secularization processes, were in fact deeply influenced by them both positively and negatively. In conformity with the general trend, some Orthodox rabbis justified traditional Jewish law on rational grounds, whereas other Orthodox rabbis closed ranks in a counterreaction and vehemently opposed any change in the custom itself.¹⁸

This Weberian scheme, as we shall see, has played a significant role in framing contemporary studies of Jewish religious practice in late eighteenth- and nineteenth-century Germany. In what follows, I will briefly chronicle the conflicts between four Jewish “rituals” and state law: burial of the dead, the ritual bath, circumcision, and animal slaughter. These summaries of contemporary scholarly accounts exemplify the continued productivity of the Weberian model, but hint at its limitations as well.

One of the first Jewish customs to come into conflict with modern state law concerned the burial of the dead.¹⁹ In 1772, the Duke of Mecklenburg-Schwerin issued the first set of German regulations regarding Jewish burials, requiring Jews to allow at least three days to elapse between death and burial. The ordinance stood in flat contradiction to the Jewish practice of burying the dead as soon as possible, a fact which troubled the Jewish community of the duchy and its surroundings.

The reason for the new regulation was a growing anxiety over premature

15. KATZ, *OUT OF THE GHETTO*, *supra* note 5.

16. FEINER, *supra* note 5.

17. *See generally* MICHAEL A. MEYER, *RESPONSE TO MODERNITY: A HISTORY OF THE REFORM MOVEMENT IN JUDAISM* (1995).

18. *See generally* JACOB KATZ, *A HOUSE DIVIDED: ORTHODOXY AND SCHISM IN NINETEENTH-CENTURY CENTRAL EUROPEAN JEWRY* (Ziporah Brody trans., 1998)[hereinafter KATZ, *A HOUSE DIVIDED*].

19. The following account is based on JACOB KATZ, *HA-HALAKHAH BE-METSAR: MIKHSOLIM AL DEREKH HA-ORTODOKSYAH BE-HITHAVUTAH* [DIVINE LAW IN HUMAN HANDS: CASE STUDIES IN HALAKHIC FLEXIBILITY] (1992); Falk Wiesemann, *Jewish Burials in Germany — Between Tradition, the Enlightenment and the Authorities*, 37 *LEO BAECK INST. Y.B.* 17 (1992).

burial. The archetypical fear of premature burial spread across Europe in the second half of the eighteenth century.²⁰ The Gothic image of the living dead found its counterpart in the fear of being buried alive. The anxiety of premature burial made its way into the ranks of the enlightened Prussian bureaucracy, which set regulations to prohibit early burial. New police regulations prohibited burial for three days after apparent death. It was only then, when the body began to rot, that one could be confident of death. These regulations, which were first imposed on the Jews in the 1770s, spread throughout Germany and remained in force well into the second half of the nineteenth century.

Unlike their Christian neighbors, German Jews held to a tradition that required the burial of the dead as early as possible so as not to violate the *halachic* prohibition of leaving the corpse unburied (*halanat hamet*). The new regulations were perceived as a blatant affront to Jewish tradition and custom and an infringement on the Jewish community's autonomy to administer its internal religious affairs.

Leaders of the Jewish community in Prussia turned to Moses Mendelssohn, hoping that the respect he enjoyed from state authorities would prompt them to revoke the decree. Mendelssohn did not decline his brethren's request, but neither did he wish to betray the spirit of the Enlightenment, and thus he sat down to write two letters. The first he addressed to the Duke, asking him to show tolerance of the ancient Jewish ritual; the other he sent to the Jewish community, explaining why the practice in dispute was not an ancient tradition at all. He argued that in Talmudic times Jews had in fact waited several days before burying their dead. Mendelssohn's legal opinion was unorthodox in both its mode of reasoning and its content. He sought to derive Jewish law directly from the Talmud, ignoring later authorities and relying on the Talmud more for its historical than its legal authority. In doing so, Mendelssohn became the predecessor of the *Wissenschaft des Judentums* movement (Judaic Studies), which in the course of the nineteenth century introduced secular methods of research to determine questions of Jewish law. Eventually, Mendelssohn's powers of persuasion seemed to appeal more to the Duke than to the Jewish community. The edict was repealed, while within the Jewish community Mendelssohn became the suspect of heresy.

A second example concerns the Jewish ritual bath (*mikveh* or *mikvah*), which became a source of public controversy beginning in the 1820s.²¹ According to Jewish law, an impure person or object can become pure only after immersion in a body of water. Most commonly, the ritual bath is used by women after menstruation or childbirth, though on occasion Jewish men too have used the

20. For the spread of this anxiety to the Anglo-American world, see Martin Pernick, *Back from the Grave: Recurring Controversies over Defining and Diagnosing Death in History*, in *DEATH: BEYOND WHOLE-BRAIN CRITERIA* 17 (Raymond M. Zaner ed., 1988).

21. The following is based primarily on Thomas Schlich, *Medicalization and Secularization: The Jewish Ritual Bath as a Problem of Hygiene (Germany 1820s–1840s)*, 8 *SOC. HIST. MED.* 423 (1995).

ritual bath to purify themselves. The *mikveh* played an important role in Jewish life, so much so that the community was under a religious obligation to construct a ritual bath, even before it built a synagogue.

According to Jewish law, the water of the *mikveh* must come from a natural source without human mediation. A spring, a well, or a cistern filled by rain can serve for this purpose. To allow access to groundwater, the ritual baths were often located at ground level and in the basement, and were referred to as *Kellerquellenbäder* (literally, “cellar spring baths”). German physicians and other prominent members of society denounced the ritual bath for being damp, unclean, and a health risk. The *mikveh* was described as a “dirty cellar shut out from daylight,” inhabited by mice and dangerous to public health. It was portrayed as a detestable place in which people could catch a variety of illnesses, not least, venereal disease.

The attacks on the morality of the *mikveh* soon became framed in the language of law and regulation. From 1810 to 1850 the authorities in various German regions examined and disapproved of many of the existing ritual baths. A number of decrees were published and ritual baths were shut down or refurbished according to hygienic standards and placed under the supervision of medical officers. Everything relating to the baths was specified in detail, down to the precise temperature of the water. Members of the Jewish community, including the Orthodox rabbis, cooperated with the reforms.²²

A third custom that came under harsh scrutiny was circumcision.²³ The dispute erupted in the 1840s when a handful of Jewish fathers refused to circumcise their sons. The parents, some of whom were medical physicians, were concerned with reported cases of death, which followed from circumcision. The accusations concerned the “ritual practices of using the fingernail for the separation of the corona (*periah*) and the mouth (*mezizah*) for the removal of impurities from the wound.”²⁴ According to the allegations, these unhygienic practices were a potential source of fatal diseases. Soon enough, state officials became concerned with regulating circumcision. In Hamburg, for example, to become a practicing *mohel* (circumciser), one required a certification not only from rabbinic authorities, but also from the state. The enforcement of medical standards, however, was not uniform, and in certain places, such as Dresden in 1844, medical officers refused to apply the new standards, arguing for the sanctity of religious rites.

22. Samson Raphael Hirsch, known also as the founder of modern Orthodoxy, encouraged similar improvements in Frankfurt, see Tzvia Koren-Loeb, *The Frankfurt a.M. Memorbuch: Gender Roles in the Jewish Community Institutions*, 4 WOMEN IN JUDAISM: A MULTIDISCIPLINARY J. (2007), available at <http://wjudaism.library.utoronto.ca/index.php/wjudaism/article/view/3075>.

23. The following is based primarily on ROBIN JUDD, CONTESTED RITUALS: CIRCUMCISION, KOSHER BUTCHERING, AND JEWISH POLITICAL LIFE IN GERMANY, 1843–1933 (2007); KATZ, A HOUSE DIVIDED, *supra* note 18.

24. JUDD, *supra* note 23, at 24.

The risk to public health was only one of two issues around which the debate revolved. The other concerned the demand made on Jewish fathers who did not circumcise their children, to nevertheless register them as members of the Jewish community. Though Judaism is traditionally matrilineal, many rabbis refused to register uncircumcised children on the basis of maternal heredity, claiming that circumcision was a necessary condition for being a member of the Jewish community. Here, too, the debates that ensued within the community soon found their way to the public authorities. Concerned fathers turned to the non-Jewish authorities, pleading with them to order the rabbis to register their sons. Some authorities respected the decisions of the Jewish community, while others instructed the community to register the noncircumcised children as Jews.

By the 1870s the controversy surrounding circumcision had subsided. The public health issues were resolved in a compromise that even the Orthodox-leaning rabbis could sanction. Henceforward membership in the Jewish community was determined on confessional grounds, so that the Orthodox congregations that wished to do so could split from the central organization and regulate membership in the community according to their own understanding, as the Jewish community in Frankfurt in fact did.

The fourth and final ritual that came under public scrutiny, and to which we shall return at length in what follows, concerned the ritual slaughter of animals.²⁵ According to Jewish tradition, for meat to be kosher, it is not enough that the animal itself is of a kosher kind (e.g., a cow rather than a pig); it needs to be slaughtered according to Jewish law, called *shehitah*, which means that the act must be performed with a sharp knife, cutting through the trachea and the esophagus in one swift move, by an expert and religiously certified *shohet* (“slaughterer”).

The controversy concerning *shehitah* focused on questions of both public health and morality. Of the two, the question concerning the humaneness of the practice turned out to be more troubling and harder to resolve. With the rise of animal protection societies in the 1820s and 1830s, the question regarding the proper slaughter of animals came to the fore. At first their complaints were directed against ordinary, non-Jewish, slaughter. The critique referred to the inhumane treatment and the infliction of pain and suffering on a sentient being. Animal protection associations advocated the stunning of the animal prior to its slaughter by a blow to the head. And, indeed, slaughterhouses gradually adopted the new methods, which were soon imposed across Germany.

25. The following is based primarily on Dorothee Brantz, *Stunning Bodies: Animal Slaughter, Judaism, and the Meaning of Humanity in Imperial Germany*, 35 *CENT. EUR. HIST.* 167 (2002); John M. Efron, *The Most Cruel Cut of All? The Campaign Against Jewish Ritual Slaughter in Fin-de-Siècle Switzerland and Germany*, 52 *LEO BAECK INST. Y.B.* 167 (2007); Robin Judd, *Jewish Political Behaviour and the “Schaechtfrage,” 1880–1914*, in *TOWARDS NORMALITY? ACCULTURATION AND MODERN GERMAN JEWRY* 251 (Rainer Liedtke & David Rechter eds., 2003); Shai Lavi, *Animal Laws and the Politics of Life: Slaughterhouse Regulation in Germany, 1870–1917*, 8 *THEORETICAL INQUIRIES L.* 221 (2006).

The stunning of animals, however, ran against Jewish law. According to the common interpretation of the Jewish law of slaughter, the animal is required to be conscious and physically intact at the moment of slaughter. The response of the Jewish community was, once again, twofold. On the scientific level, the Jewish community initiated research to prove that Jewish ritual was as humane and as hygienic as, and at times more so than, the new stunning methods. On the religious level, the community united to demand religious freedom. In addition, leading rabbis, including among the Orthodox, were willing to introduce changes into traditional practices as long as these changes did not undermine the law itself, but merely modified custom. Thus, for example, they changed the method whereby large livestock were set down on the ground prior to being slaughtered to make it more humane.²⁶

All four accounts are representative of the way current scholarship has examined the tension between Jewish law and state law and demonstrate the basic tenets of the secularization thesis. Once public law was no longer governed by (Christian) religion, the Jewish community began to lose its autonomy and the emerging regulatory state brought internal Jewish affairs and practice under its supervision. Jewish law was scrutinized and accused of failing to meet the enlightened standards of science and morality. Outside critics and internal reformers called upon Jews and the Jewish community to abolish certain Jewish practices. Anti-Jewish and anti-Semitic undertones no doubt played an important role in these debates, but most of the attacks tended to cloak themselves in the language of science and morality. Old Jewish traditions were criticized as being uncivilized and unbecoming of a modern age of reason, progress, and rationality, and were portrayed as backward and superstitious.

The depiction of the tension between state and religion along Weberian lines has, no doubt, some truth to it. But such accounts uncritically accept the underlying assumption of the “secularization” thesis, namely, that previously irrational, enchanted rituals were gradually disenchanting, leading either to their transformation or to their abolition. In what follows I wish to supplement this taken-for-granted narrative, and draw attention to an equally prevalent, but much less documented process of “ritualization” which accompanied rationalization. Instead of examining the tension between Jewish rituals and the emerging secular German state, we must first understand precisely how Jewish practice was conceived of as “ritual” to begin with.

PART II: MODERNIZATION AS RITUALIZATION

During the late eighteenth and nineteenth centuries, Jewish customs were

26. MICHAEL L. MUNK, ET AL., *EDUT NEEMANAH: SH. U-T. AL MA'AVAK HA-SHEHITAH BE-EROPAH* [RESPONSA ON HALACHIC PROBLEMS ARISING OUT OF THE DEFENSE OF SHEHITA IN EUROPE] (Jerusalem: Gur Arye, 1974).

referred to indistinguishably as ritual (*Ritus*), cult (*Kultus*), and ceremony (*Zeremonie*). Though the terms were not new in themselves, and had been used both in popular culture and by German law to refer both to religious practice in general and Jewish law in particular, they now increasingly began being used in a new sense.²⁷ In what follows, I wish to focus on this new sense that traditional religious practice acquired, and to draw attention to what may be called the “ritualization” of Jewish law.²⁸

What precisely were these new semantics of “ritual,” and how did they affect the way religious law was understood, practiced, and regulated? Cultural anthropologists have paid close attention to the definition of “ritual” and have debated the precise meaning of the term, and I will rely in part on their insights. My interest, however, is not in the scientific accuracy of the term, but rather in its discursive formation and cultural connotations.

The transformation in the discourse and practice of Jewish law consisted of two interrelated movements, which are characteristic of the modern notion of “ritual.” The first was defamiliarization. If rationalization translated the foreign into the familiar, “ritualization” transformed the familiar into the strange and alien. This aspect of “ritualization” has been described by the British cultural anthropologist, Siegfried F. Nadel: “[w]hen we speak of ‘ritual,’ we have in mind first of all actions exhibiting a striking or incongruous rigidity, that is, some conspicuous regularity not accounted for by professional aims of the actions”²⁹ Defamiliarization involved the singling out of certain Jewish practices as peculiar, and is thus worthy of special attention. A variety of discourses and practices of defamiliarization developed, which allowed non-Jews and Jews alike to single out certain Jewish customs as particularly superstitious, exotic, or supernatural.

The second element of the process of “ritualization” was symbolization, namely, imbuing the “ritual” with symbolic meaning beyond the practice itself. As Radcliff-Brown notes, “ritual acts differ from technical acts in having in all instances some expressive or symbolic element in them.”³⁰ The symbolic aspect of the ritual may refer to a supernatural domain, but may also enliven religious

27. The different shades of meaning and the nuanced distinction between ritual, ceremony, and cult need not concern us here, and I shall refer to all three as ritual. For a more elaborate discussion of this point, see Jack Goody, *Religion and Ritual: The Definitional Problem*, 12 BRIT. J. SOC. 142 (1961).

28. It is perhaps worth noting that even scholars who have dedicated their research to the study of Jewish ritual have taken the term “ritual” for granted, and have not reflected on its use. *See, e.g.*, JUDD, *supra* note 23.

29. Quoted in Goody, *supra* note 27, at 158.

30. Quoted in Goody, *supra* note 27, at 152. Radcliff-Brown himself characterized symbolism very broadly: “Whatever has a meaning is a symbol and the meaning is whatever is expressed by the symbol.” As Goody notes, Durkheim too emphasized the symbolic character of ritual: “Durkheim introduces two positive characteristics of ‘ritual,’ that is, of acts oriented to sacred things. Firstly, there is ‘the attitude of respect . . . employed as the basic criterion for the sacredness throughout.’ Secondly, ‘the means-end relationship is symbolic, not intrinsic.’” Goody, *supra* note 27, at 148.

practice in a more mundane way. Either way, the practice is bifurcated. The significance of the practice lies beyond the practice itself in another world or in another realm of symbolic signification.

The two elements of defamiliarization and ritualization are in fact interrelated. Turning familiar practices into unfamiliar spectacles transformed Jewish tradition into a riddle, the symbolic and hidden significance of which has to be deciphered. And conversely, infusing familiar practices with supernatural, exotic, or otherwise enchanted signification turned commonly practiced traditions into unfamiliar rituals.

Ritualization, thus defined, should be understood as a contrapuntal motion to rationalization. Whereas rationalization is an attempt to foster disenchantment with religious practice, ritualization is an attempt to enchant the practice and infuse it with mystery and concealed signification. Rationalization is based on the premise that nothing is without reason, whereas ritualization stems from the equally modern notion that nothing is without meaning.

One may wonder whether Jewish law was not always a ritual in the above sense, and whether the labeling of Jewish practice as “ritual” was a more or less accurate depiction of the practice, at least as it appeared to external observers. Would it not be correct to describe *shehitah*, traditional Jewish animal slaughter, as a “conspicuous regularity not accounted for by professional aims”? Is it not the case that *milah*, Jewish circumcision, was always understood to bear some symbolic meaning and signification? What precisely was novel about the “ritualization” of Jewish practice?

In his essay “Toward a Genealogy of the Concept of Ritual,” Talal Asad tracks an important change in the notion of “ritual” that took place around the eighteenth century, which may have bearing on the history of Jewish law.³¹ Originally, “ritual” referred to a manual in which the details of a religious practice were carefully documented. Ritual in its traditional sense, writes Asad,

is directed at the apt performance of what is prescribed, something that depends on intellectual and practical disciplines but does not itself require decoding. In other words, apt performance involves not symbols to be interpreted but abilities to be acquired according to rules that are sanctioned by those in authority: it presupposes no obscure meanings, but rather the formation of physical and linguistic skills.³²

During the eighteenth century, however, a new sense gradually emerges, and ritual “is no longer a *script* for regulating practice but a type of practice that is interpretable as standing for some further *verbally definable*, but tacit, event.”³³ Asad readily acknowledges that “[t]he idea that symbols need to be decoded is not, of

31. TALAL ASAD, *supra* note 10, at 55–82.

32. *Id.* at 62.

33. *Id.* at 57.

course, new . . . [but] it plays a new role in the restructured concept of ritual that anthropology has appropriated and developed from the history of Christian exegesis.”³⁴

Asad’s insights regarding the modern sense of “ritual,” its origins in Christian exegesis and its nineteenth-century reincarnation in sociology of religion and cultural anthropology are highly relevant to the understanding of the ritualization of Jewish law. We shall see how changes along similar lines took place not only among external observers of the Jewish community, but among reformers as well as the Orthodoxy within the Jewish community itself.

Indeed, the term “ritual” itself was alien to the Jewish tradition. Its closest translation to Hebrew, *pulban*, signified idol worship. Jews, at least traditionally, were more likely to speak of *mitzvah* (obligation or commandment) or *halacha* (a specific prescript, but also the entire code). Thinking of Jewish practice as “ritual” would have made little sense to traditionalist Jews, since for them there was nothing conspicuous about these practices. They were simply the way Jews led their daily lives and belonged to the *world* created by Jewish law.³⁵

Furthermore, and perhaps more strikingly, describing Jewish law as “ritual” and thus attributing signification and symbolization to traditionalist practices was also at odds with the self-understanding of the traditionalist Jewish community. Of the numerous commentaries, treatises and *responsa* on Jewish law written in the German-speaking world of the late seventeenth and early eighteenth centuries, it is hard to find any which address the underlying significance of the so-called “Jewish rituals.” Exceptions did exist, and admittedly one may find in the vast volumes of Jewish scholarship throughout the Middle Ages and up to the modern period numerous attempts to make sense of Jewish law, especially in the literature known as *ta’amei-ha’mitzvot* (“the reasoning of the commandments”). However, even when meaning was attributed to the practice, it was not used to determine, let alone to reform the practice. Furthermore, the meanings most commonly attributed to Jewish practices were either educational—the practice of the law would improve moral character—or ontological—following the precept would have a causal effect on well-being. It was only in the second half of the nineteenth century, as we shall see, that a comprehensive attempt was undertaken to interpret Jewish law symbolically.³⁶

To be sure, this is not to say that the observance of Jewish law was

34. *Id.* at 60.

35. Arnold Eisen claims that the traditionalist approach continued to prevail among many Jews including intellectuals throughout the nineteenth century. He writes, “The emphasis by Jewish actors on practice rather than belief provided space for a still more precious and perhaps indispensable strategy for dealing with modernity’s uncharted territory: avoidance of questions of ‘ultimate meaning’ altogether.” ARNOLD M. EISEN, *RETHINKING MODERN JUDAISM: RITUAL, COMMANDMENT, COMMUNITY* 4 (1998).

36. *See generally* YITZHAK HEINEMANN, *TA’AME HA-MITSVOT BE-SIFRUT YIŚRAEL 2* [THE REASON FOR THE COMMANDMENTS IN JEWISH THOUGHT] (1993).

traditionally perceived as routine conduct of no significance to the observant community. The *halacha* was practiced by many with great attentiveness and deliberation, and was highly “meaningful,” but in a very different sense of the word. Its “meaning” was not symbolic or otherwise hidden, but lay rather in the details of the practice and careful adherence to its precise performance. Any mistake in the practice of slaughter would render the livestock irreversibly not kosher, and any divergence from the laws of immersion in the *mikveh* required a repetition of the act. In the Jewish sources themselves it is very hard to find a justification, a rational or even comprehensive attempt to make sense of the practices. Instead, one finds detailed discussion and disputes regarding the precise manner in which the slaughter-knife should be used, or numerous instructions for preparing the corpse for burial. By the second half of the nineteenth century, all this would have changed and Jewish practice would be perceived, criticized, and to certain extent affirmed and practiced as “ritual.”³⁷

The gradual process of “ritualization” took form in different ways and in different contexts. External critics of Jewish law sought and found the “meaning” of Jewish practices in superstitious beliefs. More sophisticated and scientifically inclined observers tracked the origins of many Jewish practices to the Ancient East, infusing Jewish-European practices with the flavors and scents of the Orient. The emerging Jewish Reform movement in Germany abolished certain of the traditional practices for being irrationally “ceremonial” or “ritualistic” and reinterpreted and adjusted others to fit in with an enlightened notion of proper religion, i.e., nonritualistic worship. Orthodoxy too incorporated the new notion of “ritual” into its world. As we shall see, a small group of mystically inspired rabbis attempted to enliven traditional practices with supernatural signification. The larger group of enlightened German neo-Orthodoxy offered a new interpretation of Jewish ritual which placed the symbolic meaning of Jewish law at its core.

To trace the process of “ritualization” and its concrete articulations, I wish to closely examine one instance of the transformation of Jewish law into ritual, namely, the case of the Jewish slaughter of animals. Though the practice of animal slaughter is one example among many, it has several unique characteristics that may help clarify the change. Unlike circumcision, animal slaughter is a daily practice and is required in the everyday preparation of meat for consumption. Unlike the ritual bath and burial, it is not entirely internal to the Jewish community and had important ramifications for the interrelationship of Jews and Christians. And, finally, like circumcision it has clear affinities with Muslim practice.

The history of *shehitah* in Europe has recently captured scholarly attention and valuable studies have examined the ritual slaughter debate, known as the

37. In fact, the ritualization of Jewish custom was not all encompassing. Many Jews continued to practice the law long after it lost any possible “meaning.”

Schächtfrage, in Germany between 1871 and 1933.³⁸ Most scholars of fin-de-siècle Germany have focused on processes of rationalization, promoted by a strong and centralized German state, well-established animal protection organizations, and a highly secularized Jewish community. It is in looking back to the turn of the nineteenth century that one may perceive a parallel movement of ritualization which has played an equally important role in forming the historical debate. Similarly, scholars who have studied the more contemporary resurfacing of the slaughter debate in post-World War II Germany³⁹ have generally failed to note the fact that the contemporary debate has its roots in a long and turbulent past.⁴⁰

PART III: RITUALIZATION AND THE CASE OF ANIMAL SLAUGHTER

The Hebraists

The process of ritualization and the modern drive to decipher the meaning of Jewish religious practice reached a climax at the turn of the eighteenth century, and yet their roots lie in the early modern period, in post-Reformation Germany. It is important to take this earlier history into account in order to understand the Christian baggage that eighteenth- and nineteenth-century observers brought with them to the realm of Jewish custom.

Early signs of the “ritualization” of Jewish practice can be found in the late fifteenth-century studies known as the *Hebraica* literature. In these studies, Renaissance scholars such as Pico de la Mirandola (1463–1494) and Johann Reuchlin (1455–1522) observed Jewish traditional customs from a new perspective. The Hebraist writers, both Christian-born and Jewish converts, initiated the study of the Old Testament and post-Biblical sources in the original Hebrew, and introduced a new thematic that had little precedent in medieval Christian literature.⁴¹ Though this literature was often critical of Jewish custom and tradition, and one can detect in it more than a touch of the old Christian venom toward Jews, it would be a mistake to see in these texts, as some have, early signs of modern anti-Semitism. They are set in the context of a religious conflict not simply between a dominant majority and a subordinated minority, but between Jews, who still saw themselves as the Chosen People, superior in the eyes of God, and Christians, for whom the inferiority of the Jews had to be continuously demonstrated, a conflict that at least within the *Hebraica* literature

38. Brantz, *supra* note 25; JUDD, *supra* note 23; Efron, *supra* note 25.

39. See, e.g., RICHARD POTZ ET AL., *SCHÄCHTEN: RELIGIONSFREIHEIT UND TIERSCHUTZ* (2001).

40. But see PASCAL KRAUTHAMMER, *DAS SCHÄCHTVERBOT IN DER SCHWEIZ 1854–2000: DIE SCHÄCHTFRAGE ZWISCHEN TIERSCHUTZ, POLITIK UND FREMDENFEINDLICHKEIT*, ZÜRCHER STUDIEN ZUR RECHTSGESCHICHTE 42 (2000).

41. R. Po-chia Hsia, *Christian Ethnographies of Jews in Early Modern Germany*, in *THE EXPULSION OF THE JEWS: 1492 AND AFTER* 223–37 (Raymond B. Waddington & Arthur H. Williamson eds., 1994).

was commonly justified as emerging from a duty to save the souls of the Jews. In this literature, however, the Jews were no longer charged with their mistaken adherence to the Old Covenant, but rather with the fabrication of a new Covenant—the Talmud—which was far removed from the word of God.⁴² *Hebraica* literature, in this sense, differed from both the late medieval disputes between Jews and Christians and the later nineteenth-century anti-Semitism of German-Christian nationalists directed against emancipated Jews. Precisely for this reason, one may see this literature as a distinct phenomenon, and one which, as we shall see, prepared the grounds for the transformation of Jewish practice from custom into ritual.

It is in this venue that the treatises developed a new criticism of Jewish tradition. The authors tend to focus on Jewish customs, which would have been less familiar to their Christian readership, and specifically on customs that do not appear in the Bible or would not be commonly associated with it. Animal slaughter, for example, is discussed much more often in this literature than the prohibition on pork. The authors, remarkably knowledgeable regarding the minute details of Jewish slaughter, emphasize its pedantic character, at times to the point of ridicule.⁴³ Since reference to the divine command to slaughter can be found in the Bible only in one verse,⁴⁴ which itself does not specify the details, the very proliferation of lengthy manuals on the laws of *shehitah* proved the extent to which Jews had departed from the word of God. Buxtorf (1564–1629), for example, ridicules the lengthy discussions in rabbinic literature about the rules of inspecting the carcass for lesions known as *tereffa*, when the plain and original meaning of the word refers to cattle devoured by a wild animal out in the open field.⁴⁵

Another set of accusations leveled against *shehitah* concerned the alleged disrespect and even hatred that practicing Jews showed toward Christians. Some authors complained that the very fact that Jews viewed animals slaughtered by Christians as not kosher, equating them with carrion (*nevela*), was a sign of disrespect. Others claimed that the laws of *shehitah* humiliated Christians by offering them the rear parts of slaughtered cattle, which Jews were prohibited from consuming.⁴⁶ The slaughtered body of the animal was thus perceived as a

42. A similar critique seems to have emerged already in the twelfth century. See Amos Funkenstein, *Changes in the Patterns of Christian Anti-Jewish Polemics in the Twelfth Century*, 33 ZION 56 (1968).

43. Here and in the analysis that follows I often rely on the important contribution to the study of Hebraist literature on Jewish rituals by YAAKOV DEUTSCH, JUDAISM IN CHRISTIAN EYES 256 (2004).

44. “If the place which the LORD thy God shall choose to put His name there be too far from thee, then thou shalt kill of thy herd and of thy flock, which the LORD hath given thee, as I have commanded thee, and thou shalt eat within thy gates, after all the desire of thy soul.” *Deuteronomy* 12:21.

45. DEUTSCH, *supra* note 43.

46. Compare this with a similar medieval complaint discussed in JEREMIAH JOSEPH BERMAN, SHEHITAH: A STUDY IN THE CULTURAL AND SOCIAL LIFE OF THE JEWISH PEOPLE 218 (1941).

mirror image of the social relationship and symbolic interaction.

From Hebraist to Modern Anthropology

By the eighteenth century a further step had been taken in the “ritualization” of Jewish tradition. A new gaze, that of modern anthropology, was directed at Jewish custom. The new accounts of Jewish ritual were based on scientific rather than theological discourse. Still, it is important to appreciate the continuity to the same extent as the break between the two accounts. It is in this context that we now turn to the writings of Johann Jacob Schudt, perhaps the last author of the Hebraist tradition and arguably the first anthropologist of Jewish custom. It is through a close examination of Schudt’s work that we will be able to appreciate the ways in which modern anthropology “ritualized” Jewish religion at least as much as it “secularized” it, in both cases in ways that were dependent on, yet unfamiliar to, the Hebraist scholars.

Schudt was born in Frankfurt am Main in 1664, studied the Orient including Hebraistica in Hamburg, and published several books in the field. His discussion of Jewish custom as “ritual” appears in his magnum opus, *The Peculiarities of the Jews (Jüdische Merckwürdigkeiten)*, a four-volume edition which came out in 1716 in Frankfurt and in Leipzig. The multifaceted nature of the book, its different motivations, sources, and methods, is exemplified by Schudt’s discussion of Jewish slaughter. On first impression, the book may seem to belong quite squarely within the early-modern Hebraist tradition discussed above. Indeed, the chapter on Jewish slaughter does not begin with the Biblical command, but rather with a medieval Jewish text, which deems meat slaughtered by Christians to be “unclean.” “Only for us it is unknown,” Schudt reveals to his readers, “that the Jews consider that which the Christian slaughter as unclean and as carrion [*nevela*], an uncleanliness which is stirred by the devil, so that even if a Jew only carries such meat, he would become highly polluted.”⁴⁷

Though in his work Schudt repeats many of the most demeaning stereotypes associated with the Jews, his work as a whole transcends the bounds of its genre. Jews, in Schudt’s account, are lazy, dishonest, stingy, and superstitious, and lead unclean and unhealthy lives. But instead of merely repeating these stereotypes and attributing them, as some of his predecessors have done, to the essential character of the Jew—an internally Satanic evil commonly associated with the murderers of the son of God, for example—he often offers an empirical and rationalized explanation for these peculiarities. For Schudt, Jews are lazy and unproductive only because they have for centuries been deprived of privileges and denied access

47. Here, as in many other places, Schudt relies on accurate even if highly manipulative and selective sources published by Eisenmenger (1654–1704) in his infamous, JOHAN ANDREAS EISENMENGER, ENTDECKTES JUDENTHUM [JUDAISM UNVEILED] (Königsberg, 1711).

to many professions, and they smell bad not because they have associated with the devil, but simply because their diet includes unreasonable amounts of garlic. If the Jews must convert, it is only because their customs have become an inseparable part of their religion and character.

Probably the most interesting aspect of Schudt's work is that he not only wrote about Jewish life in general, but also focused on the Jews of his own city, Frankfurt. Each chapter of the second volume is devoted to a different aspect of Jewish custom and ritual—from *shabbath* and holidays to *kapparoth* and *shebitah*—but the emphasis in each is on details Schudt was able to gather about the Jewish community he knew. Thus, for example, the chapter on Jewish slaughter, titled “On the Slaughtering and Selling of Meat of the Frankfurt Jewry,” offers specific information about the Jewish ghetto, the *Jüdische Gasse*, some of which seems to have come from firsthand knowledge.

It is from a similar perspective—the move from theology to anthropology—that one may read some of Schudt's specific observations about traditional Jewish slaughter. Even before Schudt, the vilification of ritual slaughter had a practical side to it, which has often been neglected. In many towns and villages, Jews made their living by selling meat to Gentiles and competed against Christian butchers. Consequently, one of the more popular aims of the assault on Jewish slaughter was to convince potential Christian customers to avoid buying meat from the Jews. A common allegation in many of the anti-Jewish texts of the Hebraists was that Jewish butchers encouraged their children to purposefully defile the meat sold to Christians by spitting on it in order to bring sickness and death upon them. Though Schudt cites these allegations, he immediately questions their validity and goes as far as to name them libel. But then, instead of dismissing the accusations, he offers a rational explanation for their creation. Jews, he tells us, are required to inspect the corpse of slaughtered cattle and search for lesions that would make the animal not kosher. Specifically, they are required to check that the lungs of the animal have not been punctured, and for that purpose they often use spit to clean a suspicious spot and check if the surface beneath it has indeed been injured.⁴⁸

Schudt thus clears the Jews of one allegation only to condemn them with another. Referring to the actual practice of the Jewish butcher, he writes,

I thought it should offend one's entire appetite, so that one need only note the unclean, invidious, foul knife and the apron, which seems more similar to that covering a knacker, who skins dead animals, than to a

48. JOHANN JACOB SCHUDT, JÜDISCHE MERCKWÜRDIGKEITEN VORSTELLENDEN WAS SICH CURIEUSES UND DENCKWÜRDIGES IN DEN DEUERN ZEITEN BEY EINIGEN JAHRHUNDERTEN MIT DENEN IN ALLE IV. THEILE DER WELT, SONDERLICH DURCH TEUTSCHLAND, ZERTREUTEN JUDEN ZUGETRAGEN: SAMT EINER VOLLSTÄNDIGEN FRANCKFURTER JUDENCHRONICK, DARINNEN DER ZU FRANCKFURT AM MAYN WOHNENDEN JUDEN VON EINIGEN JAHRHUNDERTEN BISS AUFF UNSERE ZEITEN MERCKWÜRDIGSTE BEGEBENHEITEN ENTHALTEN 972 (Frankfurt und Leipzig 1714–1718).

butcher, how bloody, how dirty, how unclean is the apron, . . . brought about out of such evilness.⁴⁹

It is important to note, however, that Schudt is willing to rationalize the hatred toward the Jews much more than he is willing to find rational grounds for Jews' hatred of Christians. He not only refrains from rationalizing this hate, but, quite to the contrary, he enchants it. The chapter, which opens with the superstitious hatred of Jews toward Christians, thus performs a double reversal. First, it is not the Christians who are impure but rather the Jews, and second, whereas the impurity that the Jews associate with Christians belongs to the realm of the supernatural, the hatred that Christians bear toward the Jews has its grounding in reason.

Schudt's work, like much of the anthropological writing that would follow, can be characterized by this double move of disenchantment and reenchantment. On the one hand, anthropology is known for making cultures and customs that are distant and foreign more comprehensible, but on the other hand, and perhaps in a less obvious way, it strives to make that which is, in fact, becoming ever more familiar into something strange, alien, and enchanted. For Schudt the Jews of Frankfurt were both distant and near. Some of their traditions may have seemed quite alien to an outside observer, but, clearly, the practice of slaughter was quite familiar at least to some Christians, who, as Schudt notes, often bought such meat and were present at its slaughter. Under the anthropological gaze of the last of the great Hebraists, Jews become an ethnicity and their traditional practices emerge as religious ritual.

Orientalism

The association of Jewish tradition with the Orient at the turn of the nineteenth century marked a clear transformation of the critique of Judaism from theology to anthropology and initiated a new stage of the "ritualization" process. The claim that the Jews are a nomadic people whose traditions reflect their original habitat became popularized already in the eighteenth century through the writings of German Orientalists such as David Michaelis.⁵⁰ The theme, which appears in the writings of German writers, from Herder to Hegel, became a cultural trope in the course of the nineteenth century. There was no precise definition of the Orient, which was identified with the Far East as much as with the Near East, and with the Indians and the Chinese as much as with the Arabs and, as it turned out, the Jews. Though initially used in a pejorative sense, by the early twentieth century the Oriental identity was embraced by some German-Jewish intellectuals.⁵¹

49. *Id.*

50. For a collection of essays on the topic, see *ORIENTALISM AND THE JEWS* (Ivan Davidson Kalmar & Derek Jonathan Penslar eds., 2005).

51. See David A. Brenner, *Marketing Identities: The Invention of Jewish Ethnicity, in* *OST UND WEST*

Recent scholarship has drawn attention to the association of Jews with the Orient during that period. These studies have often taken Said's Orientalist critique as their point of departure, comparing the writings on Muslims with those about Jews.⁵² For current purposes, what is important is not the dynamics of power between center and periphery, which no doubt governed the discourse, but rather its concrete manifestation: the conceptualization of religious practice as ritual.

The association of Jewish ritual with Islam and the life of a desert tribe opened the possibility for a simultaneous process of secularization and ritualization of traditional practices. On the one hand, Jewish laws and specifically the dietary code were explained as a primitive yet protorational response to the conditions of the Orient. On the other hand, the very association of the Jews with the exotic desert tribes recontextualized the Jews outside of Europe and infused Jewish practice with cultish signification.

Attempts to rationalize Jewish practice were especially prominent with respect to the dietary laws, such as the prohibition on the consumption of certain kinds of animals, particularly pork, and the separation of meat from milk. Jewish apologists defended the continued relevance of the Jewish dietary laws on the basis of the new science of nutrition. Similarly, liberal-leaning Jews, while admitting that many dietary laws were no longer appropriate, attempted to ground the original Biblical prohibition in new scientific theories. Consuming meat together with milk or the consumption of camel meat was said to be unhealthy for digestion.⁵³

Ritual slaughter served as an ideal case for emphasizing the affinity between Jewish and Muslim practice. Despite some notable differences, the two practices shared much in common and were commonly referred to as *Schächten* (from the Hebrew *shehitah*), or *rituelles Schlachten* (ritual slaughter). First and foremost, both require that the animal be killed by means of a sharp cut to the throat that severs the trachea and the esophagus along with the main blood vessels, allowing the blood to pour out. A common argument tying the two traditions together made reference to the advantage of draining the blood from the meat in the desert climate of the Orient, as meat saturated with blood would rot more quickly and be more susceptible to disease.

Alongside attempts to give Jewish ritual a rational significance through the sciences of medicine and nutrition, there was a parallel attempt to infuse Jewish practice with ritualistic significance. History, archeology, and the new science of the Orient were brought to bear on the origins of the Jewish tradition. In 1869,

77 (1998).

52. See, e.g., GIL ANIDJAR, *SEMITES: RACE, RELIGION, LITERATURE* (2007).

53. For a general overview, see Thomas Schlich, *The Word of God and the Word of Science: Nutrition Science and the Jewish Dietary Laws in Germany, 1820–1920*, in HARMKE KAMMINGA AND ANDREW CUNNINGHAM (EDS.) *THE SCIENCE AND CULTURE OF NUTRITION* (1995) 97–128.

the renowned author Johan Dümichen, who had returned from an expedition in the Nile Valley, published his book on the historical inscriptions of ancient Egyptian monuments in Leipzig.⁵⁴ Among the inscriptions was a relief from an Egyptian temple, which showed the sacrifices to the goddess Misaphris, who supposedly was buried in this temple. The relief offered a visual depiction of the ancient practice of ritual slaughter, including the knife-cut, the pouring of the blood to the ground, and the offering of the animal to the gods. The archeological artifact vindicated the long-held opinion of both Orientalists and lay observers that the Jewish ritual of animal slaughter had its origins not in the Biblical word of God, but rather in a pagan tradition of the old Egyptians. The Jews, who fled from Egypt around 1500 BCE, incorporated the practice into their religion and carried it with them into the new land.

Calling attention to the affinities between Jewish and Oriental custom assumed a new understanding of Jewish religion and its place in Europe. Judaism was no longer dialectically associated with Christianity, as both its religious forerunner and arch rival, and became merely one among many Oriental religions, and a stranger to Western and Christian culture. A Berliner magazine gave voice to this emerging sentiment, in a critical article on Jewish slaughter. The author rejects the comparison of Jewish ritual with the Catholic profession of faith, due to the inhumanness of the former. The Jewish custom should rather be equated with that of Muslims, who are known for their cruelty to animals. "Supporters of the ritual," the author concluded "occupy the same cultural level as adherents of the Koran."⁵⁵

Jewish Mysticism and Animal Slaughter

The ritualization of Jewish custom was not limited to external observers, but was internalized in different ways by members of the Jewish community. In fact, radical changes in the interpretation and practice of Jewish law, including animal slaughter, took place within the Jewish religious community some time before Jewish emancipation and the secularization processes that accompanied it. These changes are closely related to the rise of *Hasidism* in Eastern Europe, an Orthodox movement which sought to enliven Jewish experience and popularize religious devotion through mystical experience. The *Hasidic* movement gave rise to a fierce struggle between its followers and its opponents, the *Mithnagdim* (literally, the "opposing"), which for several decades threatened to tear apart the Jewish community. Interestingly, one of the earliest and most contentious controversies between the parties was concerned with the meaning and practice of animal

54. JOHAN DÜMICHEN, HISTORISCHE INSCRIFTEN ALTÄGYPTISCHER DENKMÄLER (Leipzig, 1869), 2. FOLGE, NEBST EINIGEN GEOGRAPHISCHEN UND MYTHOLOGISCHEN INSCRIFTEN, TABLE 30.

55. MACKEL N. GREVENMACHER, REFERAT, 10(7) RUNDSCHAU AUF DEM GEBIETE DER GESAMTEN FLEISCHBESCHAU UND TRICHINENSCHAU (1909).

slaughter.

The *Hasidic* movement, which succeeded in winning over a large portion of the Jewish population in the East, had very limited success in Western Europe and hardly any at all in German-speaking territories. This fact is commonly associated with the general image of German Jewry as a rationalist, enlightened, and elitist community, which rejected the more mystical and superstitious trends of *Hasidic* Judaism. This common perception may be hard to deny, but it does not tell the full story. Specifically, it does not account for the exceptional story of Rabbi Natan Adler and his followers.

Rabbi Natan Adler was a highly respected Jewish scholar in Frankfurt, and a pious and humble man. He was praised by his students and coreligionists as the “Great Eagle,” a play on his German name and a reference to the medieval Great Eagle, Maimonides. On August 15, 1779, Adler was accused of heresy, excommunicated, and forced to leave his native city. The ban, which was directed against Adler, his close follower Leizer and his students, was quite extreme and left Adler isolated within his own community. Forced to leave Frankfurt, Adler became a rabbi and religious leader in Boskovitz (Moravia), only to be denounced once again by his new community, primarily for his practice of animal slaughter. For many years, Adler remained a figure of questionable repute, and it was only toward the end of his life that the Frankfurt community accepted him back and he was rehabilitated.⁵⁶

Many and varied were the accusations leading to the ban from Frankfurt. Adler was charged with introducing significant changes into the wording and custom of prayers, adding stringent ritual practices, such as excessive fasting and self-abnegation, and leading his students astray by teaching them practices of Jewish mysticism, such as the interpretation of dreams. One of the accusations leveled against Adler in Frankfurt, which later became central to his banishment from Boskovitz, was that he had altered the old tradition of animal slaughter.

The explanation for Adler’s unorthodox practice of animal slaughter was his mystical belief in reincarnation (*gilgul*) and specifically his belief in the reincarnation of a human soul into an animal body. According to certain kabalistic teachings, the souls of grave sinners, who pass away unrepentant, are punished by being reincarnated into an animal body. Sometimes the punishment may turn out to be a stage on their way to redemption. This happens when God in his mercy deposits the human soul in the body of a pure (kosher) animal. When such an animal is properly slaughtered or, according to some versions, when it is slaughtered in kosher fashion and eaten, atonement is made for its sins and the soul is elevated back to its human form. But all of this will happen only if the

56. Rachel Elijor, *Rabbi Nathan Adler of Frankfurt and the Controversy Surrounding Him*, in *MYSTICISM, MAGIC AND KABBALAH IN ASHKENAZI JUDAISM* 223 (K.E. Grozinger & J. Dan eds., 1995); Jacob Katz, *Towards a Biography of the Hatam Sofer*, in *DIVINE LAW IN HUMAN HANDS: CASE STUDIES IN HALAKHIC FLEXIBILITY* (1998).

slaughter follows the strictest ritual procedure, and first and foremost, on condition that the knife's blade is perfectly smooth and sharp.

It was not the heresy of his beliefs, however, that provoked the wrath of the community. The belief in reincarnation was as old as the early kabalistic writings from the twelfth century, and the idea that a human soul may reincarnate into an animal body, according to Gershom Scholem, dates back to the thirteenth century.⁵⁷ There is ample evidence that by the seventeenth century, the belief had spread across the Jewish world and even appeared, on occasion, in prefaces to halachic treatises on *Shehitah u'Bedika* (slaughter and examination of the carcass). What led to Adler's excommunication was not the heresy of his mystical beliefs, but rather his translation of these beliefs into a religious reform. It was one thing, in fact quite common, to study kabala and believe in the supernatural, but quite another thing to preach *halachic* change and to insist on the basis of mystical knowledge that the regular blade used by community butchers for centuries was inappropriate and had to be replaced.⁵⁸ Adler's mysticism was perceived as a threat precisely because it constituted a break from tradition and an attempt to reenchant an already disenchanting world. Adler sought to reform religious customs and to popularize esoteric knowledge.

Adler was a truly exceptional figure, but his attempt to suffuse the traditional practice of animal slaughter with spiritual meaning was not exceptional. It had its parallels in Eastern Europe, and was carried on by some of Adler's students in Germany. Thus, for example, one of Adler's outstanding students, Yosef Schneituch, composed a special prayer for the *shohet* to recite before each slaughtering, or, if he lacked the leisure, at least once a day. The prayer includes the following lines:

Master of all worlds . . . May it be your wish that in accordance with the laws of slaughter which you have commanded and through the use of the knife which I have sharpened as you have commanded in the holy scripture (*torah*), that if there is any sparkle (*nitzotz*) in this animal . . . by the observance of this commandment it will be removed from the animal and elevated to its former human stature.⁵⁹

57. Gershom Scholem, *Gilgul: The Transmigration of Souls*, in *ON THE MYSTICAL SHAPE OF THE GODHEAD* (1991), 197–250.

58. An account, which was published many years after the fact, by Avraham Yehuda Ha'Cohen Schwartz, a descendent of one of Adler's students, reads as follows: "It is the story of Rabbi Natan Adler and his student Rabbi Moshe Sofer from Pressburg, both of whom were knowledgeable in Jewish mysticism. Rabbi Natan Adler sought to disqualify the shohatim in Frankfurt, and thus overpower the influence that the Other Side [טורה אחרת] had on disqualified shohatim If he had managed to entirely fulfill his wishes the Messiah would have come, but Satan had brought upon him butchers that persecuted him and he had to flee from Frankfurt. And his student, Moshe, ran after him by foot many miles." ABRAHAM J. SCHWARTZ, *DEREKH HA-NESHER V'E-TORAT EMET* 25–26 (1924 or 1925).

59. YOSEF BEN MEIR (RIVAM) SCHNEITUCH RESPONSA, Chapter 10, Responsa 6 (Shemu'el Zan v'il beha-manoa Mosheh B.P, 1890).

A similar interpretation of Jewish ritual can be found in one of the more interesting treatises on the subject, "Ohel Issachar," which was published in Altona in 1826, more or less at the time when the first societies for the prevention of cruelty to animals were being founded. The author, Issachar Ber Lichtenstein, from Krotoschin (a small town southeast of Posen), connects the belief in *gilgul* with a concern with animal suffering:

And indeed how greatly is the *shohet* warned not to disqualify the slaughter, because it is possible that in this animal there lies a soul that is meant to be released now in the blessing over the slaughter . . . and it is known that if the animal is slit from the nape, or by one of the things which disqualify the slaughter, then the blood of the animal is sucked back into its limbs and it is immensely painful, so much so that the animal does not have the strength to moan and to exert her spirit and her blood, and there is no greater cruelty (*tsa'ar ba'aley chaim*) to the animal than that.⁶⁰

Lichtenstein's explanation integrates three distinct traditions. The first, and probably the most ancient, grounds the rules of Jewish slaughter in the prohibition against the consumption of blood. The second, which has its origins in the Middle Ages, sees the rules of *shehitah* as being intended to forestall unnecessary suffering to the animal. And finally, the third, which we have already encountered, grounds the practice in mystical thought. All three echo old traditions, but also bear certain similarities to new concerns with animal cruelty which began to emerge.

The mystical treatment of Jewish slaughter, and this is more than a mere play on words, spiritualized the animal soul and animated religious belief. In this context, one can see the late eighteenth-century debate as foreshadowing not only the rationalization of animal welfare, but also the nineteenth-century construction of *shehitah* as a religious ritual and as part of a newly emerging sense of religion.

Reform and Neo-Orthodoxy: Command and Symbol

The "ritualization" of Jewish law stood at the center of a contentious struggle between the Reform movement (*Reform Verein*) and the more traditionalist branches of German Jewry. Though the Reform movement is commonly associated with enlightenment and rationality, and with the rejection of certain aspects of Jewish law as superstitious and unbecoming of a modern age, the rational critique of religion captures only one side of the debate. The other concerns the role of ritual and symbol in religion. Jewish reformers not only rejected certain ritualistic aspects of Jewish tradition as superstitious and irrational, but, first and foremost, they identified traditional Jewish practices as rituals.

Leading members of the Reform movement rejected the overly "ceremonial" aspects of Jewish religion. What mattered in their eyes was the underlying

60. ISSACHAR BER LICHTENSTEIN, SEFER OHEL ISSACHAR (Altona, 1826).

significance or symbolic meaning of a commandment (*mitzvah*), rather than the minutiae of its observance. Traditional practices needed to be reformed in a way that would make them more dignified and of truly spiritual significance. Otherwise, all that remained was an empty shell, which should be abandoned. Thus, the dietary laws were abolished because they lacked significant symbolic meaning, whereas the Jewish Sabbath, which symbolized rest, could be maintained, but according to some reformers, such as Holdheim, it should be celebrated on Sunday to align it with Christian practice and create a shared day of rest.⁶¹

In his study of the history of the Reform movement in Germany and the United States, Michael Meyer addresses the further development of these ideas in the writings of the second generation of Reform leaders, such as Emil Hirsch (the son of the renowned German Reform rabbi, Samuel Hirsch), who became a prominent figure in the United States. “The dietary laws are a survival of a species of totemism,” Hirsch wrote, adding that the research of W. Robertson Smith had made that fact quite plain. Circumcision was originally a ceremony of initiation into the tribe or clan. Kohler described the later *tefillin* (phylacteries) and *mezuzah* (biblical inscription on the doorpost) as “talismans” whose origins lay in primitive blood daubing, and he called the wearing of the *talit* (prayer shawl) “fetishism.” Such laws, spurned by Reform Jews in practice, appeared to be totally discredited by the discovery of their parallels elsewhere in the ancient Near East.⁶²

The effort to suffuse traditional religious practice with symbolic meaning was by no means limited to liberal theology, nor was it exclusively employed to criticize and reform Jewish tradition. One finds early signs of the “ritualization” of Jewish tradition already in Mendelssohn’s attempt defend the “ceremonial” character of the divine commandments in his book *Jerusalem*.⁶³ In what has been considered by many to be a very obscure passage, and by Mendelssohn himself a “digression,” the author sketches an outline of a theory of language and symbolic meaning.⁶⁴ Briefly stated, Mendelssohn argues that written language in general and symbolic script in particular is limited in its ability to convey exact meaning. Dead letters always require interpretation and symbolic script can easily be misinterpreted (Mendelssohn goes as far as to argue that the misinterpretation of written symbols lies at the origin of idolatry). By contrast, he argues, oral language and symbolic action are much better suited to this purpose, for their meaning is fully embodied in the oral tradition and ritual practice. Whether we find

61. DAVID PHILIPSON, *THE REFORM MOVEMENT IN JUDAISM* 289 (1907) (quoting Samuel Holdheim).

62. MEYER, *supra* note 17, at 273 (discussing Emil Hirsch the son).

63. See generally MOSES MENDELSSOHN & ALLAN ARKUSH, *JERUSALEM, OR, ON RELIGIOUS POWER AND JUDAISM* (1983).

64. Arnold Eisen, *Divine Legislation As “Ceremonial Script”: Mendelssohn on the Commandments*, 15 *ASS’N FOR JEWISH STUD. REV.* 239, 239–67 (1990).

Mendelssohn's argument convincing or not, he himself believed he was laying the grounds for a possible justification of the oral and ceremonial characteristics of Jewish law.

Despite the novel approach, Mendelssohn himself never took the further step of spelling out the precise symbolic meaning of Jewish rituals. Strikingly enough, his innovative approach was eventually implemented by the founding father of Jewish neo-Orthodoxy in Germany, Rabbi Samson Raphael Hirsch. According to Hirsch, all Jewish laws have a symbolic meaning, the decipherment of which stood at the center of his teachings. The notion that Jewish law has symbolic meaning appears, as Hirsch himself pointed out, in traditional sources. What nevertheless made his interpretation both novel and radical was his argument that all Jewish law was symbolic, and that its symbolism was not of supplementary significance, but rather constituted the ultimate *telos* of Divine commandment. His commitment to the Talmudic interpretation of Biblical law led him to find symbolic meaning not in the general formulations of the commandments, as some Reformers had done, but through interpretation of the minute details of the commandments, giving consideration to the symbolic meaning of both script and ritual. Hirsch, like Mendelssohn, turned the critique of Jewish ceremonial law on its head, claiming that the existence of ritual not only makes sense, but is in many ways necessary precisely because it is ritualistic and symbolic.⁶⁵ Though Hirsch does not offer a full account of animal slaughter in his writings, his interpretations of many other "ritualistic" practices, including the sacrifice of animals in the Temple, were very elaborate and highly innovative.

State Law and Ritualization

Before concluding, I would like to offer a few comments on the relationship between ritualization and state law. As opposed to the effects of processes of secularization, those of ritualization on state law are much harder to document. Clearly, the very fact that Jewish practices were "ritualized" and thus singled out as exotic played an important role in turning public opinion against them and prompting the state bureaucracy to place limitations on them. Similarly, but leading to opposite consequences, the attempts to reform Jewish tradition and bring it in tune with prevailing Protestant practices made the Jewish rituals more acceptable to the Christian public and administration. And yet, it would be a mistake to conclude that ritualization was limited to public opinion and had no legal and political implications. Like secularization, ritualization too had a multifaceted impact on the law, at times working to intensify the conflict between religious practice and state regulation, at other times helping to demonstrate their

65. EISEN, *supra* note 35, at 135–55. For a broader perspective on Rabbi Hirsch, see ROBERT LIBERLES, *RELIGIOUS CONFLICT IN SOCIAL CONTEXT: THE RESURGENCE OF ORTHODOX JUDAISM IN FRANKFURT AM MAIN, 1838–1877* (1985).

compatibility.

Indeed, by the second half of the nineteenth century, when ritual slaughter came under legal attack, the debate was not limited to questions of animal welfare and hygiene. Since one of the strongest arguments in defense of Jewish slaughter was religious freedom, one of the main counterarguments by its opponents was that the practice was not really part of Jewish religion, but rather mere ritual (*Ritus* or *Kultus*).⁶⁶ The argument was based on the observation, correct in itself, that the minute details of the practice, particularly the knife-cut and consequently the prohibition on the stunning of the animal, did not appear in the Biblical text.

Thus, when the question of animal slaughter reached the Reichstag in the late 1880s its supporters, including most prominently Dr. Windthorst, head of the Catholic Central Party (*Zentrum Partei*), endorsed the practice by countering the allegation that it did not belong to traditional Jewish custom. Windthorst, Bismarck's main rival during the *Kulturkampf*, strongly advocated religious tolerance and defended ritual slaughter by Jews:

I have looked into the matter and I am convinced that the Orthodox Jews will take a great offence at this proposal and so they must do . . . because the proposal stands in conflict with the views, which they have had since youth, views which originate out of Mosaic times, which we too have experienced in the first days of Christianity; since we can indeed be confident, that the early Christians still observed the aforementioned command [*Gebot*].⁶⁷

It is interesting to note that in the case of circumcision, “ritualization” worked in a different way. When, in the mid-nineteenth century, Jewish parents of newborn children refused to circumcise their children, but nevertheless desired to have them registered as eligible members of the Jewish community, many rabbis inclined to Orthodoxy would not allow it. The parents applied to the authorities, claiming that according to Jewish law, circumcision was not a precondition for becoming a Jew. Though the argument was unquestionably correct according to traditional Jewish law, the rabbis did not accept it. Some argued that circumcision could be compared to baptism, as a *rite de passage* which was a necessary precondition for acceptance into the community of faith. There was little precedent for any such claim in traditional sources, and the rabbis no doubt drew the analogy only as a strategic move, but even as such it was very telling.⁶⁸

CONCLUSION

Around the turn of the nineteenth century, the Jewish community in Germany and its laws underwent a radical transformation. Ancient traditions were

66. Reichstag proceedings, 18 May 1887, 632.

67. *Id.*

68. JUDD, *supra* note 23, at 22.

discarded, the autonomy of the Jewish community was infringed, emancipation was gradually becoming a tangible reality, and Enlightenment ideals led to the crumbling of the social and mental walls of the Ghetto. Conditions were ripe for the transformation of old conceptions of Jewish law and the rise of modern alternatives, a transformation which was indeed underway. But what precisely was its nature?

An observer of Jewish custom approaching this history with a Weberian lens will assume that the old, superstitious, mystical, and otherworldly ideas about traditional practices were replaced with modern, worldly, and more rational notions. And that religion gradually became compatible with emerging notions of enlightenment, civility, and a personal profession of faith.

And yet, the secularization thesis offers only a partial account of the historical transformations of Jewish law, and the closer one explores this history the more one-sided the Weberian account appears. First, enchanted accounts of Jewish law emerged alongside modern practices of disenchantment and were clearly not dispelled by them. This is true as much for Adler's mysticism as for Schudt's ethnographic writings and the Orientalist exoticism. Second, Jewish practices were enchanted through their "ritualization," that is, by shifting the sense of the law from the minute details of its practice to its deep signification and symbolic meaning. This shift took place not only in the writings of external observers, but also from within the religious community, including its Orthodox wing. Third, enchantment or ritualization, and disenchantment or rationalization were not mutually exclusive and, in the final analysis, complemented each other in a variety of ways. At times, ritualization came as a counterresponse to overrationalization, other times, the two were part of a joint project to decipher the sense of traditional practices in the search for meaning, and still on other occasions, the interpretation of traditional practices as enchanted was a projection of the reverse image of a rational and disenchanting present onto an irrational and enchanted past.

The close affinity and interdependence between schemes of rationalization and schemes of ritualization allows us to return by way of conclusion to some of the remarks made in the preface. If, indeed, the history of Jewish law can be read as a parable of the "law and" and "law as . . ." of legal history, what lesson can this parable teach?

Let us assume (with "law as . . .") that the challenge that legal theory and legal historiography face today is how to think critically beyond the disenchantment of law and its manifestations in legal realism and the variety of "law and" scholarship. The alternative proposed by "law as . . ." seeks to expose the deceit that underlies this rationalist and disenchanting image of modern law. Law, so the argument goes, is much less rational than we customarily think. Its most mundane operations bear deeper signification, traces of the transcendental, and remnants of a political theology. Law is imaginative and legal scholarship and

historiography must take seriously the metaphoric, symbolic, and transrational dimensions of law.

But what if, as the history of Jewish law hints, the search for deeper signification and hidden meaning in a seemingly disenchanting law is not a critical alternative, but merely a complementary effect? What if, to paraphrase Heidegger, disenchantment does not exclude enchantment, and it is rather through legal disenchantment that legal enchantment comes to the fore? Is this not the case with the current historiographical and psychological investigation of law as myth?

If, however, “law as . . .” is not a satisfactory alternative to “law and” what other alternatives are open for the study of legal history? This paper has offered two possible and complementary lines of inquiry. First, the close affinity and interrelationship between the enchantment of law and its disenchantment is in itself worthy of investigation. Demonstrating the way these two seemingly mutually exclusive processes work in tandem, and inquiring into the logic of their codependence reveals important dimensions of modern law. Second, seeing beyond the modern dialectics of religion and secularism may open new possibilities for understanding the past. The history of Jewish law prior to its “ritualization” offers one possible venue. This history suggests that a focus on the minute details of legal practice was a dominant alternative to a search for meaning, whether enchanted or disenchanting. The possibility of thinking of law as neither disenchanting nor enchanting has not been fully explored in this paper, but only hinted at. The question remains whether it is possible to think of law neither through the prism of “law and” nor through that of “law as . . .” What precisely would such a possibility entail?