

I am delighted by the fact that the College-Institute should choose to bestow such an honor upon a student (or emerging scholar) of medieval Jewish law. The choice is not an obvious one. After all, Jewish history is an academic area that has developed alongside 19th and 20th century Liberal Judaism, and has illustrated the promises of the modern, open, university-modeled study of Judaism of

In fact, prominent scholars of medieval Jewish law (or *halakhah*) trace and describe a rabbinic tradition that ends in expulsion, destruction, and catastrophe. The most important creative centers of *halakhah* during the High middle ages are in the



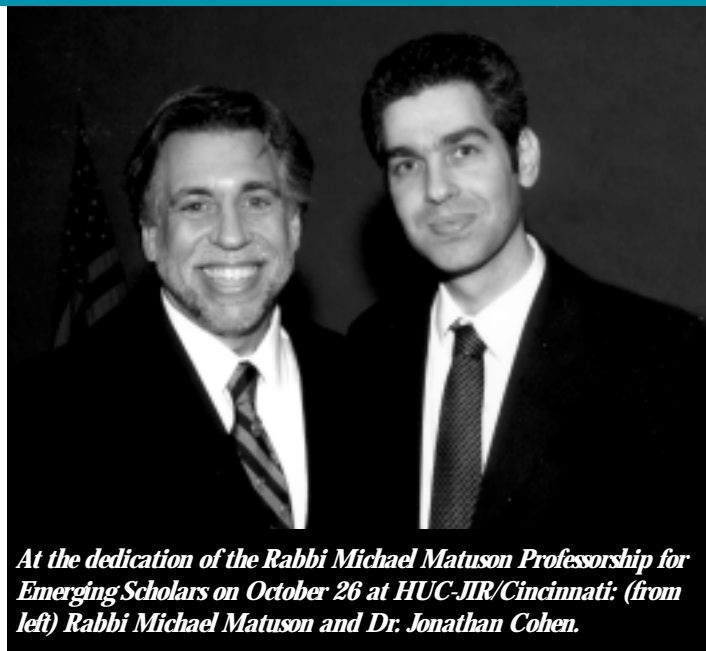
(from left) Dan Edelman and Cynthia Greener Edelman, who established the Rabbi Matuson Professorship, with Rabbi Ellenson.

The Rabbi Michael Matuson Professorship for Emerging Scholars Inaugural Lecture

Setting Examples: Role Models and Heroes in Medieval Halakhah

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which we are so proud. The study of liturgy celebrates Jewish continuity, tradition, creativity and evolution throughout the ages. The practical significance of Jewish education to Jewish leadership these days is so apparent, it hardly bears elaboration. The study of medieval Jewish law, on the other hand, is the study of a pre-modern, pre-liberal (and some might say illiberal), anachronistic tradition, a discontinued tradition, and one that has rather little following among liberal Jews of the 21st century.



At the dedication of the Rabbi Michael Matuson Professorship for Emerging Scholars on October 26 at HUC-JIR/Cincinnati: (from left) Rabbi Michael Matuson and Dr. Jonathan Cohen.

countries of Western Europe (today's France, Germany, and Spain), and Jewish law evolves there at the same time as the European centralized nation state. It is precisely the emergence of that centralized, unified state which spells disaster for the Jewish communities of England, of France, and ultimately of Spain, during the 13th, 14th, and 15th centuries. Much of the scholarship of Ephraim Urbach,¹ for example, describes the decline in creativity from the middle of the 13th century in France and some areas of Germany, and the shift in these areas towards editing, copying – towards preservation, among rabbis. Likewise, the decline in creativity in late 14th and 15th century Spain is well documented.² By the end of the 15th century, large parts of Western Europe are empty of the Jewish communities that had inhabited these areas – some for about one thousand years, and with these communities goes the halakhic study that they generated and sustained. That

medieval European Jewish tradition is gone.

And yet, it is precisely these medieval European rabbis, living in both safety and comfort at some times, and in insecurity at others, that produce both the substantive core and structure of the system that we, today, recognize as Jewish law. Their writings and purported writings are codified in the *Shulkhan Arukh* – a 16th century text that, along with later commentaries, forms the cornerstone of Jewish law as we know it. Let us consider the implications of this:

The French and American legal systems are clearly products of the Enlightenment of the 17th and 18th centuries, the English legal system is defined by the particular modernism of Victorian England, German law is to a great extent a post-World War II creation, and Canon law is profoundly, structurally influenced by developments in the 19th and 20th centuries. Jewish law, on the other hand, remains largely pre-modern, pre-liberal, pre-Enlightenment – medieval at its core. Little wonder we have such trouble with it. Little wonder that there is such a large gap between 21st century students and aspiring scholars and the texts they wish to study. Not only is this gap substantive, since we come to these texts – informed by liberalism and the Enlightenment – with a baggage that medieval authors could hardly have imagined, it is also linguistic: these texts are composed in Hebrew and Aramaic. But the gap is also methodological and stylistic:

the methods and forms of the argument are often alien to us, and much of the terminology obscure. Even if we understood the dictionary meaning of words on the page, we would still find it difficult to make sense of the text. One illustration of that gap relates to a Biblical passage that Jews throughout the world have been reading and studying this last week – the opening chapters to the Hebrew Bible. Following the Genesis stories, we learn of

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the strife between Cain and Abel. Perhaps the single most powerful phrase of that episode occurs in the dialogue between Cain and the Almighty. God tells Cain that the (voice, or sound of) blood of his brother is crying out, shouting at him from the earth,³ revealing that God knows what happened. This is the only time this phrase “*kol dmei ahicha*” is used in the Bible. Thus this unique, powerful, phrase becomes associated with this particular Biblical narrative.

One of the questions the Sages of the Jewish tradition have asked themselves is why is the word blood written in the plural in the Biblical Hebrew text. One explanation offered by the rabbis is that the murder produced multiple blood

stains, and that various elements were touched by the blood (vegetation, trees, rocks, earth): these produced the effect of plurality.⁴ Another suggestion is that Cain, that early man, was not expert in killing, and did not know wherefrom in the body Abel’s soul might depart. Consequently he inflicted upon Abel multiple wounds, hence the use of the plural form.⁵

Some rabbis cited in the Talmud adopt a different explanation

for that use of the plural in the Biblical story. In tractate *Sanhedrin* these rabbis explain that a person who kills another also kills their potential offspring.⁶ The implications of the act of killing extend beyond the victim and the present. They extend to the potential offspring indefinitely into the future. In the Talmud, this verse is cited in the context of the warning that judges must offer to witnesses in capital cases. Witnesses must be aware of the responsibility they take upon themselves when testifying. If their testimony leads to the execution of a person who should not have been executed, the implications of this miscarriage of justice extend beyond the victim indefinitely

ly into the future. In the same passage, the Talmud teaches us that he who has killed one person is thought to have killed an entire universe, and that a person who has saved one soul is thought to have saved an entire universe as well. Witnesses in capital cases must also specifically hear God’s expression of outrage at blood that is spilled, transplanted directly from the (Biblical) Cain and Abel story.

Towards the end of the 13th century, an influential rabbi is asked to comment on a famous case of defamation. In the context of an argument between two prominent (rabbinic) families in the south of France, one side publicly declared the entire family of the other suspect in terms of their lineage. *Inter alia*, the implication was that Jews should not marry into that suspect family. The matter was examined in a sympathetic rabbinic court, and the rabbinic family in question was found to be perfectly *kosher*. When defamatory statements and announcements continued, the problem was referred to Rabbi Solomon ben Adret, known by his acronym Rashba, of Barcelona. Part of the correspondence is recorded in volume 1 of his responsa, no. 386.

Reacting to the report sent to him, Rashba makes two interesting points:

1) Addressing those who were found to be making defamatory statements, Rashba writes that the ‘voice, or sound of the blood of the defamed families, is shouting

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at him from the earth.' The language he employs is extracted directly from the Biblical Cain and Abel narrative. But the reference he makes is not to the Biblical narrative. Rather, it is to the midrashic and Talmudic interpretation of that narrative. The point Rashba makes using these words is not simply that defamatory statements can sometimes be regarded as serious as an act of unlawful killing. The point is that should these statements have their desired effect, these families would be wiped out. Consequently, those making the defamatory statements would not only be responsible for the damage and hurt caused to the immediate victims, but also for the loss of potential life in the indefinite future. Further, with these words, Rashba identifies one party in this dispute with the Biblical figure of Cain, and employs a rabbinic paradigm constructed on the basis of the Biblical narrative. Should we miss the example and reference – we would also miss much of Rashba's argument.

2) Rashba describes the rabbi who found the statements to be defamatory as an authority who 'refines and purifies' – *metzaref u-metaher* (transliterated from the Hebrew). According to Rashba, once his court has found the family in question to be pure, no other court may reconsider the case. These words: *metzaref*

u-metaher appear in the Bible once, in the book of *Malachi*,⁷ one of the twelve so-called minor prophets. There, the same words are used to describe how the angel or messenger of God will come to "refine and purify" the priestly casts (particularly the Levites) so that they respect the laws of the covenant to

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lead the people of Israel justly, and fully observe the Temple rituals. This complimentary reference, once we recognize it, elevates the status of the rabbinic court to that of the messenger of God from the book of Malachi.

Yet, it also contains an implied message. In the Talmudic tractate of *Kiddushin*⁸ (a tractate that deals with the laws of marriage) we find a ruling to the effect that an assimilated family that is 'tainted' by a person of questionable lineage may be treated as pure, since it would be declared pure in the end of days. The Biblical prooftext is the same verse from Malachi, but the rabbinic interpretation is particularly relevant to the case under consideration.

The implication is that the rabbi who chaired the proceedings in the south of France would still exercise Jewish law properly, in accordance with this Talmudic ruling, even if he found that there were a doubt regarding any one member of the family, and nevertheless declared the entire family pure. In

contradistinction, statements to the contrary effect, suggesting that the family is suspect, are all the more inappropriate. Again, should we look at the Biblical words and miss the reference to the Talmudic text, we would miss Rashba's point.

By identifying parties to this dispute with positive and negative Biblical figures, by setting Biblical examples, and employing both positive and negative Rabbinic models, Rashba uses a technique that we would not expect to find in modern, or contemporary legal literature. Further, in this text, Rashba simply cites Biblical words, and does not explicitly, openly make reference to any rabbinic text. We could understand the diction-

ary meaning of every word in that document, identify the Biblical citations, and still miss much of the meaning of the text. Such is the gap between the 21st century students and emerging, aspiring scholars and the texts they wish to study.

Mr. Lehman, members of the Board, Mr. and Mrs. Edelman, rabbis, teachers, colleagues, and friends, I dedicate this Rabbi Matuson Professorship to the work of bridging this gap: of identifying arguments, and explaining the modes of explicit and implicit reference, of studying modelling, and recognizing citations. My work will aim to assist readers in acquiring the tools to read the sources of *halakhah* effectively, to become better, more competent readers, and to gain access the core texts of our legal and ethical tradition. I could not do this work without your encouragement, and support, and consider myself very fortunate to be granted the opportunity to engage in the study of *Torah* in this way. Thank you.

¹ I am thinking particularly of his *The Tosafists: Their History, Writing, and Methods* (Heb.), Mossad Byalik, 1955.

² Especially by I. Baer. See his *History of the Jews in Christian Spain*, JPS, 1961.

³ Genesis 4:10.

⁴ Genesis Rabbah 22:9.

⁵ Genesis Tanhuma, Genesis: 9 (cf. Va-yehi mi-ketz).

⁶ B. Sanhedrin 37a.

⁷ Malachi 3:3.

⁸ 71a.