THE PLACE OF STORYTELLING IN LEGAL REASONING: ABRAHAM JOSHUA HESCHEL’S TORAH MIN HASHAMAYIM

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I. Introduction

Rabbinic literature contains two main modes of expression: halakhah and aggadah. Halakhah (plural halakhot) is legal in nature: legal rules and decisions applying those rules in particular cases. It refers to the legal parts of the Torah (the first five books of the Old Testament or Pentateuch) and rabbinic interpretations of those legal rules. Aggadah (plural aggadot) is narrative in nature: stories, biography, homily, and folklore. Aggadot can either fill in the gaps of the narrative sections of the Torah or embellish them.

Although the rabbinic literature is replete with aggadot, over time most rabbis considered halakhah and aggadah as two distinct modes of thought and treated aggadah as the lesser of the two. Traditionally, they felt that

[i]n contrast to Halakhah which sounds a note of strength, Aggadah sounds a note of feebleness. Many have the sense that there is nothing that can be demonstrated by appeal to Aggadah. They see it as a game rather than a product of serious thought; its exegeses seem like the plaything of unrestrained imagination.

... [Many] sages . . . regarded Aggadah as mere side dishes to the main course of Halakhah. . . .

Indeed, in the early fourth century Rabbi Zeira proclaimed that the volumes of aggadot were

1Gordon Tucker with Leonard Levin, Commentary to ABRAHAM JOSHUA HESCHEL, HEAVENLY TORAH 1 n.[1] (Gordon Tucker with Leonard Levin eds. & trans., 2005).

2ABRAHAM JOSHUA HESCHEL, HEAVENLY TORAH 6, 13 (Gordon Tucker with Leonard Levin eds. & trans., 2005).
“books of bewitchment.” And Rabbi Saadia Gaon, the very prominent religious philosopher who lived in early tenth century Babylonia (present-day Iraq) ruled that aggadot were not precise enough to become authoritative and that a rabbi cannot cite aggadot as proof. Consistent with this approach, teachers in traditional Jewish schools tended to ignore aggadot except when students became tired and restless with their study of halakhot.

Even today, many traditional rabbis and scholars continue to view aggadot dismissively. In a recent opinion denying the right of rabbinic ordination to openly gay and lesbian Jews, for example, Joel Roth, a preeminent halakhic scholar from the more liberal Conservative Movement, wrote,

> There can be no real doubt that normatively speaking the halakhic tradition is the given, and theology is required to fall into place behind it. Theology can, indeed, should, provide the narrative which makes the halakhic tradition intellectually persuasive and emotionally acceptable and satisfying, and that narrative can change as needed, and it need not be the same narrative for everyone. Narratives, after all, are aggadic, and thus, neither normative nor binding. That claim, incidentally, in no way diminishes their importance. Whatever narrative works is fine, so long as the narrative does not reverse which is the dog and which is the tail.

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3 Id. at 12.
4 Id. at 22.
5 Id. at 9.
To Roth, then, aggadah is subordinate to halakchah and its importance is merely to bolster the legitimacy of the halakhic process.

In his magisterial work *Torah Min Ha-shamayim* (“Heavenly Torah”), Abraham Joshua Heschel, one of the most influential Jewish theologians of the twentieth century, reviews and contrasts the halakhot and aggadot of two rabbis who lived nearly two thousand years ago, Rabbi Akiva and Rabbi Ishmael. In so doing, Heschel provides us with a treasure trove of material for testing the traditional assumptions that these two modes of rabbinic expression are independent and that aggadot are unrelated to halakhot and somehow inferior. While Heschel uses the quite divergent legal opinions and stories of Akiva and Ishmael to identify their theological differences and the impact of their writings on Jewish thinking throughout the generations, the examples cited by Heschel provide ample evidence showing that, contrary to traditional notions, a close interrelationship exists between the two rabbis’ legal reasoning and their storytelling. Indeed, this conclusion is supported by the findings of cognitive science that narrative and logical modes of thinking are interconnected and are both crucial to the legal reasoning process.

This article will read the narratives and legal opinions described in *Torah Min Hashamayim* through the lenses of cognitive science on legal thinking. I will first review the cognitive science literature on logical and narrative modes of thought and the relationship of stories to legal reasoning. I will then provide a brief history of the literary and historical context

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7Heschel originally wrote *Torah Min Ha-shamayim* in Hebrew in the 1960s. In 2005, the book was translated into English and edited by Gordon Tucker with Leonard Levin under the title *Heavenly Torah*, HESCHEL, supra note 2.
in which Rabbi Akiva and Rabbi Ishmael developed their stories and decisions. In the heart of this article, I will describe representative stories and legal opinions of each of the rabbis and contrast these narratives and rulings in light of the insights of cognitive science about the legal reasoning process. Finally, I will examine Heavenly Torah as reflecting the relationship between Heschel’s own storytelling and his approach to Jewish law.

II. Cognitive Science Context: Logical and Narrative Modes in Decision Making

While cognitive scientists today recognize the traditional Jewish understanding of a distinction between logical and narrative modes of thought, they strongly reject the notions that narrative thinking is somehow inferior to logical reasoning and that the two modes are independent and unrelated to each other. Jerome Bruner, a pioneer in cognitive science posits that there are two modes of cognitive functioning. The first – paradigmatic or logical thinking – “attempts to fulfill the ideal of a formal, mathematical system of description and explanation.”

The second – narrative thinking – constructs stories to account for our experience. Throughout our lives, we are bombarded with hundreds of stimuli in the world around us. To make sense out of this onslaught, we need to filter out details we consider extraneous and focus on others we consider essential. In the process, we weave stories. Bruner theorizes that the narrative mode serves two functions. It makes our experience communicable to others and increases cultural solidarity. It also gives “a certain predictability to the plights of communal life and a certain direction to the efforts to resolve them.” Narrative forms are “recipes for structuring experience itself, for laying down routes into memory, for not only guiding the life narrative up to the

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8 Jerone Bruner, Actual Minds, Possible Worlds 12-13 (1986).

present but directing it into the future.”

Logical and narrative thinking have different operating principles and standards for judging their appropriateness: logic strives for verifiability – for one truth; narratives seek verisimilitude – meaning. Unlike logical argument, narrative
takes for granted that the puzzling problems with which it deals do not have a single “right” solution – one and only one answer that is logically permissible. It takes for granted, too, that a set of contested events can be organized into alternative narratives and that a choice between them may depend upon perspective, circumstances, interpretive frameworks.

Cognitive scientists posit that both logical and narrative thinking are essential modes of cognitive functioning, and our decisions and behavior in general are controlled by both modes.

10Jerome Bruner, Life as Narrative, 71 SOC. RES. 691 (2004).

11BRUNER, supra note 8, at 11; Jerome Bruner, What is a Narrative Fact, 560 ANNALS AM. ACAD. POL. & SOC. SCI. 17, 23 (1998).

12AMSTERDAM & BRUNER, supra note 9, at 141. Indeed, some scholars believe that the Greek root of the word “enigma” actually means “story.” Aviva Zornberg, Lecture at Congregation B’nai Jeshurun, New York City (May 12, 2007). In other words, stories are attempts to construct meaning out of the enigmas in our lives. Bruner demonstrates the limitations of logical thinking with a story about the economist Robert Heilbroner who remarked, “when forecasts based on economic theory fail, he and his colleagues take to telling stories – about Japanese managers, about the Zurich ‘snake,’ about the Bank of England’s ‘determination’ to keep sterling from falling.” BRUNER, supra note 8, at 42.

Specifically, in regard to the domain of legal reasoning, narrative by its very nature makes it possible for us to relate abstract legal doctrine to actual cases:

[I]t is through narrative that we provide humanly, culturally comprehensible justifications for our principled decisions and opinions. It is through narrative, rather than through some impeccable, impersonal argument from first precepts, that we show how the plaintiff’s or the defendant’s case is to be judged as we judge it.\(^\text{14}\)

In other words, most legal cases are not subject to solution simply by resort to algorithms. As with all our cognition, narrative, as well as logic, control our decision making. As Robert Cover observed in his classic *Nomos and Narrative*,

The student of law may come to identify the normative world with the professional paraphernalia of social control. The rules and principles of justice, the formal institutions of the law, and the conventions of a social order are, indeed, important to that world; they are, however, but a small part of the normative universe that ought to claim our attention. No set of legal institutions or prescriptions exists apart from the narratives that locate it and give it meaning. For every constitution there is an epic, for each decalogue a scripture. Once understood in the context of the narratives that give it meaning, law becomes not merely a system of rules to be observed, but a world in which we live.\(^\text{15}\)

Every story, then, has its own prescription of what is right and wrong, and every legal rule has its own underlying story. While logical and narrative thinking may operate according to different rules, they complement each other. There is no clear demarcation between a culture’s rules of control and its meaning-making narratives.

These theories of cognitive science raise serious questions as to the validity of the sages who belittle the narrative nature of much our cognition, Bruner argues that we are “bathed and swaddled in stories.” See Philip N. Meyer with Stephen L. Cusick, *Using Non-Fiction Films as Visual Texts in First-Year Criminal Law Courses*, 28 VT. L. REV. 895, 897 (2004).

\(^\text{14}\)AMSTERDAM & BRUNER, supra note 9, at 41.

assumption made by traditional Jewish sages of a stark distinction between halakhah and aggadah. The stories and legal opinions of Rabbi Akiva and Rabbi Ishmael described in Heavenly Torah clearly demonstrate the fallacy of this assumption and support the insights of cognitive science in regard to the relationship between law and narrative.

III. Literary and Historical Context of Rabbis Ishmael and Akiva

To begin an analysis of Heavenly Torah and the writings of Rabbis Ishmael and Akiva, a short historical overview is necessary. If, as Bruner asserts, stories are a means for communicating life predicaments faced in a particular culture, it is important to examine the world in which Rabbis Akiva and Ishmael developed their stories and legal opinions.

A. Literary Context

Rabbis Akiva and Ishmael inherited a rich interpretive tradition. While traditional Jews believe that God gave the Torah or Pentateuch, the first five books of the Bible (Genesis, Exodus, Leviticus, Numbers, and Deuteronomy) to Moses on Mount Sinai after the exodus from Egypt in the thirteenth century B.C.E., modern scholars believe that the text of the Torah was redacted from different sources hundreds of years later. Both traditional Jews and modern scholars agree, however, that the Torah was written down in a form similar to the present text by the fifth century B.C.E. around the time of the scribe Ezra, after the return of the people to Palestine from the Babylonian Exile. And traditionalists, as well as some modern scholars

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16David Weiss Halivni, Revelation Restored: Divine Writ and Critical Responses 12, 19 (1997). Halivni, a traditionalist, takes the position that God in fact gave the Torah to Moses at Mt. Sinai, but through the centuries the original text had been corrupted, and Ezra attempted to restore the existing maculate texts.
believe that from the time of Ezra onward, the reading and study of Torah became a regular practice.\textsuperscript{17}

In their close reading of the text, ancient scholars discovered significant problems. The written text of the Pentateuch studied by these sages contained inconsistencies, gaps, and even contradictions, sometimes in the most essential matters of observance.\textsuperscript{18} The written text does not seem to be written in chronological order.\textsuperscript{19} In Deuteronomy, for example, Moses’s prologue to his farewell address to the Israelites appears to occur near the very end of the speech.\textsuperscript{20} Moreover, as anyone who has read the Torah knows, numerous passages in the text are repetitive without any apparent explanation.\textsuperscript{21} Both Leviticus and Deuteronomy, for instance, contain similar dietary laws concerning forbidden fowl but give no rationale for the duplication.\textsuperscript{22} Also, the text contains blatant contradictions.\textsuperscript{23} While in Exodus, for example, God states, “no mortal man can see me and live,” two books later in Numbers, the Torah explicitly says that Moses beheld the image of God.\textsuperscript{24} Similarly the laws of the Passover

\begin{quote}
\textsuperscript{17}See id. at 19-21.
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\textsuperscript{18}Id. at 23.
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\textsuperscript{19}HESCHEL, supra note 2, at 240-41.
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\textsuperscript{20}Id.; see Deuteronomy 29:9.
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\textsuperscript{21}HESCHEL, supra note 2, at 466.
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\textsuperscript{22}Id. Compare Leviticus 11:14 with Deuteronomy 14:13.
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\begin{quote}
\textsuperscript{23}HESCHEL, supra note 2, at 303.
\end{quote}

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\textsuperscript{24}Id. at 306 (quoting Numbers 12:8).
\end{quote}
sacrifice provided in Exodus vary substantially from those given in Deuteronomy.25 Finally, numerous commandments for aspects of religious observance lack essential details. Although the Torah, for instance, provides a list of the holidays throughout the religious calendar, in most cases it gives only a bare description of the practices for these celebrations.26

Facing these perplexing problems with a text that ancient scholars believed was the word of God, they sought to find meaning for these inconsistencies, gaps, and contradictions. In the process, they developed alternative hermeneutics for interpreting the written text. The resulting exegeses -- evolving interpretations, stories, and embellishments on the written law -- were orally transmitted from generation to generation.27 One sect, the Pharisees, came to believe that these oral traditions, as well as the written Torah, had been given to Moses on Mount Sinai and that both the Written Torah and Oral Torah must be observed.28 This oral interpretation was eventually recorded by the rabbis in the Mishnah (compiled around 200 C.E. in Palestine)29 and

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26Id. at 24.

27See SALO W. BARON, JUDAISM: POSTBIBLICAL AND TALMUDIC PERIOD, at xxii (Salo W. Baron & Joseph L. Blau eds., 1954). Some scholars even believe that this process of interpreting the Torah had begun in the writing of the later books of the Bible after the time of Ezra. See HALIVNI, supra note 16, at 25-26 (demonstrating how the Book of Chronicles attempted to reconcile contradictory passages in the Torah in regard to the observance of the Passover sacrifice).

28BARON, supra note 27, at 72.

29Id. at xxii.
in the Palestinian and Babylonian Talmuds (redacted between the fifth and seventh centuries C.E.).

Another sect, the Sadducees, which died out after the destruction of the Temple in 70 C.E., believed that only the written text of the Torah had been given on Mount Sinai and needed to be observed.

Both Rabbis Akiva and Ishmael lived approximately 70 years before the redaction of the Mishnah and followed the approach of the Pharisees believing in the divine authorship of both the Written and Oral Torah. They were the two greatest teachers of the third generation of Tannaim, the rabbis who taught during the period preceding and at the time of the redaction of the Mishnah. Later generations nicknamed them “Fathers of the World.”

B. Historical Context

At the time of Rabbis Ishmael and Akiva – early Second Century C.E. in Palestine – the Jewish people faced a major social and theological crisis. In 70 C.E., the Romans destroyed the Second Temple, and a large number of Jews were exiled from the land. The Temple had been the physical representation of God’s presence for the Jewish nation, and its destruction


31 Id. at ix.

32 Heschel, supra note 2, at 29.


34 See id. at 25.

caused a crisis of faith among the Jews of Palestine.36 Their “confidence in the truth of the Mosaic revelation and the goodness of God was shaken.”37

This despair became even more intense in the years after the destruction of the Temple. Around 132 C.E., the Jews of Palestine rebelled against the Romans in a revolt led by Bar Kokhba.38 After this revolt failed, the Romans established a repressive system against the Jews there and made the practice of Judaism a crime.39 Belief in the grace of God was weakened, and Jews began to question why they were forced to undergo this persecution.40

C. Rabbi Akiva and Rabbi Ishmael

In the midst of all the suffering, the schools of Rabbi Akiva and Rabbi Ishmael emerged. Little is known about each of these rabbis, and much of our knowledge is based on legend. Rabbi Akiva was believed to be a zealot and a supporter of the Bar Kokhba rebellion,41 who preached martyrdom and encouraged the Jews of Palestine to revolt against the Romans.42 Rabbi Akiva ultimately proved his commitment to the importance of martyrdom in the name of


37 NEUSNER, supra note 33, at 40.

38 JACOB NEUSNER, FROM POLITICS TO PIETY 123 (1973).

39 Id.

40 See NEUSNER, supra note 33, at 40.

41 See NEUSNER, supra note 38, at 99.

42 See HESCHEL, supra note 2, at 146.
God. According to a well-known legend Rabbi Akiva was one of ten rabbis who was captured by the Romans and persecuted for violating the ban on the study of Torah. While a Roman officer tortured him, Rabbi Akiva smiled and recited a portion of the Written Torah stating that Jews should love God with all their heart and soul. When asked why he was smiling, Rabbi Akiva replied that all of his life he did not understand what loving God with one’s soul meant, but he was happy because he was now able to fulfill the commandment through his martyrdom.

Unlike Akiva, Rabbi Ishmael, who was the descendant of a priestly family, was more of an accommodator and believed that the Jews did not have to revolt against the Romans or commit martyrdom when commanded to refrain from the study of Torah. But despite his political position, Rabbi Ishmael, according to legend, was one of the ten rabbis persecuted and executed by the Romans.

D. Cautionary Notes

Before examining the stories and legal decisions of Rabbi Akiva and Rabbi Ishmael, some cautionary notes must be given.

\[43\text{Id. at 149.}\]
\[44\text{Id. at 135.}\]
\[45\text{Id.}\]
\[46\text{Id. at 30.}\]
\[47\text{Id. at 31.}\]
\[48\text{Id. at 35.}\]
\[49\text{Tucker with Levin, Commentary, supra note 1, at 29 n.[103].}\]
First, this review is based exclusively on the description of the writings of these two rabbis as set forth in Heschel’s *Heavenly Torah*. As Gordon Tucker repeatedly notes in his English translation of the book, Heschel’s arguments are phenomenological, not necessarily historical. Heschel presents Akiva and Ishmael as eternal paradigms of two distinct theological approaches that have existed for the last two thousand years in Jewish thought. For that reason, some of his selections of stories and legal decisions may have been driven more by Heschel’s overall argument than by historical accuracy. Since, however, little is actually known of the historical Akiva and Ishmael, relying on Heschel’s descriptions of their writings is reasonable. Moreover, because the purpose of this paper is to examine the interrelationship between narrative and legal decision-making, its conclusions are relevant regardless of whether the texts are considered to be written by actual individuals or merely represent Heschel’s portrayal of them. If the latter, this paper is examining the relationship of Heschel’s own stories

50 Tucker, *Commentary*, supra note 1, at 429 n.[16], 461 n.[23], 570 n.[55].

51 *Id.* at 47.

52 Despite Heschel’s suggestion, for example, that Rabbi Akiva was a strict enforcer of the Torah’s requirements for the penalty of capital punishment, *see infra* text accompanying notes 145-50, in other writings Akiva appeared to be quite lenient on the issue of capital punishment. *See IV Mishnah, Makkoth 1:10* (Phillip Blackman trans., Judaica Press 1965) (“R. Tarfon and R. Akiva say, ‘If we had been in the Sanhedrin [council of judges in ancient Israel], no one would ever have been put to death.’ Rabban Simon ben Gamiliel says, ‘They would indeed have [thereby] increased shedders of blood in Israel.’”)
and legal opinions.53

Second, while reference is made in this paper to the “schools” of Rabbis Akiva and Ishmael, neither had formal academies at which their students studied. Both merely had followers who adopted their interpretive and jurisprudential approaches.54

Finally, it can be argued that the opinions of Rabbis Akiva and Ishmael are irrelevant to any examination of law and narrative because these rulings are not legal decisions in the traditional sense. In this era rabbinic rulings were rendered without the sanction of the coercive power of the state. Some of the decisions, for instance, concern the sacrificial rite which was no longer in operation; most, if not all, do not address actual cases brought by interested parties. These objections, however, ignore the seriousness with which the rabbis of the period rendered their decisions. Many of the legal opinions, however, concerned communal and interpersonal problems that existed in their communities. As leaders, the rabbis’ decisions had coercive power in their society. Moreover, the rabbis of this period operated as if the state might imminently be reestablished.55 In this context, they rendered many of their judgments with the expectation that

53See Part VII, infra.

54For example, in the fourth generation of Tannaim (the Mishnaic Period), following Rabbis Akiva and Ishmael, Rabbi Simeon ben Yohai was a disciple of Akiva and Rabbi Jonathan was a disciple of Ishmael. Gordon Tucker with Leonard Levin, Appendix 2 to Abraham Joshua Heschel, Heavenly Torah As Refracted Through the Generations 792-93 (Gordon Tucker with Leonard Levin eds. & trans., 2005).

55See Meyers, supra note 35, at 164.
they would have an effect in the real world. Most important, they believed that their decisions were based on the will of God. For that reason, even if they knew that some of their decisions could not be immediately enforced by the state, divine sanction was ultimately possible.

IV. The Stories of Rabbi Akiva and Rabbi Ishmael

In *Heavenly Torah*, Heschel examines scores of aggadot from Rabbi Akiva and Rabbi Ishmael and their respective schools. Many of these stories address the same subject, but the different rabbis’ themes and images are often significantly dissimilar. An examination of those different themes and images demonstrates the very distinct world views of the “Fathers of the World.”

A. Miracles in the World

The Written Torah contains many examples of miracles in the world, especially surrounding the Israelites’ exodus from Egypt, their wanderings in the desert, and the giving of the Torah at Mount Sinai. Confronted with a society of exile, persecution, and suffering, Akiva and Ishmael faced the daunting question of whether miracles were still possible in the world and whether God would eventually intervene to alleviate Israel’s plight. Their own stories about these miracles reflect divergent answers to that question. Ishmael shunned wonders and miracles and instead focused on the natural world. Akiva, on the other hand, reveled in the supernatural and even sought to embellish the miraculous nature of events recorded in the written text.

One illustration of these different approaches concerns a story in Exodus that occurs after the giving of the Ten Commandments. The written text states that Moses slaughtered bulls, “took one half of the blood and put it in basins,” and sealed the covenant by tossing this blood on
the people. AHow, the rabbis ask, did Moses manage to divide the blood exactly in half? A
disciple of Akiva held that Moses did nothing, and the blood miraculously divided by itself.57
Rabbi Ishmael, however, alone among the teachers of the Mishnaic period, held that Moses
performed the division himself: “‘Moses was expert in the regulations of blood and its division.’
Moses determined the quantity himself, as [God] says, ‘. . . My servant Moses, he is trusted
throughout my household’ (Numbers 12:7)”58 In Ishmael’s narrative, the theme is human
initiative and expertise. To the school of Akiva, the theme is God’s intervention.

Another example of the rabbis’ different approaches to supernatural is the miracle par
excellence: the splitting of the Sea of Reeds when the Israelites left Egypt. Rejecting an Otto
Preminger approach, the Ishmaelian school’s retelling of this story even tried to give a
naturalistic rendering of this event. It read God’s turning the sea into “dry ground” as meaning
“somewhat dry ground” and “the water formed a wall” to mean “something resembling a wall”
59 Akiva, on the other hand, was not satisfied with the literal portrayal of this event in the
written text. According to oral tradition, God inflicted ten plagues on the Egyptians in Egypt and
ten at the sea. Rabbi Akiva embellished the story even further and imagined that the Egyptians
suffered 50 plagues in Egypt and 250 at the Sea.60 Again, Ishmael tries to downplay the

\[56\] Exodus 24:6 (Everett Fox).

\[57\] HESCHEL, supra note 2, at 66.

\[58\] Id. at 66.

\[59\] Id. at 67.

\[60\] Id.
supernatural while Akiva attempts to magnify it.

Even in regard to manna, the miraculous bread from heaven, delivered by God six days a week to the Israelites in the desert, Ishmael was the rationalist. While most of the sages considered manna “bread from heaven” in the literal sense, the school of Ishmael recounted this story:

[The Torah recounts,] “The Lord will open for you His bounteous store, the heavens (Deuteronomy 28:12). “Shamayim (heavens)” is an epithet for God, the Heavenly One. “Bread of heaven” means bread by the agency of God, not spatially coming from the heaven. Would you imagine that God would actually open the heavens? Rather, these verses speak of God’s blessing, the symbolic storehouse of goodness. So too “bread from heaven” connotes bread from God’s storehouse of goodness, which is found everywhere.61

Akiva, on the other hand, expanded on the text, asserting that manna was the food eaten by God’s ministering angels.62

As these stories demonstrate, the distinction between the two schools in regard to miracles is not the difference between a literal and loose reading of the Written Torah. Indeed, Akiva’s stories seem more faithful to the literal words of the text than Ishmael’s. Rather, the divergent themes reflect alternative views of the operation of the world.

Where Rabbi Ishmael sees order, Rabbi Akiva sees miracles. . . [W]here Rabbi Ishmael would see the world as autonomous, following the course that the transcendent God set for it, Rabbi Akiva would experience every day, every minute, every experience as another miracle and as evidence of the direct flow of divine immanence.63

Consistent with their respective views, Akiva in his personal life saw the potential for miracles in

61Id. at 69.

62Id.

63Tucker with Levin, Commentary, supra note 1, at 65.
the world (his support for the Bar Kokhba rebellion) while Ishmael was politically more the realist (advising accommodation with the Romans).

B. Image of God

As with their narratives on miracles, the different stories of the two rabbis and their schools reflect divergent visions of God.

Rabbi Akiva and his followers attributed human, albeit supernatural, characteristics to God. Returning to the story of the splitting of the Sea of Reeds, the Written Torah relates that after the miracle, the Israelites sang a song to God, extolling “[the Lord] is a man of war. [The Lord] is his name.”

A disciple of Akiva portrays this event with striking imagery: “God revealed Himself to them in all His armor, as a warrior girded with a sword, as a horseman in a coat of armor and helmet, holding a spear, wearing a breastplate and shield.”

Another follower of Akiva recounted that at the Sea of Reeds, the Israelites beheld God publicly, as it is written, “And Israel saw the great hand (Exodus 14:31).”

These images of God were not exclusively masculine. In retelling the story of God’s passing over the house of the Israelites when God inflicted the tenth plague of death on the Egyptians, the school of Akiva portrayed God as a nursing mother leaning over her child and

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64 Exodus 15:3 (Everett Fox).

65 Heschel, supra note 2, at 227. In a similar vein Rabbi Akiva recounted that when the Israelites sang to God at the Sea of Reeds, God “dressed up in a brilliant robe on which was embroidered every occurrence of the word ‘then’ in the Torah.” Id. at 298.

66 Id. at 310.
In contrast, Ishmael takes the images in the written text and makes them more abstract.

In regard to the Israelite’s song at the Sea of Reeds, he tells a very different tale than the Akivians:

“The Lord is a man of war” – Can such a thing be said? Does it not say: “For I fill both heaven and earth, declares the Lord”? (Jeremiah 23:24). . . . What, then, does this verse, “The Lord is a man of war” come to tell us? In effect, God says to Israel, because of your love for Me and because you have become holy by performing My [commandments], I will sanctify My name through you, as it is written, “Though I am God, and not a man, yet I, the Holy and Blessed One, am in your midst.” (Hosea 11:9) – I sanctify my name by you.

. . . .

“The Lord is His name – God does power through the power of His name, and has no need for armaments.”

Similarly, in retelling the story of God’s protections of the Israelites during the tenth plague, Ishmael adopted a metaphorical reading and recounted that God said, “‘I shall have mercy,’ as in the verse [from Isaiah], “As birds hovering, so will the Lord of Hosts protect Jerusalem, shielding it and saving, protecting . . . and rescuing.” As Heschel aptly notes, Ishmael, unlike the school of Akiva, treats the image in the text rhetorically rather than literally.

These divergent images of God are clearly portrayed in narratives about the functions of the sacrificial service for the Israelites. The Written Torah itself is quite anthropomorphic in its

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67 Id. at 225.
68 Id. at 227.
69 Id. at 225 (quoting Isaiah 31:5).
70 Id. at 227.
description of the sacrificial system: “[I]n order that [the Israelites] may bring slaughter-offerings that they are slaughtering in the open field, that they may bring them to [the Lord] to the entrance of the Tent of Meeting to the priest . . . . to turn the fat into smoke as a soothing savor to [the Lord.]”71  The school of Akiva took this language literally:

[F]rom the fats of the animals there emerged a fire of pleasing odor that gave satisfaction to the Holy and Blessed One. . . . [This shows] the superiority of the true God to the idols: “Their idols have noses but cannot smell” (Psalm 115:4-6). But the One Who by His Word created all, is not so! Rather, “The Lord smelled the pleasing odor.”72

As Heschel describes it, the school of Akiva imagined God almost hungering for the smell, passionately beseeching the Israelites: “I desire nothing but the sacrifices. Their sweet savor brings delight to me.”73

The school of Ishmael rejected this anthropomorphic image of the sacrificial system. For them, “a pleasing odor to the Lord” was meant to be understood in the spiritual sense. “It meant that God was pleased with the fulfillment of his commandment to offer the sacrifice to Him, [as it is written], ‘I have great satisfaction that they performed My will as I instructed them.’”74 In the view of Ishmael, the sacrificial system was established primarily to wean the Israelites away from idolatry. “‘Why [asks God] do I tell you to bring sacrifices to Me?’ The school of Ishmael

71Leviticus 17:5-7 (Everett Fox).
72HESCHEL, supra note 2, at 83.
73Id. at 86.
74Id. at 83. Tucker notes that this interpretation is based on a pun. The Hebrew word for odor is “reiah.” The School of Ishmael reads the word as “ruah,” an easing of the spirit.” Tucker footnote, Tucker with Levin, supra note 1, at 83, n.[26].
answered, ‘Only to do God’s will, as it is said [in Leviticus 19:5], “Sacrifice so that it may be accepted on your behalf.”’”75

A final illustration of the differences in portraying the image of God is the characterization of God in regard to problems that afflict humans. Given the persecution and suffering of the Jewish people in the Second Century, C.E., this issue was a preoccupation of the rabbis living at that time. Rabbi Akiva prohibited questioning God’s actions for everything God does is grounded in truth and in justice. Even afflications can be a reward and not merely a punishment. Akiva told the story:

A king had four sons. Upon being struck, one was silent; one protested; one begged for mercy. The fourth said to his father: “Yes, strike me!” Abraham was stricken and was silent. . . . [King] Hezekiah begged for mercy when he was stricken. . . . King David said to his Father, “Yes strike me!” For it says, “Wash me thoroughly of my iniquity and purify me of my sin” (Psalm 51:4).”76

Akiva lauded David’s response. “It was characteristic of Akiva to love afflictions, and not gratuitously did he instruct his generation: ‘Let a person rejoice more in affliction than in fortune.’”77 Indeed, Akiva declared that “poverty is as becoming to Israel as a red ribbon on the head of a white horse.”78

Ishmael’s image of God in relation to human affliction was substantially darker. At the

75 HESCHEL, supra note 2, at 83.

76 Id. at 130.

77 Id.

78 Id. at 139-40.
Sea of Reeds, the Israelites sang, “Who is like You, O Lord among the mighty!” 79  Focusing on the similarity between the Hebrew words for “mighty” (ba’elim) and “mute” (ba’ilemin), his school puts the following words into the mouths of the Israelites at the Sea of Reeds, “‘Who is like You, God, among the mighty [ba’elim]’ – Who is like You among the mute [ba’ilemin]! Who is like You in how you see the humiliation of Your children and remain silent!” 80 For Ishmael, even at the most triumphant moment in Israelite history, God’s power is in some ways overshadowed by God’s silence in response to human affliction. And, while Akiva sang the praises of poverty, “Rabbi Ishmael wept and said: The daughters of Israel are beautiful, but poverty has disfigured them.” 81

In the stories of Akiva and his academy, then, God was imagined as a being with human characteristics who performed miracles and was intimately involved in the operations of the world. The narratives of Ishmael, and his followers, however, portrayed God as transcendent, not interfering with the natural cycles of the world or, for that matter, the suffering people encounter in their lives.

**C. Image of Moses**

Just as the stories of Akiva and Ishmael presented differing portrayals of God, their narratives provide divergent views of Moses, the prophet who brought the Israelites out of slavery in Egypt, received the Torah on Mount Sinai, led the people through the wilderness, and

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79 Exodus 15:11.

80 Id. at 137.

81 Id. at 139.
taught them the law. The Oral Torah grappled with many questions left open by the written text:  What was Moses’s relationship with God? What, if any authority, did Moses have to act on his own? What, if any role did Moses play in developing the Oral Torah?

In the Book of Exodus, in response to Moses’s request to behold God’s glory, God says, “[Y]ou shall see my back, but my face shall not be seen.”82 Later, in the Book of Numbers, the text explicitly states that Moses beheld “the form of [the Lord].”83 In the tale of Akiva’s followers about this event, anthropomorphic images abound:

[Moses] said, “Master of the universe, show me your glory” . . . . Whereupon God answered, “You cannot see my glory, lest you die. . . . However, because of My oath to you and because of My name which I have made known to you, I shall agree to your request. Stand at the entrance of the cave and I shall cause all my ministering angels to pass before you . . . . When you hear the Name that I have made known to you, I shall be standing there before you. Exert all your strength and do not be afraid.” When the angels heard this, they spoke up before the Holy and Blessed One. “We minister to You day and night; yet we are not permitted to see your glory! Yet this man, born of woman, dares to demand that he see your glory!” The angels rose in anger and dismay against Moses to kill him. He was near to death when the Holy and Blessed One appeared in a cloud, covered him with the palm of his hand, and saved him. When the Holy and Blessed One had passed, He drew back His hand, and Moses saw the back of [God’s presence].84

The school of Ishmael rejected the image of such an intimate relationship between Moses and God. They ignored the literal, anthropomorphic language of the written text and read the words “God’s glory,” “God’s face,” and “God’s back” not as physical aspects of God that could

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82 *Exodus* 33:23 (Everett Fox).
83 *Numbers* 11:8 (Everett Fox).
84 *Heschel*, *supra* note 2, at 307.
be seen by the human eye, but rather as constructs that exist in time. Their story recounts,

Moses at no time demanded to behold [God’s presence]; he was asking for an explanation of the mystery that haunted him, the suffering of the righteous and the prosperity of the wicked. How could he reconcile that with His justice and righteousness? To which God replied, “You cannot see My justice in the present world, only in the future world. There the wicked will receive their full punishment and the righteous their full reward.

Likewise, the school of Ishmael recounts the passage from Numbers about Moses’s seeing God’s image merely as his viewing of the future world.”

This contrasting view of Moses’s relationship with God is also reflected in narratives about Moses’s authority to act on his own. In several situations, the school of Akiva portrayed Moses as deeply dependent on God’s commands; he did nothing on his own authority. For the school of Ishmael, Moses had some independent authority. In Exodus, for example, when Moses descends from Mount Sinai with the Torah and sees the Golden Calf, the text reads, “[Moses] threw the tablets from his hands and smashed them beneath the mountain.” Disregarding the literal language of the text, Akiva embellished the story recounting, “The Holy and Blessed One instructed him to shatter them.” Ishmael, ever the rationalist, said, “Moses drew an inference, and said: ‘if the Paschal sacrifice, a single [commandment] was not to be given to idolaters, how much more so the entire Torah! And he shattered them.’

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85 *Id.* at 306.

86 *Id.*

87 *Id.*

88 *Exodus* 32:19 (Everett Fox).

89 HESCHEL, *supra* note 2, at 411.
These different approaches are also reflected in Moses’s independence in making commands to the Israelites. In Exodus, for instance, before the giving of the Torah, God tells Moses, “[Let them] be ready for the third day.” Four verses later, Moses changes the wording slightly and says to the Israelites, “Be ready for three days.”90 The rabbis asked, “Did Moses, on his authority, add an additional day to the preparation period?” A follower of Ishmael tells the tale that Moses added an extra day – making the period a full three days -- on his own authority and God concurred. Rabbi Akiva, though, has a different take on the story and describes Moses as following God’s command in its entirety.91

Even in regard to Moses’s personal life, the school of Akiva imagined the prophet’s actions as merely responses to God’s command. Based upon the part of the Written Torah that describes complaints against Moses by his brother and sister, an oral tradition says that in the wilderness Moses stopped having sexual relations with his wife. Akiva explained this behavior by explicitly stating that Moses made this decision at God’s command. The school of Ishmael, however, rejected this reading.92

These contrasting images of Moses – as a passive follower of God’s commands versus an independent player with some autonomy – have crucial significance in the conflicting narratives about the role of Moses in the writing of the Torah. In the narrative of Rabbi Ishmael, when giving the Torah, God gave Moses general principles on Mount Sinai but communicated the

90Exodus 19:11-:15 (Everett Fox).

91HESCHEL, supra note 2, at 411-12.

92Id. at 409-10.
particulars of the law in the Tent of Meeting in the wilderness where Moses met with God on a regular basis. In Rabbi Akiva’s retelling of the Sinai event, on the other hand, both general principles and particulars were given on Mount Sinai, repeated in the Tent of Meeting, and then repeated a third time in the Steppes of Moab before the Israelites entered the promised land.93 For Akiva, Moses received the entire law at Sinai. For Ishmael, many matters given on Sinai were ambiguous and needed explication in the day-to-day life of the Israelites. Moses brought these questions to God in the Tent of Meeting for decision. For Akiva, all the law was given at one time.

But the narratives of the school of Ishmael took an even more radical approach in their description of Moses’s role in developing the Torah. It related that when Moses used the expression, “Thus says the Lord” in the Written Torah, he occasionally altered God’s language and transmitted only the general intent.94 And expanding this viewpoint even further, the followers of Ishmael asserted, “[J]ust as a hammer throws off many sparks, so does a single verse [of Torah] branch off into many meanings. . . . [T]he Torah granted wisdom to the Sages to expound and to proclaim.”95 In contrast, the disciples of Akiva portrayed Moses in their tales as merely a scribe to God: “Moses spoke only what the Holy and Blessed One had told him.”96

Accordingly, the stories of each rabbi’s school presented a different image of Moses. For

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93 Id. at 462-63.
94 Id. at 497.
95 Id. at 577-78.
96 Id. at 497.
Akiva, Moses’s intimate relationship with God severely limited, if not eliminated, his authority to act on his own. All the words of the Torah were from God, and Moses was his dutiful assistant. For Ishmael, the relationship of Moses to God was more distant, and at times Moses acted on his own authority and thus was a partner in the development of law.

D. Image of the Israelites

A final example of the subjects addressed in the stories of Rabbi Akiva and Rabbi Ishmael is the portrayal of the Israelites. Similar to the stories of the relationship between God and Moses, these narratives present the contrast between a people who are deeply dependent on, but intimately related to God (Akiva) and a nation that is more distant from God but can act on its own (Ishmael).

In the story of the Mount Sinai experience in the Written Torah, the text reads, “Now all the people were seeing the thunder-sounds, the flashing torches.”

97 How, the sages asked, did the people see the sound of thunder? According to the Akiva account, at Sinai the Israelites heard what is normally seen and saw what is normally heard. The speech came forth from God’s mouth, and the people immediately saw it and knew all the interpretations of the text. Everything was revealed at Sinai, and there was no need for any further interpretation or explanation.

98 Those following Rabbi Ishmael, however, interpreted the words in the text “saw the thunder-sounds” to mean understanding through reason. “There was a partnership based on

97Exodus 20:15 (Everett Fox).

98HESCHEL, supra note 2, at 484-86.
reason, for as they heard the words, they would explicate them on their own.”99

In a similar vein, the two rabbis disagreed on the exact nature of the communication on Mount Sinai. According to Akiva’s retelling of the story, Moses spoke to the Israelites in the same language that God spoke to him.100 “[W]ith whatever voice, power, and melody Moses heard, he caused Israel to hear as well.”101 In contrast, the school of Ishmael recounted that God only spoke to Moses in a voice he could hear, and Moses only spoke to the Israelites in a voice they could hear. In a creative reading of the text, the followers of Ishmael focused on the Torah’s language, “the thunder-sounds”102 and read the plural “sounds” as implying that each person was addressed in a voice as befits his or her ability.103 Accordingly, while for Akiva the story of revelation occurred exclusively on a divine level, for Ishmael it was a very human process, experienced by each person in his or her own way.

These contrasting images of the Israelites have consequences not only for the image of their relationship to God but to Moses as well. In the story of the Sea of Reeds, the text reads, “[The Israelites] trusted in [the Lord] . . . . Then sang [Moses] and the Children of Israel this song.”104 Despite the literal language of this text which suggests that the Israelites and Moses

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99Id at 486.
100Id. at 481.
101Id.
102Exodus 20:15 (Everett Fox).
103HESCHEL, supra note 2, at 482.
104Exodus 14:31-15:1 (Everett Fox).
sang in unison, in Akiva’s retelling, it was Moses who sang the entire song, and the people simply repeated his words. 105 A follower of Ishmael, however, disagreed and retold the event with Moses reciting the first half of each verse and the people coming up with the second half themselves. In his tale, “[T]he Israelites took part in the composition of the song, for by virtue of the faith our ancestors had in God, they were privileged to have the holy spirit rest on them, and they broke out in song.”106 To Akiva, the Israelites passively followed the instructions of Moses; to Ishmael, they became active players along with Moses.

Finally, these divergent images of the Israelites are revealed in the personal, as well as the collective, level. The Written Torah is replete with passages asking the people to “love [the Lord] your God, to walk in his ways, and to cling to him”107 and offering the reward that God “will walk about in your midst.”108 The stories of Akiva take these passages literally and extol the inner spiritual experience of cleaving to God. Their retelling portrays God as a close companion to humans: “[Our relationship with God] may be compared to a king who went for a stroll in the garden with his tenant. The tenant sought to hide himself and the king asked, ‘Why

105 HESCHEL, supra note 2, at 185.

106 Id. at 532. Actually, the school of Ishmael went even further asserting that Pharaoh and the nations of the world actually participated in composing the song. In the text, the song relates that the foe said, “I will pursue, I will overtake it, I will divide the spoil.” The Ishmaelians attributed those words to Pharaoh himself. Id.

107 See, e.g., Deuteronomy 11:22 (Everett Fox).

108 Leviticus 26:12 (Everett Fox).
are you hiding from me? I am just like you.’”109 The school of Ishmael rejected such
anthropomorphic imagery. “How is it possible for man to rise heavenward and to cleave to fire?
Does not the Scripture say: ‘The Lord your God is a consuming fire’ . . . or ‘His throne was fiery
flames.’ . . . It can only mean that we are commanded to cleave to the Sages and their
disciples.”110

In short, like the characterization of Moses, the image of the Israelites in the Akiva
stories reflects a people in a close, even intimate, relationship with God but with little autonomy.
The narratives from the school of Ishmael portray a nation farther removed from God but with
the independence to reason and create on its own.

E. Schemas of Rabbi Akiva and Rabbi Ishmael

This review of the themes and images in the stories of each of the rabbis and their
followers demonstrates that they had very different schemas about the world in which they lived.
The narratives of Rabbi Akiva and his school revel in the miraculous; imagine a very personal
God intimately involved in the world as a powerful warrior or a protecting mother; see no clear
boundaries between heaven and earth; and envision the people of Israel as dutiful followers,
almost passive recipients, of God’s commands. In their writings, Akiva and his followers “did
not shrink from anthropomorphism .. cherished imaginative meanings, and created images of the
supernal world.”111

109 HESCHEL, supra note 2, at 192.

110 Id. at 190.

111 Id. at 34.
On the other hand, the stories of Ishmael and his disciples “sought to strip Scripture of anthropomorphism and to excise unnecessary metaphor and imagery.”\textsuperscript{112} He and his followers used straightforward logic; were averse to intellectual games; shied away from the miraculous and supernatural; saw a clear demarcation between heaven and earth; and conceived of Jewish leaders and the people of Israel as somewhat autonomous.

As Heschel describes the contrasting world views,

Rationalism and lucidity of thought characterized the teachings of Rabbi Ishmael. His greatness lay in a congenial straightforwardness amenable to all. Soaring visions marked the teachings of Rabbi Akiva; his language was a ladder planted on earth, ending in heaven. In one system of thought, there was clarity; in the other profundity. Here, a shunning of the wondrous; there, a thirst to apprehend the hidden and wondrous.\textsuperscript{113}

V. The Legal Opinions and Reasoning of Rabbi Akiva and Rabbi Ishmael

Besides describing the different stories of Rabbis Akiva and Ishmael and their followers, \textit{Heavenly Torah} reviews numerous legal opinions of these two Fathers of the World. It also describes in some detail the legal reasoning strategies used by each rabbi. As will become apparent, like their stories, the legal decisions and reasoning processes of each rabbi differ markedly. And, as will be shown in the next section, the different jurisprudence of these rabbis in many ways reflect their distinct narratives about the culture in which they lived.

A. Requirements in Religious Life

As described earlier, the Jewish people in the Second Century C.E. Palestine confronted a

\textsuperscript{112} \textit{Id.}

\textsuperscript{113} \textit{Id.} at 38.
Their sacred place of worship had been destroyed, large numbers of people were exiled from the land, and those who remained suffered humiliation and persecution. Concomitantly with these problems, the legal system faced its own crisis. Much of the extant law – including the Written Torah – was based on the existence of the sacrificial rite, the community’s presence in the physical land of Israel, and some communal system of governance. With the destruction of the Temple and the dispersion of large numbers of Jews from the land, the rabbis of the Mishnaic Period, including Rabbis Akiva and Ishmael encountered daunting new legal issues concerning religious life. The rabbis needed to reconstruct the existing laws to address the issues of this new world.

One of these issues concerned edicts of the Roman government against Jewish practices, such as circumcision and public study of Torah, issued to undermine the morale of the people. These decrees raised two major legal issues for the rabbis: (1) whether or not, under threat of the death penalty, a person was obligated to observe every law of the Torah; and (2) whether, if a person could violate the law, there was a distinction between transgressions committed in public and those performed in private. As to the first question, the majority of sages, including Rabbi Ishmael, ruled that a person should transgress any law in the Torah when threatened with death, except for those commands prohibiting idolatry, adultery/incest, or

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114 See supra text accompanying notes 33-40.

115 See Meyers, supra note 35, at 162-63.

116 HESCHEL, supra note 2, at 146-47.
martyrdom.117 Rabbi Akiva, however, decided that there were no distinctions between different laws of the Torah and that martyrdom was preferable to transgressing any commandment.118 In regard to the second question, Ishmael distinguished between public and private transgressions and limited the obligation of martyrdom only to those transgressions committed in public. Rabbi Akiva acknowledged no such distinction.119

Faced with the severity of the Roman decrees, the sages also faced the issue of whether or not to enforce the observance of the Torah stringently. In new cases that arose in his generation, Rabbi Ishmael generally took the more lenient position and insisted “whoever imposes stringencies must prove their validity.”120 He noted, “From the destruction of the Temple onward, it would have been proper to decree for ourselves no longer to eat meat or drink wine; but one does not issue a public decree with which a majority of the public cannot live.”121 Rabbi Ishmael even took the position that some of the laws of the Torah were optional and apparently opposed a new dietary restriction that prohibited the eating of cheese produced by gentiles.122 Rabbi Akiva, on the other hand, recognized no distinction between major and minor commandments. He declared, for example, “Not visiting the sick is equivalent to

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117 Id. at 147, 150.
118 Id. at 146-47.
119 Id. at 147.
120 Id. at 724 n.15.
121 Id. at 724.
122 Id. at 151.
committing murder.” 123

Unlike Akiva, Rabbi Ishmael focused on the realities of human life. For instance, in a debate on the issue whether a person is obligated to work for a livelihood or devote himself to the study of Torah, Rabbi Ishmael ruled that both were needed. A disciple of Akiva, however, decided that only the study of Torah was obligated, thereby minimizing the practical demands in the lives of most people. 124 Indeed, Rabbi Akiva taught, “Why do some Sages die prematurely? Not because they commit adultery, or steal, but because they interrupt their studies to indulge in frivolous conversations.” 125

The distinction between the stringencies of the school of Akiva and the leniency of the school of Ishmael is starkly reflected in their respective rulings on the ultimate punishment in Jewish law: denial of a share in the world to come, the afterlife. In all his opinions, Rabbi Ishmael never ruled that a particular transgression would result in the loss of a share in the coming world. 126 In contrast, Rabbi Akiva recognized this penalty in a number of cases: studying of non-canonical books; uttering scriptural incantations over wounds; and transforming verses from the biblical book, the Song of Songs, into barroom ballads. 127

B. Interpersonal Relations

123 Id. at 178-79.

124 Id. at 152-53.

125 Id. at 175-76.

126 Id. at 176.

127 Id. at 176-77; Tucker with Levin, supra note 1, at 177 n. [36].
Besides setting standards for religious observance, rabbis in Second Century Palestine faced the challenge of setting standards for interpersonal relations, including family law, life cycle events, and relations with the gentile world. Again in this area, the schools of Rabbi Akiva and Rabbi Ishmael differed in their opinions. Rabbi Ishmael took the approach that whenever the literal language of a law on interpersonal relations could be read as conditional, rather than mandatory, it should be read as an option. “To Rabbi Akiva, however, every single word of Torah was a commandment and carried with it obligation.”128

A good example of the different approaches on issues of interpersonal relations is the rabbis’ attitude toward jealousy in a marriage. The Torah, for example, requires that a woman be subjected to an ordeal ritual before the priest if her husband suspects her of marital infidelity.129 Without the Temple, this ritual no longer could be performed, but the sages still faced the issue of how to deal with a husband’s jealousy. The written text of the Torah required the ordeal ritual whenever “the rush of jealousy comes over [the husband].”130 Rabbi Akiva read this text to create an obligation for all Jewish husbands to be jealous of their wives; in other words a “rush of jealousy” must come over all husbands. To Akiva, such a literal reading of the text prevents immoral conduct in the community.131 Rabbi Ishmael, however, read the text as

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128 HESCHEL, supra note 2, at 153-55.

129 Numbers 5:11-31 (Everett Fox).

130 Id. 5:14.

131 HESCHEL, supra note 2, at 154.
optional and saw no such obligation for Jewish husbands.132

Another illustration of these divergent views concerns the burying of close relatives. The sages were confronted with the question whether or not a person was obligated to interrupt his performance of a Torah commandment (e.g., a religious practice) to bury a close relative. The Torah forbids priests from coming into contact with a dead body except in the case of the burial of a close relative.133 Rabbi Akiva read this verse as a command requiring any person to interrupt his performance of another commandment for such a burial. Rabbi Ishmael, however, construed the passage as only optional and left the decision to the individual.134

This contrasting approach to interpretation of commands concerning interpersonal relations is also reflected in a theoretical legal debate concerning perpetual slavery of gentiles. In Leviticus, God commands,

> Your servant and your maid that belong to you from the nations surrounding you, from them you may purchase serf and maid . . . and they shall become your holdings. You may keep-them-as-an-inheritance for your children after you for (them) to possess as holdings; for the ages you may make them serve you.135

Rabbi Akiva held that under this language, the Israelites were required to keep Canaanite slaves in perpetual servitude. Rabbi Ishmael ruled that God granted the Israelites the option whether or not to hold such slaves permanently.136

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132 Id.

133 Tucker with Levin, supra note 1, at 154 n.[25].

134 Id.

135 Leviticus 25:45-46 (Everett Fox).

136 Tucker with Levin, supra note 1, at 154 n.[25].
Accordingly, in the area of what in Hebrew is called *derehk eretz* (the ways of the world), Akiva read the Written Torah as giving little, if any, discretion to Israel in practicing the commandments. For Rabbi Ishmael, however, whenever the text did not unambiguously require certain social behavior, the individual was free to choose. This approach is clearly demonstrated by some “case law” attributed to Ishmael. Under the laws of the Torah, a man is required to fulfill any vow made in the name of God.137 In the case before Ishmael, a husband, in a fit of anger, swore that he would no longer have sexual relations with his wife. Later, the man changed his mind, wanted to have sex with his wife, and sought to annul the vow. But he was faced with the stringent laws of the Torah in regard to vows. Ishmael asked that the wife be brought to his home, where he gave her a complete makeover. Ishmael then asked the husband, “‘My son, is *this* the woman from whom you vowed no benefit?’ He replied, ‘No.’” Ishmael then permitted him to annul the vow.138

C. Culpability for Mere Intent

In several places in the Written Torah, God makes a commandment focused on the intent of the individual, not just his or her actions. The best-known of these laws is the prohibition in the Ten Commandments of “coveting the house of one’s neighbor” (Exodus 20:14) or in the second version “craving the house of one’s neighbor” (Deuteronomy 5:18). In interpreting these and other “commandments of the heart,” the ancient rabbis faced the question whether evil intent alone was sufficient to find an individual guilty or whether some action was required to

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137 *See Numbers* 30:3.

138 Tucker with Levin, *supra* note 1, at 154 n.[25].
constitute a transgression.

Here again there is a contrast between the rulings of Rabbis Akiva and Ishmael. In regard to these commandments, Akiva required only intent to establish guilt; Ishmael adopted an “intent plus” requirement.

To the school of Akiva, the use of the different words “covet” and “crave” in the two versions of the Ten Commandments established two separate commandments: (1) the intent to transgress and (2) the act itself. Accordingly, a person who craves only in thought is as guilty as one who performs the deed itself.139 The school of Ishmael, however, relied on another passage of the Written Torah in construing these passages from the Ten Commandments. In Deuteronomy, the Torah states, “The carved-images of their gods, you are to burn with fire, you are not to come-to-yearn for (the) silver and gold on account of them and so take it for yourself.”140 Noting that this text requires not only the intent to transgress (to yearn) but also the action (to take), the school of Ishmael held that a person must take action before he or she is guilty. Accordingly, one who covets merely with words is not guilty of a transgression until he or she actually performs the deed.

In a number of other rulings on “commandments of the heart,” the school of Rabbi Akiva continued to emphasize the importance of intent transgressions as separate violations of the law. The Torah provides, for instance, “You are not to take-vengeance, you are not to retain-anger

139 HESCHEL, supra note 2, at 201.

140 Deuteronomy 7:25 (Everett Fox) (emphasis added).
against the sons of your kinspeople . . . ”141

In the school of Rabbi Akiva they asked: How far does this prohibition extend?” If one
says to another, “Lend me your scythe,” and he refuses. The following day the latter says
to the former, “Lend me your axe,” and he replies, “I will not lend it to you, just as you
would not lend me your scythe” – that is a violation of the law, “You shall not take
vengeance.”142

To Akiva, even though the latter speaker has given a very human “tit-for-tat” response and has
not explicitly expressed anger to his neighbor, the inference from his response is that he retained
anger in his heart, and he is therefore guilty of a transgression.

Even when the Torah literally did not impute liability for evil intent alone, Rabbi Akiva
sometimes found it. In regard to another commandment, “You shall not commit adultery,”
(Exodus 20:13), Akiva ruled that the law even prohibited contemplation of the transgression.
Ishmael found that the commandment concerned only the act itself.143

D. Legal Reasoning Strategies

Not only do the Fathers of the World differ in their approaches to substantive legal issues,
but they also use differing hermeneutics in approaching legal problems. The school of Rabbi
Akiva attempts to remain faithful to the precise language of the Written Torah – every word and
every letter – even if the resulting reading may seem contrived. The school of Rabbi Ishmael,
on the other hand, seeks to find a commonsense interpretation of the text read in light of the
realities of the world even if this construction varies from the literal meaning.

141Leviticus 19:18 (Everett Fox).
142HESCHEL, supra note 2, at 202.
143Id. at 201.
A good example of the differing approaches of the two schools to the language of the text concerns a law in Leviticus concerning harlotry by a priest’s daughter: “And the daughter of a man (who is a) priest – when she profanes herself by whoring, it is her father that she profanes, in fire she shall be burned.” While this language is fairly straightforward, the issue arose whether a distinction in regard to the penalty to be imposed should be made between a priest’s daughter who was only betrothed and one who was fully married. Two possible means of execution were available – burning and strangulation – and in the rabbinic view, burning was more extreme.

In deciding this “sentencing” issue, Akiva adopts an exact reading of the text, and notes the that the text reads, “and the daughter,” rather than “the daughter.” (In Hebrew, the word “and” is noted only by a single letter, a vav, as a prefix to the noun following it.) Because of this additional letter, Akiva ruled that it did not matter whether or not the woman was betrothed or fully married; in any case the penalty should be burning. He reasoned that every letter in the Torah must have meaning and that therefore the additional word/letter “and” shows that the extreme penalty of burning should always be the means of execution regardless of the precise marital status of the priest’s daughter. Rabbi Ishmael, however, found the additional word “and” to be superfluous and ruled that burning should only be used if the woman was betrothed. In the reported “in chambers” interchange between the two rabbis, Rabbi Akiva argued, “Brother Ishmael, my exegesis is of the difference between ‘daughter’ and ‘and the daughter,’ to which

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144 *Leviticus* 21:9 (Everett Fox).

145 HESCHEL, supra note 2, at 49 n.12.
Rabbi Ishmael responded, “Shall we condemn this woman to be burnt just because you wish to interpret the letter vav!?”\(^{146}\)

The two rabbis took similar approaches to redundancies in the Written Torah. In Numbers, for instance, in regard to a person who spurns God’s word, the text reads, “Cut off, cut off shall that person be.”\(^{147}\) While the doubled “cut off” appears to be merely for emphasis, Rabbi Akiva read this duplication as showing that the person should be cut off from the people in this world and additionally should be cut off from any afterlife. Rabbi Ishmael sarcastically rejected this reading: “Since the previous verse also says ‘cut off,’ will you therefore deduce that he is cut off three times in three worlds. Rather, this proves that the Torah speaks in human language.”\(^{148}\)

In his reasoning strategy, however, Rabbi Ishmael would himself rely on the precise, if stilted, construction of the text when it would serve some other policy goal. One example of this approach is his interpretation of the verse in Deuteronomy which provides the penalty for a town which engages in idolatrous worship:

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\text{[S]strike-down, strike-down the settlers of that town with the edge of the sword, devote it to destruction, it and all that is in it, and its animals with the edge of the sword, and all its booty, you are to gather to the middle of its town square and are to burn with fire.}^{149}\]

\(^{146}\)\textit{Id.} at 49.

\(^{147}\)\textit{Numbers} 15:31 (Everett Fox).

\(^{148}\)\textit{Heschel}, supra note 2, at 381.

\(^{149}\)\textit{Deuteronomy} 13:16-17 (Everett Fox).
Following their respective positions on issues of interpersonal relations, Rabbi Akiva held that these commands were mandatory, and Rabbi Ishmael held they were optional. But Ishmael restricted the law even further: “If the town has no open square then it cannot be classified as a subverted town and it is not to be burned.” This time, Rabbi Akiva would not countenance this disregard of the literal language of the text: “If it has no square, then you build one.”

Accordingly, Rabbi Ishmael was guided by the principle “the Torah speaks in human language.” He sought to interpret the written text in a straightforward manner using human reason and sensibilities. Rabbi Akiva, on the other hand, “extracted from every jot and tittle in the text piles and piles of [laws], believed it impossible that there be in the Torah a single superfluous word or letter. Each word, each letter issues the invitation: ‘Interpret me!’”

VI. Relationship Between the Stories and Legal Opinions of the Fathers of the World

As discussed earlier, most traditional Jewish authorities view aggadot and halakhot as independent genres with no relationship to each other. But even a cursory review of the stories and legal decisions of Rabbi Akiva and Rabbi Ishmael demonstrates that such a position ignores the actual rabbinic texts. Contrary to the view that halakhot are devoid of rhetoric and pathos, the opinions of these rabbis clearly reflect the passionate conflicts that all the rabbis

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150 See supra text accompanying note 128.

151 HESCHEL, supra note 2, at 154.

152 Id. at 57.

153 Id. at 47.

154 See supra text accompanying notes 2-6.
faced in rendering legal decisions in the real world. A reader of the rulings on when martyrdom is required,\textsuperscript{155} for example, cannot help but see the emotional, deeply personal, struggle each rabbi faced when balancing the demands of religious practice and the realities of a world in which Jews were persecuted for this practice. Likewise, an examination of Ishmael’s decision on the husband who in a fit of pique vowed not to have sex with his wife\textsuperscript{156} shows a decision maker listening to the needs of the party before him, not simply applying precedents and rules. Any lawyer or judge who handles an actual case understands quite clearly that no legal decision is devoid of pathos and rhetoric.

Moreover, a quick examination of the stories of Rabbis Akiva and Ishmael shows narratives packed with normative standards. The different stories about the purpose of the sacrificial rite,\textsuperscript{157} for example, certainly present fascinating portraits of God and God’s relationship to the Israelites, but implicit in each of them is an opinion on the stringency required for proper religious practice. As the great twentieth-century Talmudist Rav Joseph Soloveitchik observed, every narrative has a normative vision.\textsuperscript{158}

Finally, an examination of the rabbis’ opinions demonstrates that their different positions on similar subjects cannot be traced simply to divergent interpretive approaches. Indeed, depending on the circumstances, each rabbi selected an interpretive method that best fit into his

\textsuperscript{155}See supra text accompanying notes 116-19.

\textsuperscript{156}See supra text accompanying notes 137-38.

\textsuperscript{157}See supra text accompanying notes 71-75.

\textsuperscript{158}JOSEPH D. SOLOVEITCHIK, YEMEI ZICHARON 86 (1986).
“story of the case.” In regard to the “cut off, cut off” penalty for sinners in the Book of Numbers, for example, Rabbi Ishmael adopts a plain meaning approach and suggests that the use of the doubled “cut off” in the text was merely for emphasis. Rabbi Akiva rejects this approach and rules that the doubled use of the term showed that the sinner is cut off in this world and the afterlife. But in their interpretations of the commandment not to “covet your neighbor’s house,” Akiva focuses on the plain meaning of the passage and holds that no action on the part of the individual is required for a transgression of the commandment while Ishmael disregards the surface meaning of the text and relies on an entirely different verse to rule that action, as well as evil intent, is required for a violation of this law.

Heschel begins *Heavenly Torah* with the observation that, “A careful study of Aggadah reveals that behind the scenes you find a complete and comprehensive world outlook.” Similarly, an examination of legal rulings and reasoning of Rabbi Akiva and Rabbi Ishmael reveals that behind the scenes we find the world outlook reflected in their respective stories. Contrary to the traditional position, their aggadot and halakhot are interrelated. The rabbis’ stories are an attempt to grapple with the problems faced by their community in the Second Century, C.E., and their legal opinions reflect the narratives they developed to address those problems. As will be demonstrated by unpacking the different legal opinions of the rabbis, their decisions are infused throughout by their divergent narratives about the world in which they lived.

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159 See supra text accompanying notes 147-48.

160 HESCHEL, supra note 2, at 8.
A. Requirements in Religious Life and Schemes of Punishment

In regard to the circumstances when martyrdom was required, the divergent narratives of each rabbi clearly distinguish their rulings. In Akiva’s stories, affliction is extolled as a virtue, a means for purification. As his story of King David demonstrates, a person should rejoice more in affliction than in fortune.161 (Indeed, the legend of Rabbi Akiva’s own martyrdom concludes with his joyful realization that with this act, he would be serving God with all his heart and soul.162) Consistent with this approach, in his legal opinions Akiva rules that when faced with a choice between violation of any commandment or death, a person should choose martyrdom. Moreover, given the themes in his stories of the intimacy of God with every aspect of our lives, Akiva makes no distinctions between transgressions committed in private or in public.163 God is connected with every moment of our lives.

The stories of Rabbi Ishmael, however, take a more skeptical view of the benefits of affliction. For him, God is distant from humans and is silent when viewing the humiliation of the Jewish people. Instead of rejoicing at the sorrows of the community, he weeps when he sees poverty in the world around him.164 Not seeing affliction as virtuous, Ishmael rules that, on pain of death, a person should transgress any law in the Torah, except for idolatry, adultery/incest, or murder. And imagining a God less involved in our lives, Ishmael holds that

161 See supra text accompanying note 76.

162 See supra text accompanying notes 45-46.

163 See supra text accompanying note 120.

164 See supra text accompanying note 82.
this ruling pertained to only public, not to private, transgressions.165 Apparently, Ishmael was more concerned with the effect of such a transgression on the community than on God.

These same contrasting outlooks in the different rabbis’ stories are also evident in the legal opinions penalizing people with loss of an afterlife. Akiva, who imagined with certainty a God who was intimately involved in our lives, did not hesitate in finding situations in which a sinner would lose the right to the world to come. Ishmael, who was less certain of such involvement in our lives, never ruled that a situation merited such a harsh penalty.166

In their legal decisions in areas far less dramatic than martyrdom and loss of an afterlife, the rabbis’ divergent images of God affected their decision making. For a rabbi whose God appeared as an armed warrior at the Sea of Reeds and who imagined God’s delight at savoring the pleasing odor of Israelite sacrifices,167 the boundaries between heaven and earth were blurred. And for that reason, to Akiva God’s commandments have to be strictly enforced. For his followers, there was no leniency in the interpretation of the religious law: not visiting the sick was equivalent to murder. Moreover, this world was not as important as the wondrous experience of the supernal, and therefore the duty to study took precedence over the obligation to work for a livelihood.168

In contrast to Akiva’s stories, Ishmael’s narratives downplayed God’s intimacy with

165 See supra text accompanying notes 118, 120.

166 See supra text accompanying notes 126-27.

167 See supra text accompanying notes 68, 72-73.

168 See supra text accompanying notes 124-25.
humans. At the Sea of Reeds, Ishmael imagines an abstract vision of God with no need for armaments. Likewise, his vision of the sacrificial service does not portray it as a rite to an anthropomorphic God but as a spiritual ritual aimed at weaning the Israelites from their idolatry. From these stories, Ishmael has a much more pragmatic, down-to-earth view of religious practice than Akiva. He puts the burden on advocates of stringent practice to support their position and explicitly rejects any public decree that a majority cannot follow. Likewise, he rules that a person has an obligation both to earn a livelihood and to study Torah. Consistent with Ishmael’s narratives, religious practice should be straightforward and adapted to our lives in this world.

B. Authority, Autonomy, and Interpersonal Relations

In regard to the cases concerning interpersonal relations, the two rabbis’ decisions reflect their contrasting images of the autonomy of Moses and the Israelites. As described earlier, Akiva’s rulings in this area – whether on jealousy of husbands, supremacy of the commandment to bury the dead over other laws, or the requirement to hold the Canaanite slave in perpetual servitude – left no discretion to the individual. The laws are mandatory, and people have no autonomy in their decision making. These decisions clearly reflect the school of Akiva’s stories on the giving of the Torah on Mount Sinai. In those narratives, God reveals everything to Moses and the Israelites in one fell swoop – both the general principles and particulars of the law.

169 See supra text accompanying notes 68, 74-75.
170 See supra text accompanying notes 120, 124.
171 See supra text accompanying notes 129-31.
Moses actually heard God’s voice and communicated everything he heard to the people. The Israelites did not even compose their own song at the Sea of Reeds but were provided the songsheet by God. Accordingly, those stories portray a passive people given explicit commandments for all aspects of their lives. With that schema, it is no surprise that Akiva gives no discretion either to the people or their leaders in decision making.

Rabbi Ishmael and his school, however, wove very different tales about the Mount Sinai experience. To them, when the people saw the “thunder-sounds” at Sinai, they obtained reason to use in decision-making. God did not reveal all the Torah to Moses but only the general principles; all the particulars were revealed at the Tent of Meeting in the wilderness when specific cases were brought before Moses. And each person heard a different voice at Sinai that she with her own uniqueness, could hear. Finally, the Israelites independently helped to compose the song at the Sea of Reeds and did not follow a given script. In the schema of the school of Ishmael, therefore, individuals have some independence in making their own decisions.

Given these stories, Ishmael’s decisions on interpersonal relationships are very understandable. Decisions in this area are to be made in the context of the everyday experience of the people and their rabbis, not based solely on some eternal command on Mount Sinai. Accordingly, the school of Ishmael makes discretionary those commands on interpersonal relationships that the school of Akiva makes mandatory.

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172 See supra text accompanying note 105.

173 See supra text accompanying notes 93, 99-103, 106.

While Ishmael recognized the importance of autonomy in decision making, he certainly was not a radical individualist. To him, following the pattern of Moses in his stories, rabbis were responsible for making decisions in their own “Tents of Meeting.” But rabbis, like Moses, were required to read the Torah as given in human language, not as commanded with some supernatural voice. As is clear from the decision in the case concerning the husband who precipitously vowed not to have sexual relations with his wife,\textsuperscript{175} Ishmael saw the role of the rabbi as a problem solver, not as a rigid magistrate.

C. Love, Practice, and Culpability for Evil Intent

The contrasting images of the relationship of God to the Israelites are also evident in the different legal opinions on evil intent. Rabbi Akiva imagines a very intimate relationship between individuals and God. In his narrative, we actually cleave to God, and God walks with us as a close companion.\textsuperscript{176} This connection is passionate. God, for example, takes a sensual delight in the sacrifices brought by the Israelites.\textsuperscript{177} As Heschel observes, “According to Rabbi Akiva’s teachings, love and cleaving to God are matters given to the heart. \textit{Love is not an attribute of action; it is an action in its own right.”}\textsuperscript{178}

Such emotion is foreign to the school of Ishmael. In its narratives, cleaving to God means actions: performing good deeds and studying the Torah. The purpose of sacrifices is not

\textsuperscript{175} \textit{See supra} text accompanying notes 137-38.

\textsuperscript{176} \textit{See supra} text accompanying note 109.

\textsuperscript{177} \textit{See supra} text accompanying notes 72-73.

\textsuperscript{178} \textsc{Heschel}, \textit{supra} note 2, at 200 (emphasis added).
to arouse an emotional connection with God but to provide an incentive to avoid sin. And the commands in the Written Torah to walk with God and cleave to God are only metaphors for performing God’s commandments. Actions in this world are the focus of their stories, not some emotional connection with the divine. As Heschel describes Ishmael’s schema:

Through you the name of God will become beloved. How? When a person reads and studies Scripture, when his conversation with people is pleasant, when his business in the marketplace is fair and his transactions are honest, people will say about him: “How fortunate is he who studied Torah; how blessed are his father and mother and teacher who taught him Torah.

These divergent narratives infuse the rulings of the two rabbis on the issue of whether evil intent, by itself, can constitute a separate transgression of God’s commandments or whether some action is necessary in addition to intent. For Akiva, who focuses in his stories on the emotional connections with God and who sees love as independent of the action itself, coveting one’s neighbor house, contemplating adultery, or even having feelings of vengeance against another person can constitute an independent transgression. In his jurisprudence, we must devote our whole selves – emotions and actions – to God, and if our emotions are tainted, we can be guilty of sin. On the other hand, in his opinions, Ishmael is concerned primarily with the down-to-earth living of our lives. He recognizes none of these purported transgressions. Indeed, contrary to his usual interpretive rules, he ignores the plain reading of the Ten Commandments and decides that coveting one’s neighbor’s house, without more, does not constitute a sin.181

179 See supra text accompanying notes 74-75, 110.

180 HESCHEL, supra note 2, at 193.

181 See supra text accompanying notes 140-43.
D. Legal Reasoning Strategies

While at first it may seem odd to assert that judges’ legal reasoning strategies reflect their narratives about the world in which they live, an analysis of the interpretive approaches used by each of the Fathers of the World reveals a close connection between their respective hermeneutics and their stories.

As described previously, the school of Akiva viewed every passage, every word, even every letter as containing meaning. Accordingly, it read meaning into the extra letter in the verse on the adulterous daughter of a priest to require the penalty of burning for every violation; viewed a repetition of the phrase “cut off” in the Torah to mean that sinners would be punished both in this world and the afterlife; and rigorously urged the enforcement of extermination for an idolatrous town.182 These legal rulings are a clear reflection of narratives that view the text as wondrous. If Akiva’s stories can give an expansive reading of the miracles at the Sea of Reeds and in the dessert, if 10 plagues can be magnified into 250,183 then all the more so should every letter and word of God’s commandments be given a precise, even if at times stilted, reading.

The school of Rabbi Ishmael, on the other hand, approached legal provisions in the Written Torah with straightforward logic when trying to find the reasonable reading. Ishmael considered that the Torah was written in human language and ridiculed Akiva’s infatuation with giving meaning to every letter and word. Using this approach, he rendered commonsense rulings

182 See supra text accompanying notes 144-51.

183 See supra text accompanying note 60.
in regard to the adultery of a priest’s daughter, the penalties for a sinner, and the punishment for an idolatrous town.184

This legal reasoning strategy is clearly an outgrowth of Ishmael’s narrative schemes. Even in those situations in which the Torah itself recognizes the miraculous in the world, be it the splitting of the Sea of Reeds, the giving of manna, or Moses’s measurement of blood, Ishmael tries to downplay the wondrousness of the event. His stories focus on the natural cycles in an orderly world, not a life affected by supernatural intervention.185 In this same way, Ishmael’s rulings do not look for the hidden meaning in a text or make extreme demands on humans. Rather, they look at the legal issues through the lens of human capacity and reason, not heavenly commands.

VII. HEAVENLY TORAH AS HESCHEL’S OWN NARRATIVE AND JURISPRUDENCE

One final point should be made about Heavenly Torah. In this work like many other of his other texts, Heschel seeks to present a certain theological perspective. But a close reading of the book discloses that, like Rabbi Akiva and Rabbi Ishmael, Rabbi Heschel himself is composing his own story, attempting to find meaning in the modern world in which he lived and to develop a jurisprudence appropriate for this world. In this way, Heavenly Torah is not only a resource for comparing storytelling and legal reasoning in two-thousand-year-old rabbinic law but also for examining the legal thinking of a contemporary rabbinic scholar.

As with the analysis of the writings of Rabbi Akiva and Rabbi Ishmael, a little

184 See supra text accompanying notes 144-51.

185 See supra text accompanying notes 112-13.
biographical background is helpful to understanding the context in which Heschel wrote Heavenly Torah. Heschel was born in Warsaw, Poland in 1907. Both his mother and father were descended from distinguished rabbis of Hasidic Judaism, the mystical, revivalist movement that arose in Eastern Europe in the late eighteenth century. Heschel received a traditional Jewish education and obtained rabbinic ordination in Poland. At the age of 20, however, he left Poland for Berlin to study at a liberal rabbinical seminary and philosophy at the University of Berlin. In 1935, he received his doctorate in philosophy from the University of Berlin, writing his dissertation on the biblical prophets.

Even after Hitler’s ascendancy to power, Heschel continued to teach in Germany and live a traditional religious life committed to Jewish law. In 1938, along with other Jews living in Germany but holding Polish passports, Heschel was deported to Poland. For ten months, he taught Jewish philosophy and Bible in Warsaw. Fleeing from the Nazis, Heschel found refuge in England, and then in the United States. His mother and two of his sisters perished in the Holocaust.

In the United States, Heschel first taught at the reform rabbinical seminary, Hebrew Union College in Cincinnati, and then in 1946, moved to the conservative rabbinical seminary, the Jewish Theological Seminary of America in New York, where he was a professor of ethics.

\[186\] This section on Heschel’s background is based primarily on his biography written by his daughter Susannah Heschel as an introduction to a book of his essays. Susannah Heschel, Introduction to Abraham Joshua Heschel, Moral Grandeur & Spiritual Audacity ix-xxix (Susannah Heschel ed. 1996).
and mysticism. He taught at JTS until his death in 1972.

Heschel’s published works reflected his eclectic interests: Yiddish poetry; a monumental text, based on his doctoral dissertation, on the biblical prophets; a book on the most distinguished Jewish medieval philosopher and rationalist, Moses Maimonides; numerous works on Jewish theology; and several texts on the spiritual lives of Hasidic masters. As his daughter Susannah Heschel notes, throughout much of his work Heschel “writes of the sheer joy of being Jewish, the vitality, the love of learning, and also the tenderness, the gentleness, the sincerity and deep trust of other people that characterized East European Jewry – and himself.”

Heschel’s prominence, however, was not limited to the arena of Jewish scholarship. He was an early advocate for the rights of Jews in the Soviet Union. He took a leadership position in discussions of Christian-Jewish relations during the Second Vatican Council in the mid-1960s. And he was an active religious leader in the Civil Rights movement and against the Vietnam War.

In 1963, he met Martin Luther King Jr. at a forum on religious issues in race relations where they quickly became friends. Heschel became a prominent spokesman within the religious Jewish community on behalf of civil rights. In 1965, he marched with King in the front line of the march in Selma. In fact, one of the black women who participated in the march recently told former President Clinton that she remembered a white man leading the march with King who had a long, white beard. She related, “It was as if God himself was leading us.”

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187 *Id.* at xx.

188 E-mail from Susannah Heschel, Eli Black Professor of Jewish Studies, Dartmouth
1965, Heschel, became a strong advocate against the Vietnam War, and, along with religious leaders from other faiths, helped to found the antiwar group, Clergy and Laymen Concerned About Vietnam.

From this short biography, it should be clear that Heschel was more than a typical ivory tower academic or a traditional rabbi focused exclusively on his community or the details of Jewish ritual law. While he was a brilliant scholar, he also was a mystic, poet and storyteller. (Anyone who has read Heschel’s beautifully-crafted writings is amazed that English was his third language. His prose reads like poetry. As a Mormon philosopher at Brigham Young University noted, in his writing “Heschel sings rather than argues.”189). While throughout his life, he was a devoutly religious Jew, he was also a champion for social justice and peace not only for the Jewish people, but also his country and the world. At the core of both his writing and his advocacy, he attempted to tackle the question: “How could the spirituality of Hasidism, the holiness of East European Jewish life, now utterly destroyed, be expressed in the language of postwar America?”190

Like Rabbi Akiva and Rabbi Ishmael, Heschel faced a world in crisis. The Eastern European Jewish community in which Heschel had grown up was destroyed; members of his

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190 Heschel, supra note 186, at xxi.
family had been murdered in the Holocaust; secular philosophy proved inadequate to tackle the issues of the day and conflicts between traditional and liberal Jews were growing. The country that had provided him safe haven from the Nazis continued to deny full civil rights to blacks and was engaged in a war that he considered to be imperialistic and immoral. In this context, Heschel was faced with his own crisis of faith. 191 Heavenly Torah was one of his responses.

In this text, Heschel paid tribute to both the wondrous tales of Akiva and the down-to-earth stories of Ishmael but was reluctant to endorse entirely the narratives of one rabbi over the other. Both, he felt, were essential for finding meaning for his generation. In this way, he developed his own narrative combining the themes of both Fathers of the World. To Heschel, recognition of the awe of the miraculous was necessary for navigating this frightening world. But acknowledgment of the realities, limitations and demands of day-to-day living were essential for living in this world, not outside of it. As he wrote of the approaches of Rabbi Akiva and Rabbi Ishmael, “Each interpretation has its own truth, but none can stand all by itself. Had the Torah been given cut and dried, we would have no leg to stand on.” 192 While this narrative point of view may seem too open-ended and inadequate to some,193 “these tensions form the

191 For example, at a silent vigil at Arlington National Cemetery against the Vietnam War, Heschel exclaimed, with the words of Psalm 22, “My God, My God, why has Thou forsaken me.” Edward B. Fiske, Arlington Vigil Held on Vietnam; Dr. King Leads 2,500 in a Silent Prayer for Dead, N.Y. TIMES, Feb. 7, 1968, at 17.

192 HESCHEL, supra note 2, at 709 (footnote omitted).

193 Tucker with Levin, supra note 189, at xxvi.
foundation of the mode of paradox that characterizes religious experience” for Heschel.194

Like Rabbi Akiva and Rabbi Ishmael, however, Heschel confronted actual legal questions in the real Jewish world in which he lived that needed resolution: for example, issues of proper ritual observance in modern times, the status of women, and relations with the non-Jewish world. These issues were fueled by tensions between traditionalists who strove to comply with every provision of the Written and Oral Torah and liberals who regarded halakhah as outmoded. In tackling these questions, Heschel presents his own approach to Jewish law:

The Halakhah is the lens through which, seeing human life, one distinguishes between the forbidden and permitted, the suitable and the unsuitable, the liable and the exempt. Its mode of thought is that of rules, justice, legislation. But this raises several questions. Does the Torah contain but one mode of thought, the legal mode? Is there no role for the mode of mercy, that which commands action beyond the legal boundary? Moreover, does the Torah give us no life values other than those of “kosher” and “nonkosher”? Do we need to take into account the values of pleasantness and righteousness? If . . . a person may be a “scoundrel within the bounds of the Torah,” it is implied that there is another path, beyond the line of Halakhah.195

In this way, like his open-ended narrative vision, Heschel straddles the worlds of both Rabbi Akiva and Rabbi Ishmael to advocate reverence for established precedent but openness to change. Heavenly Torah, then, demonstrates not only that historically Jewish law has been infused by different narrative approaches, but also that Heschel’s own jurisprudence continued their traditions and was permeated by his own story-telling.

CONCLUSION

194Id. at xxvii (quoting Tamar Kohlberg, Bein Musar le-Teologia be-Torah min Hashamayim Ba-aspkllaria Shel Hadaro, DA’AT 29 (Summer 1992)).

195HESCHEL, supra note 2, at 782.
Toward the conclusion of *Heavenly Torah*, Heschel quotes a saying from the Talmud, “One who is blind in one eye is exempt from the pilgrimage” to the Temple in Jerusalem.196 Relying on this aphorism, he argues, “The Torah cannot be fulfilled unless one safeguards the plain meaning of the text and also remembers the revelation at Sinai. Torah can only be acquired in two ways: with reason’s lens and the heart’s lens.”197 Accordingly, he contends, the theologies of Rabbi Akiva and Rabbi Ishmael do not contradict each other but represent one reality.

While Heschel uses his close examination of these rabbis’ aggadot and halakhot to provide his own theological insights, these stories and legal opinions also give lawyers, judges, and students of the law profound insights into the operation of their craft. These texts clearly support the theories of cognitive scientists that all human decision making, including legal judgment, is controlled by both logical and narrative thinking. As Bruner writes, narrative makes it humanly possible for us to provide culturally comprehensible justifications for our principled decisions and opinions.198 Or as Robert Cover puts it, “For every constitution there is an epic, for each decalogue a scripture.”199 In the context of *Heavenly Torah*, each legal opinion of Rabbi Akiva or Rabbi Ishmael – or for that matter, Rabbi Heschel – reveals an underlying narrative viewpoint that each developed to make meaning in their cultural

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196 *Id.* at 708; see Babylonian Talmud, Hagigah 2a (E.I. Epstein trans., Soncino 1938).

197 HESCHEL, *supra* note 2, at 708.

198 See *supra* text accompanying note 14.

Both Rabbi Akiva and Rabbi Ishmael lived at a critical period in Jewish history. The Temple, the central focus of the people’s connection with God, had been destroyed; large numbers of Jews were exiled from the land; the practice of Judaism had been criminalized; and Jews, including prominent rabbis, were humiliated and persecuted. In this culture, both rabbis wove narratives in an attempt to give meaning to this catastrophe. Rabbi Akiva’s stories centered on God’s supernatural and miraculous intervention in the world; God’s anthropomorphic manifestations and loving relationship with Israel; and a passive, dependent role for Israel which one day would be miraculously redeemed from its present misery. Rabbi Ishmael’s narratives, on the other hand, focused on the natural cycles of the world, a clear demarcation between heaven and earth, and an autonomous role for humans in the decision-making process. Faced with the misery around him, Rabbi Ishmael composed stories, in which, humans, not God, played a prominent role in directing life.

These narrative themes and images permeate the legal rulings of each rabbi. In his decisions, Ishmael takes a middle of the road, down-to-earth approach focusing on the humanity of the parties, the realities of the decision-making process, and the commonsense meaning of the written text. He puts into action his story that at Sinai only general principles were given; the particulars were left for later real cases. Likewise, Akiva’s opinions reflect his narratives. They are usually extreme, demand strict compliance with commandments, and attempt to give meaning to every word and letter given by God. His jurisprudence puts into action his story that at Sinai all written and oral law once and for all was given by God. Nothing was left for later.

When rendering their legal decisions, these rabbis probably did not consciously reflect on
the different narrative visions they had developed. Nor, however, did they simply resort to
simple algorithms applying the facts to the rules and established precedent. As human judges,
they attempted to relate abstract legal principles to actual cases using both the logical principles
of their legal system and the narrative themes and images they had created to find meaning in the
world in which they lived. The lesson that these stories and opinions teaches us is that, as
lawyers and judges, we need to understand the complexity of the decision-making process and
recognize the crucial role that our culturally-developed stories play in actual judgment.

To tweak Heschel’s take on the Talmudic proverb, “One who is blind in one eye is
exempt from the pilgrimage,” we as lawyers, judges, and students of the law need to view our
craft through both the lenses of legal rules and narrative. A person who is blind to either one of
these modes of thought cannot partake fully in the lawyering pilgrimage.