

# **The Metaphysics of Halakha: Halakhic Naturalism vs. Halakhic Non-Naturalism**

Paper for Routledge Companion to Jewish Philosophy

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## **Abstract**

In this paper, I discuss the nature of halakhic facts and I frame the discussion in a broader meta-ethical context. Most of the existing literature on the philosophy of halakha has focused on the contrast between ‘Halakhic Realism’ and ‘Halakhic Nominalism’. This theoretical contrast is vague and includes a wide range of theories. Inspired by the meta-ethical literature, I propose to focus the discussion on views that can be called ‘Halakhic Naturalism’ and ‘Halakhic Non-naturalism’. I present, develop and distinguish between different meanings of ‘naturalism’ and consider arguments for and against ‘Halakhic Naturalism’. The purpose of this paper is twofold: First, to present and demonstrate the fruitful encounter between meta-ethics and the philosophy of halakha. Second, to present, evaluate and promote the substantive discussion of naturalistic and non-naturalistic views.

## **§1: Introduction and Some Clarifications**

The story is told of two Hassidic Jews who were arguing about the merits of each one’s Rabbi. The first related that he was traveling with his rabbi on a stormy Friday and they were afraid that they would not arrive at their destination before the onset of the Sabbath. As he described it, the rabbi raised his hands to heaven and cried out “Clouds left, clouds right.” Immediately the clouds obeyed, and the middle of the road became dry land. The other Hassid replied, “You call that a miracle? On the exact same day, we were also caught on the road while the Sabbath was approaching. My rabbi raised his hands to heaven and called out ‘Sabbath left, Sabbath right.’ Immediately the Sabbath complied, and the middle of the road became Monday”.

Philosophers tend to ruin jokes in the attempt to understand exactly why they are funny. It seems that at least part of what makes this a successful joke is the fact that the rabbi who attempted to move the Sabbath away seems to be confused, as opposed to the one who only tries to move the clouds. Clouds are not usually moved by hand movements, but at least they are things that move. On the other hand, Sabbaths are strongly connected

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to certain natural phenomena – the time of sunset – but nevertheless, one does not attribute to them spatial movement. In general, one could say that treating halakhic facts like natural facts is a category mistake.

In this paper, I would like to develop the distinction between natural facts and halakhic facts and to describe their mutual relations. I wish to present an analysis that is based on a critical discussion of a view that has been described in the literature as “Halakhic Naturalism”, as well as of the opposite view, the non-naturalistic view. In the discussion, I will claim that each view can be characterized in several ways and that in fact, we are talking about two families of positions.

In general, the different naturalistic positions hold that natural facts fully determine halakhic facts. According to this family of positions, the Divine command is consequent upon the natural facts and the normative halakhic facts that are derived from them, and simply discloses them to the addressees of the command. The versions of the naturalistic view differ from each other because of different understandings of the nature of the strong connection between natural facts and halakhic facts.

On the other hand, the family of non-naturalistic positions claim that natural facts do not fully determine halakhic facts. According to these positions, God’s command is not only a reflection of the halakhic facts “as they are” but He takes a part in constituting them. The various non-naturalistic positions differ as to what is the role, if any, of natural facts in determining halakhic facts.

Before embarking on the discussion, it will be helpful to clarify four points regarding its framework.

First, any attempt to provide a uniform and general theory regarding the nature of halakha may suffer from oversimplification and will be far from the truth. The fact that the halakha has numerous historical strata – the different social and intellectual contexts of halakhic scholars and decisors over the centuries – as well as the variety and abundance of halakhic topics, frustrate the possibility of offering a unified and general theory of halakha. On the other hand, it seems that categorical opposition to any theorization of the halakha is inappropriate. Awareness of the existence of the many strata of halakha – historical, cultural and others – does not necessarily mean that the halakha is a system which is chaotic, arbitrary, and senseless. The synchronic and diachronic give-and-take of halakhic discourse, which is typical of the halakhic tradition, assumes that there is basic regularity in the background of the halakha. I, therefore, do not intend to offer a unified and general theory in the paper, but rather to point to a hidden dialogue within the halakhic tradition between different theoretical tendencies. It is possible that regarding this dialogue, there is room to differentiate

between different topics dealt with in the halakha, as well as between different historical and cultural strata.

Second, in this discussion I will focus on the halakha as it is seen by the rabbinic jurists themselves. As a result, I will use the position of Halakhic Realism as my starting point. According to this position, there are halakhic facts which are part of objective reality “out there”, and are not a purely human convention. In other words, from a perspective within the halakha, the halakhic deliberations are not an activity of invention and creation ex nihilo, but rather an attempt to uncover and discover the objective halakhic truth, even if this attempt may sometimes fail. Of course, this starting point is not self-evident. Nevertheless, attributing belief in the thesis of Halakhic Realism to the majority of the halakhic jurists seems reasonable. This is because various halakhic sources teach that halakhic discourse works under the rule which Helmreich called “The principle of Faithfulness”. To wit: “Rabbinic decisors must strive to get the correct answer, especially in contrast to what they might wish it to be or prefer it to be” (Helmreich, 2019, p.65).

Third, and continuing the previous clarification, it is important to distinguish between different theses which have appeared in the literature dealing with the philosophy of halakha. In the wake of Zilberg (1981) and Silman (1985) an extended discussion has developed regarding two opposing theses: “Halakhic Realism” and “Halakhic Nominalism”. I will refer to parts of this discussion later. However, as has already been noted (Lorberbaum, 2015), the discussion of the two alternative theses is multifarious and obscure. Among other things, this theoretical obscurity is reflected in connections made between various claims that are far from being self-evident. For example, at the beginning of Silman’s discussion of the “nominalist” position there is an unjustified transition from a claim regarding the “reduction of the halakhic properties to the normative realm” to a claim about “the focusing of the meaning of halakhic properties to a plane in which the human element is a constitutive ingredient” (Silman, 1985 p. 250). The transition between these two claims is unjustified because it is clearly possible for halakhic properties to belong to the normative realm but nevertheless not to be constituted by the human element. It would seem that the connection between the two claims is based on the unstated assumption that anything that is not physical does not exist independently of the human element. However, this assumption is far from being obvious: for example, there is nothing unreasonable in the thought that mathematical objects exist independently of the human element even though they are not physical objects.

This unstated assumption reappears later in Silman’s discussion, which also connects the realist claim with the naturalist claim, a link that appears again (with some reservations) in Wozner (2008). However, “Halakhic Realism” and “Halakhic

Naturalism” are in fact independent positions, at least in one direction. In other words, even if every Halakhic Naturalist is committed to Halakhic Realism – according to which halakhic statements “belong to the realm of existence” – one can still be a Halakhic Realist without being a Halakhic Naturalist. This is because it is possible to think that halakhic facts exist in the objective reality “out there”, but that they are not natural facts, instead being abstract facts that exist similarly to the existence of numbers, the laws of logic, etc. The assumption that only natural facts exist is far from being obvious and is probably a remnant of a positivistic outlook according to which the only facts that “truly exist” are natural facts. Following the approach that in philosophy “everything is on the table, but not everything together”, I will restrict the present discussion to the views of Halakhic Naturalism and Halakhic Non-naturalism. I discuss similar claims elsewhere (Cohen, 2023; Cohen, in preparation).

Fourth, a final methodological clarification. I receive the inspiration for the critical comments in the preceding paragraph from the meta-ethical literature which deals with the nature of ethical facts. The background for the criticism is the claim that a realist claim regarding ethical facts does not necessarily deny the constitutive role that the human component fulfills in them. This argument has been discussed extensively regarding the Moorean analogy between colors and ethical values (McDowell, 1985), and lately in other contexts (Wygoda Cohen, 2021). In addition, the criticism also has in the background the careful discussion regarding ethical realism that denies ethical naturalism (see, for example, Enoch, 2017). The methodological hypothesis that accompanies the present paper is that the meta-halakhic discussion may benefit from a careful juxtaposition with the meta-ethical discussion.

## **s2: Why Halakhic Naturalism?**

As already stated, I first assume the position of Halakhic Realism in the broad sense – I assume that halakhic claims reflect, in the eyes of the halakhic jurists and decisors, halakhic situations that exist “out there”. At the same time, while discussing Halakhic Naturalism, I wish to question the nature of the connection between natural facts and halakhic facts. Halakhic Naturalism claims that there is a strong bond between natural facts and halakhic facts; natural facts fully determine the halakhic ones. In order to characterize this strong bond, it will be helpful to first describe the motivations for the naturalistic view.

One type of argument in favor of the naturalistic view is based on the linguistic formulations of various halakhic rulings. These arguments are based on the fact that halakhic rules are often formulated in descriptive and not normative terminology. Often, these descriptions are formulated in naturalistic terms. For example, in the laws of ritual purity and impurity one can find expressions such as “impurity which is confined in a

narrow place, breaks through and goes up” or “impurity will eventually leave”. These and other similar expressions seem to attribute to impurity the ability to move and to take up space. Similarly, in the laws regarding written deeds, we find reference to the “power of the deed” as something happening in time-space; in the laws of forbidden food we find metaphoric comparison of prohibited food to poison, and so on. These are typical naturalistic properties, and this type of argument sees them as reflecting the naturalistic picture of halakhic facts in general.

What, if anything, can be deduced from these formulations? I am afraid not much. If we were to be convinced that the naturalistic view was unreasonable, we could see all the descriptive-naturalistic formulations as purely metaphorical and readily substitute a normative paraphrase which would not be committed to the naturalistic view (see also Wozner, 2008, sec. 8; Lorberbaum, 2015, sec. IIIV). On the other hand, if we were convinced of the truth of the naturalistic view, we could easily offer descriptive paraphrases of the normative formulas. Therefore, these arguments in favor of the naturalistic view are not only inconclusive but have no weight at all.

Another type of argument in favor of the naturalistic view is based on what is seen as the best explanation for certain halakhic principles. The central kernel of these arguments is the identification of a certain halakhic phenomenon together with the claim that the best explanation for that phenomenon assumes Halakhic Naturalism. These arguments are more persuasive when more and more phenomena are identified to which the best explanation is the naturalistic thesis. This strategy can be found in the writing of Zilberg who, on the basis of a number of halakhic discussions (*sugyot*), argued in favor of what he calls “Halakhic Naturalism” which he defines as “transfer of the laws of nature to the legal sphere” (Zilberg, 1981, p.160). Zilberg modifies his position and admits that “no one thinks that the legal action... changes the molecular structure of an object... or its chemical properties”. However, he does claim that “the legal relationship of action and effect... is understood in the categories of physical causality and the laws of nature relating to energy and causation are applied to it”. Zilberg supports his general claim through the explication of three well known and central halakhic Talmudic discussions which he uses to generalize about the nature of halakha in general. I will present these topics concisely.

The first discussion to which Zilberg refers is the halakhic rule “With regard to a document that one borrowed money based on it and then repaid the debt, he may not borrow money again based on it. This is because its lien has already been forgiven” (BT Ketubot 85a). The background for this rule is the law by which a debt that is grounded in a written deed of debt puts a lien on the property of the borrower even after the property is sold to a third person. However, in the case of a loan by oral agreement, there is no such lien. The Talmud deals with the case when a loan that had a deed was repaid on the

same day, and the two parties immediately executed an additional loan using the same deed. The ruling of the Talmud is that once the debt has been repaid, the lien resulting from the loan is no longer in force and the loan will have the status of one by oral agreement. Zilberg analyses the various purposive considerations regarding the taking of liens and shows that they are not able to justify this Talmudic ruling. Zilberg suggests that the explanation is that the deed created the lien and once it is used “its energy was dissipated in order to create the first lien” (Zilberg, *ibid*, p.165). Therefore it cannot create a second lien. Zilberg completes his case with the following analogy: “A stone that has fallen to the ground cannot fall again and create additional heat in the place where it falls unless it has been given new energy by picking it up. Here, instead of picking the stone, there is a need for the new force of writing a new deed” (*ibid*).

The second discussion to which Zilberg refers is a law relating to acquisition. The Talmud quotes an opinion that one cannot transfer ownership of something that does not yet exist in the world (such as fruits that have not yet come into being) even if the sides have agreed to separate the act of acquisition from its realization, and that the acquisition will be realized only when the fruit already exists (BT Bava Metzia 32b and elsewhere). This principle is reflected in additional limitations on halakhic acquisitions (such as *Hidushei Haran*, *Nedarim* 28b s.v. v’katav; *Hidushei Rabbi Shimon Yehuda Hacoen*, *Nedarim*, Ch. 22). In this case also, Zilberg claims that it is difficult to find the purposive logic of this principle “and therefore, the only answer is the naturalistic approach of the law” (p.166). His proposal is that the forces that function in the world of halakhic law are “replicas of natural forces which act in the real world”. Since in the real world there is continuity in time between causes and their results, the Halakhic relationship between the act of acquisition and its result must be continuous.

The third example which Zilberg cites is the rule that “A prohibition does not apply to a prohibition”. (BT *Yevamot* 32b and elsewhere). This rule states that a prohibition does not apply to an object that has already been prohibited for a different reason, unless the second prohibition adds additional halakhic limitations. Zilberg suggests that “the reason for this is naturalistic: After the first prohibition attached itself to the object, it surrounds it as it were from all sides, so that the “younger” prohibition is unable to attach itself, unless it is a “prohibition that adds on” which attaches itself, as it were, to a point which is inaccessible to the first prohibition” (p. 166. See also Silman 1985 pp. 257-259). Zilberg argues that in the natural world two objects cannot be absolutely coincident, and the same thing applies to two prohibitions (for a detailed critique of this argument, see Cohen, 2023 sec. 3).

It is important to note that Zilberg seems to say that the naturalistic explanation, which he calls “applying the laws of nature to legal relationships”, is the only possible explanation for these phenomena. However, as Wozner (2008, sec. 2) claims, and as

opposed to Zilberg's unequivocal position, it is possible to offer other explanations, which are not based on the application of the laws of nature to legal relationships. Nevertheless, it seems that the naturalistic explanation has a theoretical advantage in that it succeeds in offering one single explanation, with some degree of simplicity, to the halakhic rules which were presented by Zilberg and to the additional ones which are quoted by Wozner (ibid, sec. 3-7). In other words, even if the naturalistic explanation is not *the only possible explanation* for the phenomena, it may be claimed that it is *the best explanation* for them. This is an important point and I will return to it in the critical analysis in the next section.

The third type of argument in favor of the naturalistic view consists of arguments based on the way certain halakhic rules are generalized. Halakhic laws are often formulated in the Bible and in early Halakhic literature in casuistic terms which deal with a specific case. The later Talmudic and Halakhic literature took the principle which was assumed to be the basis for the original ruling and applied it to other cases. Sometimes, the way in which the specific cases are generalized is derived from identifying the purpose of the ruling. However, it is claimed that often the halakhic generalizations are constructed by identifying the natural laws that apply to the specific case. These laws may be totally independent from the purpose that the relevant law is to promote and might sometimes even be diametrically opposed to it.

A paradigmatic example of naturalistic generalizations is analyzed extensively in the work of Noam (2009) regarding ritual purity and impurity. According to her, the way in which the rabbis extended the halakhic laws of impurity beyond those specified in the Bible, reflect a naturalistic view of impurity in rabbinic law. One of the extensions that she discusses regards the way one becomes impure from a dead body. Biblical law states that the impurity of a dead body is transferred to a person touching a dead body or to someone who is with it in a tent. According to Noam, it would be expected that the biblical law would be extended to include any home. This extension would be appropriate to the conditions in which the law was formulated (the people being in tents in the desert), to the conditions in which the law is to be implemented (when people are residing in homes in a settled area) and to the assumed purpose of the law, to distance the dead body from a dwelling place. As she shows, some Jewish texts from the Second Temple period did indeed only extend the laws of tent impurity to the dwelling area. However, the tannaitic halakha applied the laws of tent impurity not only to the abode but to almost anything that hangs simultaneously above the dead body and the person who will become impure. According to Noam, this (and other extensions that she analyzes) can only be justified based on a naturalist worldview. According to such a view, the laws of impurity are based on the principle that impurity is a natural fact, subject to objective laws, which are not solely dependent on the social or other aims that

the halakhic rule wishes to promote. Therefore, as she says, “if the impurity of a dead person spreads under the roof of a tent, it must spread in the same way under a boat, sheet, mat, animal, plants and food, dovecote or rocks...and in *all physical circumstances* in which there are conditions of a tent” (p. 166, my emphasis). Noam deduces from this that the Rabbis saw the halakhic system of impurity not just as one that comes to serve “social needs – whether religious or secular – such as hygiene, esthetics, the need to buttress the sanctity of the temple or the separateness of the Jews, strengthening the status of the priests or polemic with pagan concepts of holiness” (p.160). Rather, it is also, and mainly, an institution which reflects a naturalistic understanding of impurity as “an entity in nature, that has quasi-physical characteristics of movement, extension, flow and other similar qualities” (p. 164).

This type of consideration was at the focus of the extensive debate between Schwartz (1992; 2015) and Rubenstein (1999; 2015). The terminology used in the debate followed Silman and revolved around the realistic view, but essentially, as far as this paper is concerned, they are debating the naturalistic view. According to the position of Schwartz, in its updated and modified version, the Pharisaic halakha, in cases when it polemicizes against the Sadducees, tended to reject the naturalistic position. On the other hand, the priestly Halakha, which found its way into the Sadducean and Kumranic halakha, tended towards the naturalistic view according to which halakhic obligations are imbedded in the very nature of things. Schwartz bases his position on the way in which a variety of Biblical laws are generalized by the priestly, Sadducean and Kumranic halakha. This is clearly at odds with the rabbinic-Pharisaic halakha which opposed these generalizations and retained the formal understanding of the language of Scriptures.

One of the interesting cases brought by Schwartz relates to the prohibition of marrying one’s niece. The biblical verse prohibits a man from marrying his aunt (Lev. 18,13). The Pharisaic halakha, based on the fact that the Torah only speaks of that case, ruled that a man may marry his niece. However, The Kumranic halakha extends the biblical prohibition and applies it to relations between a male uncle and a female niece. This is based on the equivalence of the natural relationship between uncle and niece and of that between aunt and nephew (Damascus Covenant 5: 7-11). Rubenstein analyzed the different examples brought by Schwartz and showed that it is possible to offer naturalistic interpretations to some of the Pharisaic generalizations and non-naturalistic interpretations of the Sadducean and Kumranic generalizations. For example, he suggests that the Pharisaic position regarding relations with a niece assumes a natural distinction between men and women that is relevant and which influences the type of family bond that was prohibited according to the biblical law of incest. Therefore, Rubenstein refuses to see the question of Halakhic Naturalism as one that distinguishes



between the different historical strata of the halakha. In any case, it seems that Schwartz and Rubenstein agree that choosing certain generalizations and opposing other ones may reflect a naturalistic understanding of the halakhic facts.

### **§3: What exactly is Halakhic Naturalism? Evaluating the Arguments**

At this point, we have described two general motivations to offer arguments in favor of the naturalistic thesis: the inference to the best explanation and the explanation of generalizations of different laws. We will now attempt to formulate the thesis in a more precise way. As mentioned, the general formulation of the naturalistic view is that there is an especially strong bond between natural facts and halakhic facts; natural facts fully determine the halakhic facts. Now, we must attempt to understand the nature of this “strong bond”.

An important distinction between two possible versions of the naturalistic thesis regards the question of whether the bond between the natural and the halakhic is one of reduction or one of grounding. The metaphysical distinction between these two types of relations is a central distinction between different types of explanations in various areas. Each one of these types has different logical features (Rosen, 2010). The central difference between the two types of explanations is that reductionist explanations are subject to a claim of identity of which the form is “A is nothing but B”. A common example of a claim of reduction is the claim that “water is H<sup>2</sup>O” which identifies the natural type “water” with the chemical compound “H<sup>2</sup>O”; to be a water is nothing but to be the chemical compound “H<sup>2</sup>O”. As opposed to claims of reduction, grounding claims are not obligated to conform to a claim of identity. Sometimes, all we ask to state is that A is a grounding of B, while A and B are not identical. For example, the fact that my car is red, grounds the fact that my car is colored. The fact that my car is colored is not identical to the fact that my car is red, as there are many ways to be colored, such as to be blue, green et cetera.

This distinction, between grounding and reduction as two types of metaphysical relationships, permits us to also distinguish between different types of normative explanations, reductionist as opposed to non-reductionist (for a similar distinction see Schroeder, 2005). In the present context regarding halakhic facts, this distinction allows us to distinguish between reductionist Halakhic Naturalism and non-reductionist Halakhic Naturalism. According to the first type, halakhic facts are identical to certain natural facts. For example, the fact that pork is prohibited for consumption is identical to the fact that pork has certain natural properties, in the same way that the fact that a certain x is H<sup>2</sup>O is identical to the fact that x is water. In other words, there is identity between the property of being prohibited meat and all (or some) of a pig’s natural properties. On the other hand, according to non-reductionist Halakhic Naturalism, the

halakhic facts are fully grounded on certain natural facts, but they are not identical to them. For example, the fact that pork is prohibited is fully based on its natural properties, but the property of being prohibited is different from those natural properties.

The non-reductionist position has a significant theoretical advantage since it is not subject to one of the central objections to normative (not only halakhic) reduction. The kernel of this objection is the claim that the normative is “just too different” from the natural. It seems that the proposition of identity between the normative and the natural involves one with a confusion of categories similar to the one with which I began the paper, of the rabbi who tried to move the Sabbath to the side of the road. This criticism plays a central part in the considerations against moral naturalism (Railton, 2017; Enoch, 2017). As opposed to the reductionist version, the non-reductionist version which only claims a grounding relation from the natural to the halakhic avoids this category error. As already pointed out, the claim of grounding does not claim identity of the facts of the two types. Using this claim takes the sting out of the objection that they are “just too different”, because it is not clear why we should expect that a fact that grounds another fact would have to be of the same type.

This theoretical advantage would bring us to prefer non-reductionist naturalism. However, the fact that non-reductionist naturalism is more plausible, does not settle the issue, in and of itself. Here we must return to the arguments in favor of the naturalist view and judge which of the two versions of Halakhic Naturalism – the reductionist and the non-reductionist – achieves the theoretical achievement we are expecting.

As already mentioned, one of the arguments in favor of the naturalistic view is based on identifying various halakhic phenomena for which the best explanation assumes the naturalistic view. The examples cited included the impossibility of using the same deed twice, of transferring ownership over something that does not yet exist, and of two different prohibitions being applied simultaneously to the same object. The naturalist claim is that Halakhic Naturalism explains these phenomena by subjecting the halakhic properties to the laws of nature. However, it is very important to note that this argument wishes to explain the rules that govern the halakhic-normative properties themselves, such as “the power of the deed”, “acquisition”, or “prohibition”, by applying the laws of nature to them. Therefore, applying the laws of nature to facts that ground halakhic facts, but not to the halakhic properties themselves, is insufficient to justify the aforementioned halakhic phenomena without assuming that the halakhic facts are themselves natural facts.

In other words, to make these arguments it does not suffice to support non-reductionist naturalism, which is committed only to the claim of grounding the halakhic in the natural, without identifying the halakhic as the natural. This is because if we assume that

halakhic facts are different from natural facts, the phenomenon that halakhic facts follow natural laws is just as surprising as it would be without the naturalistic assumption. It still would not be clear why the halakhic facts themselves – which, according to non-reductionist naturalism are not identical to natural facts – should follow natural laws. This leads to the conclusion that non-reductionist naturalism does not provide an explanation for those very phenomena which the argument was supposed to explain. In other words, this type of argument must assume reductionist Halakhic Naturalism. However, the entire argument is based on seeing the naturalistic explanation as the best one – as it is characterized with unity and simplicity – and not the only explanation, as I emphasized before. Therefore, it seems that the problem of “just too different” makes this type of argument much less attractive.

As opposed to the arguments based on “the best explanation”, arguments in favor of the naturalistic view based on halakhic generalizations are applicable also to the non-reductionist version of Halakhic Naturalism. As already mentioned, these types of arguments are based on identifying the way in which certain halakhic claims are generalized and applied in different cases. This argument does not require that the halakhic facts be identical to natural facts. For the purpose of this argument, it is enough to accept the reasonable assumption that grounding relationships are systematic in that if A grounds B then A always grounds B (this point is also related to the necessity of grounding relations, which I will discuss extensively in sec. 5). Once we accept the assumption of the systematic nature of grounding relationships, generalizations can easily be justified even without assuming identity between the natural and the halakhic. The fact that certain halakhic generalizations are based on identifying facts as natural, succeeds in supporting the claim that natural facts ground the halakhic facts, even without assuming that they are identical. The advantage of an argument of this type is that it supports the position of non-reductional naturalism, without paying the theoretical price of identifying the natural and the halakhic which are facts of different types. These arguments escape the objection of “just too different”.

However, if all we accept from the naturalist thesis is the possibility of certain generalizations, we may end up with an even weaker relationship than the one of grounding. In order to ensure the validity of halakhic generalizations it is sufficient to posit the systematic nature of the relationship between the natural and the halakhic. This systematic nature would also be ensured under the assumption that there are only relationships of coordination between the two types of facts. I shall call such a relationship “joint-carving relations” following the discussion of McPherson (2015) regarding ethical naturalism. According to this suggestion, the “halakhic joints” divide the world in a way that aligns, at least to some extent, with the natural joints (for a discussion in this vein, for totally different reasons, see Segal 2019). This “common

carving” allows deducing halakhic conclusions on the basis of naturalistic generalizations, even if natural facts do not ground the halakhic facts.

The weakness of this last suggestion is that if we do not accept the existence of grounding relationships from the natural to the halakhic, the correlation between them seems surprising and inexplicable. However, at least in the halakhic context, it seems that this lacuna of explication can readily be rectified by using a theological assumption which reverberates in several places in rabbinic literature, by which the Torah is the ultimate blueprint of Creation: “God looked into the Torah and created the world” (BT Shabbat 88a, Psachim 54a, Breishit Rabba 1,1 Zohar Terumah 161a). Once this theological assumption is present, the accord between the halakhic and the natural is no longer surprising. With this theological perspective, which is reasonable to attribute to the halakhic decisors, the thesis of joint alignment will be sufficient in order to offer a basis for natural generalizations for the purpose of halakhic deductions. Thus, we neither have a need for the thesis of reductionism nor for the thesis of grounding from the natural to the halakhic. If, after all, there is something like a grounding thesis in the background, its direction is exactly the opposite; from the halakhic to the natural. However, once we see the limited version of Halakhic Naturalism as nothing but a thesis of joint carving, together with the grounding thesis from the halakhic to the natural, we have already entirely left the realm of the naturalistic view.

#### **§4: Why Halakhic Non-naturalism?**

Alongside the naturalistic view, there are also voices within the halakhic sources which support a non-naturalistic view. In general, according to this view, natural facts do not fully determine the halakhic facts. It is important to emphasize that this view does not deny all connections between the natural and the halakhic but it denies a strong connection. The claim that there is absolutely no connection between natural facts and halakhic facts seems clearly mistaken. The existence of a connection between the natural and the halakhic is clearly a pre-theoretical given. For example, if a certain object is a pig – which is a natural fact – its meat will be considered halakhically prohibited for consumption – which is a halakhic fact. However, the non-naturalistic view claims that the connection between the natural and the halakhic is an especially weak connection, as will be explained later. In a similar way to our analysis of the naturalistic view, the characterization of the relationship between facts of the two types demands more precise analysis, which will enable the presentation of different versions of the non-naturalistic view. As with the naturalistic view, I will begin by presenting the central motivations in favor of the non-naturalistic view and will then present a more careful formulation.

There is a rabbinic text dealing with the laws of purity and impurity that is often quoted as a basis for the non-naturalistic position. The text describes a somewhat surreal

dialogue between a gentile and Rabban Johanan ben Zakkai, one of the greatest sages at the end of the Second Temple Period. The dialogue begins with a polemic of the gentile against the law of the red heifer, whose ashes (after being mixed with water) purify a person who has come in contact with a dead body. According to the claim of the gentile, this law is “a kind of sorcery”. The answer given by Rabban Johanan ben Zakkai to the gentile is that the act of purification with the red heifer is similar to the natural treatment which the gentiles offer to a man possessed by the spirit of madness. After the response to the gentile, the students of the bet midrash refuse to accept the answer: “Rabban Johanan, you put off that gentile with a mere reed of an answer, but what answer will you give us?”. Here comes the often-quoted answer of the rabbi:

By your lives, I swear: the corpse does not have the power by itself to defile, nor does the mixture of ash and water have the power by itself to cleanse. The truth is that the purifying power of the Red Heifer is a decree of the Holy One. The Holy One said: ‘I have set it down as a statute, I have issued it as a decree. You are not permitted to transgress My decree. This is the statute of the Torah (Num 19: 1)’ (Pesiqta de-Rab Kahana, pisqa 4, parah adummah, translated by W.G. Braude and I. J. Kapstein, p. 112).

The response of Rabban Johanan ben Zakkai to his students – who belittle the naturalistic answer that the rabbi gave to the gentile – is that natural facts are insufficient to support the halakhic facts. This support requires the divine command, which takes a constitutive role for them.

From this quote in, it is not clear if the non-naturalistic view stated by Rabban Johanan ben Zakkai and his students is itself a presupposition or a conclusion drawn from other assumptions. However, as we shall see, a later rabbinic source connected the non-naturalistic view with another thesis according to which there are “No Necessary Connections” between natural facts and halakhic facts (which we will call NNC). Formally, this thesis denies the supervenience of the halakhic on the natural and accepts the claim that there may be differences in halakhic facts without differences in natural facts.

The sources for the thesis of NNC itself are several rabbinic texts that deal with the question of the reasons for the commandments. One, which is often quoted, deals with the laws of slaughter:

Do you really think that The Holy One cares if an animal is slaughtered by front or by the back of the neck? Therefore, mitzvot were given to purify people (Breishit Rabbah 44: 1).

This midrash says that despite the natural differences between the two different slaughtering procedures, they do not, in and of themselves, cause any normative

distinction. What does cause such a normative difference is the Divine command that determined that the proper halakhic procedure is one and not the other. From that perspective, just as it is impossible to explain the reason that slaughtering from the neck is kosher on the basis of a natural fact, it is also impossible to explain the reason for the halakhic fact that slaughter from the back is not kosher. “Purifying people” could be achieved in various ways, and the question “why this way and no other” could be asked regarding any choice of a certain procedure.

Other texts that support NNC are rabbinic midrashim which claim the contingent nature of the kosher status of types of animals. For example, there is a midrash that claims that the etymological basis of the Hebrew word for pig – “chazir” – is because it will in the future be “returned” – l’hachzir – to the Jewish people. The source of this midrash is obscure, but it is quoted by a number of medieval rabbis and has been given various interpretations through the ages (see Steinsaltz, 1967). The simple reading of the midrash expresses the contingency of the prohibition of the eating of pork – a contingency arbitrarily dependent on time – according to which there is nothing in the essential natural properties of the pig that determine the fact that it is halakhically prohibited. The thesis of NNC is also expressed in the words of the Talmud according to which in the past, during the conquest of the Land of Israel the Jews were permitted to eat pork (BT Chulin 17a) or that in the distant future it will be permitted to eat whale meat, despite the fact that today it is prohibited (BT Bava Batra 75a).

Based on these and other similar texts that support the thesis of NNC, the sixteenth century rabbi Maharal of Prague concluded that the commandments of the Torah “are things that are unnatural” (Tiferet Yisrael, Ch. 26 and especially chapters 6-8). Maharal repeatedly and specifically connects the NNC thesis with the aforementioned dialogues involving Raban Johanan ben Zakai, and deduces a non-naturalist view from them.

However, it is important to note that even if there is an intuitive transition from the thesis of NNC to a non-naturalistic conclusion, it is not self-evident. In fact, the deduction is not valid unless a substantive assumption is added, which will establish the validity of the inference from the lack of necessary connections from natural facts to halakhic facts to the conclusion that natural facts do not ground halakhic facts. In order to validate this argument – that assumes the thesis of NNC and concludes with Halakhic Non-naturalism – there must be a bridging principle which connects the modal status of the relevant facts with the existence or non-existence of grounding relations between them. Here is a preliminary formulation of such a principle:

**Grounding Necessary Principle (GNP):** If  $\Psi$  grounds  $\Phi$ , then necessarily if  $\Psi$  holds,  $\Phi$  also holds.

Once this principle is accepted, the following valid argument results:

- 1) **NNC thesis:** It is not necessary that if natural fact F holds, halakhic fact N also holds;
- 2) **Particular Case of GNP:** If natural fact F grounds halakhic fact N, it is necessary that if natural fact F holds, Halakhic fact N also holds;
- 3) **Non-naturalistic conclusion:** It is not true that natural fact F grounds halakhic fact N (Modus-Tollens on 1 and 2).

Now that we have a valid argument, we still have to see if the argument is also sound. I accepted the NNC thesis as it is common in Rabbinic literature. Now we must analyze the bridging principle (GNP). As far as I know, this principle was not given at Sinai and therefore requires careful analysis, which will allow us to distinguish between different versions of Halakhic Non-naturalism.

### **s5: What exactly is Halakhic Non-naturalism? Evaluating the Argument**

In order to evaluate GNP, it will be beneficial to think of counterexamples to this principle. For example: It seems reasonable that the fact that Shulamit was born on July 19, 2010 grounds the fact that her thirteenth birthday will occur on Wednesday of the third week of July 2023. This grounding proposition is true, despite the fact that the connection between the two facts is not necessary, because her birthday could fall on another day if the number of days in one of the months after her birth had been different. Nevertheless, the date on which Shulamit was born plays a role in grounding the day of her thirteenth birthday. Here we have an example of a fact that grounds another fact, but the relationship between them is not necessary. This is a clear refutation of GNP in its preliminary formulation.

It is clear that this example refutes GNP only because of the crude way I formulated it, without distinction between partial grounding and full grounding. Shulamit's thirteenth birthday is grounded by her birthdate, but the grounding is not full; there is a need for additional relevant facts to fully ground the date of her birthday. It is therefore easy to argue that GNP is true only regarding full grounding but not regarding partial grounding. This is also the accepted position in the philosophical literature regarding grounding relations (Trogon, 2013). In other words, when a number of facts join together to ground another fact, it is still possible to think that each one of them takes part in the grounding of the fact that is grounded, even though there are no necessary connections between each separate grounding fact and the grounded fact. Therefore, we must limit GNP so that it will only be regarding full grounding, thus:

**Full Grounding Necessary Principle (FGNP):** If  $\Psi$  *fully grounds*  $\Phi$ , then if  $\Psi$  holds,  $\Phi$  also holds.

This modification of the principle requires modification of the entire argument in favor of the non-naturalistic conclusion, thus:

- 1) **NNC thesis:** It is not necessary that if natural fact F holds, halakhic fact N also holds;
- 2) **Particular Case of FGNP:** If natural fact F fully grounds halakhic fact N, it is necessary that if natural fact F holds, halakhic fact N also holds;
- 3) **Non-naturalistic conclusion:** It is not true that natural fact F *fully grounds* halakhic fact N (Modus-Tollens on 1 and 2).

Now, after accepting only the modified conclusion, we remain with an open question regarding the role that natural facts play in grounding halakhic facts. It is possible to propose three competing answers which provide three possible versions of the non-naturalistic view.

According to the first answer, which I call Standard Halakhic Non-naturalism, the natural facts together with the divine command ground the specific halakhic fact. Like in the case of Shulamit's birthday, this option does not differentiate between the different ways that the natural facts and the divine command ground the specific halakhic facts. For example, the fact that an object is a pig joined with the divine command that prohibits the eating of pork, ground the fact that the object is prohibited for consumption. This option can be represented by the formula  $(C \& F) \Rightarrow N$ , when C represents the divine command, F represents the natural fact and N represents the halakhic fact. The drawback of this option is that it is not sensitive to the distinction, which seems meaningful, between two types of facts, divine command and natural facts. Intuitively, it would seem that the divine command and the natural facts ground the halakhic facts in very different ways.

The intuitive difference between how divine command grounds and how natural facts ground, if taken seriously, can result in a more nuanced option, which I call Iterated Halakhic Non-naturalism. According to this suggestion, there is a distinction between different levels of grounding (see Enoch, 2019 and Salinger, 2022). Think of the following example: the fact that the law says that everyone who crosses the road on a red light is subject to a fine, together with the fact that Hagit crossed the road on a red light, ground the fact that Hagit is subject to a fine. In this case, it is reasonable to think that each of the two facts – the legal one and the natural one – ground together the specific legal fact by which Hagit is subject to a fine. However, it seems reasonable to think that each of



the two facts ground the specific legal fact on a different level. Regarding this case, we would like to claim that there is iteration of grounding relations by which the general law grounds the fact that the relevant natural fact grounds the specific legal fact. This can be represented by  $C \Rightarrow (F \Rightarrow N)$ , when C represents the law, F represents the natural fact and N represents the specific legal fact. Similarly, it is reasonable to think that the fact that God prohibited the eating of pork grounds the fact that: the fact that an object is a pig grounds the fact that the object is prohibited for consumption.

The advantage of this option is that it is sensitive to the intuitive difference between divine command and natural facts. It distinguishes between the “internal” grounding relation – the one that exists between the specific natural facts and the specific halakhic fact – and the “external” grounding – the fact that determines the internal grounding relation. In the present context, I will just mention that in addition to the intuitive advantage of this option, it may also have an explanatory advantage regarding the important distinction between cases of factual uncertainty – in which the relevant natural facts are unknown – and cases of normative uncertainty – in which the halakhic norms are unknown. This distinction is prominent in the halakhic literature dealing with doubts and its implications require a separate philosophical account (Cohen, 2018). Tentatively, it may be assumed that the distinction between the “external” grounding, which is anchored by halakhic law, and the “internal” grounding, which is anchored by the relevant natural facts will help to understand the difference between the two types of doubts. Careful elaboration of this argument is beyond the scope of the present paper.

Once my proposal to distinguish between different levels of grounding is accepted, an additional suggestion for future discussion may be raised. This version is an additional and more radical type of Halakhic Non-naturalism which I call Halakhic Occasionalism. This proposal suggests that natural facts do not take any part in grounding halakhic facts. Here too, it will be helpful to think of an example. Solomon promised to meet me this evening at eight o’clock. It would seem that this fact establishes an obligation for Solomon to meet me at eight. However, in order that Solomon’s promise will ground his obligation, it must be a result of free will and devoid of manipulation (the example is taken from Dancy, 2004, Ch. 3). In this case, it is reasonable to think that free will is not a thing that grounds the obligation of Solomon, but rather it provides the occasion for the promise to constitute the obligation. This proposal can be presented as: Given F,  $(C \Rightarrow N)$ . In a similar way, we can think of the relationship between natural facts and halakhic facts. According to this proposal, natural facts do not ground the halakhic facts but rather provide an occasion for the halakhic law to ground the specific halakhic facts by itself.

This version respects the relevance of the natural facts to the determination of halakhic facts, but it denies the existence even of partial grounding relationships between them. This third non-naturalist option does not *derive* from NNC in its modified form. However, this option is *consistent* with NNC, from which I deduced the non-naturalistic view, following the rabbinic literature. Giving the last option a theoretical advantage over the others requires an independent argument which I hope to develop in the future.

In any case, the last two proposals take into account the intuitive difference regarding the role of halakhic law and natural facts in grounding specific halakhic facts. It may therefore explain part of what is amusing about the Hasid, whom we met in the beginning of the paper. We may be amused by the fact that in order for the miracle to work it requires action not only on clouds, and not only on the specific Sabbath that was “in the way”, but rather on the divine command itself. Action of this sort demands a jump “outside”, out of the halakhic world. In fact, it may not only be amusing but somewhat shocking. It seems that even someone who thinks that a rabbi can influence some natural facts still expects to leave God’s commands in His hands.

## **§6: Conclusion**

In the course of this discussion, I have distinguished between different metaphysical pictures regarding the relationship between natural facts and halakhic facts. As I attempted to show, once the distinction is made, the different arguments for and against Halakhic Naturalism do not actually deal with the same theories and do not lead to the same conclusions. I first distinguished between different versions of Halakhic Naturalism. According to reductionist naturalism, halakhic facts are identical to certain natural facts. This version may provide the best explanation for certain halakhic phenomena but is clearly unreasonable and may even suffer from a category mistake. As a result, it is not clear if it is really the best explanation for those halakhic phenomena.

On the other hand, according to non-reductionist naturalism certain halakhic facts are *fully grounded* by natural facts but are not identical to them. This version is much more reasonable than the reductionist one, but it seems that the argument which should lead to it – based on the characteristics of halakhic generalizations – does not even require the existence of relationships built on grounding but can suffice with the thesis of joint-carving. This thesis guarantees systematic correlation between halakhic facts and certain natural facts and allows achievement of the aims of Halakhic Non-reductionist Naturalism without commitment to naturalism. At that point, I discussed the non-naturalist view and attempted to claim that it is supported by the well-known halakhic thesis that there are no necessary links between natural facts and halakhic facts. My claim is that the non-naturalistic view is open to three competing versions and that deciding between them requires additional discussion.

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