In this brief text, I aim to present a comprehensive yet substantiated claim. I will present the main academic approaches to the study of Halakhic literature that have developed over the last century and argue that generally, this is a secular and modern process. It is not ‘secular’ in the sense of it being a non-religious occupation, but ‘secular’ in the sense used in the academic study of the phenomenon of secularism. In this sense, academic academic study of halakha makes unnecessary assumptions, or perhaps one can say that it views its object through an unsuitable lens and consequently, its ability to produce productive research is limited. When I say that the academic study of halakha is modernist, I am not to chronology, but rather to the cultural phenomenon of modernism, that is, participating in a certain understanding of the concept of progress as part of the modern Enlightenment project, particularly certain formulations of that developed at the turn of the 20th century.

halakhah is a somewhat nebulous term that, in a certain way, encompasses the way of life as shaped in Rabbinic Judaism since the era of the Sages. In certain contexts, the category of halakha is sometimes defined by comparison to categories distinct from it – thus ‘halakha’ is contrasted with other concepts such as ‘Aggadah’, where the former reflects the legal-practical aspect of Jewish life and the latter the theological, faith-based or narrative aspect. However, such definitions are somewhat problematic, and primarily reflect a pedagogical division regarding study arrangements.[[1]](#footnote-1) In many ways, one can speak of halakha as a religious law, although of course, this definition also raises many difficulties.[[2]](#footnote-2) The reference to halakha as merely a system of laws captures an important, “practical” aspect of the term. However, the halakha is a broader framework. It is both a body of knowledge and a practical framework, as well as a driving force that has shaped the traditional Jewish agenda from both a practical perspective and to a large extent also from broader cultural and social perspectives; many would argue that at least until 1800, it is the primary vector in the dynamics of Jewish culture.[[3]](#footnote-3) Alternatively, one can discuss the problematic nature of the term ‘halakha’ in that it signifies praxis, specific texts, and a particular type of discourse (including terminology, arguments, and rationales) that is not necessarily confined to texts of a specific genre.

From the inception of Jewish Studies, or *Wissenschaft des Judentums*, a cultural movement rooted in 19th-century Central Europe that developed the systematic academic engagement with Judaic topics, the study of halakha was given a place. This engagement included the study of halakhic literature and halakhic praxis, the relationships between them, and their relationships to other aspects of the cultural life of Jewish societies (although the tendency was to focus primarily on certain periods and authors that seemed to scholars as ‘fruitful,’ interesting, or as representing the ‘ideal’ halakha).[[4]](#footnote-4) In particular, in the last few decades, the study of halakha has enjoyed a relative renascence in various contexts, which also attempt to apply new methods from different disciplines to it.[[5]](#footnote-5) Nevertheless, it seems that one can still say that the study of halakha makes use of four main disciplinary methods or approaches (which also reflect the institutional-academic framework of the research). These include philological-historical research; social history; *Mishpat Ivri* (the usual English translation would be Jewish Law, there is no exact translation for this term, and not without reason); and ‘philosophy of halakha.’

Philological-historical research has been the primary tool of Talmudic and halakhic studies since the inception of Jewish academic scholarship. To a great extent, it is the most ‘modest’ in his aspirations. It seeks to understand the halakhic literature through meticulous examination of the text, language, and historical context of the sources,[[6]](#footnote-6) and in this context, it mainly addresses sources from ancient times and to some extent also the Middle Ages. This research is generally conducted in departments of Talmud, and adopts positivistic assumptions regarding the appropriate methodology, and tries, at least declaratively, to avoid interpretations that are not supported by the meticulous study of the language and syntax of the text or the historical and material context.[[7]](#footnote-7) By means of an enormous amount of published research and sustained intellectual effort, using both “low” criticism (textual criticism) and “high” criticism (which is more speculative, asking questions about the chronology of the composition of texts, the thematic trends found therein, mutual influences, and connections to contemporary cultures), philological-historical Talmudic and halakhic study can be said to have succeeded in significantly advancing our understanding of Rabbinic literature, has challenged traditional conventions, and offering convincing solutions to a series of fundamental questions in the development of Rabbinic Judaism.

Social history using halakhic texts was to a great extent founded by one man: the historian and sociologist Yaakov Katz (1904-1998); his project was taken up by numerous students and researchers. Katz was a prominent student of the sociologist Karl Mannheim, who greatly developed the framework for studying the relationships between knowledge, society, and sociological circumstances. He believed that exposing these sociological connections is vital for understanding the development of knowledge (it is no coincidence that many consider him the founder of the sociology of knowledge). Moreover, Mannheim – following Emile Durkheim – developed a sharp distinction between “traditional” society and modern society, and Katz, his student, enthusiastically adopted this idea, which became very central in his writing. Katz’s studies focus on Jewish society in Europe during the Middle Ages and in his view, the Jewish Middle Ages were very long, extending until the Emancipation and into the modern era. Katz, who viewed the halakha as the core of the “traditional society,” argued that to understand Jewish society and its history, it is necessary to examine and characterize developments and changes in halakhic writing and the approaches of halakhic authorities to a series of fundamental issues. His numerous studies in the field are based on the assumption that the halakha constantly responds to societal changes and pressures (economic, cultural, and political), and the role of the halakhic authorities is to serve as “valves” that direct these pressures in certain ways, in parallel to internal changes and developments within the halakha “itself.” The novelty is not in the formulation of this principle itself, which is perhaps self-evident and intuitive, but in the scope and productivity of the extensive use that Katz made of it, turning it into a powerful tool in Jewish historical research and the study of the halakha itself. His studies on halakha encompass many topics: the relationship between Jews and non-Jews, martyrdom, observance of the Sabbath in a changing economic reality, and what can be termed the attitude towards modernity. Toward the end of his life, Katz published a study of the growth of Jewish Orthodoxy in 19th-century Europe, a field of research he significantly developed.

*Mishpat Ivri* is its own category. The foundations of this discipline-method were laid in Russia in the 1910s, and it was further developed by legal scholars in Mandatory Palestine.[[8]](#footnote-8) This school of thought believed in the existence of a ‘national’ component in Jewish law, a component that could be extracted and ultimately integrated (they hoped) into the national, modern legal system of the Jewish national movement. Initially, this integration would be theoretical and in an academic setting. This would begin in the Yishuv (the name for the Jewish community and its institutions in pre-State Palestine), and continue, at least in principle, with the establishment of the State of Israel. Those who adopted this approach argued, with various nuances, that halakha is a legal system, similar to Roman or Canon (or French) law, and that it is possible and important to understand its principles through this prism. The inspiration for this approach can be traced directly to the thought of the 19th-century German jurist von Savigny‏ which greatly influenced lawyers and historians in Europe regarding the organic connection between the nation and the national spirit to the historical development of the law of that ethnic group.[[9]](#footnote-9) A fundamental principle of the discipline of *Mishpat Ivri* is the separation between the components of halakha that pertain to civil law – monetary disputes, personal status issues, family law, and the like, and the religious law component. Only the former is included in *Mishpat Ivri*). Understandably, this modern separation, which is very foreign to halakha as a field of knowledge and as a cultural insititution, has raised significant criticisms.[[10]](#footnote-10) The figure most identified with *Mishpat Ivri* is former Israeli Supreme Court Vice-President Menachem Elon, whose monumental book *Jewish Law:* *History, Sources, Principles* (*Misphat Ivri* in Hebrew)is well-known, albeit without much affection, to law students in Israel. Elon, who before his appointment to the judiciary had a long academic career, authored this wide-ranging book reviewing the history and origins of *Mishpat Ivri* and the fundamental questions raised in the discipline (in Elon’s language, its principles). The book exhibits throughout the clear, almost self-evident, assumption that *Mishpat Ivri* is indeed a “legal system” that can and deserves to be analyzed in such a way. For example, the review of the book published in the journal *Mishpat veMimshal* [Law and Government], mentions almost in passing: “Whoever wants to get to know *Mishpat Ivri* in its various periods, or delve *into this or that element of the legal system of the Jewish people*, one way is to turn to Professor Elon’s monumental book.”[[11]](#footnote-11) Although the book is ostensibly a textbook, this assumption about *Mishpat Ivri* is implicit in countless details in the book (after all, there is no textbook without a hidden or explicit ideology). A clear example is the discussion of “codification.” The question of codification, i.e., the transformation of the halakha into a relatively uniform legal system as an internal halakhic question, which preoccupied the halakhists *themselves*, is a pressing question for Elon. Many of the questions pertaining to the understanding of halakha in modern times are examined through these lenses, expressing what troubles those who seek to establish a comprehensive “legal system” model, and not necessarily the halakhists who are the subjects of the research.

Philosophy of halakha is a sub-field of Jewish philosophy that primarily seeks to make use of legal tools commonly used in jurisprudence research.[[12]](#footnote-12) Scholars in this field will attempt to examine principles in halakha, or the teachings of certain halakhic authorities, in light of questions, insights, and worldviews developed in meta-ethics, and especialy in jurisprudence. They will also formulate questions that can be termed “meta-halakhic” (for instance: distinctions related to formalism, positivism, or legal realism; questions of legitimacy, authority, and jurisdiction; legal pluralism or monism; and the like). Research of this kind is primarily conducted in the departments of law, Jewish thought, and philosophy.[[13]](#footnote-13)

Of course, these four paradigms of the academic study of halakha are not exclusive. Often a combination of these methods is used. This is especially true concerning the last two methods; *Mishpat Ivri,* beyond its being a research methodology, is a category that has clear *ideological* foundations. These ideological foundations have weakened over the years. Consequently, much of the current activity in *Mishpat Ivri* departments does not necessarily participate in efforts to embed *Mishpat Ivri* into the Israeli legal system. Rather, it is simply a common term for the study of halakha in law faculties, often conducted using the tools of the philosophy of halakha method (but not necessarily).[[14]](#footnote-14)

In my subsequent discussion, I will not relate to the first discipline reviewed above, the philological-historical study of the Talmud and halakhic literature This, as mentioned above, makes use of a positivist methodology based on a close philological-textual analysis. Talmudic philological-historical study can be critiqued,[[15]](#footnote-15) but it is less relevant to the prism through which I wish to view academic research on halakha below,[[16]](#footnote-16) and I will therefore focus on the other three approaches. Each of these disciplines deserves discussion, perhaps individually, but I will present here one point that pertains to all of them (even if not equally).

What is modernity? Let us take Max Weber’s well-worn – and not unproblematic – description: the process of removing magic from the world. This is a process in which religion, the irrational, and the unnatural cease to provide satisfactory explanations for understanding phenomena, both those of the natural world and those of the human social-cultural world. However, far more than just dispelling magic, the project of modernity is an active endeavor that seeks to fill the vast void created by the expulsion of religion and the supernatural.

The Enlightenment sought to fill the void with science, and ostensibly, to explain phenomena without a grand framework capable of resolving all incongruities (much like Deux ex Machina). However, as many have already pointed out, this claim of “scientific” neutrality has failed to subdue the temptation to seek comprehensive and all-encompassing explanations. Later modernist movements, even those that can perhaps be seen as counter-movements to the Enlightenment, sought to uncover the “hidden,” the “great thing” that is hidden behind all phenomena. Certainly, there is “something,” that modernist historical and cultural interpretation can reveal that would explain “everything.” The task of the interpreter is not to examine the signified, the representation that is on the surface. The real challenge is to try to penetrate beneath the surface and decipher what is not openly represented, what is not marked or given to us by the actors, and to bring it to the surface.[[17]](#footnote-17) Paul Ricoeur termed such hermeneutic interpretation “de-mystification” (as opposed to de-mythologization, an ‘objective’ interpretation that attempts to decipher the obscure meaning that inherently exists in the text itself).[[18]](#footnote-18)

The signified always exceeds what signifies it, it only ever testifies about itself through its external expressions, by means of the traces it leaves behind, its symptoms, its messengers, its miracles and wonders. The signs that testify to the meaning, power, idea, structure, or fundamental principle are hidden from sight (whether these are the “establishment,” the “subconscious,” the “state,” or the Holy One, Blessed be He) testify as such, because in one way or another they are part of that hidden existence whose nature, its very essence, is to appear intermittently, in fragments and elusive traces, and yet in a way that invites the act of interpretation and enables it. The modernist is a master at interpreting the surface appearances, but his interpretation is always a deep one. So Marx, so Freud, so too Nietzsche, at least in some of their writings, at least according to several prevalent interpretations of them.[[19]](#footnote-19)

This is a well-known claim that recurs many times in various formulations in the critique of modernity, and there is no need to elaborate on it at this time. What is worthwhile is to see how central elements in much academic research on halakha fall into such a pitfall that is almost inherent to their work. In simple terms, academic study of halakha grew out of an “optimistic” modernist attempt to demystify the halakha. And here we encounter a problem: the focus on the removal of the magic has shifted the discussion away from the surface, almost exclusively to that which is hidden beneath the surface. Halakhic activity and discourse, including its traditions, rationales, and conceptions perceptions – in other words, its internal language, in which it operates and which must be deciphered to understand how halakhicists think, what bothered them and how they “make” halakha – these have remained outside the discussion (another question is why it is important, if at all, to understand these things).

*Mishpat Ivri*, as mentioned, sought to uncover fundamental, stable, and established principles of Jewish civil law.[[20]](#footnote-20) Aside from the straightforward claim that this division (into civil and religious law) is a secularizing reading of the halakhic space,[[21]](#footnote-21) and aside from the non-trivial assumption that there are indeed stable foundations in the halakhic system, the perspective here primarily looks beneath the surface, in search of the “national” motive or motivation (which the researcher presumes must exist). Thus, “traditional” forms of legal activity may serve as a precedent for modern forms if it appears that these contain the “fundamental” principles, or those driven by motives similar to those sought today. For instance, community regulations (as an institutional-procedural action or the very content of the regulation) could serve as a prototype for a type of “legislative” system, if we strip them of their contingent, arbitrary, and circumstantial elements, and expose the stable underlying principles, (the national) that lie beneath the surface. (1)

In meta-halakhic discourse, the search for the hidden motive is much more explicit. We can only *really* understand a halakha if we clarify the motive or the position behind it. Halakhic activity, debate, dialectic, and interpretation – all of these can be misleading. They seem foreign, strange, and even arbitrary, and it would be better to reduce the issue to the philosophical questions that supposedly underlie the discussion. Of course, these jurisprudential categories are foreign to the subjects of the research, but that is not the problem. The problem is that this reduction (i.e., the translation into this discourse) loses significant portions of the activity explicitly taking place. When we engage in textual analysis, such analysis simply does not explain the texts (or worse than that: it explains them poorly). When we do not understand the texts, we will also be unable to provide historical explanations. There is more going on here. There is an implicit assumption that revealing the philosophical motives behind the halakha is what will (perhaps unconsciously) make it, understandable or transparent (and perhaps also: obligatory) in the eyes of the modern person. The explanations offered within this approach are teleological. The halakhic actors used specific formulations, but their actual intention was towards a certain purpose, a purpose that is not necessarily reflected in their language. (2)

Social-historical research of Yaakov Katz’s school does not necessarily seek a “personal” motive (the meta-halakhic tendencies and positions of the halakhic authority), but rather the exposure of the material or sociological circumstances which are the *real* driving forces beneath the surface. In contrast to the philosophy of halakha, the social history of halakha does not render superfluous the halakhic system of concepts, its rationales, and dialectic, but ostensibly influences how the text is interpreted. In fact, this type of reading involves the complete adoption of the legal realism approach.[[22]](#footnote-22) Thus, despite the seemingly formalistic, perhaps difficult-to-understand halakha, it is much more connected to social reality than it seems. This is the hidden understanding that we must reveal (and again: thus making the halakha – the activity of halakhic discourse – understandable so that it makes sense to the modern person).[[23]](#footnote-23) (3)

All three of these approaches are based, as I have already stated, on the foundational assumption that the surface of the halakhic discussion does not reflect its true essence, but even more than that: the halakhic surface is not truly rational or “understandable”’ to the reader. The scholar, the enlightened, rational, and modern individual, the one whose role (conscious or unconscious, declared or hidden), is to establish the meaning of the halakha through the exposure of the hidden motive beneath the surface or the revelation of the fundamental legal mechanism. In doing so, he transforms it from a closed and non-rational space to a comprehensible modern one.[[24]](#footnote-24)

As a side note, these various methods or approaches, can be understood as part of the zeitgeist of cultural Zionism, from the school of Aḥad Ha’am and Bialik.[[25]](#footnote-25) In a sense, their project was the extraction of the “great matter” hidden behind the boring and petrifying detailed discussions of traditional Judaism. They oscillated between an unwillingness to relinquish the “spiritual treasures” of Judaism on the one hand, and a negative view of their modes of expression and the character of the society that preserved and expressed them, the “traditional society,” on the other. The study of halakha – as described here – is another branch of “Judaism as a Culture,” a school of thought that was prevalent at the Hebrew University until the 1990s, largely due to the work of Eliezer Schweid, and associated circles.

(4) For the sake of argument, let’s take one of the most fundamental tools in halakhic discourse and writing: interpretation. The interpretation of texts is an inherent part of halakhic discourse, from the era of the Sages until today. When we try to understand how scholars read and interpret texts, it is better to assume that they saw this act of interpretation as directed at the “true” interpretation, that is, while it is seldom entirely naïve,[[26]](#footnote-26) it is also not entirely cynical (=manipulative). The perception of the act of interpretation as a “naïve” action assumes that the way of thinking and reading that the subjects present accurately reflects how they innocently approached the text, and that there is no hidden level. However, even if the action is not naïve, it is still not entirely manipulative. Almost all the methods I described – particularly those of the philosophy of halakha and the socio-historical study of halakha, go to the other extreme, focusing on the manipulative action of the interpreter. Even if, in their rhetoric, they concede that the interpreter is not an all-powerful manipulator, that he is limited, and probably also believes to some extent that he is reading the text “truthfully,”[[27]](#footnote-27) in practice, these methodologies shift the focus solely to manipulation and its exposure, namely: the exposure of the hidden motive. This, almost exclusively, is the arena of their research activity, and as such, it largely ignores the act of reading and interpretation by the research subjects themselves. It also introduces elements that they would not have considered, without providing a sufficient account of this gap.

An influential book in the academic study of halakha is ‘Revolutionary Interpretations in their Formation’ by Moshe Halbertal. The book focuses on the process of creating halakhic interpretation, primarily in Tannaitic literature (the first centuries CE), and mainly concentrates on the perceptual change of individual rights within the family structure – the growth of an individualistic or anti-patriarchal conception. The author seeks to demonstrate how often, instead of the “reasonable” interpretation, the Sages chose a remote or strained interpretation that reflects their moral values. They “distanced” the biblical text from its (for example patriarchal) meaning and effortly, and perhaps also courageously, loaded it with a less “reasonable” or literal interpretation to create a more ethical law. The entire study, therefore, hinges on the claim that an interpreter refrains from more logical interpretations due to external value considerations and argues that the Sages implemented a teleological interpretation par excellence. In other words, the Sages were not formalists regarding the letter of the law, but quite the opposite. The assumptions of this approach provide not only the categories that may describe an interpretive process, they also present a “motive” for interpretation. Thus, there is the “simple” interpretation, the explanatory, the literal, the neutral, and when the interpreter proposes an alternative interpretation, justified by a “moral” explanation, this should be seen as the motive. However, this is by no means self-evident, and it is possible that paying attention to the interpretive work of the Sages, even in non-moral contexts, may reveal similar techniques. Thus, although Habertal’s reading reveals the Sages’ moral sensitivity, it is not clear that that is what is “beneath the surface,” i.e. the motive.[[28]](#footnote-28)

The problem here is not just that the interpretation is necessarily speculative. In a well-known example, the Sages took several “problematic” biblical laws (due to their severity and hence immorality) and “neutralized” them. The rebellious son (*ben sorer umoreh*) or the condemned city (*ir hanidachat*), according to certain traditions in halakhic literature, “never were and never will be, rather, they are educational.” This is a non-trivial interpretive act, but what can I really say about the motive here? How can one infer that this was an act of neutralization from the Sages’ statement without risking speculative anachronism? Did the Sages do this from moral considerations? Perhaps they adhered to anarcho-pacifist ideology? That is indeed implausible, but the sources, at least, do not tell us anything about their ideology just as they do not tell us anything about the “moral” motive, and what does “moral” even mean in this context? “Moral” discourse lacks any specific content, and any attempt to reveal the *motive* will yield speculations that inevitably reflect the prisms of the judgment of the contemporary reader, the “enlightened” judge. This is one kind of problem and it is relatively trivial. What is more disturbing is that, as usual, this way of reading does not *really* deal with the raw material. It does not deal with the method of interpretation in the Rabbinic tradition as they constructed it, its formulations or its contexts. The entire discussion is flattened and sterilized for the sake of addressing the hidden motive alone. The actual text is treated as if it is almost uninteresting, perhaps even intrusive. Such readings – when they succeed – no doubt have the advantage of ostensibly in building an ahistorical bridge between the modern scholar and his historical heroes. This can be seen as an application of the principle of charity in interpretation: when interpreting someone’s words, one should choose the strongest and best interpretation, and as much as possible, attribute rationality to the author. The advantage of that practice is clear, but to what extent can it be applied here? I am inclined to think that it is to a lesser extent than we would like to believe.

Sociologists and social theorists have engaged in the analysis of discourse and public debate in modern society. Perhaps in a sort of attempt to solve Kant’s “practical reason” problem regarding public debate about social order, they developed concepts of “universal pragmatism” to find a way to diagnose what are the *fundamental* questions that people are arguing about.[[29]](#footnote-29) Their approach is based on the fact that *modern* law is based on certain values and principles, what is sometimes referred to as the “spirit of the law.” In their view, sometimes the discourse in society – for various reasons – does not reflect the “true” value discourse behind it, but it is possible to characterize this axiological discourse. The aim of the semantic and ethical inquiry will be to extract the “essential” from the “incidental” and this extraction – which is what those who work within the discipline are interested in – is, at least from their perspective, a prominent characteristic of modern legal-ethical discourse. These are, by their own admission, entirely modern paradigms and practices. Even if the halakhic discourse does not always come down on the side of this or that value, the assumption is that it is the core of the debate or trade-off that occurs in the “legal” deliberation.[[30]](#footnote-30) The attempt by modern readers to locate an ethical discourse within the halakhic conversation – one that is remarkably composed of axiological categories that are identical or overlap with those that the modern liberal individual grapples with – is a non-trivial task, to put it mildly.

These observations are accurate concerning the study of the halakha of antiquity – whose interpretive moves often appear more elemental, perhaps even bolder, making it easier to attach them to teleological discourse – but the same criticism applies to academic accounts of halakhic literature in general. These are attempts to read the halakha as a modern project, as it is reflected in the eyes of the rational judge, while it is not necessarily so. Instead of doing this, we ought to be trying to explain how the halakha works. How did the people of the time understand the text? How did they understand the relationships between its various components? These questions do not receive an answer (or more accurately: they receive an answer that says these questions are not in themselves worthy of being addressed).[[31]](#footnote-31)

Here are two more expressions of the modernist spirit that hovers over the academic study of halakha. The first is trivial, and almost stems from the definition of modern scholarship that I described above. One of the most fundamental elements in the academic study of halakha is the distinction between the halakha “in itself” and “extra-halakhic considerations.” The *Mishpat Ivri* scholar will ask: What are the *essential* characteristics of the legal system, which I must point out and which must be isolated (and perhaps also preserved)? A social-historical academic study of halakha would ask: What is the relationship between the extra-halakhic considerations like economic need or family difficulties, for example, and the halakha, and how did these shape and change it? A scholar of the philosophy of halakha (or halakhic jurisprudence) would ask: What is the relationship between external values or other considerations and the halakha, and no less: What system of assumptions and meta-halakhic beliefs (literally: beyond the halakha itself) stands behind it?

The history and sociology of science, for example, grew out of this dichotomous division already several decades ago, recognizing that it is is alien not only to the participants in the endeavor of science, the scientists, but also to the way scientific research is conducted.[[32]](#footnote-32) In the academic study of halakha, these perceptions are still deeply ingrained among many scholars. It must be acknowledged that many of those who adhere to the approaches I described also recognize that such a division is problematic. The “external” considerations are not truly external as is evident from the fact that halakhic decisors use them in their writings and justifications as significant considerations![[33]](#footnote-33) However, this appears to be not more than lip service. These considerations are not “really” external; nevertheless, the tension between “formal” considerations and “foreign” considerations (values, or economic, social, or educational considerations) remains the main focus of interest in the study of halakhic discourse: this *subterranean* tension is (all) that which the scholar must discover, emphasize and thus explain the halakhic activity. (Alternatively, this tension *itself* already presupposes a legal discourse that is formulated in a very formal manner, even if this discourse takes place entirely within the framework of the halakhic-legal discussion itself.) Suppose we took the elementary step of including these considerations within the framework of the halakha, that is, we admitted that we do not have a rigid formalistic system before us. Doing so we would establish the locus of the struggle. It is not a struggle between elements outside the law and the law, but within the framework of the law such a struggle is taking place and we must reveal it.[[34]](#footnote-34) Doing so would not yet solve anything. We have not yet approached the halakha itself, nor have we tried to understand how these considerations are handled by the halakhic authorities, how they are mediated through the internal discourse of the halakhic authorities – interpretive techniques, legal concepts, negotiation, connections, custom. Only the naked categories remain at the center of interest.[[35]](#footnote-35)

In other words, one could say that the halakha is a field of knowledge and discourse with very undefined boundaries (in terms of the nature of its reasoning and the types of sources that are regarded as legitimate).[[36]](#footnote-36) What a halakhist chooses to include in his discussion does not necessarily reveal much about “the halakha,” but about the method and conceptions of that scholar. For example, sometimes a halakhist will balance considerations of human dignity against the prohibition of *muktzeh*. A common tendency of academic scholarship would be to view human dignity as an amorphous concept from a halakhic perspective, in contrast to *muktzeh*, which has a complex halakhic history, with numerous discussions in many sources leading to definitions and nuances. Human dignity is a kind of general consideration that a halakhist can express when he seeks to implement “values” instead of formal law. However, this is not a necessary assumption. Human dignity can also be a “serious” halakhic consideration, a “formal” consideration that has detailed formal definitions, if we use that same dichotomy of values versus formalism. The choice to examine such a halakhic discourse through the prism of values versus formalism does not guarantee any scholarly insight.

One can discuss other fundamental assumptions embedded in these rational conceptions of the academic study of halakha. For instance, the belief that ultimately, the halakhic decision-making process is “transparent,” transparent in the act of “legislation” and in the “judicial process.” Transparent means it possesses a logic that can be explained, and to a large extent is also uniform and coherent. These are clear foundational assumptions that are almost universally applicable to modern legal systems, and they reflect modern expectations. However, I am not certain that the halakhists, the research subjects of such analyses, share these assumptions, and they certainly do not form the foundations of halakhic discourse. For example, even in halakhic texts, there are genres of what can be termed “legislation” and “judgment.” The distinction between them is not always clear, and in any case, the information about the actual judgment is limited. The attempt to retroactively justify a certain collection of precedents through a set of abstract and general principles is reductionist and artificial (which is somewhat true for any legal world that has a broad place for the institution of precedent, particularly in pre-modern law). This awareness also exists among halakhists. Nevertheless, one can point to the development of certain tools in the history of halakha, which seemingly attempt to create a unity of judicial practice – a uniform way to reach a halakhic ruling (adjudication), without any uniformity or understanding of the rationale behind it; this phenomenon is fundamentally alien to a transparent conception of the halakhic process.[[37]](#footnote-37)

Projects that are based on the conception of the halakha as a rational enterprise with modern relevance and meaning (even if this is not overtly apparent) rely on certain assumptions about the “legal system” of halakha, to which the halakha is often not committed. As long as we are attempting to ask “external” questions of the halakha, questions about ways to translate halakha into tools, applications, or modern legal-philosophical categories while being self-aware of the gap between these questions and the subject of the research, there is nothing wrong with that. However, attempting to explain the halakha itself under these categories, to propose an “interpretation” of the halakhic texts or of halakhic discourse is an extreme case of anachronism.[[38]](#footnote-38) (5)

To sum up, in this essay, I have pointed out a fundamental flaw that I believe exists in significant parts of the academic study of halakha. It can be concisely articulated as a lack of interest or faith in the surface of halakhic discourse, coupled with the motivation to characterize the motive behind it. What can be done? In the context of this short paper, I will not propose a detailed program or a comprehensive plan for how to conduct the academic study of halakha. My primary proposal will focus on the question of prism and perspective, a view that seeks to avoid separating the “magic” (obscure) world of halakha from the “understood” world of law and morality, a view that inherently assumes that the system has “internal” and “external” mechanisms and motivations. When attempting to unpack this slogan for a practical scholarly agenda, it seems to me that there are three principles that should be adhered to: awareness, preservation, and abandoning the ascription of motives.

Many of the problems can be solved with awareness. There is nothing invalid about translating a specific discourse into another. There is no fundamental problem with the reduction of texts from a given period to an external scholarly discourse or with the use of “flattening” generalizations. Anachronism becomes a problem when there is a lack of awareness, when the interpreter is convinced that the language he speaks is also the language spoken and thought by his subjects; and that in using it, he is articulating the sources more accurately. In other words, any question can be asked, but reflexive consideration of fundamental assumptions is necessary.

The second point is preservation. Every interpretation and scholarly mediation is a process that involves filtering the essential from the incidental and cherry-picking. Scholarly translation inherently involves decontextualization, and therefore necessitates making choices about what to emphasize and what not, what elements of the context and arguments are at the heart of the matter and what are less so. However, it seems to me that one can aspire, to preserve as many moments and monuments as possible which are the core points of the concept (or discussion, or event) being translated. This attempt will never preserve all the context and all the components in the texts or events that the scholar describes – for if so, there is no point in his work – but he can aspire. One could argue about what constitutes the core and what does not, but anything would be preferable to the situation in which almost every concrete connection (in the text’s discourse, and often also in the historical context) is abandoned in favor of a quick and sharp reduction to an abstract question.

How can this be done elegantly? Here we arrive at the third component: the abandonment of the attempt to attribute motives. Instead of a teleological interpretation, one should focus on descriptions of the morphologies and typologies of the discourse and the events. By way of analogy, in comparative biology, the tendency in the past was to search for similar components in different animals and to argue that some organ/system evolved for similar reasons. Now the tendency is to focus on the description of the morphology: there are systems here that maintain similar reciprocal relationships; there are morphologies worth comparing here.

(6).

1. [↑](#footnote-ref-1)
2. [↑](#footnote-ref-2)
3. [↑](#footnote-ref-3)
4. [↑](#footnote-ref-4)
5. [↑](#footnote-ref-5)
6. [↑](#footnote-ref-6)
7. [↑](#footnote-ref-7)
8. [↑](#footnote-ref-8)
9. [↑](#footnote-ref-9)
10. [↑](#footnote-ref-10)
11. [↑](#footnote-ref-11)
12. [↑](#footnote-ref-12)
13. [↑](#footnote-ref-13)
14. [↑](#footnote-ref-14)
15. [↑](#footnote-ref-15)
16. . [↑](#footnote-ref-16)
17. [↑](#footnote-ref-17)
18. [↑](#footnote-ref-18)
19. [↑](#footnote-ref-19)
20. [↑](#footnote-ref-20)
21. [↑](#footnote-ref-21)
22. [↑](#footnote-ref-22)
23. [↑](#footnote-ref-23)
24. [↑](#footnote-ref-24)
25. [↑](#footnote-ref-25)
26. [↑](#footnote-ref-26)
27. [↑](#footnote-ref-27)
28. [↑](#footnote-ref-28)
29. [↑](#footnote-ref-29)
30. [↑](#footnote-ref-30)
31. [↑](#footnote-ref-31)
32. [↑](#footnote-ref-32)
33. [↑](#footnote-ref-33)
34. [↑](#footnote-ref-34)
35. [↑](#footnote-ref-35)
36. [↑](#footnote-ref-36)
37. [↑](#footnote-ref-37)
38. [↑](#footnote-ref-38)