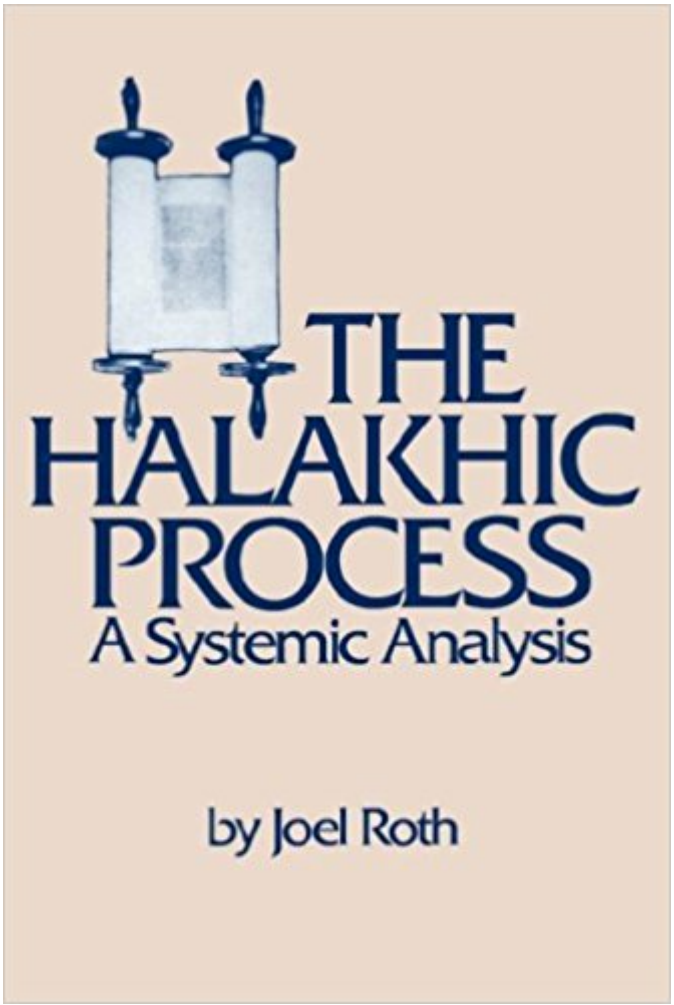
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# The Halakhic Process: A Systematic Analysis (Moreshet)




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## Synopsis

In his enlightening discussion of one of the most important topics in Jewish thought today, Prof. Roth presents and analyzes the primary Talmudic and rabbinic sources relating to the legal and extralegal factors that go into the process of halakhic decision-making. He leads the reader through the entire process, step by step. The concepts of Biblical versus rabinnic legislation, the role of precedent and custom, extra legal factors (science, technology, medicine, sociology, economics, ethics and psychology) the scope of rabbinic authority, the qualifications for halakhic decision-making authority-all these are taken up and placed in context of the question of legitimacy and illegitimacy, authenticity and in authenticity. All the pressing and controversial questions of our time-women’s rights and obligations: the ordination of women, their inclusion into a minyan, prenuptial agreements regarding divorce, the abolition of the second day of the festivals-are bound up with the issues discussed in this book. Anyone concerned with these and similar matters will gain a far broader and deeper appreciation for the real issues involved.

## Book Information

Series: Moreshet (Book 13)

Paperback: 412 pages

Publisher: JTS Press (January 1, 1986)

Language: English

ISBN-10: 0873340353

ISBN-13: 978-0873340359

Product Dimensions: 6 x 0.8 x 9 inches

Shipping Weight: 1.1 pounds (View shipping rates and policies)

Average Customer Review: 4.0 out of 5 stars 1 customer review

Best Sellers Rank: #2,372,247 in Books (See Top 100 in Books) #54 inÃ Â Books > Religion & Spirituality > Judaism > Movements > Conservative #80 inÃ Â Books > Religion & Spirituality > Judaism > Law #393 inÃ Â Books > Religion & Spirituality > Judaism > Sacred Writings > Talmud

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This book is a rebuttal of the commonly-held view "that if one could but plumb the sources to their depths, there is no question to which the halakhah [Jewish law] cannot provide its definitive answer." (p. 61). In the course of this discussion, Roth addresses a variety of issues:1) The difference between rules that are de-oraita (originating in the Torah) and de-rabbanan (invented by rabbis, usually as "fences" meant to prevent violates of de-oraita rules). Although some

commentators assert that the former rules are interpreted more stringently, Roth points out that no consensus exists as to the boundaries of the two concepts.2. The weight of precedent. Roth cites numerous examples of later scholars disagreeing with earlier scholars; even if the earlier scholars are greater, the later scholars benefit from a wider variety of sources. As one 15th-c. commentator pointed out, in case of a conflict between later and earlier scholars, "[we] should not decide in favor of the earlier [scholars], but rather should abide by the decision of the later ones, for they knew the words of the early ones better than we" (p. 366).3. The ability of sages to ignore Torah rules under exceptional circumstances (mostly involving trade-offs between rules, e.g. allowing people to break oaths, thus violating one rule, in order to avoid violating other rules).4. The weight of custom. Can custom supersede law? It depends on whether the custom contradicts the Torah or preserves it, on the clarity of the law, and on how venerable the custom is. (Given the heavy weight of custom in Jewish communities today and the blurry lines between custom and law, I wish Roth had discussed this issue in more practical detail).5. Sages' common use of science, sociology and psychology to change halakha. For example, it had once been the norm that one should wash between eating meat and fish because eating them together is medically dangerous. As science advanced, halakhists learned that this danger was nonexistent, and a later commentator rejected the rule.Roth emphasizes a key limit to this principle: even if the original reason for a rule is no longer valid, the rule should be upheld if other reasons support it.6. The role of new legal sources. If scholars become aware of sources that they were not aware of in the past, they may rule differently today.Occasionally, Roth fails to address issues that are worth discussing (e.g. whether a custom stops being binding due to disuse, and how much disuse is required). Also, he should have created a glossary to give a handier guide to the many foreign words he uses (not just Hebrew words, but even German!)

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