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Loopholes and Legal Fictions in Jewish Law: Religious Dispositions that Respond to the Discomfort

Jewish law is replete with devices, dodges, fictions, and other such legal mechanisms. These tools often cause disquiet and even embarrassment: If there is a legal requirement to act a certain way, how is it legitimate to circumvent that obligation? In truth, every legal system employs such mechanisms, but a religious legal system that strives to fulfil Divine Will would presumably avoid subterfuge and circumvention. Moreover, it seems that there is a preponderance of such devices in Jewish law – more than in other legal systems – and they are part of the rhythm of contemporary Jewish life and practice.

This article opens with examples of loopholes and legal fictions associated with the fulfilment of *Shemittah*-related commandments. Voices expressing apprehension at the *Shemittah* devices and uneasiness about such legal workarounds in general are sounded from various quarters. This provides the background for examining two groups of religious attitudes – termed “Messianic Approaches” and “Theocentric Approaches” – that respond to the misgivings.

Messianic Approaches see devices as temporary legal measures. The devices strive to preserve a vestige of the original requirement and retain the commandment’s template. While the substance of the obligation is not actualised, the form is retained with the hope that in the future it will be possible to fulfil the original commandment without the need for dodges or fictions.

In contrast, Theocentric Approaches see devices as part of the Divine plan. They are not a bug in the legal system but a feature, and they should be celebrated as expressions of God’s will.

While neither group of approaches provides a comprehensive response, each group offers directions for grappling with an aspect of the Jewish legal system. This article lays the groundwork for further research into other religious dispositions that address the phenomenon of loopholes and legal fictions in Jewish law.