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Many years ago Garelick Farms decided to market its milk all-natural, which meant that it needed a natural source of Vitamin D – and it chose shark oil. This had at least two consequences: Hood Dairy began running an ad with the tagline “There’s something fishy about Garelick Farms milk”, and the KVH (this was long before I became involved) pulled its hashgachah.

Garelick Farms sued Hood, arguing that the fish was imperceptible, and won – the (non-Jewish) judge tasted the milk and agreed there was no fish taste. I therefore ruled that the milk was kosher because the KVH had pulled its hashgachah.

The judge’s taste test demonstrated that the shark oil was nullified (certainly the percentage was below 1/60 anyway), so the only remaining issue was deliberate nullification (bittul lekhatchilah), which makes a product prohibited to the person or person for whose benefit the nullification occurred.

R. Akiva Eiger (YD 99:5) states that a nullification done with no specific end-user in mind, but rather for “whomever will wish to buy”, is considered to be done for the benefit of all eventual purchasers. One understanding of this position is that anything consciously produced with observant Jews in mind has that issue, even if the observant Jews are a trivial percentage of the intended audience. However, by giving up its kosher certification, Garelick Farms demonstrated that it did not have any concern for observant Jews, and therefore the milk was kosher because it had lost its hekhsher.

Paradoxically, had the KVH accepted this argument and sought to restore the hekhsher, the milk would have become treif. My contrarian ambition was to develop a list of products that were kosher only when unhhekshered, as many industrial koshering procedures ultimately depend on some form of nullification. (Note however that this broad interpretation of the prohibition is not obvious either in R. Akiva Eiger or in his cited source, Responsa Rivash 498, and is not followed consistently in practice today; see for example Igrot Moshe YD 1:62-63.)

I thought this was a compelling but creative psak, and to make sure I really believed it, I went out and bought a quart of milk and drank a glass before paskening that anyone else could do so. But Dov Weinstein shows me that in the current issue of Tradition my teacher Rabbi J. David Bleich makes the same argument. Here is his quote.

“Paradoxically, according to R. Akiva Eiger, a product that otherwise would be permitted may become forbidden by virtue of the fact that it is certified as kosher. Products produced for the mass market are not produced for the benefit of Jews. Accordingly, if some small quantity of a non-kosher ingredient is
present, but nullified, the product is permissible. The same product, if produced for a Jew, according to the opinion of R. Akiva Eger, even for an unspecified, anonymous Jew, is prohibited.

Kosher certification is sought by a producer precisely because he wishes to market his product to the Jewish consumer. Targeting the Jewish consumer as a potential customer creates a situation in which nullification is carried out expressly for the benefit of a Jew and hence, according to R. Akiva Eger, a Jew may not benefit from such nullification. Accordingly, stem-cell burgers might be produced that are indeed kosher but they would become prohibited if labeled as such!”

Barukh shekivanti ledaat mori!

Section 1: Introduction

Are partnership minyanim an Orthodox phenomenon?

In 1992, Rabbi Yehudah Herzl Henkin published (Bnei Banim 2:11) a responsum which stated that “forgiveness of communal honor would be effective regarding women’s aliyot, but I have already written that this is an opening for assimilationists, and I will begin and end with this, that a congregation which brings women up for the Reading of the Torah should be separated from the community of the Diaspora.”

In 2001, Rabbi Mendel Shapiro made essentially the same argument regarding communal honor in the Edah Journal (1:2), but he concluded that the practice should be instituted.

Rabbi Henkin responded in the same issue by criticizing some of the places in which Rabbi Shapiro’s exposition differed from his own, and repeating his evaluation that: “women’s aliyot remain outside the consensus, and a congregation that institutes them is not Orthodox in name and will not long remain Orthodox in practice. In my judgment, this is an accurate statement now and for the foreseeable future, and I see no point in arguing about it.”

In light of Rabbi Henkin’s articles, it seems to me reasonable to concede from the outset that an intellectually plausible argument can be made for the practice of giving women aliyot.[2] My analysis will therefore focus on his contention that any congregation that institutes that practice “is not Orthodox in name and will not long remain Orthodox in practice.” Has the experience of the last 13 years verified this judgment?[3] Can practices be halakhically legitimate only if they fall within Orthodoxy? How should Orthodoxy respond to the reality of minyanim that institute women’s aliyot, and of individuals who attend those minyanim regularly or occasionally, and nonetheless see themselves, and wish to continue to identify themselves, as constituents of Orthodoxy?

One premise of mine should be clear – the existence of an intellectually plausible argument for a halakhic position does not ipso facto legitimate that position as an option for practice. If that were so, my initial concession would obviate everything that follows. Rather, I believe that arguments generally confer legitimacy only in the company of authority.

Another premise may be less clear. There is no magic in the word “Orthodoxy”. Practices are not necessarily religiously legitimate just because they are descriptively or prescriptively “Orthodox”, and I can certainly envision scenarios in which practices are religiously legitimate despite being descriptively or prescriptively non-Orthodox. Inclusion within Orthodoxy is a sine qua non for halakhic legitimacy only so long as Orthodoxy remains a faithful conduit of the Tradition and so long as it does not exclude other legitimate conduits of the Tradition.

There is an evident tension between these two premises – if Orthodoxy is not by definition the arbiter of halakhic legitimacy, on what other basis do I delegitimate intellectually plausible positions?

The answer to this question is fraught, and not necessarily rigorously definable, at least not yet for me. But here is an attempt that I think will shed important light on what follows: To be legitimate, Halakhic
positions must be advanced by authorities, and embraced by communities that genuinely relate to Halakhah as Divine law, and to the Jewish people as a political community Divinely bound by that law.

Relating to Halakhah as law means that one is open to heteronomy, to being commanded-by-another. This is true not only with regard to G-d, but also with regard to the human beings empowered by any system His Torah sets up. It means there is a constraint – not an absolute, but a highly significant constraint – both on individual conscience and on the right of secession. The strong default, as I will argue in more detail below, is that the constituent members and subcommunities of the halakhic community should give each other full opportunity to persuade, and then be bound by the result when a majority or consensus is left unpersuaded.

To my mind this means that in practice the boundaries of Orthodoxy today are a good approximation for the boundaries of halakhic legitimacy.

It should be clear on reflection that perhaps the strongest advocates of the position that conflates Orthodoxy with halakhic legitimacy are those members of partnership minyanim who are, absent halakhah, more comfortable in settings that make no gender distinctions at all. Their willingness to attend partnership minyanim is a stunning rebuke to non-Orthodoxy for its failure to provide them with a sociologically or theologically reasonable alternative. At the same time, that people so strongly attached to formal halakhic legitimacy are willing to marginalize themselves should obligate the Orthodox establishment to pay close heed.

Section 2: Half-Measures and Slippery Slopes – General Approach

A presumption of Jewish law is that many of the Torah’s prohibitions include unstated quantitative conditions. For example, Biblical prohibitions against “eating” SUBSTANCE X are generally presumed to prohibit eating the volume of an olive or more of SUBSTANCE X within a defined time period.

On Talmud Yoma 74a, Rabbi Yochnan and his student/colleague Resh Lakish debate whether the quantitative conditions are necessary only to justify punishment, or even to forbid the action. Resh Lakish argues that there is no Biblical prohibition at all unless the quantitative conditions are met; Rabbi Yochnan says that half-measures, e.g. eating less than an olive-volume of forbidden SUBSTANCE X, is prohibited “since it is fit to be combined.”

In the course of a very technical exposition of some rather abstruse areas of Jewish law, the great Talmudist and Holocaust martyr Rabbi Elchonon Wasserman offers two different explanations of Rabbi Yochnan’s rationale. One is that the rationale is a הוכחה וראיה = demonstration-and-proof, that SUBSTANCE X is forbidden stuff in any amount. The other is that the rationale is a גורם וטעון = cause-and-reason for the prohibition.

The interplay between these two explanations is popularly known as “the siman – sibah chakirah,” where siman = demonstration-and-proof and sibah = cause-and-reason. These options are explained roughly as follows:

Is the slippery slope the evidence that any amount of the stuff is intrinsically bad (siman), or rather the reason that half-measures are prohibited (sibah), or rather:

Siman – A must be bad because it is halfway to B, which is prohibited.
Sibah – A must be prohibited because it is halfway to B, which is bad.

There are “Limit Cases” that test the extent of the prohibitions according to either option.

For Siman – what if B is prohibited for reasons unrelated to the nature of the prohibited substance? For example:

If one took an oath not to eat something (in which case it is clear that the prohibition is on the person, and unrelated to the nature of the object).

Food on Yom Kippur – the same food will be perfectly permissible the next day, so it seems clear that there is nothing wrong with it intrinsically.

For Sibah – what if there is no chance of a slippery slope? For example:

If one took an oath not to eat a specific loaf of bread, and (for reasons other than your eating) less than an olive-volume of the bread remains.

If one ate a half-measure at the very last moment of Yom Kippur.[4]

There are also what I call “Super Limit cases,” cases that could be used to attack the underlying theories of prohibition.

Siman:

What about objects which are medicinal in small doses but poisonous in large doses?

For example: The prohibition of bal tosif = adding-on-to-Torah, turns a mitzvah into a sin because of a quantitative increase. Thus it is forbidden to hold a fifth species in your hand on Sukkot together with the lulav, etrog, hadas, and aravah, or to put a fifth Torah portion into one’s tefillin. Similarly, one who grossly overeats does not fulfill a mitzvah of eating.

Sibah:

What if the slippery slope becomes more likely if one forbids half-measures than otherwise?

For example: We permit eating half-measures on Yom Kippur if that will likely prevent the same person from having a medical need to eat whole-measures later.

Note that the failure of the rationale-for-prohibition to apply in these cases does not necessarily mean that there is no prohibition. We can say lo plug, that law by its nature cannot take into account all specific circumstances, and therefore, for example, that the prohibition against half-measures applies at the last moment of Yom Kippur even if one adopts the sibah approach. But there is a debate as to whether the principle of lo plug applies legally to law given Biblical authority = deoraita,[5] and of course law must take into account some specific circumstances, so I feel comfortable generally leaving that issue aside in this article. For our purposes, then, a prohibition against half-measures will apply only where the rationale for the prohibition applies.

Section 3: Half-Measures and Slippery Slopes – Application to Partnership Minyanim

Let us grant the claim that from the perspective of mainstream Orthodox practice, partnership minyanim constitute a half-measure of either or both of egalitarianism and Conservative Judaism. (From
the perspective of mainstream American Conservative Judaism, they constitute a half-measure of Orthodoxy and/or misogyny.)

Forbidding this half-measure on that ground requires the assertion(s) that complete egalitarianism and Conservative Judaism are obviously bad things. My aim here is not to debate or justify those assertions, but rather to describe how they might be maintained by Orthodoxy. So here I offer propositional statements that I think Orthodoxy reasonably sees as bad, and associates respectively with egalitarianism and Conservative Judaism.

To Orthodoxy, “egalitarianism” stands for the proposition that all gender distinctions in religion are presumptively unjustified – it might better be called “identitarianism”. Orthodoxy understands itself as standing for the premise that G-d created gender for a reason (other than as a test to overcome), and that religion must account for that difference, although the extent, ways, and contexts of that accounting are properly the subject of fierce contention.

To Orthodoxy, Conservative Judaism stands for the policy of halakhically accommodating the desires and critiques of the halakhically uncommitted. Orthodoxy understands itself as distinguishing outreach from accommodation – outreach allows individuals to find subjective parahalakhic spaces within which to conduct personal religious journeys, but without changing the ideals or core commitments of the community in any way. Orthodoxy allows a formal role in halakhic discourse only to those whose practice suggests that they will be bound by the outcome of the conversation even if their position is rejected.[6]

Given those premises:

Is Orthodox opposition to partnership minyanim based on:

Siman – Partnership minyanim reflect the (presumptively wrong) positions of Conservative Judaism and/or Egalitarianism,

or rather

Sibah – Partnership minyanim will lead individual members or their whole membership to Conservative Judaism and/or Egalitarianism?[7]

Each of these are reasonable grounds for prohibition, but we need to check whether the specific case of partnership minyanim matches the profile of a limit case. For example:

Siman –

What if the motivations of participants or organizers are unrelated to Conservative Judaism or egalitarianism?

What if a move toward less-gendering halakhah is medicinal in small doses, even if in large doses it would merge with unacceptable identitarianism?

Sibah –

What if these minyanim are a safety valve that gives Orthodox participants enough to prevent them from attending fully egalitarian prayer services, or leaving the Orthodox movement for Conservative Judaism?
What if we conclude that there is no realistic chance that these minyanim will slide toward either full egalitarianism or Conservative Judaism, as their whole existence testifies to their member’s rejection of those as insufficient?

My own sense is that there are at least two reasons to reject the siman argument for prohibiting partnership minyanim:

Measures likely to heighten women’s and men’s appreciation of women’s autonomous ritual responsibilities are a good thing, and we certainly need ways to recognize the massive growth of Talmud Torah by women, which is a wonderful thing.[8] Additionally, as many before me have noted, it is unpleasantly reductive to assume that a yearning for religious responsibility can only come from the yetzer hora (evil inclination). Furthermore, even if we were to grant some role to the yetzer hora here, much in Jewish tradition speaks of the value and necessity of using the yetzer hora to serve G-d, and when the yetzer hora pushes people to pray and do mitzvot, we should stand ready to take advantage.

Whatever one thinks of Conservative Judaism, a standard for banning things admittedly taken from its practice cannot be higher than that offered by Maharik regarding the prohibition of imitating Gentiles[9] – therefore anything which has an independent rational purpose should be fine.

What about Sibah?

Here we are in many ways recapitulating the women’s tefillah argument of 30 years ago,[10] and it is worth trying to be very specific. Some people argue that partnership minyanim are a necessary outlet for the tension between modernity and tradition on women’s roles, and others argue that they are just a way station to complete surrender to full egalitarianism.[11]

Really these arguments boil down to this:

Pro: This is not just a way station, as then why would you stop here? It is true that many participants would welcome a fully egalitarian option with open arms – but they have already chosen what they perceive as halakhic legitimacy over that option.

Con: This is just a way station, as these minyanim are plainly rejecting Orthodox halakhic authority. Eventually someone will develop a halakhic argument for full egalitarianism that convinces them, even if it convinces no Orthodox halakhic authority.[12]

Please note that these arguments are not just abstractions that I offer to explain others’ behavior, but rather things people have said to me about their own behavior or that of the people “in the pew next to them” at such minyanim.

I suggest that the reality is psychologically more complex than either/or. Partnership minyanim are not[13] waystations or attempts to lure people out of Orthodoxy. They are obviously a half-measure of egalitarianism, but we need to explain why they have thus far succeeded, in large measure, in not rolling further down the slope – recognizing that many of the participants regularly participate in either or both of conventional Orthodox and fully egalitarian prayer. And the reason must be that Orthodoxy as well has value for them.

Section 4 – Partnership Minyanim and Orthodoxy – Description

But what is the value in Orthodoxy that partnership minyan attendees recognize?
I see three possibilities:

1. A recognition that gender differentiation is a fact or value that should play a role in religion.
2. An appreciation of Orthodox community, social and religious.
3. An appreciation of the necessity for halakhic authorities with authority

None of these is likely, on the large scale, to be replicable outside Orthodoxy anytime soon, and possibly not even on a small scale. So in that sense the slippery slope may not be so slippery.

Some evidence:

Regarding 1 – Partnership minyanim certainly do not object to women wearing tallitot. Yet my sense is that few of the women who attend choose to do so, and that if/when such minyanim take place on weekdays, even fewer would choose to wear tefillin.

Regarding 2 – I think each of us has enough personal anecdotes that I need not mention mine. Orthodox community is attractive to many for its communal intimacy even without religion. Furthermore, many partnership minyan attendees, like other aspirational servants of G-d and observers of mitzvot, seek to live in a community that reinforces and supports their religious ideals. Finally, they may believe that Orthodoxy in fact represents the Tradition, and have no interest in leaving it – in other words, they may be frum.

So the core issue is whether there is, or must be, any deep reality to 3. In other words: Do the leadership and membership of partnership minyanim genuinely appreciate the necessity for halakhic authorities with authority, and, absent such an appreciation, is the result necessarily beyond Orthodoxy and/or beyond halakhic legitimacy?

My take is that ultimately there is a need for such appreciation, and the jury is out as to whether it exists in the partnership minyan world. My friend Rabbi Asher Lopatin describes them as an “experiment within Orthodoxy” – I’m not sure that’s wholly accurate. I think the better description is “experiment that may or not may end up being within Orthodoxy” – they’re in a liminal condition – and that the key issue is 3.

I further think that there has been evolution on this issue. When the ‘partnership minyan movement’ started, it was built on the façade of a wholly democratic halakhic process – each layperson should evaluate the halakhic data and decide for themselves – and on taking the judgment of Rabbi Mendel Shapiro over that of Rabbi Yehudah Herzl Henkin. This was hard to justify – the arguments are quite technical, and unlike Rabbi Henkin, Rabbi Shapiro had no record of making hard communal decisions, well or otherwise.[14] Later, others within the movement began writing halakhic justifications for actions far beyond aliyyot, such as women serving as shluchot tzibbur for Shacharit and Mussaf, or blowing shofar.

But the practice seems, as best I can tell, to have largely stabilized (although my data is uncertain, and several people have expressed contrary empirical evaluations to me – my hope is that the public discussion of this article will help clarify the situation, which may also differ from minyan to minyan), and now the most frequent justification I hear is Rabbi Sperber’s kavod haberiyot argument. I do not see that argument as compelling, and I have always – since taking his course at YU more than 25 years ago – liked Rabbi Sperber’s “trees” better than his “forests”. But Rabbi Sperber is a great scholar who
functions within Orthodoxy, and so when people sincerely rely on his arguments,[15] I have no procedural grounds for deep censure,[16] even if I completely reject those arguments on substantive grounds.

Here, however, are three counterarguments.

First, the valuing of Orthodoxy I have argued exists may not be generationally transferrable; each of my descriptions must be evaluated not only in terms of current participants, but in terms of the children who are being raised as attendees of these minyanim.

Second, it may be that the core ground for valuing Orthodoxy is mere identity politics – people who have been raised as or chosen to identify as Orthodox resent having the label involuntarily pulled from them.

Third, it may be that the kind of sweeping argument Rabbi Sperber makes simply cannot sustain Orthodox loyalty long-term, as it provides no Archimedean point from which to evaluate and perhaps reject positions further down the slope.

My sense is that each of these counterarguments has significant validity, but that there remains room for highly guarded optimism if the leaders – formal and informal – of the partnership minyanim seek to strengthen and maintain the Orthodox affiliations of participants.

Section 5 – Partnership Minyanim and Orthodoxy – Prescription

What holds a community together? In other words, what is necessary for partnership minyanim to become part of the Orthodox community, and/or for their members to remain within the Orthodox community, short of the Orthodox community’s full legitimization of their practices?

Rashi understands the prohibition of Lo Titgodedu = Do-not-form-factions as requiring either a joint, at least theoretical, decision procedure, or – not as good – a recognition that we cannot compel you to accept our decision procedure, and your results are not prima facie illegitimate. (The latter is the current relationship of Sefardim and Ashkenzim, or of Chasidim and Mitnagdim). Do we have that here, or are we likely to have it?

The jury is still out. However, several things can happen that will make it more likely.

Orthodoxy must make clear that legitimate halakhic authority – the joint decision procedure – includes those who see the modern change in women’s religious role and growth in authority as lekhatchilah and laudable, rather than as at best bediavad and tolerable after the fact. (I hasten to add that this group certainly includes Rabbi Henkin, and it was the rejection of his authority by the partnership minyan movement that was perhaps most problematic at the outset.) It must further be clear that legitimate halakhic authority includes women with sufficient Torah learning and experience. If we wish to reintegrate the members of this movement into Orthodoxy, we cannot demand unconditional surrender of their values, even if we would want that surrender – which I don’t. Rather, we should find ways to ensure that their critique of the ways in which contemporary Orthodoxy enacts gender differentiation is fully heard and discussed.

Partnership minyanim must take concrete steps that anchor themselves to Orthodoxy, esp. on issues that are not directly related to their practice. This means, for example, explicitly adopting Orthodox
standards for personal status issues, holding the line on recognizing gay marriages, etc. I recognize that it is very difficult for a cutting-edge group to do this[17] – and that it will involve disappointing some members, and eventually having some leave in frustration.

One possible scenario, which I would see as positive, is that partnership minyanim do not become accepted as legitimate halakhic practice, but rather that we (at least temporarily) recreate the status that used to belong to non-mechitzah Orthodox shuls. Orthodoxy may have the confidence to do that again – I don’t know – and of course the outcome may not be the same.[18]

A possible contemporary parallel, which I hope to treat more extensively soon, is the status of Chabad minyanim with particularly egregious Messianist practices.

The alternative I see is that partnership minyanim eventually develop their own authority structure – I don’t believe that even the façade of democracy will continue long. They will hire their own rabbis, align with other institutions, and effectively split off from Modern Orthodoxy. This will in turn relieve much of the pressure for change within MO, and also likely lead to its end as an independent denomination.[19] I would see this result as undesirable. Nor do I think that the new authority structure would long endure – rather, the slippery slope will in fact come rapidly into play.

Section 6 – Two Concluding Notes

The body of this article treated the core halakhic issue as aliyot, and the core ideological issue as ritual egalitarianism. A different perspective, and one less easily bridged procedurally, would focus on voice as a moral category (feminism) and erotic category (halakhah). In other words, partnership minyanim provide women with the chance to be heard in public, but that necessarily creates discomfort for those men who are strict about hearing women’s singing voices – essentially it makes the service off-limits to them, not merely as a matter of personal discomfort but often, if they are honest with themselves, as a matter of law.

It would, in my opinion, be a real loss for there to be many Orthodox shuls that were not universally accessible halakhically. But issues of tzeniut[20] always require careful navigation when they interfere with other people’s normal life. Often the solution is to maintain two kinds of spaces, but where that is practically impossible, good will is vitally necessary on both sides. Here the opposition to women’s tefillah groups comes back to bite us, as there certainly is a need for women to be able to sing communally in praise of G-d. The price of men’s access cannot be women’s silencing.

Those of us who oppose attendance at partnership minyanim, and use our religious authority to discourage such attendance, must recognize our deep pastoral and moral responsibility to those men and women who willingly heed us despite their moral sympathy with the specific practices of partnership minyanim. This is a group of people who are doing exactly what we tell them halakhah requires, and paying a serious emotional and/or spiritual price for doing so. How are we helping and supporting them?

[1] My thanks to the many friends and family who read innumerable drafts of this article and whose comments continually improved it. Any remaining errors or infelicities are of course entirely my responsibility, and I forbear to list the readers lest they be held responsible for its content.
Thank you as to Harvard Hillel’s Orthodox Minyan for hosting my first articulation of this material last spring, and specifically to Dr. Mike Frank, Rabbi Dani Passow, and Tali Rasooly for inviting me and organizing the event. I was grateful and impressed that many people who regularly attend partnership minyanim came to the shiur and gave it a respectful and constructively critical hearing. That is precisely the kind of conversation that I hope this written version succeeds in creating among and between all those engaged with this issue.

[2] This does not mean that the argument is correct, only that it is not demonstrably wrong, so that someone following it could not be dismissed as making an obvious error = toeh bidvar mishnah. There are of course many who have argued that woman’s aliyot are technically impossible, most recently Rabbis Aryeh and Dov Frimer in a massive article in Tradition. Readers interested in my own past evaluation of the evidence – which precedes the Frimers’ article – are directed to my audio lecture “Aliyot for Women and Kvod Tzibbur”, available at https://archive.org/details/AliyotForWomenAndKvodTzibbur, with the sourcesheet available at http://www.facebook.com/l.php?u=http%3A%2F%2Fwww.torahleadership.org%2Fcategories%2Fwomen__saliyot_1.doc&h=xAQH31veF&s=1&skip_shim_verification=1.

[3] If yes – was this inevitable, or was it the result of self-fulfilling prophecy?

[4] Note that for Yom Kippur the quantitative condition is the volume of a large date.

[5] Some argue that de’oraita law is understood as directly from G-d and therefore, in its perfection, should never apply beyond its rationale. Others assume that even de’oraita law generally requires human interpretation to be put into practice, or that the nature of law prevents it from being so precisely targeted,

[6] One reader noted correctly that Orthodoxy does not necessarily grant a formal role in halakhic discourse to everyone who agrees to be bound by the outcome of the conversation. The role of the laity and of the less-Torah-educated in contemporary Orthodox halakhic discourse deserves extended treatment, which I cannot provide here, but in brief, I believe that even the most innocent and ignorant of lay constituents participates in halakhic discourse by choosing whom to ask their sh’eilot to. It is a given for this author that men and women of equal qualifications participate equally in halakhic discourse.

[7] One might suggest other grounds for opposition, such as pure traditionalism, but my sense is that the deep structure of those grounds will turn out to fit the categories I’m using, which admittedly I have left undefined here.

[8] This does not suggest that there is any ideological or sociological connection between the phenomena of women’s learning and partnership minyanim, respectively – only that we should be careful not to indiscriminately oppose changes on the grounds that they tend to make men’s and women’s religious experiences more alike.

One reader argued: Women’s tefillah, on its own, cannot split Orthodoxy because, by definition, the men still need somewhere to daven. Partnership Minyanim, however, create an independent environment where heterodoxy can develop unchecked. In other words, a much slipperier slope.

I should note that I felt that women’s tefillah groups then were a necessary outlet, and was very influenced by the friend who kept a copy of the responsum forbidding those groups in her purse as a constant reminder of why she had chosen to leave Orthodoxy.

In other words, some attendees simply have not yet been convinced that any of the arguments offered for full egalitarianism are intellectually plausible, and they stick to the half-measure because their intellectual integrity requires it. My sense is that this position is not long-term sustainable – in the absence of the constraint of some society, a plausible argument can be found for anything. That is why authority is necessary, and always requires social recognition.

It is also possible that the issue is not intellectual but sociological evaluation – in other words, participants in partnership minyanim do not currently believe that they can remain part of the Orthodox community if they adopt full egalitarianism.

likely as opposed to “independent minyanim” that eschew affiliation with Conservative Judaism but accept no gender-related halakhic constraints.

It is immaterial that Rabbi Henkin considered Rabbi Shapiro’s position intellectually plausible, and had previously articulated it himself – in practice, he denied it authority.

One might say that the demos accepted Rabbi Henkin’s intellectual authority, but disagreed with his sociological judgment. This possibility deserves its own theoretical discussion, but here seems to me inaccurate factually and likely inaccurate procedurally. Factually, I think that most readers of Rabbi Shapiro’s article thought that he was offering creative halakhic arguments that were universally rejected by his Orthodox rabbinic colleagues. Procedurally, arguments have different degrees of plausibility – if a posek says that an argument has sufficient plausibility to be relied on in cases of emergency, but that this is not an emergency, and a layperson relies on it anyway, it is possible that they believe it to be an emergency, but as likely that they are imputing to it an unauthorized degree of plausibility.

Of course there is the risk, as one reader argued, that if participants in partnership minyanim were to formally accept Rabbi Sperber or someone else as their overall posek, and he were to accept that role formally, the end result would be the complete delegitimization of both.

Deborah Klapper points out that “deep censure” is a vague term. Deliberately so.

My model is the Yoetzet Halakhah program at Nishmat, a stunningly creative accomplishment that generally succeeds in achieving conventionality on secondary issues.

Deborah Klapper notes that the RCA reneges on our past inclusion of those synagogues within Orthodoxy – within the OU – when it presumptively invalidates conversions that their rabbis – RCA members in good standing – oversaw. This is a moral wrong, and must be opposed strenuously for that reason. It also diminishes the appeal of the status I am suggesting.

But perhaps that leads to more pressure for change within Charedi Orthodoxy – one can never be sure which way is best.
Rabbinic Authority and Public Policy
by Shira Hecht-Koller, Esq. (moderntoraleadership.wordpress.com November 5, 2014)

Rabbi Klapper’s article, “Are Partnership Minyanim an Orthodox Phenomenon,” argues that although “it seems... reasonable to concede from the outset that an intellectually plausible argument can be made for the practice of giving women aliyyot,” this does not suffice to make this practice “Orthodox.” For that, Rabbi Klapper says, the submission to authority is also needed, and it is not yet clear that partnership minyanim and the people who comprise them do in fact submit to rabbinic authority.

It is salutary that Rabbi Klapper makes it clear at the outset that the deepest issues in the ongoing discussion about partnership minyanim within the Orthodox community revolve primarily around issues of sociology and public policy. The leaders of these minyanim are committed to halakha and to the halakhic tradition, and from the beginning the initiatives have grown out of intensive study of the halakhic sources. As we know, the process of arriving at normative halakha is not a scientific one, and there has always been room for a plurality of halakhic opinions. This does not of course mean that any halakhic opinion is acceptable, but as Rabbi Klapper says, it does mean that there are legitimate halakhic views, that are “not demonstrably wrong,” that still may not be accepted as normative. The question, then, of course, is what allows a view to move from possible to normative.

The fundamental issue raised by Rabbi Klapper’s piece is the nature and source of religious authority. In order to articulate how important this issue is, though, let me begin with the question of terminology. As Rabbi Klapper points out, “There is no magic in the word ‘Orthodoxy’.” So a first step towards a deeper analysis of the explicitly sociological issues would be an attempt to better understand what is at stake beyond a mere word. Rabbi Klapper distinguishes between “Orthodox” and “religious” or “halakhic legitimacy.” This distinction is unclear, and this then clouds the rest of the discussion. If there are “halakhically legitimate” practices that are non-Orthodox, one begins to wonder what the value of “Orthodoxy” is as a label. Has it been reduced to just politics, to the question of membership in certain organizations? Perhaps this is obviously true.

Rabbi Klapper certainly agrees with this basic point: there is something other than pure halakha that defines Orthodoxy. I can well imagine a pure “halakhic man” looking quizzically at this statement. What is this “Orthodoxy” if not a group of Jews in the modern world who have committed themselves to not compromising on matters of halakha, to resisting the temptation to abandon the halakhic tradition, and to insisting always on rigor and depth of halakhic thought and analysis when approaching the world? But even a less rigid worldview may argue that halakha includes within itself numerous extra-legal categories and norms. These are not what Rabbi Klapper leans on, however. He concedes that within halakha, as expansively as that might be applied, there is a plausible case to be made for the legitimacy of partnership minyanim. It is outside of halakha that Rabbi Klapper’s concerns are to be found.

This then leads us to the central question raised by Rabbi Klapper’s analysis: the nature of the extra-halakhic authority on which “Orthodoxy” is said to depend. This authority is placed front and center by Rabbi Klapper in the discussion of what makes a practice Orthodox and legitimate (these terms are interchanged on p. 2). Rabbi Klapper refrains from using the term “rabbis” for those with this authority,
presumably because of his stated belief that women with appropriate training and experience should have equivalent authority as their male counterparts – a belief that I think is so well justified as to be almost beyond question. (If only the reality reflected this already!) Instead, he speaks repeatedly of “Orthodox halakhic authorities,” whose approval is needed to make a practice Orthodox. But this brings us to the crux of the question: why should halakhic authorities, male or female, be authoritative on non-halakhic matters, on matters of public policy?

In my view, it is precisely this question that had led to the sense of a “break” within the community. Leaders of partnership minyanim often feel that many halakhic authorities are not sufficiently sensitive to some of the relevant policy and communal factors. When the issues are not halakhic in nature, on what basis do halakhic authorities have authority?

It should be clear that for halakhic questions that do not relate to gender issues (e.g., the kashrut of a sefer Torah, the latest time to eat se’uda shelishit, etc.), participants in partnership minyanim respect rabbinic authority as much as anyone else. But when it comes to the question of women’s roles, my sense is that many participants in these minyanim feel that deferral to rabbinic authority simply means conceding that nothing will be allowed. This sense of alienation comes from exactly the point Rabbi Klapper makes at the beginning: rabbis forbid practices despite being halakhically permissible, because of their views on public policy, sociology, and a whole suite of other fields.

Of course, it was once true that rabbis (for then there were only rabbis) were entrusted with guiding the community in all sorts of matters. However, it is no longer necessarily the fact that rabbis are more educated than others in the community in anything other than Torah. A rabbi would be foolish to preach on matters of politics in front of the political scientists in his community, or to comment on the medical findings of the week without consulting the doctors. When it comes to Jewish public policy, too, there are professionals and there are experts, and these may or may not be the halakhic authorities. If the question is whether a practice is halakhically acceptable, the halakhic authorities ought to be the decisionators. But if the question is one of policy, where does that authority lie?

I will conclude with a question, returning to the question of the terminology. Rabbi Klapper mentions that some people might just like the social networks afforded by the Orthodox community, but that for others the attraction is a personal commitment to halakhah. Is it important to people whether they are called “Orthodox” by others? If they live by halakhah but are judged to have left Orthodoxy, what would the results be?

Shira Hecht-Koller, Esq. teaches Talmud and Comparative Medical Ethics at SAR High School and is a Founding Member of the Orthodox Leadership Project.
Introductory note from Rabbi Klapper:

Dr. Yoel Finkelman’s keen observations on the Orthodox community in general, and the Modern Orthodox community in particular, are generally vital reading for anyone who cares about maintaining and improving them. I am very grateful that he has taken the time to write comments on my article.

Parsing the Partnership Minyan Debate
by Dr. Yoel Finkelman (moderntoraleadership.wordpress.com November 5, 2014)

If the debate about so-called Partnership Minyanim has been marred by bitterness and nastiness, certainly Rabbi Klapper deserves kudos for writing, כדרות בקושיש, with insight, fairness, and evenhandedness. In particular, he deserves credit for articulating clearly that “Orthodox” is not a synonym for halakhically and Jewishly positive or acceptable. He has graciously asked me to respond, but unfortunately, time considerations and professional commitments prevent me from offering a full-length response. Still I would like to raise four points briefly.

I do not know if partnership minyanim are an Orthodox phenomenon, but arguing about whether they are an Orthodox phenomenon most certainly is itself an Orthodox phenomenon. Historically, orthodoxy came to be only when non-observant Jewish ideologies gained influence, and in those contexts orthodoxy has always needed and thrived upon an obsessive concern for its own boundaries.

The word “legitimate” and particularly “illegitimate” in these conversations need to be parsed. What do Orthodox Jews mean when they refer to an idea or practice as illegitimate? How does that differ from using such terms as assur, misguided, or improper. The term “illegitimate” is meant to pack somewhat more of a punch, to suggest a deeper and more profound mistake. It too relates to questions of boundaries, since some practice (say, kapparos with a live chicken,) might be misguided or problematic, but do not put one out of the pale and beyond legitimacy, while the particular practices of partnership minyanim raise questions of their and their practitioners’ legitimacy. My sense is – and I don’t really have empirical data to demonstrate this – that Orthodox Jews use the term illegitimate when A) a particular idea or practice bothers them B) the textual evidence to reject that belief or practice is not a slam dunk, C) some (perhaps quite healthy) intuition tells them that something of great importance is at stake, something which potentially threatens their ideological, theological, or practical sense of individual or collective identity. Generally, claims of illegitimacy are generally made by the right against the left, but rarely in the other direction.

Klapper is certainly correct that halakhah is more than the letter of the law, and he ties the question of the non-technical aspects of halakhah to authority and to the presence of a community that is committed to halakhah as divine law. But what makes those the standards and how does he know? Like many of the arguments about partnership minyanim, it runs the risk of becoming circular. Much of the debate about partnership minyanim transcends the technical questions of whether a particular synagogue practice can be defended in the sources, but instead revolves around questions of who gets to make those determinations and what gives them that authority. Hence, arguments (from both of the left and the right) about their positions often become circular. One side claims: My practice is “legitimate” because I can defend it technically in the sources, and that is all I need. The other side responds: No, your practice is “illegitimate” because it is not backed by authorities with the shoulders broad enough to make such determinations, or it is incompatible with the spirit of the law, a determination that only those on my side are qualified to make.
So, what is the nature of Rabbi Klapper’s claim that Halakhic determination on technical grounds is problematic in the absence of both authority and a community committed to halakhah. Is he making a technical, legally defensible constitutional point – the texts tell me that these criteria are required for good pesak? Or is he making a sociological point, that it is hard to imagine decisions functioning as pesak without those two elements? Or, is this an ideological position: the halakhah to which I am committed contains those two elements?

But note also that Rabbi Klapper’s two criteria – authority and a community committed to halakhah – are precisely two of the great anxieties of historical orthodoxy. Along with obsessing about boundaries and legitimacy, Orthodoxy has, since its founding in the 19th century, always been obsessively concerned about the nature of authority and about the creation of communities of committed laypeople. I tend to agree with Rabbi Klapper’s criteria, largely on sociological grounds, assuming that pesak is likely to be stillborn when it is issued by people who lack a political place of authority within their own communities, or when issued within communities not committed to observance. But the argument remains circular in important aspects.

Rabbi Klapper asks a fresh and important question. Why do people care so much about whether a particular institution or practice is or is not considered “Orthodox”? Why is this question worth fighting about? He suggests, among other things, that Orthodoxy is a label of identity, and people do not easily give up on labels of identity. To declare my own practice non-Orthodox is to become somebody new. Agreed. Perhaps another way to think about it, however, is a question of branding. Terms, symbols, and images come with networks of connotations and emotions that can have a huge impact on how people make their decisions and spend their money. Companies invest enormous resources branding themselves and in protecting their brands. At its best, orthodoxy as a brand connotes authenticity, tradition, and “real Judaism” (though Orthodoxy is not always at its best). No wonder people desire that brand for their product, while others are willing to go to the mat to protect it from interlopers.

Dr. Yoel Finkelman is the curator of the Judaica collection at the National Library of Israel.
Introductory note from Rabbi Klapper:
Malka’s honesty, openness, and intelligence contribute to every conversation in which she takes part. I am very grateful to her for taking the time to be part of this one.

Heteronomy and Hierarchy: Partnership Minyanim and Their Relationship with Halakhic Authority
by Prof. Malka Simkovich (moderntoraleadership.wordpress.com November 5, 2014)

I want to thank Rabbi Klapper for inviting me to respond to his thoughtful and insightful essay, which considers the question of whether Orthodox Jewry can make a halakhic space for partnership minyanim. It seems to me that the answer may be different for different minyanim, depending on their conception of and relation to halakhic authority. Rabbi Klapper opens his piece by clarifying that in order for partnership minyanim to find a place in orthodoxy, one must not only support it halakhically, but it must also have the support of authority.

I entirely agree with Rabbi Klapper regarding this point. The matters of authority and how administrators of partnership minyanim relate to halakha and halakhic authorities lie at the heart of the issue. The question of whether those who are involved in partnership minyanim are willing to regularly turn to halakhic authorities for guidance when making decisions about liturgical practice or other aspects of halakhic life is, I believe, a key factor that will in part determine whether these minyanim will remain within the fold of orthodoxy.

Rabbi Klapper suggests three possible values inherent to Orthodox Judaism that those involved in partnership minyanim recognize. He believes that the third value he mentions, “an appreciation of the necessity for halakhic authorities with authority,” (p.8) is the true motivator for those involved in partnership minyanim to stay within the orthodox fold. This is the primary presumption of Rabbi Klapper’s article that I respectfully question.

The assumption that Rabbi Klapper, like others before him, have made regarding what motivates orthodox laymen to start partnership minyanim is that they are motivated by concern regarding how to better involve women in synagogue services. But I believe that another factor has been overlooked: many of these minyanim have been founded as a response to the profound disillusionment and dissatisfaction with rabbinic authorities and the control that they hold within the social framework of the synagogue. Such dissatisfaction can possibly cause lay administrators of partnership minyanim who have selected halakhic authorities to guide them to minimize or in extreme cases, eliminate, the legal and social power of these authorities. In some cases that I know of, the rabbinic authority of a partnership minyan lives out of town, and only comes to lecture the congregation once every few months, or a few times a year. I believe that this sort of “satellite rabbinic leadership” may be intentional and is meant to make a space for lay participants in partnership minyanim to run the congregation in a more democratic way. Rabbi Klapper refers to this dynamic in his mention of “heteronomy” (p.2), but the question of how heteronomy interacts with his belief that partnership minyanim appreciate “halakhic authorities with authority” (p.8) is not, I believe, sufficiently addressed.

Orthodox authorities who are navigating relationships with local partnership minyanim must therefore ask: What is the exact role that this particular egalitarian community desires that a rabbinic figure or halakhic authority – male or female – play in their capacity as a religious leader? This question is important precisely because to reject this structure often means to marginalize rabbinic or halakhic
authority in a broader sense – even if this authority is coming from a woman. While one would expect that these partnership minyanim would consider replacing this structure with one that places a female halakhic authority at the center, my understanding is that this is often not the case. This may be because the resistance to having a dominant halakhic authority running the congregation trumps the desire to promote female halakhic leadership.

Rabbi Klapper asks whether halakha can make a space for partnership minyanim, and whether there is a critical mass of rabbinic authorities to sanction it. I ask a different question: If it is the case that some of the minyanim at hand are by definition a “half-measure” egalitarian (p.5), as he puts it, would this egalitarianism require intentionally minimizing the role of halakahic leadership? If so, can these minyanim find space within the framework of traditional rabbinic Judaism?

One element that is at stake is the question of asking sha’aylot versus paskening for oneself. Recently, a friend of mine involved in partnership minyanim complained that halakhic infertility is the fault of “the rabbis,” and if they won’t solve it sufficiently, women must take the question of when to go to the mikva into their own hands. This seemed to me to be an interesting fusion of the two differentiating markers of partnership minyanim – the expansion of women’s roles and the wariness towards rabbinic authorities who determine halakhic practice. The conclusion that this friend made reflects his noble desire to empower Jewish women by giving them agency over their own bodies. For some, this agency takes priority over subjecting oneself to a rabbinic authority. But my point is that many participants of partnership minyanim, when faced with major individual and communal decision making, may self-consciously be making these decisions without consulting halakhic authorities – regardless of whether or not they directly pertain to women.

On the other hand, I am also aware of partnership minyanim that regularly consult with a halakhic authority. One partnership minyan that is located near my own neighborhood, for instance, uses a space that does not have a kosher kitchen, and food for Kiddush must be brought in by congregants who donate the food on rotation. This congregation asked their rabbinic posek to give a two-hour shiur on hilkhot kashrut, and then, with his collaboration, created an official kashrut policy regarding what food may or may not be brought into the synagogue. Needless to say, every partnership minyan is different in how it balances egalitarian leadership values with halakhic engagement.

The possibility that partnership minyanim are inherently at odds with active halakhic leadership (I say active, because I recognize that these minyanim do employ rabbinic leaders) that regularly gives p’sak at the request of community members is one that administrators of these minyanim will have to address directly, and do so soon. Otherwise, as Rabbi Klapper writes, partnership minyanim are destined to leave the fold of orthodoxy, which, as a doctrine focused on practice, looks up to halakhic experts for religious guidance.

As noted above, Rabbi Klapper writes that if partnership minyanim can be halakhically justified and can be supported by halakhic authorities, a space can be made for them within Orthodox Judaism. I would add a third criterion: these minyanim must involve a male or female halakhic expert who is, at the request of the community, regularly present to actively guide them through the navigation of halakha that is inherent to observant Judaism.

*Malka Simkovich is a visiting professor of Jewish Studies at Catholic Theological Union in Chicago and an editorial assistant for the Harvard Theological Review.*
Introductory note from Rabbi Klapper:

*It is always a pleasure and privilege to engage in Torah discourse with Rabbi Dr. Lockshin, especially as he often forces me to rethink. I am very grateful to him for taking the time to respond to my article.*

Women in the Modern Orthodox Shul
by Rabbi Dr. Martin Lockshin (*moderntoraleadership.wordpress.com November 5, 2014*)

I am grateful to Rabbi Klapper for giving me an opportunity to respond to his thoughtful paper. He and I do not agree on this issue, but I always learn from what he writes.

For the benefit of those who are not familiar with the term, a “partnership minyan” (PM) is a service where prayers follow the standard Orthodox service precisely and where a mechitzah (a partition down the middle of the room, from front to back) separates the room into two equal sections, one for men and one for women, attempting to have the same sight lines for both groups. Some parts of the service are led only by men, but other parts, particularly Torah reading, are led both by men and by women. As Rabbi Klapper notes, a small minority of Orthodox rabbis have endorsed this type of service as being acceptable according to halakhah. I am one of those, and I see PMs as a positive development. I would estimate that some 50 to 100 other Orthodox rabbis, with semikhah from a wide variety of yeshivot, pray at a PM, either regularly or irregularly.

PMs do not have the support of the “gedolim,” the great Torah sages of our generation. In this, PMs are like many other innovations introduced into modern Orthodoxy in the last two hundred years—they proceeded from the grass roots. Many of them later won the (often grudging) approval of some gedolim. In this category I would list, among others:

- Sermons in shul in the vernacular.
- Beardless rabbis.
- Believing that the world is more than 6000 years old.
- Bat mitzvah celebrations.
- Orthodox Jews studying humanistic subjects in a university.
- Women’s tefillah groups.
- Women teaching Torah to men.
- Women reciting mourner’s kaddish in shul.

Implementing these innovations, it was argued in almost every case, would ultimately lead people to abandon Orthodoxy. Rabbi Henkin has made the same claim about PMs. Rabbi Aaron Soloveitchik took another approach when he gave his unenthusiastic support to women reciting mourner’s kaddish in an Orthodox shul. He said that if we did NOT permit this, women would be likely to go to a Conservative shul to say kaddish. Clearly, it is difficult to know in advance which approach will prove correct. It is certain, though, that wherever PMs now exist, the founders chose to have a mechitzah in the synagogue. No one forced them to do that. They also chose neither to establish a Conservative or egalitarian minyan nor to join an already existing one, though they could have.
PMs are a very recent phenomenon. The first ever PM, Shira Chadashah in Jerusalem, just celebrated its bar-mitzvah (i.e. the thirteenth anniversary of its founding) a few months ago. Despite strong opposition, the practice has spread to many other locations in Israel, the United States, Canada, England and Australia. In the last half a dozen years I have prayed at PMs in Canada and the United States in ten different locations (and also a few in Israel). During that same period of time I have prayed much more often at various standard modern Orthodox minyanim (SMOMs) in North America and in Israel, where women play no roles. My comments about the differences between the models are only about North America; Israel is more complex.

PMs are not “modern Orthodox Judaism lite.” When it comes to commitment to halakhah, I am unable to find significant differences between Jews who pray at a PM and those who pray at most SMOMs. Both groups have participants with and without strong allegiance to halakhah. Both have more knowledgeable and less knowledgeable Jews.

All North American PMs have a strong “do-it-yourself” approach, where both women and men who have not led parts of the service in the past are encouraged to acquire the skills to do so. This approach occasionally includes an anti-clerical attitude—in other words, celebrating the fact that the minyan has no need for a rabbi. (The presence of a rabbi at an Orthodox religious service is not required by halakhah; Orthodox minyanim all over the world function without a rabbi.) This attitude, however, is changing. More and more PMs are seeking out an Orthodox rabbi to serve as their “halakhic advisor,” answering questions of Jewish law. I serve as the halakhic advisor or rabbi for partnership minyanim in four North American cities. (I receive no pay for serving in this role.)

In three of the four, the PM meets just once a month. During the rest of the month, at least 90% of the PM members pray at a local SMOM. Almost everyone who attends the PM is a member of a SMOM. So I see no evidence that anyone in these minyanim is on their way out of Orthodoxy. I often hear from people in these PMs that they would never have become involved with an alternative minyan had they seen any signs of adjustment to modernity (as I will outline below) in the SMOMs that they still belong to.

In the fourth PM with which I am affiliated, the minyan meets weekly or more frequently and so most of the people there are not members of a SMOM. Have they left Orthodoxy? Perhaps structurally they have, but they turn to an Orthodox rabbi (me) with halakhic questions regularly. These questions most frequently have nothing to do with women’s roles but cover a wide variety of issues from all volumes of the Shulchan Arukh. Not surprisingly, I receive many more halakhic inquiries from members of that minyan, since they, as opposed to the members of the other three PMs with which I am affiliated, have no other Orthodox rabbi to turn to.

Why am I involved with PMs? Fourteen years ago when I started to read Rabbi Mendel Shapiro’s famous article I was very skeptical that he would succeed in making a reasonable halakhic argument for women reading Torah at a minyan with men present. But he convinced me. I find his argumentation solid and I am not impressed by the various attempts to dismiss his approach.

Just because something is permitted, though, does not mean that it is a good idea. I, however, am convinced that PMs are not only legitimate halakhically but they promote important causes both on the personal and on the communal level. I support them since I follow the words of the book of Proverbs (3:27), “al timna tov mi-be’alav (do not withhold something good from a person to whom it is coming).”
On the individual level PMs provide meaningful Jewish religious experiences to large numbers of people—women—who are denied those opportunities in other settings. Speaking personally, the religious ceremony that moves me more than almost any other is having an aliyah to the Torah, holding the atsei chayim (the handles) in my hands, thanking God for giving us a Torah of truth, looking at the text of the Torah written on parchment precisely according to the thousands of halakhot about the writing of a sefer Torah, the same way that it has been written for millennia, and attempting to read the words of God’s Torah to my fellow Jews accurately. I have seen many women, particularly adults who have been denied these opportunities for 40 or more years, but also younger women, who have been visibly moved when they were finally given an opportunity for this uplifting religious experience and I am glad to help them have such experiences.

On the communal level, I am sad that modern Orthodox Judaism has failed to incorporate some of the positive social developments of the last fifty years into our SMOMs. I feel that Orthodox Judaism would be richer if we did.

We live and work in a world where men and women have equal duties. Women give men instructions, hire and fire men, and speak in public to both men and women. I am happy to live in this world and not in the world of my grandparents where these changes were unthinkable. I teach at a university, where I have reported to women for my entire career. I feel that having the voices of women heard in the work world is good for women and good for men.

Outside of work, when I daven at a SMOM, women are absent or at best invisible. Whether they attend the service or not is a matter of indifference; the service proceeds the same way. On weekdays, the service at most SMOMs is a boys club. The only two places where I still sometimes hear sexist comments these days are in a men’s locker room or at a weekday minyan where no women are present.

On shabbatot and chagim you find women and men at most SMOMs, but in my experience women, even ones who don’t have small children, show up in much smaller numbers than men. One advantage in PMs is that women come in pretty much equal numbers to men: they feel their presence is needed and appreciated and they make the effort to be there.

I have heard the argument from a number of women that they actually like the fact that nothing is ever asked of them in synagogue. Some say that they have so many responsibilities in the work world and at home that they like coming to shul and having nothing ever asked of them. I am in favor of leaving alone both women and men who want to be left alone in shul. But we the community lose when we fail to find outlets in shul for the voices of some of the most accomplished, brightest and most compassionate members of the community.

We cannot eliminate all gaps between our Orthodox shuls and the outside world. I do not believe that complete egalitarianism can be halakhic. PMs are not as egalitarian as the work world. But the cognitive dissonance between SMOMs and the work world is of a different order of magnitude.

Haredi synagogues that teach that modern changes in the status of women are bad and that women ideally should not be taking public roles anywhere are still able to explain why women do nothing in shul. But how can a modern Orthodox shul explain the exclusion of women from every active role?

SMOMs that take the problem seriously could take steps, short of becoming partnership minyanim, to let women know that their presence is appreciated and acknowledged. They could have a mechitzah
down the middle of the shul, equal sight lines for men and women, and (ideally) equal space for men and women. The Torah could be marched through, or at least up to, the women’s section when removed from and returned to the Ark. On a weekday when a tzedakah box circulates, it could circulate in the women’s section, too. Modern Orthodox shuls could establish a policy that weddings may not take place in the shul unless a halakhic pre-nup is used, even if this means forgoing catering fees. A man could be called to the Torah as, for example, Yitzchak ben Avraham veSarah, not Yitzchak ben Avraham. These initiatives would make women feel more part of the minyan. None of them is halakhically radical.

The genius of PMs, however, is that women not only feel welcome; they feel that the service depends on them. Something would be missing if they were not there. Many women who attend PMs have (at least initially) no interest in taking any active role in the service. They still appreciate being in a minyan where other women do, and where they could if they wanted to.

SMOMs could create a similar feeling by having women be the ones primarily responsible for:

Delivering divrei Torah.

Making announcements.

Reciting the prayers for the governments.

Reciting the mi she-berakh prayer for the sick.

If possible, SMOMs could also have a regular parallel Torah reading for women by women, while the men are reading the Torah in another room.

At present modern Orthodoxy attracts only five percent of the Jews of North America. Telling half of that group, the women, that their voices are not needed in synagogue is not in our own best interest. Through PMs and modified SMOMs we can try to make Orthodoxy more responsive to the needs and wants of twenty-first century Jews.

Martin Lockshin is a professor of Jewish Studies and Chair of the Department of Humanities at York University in Toronto. He also serves as rabbi or halakhic advisor to four partnership minyanim.
In one of the later volumes of his misnamed Hitchhiker’s Trilogy, the late Douglas Adams has a character learn two life lessons:

a) One should never go back for one’s handbag (lest one miss an essential opportunity)

b) One must always go back for one’s handbag (lest one blow an essential opportunity)

The problem is that the two lessons contradict, and the character never learns which rule applies when.

The issue of “partnership minyanim” is appropriately generating much polemic and counterpolemic and antipolemic, but I have no interest in adding more at present. Instead, I’d like to ensure that the discussion—presumably all leshem Shomayim (for the sake of Heaven)—generates some Torah lishmoh (Torah for its own sake) as well. I think this is vital, because in the course of polemic debate each side runs the risk of sacrificing the capacity for reexamining evidence, lest changing one’s mind about what a particular text means be taken as a sign that one’s overall commitments are weakening or as an admission that they are insufficiently grounded in the Tradition.

So—Rabbi Herschel Schachter’s public letter regarding “partnership minyanim” emphasizes that not every student who has learned in yeshiva, or in kollel, or even received semikhah, should consider themselves as competent to issue halakhic rulings. In response, my friend Rabbi Ysoscher Katz notes that the Talmud (Sotah 22a, Avodah Zarah 19b) cites R. Abahu quoting R. Huna quoting Rav interpreting Mishlei 7:26 as criticizing in parallel those who issue halakhic rulings when they should not, and those who don’t issue halakhic rulings when they should.

What is meant by “for many are the corpses she has miscarried, and atzumim are all those she has killed”? 

“for many are the corpses she has miscarried” – this is a scholar (talmid chakham) who has not reached the level of issuing halakhic rulings and issues halakhic rulings;

“and atzumim are all those she has killed” – this is a scholar who has reached the level of issuing halakhic rulings and does not issue halakhic rulings.

I think it is inarguable that R. Abahu teaches both lessons – the question is whether or how any of us can reliably know which rule applies to us, regarding what areas of halakhah, which degree of halakhic complexity, and under what political, social, and religious circumstances.

Rabbi Katz argues that
Maharsha and Rashi disagree as to whether R. Abahu is criticizing all competent scholars who fail to issue halakhic rulings (Rashi), or only great scholars (Maharsha).

However, Shulchan Arukh 242:14 rules in accordance with Rashi against Maharsha:

Pitchei Teshuvah YD 242:8 explicitly makes the point that Shulchan Arukh rejects Maharsha

Rabbi Schachter’s critique assumes that a scholar risks more my overestimating than by underestimating their stature. Since the Talmud equated the risks, he must implicitly be following Maharsha against Rashi and arguing that the risk of underestimation applies only to scholars who are great. However, scholars who may be competent, but are certainly not great, have no obligation to rule, and therefore run no risk by refusing to do so.

However, we follow Shulchan Arukh and Pitchei Teshuvah in ruling like Rashi. Therefore we run equivalent risks either way, and each person must make their own fraught determinations as to when to go back for their handbag.

I am not convinced that Maharsha and Rashi disagree in the way Rabbi Katz argues, or that either Shulchan Arukh or Pitchei Teshuvha relate to that alleged disagreement.

Here are the texts of Rashi and Maharsha:

Rashi to Sotah 22a

ועצומים – לשון “ועצם עיני”

VaAtzumim – derived from “one who forcefully closes (otzem) his eyes” (Yeshayah 33:15)

Rashi to Avodah Zarah19b

ועצומים – המתחצתו מהתрактиו ומתחפיפו – הוררגים את דור

ועצומים לשון “ועצם עיני”

VaAtzumim – those who overpower themselves and are mute and control themselves from issuing halakhic rulings – they kill their generation;

VaAtzumim is derived from “one who forcefully closes (otzem) his eyes”

Maharsha to Sotah 22

ועצומים כל הוריגה – זה ת”הشهיגו כ

“ועצומים כל הוריגה – זה ת”הشهיגו כ

פיור,” כלשון עוצם עיני

ושランス תרשימו

ואר” כלשהם תושיבים השיגו להוראה

כמ”ש ליעלא סске

ואת עצומים יחלקל Sheila

וכבראה יצוחו יועקב ו

and atzumim are all those she has killed – this is a scholar who has reached etc.

Rashi explains atzumim as derived from “one who forcefully closes (otzem) his eyes”

But one can explain atzumim in its literal sense, so that it means “great and important”,

as the Talmud writes at the end of the first chapter (Sotah 14a):

“and with atzumim he will take a share of spoils” (Yeshayah 53:12) -

just like Avraham, Yitzchak, and Yaakov
Rabbi Katz reads “great and important” in Maharsha as adding a qualification beyond “reached the level of issuing halakhic rulings”. But I think Maharsha is merely offering an alternate etymology. The question is how the Hebrew *atzumim* can refer to “those who have reached the level of issuing halakhic rulings but do not issue such rulings”. Rashi argues that *atzumim* means “those who are otzem their eyes”. Maharsha argues that this is not compelling, as no other instance of the noun form *atzumim* in Tanakh means that. Rather, *atzumim* consistently means “powerful”, and is often paired with *גדולים* = great. Therefore, here as well the etymology of *atzumim* is “great, important”. In other words, for Maharsha anyone who has reached the level of issuing halakhic rulings is described by this verse as great and important. Rabbi Schachter of course agrees – the remaining question is whether one can use the equation in reverse, and conclude that anyone who is not great and important has not reached the level of issuing halakhic rulings.

Shulchan Arukh 242:14 writes as follows:

כלה חכם שהגיע להוראה
ואינו מורה
הרי הוא מונה התורה ומכשוחת לפנים רבים
ועליו אמרו: ועטמות כל הרוגיה

Every sage (kol chakham) who has reached the level of issuing halakhic rulings and does not issue halakhic rulings - behold he is withholding Torah and placing obstacles before multitudes, and regarding him Scripture says: and atzumim are all those she has killed

Rabbi Katz argues that the opening “Every” is intended to reject Maharsha’s claim that only some scholars – namely, those who are great and important – are criticized for not issuing halakhic rulings when they have reached the level of doing so. However, I argue that Maharsha never made such a claim, and therefore everyone agrees that the criticism applies to all competent scholars, and the only question is the definition of competence.

Pitchei Teshuvah YD 242:8 writes as follows:

"כלה חכם מ""כ לך מ"ב רב""א פ"ג דסמה סכתב
ובדורתו הלול
אומות שמותו הלכה מחו וש"ע
וורח המ אינן ידעין מעניין של כל דבר
אמ לא ידקינו תחלו דבר מחו
שאוהו שמשה ת"ת
шуוט נפל פרבריא
ורח المركز מבלי עולמ
ולכל שיש לגור עבון
ל"ש
ו"ש
ואפרזר דודא ביתון הרב Maharsha
שהלא היה ד"ה היום חיבור על شيء
אכל 아이דיא
schütטרEK הת"ו וש"כ ומקרא Aircraft
וכל דו מברא העם ממוקמי.
“Every sage etc.” -
See Maharsha Sotah Chapter 3, who wrote
But in these generations,
those who issue halakhic rulings on the basis of the Shulchan Arukh
when behold they do not know the underlying rationale of every matter
unless they carefully examine the matter first on the basis of the Talmud
which is (the contemporary equivalent of) apprenticing with scholars –
error befalls their halakhic rulings
and they are in the category of “those who wear out the world”
and therefore one should castigate them
(see the source!).
But perhaps that was only in the time of the Rabbi the Maharsha,
when there was as yet no commentary on Shulchan Arukh,
but nowadays
that TaZ and ShAkh and Magen Avraham and other later commentaries have been written,
so that every law has its rationale explained right where the law is found,
it is fine to rule on the basis of Shulchan Arukh and the later commentaries.

Rabbi Katz seems to read Pitchei Teshuvah as relating to the word “every”, and arguing that even
Maharsha would broaden the franchise today, when the existence of supercommentaries to
ShulchanArukh lowers the risk that merely competent scholars will err.

I disagree. I think Pitchei Teshuvah and Maharsha here are making a procedural, not a substantive
point. Maharsha states that there are some scholars who have reached the level of issuing halakhic
rulings but only if they first study the primary Talmudic sources, as otherwise they will not understand
the underlying principles of Shulchan Arukh’s rulings and misapply them. Such scholars might feel
compelled to issue rulings even when they only have time to look up the Shulchan Arukh, lest they fall
into the category of “and atzumim are all those she has killed”; but this would itself be an error on their
part. Pitchei Teshuvah notes that Maharsha’s argument may no longer apply, since the underlying
principles of Shulchan Arukh’s rulings are now explained by commentaries on the spot and can therefore
be understood without researching the primary sources. This discussion has no necessary connection
with Maharsha’s opinion as to the etymology of atzumim.

Nonetheless, both Maharsha and Pitchei Teshuvah make points that are relevant to the issue Rabbi Katz
raises, in the following way: Maharsha states explicitly that a person can be considered competent on
the basis of research even if they might not be competent to answer other questions without additional
research, and Pitchei Teshuvah states explicitly that a person can be considered competent if they know
Shulchan Arukh and commentaries even though they do not recall the primary sources. Each of these
can reasonably be considered as setting a fairly low standard as to which scholars are not only permitted
but even obligated to issue halakhic rulings.

However, here again I don’t think Rabbi Schachter would disagree. On both Sotah 22a and Avodah
Zarah 19b the Talmud continues as follows:
How old must one be (before one is considered competent to issue halakhic rulings)?
Forty years old.
But [Rabbah] (Rava) issued rulings (even though he died at 40)!!
(The permission and therefore obligation to rule applies to those under 40 only) if they are equal
(in scholarship to those above 40).

In other words, the question is not whether one is obligated to issue rulings in the abstract; it is whether
one is obligated to issue rulings (when asked) even though someone else more technically competent is
available. Put differently, the question is whether competence is defined objectively, or relative to the
available talent pool. A related question is whether competence can be defined on a sliding scale, so
that one can be obligated to answer basic questions and yet forbidden to issue rulings on more complex
or weighty issues.

My own opinion is that competence can be defined relatively, and on a sliding scale. Nonetheless, I
think it is reasonable to say that there is a standard of competence above which one may, and perhaps
must, express an opinion even if others more technically competent are available. I also think that
technical competence is not the only consideration – sometimes a technically greater posek may be less
aware of the social reality of a particular community, or have hashkafic positions less compatible with
those of that community, or simply have done less extensive research, than a technically lesser posek.
Under such circumstances again, I suggest that the lesser posek may, and perhaps must, express their
opinion.
Vayikra 10:8-11 juxtaposes a prohibition against kohanim entering the Sanctuary after drinking alcohol with a list of types of legal decisions. The midrash halakhah reasonably concludes that making such decisions is also forbidden to anyone who has drunk alcohol.

This conclusion is challenged in two ways. On Eruvin 64a, Rav Nachman asserts that he achieves mental clarity only after drinking beer, while a beraita on Keritut 13b insists that some forms of Torah study must be permitted even after drinking. I have difficulty relating to Rav Nachman’s objection (although I’m very glad this prohibition has not been Rabbinically extended to caffeine), but I can see why a culture in which alcoholic liquids are standard beverages would insist on the latter.

Which forms of Torah study are permitted? The printed text, which seems also to have been that of Rashi, records two positions. The first anonymous position (missing in several manuscripts) is that Mishnah is permitted, while Rabbi Yose bar Yehudah says that Talmud (other versions: gemara) is permitted. The common denominator is apparently an attempt to distinguish forms of Torah study that generate hora’ah, halakhic rulings, from those that don’t.

Keritut 13b cites Rav as ruling like R. Yose bar Yehudah. But, the Talmud objects, Rav himself refused to teach publicly after his Yom Tov meal, owing to alcohol consumption? Why should he not simply have taught Talmud, without issuing halakhic rulings? The final answer is

כל מקום יחות רב אל מבו יה אלו הוראה

Wherever Rav sat, it would be insufficient without hora’ah.

Rashi explains

דַּכְּמָע בֵּשׁ מִינוּה

Because everyone asks questions of him.

Rav therefore would not teach publicly after his Yom Tov meal, but he would be engaged in Talmud on his own.

Maimonides, however, explains Rav’s exceptionality as follows in Laws of Entrance to the Temple 1:4:

ומותר לשכור ללמד תורה
ואפי הלכות ומדרשות
וזהו שלאوري
ואם ה钋 תנבר להוראה לא לימד
שלימודו הוראה היה

It is permitted for someone who is drunk to teach Torah even laws and legal interpretations of Scripture so long as he does not issue halakhic rulings, but if he was a sage “established for legal ruling” he must not teach because his learning is legal ruling.
Arukh HaShulchan YD 242 suggests that Rashi and Rambam differ only about the stature of the sage who is forbidden to teach: for Rambam it refers to anyone who is recognized as a decisor, while for Rashi it refers only to

אדם גודל שרובו שלימדו问他 שאלות ואינו יכול להמלט מזה

A great man whom many ask questions to and is unable to escape from this.

Kessef Mishnah, however, hints at a more fundamental disagreement.

I confess that I cannot confidently translate what he says about Rambam (first line above), but he is clear that Rashi explained it in a different manner, which I think refers to a more fundamental disagreement than the one presented by Arukh HaShulchan.

My suggestion is that Kessef Mishnah understands Rambam as forbidding all public teaching of Torah by all recognized decisors because their words are automatically taken as guides for practice, rather than as intellectual frameworks for discussion. Recognized decisors lose the capacity to speculate publicly. Here Kessef Mishnah anticipated the age of Twitter.

I want to make a further suggestion. Rambam’s sociological reality drew a hard-and-fast distinction between recognized decisors and others. In our world, however - for good or for ill – many people see the intellectual plausibility of an argument as sufficient to make it a guide for practice, regardless of the stature of the person making it. This means that every speculation in Torah offered publicly by anyone should be subject to this halakhah, which we can frame epigrammatically as the “No beer before blogging!” rule.

A deeper point is that the current democratization of halakhic authority in some Jewish communities – leaving aside the questions of how far it ought extend, and whether it is likely to survive – must at the least be accompanied by a concomitant acceptance of responsibility. One component of this is that everyone making a halakhic suggestion must think about what would happen not only if everyone adopted it, but also about what would happen if some people would adopt it while others would as a result see the adopters as beyond the halakhic pale.

We must also realize that the combination of completely eliminating private Torah conversational space with the complete democratization of Torah authority may have the ironic effect of shutting down all capacity for serious halakhic deliberation (as opposed to polemical debate), and in the end generate and enable an effective authoritarian backlash.

Very likely this is already happening.
Dear Rabbi,

I received the attached letter this morning. After the fiasco last year during your sabbatical when Mr. Yosef objected at the Sefardi minyan when your rabbinic intern insisted that we give that homeless blind man an aliyah, and the whole fight last month when you insisted that Mr. Reiner, no matter how old he was, could only duchen if he stood up without his walker, this is probably the last thing you need, and I’m sorry to inflict it on you. But I think you do need to respond to this family, and maybe it’s a chance for you to give the whole shul a real sense of your overall vision of how Orthodoxy should relate to people with disabilities. Maybe this bar mitzvah will give you a valuable chance to be proactive and not just react when hard cases happen.

Sincerely,

Jack

P.S. You know everything that happens here ends up fodder for the blogosphere, so I think it would be a good idea to have a formal teshuvah on the bar mitzvah issue ready. We can put that on your blog!

To: Mr. Jacob Hagiz, President, Young Israel of Bedrock (BeitYakov@darkages.com)
From: Mr. Yitzchak Taylor-Kogan (chayatcharif@saginahor.net)

Dear Mr. Hagiz,

Shalom uvrakhah. My name is Yitzchak Taylor Kogan. I am a potential congregant who has recently moved to your neighborhood. Please allow me to introduce myself. I apologize in advance if my writing is somewhat stilted, and if this letter is overlong – my first language is ASL, and translating my thoughts and emotions into English can be challenging.

I was born in Steubenville, Ohio, in 1964, to a nonobservant Jewish family. I was born unable to hear anything. My parents tried to raise me in the “oral method”, and refused to allow me to sign until I was eight. This failed completely, and I am still unable to speak any words intelligibly other than “yes”, “no”, and “hurt”. In 1972 they sent me instead to a school that taught ASL, and I flourished.

However, this school had no Jewish content. I was bar mitzvahed in our Reform temple in 1977 without performing any ritual other than wearing a tallit, and that was really my only Jewish exposure until I went to college, although my family always took pride in our status as kohanim.

I attended Overland College and was drawn to the amazingly open and inclusive Hillel there, and began attending Friday night services (they always had an interpreter) and attending Shabbat dinners. At one of those dinners I met Rivkah, who would become my wife. Rivkah is hearing but does not have the use of her legs. She was also from a weak Jewish background, but we grew religiously together. By the time we graduated she would often lead the Friday night services, and afterward I would give the Priestly Blessing in Sign.

Why am I writing all this? Our youngest son Azriel will be bar mitzvah soon, and we are thinking very hard about how that should be. Also, we are worried about Binyamin, our oldest son, who often expresses frustration that the synagogues we attend do not invite him to read Torah or lead services,
and he gets an aliyah only on Simchat Torah. Some synagogues have even discouraged him from duchaning because they say that his voice is unmusical and both distracts and detracts from the beauty and solemnity of the ritual.

I shouldn’t give you the impression that it’s only the children. Rivkah and I among ourselves often wonder why shul can’t be more open and welcoming the way our Hillel was. Also, there are parshiyot in the Torah that are hard for us to understand – why are kohanim excluded from the Temple Service just because they have physical blemishes? Why isn’t there a special mitzvah to help the blind, instead of just a prohibition against tripping them? Why do prophets use disability as a threat or as a metaphor of insult?

The short of it is that it’s more than Azriel’s bar mitzvah – we want to find a community that values us and makes us feel like we are contributors and not guests or difficult relatives. We want our children to feel welcomed and equal to all their peers. We want to be part of a community that understands Torah in a way that recognizes us as beings created in the image of G-d rather than as damaged goods and/or objects of sympathy.

So please tell us what your community is like, and what Azriel’s bar mitzvah would be like in your shul. We look forward to your reply.

Sincerely,

Yitzchak, Rivkah, Binyamin, and Azriel Taylor-Kogan.
Dear Reb Yitzchak, Rivkah, Binyamin, and Azriel,

It was a great pleasure to read your powerful letter, and I'm grateful to Mr. Hagiz for bringing it to my attention. Our community needs members with your rare combination of depth, openness, intelligence and sincerity. I very much look forward to welcoming you into our midst, and to sharing your upcoming simkhah.

Perhaps the first thing you should know about our community – I trust this will be a positive – is that its rabbi appreciates being asked hard questions and tries his best to answer them honestly and directly. So let me try to live up to that self-description now. I'll start with the beautiful formulation toward the end of your letter:

The short of it is that it's more than Azriel's bar mitzvah – we want to find a community that values us and makes us feel like we are contributors and not guests or difficult relatives. We want our children to feel welcomed and equal to all their peers. We want to be part of a community that understands Torah in a way that recognizes us as beings created in the image of G-d rather than as damaged goods and/or objects of sympathy.

I think our community certainly aspires to live up to each of these ideals. There is no question of your being important contributors, in so many ways. We will make every effort to make your children feel welcomed and equal, and we are deeply committed to understanding Torah in a way that recognizes the tzelem Elokim in every human being.

But these are platitudes – important, but also capable of disguising hard or unpleasant truths. Certainly our shul at present is in practice hearing-centric – we have for example no sign interpreters at services, even for announcements. We can welcome you with all sincerity, but we don't have the experience to know what is needed for your fully comfortable integration, and the extent to which that will require allocating scarce resources or negotiating among the reasonable comfort zones of all members.

As an example: Our shul has several blind members, as well as nonmembers who pray with us from time to time. It is our practice to follow the positions that allow blind men to have aliyot in the same manner and with the same priority as hearing men, even at our Sefardi minyan, despite our recognition that the halakhic record on this issue is very mixed. We also used to allow service dogs in without restriction, following R. Moshe Feinstein basic holding against the Chelkat Yaakov. But we then discovered that this made a number of members exceedingly nervous, and furthermore was physically unpleasant for some members with allergies. Accordingly we have shifted to asking people with service animals to sit as close to the door as possible, as R. Moshe recommended. Similarly, we have purchased several Braille siddurim, and we send out shul announcements in formats that are friendly to programs that read them aloud, but we have not purchased a Braille printer and do not put out Braille versions of sourcesheets and the like.

Here it may be valuable to address one of your theological challenges:

Why isn't there a special mitzvah to help the blind, instead of just a prohibition against tripping them?

There is a paradoxical tension between treating the blind like everyone else and treating them equally. Creating a special mitzvah or mitzvot to help specific groups is a form of affirmative action; it affirms the
existence of inequality while attempting to overcome it. This is the Torah's approach to converts, for good reason, but is not necessarily the best basis for handling the disabled. The key distinction is that disability in principle applies to everyone, in actuality or at least potential.

My suggestion is that there is a different Torah ground for proper treatment, namely: "You must love your peer as you love yourself". Nachmanides understands this as an obligation of behavior rather than sentiment. We can, accordingly, reframe it as “Treat your peer as you would like to be treated”, or in Hillel’s negative version, “What is hateful to you, do not do to your peer”.

I suggest that this behavioral obligation should be understood in terms of a Rawlsian “veil of ignorance” - you should treat your peer in a manner you would find proper if you did not know in advance which position in the relationship would be yours. This eliminates the concern about “special treatment”, and at the same time provides a reasonable check against unlimited claims on resources. Fulfilling this obligation requires us to collectively develop a genuine understanding of and empathy for what it would be like to be in someone else’s place, and I look forward to including your family’s experience within our community’s.

I suggest further, and tentatively, that this is also a useful principle to consider when evaluating issues of halakhic inclusion – that is to say, whether one would accept as just one's own inclusion or exclusion for such reason. There are grounds and sources in our Tradition for using this as both a direct halakhic rationale – for example "כדי להعادיל את רוח" = “in order to create contentment” - and as a metaprinciple for choosing among intellectually and textually legitimate halakhic options.

At the same time, this is not the only principle to consider when evaluating such issues. Orthodoxy generally shies away from using broad interpersonal values to explicitly decide issues of ritual, especially when they seem in out and out contradiction to entire areas of established Halakhah. Phrases such as tikkun olam and kavod haberiyot have been so overused and abused in public discourse as to become halakhically almost useless. We have a healthy resistance to seeing religious honors as social currency that must be apportioned in accordance with human needs.

This brings us to another of your questions:

Why are kohanim excluded from the Temple Service just because they have physical blemishes?

The best answer is that I don't know, and that I am willing in this case to accept the limits of my knowledge rather than insist that every aspect of Torah conform to my immediate perception of justice. Perhaps R. Joseph Polak is correct in his argument that the kohanim are treated as objects rather than as human beings in this regard. My sense is that the human body is ineluctably a metaphor for the self, and we do not wish to treat bodies as meaningless – that way lies euthanasia for those living human bodies lacking full or distinctively human mental or emotional capacities. We also don’t wish to treat bodies as determinative – that way, as you point out, leads to treating a whole person as damaged because their body lacks certain abilities. Navigating between those poles is not easy, and best-case-scenario our exclusion of blemished kohanim, while at the same time insisting that Torah scholarship ultimately matters more than achieving the High Priesthood, can help us do so safely and well.

I think there is a different metaprinciple, however, that inclines us, at least in some situations, toward ruling in accordance with those halakhic positions that line up with the social value of inclusion. This is the combination of a deep commitment to allowing each human being to fulfill their spiritual potential –
perhaps this is another term for tzelem Elokim – with a recognition that to be metzuveh, Divinely commanded, is in some respects a human summa, and that ultimately our goal is for every human action to be in some sense a mitzvah.

I think the most powerful expression of this metaprinciple is the position of the quintessential Tosafist, R. Isaac of Dampierre (RI). RI notes that according to the Talmud the Tanna R. Yehudah held that blind people were Biblically exempt from all mitzvot. This might lead him to the conclusion that, for whatever reason, they are unfit to be commanded. Instead, he argues that as they are obviously capable – witness that several great rabbis were blind – they must be rabbinically obligated. One might think that RI’s position only reacts to the suggestion that the blind have no commandments whatever, but has no relationship to the question of extending obligation to specific mitzvot. However, most commentators argue that even according to Rabbi Yehudah the blind are Biblically obligated in some or many mitzvot. As well, Mas’eiit Binyamin expresses his sense that ruling against aliyot for the blind would be “exiling him from the fields of Hashem”.

How does this play out in practice? First, it gives us a strong bias against rulings that exclude people from obligation on the basis of lo plug = that they belong to an excluded category even though the rationale for the exclusion doesn't apply to them. Second, it gives us a bias against presuming that exclusions from obligation are rationally unfathomable so that we have no basis for evaluating whether they apply to specific individuals.

These biases are not absolute – we are also bound by authoritative precedent. I would not allow kohanim with mumim to serve in the temple, and I do not allow even very old kohanim to offer the Priestly Blessing if they are unwilling to stand. But I would rather not add examples to this list if I can avoid doing so. For example, I rule like Maharam, and against the apparent meaning of the Zohar, that physical blemishes are, if anything, qualifications for serving as shaliach tzibbur, whether on the Yamim Noraim or during the year. This brings us to the specific question of Azriel's bar mitzvah, and your potential experience in our shul.

What I hope has become clear over the course of this letter is that I don't wish to issue definitive halakhic rulings on these issues without having had the chance to speak with you first, and really to get to know you well. But I will say that my expectation is that I will rule in practice that anyone who can effectively communicate via language with a large number of other people, and shows no evident insanity or lack of responsibility, is fully legally competent regardless of their ability to hear; that where intelligible speech is a requirement for public ritual, the community should make every effort to make the speech of every one of its members practically and legally intelligible; and that we should always seek to support the desire of a young member to participate in a ritual for which they are essentially qualified. Achieving these results may take both legal and practical creativity. For my part, I am intensively researching these issues, and expect to produce detailed halakhic analyses for the shul well in advance of the the bar mitzvah, and I look forward to many stimulating and inspiring conversations with all of you, if you are willing, and willing to bear with my unfamiliarity with Sign.

The study of Halakhah, at its and our best, is both empowering and humbling. How could the realization that we have responsibility for properly interpreting and applying G-d’s Word and Will in our lives be otherwise! I believe that this realization can enable us to see the setting of Halakhic limits – even ones that we would otherwise find terribly frustrating - as deeply fulfilling. I look forward to your help as we try together to reach an understanding of Torah that recognizes the role of human beings as the only
true tzelem Elokim and at the same recognizes that our job is to discover and implement the Will of the G-d in whose Tzelem we are all made.

With blessings and welcome,

Rabbi Aryeh Klapper
Appendix A – The Halakhic Status of Deaf People in Our Day

The Mishnah regularly groups minors, the insane, and the deaf-mute, and the Talmud draws the implication that deaf-mutes are really just a subcategory of those disqualified by reason of mental disability. They are accordingly seen as exempt from all commandments. However, contemporary observers of the Deaf see many if not most of them as happy, healthy, bright and mature to the same level as the hearing. The question is whether these observations should lead us to change the law regarding them.

Three basic positions have emerged, each of which has roots going back to at least the nineteenth century. The first is that nothing has changed halakhically; the second is that the Halakhah should be altered to conform to contemporary perceptions; and the third is that we prefer not to decide overall which of the first two is correct. This outline can be found in Shut Rabbi Azriel, Melekhet Cheresh, Heikhal Yitchak, Sridei Eish, and more.

How can we say that nothing has changed halakhically? One possibility is that the disqualification of charashim is a gezeirat hakatuv, a Divine decree with no rationally intelligible purpose. Another is that it reflects a halakhah lemosheh misinai. Each of these, however, seems to me against the beraita in Tosefta, cited (although not completely) in the Talmud, in which there is a Tannaitic dispute regarding the status of Terumah separated by a cheresh. According to the anonymous position, which the consensus of later halakhah generally follows, it is certainly not terumah; according to Rabbi Eliezer it is safek terumah; according to Rabbi Yehudah it is certainly terumah. The Talmud in Yeḥamot analyzes the position of Rabbi Eliezer, but does not mention as part of his safek the possibility of either a gezeirat hakatuv or of a halakhah lemosheh misinai, whereas if that were the basis of the anonymous position, it should have been one side of his safek. This aside from Rambam’s famous but problematic position that anything about which there is dispute is not a Halakhah lemosheh misinai.

A third possibility is that the contemporary cheresh still has the mental lack that caused Chazal to classify the category with shotim, even though we no longer perceive the lack. This lack may be hypothetically reconstructable (meaning that we can describe or formulate it even though we cannot perceive it), or completely opaque to us. This is the position apparently taken by Rabbi Meir Twersky in a shiur at YU’s Kollel Yom Rishon some years ago, now available at yutorah.org.

This position is per se unfalsifiable, and I am unhappy with unfalsifiable factual propositions as the basis of law in the absence of a gezeirat hakatuv. Really the only motive for it is to defend against the claim that Chazal were in factual error, or that their descriptions of human nature were societally contingent. Especially the second of these seems to me an insufficient and largely unprecedented motive for deciding Halakhah in a fashion that causes great human suffering and risks bringing it into public disrepute, especially as there are legitimate ways to interpret the Tradition that have no negative repercussion for either Chazal’s reputation nor for contemporary deaf people.

On the other hand, the positions that Halakhah should change to account for our contemporary experience of deaf people runs into the problem that many, many great poskim from the seventeenth century on report similar experiences without reaching the conclusion that the deaf and mute are now to be considered full pikchim. These poskim in essence fall into two categories – those who concede that
our charashim are factually pikchim but suggest that there is nonetheless a lo plug, and those who find the sum of the possible arguments against halakhic change sufficient to create a safek. One can see a historical trend toward safek and away from the kind of certainty Rabbi Twersky advocates.

It seems to me that lo plug arguments rest on, as Mayer Juni argued well, the continued existence of the category to which we are assimilating individual cases, and perhaps equally on the failure of the proposed exceptions to fall into a category that is easily distinguishable both conceptually and practically. Such is not the case here, where the category of deaf-mutes who have no language at all has shrunk dramatically, and it is not complicated to determine whether contemporary charashim have language. (Note also – as I said in shiur, and Mayer agreed – the linguistic irrelevance of Tzemach Tzedek).

The remaining question, then, is whether our experience of charashim is sufficient to give us halakhic certainty. It seems to me reasonable that the persistence of this experience for more than a century is in and of itself a powerful argument. But I think it is also important to understand that certainty is always a practical chimera; the real question is at what point we allow rov to be makhria or mevarer. It is clear to me that our experience is sufficient to generate a rov in our own minds, against which the only argument is the justified fear of the destabilizing effects of practical legal change, even when it involves no change of principle.

But I think several factors militate against allowing that fear to paralyze us here:

1) Determining halakhah in a way that conflicts with people's lived experience diminishes respect for Torah, and therefore should be reserved for cases of absolute necessity (Perhaps this is the intent of R. Sternbuch in invoking תעט לעשות, although he may also be considering many of the other factors mentioned here.)

2) Determining halakhah in a way that makes Jews feel excluded greatly increases the risk that those Jews will move away from Torah and mitzvot. It is no accident that so few Orthodox shuls have explicitly deaf members, and we must understand that generally this means that their families move out of the observant orbit as well. In halakhic terms, this can be formulated as a concern שמא יצאו לתרבות רעה. (Note that sociologically this seems to me to extend now even to de’oraita cases – I think that the combination of intellectual sophistication and autonomy that characterizes our community, for good and for ill, means that resolving the safek lekula for derabbanans and lechumra for deoraitas will in practice still drive people away. The same is true even if we allow them to say kim li for all halakhot that don’t implicate other's mitzvah-fulfillment, although certainly this is an approach that should be adopted by poskim who cannot in conscience rule without reservation on this issue. My contention is that these arguments would have been sufficient for Rav Ovadyah Yosef, and that his psak is aimed at a community where autonomy is much less valued. Note that this argument applies, mutatis mutandis, to many issues of disability, but also that I am using it here only to argue for choosing among different standards of rov, and that it should not be extended further lest it join the club of halakhic metaprinciples that have been stretched so far that, for contemporary Orthodox purposes, they have simply snapped.)

3) As Aron Rubin argued well here, and as Rabbi Saul Berman argues on slightly different grounds, there is a general Torah mandate to be concerned for the emotional wellbeing of those members of the community who reasonably feel marginal and are therefore emotionally vulnerable. I suggest that this
mandate functions as a metaprinciple that should incline us against setting too high a standard of certainty here.

4) Even regarding populations that are not specifically vulnerable, there is a halakhic value of having religion cause נחת רוח rather than its opposite, and which seems clearly to allow taking risks. (Cite Rav Rosner on aliyot for the blind.)

5) There is a general Torah mandate that we should seek to allow people to fulfill their spiritual potential, and a formal recognition that where being metzuveh is possible, it is preferable, since גדול המצוות ועשה. This can be seen in Rif’s position that acc. to R. Yehudah the blind are obligated in all mitzvot via a new comprehensive derabbanan, and also see Mas’ei Binyamin and cite Rabbi Jachter. (Note irrelevance of Chatam Sofer’s phrase מטוב יהאשוטהכל ימיו, as noted by שבט סופר."

For all these reasons it seems clear to me that we should seek to avoid ruling that any people we experience as competent are not bar chiyuva. This seems to me straightforwardly easy in the case of people who are capable of hearing via any mechanical or electronic means (as this is the position of the lion’s share of even those poskim who still treat a complete nonhearer and speaker as a safek shoteh), and not very difficult in the case of those who have sufficient speech to say even “yes” or “no” (This can be derived from the absence of any standard for medaber status in the Talmud, and the apparent definition of nishtatek as one who can say yes or no only by nodding). It is more complicated in the case of those who lipread effectively but have no residual hearing and no speech of their own. I suspect such cases are very rare, especially if one counts Sign as speech.

However, there are certainly speakers of Sign who do not lipread well, and they require separate analysis. Let us be clear that this is not because we doubt that Sign is capable of being the medium for rich individual and communal experience, nor that we doubt its status as language. Rather, it is because the Talmud Gittin 71-72 seems formally to declare written language insufficient to remove a cheresh from the status of shoteh, and we would be hardpressed to evade that precedent if it were unequivocal. Let is therefore analyze that sugya in depth.

The sugya begins with a statement by Rav Kehana in the name of Rav that “A cheresh who can speak from the written – we write and give a divorce to his wife”. For our purpose we will assume, against some fascinating reads by acharonim, that this means, as per Rashi, that the cheresh writes out an order for divorce. This suggests that a cheresh who can write is fully legally competent, which opens the door to non-spoken language as a basis for legal competence. However, the end of this Talmudic discussion is a rejection of Rav Kehana’s statement on the basis of a beraita which is apparently read as permitting the writing of a divorce only in response to a direct oral command from the husband. If this rejection is absolute, then we would have to argue that Sign is superior to written knowledge.

It is easy to argue (see Sridei Eish), however, that this rejection relates only to the claim that writing is insufficient to command divorce, without regard to the question of competence. However, as we will see shortly, there is good reason to see Rav Kehana as halakhically rejected in toto on the basis of other factors in the sugya.

It is also clear that the concluding beraita, on which basis Rav Kehana is rejected, seems to be in direct contradiction to the first Mishnah of Gittin Chapter 7 (cited in this sugya). That Mishnah states that a
mute may divorce on the basis of confirmed nodding. How can confirmed nodding be sufficient when written commands are not!

One answer, generally cited from Rosh but rooted in the Yerushalmi, is that headnodding is superior to writing “because he is showing (intent) with his body”. My dear friend Rabbi Elisha Ancselovits argues on this basis that sign language is superior to writing, as it is a “super showing-with-the-body”. In my humble opinion this argument is incorrect. Rosh suggests that headnodding is technically more similar to the “voice” demanded by the beraita than writing, as headnodding is a part of ordinary conversational practice. Perhaps headnodding can also be seen as a clearer indication of intent than writing (which can be done simply for practice), although this seems to me speculative. Regardless, it is not a relevant indication of complete mental competence. Nor can the confirmation process be sufficient for that, or else the Talmud would have suggested using it to determine the competence of charashim generally, and I don't see the suggestion that Rav Kehana would have deemed any cheresh competent on the basis of confirmed nodding as plausible. (I will note here as well that I do not agree with the suggestion of Nachalat Binyamin that sign language counts as an “action” rather than as speech, and that the cheresh has acc. to Mishnah Tamarot 8:6, “action but not thought”. The distinction in that Mishnah is about intent-for-action versus intent-for-ends, and the capacity for meaningful action can never be sufficient to establish competence.)

The second standard answer in rishonim is that headnodding works for the speechless but not for the deaf and speechless. The simplest way to understand this is that the hearing but speechless are presumed competent, whereas the deaf and speechless are not presumed competent, and confirmed nodding works to establish intent but not competence. Here again, the claim that sign language is superior to headnodding will not make it sufficient to establish competence.

Rashi asserts – and his interpretation seems to be accepted by all rishonim, although many acharonim challenge this – that the sugya throughout assumes that Rav Kehana is referring only to a cheresh who knew how to write prior to becoming deaf. It seems clear that Rashi’s basis for this assertion is that the Talmud later aligns Rav Kehana with a statement of Rabban Shimon ben Gamliel. In the Bavli (very much as opposed to the Yerushalmi), RSBG’s statement and its context (as best I can tell, according to almost all commentaries) are as follows:

They did not say that we follow the gestures or mouthings or writings of a cheresh except with regard to movable property, but not with regard to divorce.

RSBG said: In what context were these words said? With regard to one who is a cheresh from his beginning, but if he were a pikeiach who became a cheresh, he writes and they sign/seal.

Rabbi Yochanan asserts, and the Talmud seems to say that Rav Kehana agrees, that RSBG is in disagreement with the anonymous Tanna Kamma (for our purposes “the Sages”). In that dispute, as Rashi explains, Rav Kehana aligns with RSBG, and as by the normal rules of Halakhah (and regardless, as all rishonim say) the Halakhah follows the Sages, Rav Kehana is rejected.

Rav Zalman Nechemyah Goldberg notes that it seems hard to believe that one who was a pikeiach a moment previously and can still write should become a presumptive shoteh because of lost speech and hearing. Rav Meir Twersky finds this argument powerful; others, however, say that such a loss can reasonably be presumed to have affected mental capacities.
I would like to take a different approach. I suggest that RZNG is entirely correct that we would not make this claim about someone who had lost their speech and hearing owing to a known nonmental cause – i.e., who had their ears and vocal cords damaged by a targeted assault. The basis of the Sages' position is that the simultaneous loss of both functions is evidence of brain damage, and in the absence of a clear amatla otherwise, this is eminently reasonable. But they would concede to RSBM where such an amatla exists.

I think that similarly an okimta is necessary lechumra, as follows. If a child becomes deaf prior to developing speech, would they be considered a pikeach venitcharesh or rather a cheresh meikaro? It seems probable to me that he would be considered a cheresh meikaro (here I believe I am disagreeing with Yaakov), and that the language of the beraita is imprecise.

In other words, the Tannatic dispute is not one of principle – everyone agrees that some non-congenital charashim are competent, and some are not, and the question is only where to draw the line, and the basis for decision is practical evaluation.

Once we recognize that the beraita requires okimtifying, we can ask whether the same is true of the consensus position regarding a cheresh meikaro.

The first point we must make is that no one in Chazal's time was deaf and speechless “from birth” - rather one was deaf from birth, and then failed to acquire speech (see Rambam and Bartenura Terumot 1:1). In other words, the category cheresh meikaro meant only that such a person was presumptively incompetent because they had no opportunity to acquire language, not because they were born mentally deficient.

The Sages might or might not have continued to exclude any particular cheresh from the status of bar chiyuva on the ground of lo plug – but they certainly did not intend to claim that a cheresh meikaro with obvious linguistic capacity was practically incompetent, any more than they intended to do so for one who lost their speech and hearing via specific injury to the organs of speech and hearing.

The possible objection to all this is that the Tannaitic consensus, as understood by the Talmud, rejects the writing of a cheresh meikaro as evidence of competence! Why?

I think the simplest approach is to say that the Sages never really considered that possibility – their intent was to exclude the gestures of a cheresh meikkaro and the writing and gestures of a pikeach shenitcharesh. RSBG then seeks to reverse their exclusion of the writing of a pikeach shenitcharesh. This is likely the approach of Maharshal.

However, Rashi did not read the sugya this way.

For Rashi, I think one has to say that a shoteh can write too, and that for a presumptive shoteh to write is therefore not evidence that they are not a shoteh. Here I think Rav Ancselovits' argument that the existence of a society of the Deaf, together with the often full integration of the deaf into general society, is sufficient to undo the presumption, and that it is likely that nowadays writing should be sufficient to establish competence for the deaf. However, it may be that davka in our day the absence of other modes of communication constitutes a reiuta.

It is possible to adopt the implicit position of R Hildesheimer and R. Glauber? of early 20th Century Detroit that requires credentialing to break the presumption. However, I generally am not a fan of
credentialling, and so I would insist that beit din then create an alternate credentialing/GED-type system for charashim to establish competence.
Can kohanim who use wheelchairs do birkat kohanim (the priestly blessing)?

Responsa Shevut Yaakov 2:1 (R. Yaakov Reischer, 1670-1733) argued they can but his position was attacked by Responsa Noda b’Yehuda OC 5 (1713-1793) and others. Generally these attacks were seen as compelling. Contemporary posek R. Shmuel HaLevi Wosner states (Responsa Shevet haLevi 10:28) that R. Reischer’s position was “pushed aside from Halakhah without any uncertainty.”

I suggest that the rejection of Shevut Yaakov should be reconsidered in light of analysis bolstered by new evidence.

According to Talmud Sotah 38a, everyone agrees that birkat kohanim must be performed standing—the only dispute is about how to derive this rule from the Torah. The anonymous first position (tanna kamma) in a beraita (text from the Mishnaic period) suggests that Devarim 27:12—“and these shall stand to bless the nation on Mount Gerizim”—establishes a legal paradigm for the act of blessing. Since Bamidbar 6:23 says that birkat kohanim must be done כה ‘thus’, we derive it includes all standard blessing requirements.

Rabbi Natan in that beraita prefers to assimilate blessing to the realm of sheirut (priestly Temple service), all of which must be done standing. He derives this from the juxtaposition of service and blessing in Devarim 10:18: “to serve Him and to bless in His Name.”

The Talmud asks: How does Rabbi Natan know that sheirut must be performed standing? It replies that Devarim 18:5 declares that G-d chose them “to stand to serve.”

This appears to be a stub citation of a beraita from Zevachim 23b. That beraita notes further that Devarim 18:7 concludes “and he will serve in the Name of Hashem his Divinity, like all his brothers the Levites who stand there before G-d.” The duplication of the requirement to stand teaches us that it applies even bediavad (post facto), meaning that sheirut performed while seated is invalid.

Tosafot to Sotah 38 cites R. Isaac of Dampierre (RI) as deriving from Zevachim 23 that birkat kohanim is also invalid if performed while seated. All this suggests that the answer to our opening question is an unequivocal no—kohanim may not do birkat kohanim while seated in wheelchairs.

However RI’s conclusion can be challenged in a variety of ways:

1) According to Zevachim 23, Devarim 18:5 is not sufficient to declare that sheirut performed while seated is invalid—that is derived from 18:7. Since the assimilation of birkat kohanim to sheirut is derived from 18:5, perhaps there is an obligation to stand for the Blessing, but it is valid nonetheless if performed while seated. It might follow that a kohen who is incapable of standing can still perform a valid birkat kohanim, and perhaps is obligated to go up to do so.

2) Zevachim 23 is relevant only according to Rabbi Natan. According to the tanna kamma in the beraita on Sotah 38, the requirement to stand for birkat kohanim is derived, via the word ‘thus’, from the one-time blessing on Mount Gerizim rather than from sheirut.
Sotah 38a earlier records a dispute between a tanna kamma and Rabbi Yehudah as to the source of the requirement that birkat kohanim be said in the original rather than in translation. Rabbi Yehuda derives the requirement directly from ‘thus’, whereas the tanna kamma derives it from Mount Gerizim.

Tosafot explain that the tanna kamma did not see ‘thus’ as establishing a bediavad requirement. If we combine the positions of the two tanna kammas, birkat kohanim performed by a seated kohen is not invalid. It follows that a kohen who is incapable of standing can still perform a valid birkat kohanim, and may be obligated to go up to do so.

3) RI assumes that the analogy to sheirut is a genuine midrash halakhah (legal derivation from the Biblical text), i.e. that it establishes a deoraita (having the authority of Biblical law) requirement to perform birkat kohanim standing.

However, the Talmud on Taanit 26b-27a asks why the analogy to sheirut does not prove that birkat kohanim cannot be performed by someone with a mum. It responds that “they are asmakhtot, derabannan, lekulla” (mnemonics rather than midrash halakhah; having the authority of Rabbinic rather than Biblical law; and lenient). This may mean that the analogy to sheirut is mere mnemonic, establishing only Rabbinic requirements. It follows that the requirement of standing for birkat kohanim, at least according to Rabbi Natan, may be Rabbinic rather than Biblical. This makes it likely that the requirement does not apply bediavad or to someone who is physically incapable of standing.

What emerges from all this is that RI’s position invalidating birkat kohanim performed while seated is explicitly based only on Rabbi Natan, not the tanna kamma. The default principle is that halakhah follows a tanna kamma. As well, we now have 2 plausible grounds for arguing that RI’s conclusion doesn’t follow from Rabbi Natan’s derivation.

Nonetheless, we would be hard pressed to rule against RI without finding a Rishon (medieval authority) who disagreed with him. But Maimonides cites ‘thus’ as his source for the requirement to stand during birkat kohanim, rather than the analogy to sheirut, apparently following the tanna kamma rather than Rabbi Natan. Maimonides may therefore hold that a kohen who is incapable of standing can perform a valid birkat kohanim, and perhaps is required to go up to do so.

Shevut Yaakov argues that Maimonides cites ‘thus’ because he followed Taanit 27 and saw the analogy to sheirut as establishing a Rabbinic law. He argues the requirement then does not apply to kohanim who are incapable of standing.

Noda b’Yehuda responds that Taanit 27 does not mean that the analogy to sheirut is wholly Rabbinic; rather, it is Rabbinic in its application to all issues other than standing. He notes that Tosafot Menachot 109 and Sefer Mitzvot Gedolot both state clearly that the analogy is Biblical with and only with regard to standing. Noda b’Yehuda’s critique, and variants advanced by others such as Panim Me’irot, have generally been taken as dispositive.

Noda b’Yehuda’s reading of Taanit 27 seems very forced; nothing in that text suggests that the analogy to sheirut should be understood as Biblical anywhere. Furthermore, Shevut Yaakov concedes that RI would invalidate any seated birkat kohanim, but argues that Maimonides disagrees. R. Landau’s rejection of Shevut Yaakov comes down to the claim that that Maimonides should be presumed to agree with RI—even though RI depends on the forced interpretation of Taanit 27—unless we clearly establish
why he disagreed. Intellectually, the real puzzle is not why Maimonides disagreed, but rather why Tosafot Menachot 109 and Sefer Mitzvot Gedolot offered that interpretation in the first place.

The contemporary R. Pinchas Leibush Padua (Pelaot Edotekha 5) solves that puzzle. He argues that Tosafot Menachot and Sefer Mitzvot Gedolot (and Rabbeinu Asher Megillah 3:19) are not presenting an interpretation of Taanit 27a as we have it, but rather either preserving an alternative text or presenting an alternative answer from the Sifrei. That alternative’s explanation of why the analogy to sheirut does not ban someone with a mum from performing birkat kohanim is that Devarim 10:8—“To stand before Hashem to do sheirut and bless”—limits the analogy to standing.

I believe that Pelaot Edotekha’s argument is demonstrably correct. Tosafot Menachot is citing a responsum of Rashi, and the language of that responsum in many versions makes clear that the limitation of the analogy’s Biblical force to standing is a quote, not an interpretation.

RI’s position that birkat kohanim performed while seated is wholly invalid was based on that text; but Maimonides had our text of Taanit, and therefore believed that the analogy to sheirut is wholly Rabbinic. This was likely the position of every other Rishon who had our version of the text, and is explicit in Rabbeinu Gershom and Meiri. These Rishonim would probably allow kohanim who are incapable of standing to perform birkat kohanim while seated, and I suggest that we have a general halakhic preference for positions based on the Talmudic version that has become standard.

The question is whether this argument is sufficient to return the Shevut Yaakov to the halakhic mainstream. I suggest that this must at least be considered.
Are the lives of civilians worth more than those of soldiers in wartime?

The assumption that civilian lives are worth more is built into the moral critiques emanating from both sides of the conflict in Gaza. To bolster these critiques, civilians are described as “innocent”, with the implication that soldiers are – by definition – “guilty”. The underlying argument is that endangering civilians is wrong because they are innocent, and targeting soldiers is legitimate because they are guilty.

Every step of this argument is wrong. Identifying and correcting the errors is vital to developing an ethics and a law of war that are practical guides for the conduct of conscience-driven armies, rather than being additional weapons in the hands of their anethical opponents. In particular, we need to identify and correct the ways in which this argument distorts the “doctrine of proportionality”. The distortion I will identify in this article is the application of the doctrine to cases where a military action is undertaken in order to protect the civilians of one side against deliberate attack from the other.

The doctrine of proportionality requires military forces to endanger civilians through their use of force only to an extent proportional to the importance of the military objective involved. This is an inherently vague and perhaps subjective principle, but some examples may help clarify the point. For example, it may be legitimate to bomb a crucial enemy supply depot even if there are inhabited private houses nearby, but the same bombing would be illegitimate if carried out to kill a single unremarkable enemy soldier. Similarly, the same bombing may be illegitimate if destroying the supply depot will have no effect on the enemy’s ability to fight.

None of this applies to the killing of enemy soldiers. One is legally permitted to bomb enemy soldiers even if they have minor military roles, and one legally may kill unlimited enemy soldiers to achieve even minor tactical goals.

Why is it permitted to kill many soldiers for a goal that would not permit the killing of a single civilian?

Let us first consider and reject several popular answers.

1) Soldiers accept the risks as part of their profession. This is demonstrably wrong simply because most armies consist of conscripts, not volunteers. There are more complex objections as well, but this is sufficient.

2) Soldiers are more important militarily. Many civilians are more crucial to war efforts than many soldiers. For example, research scientists and workers in munitions factories play more important roles than a general’s aides. An ongoing question in the United States is whether many bureaucratic jobs currently performed by uniformed personnel should be privatized. As a thought experiment: From the perspective of the Japanese empire, were the Manhattan Project scientists less of a military threat than the average Navy midshipman?

3) Soldiers are more responsible for war's outbreak and continuation. This is essentially the argument from guilt, and it too is demonstrably false. Most soldiers have no interest in fighting precisely because it is their lives at risk, whereas civilians – especially when they expect the laws of war to be followed – may feel they have much less to lose. Furthermore, the essence of democracy is that each citizen must take responsibility for such decisions.
The true answer, I think, is a combination of:

1) There is a sense that war is less terrible the less it interferes with the non-military life of a culture or society.

2) Soldiers are presumptive threats, whereas civilians are presumptively not threats. Here is where proportionality enters. The desire for non-disruption does not ban war, and war is inevitably disruptive. To contain that disruption, we ban the deliberate targeting of civilians absolutely – even if they are directly involved in the war effort, i.e. not “innocent” - and we require the disruption to be proportional to the significance of the military aim.

This requirement rarely results in a military objective being foregone. Rather, the military means used to achieve the objective are altered so as to decrease the risk to civilians at the cost of increasing the risk to one’s own soldiers. For example, it may be decided that destroying a particular munitions store legitimates endangering 10 but not 50 civilians. This eliminates aerial bombing as a feasible method of attack, even though it would put the pilot at minimal risk and almost certainly destroy the target, and likely results in a raid by ground forces that carries much lower risk of civilian deaths but is much more risky for the soldiers involved.

The requirement of proportionality does not apply to enemy military forces because killing enemy military personnel is in and of itself a legitimate military goal, and one which is presumed to have minimal impact on non-military culture.

None of this relates to the “innocence” of civilians. Civilians may have instigated the war, authorized the war, politically supported the war, be funding or supplying the war, and so on. They may be serial killers or saints. The war itself may be an idealistic humanitarian intervention or a naked and bloodthirsty power grab. The rule of proportionality applies regardless.

However – all this assumes that the aims of the military in question can be evaluated in military terms – that is, whether they make it more likely for one’s side to win the war, and diminish the enemy’s capacity to resist one’s military force.

This calculus should and must change dramatically when the military goal in question is to prevent the enemy from deliberately killing your civilians, and the price of considering proportionality is not risk to soldiers, but risk to one’s own civilians. Here we are measuring civilian lives against each other.

Here a certain form of “innocence” is relevant. There is a general intuition that hostages have a particular immunity that justifies the police in not shooting the hostage-takers immediately, even if that risks having the hostage-takers endanger many more people subsequently. I suggest that the same is true when military forces essentially hold an entire population captive by operating from their midst without their consent. So it is likely that a version of proportionality applies in such circumstances.

However, wars are fought between political communities, and when a military force represents the government of a political community, the nonmilitary members of that community are not hostages, but rather enemy civilians. This remains so even if the military chooses to operate from their midst, and all the more so if the civilians actively cooperate with the military, for example by allowing their homes, schools, hospitals, or religious buildings to be used for military purposes. (Volunteering to be human
shields for military equipment of personnel is self-defeating, as anyone doing so is directly engaging in military activity and loses their civilian status.)

When an army must choose between the lives of its own civilian population and those of enemy civilians, I contend that the doctrine of proportionality does not apply, just as it does not apply to choices between one’s own soldiers and those of the enemy military.

It should be clear that even the targeting of civilians by one side does not give the other side the right to target civilians, or to be unconcerned generally about civilian casualties and collateral damage. However, it does permit the side whose civilians are being targeted to take whatever actions will be most effective in eliminating the threat to its civilians, even if those actions will cause “disproportionate” collateral damage.

For example – if a missile is on the verge of being fired from within a densely populated enemy suburb at your own suburb, and your most effective tactic for preventing that firing is to bomb the launcher, you may do so, despite the likelihood that the number of enemy civilians harmed in the process will be much greater than the number of your civilians likely to have been harmed by the missile.

I believe that this analysis properly applies to the recent conflict in Gaza. If one accepts that Hamas is the de facto government of Gaza, the Gazan population are members of the political community that Hamas’ military arm represents. They are enemy civilians, not hostages. On that analysis, Israel was entitled to use whatever means were most effective in removing the threat posed by Hamas rockets to Israeli civilians, regardless of collateral damage. However, Israel would still not have been permitted to deliberately target Gazan civilians, or to engage in actions that caused more collateral damage than necessary to maximally protect its civilians.

For both pragmatic and moral reasons, Israel properly avoids using this license except in extremis. Pragmatically, collateral damage caused for the best of reasons and after the most rigorous of analyses weakens Israel’s position internationally and builds a reservoir of hatred in Gaza that may create greater long-term threats. Morally, the closer to the line one comes, the more likely it is that some of one’s soldiers will step over.

The murder of Muhammad Abu Khdeir reminds us that Jews are not immune to the temptations of violence for the sake of emotional expression. It is for this reason that Israel properly and consistently takes precautions beyond the minimally morally essential to protect the lives of enemy civilians.

We should make every effort, consistent with military prudence, to ensure that this essential willingness to go lifnim mishurat hadin (beyond the letter of the law), with a recognition of what is morally right over and above what is legal, flourishes and endures forever. At the same time, we must ensure that distortions of ethical and legal principles do not prevent Israel – and all other political communities of conscience – from effectively defending themselves militarily, philosophically, and legally against cynical or idealistic assailants.
When is humanitarian military intervention morally required? The U.S. re-intervention in Iraq to protect the Yazidis, against the background of the Syrian and Libyan implosions and ongoing human rights crises in other parts of the world, makes this question vital and immediate. Jewish tradition suggests that the obligation to intervene militarily exists when and only when the alternative is genocide.

To avoid dangerously incoherent decision-making, we need to articulate a policy that mandates some interventions without obligating us to intervene in every difficult humanitarian circumstance. We cannot reasonably base our policy on quantitative criteria such as the number of potential deaths – each human being is an entire world of infinite value. But the United States also cannot be the world’s policeman, and our troops cannot be sent to stand against all brutes, despots and injustices everywhere.

As an American Jew, I have one fixed reference point: The United States had an obligation to prevent the Holocaust. This premise had no antecedents in Jewish, and perhaps in human, history; I’m not aware of any other time that a persecuted minority felt morally entitled to expect the intervention of an unrelated party. The development of an environment in which such expectations seem reasonable is among the great moral contributions of the United States. The Holocaust therefore demanded military intervention for humanitarian purposes. But it cannot be the only such event. The Jewish law known as “rodef” can be helpful in determining the parameters for required intervention.

Rodef obligates every individual human being to rescue their fellow human from the threat of murder. Under Jewish law, where moral principles generate a legal obligation on individuals, there is generally a communal analogue. For example, just as individuals must keep honest weights and measures, communities must establish fair marketplaces. The individual obligation to save others from being killed or raped is therefore paralleled by a communal obligation to ensure that everyone can walk about without fear of being killed. The communal obligation to save others extends to preventing the deaths of entire other communities – in other words, to prevent genocide.

Must we risk the lives of our soldiers to fulfill this obligation? Jewish law does recognize the category “obligatory war.” It may be that a community has no obligation to risk its own existence to save another community, but that it is obligated to risk the lives of some of its members.

This still leaves much undefined. But I hope that Jewish law can be helpful in both affirming the obligation of intervention, against the hardcore realists, and in limiting that obligation, despite the hard-core idealists.
Is the G-d of the Book of Joshua a moral G-d? Is Joshua a moral leader?
(modernitoraleadership.wordpress.com June 13, 2014)

Eric Cohen, Executive Director of the Tikvah Fund, triggered a lively and fascinating conversation with those questions. Their premise is that at least on first reading Yehoshua has Divine sanction to act in ways that defy contemporary morality – for example, he exterminates the inhabitants of various cities, including children, without regard for the innocence or guilt of particular individuals, and not distinguishing between combatants and non-combatants.

I admitted early in the conversation that this issue had bothered me since high school, and that I had not yet found a satisfying way to read the Book. This is still the case, and I’m glad to be challenged to revisit the issue. However, based on the conversation at the Tikvah seminar, it seems to me that there may be value in laying out some preliminary methodological thoughts and tentative theological guideposts.

1) One can simply invalidate the question, or deny it any significance. Behavior that G-d approves is proper, and “morality” is a useful category only insofar as it enables us to accurately predict what behaviors G-d will approve.

This is not an approach I generally find religiously useful or attractive. From an internal Biblical perspective, as several participants noted, there are clear instances where prophets challenge G-d on the basis of an external standard, and from a Rabbinic perspective, Torah can be properly interpreted only on the basis of a priori moral intuitions.

We do recognize a category of “hora’at sha’ah”, of actions that are given Divine sanction even though they violate our standard norms. However, this category refers generically to actions that violate legal norms for the sake of principles that anteced the law – they do not refer specifically to teleological suspensions of the ethical. It may be at times useful to argue that a hora’at sha’ah legitimates violation of moral norms as well, but that seems to me at best a last resort.

2) One can morally rationalize Joshua’s actions in a way that seeks to prevent them from serving as a legitimating precedent for any subsequent behavior. One can say, for example, that such behavior is justified only when a people is returning to its Divinely granted homeland, or when an enemy population is so culturally corrupt as to make the prospect of their repenting – even partial – utterly ridiculous. Or one can say that his behavior was grounded in prophetic knowledge of consequences, so that he was able to make utilitarian judgments in circumstances where uncertainty would generally forbid them.

My sense is that such approaches fail in practice. I may think that I have effectively quarantined a text, but someone else will come along and argue that his or her circumstances exactly match those I described. For example, the conversation at Tikvah took place with an unspoken agreement that no one would evaluate interpretations by their implications for current or past Israeli policies, but it was clear to all that such implications were lurking close to hand.

Furthermore, defending Joshua’s actions on utilitarian grounds often fails empirically. If the justification is that it was necessary to prevent all Canaanite resistance, and/or eliminate all subsequent Canaanite cultural influence, why is it that he did not in fact complete the conquest, and that Canaanite influence seems alive and well in subsequent Biblical narratives?
3) One can critique the applicability of ordinary morality to particular political situations. For example, one may believe that national origin stories inevitably involve aggressive violence, and that nonetheless nations have a right to emerge, as birds have the right to crack their shells. Joshua – or the American West – must be judged by a different standard than we use to judge life as conducted within an existing political entity.

This position is to some degree embodied in the rabbinic presumption, sometimes given legal effect, that all land outside Israel was obtained by robbery. I understand this as a recognition that all land titles that don’t trace directly to G-d trace back rather to an act of conquest, and conquest per se can rarely if ever be condoned by the moral rules that apply within a political community.

I am not willing, however, to concede that moral rules by definition apply only within settled political communities. As I have written elsewhere, the practical ethical rules of war may not be those of ordinary society, but that does not mean that there are no rules. So it may not be proper to judge Yehoshua by the standards of behavior within a state, or by the standards of international behavior in a community of nations that recognize an effective system of international law. But there must nonetheless be standards by which his behavior can be judged.

4) One can seek to reinterpret the story so that Joshua’s actions conform to a standard of morality one is willing to defend in ordinary life. For example: One can adopt the halakahic position that the Canaanites were entitled to convert or flee, and adequately informed of this right, and thus anyone remaining in the cities was in fact a combatant. This seems to me a plausible approach in some cases.

5) One can seek to reinterpret the text so that it is not evident that G-d approves some of Joshua’s actions. This is difficult, as overall Divine approval of Joshua is repeated and unquestioned in the book. In general, the Book of Joshua seems to have a more values-transparent narrator than is usual in Biblical narratives, and to leave less space for readers to make their own evaluations.

Nonetheless, this is the approach I find most religiously attractive, because I think it most allows genuinely wrestling with the text rather than imposing on it – and in the end, if we come to the conclusion that G-d did approve, we will need to rethink our assumptions. But I want to make clear that I think it is legitimate to say that for the time a narrative’s meaning is opaque to us, and therefore that we will not seek to derive values from it, although we aspire to do so in the future.

Here is one resource that I hope and suspect will eventually prove helpful:

In 5:13, before the conquest of Jericho, Joshua sees an angel holding its sword drawn, and asks: “Are you for us, or for our enemies”? I think the most plausible reading of his uncertainty, following the Talmud, is that he fears that the angel intends to slaughter the Jews, because they have done or intend to do something wrong. The Rabbis identify that wrong with failure to study Torah or bring the daily sacrifice, but these are in the first instance likely symbolic, and in the second instance difficult to find evidence for in the text (see Radak for a remarkably pointed rejection of this midrash).

The angel’s possible ambivalence here puts me in mind of G-d’s ambivalence in the story of the Concubine of Give’ah (Judges 19-21). In that story, the Urim veTummim endorse an attack on the tribe of Binyamin – and the attack fails, twice, with heavy losses. A third attack is endorsed with the note that it will lead to victory, which it does. To me, this clearly indicates that G-d is (to put it mildly) not wholly
comfortable with those He grants overall victory, and perhaps the angel indicates something similar here.

Those who seek to argue that only Divine command matters in this narrative cannot, to my mind, well explain why Rachav and her family are saved from Jericho, and the Gibeonites from among the Canaanites generally. In each case the presumptive command to kill everyone seems to be trumped by a humanly assumed commitment, and at least in the case of Rachav, the decision to spare her seems to be as endorsed as the killing of everyone else. What if, as a tactic to induce surrender rather than fighting to the last man, Joshua had sent in a herald promising to spare noncombatants generally? So I don’t think that the question is so easily evadable.

But as noted, this is not yet a reading, only a suggestion of a possible seed out of which such a reading might develop. I welcome your suggestions, assistance, and critiques.
To What Degree Are Public Servants Genuinely Servants? (moderntoraleadership.wordess.com March 28, 2014)

At the YU Chag HaSemikhah this past Sunday, Rabbi Yosef Bronstein’s dvar Torah on behalf of the new musmkahim cited a story I was familiar with in a very different version, and I’m happy to honor the new rabbis by sharing with you what I learned from him. I note that I spent the same evening honoring Rabbi Avi Weiss and his family by attending the YCT/Maharat dinner, and the dvar Torah below will relate to that experience as well, and to the broader question of the nature of ideal rabbinic leadership.

To what degree are public servants genuinely servants?

In a variety of famous narratives in the Mishnah and Talmud, Rabban Gamliel of Yavneh is depicted as an authoritarian ruler who brooked no dissent, especially from his colleague Rabbi Yehoshua. A story on Horayot 10a, however, seems to create a very different impression.

This is like the time Rabban Gamliel and Rabbi Yehoshua traveled on a ship. Rabban Gamliel had bread with him; Rabbi Yehoshua had flour with him. When Rabban Gamliel’s bread ran out, he relied on Rabbi Yehoshua’s flour. Rabban Gamliel said to him: How did you know that we would be so delayed, that you brought flour? Rabbi Yehoshua said to him: There is a star that rises every seventy years and misdirects the sailors, and I said: Perhaps it will rise and misdirect us.

Rabban Gamliel said to him: You have all this (knowledge), and yet you travel on a ship?! Rabbi Yehoshua said to him: Rather than being astonished at me, be astonished at these two students I have on dry land, Rabbi El’azar Chasma and Rabbi Yochanan ben Gudgeda, who know how to measure how many drops there are in the sea, and yet they have neither bread to eat nor clothing to wear!

Rabban Gamliel intended to place them at the head (of the academy?). When he alit, he sent to them, but they did not come; he sent to them again, and they came. He said to them: Do you imagine that I am giving you rulership? I am giving you servitude, as Scripture writes: “They said to him as follows: “If today you will be a servant to this nation . . .”

The psychology of the final interchange is subtle and complex. Rabbi Yehoshua’s students, though desperately poor, refuse to come the first time they are sent for, but not the second time – even though nothing changes in between. Rabban Gamliel deduces that they are formally expressing modesty – they do not wish to appear eager to assume power. He rebukes them for this, saying that their gesture is mistaken – public office is a burden, not a privilege, and there is no need to pretend that one is unworthy of it.

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The irony should be evident – by treating public office as servitude, he releases them from the obligation to demonstrate that they do not see themselves as superior.

There is another, less evident irony. The verse Rabban Gamliel cites is excerpted from the (rejected) advice the elders give Rechav'am sone of Shlomoh when he assumes the Jewish monarchy. Here is the full verse

וידברו אליהם לאמר
אם היום תהי עבד לעמ זה
ועבדתם לפי רצון אלהים ובדבר טובם
והיון לאבדם כל היום

They said to him as follows:
If today you will be a servant to this nation
and serve them and respond them and speak positive words to them
then they will be servants to you for all time.

The advice the elders give is tactical – behave like a servant (at least at the outset, bow to public opinion) so that they willingly become your servants. This seems to be exactly what Rabbi Yehoshua’s students are trying to do!

My very tentative thought is that Rabban Gamliel’s reaction is an extension of their gesture – saying that public office is servitude is also a necessary ritual performance of modesty, and his apparent reproof was actually endorsing and reinforcing the principle behind their behavior. But underlying all the professed modesty is a clear belief that the community must in the end be led, not followed.

Now here is the version of the story Rabbi Bronstein cited, from Sifrei Devarim 16:

“At that time, as follows” (Devarim 1:16) –
yesterday you were under your own authority, but now you are servants subordinated to the community.
A story about Rabbi Yochanan ben Nuri and Rabbi El’azar Chasma
that Rabban Gamliel set them down (at the head) in the Yeshiva but the students paid no attention to them
Toward evening they went and sat among the students.
This was the nature of Rabban Gamliel.
When said “Ask!” upon entering, it was evident that no rebuke was coming
When he did not say “Ask!” upon entering it was evident that a rebuke was coming.
He entered and found Rabbi Yochanan ben Nuri and Rabbi El’azar Chasma seating themselves among the students.
He said to them: “Yochanan ben Nuri and El’azar Chasma!
You have done wrong to the community by not seeking to assume rulership over them.
Yesterday you were under your own authority
From now on you are servants, subordinated to the community.”
In this version Rabban Gamliel genuinely rebukes them, as their failure to assume authority was genuine rather than symbolic, and occurred after they had already been appointed. The willingness to rule is the beginning of service.

Here is my best-for-now formulation of this semi-paradox. Public office, or rabbinic office, involves subordinating personal ends to those of the community, while at the same time taking responsibility for means and exerting every effort to make sure that the community properly identifies its own best ends.

One can err in both directions. One can, for example, mistake one’s own ends for those of the community - 'Torah c'est moi. One can also mistakenly believe that the legal meaning of Torah is determined entirely by the majority vote of its lay constituency, to which scholars must humbly bow, or even by the majority vote of a particular self-organizing lay constituency.

In the end there are no easy formulae for effective religious leadership. Each Torah scholar, and perhaps each Torah institution, must find their own balance between authority and servitude. Perhaps the key is to never stop taking each aspect with great seriousness.
How Rabbis Treat Rabbis Versus Other People

How rabbis treat rabbis is less important than how halacha treats people.

The happy resolution of the Chief Rabbinate’s treatment of Rabbi Avi Weiss must not obscure the immediate victims, namely the olim who came to Israel in good faith with a letter from their Orthodox rabbis; and the deeper scandal, which is that Jews in Orthodox synagogues and schools across the world can no longer be confident that the evidence of Jewishness they bring in good faith from home will be accepted in Israel.

Worse - do we have reason to be confident that the rabbinic bureaucracy will not apply such disqualifications retroactively? That people who made Aliyah years ago with letters from their rabbis will not have trouble when they come to marry? Regrettably, both the rabbanut and the RCA have in the past changed their halakhic positions without regard to these consequences.

And yet – none of these is the real issue. Hebrew Institute of Riverdale congregants could get letters other Orthodox rabbis; eventually the Chief Rabbinate and the RCA, and hopefully the IRF as well, will establish a mechanism that will prevent such unpleasant surprises; and sympathetic Israeli rabbis will issue Rabbinate-acceptable letters to affected past olim.

The real issue is that both the Israeli and the American Orthodox rabbinate have not come to terms with the reality that many American Jews live their lives, and had mothers who lived their lives, in practical isolation from Orthodoxy, and that it is unacceptable for halacha to leave thousands or millions of Jews unable to prove their true status. Fully endorsing Rabbi Weiss’s boldest dreams and actions would not change this.

Any evidentiary standard for Jewish identity will produce both false positives and false negatives, that is, nonJews who are accepted as Jews, and Jews whose Jewishness is not accepted. The rabbinate has gone all out to prevent false positives, but taken no responsibility for false negatives, and especially when those negatives leave people in both psychological and social limbo. People who are not sure whether they are Jewish or not Jewish cannot marry anyone halakhically. Halacha has always seen this outcome as intolerable cruelty and legitimated the use of extreme legal mechanisms to prevent it.

Nonetheless, the prevalence of false negatives is among the great disasters of the response to the Russian aliyah. But there we had the excuse of the totalitarian and anti-Semitic Soviet regime. What is our excuse in America?

One Orthodox response is to point out that all the false negatives can convert. This response fails on at least four levels:

a) For women, unnecessary conversion prevents them from being able to marry kohanim

b) Both men and women are legitimately unwilling to cast aspersions on the Jewishness of their mother or maternal relatives

c) All human beings reasonably resist going through rituals that require them to deny their own sense of self

d) In practice, many false negatives are unable to convert because they are unwilling or unable to meet contemporary Orthodox conversion standards.
Now some people argue that the problem is those conversion standards, and we should rely on opinions and interpretations that require minimal if any observance and sincerity. While I believe it is the Orthodox rabbinate’s general responsibility to validate past conversions undertaken in good faith under Orthodox rabbinic auspices, I am not certain that lowering standards is the best path forward in America. But I am certain that it is wrong for us to simultaneously maintain conversion standards that exclude the non-Orthodox from conversion, and Jewish identity verification protocols that will inevitably lead us to deny the halakhically legitimate Jewish identities of many non-Orthodox Jews.

The deepest question is whether Jews who reject the authority of Orthodox halacha are nonetheless part of its constituency. In Israel this question is a fundamental divide between Religious Zionists, who see all Jewish citizens of the state as their constituency, and Charedim. Which side controls the rabbinic bureaucracy is therefore critical. In America the ideological lines are not quite as firm, and perhaps there is still time to craft a consensus solution that will be accepted by all sides, and by all sides in Israel as well.
Rambam asks us to imagine ourselves and our world at equipoise, virtues and vices cancelling out perfectly, so that our next action decides how G-d will judge. But is it true justice to weigh deeds against one another, rather than responding to each deed independently? This is a metaphysical question, but I want to approach it by putting two very concrete halakhic analyses in dialogue with each other:

Professor Jeffrey Rosen’s take on lashon hora, and Rabbi Shaya Karlinsky’s approach to dealing with abuse allegations.

The obvious question regarding lashon hora is: Why should it be forbidden? Why shouldn’t we see maximum transparency as a good, and celebrate when a false image is shattered? Professor Rosen’s answer is that complete transparency is never achieved. We are continually making educated guesses and filling in the blanks of our knowledge about others in order to complete our view of them. In this process, human nature tends to assign negative information disproportionate weight, and therefore a word of lashon hora can generate untold numbers of unjustified negative guesses. Lashon hora is therefore deceptive in result—it makes us think of people as worse than they are—even when true.

Rabbi Karlinsky notes, however, that abuse allegations against popular rabbis and teachers often generate the opposite reaction. People rush to serve as character witnesses for the accused and argue that their many acts of kindness and compassion make the abuse allegations implausible. Rabbi Karlinsky’s response builds off a Kli Yakar. Kli Yakar understands Devarim 25:13-16 as condemning both the honest and dishonest weights of a shopkeeper who maintains two sets, on the ground that the honest weights—and all the transactions for which they are utilized—are essentially covers for the fraud. When accused by a victim, the shopkeeper will produce the honest weights and satisfied customers and use them to attack the credibility of the fraud accusation. So too, Rabbi Karlinsky argues, the abuser’s acts of kindness and compassion are a core part of their abuse.

On the surface, Rabbi Karlinsky and Professor Rosen are in serious tension. However, they dovetail in the following way: Our tendency to overplay the sins of others makes it hard for us to believe that someone who has sinned seriously is also capable of great good. Where the good is incontrovertible, we may choose to disbelieve the evil, since we cannot find a coherent narrative that explains it.

Rabbi Karlinsky’s solution to this problem is dramatic. He encourages us to disregard apparent good done by abusers, seeing it as instrumental to the evil, and so the evil becomes the only aspect of character left, and cannot be ignored.

I prefer a slightly different framing of the problem. It may not be that people disbelieve the accusations, but rather that they are hesitant to ruin a life for one misdeed when they know of much good the accused has done. Rabbi Karlinsky’s solution theoretically works for this version of the problem as well. But I’m not sure it works in practice. Here’s why:

If the fundamental issue is whether the allegations are accurate, it is directly useful to explain how the same person could have committed both great and foul deeds. But if the fundamental issue is justice, Rabbi Karlinsky’s theory has a more uphill climb. It requires us to believe both that the accused committed evil deeds, and that their good deeds are essentially meaningless.
Divrei Torah during this period of repentance should meet two criteria: cause self-reflection and be concrete. So let me put this question in a framework that functions as a soul-mirror for us, challenging us to make real decisions differently.

Are there people who do good primarily to enable them to do or get away with evil? Is this an underlying motivation for other people? I think the answer to both questions is yes, which is an introduction to more serious questions.

Base motivations can often be bent to positive aims, and one can imagine a person successfully doing good their whole lives by convincing their evil inclination that, on some undefined day, their reputation will be so unimpeachable that they can act as they please without fear of consequences. So the real questions are: How much good is done by being alert for such motivations? How much harm is done by suspicion?

Answering these questions properly likely requires developing a comprehensive taxonomy of people who do both significant good and significant evil. Here is a tentative and very incomplete attempt toward that end:

Conflicted: They have tasted the fruit of the Tree of Knowledge of Good and Evil and found it delectable either way. There is no ultimate way to know which will predominate their life. In the terms of mussar, we might say that they constantly revisit the same “bechirah (choice) points.”

Consistent: They are fundamentally driven by a single basic passion, regardless of whether it leads to good and evil. Examples of passion include power and eros.

Goal-oriented: They believe they have an end that justifies all means, and their actions ultimately aim at that end. In an extreme version, their end not only justifies any means, but fundamentally makes all other values irrelevant. They may believe their attainment of power to be an essential means, and can end up confusing that means with their ultimate end.

Manipulative: They have no values other than their own satisfaction, but are capable of making short-term sacrifices and long-term strategies. They will go to lengths to cement relationships that give them what they want. But they will badly use people after a relationship is established, using gratitude, insecurity, and hero worship to maintain control.

These are ideal types, and very few people, if any, fit any of these descriptions precisely. I suspect, though, that each of us can recognize a little of ourselves in at least one.

It is very important to socially reward the conflicted and the consistent for the good they do. But Rabbi Karlinsky argues that we as a community and as individuals must recognize the manipulators for who they are. Gratitude and admiration are natural and generally wonderfully positive human emotions, but they can be perverted. The question is how we can tell which kind of person we are dealing with.

Perhaps the scariest experience of my life was attending a speech by the late Rabbi Meir Kahane. What terrified me was the way he insulted his followers—he seemed depressed that his supporters were generally not intellectually gifted—and nonetheless kept perfect control over them. I submit that the surest sign of a manipulator is the presence of acolytes who cannot tear themselves away no matter how badly they are betrayed or humiliated. When apologists for the accused include people whose trust has been betrayed, look out.
Now it seems to me from a legal theory perspective that in general we rule that interpersonal mitzvot do not require intent to be legally significant. Money given to the poor is charity even if given for the sake of personal aggrandizement, even if it is not ideal charity. So from a theological perspective, it may be that G-d rewards manipulators for the interpersonal mitzvot they do.

From a human perspective, we cannot allow the good they do to weaken our resolve to stop their ongoing manipulation, and, as Rabbi Karlinsky argues, we cannot think in terms of balancing their good and evil. In particular, we must take a very jaundiced view of any apparent teshuvah, demanding it be sustained for many years, without relapse, before even thinking of considering them changed people.

It is also very important that we identify the goal-driven, not because their good deeds are done in service of evil, but because their good deeds are not predictive of how they will behave when faced by similar choices in the future. Most specifically, they are likely to behave differently when trusted with power than when they are powerless.

In the foremath of Yom Kippur, it is and should be emotionally difficult to set high standards for accepting the repentance of others even as we ask G-d to set abysmally low standards for our own. It is similarly hard to judge others by their worst aspects as we ask G-d to judge us by our best. We are mostly, I hope, conflicted or consistent sinners, striving to find ways to empower our best selves. We would rather believe that all others are doing the same, and we pray for G-d to take that as His premise. But that may be a Divine luxury in which we cannot always indulge.
Sh’mot 32:26-28

Mosheh stood in the gate of the camp.  
He said: “Whoever is for Hashem – to me!”  
All the Sons of Levi gathered to him.  
He said to them:  
“Thus said (koh amar) Hashem G-d of Israel:  
Each man – place his sword on his hip  
Pass through and back  
from gate to gate in the camp  
and kill  
each man his brother  
and each man his peer  
and each man his relative.  
The Sons of Levi acted  
according to Mosheh’s word.  
There fell from the nation that day  
around three thousand men.

“The wages of sin are sin”; “sin causes sin”; “the coverup is often worse than the crime”.  Why do human beings so often double down on their misdeeds rather than cutting their spiritual losses?

This pattern begins with the very first sin – Adam and Eve hide from G-d, and then deflect responsibility.

I raise this question now in the context of Mosheh Rabbeinu’s post-Golden Calf rallying cry in this week’s parshah: “Whoever is for Hashem – to me!”  What would have happened had everyone rallied to him?
Are the various short and longterm punishments meted out for the Calf actually the result not of the sin, but of the failure to recover from it? And if the Calf was, as Nachmanides plausibly argues, merely a symbolic chariot for Hashem the invisible Rider, and as seems clear, a replacement for Mosheh when he was thought dead, why didn’t everyone rally to Moshe on his return?

My suggestion is that our every action becomes part of our self-image, so that we become invested in our sins. Had Mosheh been present all the way through, no one would have thought of building a Calf as acceptable. But having already done it, they could not disown it without disowning part of themselves – and so very few rallied to Mosheh.

At the same time, it seems that only 3,000 of them failed to completely back away from the Calf and dared to confront those who rallied to Mosheh.

The policy question this raises is: what would have happened had Mosheh not initiated the confrontation? Could things have returned to the way they were before, as if nothing had happened?

In one of my tenth grade classes this past week, we’ve discussed the difference between “local” and “reverberating” choices. Local choices are those that we make each time that will not change the choices we make next time; reverberating choices are those that make us different people, that affect the choices we will make in the future. The question in those terms is: Could the Golden Calf have been a local choice had Mosheh not made it reverberate by forcing a confrontation?

What makes this question more important is that the question of whether Mosheh made the decision to initiate the confrontation on his own, rather than by Divine command. The verse says that he said “So said Hashem”, but where did He say it? Rabbeinu Bechayay said he said it offscreen: Rashi, following Mekhila and Targum Yonatan, suggests that it refers to Shemot 22:19; but by far the most interesting suggestion is made by the midrash Eliyahu Rabba:

"I call Heaven and Earth to testify for me that The Holy Blessed One never told Mosheh this, to stand in the gate of the camp and say “Whoever is for Hashem – to me!” and say “Thus said Hashem G-d of Israel"
but Mosheh the righteous made an a fortiori argument on his own –
He said:
If I say to Israel:
“kill each man his brother and each man his peer and each man his relative”;
then Israel will say:
Did you not teach us thus, that a Sanhedrin that takes a life once in seven years is called destructive?!
For what reason are you killing 3,000 in a single day?!
Therefore he made it depend on the honor of Above.
as Scripture writes: “Thus said G-d”
What comes afterward?
“The Sons of Levi acted according to Mosheh’s word.
For Eliyahu Rabba, Moshe felt that the confrontation was necessary to forestall the anger of G-d.
However, it seems that the principles he had taught his people – in the name of that same God – would be seen as incompatible with the actions he thought were necessary. So he shockingly pretends to be quoting G-d when actually he was seeking to forestall Him. In halakhic terms, he claimed that he had a hora’at sha’ah, an explicit suspension of ordinary Torah law. But this was not true. Perhaps this provides a different explanation of why only the Levites rallied to him.
Moreover – Sifrei Matot 153 states that Moshe’s was unique among prophets in that he used the language זה הדבר, this is the word of Hashem, as well as כה אמר, Thus spoke Hashem. Careful study shows that Mosheh uses זה הדבר when speaking to the Jews, and כה אמר when speaking to Pharaoh. This is the exception, and perhaps that set off alarm bells and even suspicions among the Jews, who recognized that somehow Mosheh was not prophesying in the manner to which they were accustomed.
Now Eliyahu Rabba endorses Mosheh’s decision via a fascinating parable:
משלו משלו – למלך מדברים
מלך זכר מעשה שסחרא לפני בני בני
תפסו ביד עצים בחצרו, ואמר לו
איך לכך אותו לך לכתב
מה עשה או הצב
הוא צין את בניו
לבן בבן
ולפניו
לימים
כטוב לב המלך عليه,
והיו בניו ייבא בידיו.
כשהוא נשקת את עיניו את ראיה את בני
והוהו עלבсть לפני
כשעשה את בני
והיו בני המלך
כשהוא נשקת את עיניו את ראה את בני
והיה מייסח יאן כנים בני
אין לי ים
כשהוא נשקת את בני
ומלך
כשהוא נשקת את בני
והיה מייסח יאן כנים בני
אין לי ים
כשהוא נשקת את בני
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והיה מייסח יאן כנים בני
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ומלך
כשהוא נשקת את בני
והיה מייסח יאן כנים בני
אין לי ים
כשהוא נשקת את בני
ומלך
כשהוא נשקת א
והיה מייסח יאן כנים
אין לי ים
כשהוא נשקת את
ומלך
כשהוא נשקת את
והיה מייסח יאן
אין לי ים
כשהוא נשקת את
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אין לי ים
כשהוא נשקת את
ומלך
כשהוא נשקת את
והיה מייסח
אין לי ים
כשהוא
A parable – to what is this similar?
To a flesh and blood king whose eldest son behaved rottenly before him.
He took him in his hand, gave him to the palace chamberlain, and ordered:
“Go out and kill this one and give him to the beasts and dogs!”
What did that servant do?
He took him out from before him and hid him in his house, then ran back and stood before the king.
After 30 days, when the king grew cheerful, and all his servants and household were dining before him –
There was pain and agony in his heart – and no one recognized it but the palace chamberlain.
Immediately he ran and brought (the condemned son) and stood him in his (accustomed) place.
(The king) had a crown stored before him – he took it in his hand and placed it on the head of his servant the palace chamberlain.

The fundamental analogy seems to be that Mosheh, like the chamberlain, is ultimately rewarded for disobeying orders. But while it is true that G-d initially threatens to kill all the Jews, He as-if changes his mind – וינחם - before Mosheh actually descends from Sinai (unless one takes verse 14 as out-of-order, as describing in advance how the narrative will end.)

Note also that the chamberlain’s reward is likely the crown that had previously belonged to the rescued prince. But reading the Torah, we generally assume that Hashem takes back both of His threats in verse 10 – that He neither destroys the people nor replaces them with Mosheh. In this midrash, I suspect that Mosheh’s face is eventually illuminated by light that originally would have been shared by all the people.

Mosheh earns the condemned prince’s crown even as he saves him; his disobedience covers that of the people. Sometimes one sin makes another necessary.

This is plainly a dangerous message, and one that – even believing that it is the clear meaning of this midrash – I am hesitant to embrace.

But within the framework of that midrash – I suggest that the servant is heroic because he has so internalized the values of the king that he can act in direct response to values rather than rules, and because he is willing to risk his own life solely for his master’s happiness.

The problem here, as in Iyov and the Akeidah, is that once we know the story, we can never be the selfless servant – in the back of our minds will always be the hope that, if we get it right, G-d will give us a crown. And I wonder how the king reacts – however happy he is to see his son – if he suspects that the servant is gaming the system, and chooses when to obey and when not with self-interest as part of the equation.
Purim, Anti-anti-semitism, and Modern Orthodoxy (moderntoraleadership.wordpress.com March 13, 2014)

Megillat Esther opens with a massive all-male drinking party at King Achashverosh’s palace, then cuts to an all-female drinking party at the queen’s palace. Disaster strikes when the king demands that Queen Vashti switch parties* while “wearing the crown of royalty, so as to show the nations and the officers her beauty”. The midrashic suggestion that she was ordered to come wearing only the crown captures the atmosphere of the verse perfectly, although the specific facts necessary to create that atmosphere may well be culturally dependent.

Vashti refuses, and the king (at least) banishes her and removes her queenship. It’s not clear whether we are supposed to sympathize with her (in which case her role in the story is to help establish Achashverosh’s character and explain Esther’s handling of him), ignore her, or celebrate her downfall (thus the midrashim which suggest that Achashverosh was essentially imitating her humiliation of Jewish women).

A key question is whether Achashverosh’s demand of Vashti is a breach of Persian morals or not. If it is, it generates a whole social breakdown, as all the virgins in Persia are now put on display for the king, and all the women are put on notice that they may not refuse any of their husbands’ requests. Ironically, it is precisely this breakdown that enables the reversal of fortune at the megillah’s end – Esther invites the king and Haman to drinking parties, and Haman’s fate is sealed when the king reasonably suspects that such drinking parties lead to debauchery.

Now how do the Jews relate to all this? The midrash reasonably assumes that they participate in the party (the midrash also notes that no reason is given for the party, and suggests that it was about the failure of the promised Jewish redemption to arrive - thus the use כלים מכלים שונים in 1:7, which the midrash identifies with the Temple vessels), and there is no hint in the text that they object to the chauvinist decree or the taking of the virgins. To all accounts they participate כדת, in accordance with the law – a term which appears in 1:8 (describing the drinking), in 1:15 (regarding Vashti’s fate), and in 2:8 and 2:12 (regarding the collection and preparation of the virgins, described as “in accordance with the דת of women”).

But Haman does not see it that way. The Jews, he declares in 3:8, have different דת than any other nation - and is likely a basis for identifying those with the Temple vessels), and they do not follow the דת of the king. Is Haman correct? Or is this an anti-Semitic projection? Regardless, in 3:15 the king’s דת becomes that the Jews are to be exterminated.

The truth is that one Jew – Mordekhai – refuses to obey one order2 of the king – bowing down to Haman. I suggest that Mordekhai sees Haman as ambitious and a threat to the king, whose life

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1 I had the pleasure of listening as Rabbi David Silber taught Megillat Esther to one of my tenth grade classes at Gann Academy last year, and thought that several of his ideas deserved to be passed on. So this dvar Torah is admittedly derivative, although of course I take full responsibility for any errors. I have asterisked the points I recall specifically from Rabbi Silber.

2 Which is, interestingly, never called a דת, but rather a צויאי, but rather a צויאי.
Mordechai has already saved. ונהפוך הוא – it is Mordekhai’s loyalty that exposes him to the charge of being a Vashti. At the same time, we learn that Haman may be somewhat hen-pecked, despite the king’s banishment of Vashti.

In 4:16, the plot turns when Esther agrees to approach Achashverosh, after protesting that all the people of all the nations know better. In other words, she makes Haman’s charge true – her דת is not the king’s, and different from those of all other nations. In 8:13 the king overwrites his דת of extermination, and in 9:13 we learn that the new Jewish דת involves hanging the ten sons of Haman.

Is that all there is to Persian Judaism – does (see 9:1) change only who’s on top and who on bottom, but not the nature of society?

As of 8:17, that seems to be the case – the Jewish reaction to victory is – a drinking party!* In which they are apparently joined by many nonJews, who are now afraid of them. In other words, they have become Achashverosh.

But in 9:19, a new feature (mitzvah – דת?) is added to the day – now in addition to the drinking, there must also be mishloach manot, reflecting some recognition of community, and in 9:22, a radically new מתנות לאביונים, gifts to the poor.*

Until 9:22, the Megillah is a court farce, and one might be forgiven for thinking that the entire plot relates only to the wealthy elite –perhaps the extermination plan seemed total to them because they simply didn’t consider the poor. But over time, the Jews – perhaps prodded by Mordekhai and Esther – recognize that this episode should cause them to question the whole moral structure of Persian society, and so their דת in fact become different than those of other nations.* (If I were a dyed in the wool liberal I would connect this to Mordekhai raising taxes as well, but I’m not.)

Most specifically, the Jews become the antithesis of Amalek, which attacks specifically the weak.* We reject the evolutionary imperative and preserve those who cannot protect themselves.

The challenge of this reading is that it makes anti-Semitism the spur of Jewish morality. We are blessed to live in a society in which caring for the less fortunate or less able is an almost universally agreed upon דת, although we disagree strongly about how best to accomplish that. But there are other areas in which there is profound pressure to fall into step with the immoral moral expectations – the דתות – of the society that surrounds us.

This is especially true of Modern Orthodoxy. I confess that the first chapter of the Megillah always puts me in mind of a group of male Orthodox college students I once knew who would drink themselves into oblivion each Friday night, but tried hard to send the female students home (to their own parties?) before they completely lost control over their behavior.

Nonetheless, I don’t think that self-ghettoization is effective, and it has its own corruptions. The yetzer hora (evil inclination) finds its way through cracks in the walls, and is all the more effective when unrecognized.

But openness to influence must be balanced with a firm sense of identity and moral self-confidence – we must be willing to be out of step, even if that causes us to pay a heavy social price – even if we are no longer invited to the parties, or lose influence in political parties. “Everyone thinks that” is no more an excuse for us than it was for Esther.
**Seeing Voices (Parashat Yitro)**

For those who treat Led Zeppelin as sacred scripture, the following lines from “Stairway to Heaven” have presumably been the subject of great inquiry:

In my thoughts I have seen
rings of smoke through the trees
and the voices of those who stand looking
How can one see voices, even in one’s thoughts?

Ibn Ezra notes that sensation is fundamentally a cognitive phenomenon, and essentially the wires from the various sense organs can be crossed. Synaesthesia can have many causes, including heredity, and is often prized by those who experience it. It is also a common side effect of hallucinogens, which may well exclaim the presence of rings of smoke in the paragraph.

Now the title of “Stairway to Heaven” is obviously a reference to Yaakov’s dream, and it seems reasonable therefore to look for Biblical allusions in the lyrics as well. Here the line “and the voices of those who stand looking” seems to me a clear play on Shemot 20:14

 Goku hamburg all kotolt.
Aat hilek.
Aat kool hifper.
Aat her r ushn.
Aar hame.
Weten.
Yumza mראק.

All the nation were looking at the voices
and the lightning bolts
and the voice of the shofar
and the mountain smoking;
The nation looked
and they trembled
and they stood at a distance

Many, many beautiful interpretations - pace Ibn Ezra - have been offered for the phenomenon, experience, and/or metaphor here of visible voices. Targum Yonatan captures some of the opportunities as follows:

 وكلעם רцию את הקולות
ואת הלפידים
ואת קול החופר
ואת הר העשן
וית עצב
וית ענים
וית מרחק.

And all the nation saw the voices
how they were altering in the hearing of each individual
and how they were emerging from the flames
and how the voice of the shofar was resurrecting the dead
and the mountain smoking
For Targum Yonatan the voices are made visible so that each Jew can hear the voice particular to him or herself, and at the same time see that their subjective experience does not capture the objective reality of Torah. Perhaps the collective transgenerational experience of Klal Yisroel can, and that is why it was necessary to resurrect the dead at Sinai. (Perhaps the song really means “the voices experienced by those who stand looking”; what would it have been like to stand at Sinai, see everyone else’s experience, and yet hear no Voice of one’s own?)

What becomes clear by contrast, however, is that Targum Yonatan leaves the smoke uninterpreted. The standard midrashic interpretation reads the smoke as an allusion to the Covenant between the Pieces in Genesis 15:17, and in both places as a stand-in for Gehennom (from which one can be saved by the fire of Torah). I find this deeply unsatisfying; fire causes smoke, rather than saving from it, albeit an image of Torah as gasmask might not be effectively inspirational. And why must a negative image, even threat, be part of Ultimate Revelation?

Meshekh Chokhmah offers the best alternative I have thus far found, although even he cannot avoid a negative association. I suspect (although he says none of this explicitly) that he began with the conviction that the fire of the Burning Bush did not smoke; smoke is a side effect of fuel consumption. He then moved to the claim in Yoma that manna is angel food = לחם אבירים, and therefore produces no bodily waste to eliminate. Combining these tropes yields the realization that smoke is the product of an imperfectly efficient flame, which is neither self-sustaining nor non-polluting. Why would the flame of Sinai be imperfect?

Here is his daring answer in part:

וכל העם ראים את הקולות וו, ואת הור עשו וייו טעם וו ומטומנו.

הביאו, אחר דבל המסמט כותב "ויסעו יהודים" בלשון רבים - שנשו במכה, עד ששהו שם וו הנומיה והכלה.

אתה שלח לי במכה.

אמר:ieri התשובה אתיה וбин.

אמרוכ, כי יא לי יה ובמכה,麂 את היה בה ויו קמא אתח אתביר, SHALL NGOYE דער לא דאם מיטה.

כפוושי והשמחה במלכורד בחרז.

ועל זה אמרה במכהית: (יחו פורה יי, כא שמעדו בסיינא מרעיליה (תהלימ הנה, ו) "ויפתוהו בפיהם ולבם לא כוכ עמו, שחייה הלב לא מטニア מקנה.

וזנה אמרוכ יחי משה שקול כל Elli שיאריל, צבר קוי יא שיאל שקוליה כמא (מכילה ושתלח טו, א). יא כים, אס קוי, יהי בלא שומ קוהぬ אשר פירד לכבו זה מן, רק כיו הורע כל שוקים בלא זופות אתן, הלא יהי כום אשי, יהי ראויים כלכל כלה התורה כמות. איל קוי שיאל יי שוקים בלכב חמוד, איי כים אתור ליו הוהי.

לשמית כולם לקבל התורה. יהי שיאו שומש בדחה זו עלא אמת האמוניה בלכב, יהי והראות שפש.

The explanation is that in all their travels Scripture writes “And they travelled and they camped”, because they travelled in controversy, until they came to Sinai and became one bloc with no controversy.

G-d said: Behold the time that I will give Torah to My sons!

However, even though they had no controversy, there was yet among them a spark of interpersonal jealousy, as they had not yet reached the level of loving their friend as themselves and celebrating the greater achievement of a friend.
About this, Mekhila (the halakhic midrash on Exodus) writes that “Even while they stood at Sinai
Scripture (Psalms 68:36) says of them “They seduced Him with their lips, but their hearts were not
prepared to be with Him”, because their hearts were not purified of jealousy.

Now the Rabbis said that Mosheh was equivalent to all Israel, but likewise all Israel are equal to Mosheh,
and if so, had their been no jealousy or division of hearts among them, rather all the congregation bound
together as one heart and spirit, they would all have been one person, and they would have been fit to
receive the whole Torah, just like Mosheh. But since they were not bound together as one heart, each
individual did not reach the level of perfection necessary for receiving the Torah, so that what they saw
and heard at the Statement was only to verify faith in their hearts, and it was like a temporary
suspension of the Law . . .

Among the beauties of Meshekh Chokmah’s reading is that he notes the irony of having smoke obscure
the astounding visual experience of voices. Perhaps he believes that in a perfect world each of us, like
Mosheh Rabbeinu, would have heard all voices simultaneously – zakhor and shamor in one Statement –
and Hashem resorted to synesthesia only because of our limitations. It is quite astonishing to claim that
the Law was given in the equivalent of a (justified and necessary) breach of the Law!

Meshekh Chokhmah of course also beautifully captures the Rabbinic idea that all future interpretations
of Torah were already revealed to Mosheh. But this Rabbinic notion has an underappreciated
consequence – it means that Mosheh Rabbeinu, uniquely among all Jews, was never able to experience
himself as contributing creatively to Torah. Perhaps G-d gave us the Torah just before we reached
perfect concord to ensure that we would still have the capacity to be partners in the creation of Torah
just as we are in the creation of the physical world, and perhaps this is why the Sages often praise the
mutual jealousy of scholars when it is harnessed to productive Torah ends.
The God of Rivka

To make the prayer service more inclusive, egalitarian communities often attempt to add women back into the liturgy. One common example is amending the first blessing of Amidah to add the italicized words: “the God of our forefathers and foremothers, God of Avraham, God of Yitzchak and God of Yaakov, God of Sarah, God of Rivka, God of Rachel and God of Leah.”

I have always been uncomfortable with this addition – not primarily because of a conservative hesitance to change the wording of the prayers, but more because I don’t think I know enough about the foremothers’ relationship with God to know what exactly I’m saying.

I can know, in some sense, what it meant to Avraham for Hashem to be his God. I can, in an even more limited sense, know what it meant for Hashem to be the God of Avraham. But I have much less of an idea of what, if anything, Hashem meant to the foremothers, since the Torah records almost none of their religious experiences. Although God frequently speaks about the foremothers and they frequently speak about Him, Genesis 25:22-23 contains possibly[1] the only record of direct interaction between them:

The children struggled together within her, and she said: “If it is thus, why is this happening to me?”
So she went to inquire of God.
And God said to her: “Two nations are in your womb, and two peoples from within you shall be divided; the one shall be stronger than the other, the older shall serve the younger.”

It is noteworthy, however, that Midrash Rabbah 63:6 on this verse (adopted by Rashi) places a (male) intermediary between Rivka and God:

“So she went to inquire of God” - Were there synagogues and houses of study in those days?! Didn’t she just go to the house of study of Shem and Ever?! Rather, this comes to teach us that one who welcomes a sage, it is as if he has welcomed the Divine Presence.

The midrash’s interpretation seems solidly based on the use of the phrase “going to inquire of God,” which is used frequently in the Tanakh to describe the process of going to a prophet to consult with God through Him (see, for example, מלכים ב כב). On the other hand, those sources seem usually to explicitly mention the prophet involved. Furthermore, the text has never mentioned a character outside of the Abrahamic family with a relationship with God (at least not by the four-letter Name used in our verse), a problem solved by the midrash by drawing on the recurring story of a house of learning set up by Shem and Ever, Noah’s son and grandson, where the forefathers periodically study.

The midrash leaves open the question of why Rivka sought out Shem rather than asking Yitzchak or Avraham. Various commentators suggest that they were unable to answer, or that Rivka or Hashem
chose not to use them as intermediaries so as not to distress them with the news of Esav’s anticipated wickedness.

Ramban takes a different approach, translating the verse not as “to inquire of God” but as prayer (perhaps best translated “to seek out God” and as used in Tehillim 34:5 and elsewhere). However, the Ramban’s claim that this is the only meaning of the term drisha he has encountered seems to ignore many verses that would support the midrash’s interpretation. His reading also ignores that the surrounding verses have used a variety of other terms to describe prayer (most recently ויעתר and does not explain the term “went”, which is not used in any of the parallel sources cited.

I would suggest that these verses can be better understood by realizing how unusual Rivka’s actions are in the context of the Book of Genesis: to the best of my knowledge, we have never yet seen a character initiate a dialogue with God.[2] Characters may pray for and be answered with Divine action; they may mention Him in blessings or call in His Name; they will respond to Him when He chooses to speak to them, but they never turn to Him and expect Him to answer.

In light of this, I would suggest a more general interpretation of the phrase לדרוש את ה which would include both the Midrash and Ramban’s source texts: drisha is used to imply actively seeking out God – being the one to chose to initiate a dialogue, whether it be by direct prayer or via an intermediary. In our context, I suggest the phrase serves not to insert an intermediary, but to highlight the significance of Rivka’s choice; adding the term “to go” emphasizes the pro-active nature of her actions, as well as the sense of embarking on a quest.

Rivka’s relationship is thus marked as fundamentally different from that of the forefathers. God never chose to initiate a relationship with her; by marrying Yitzchak, she married into his faith and became a part of the story of his religious evolution. Rivka could have remained an ancillary character whose faith never becomes relevant. But instead she became the first person not to wait for God to chose her, but rather to choose Him.[3]

Tobie Harris (SBM ’05) lives in Jerusalem and works as an attorney for the Israeli Antitrust Authority.

[2] Credit to my friend Debbie Zimmerman for pointing this out to me about Avraham. Some sources I have seen read Genesis 18:22-23 as Avraham initiating the argument over destroying Sodom, but I think that the preceding verses make it clear that the contact has been initiated by God, even if Avraham choses to extend it.
[3] It is interesting to contrast this proactive role with Yitzchak’s general passivity – the contrast of the first person to initiate dialogue with God and the first person born into a relationship with God.
Rabbi Ethan Tucker argues that the Rabbis excluded women from the obligation to lay tefillin because tefillin represent full citizenship and - given their immersion in Roman culture - the Rabbis could not imagine women as full citizens.

This argument is frankly puzzling. The Talmud asserts in several places (Shabbat 62, Eiruvin 95-96) that Rabbi Meir held that women are obligated to lay tefillin. On what basis does Rabbi Tucker claim that Rabbi Meir’s colleagues found his position unimaginable? Even if the reconstruction of Rabbi Meir’s position is not historically accurate, the fact would remain that the Talmud found it imaginable. So why should we read the subsequent tradition, which rules that women are not obligated, as resulting from a lack of imagination?

Note that Rabbi Tucker’s argument is derived wholly from the rhetoric of a Mekhilta whose rhetoric finds no echo in the Talmud’s various discussions of gender-and-tefillin. It is true that the Talmud in one place (but not in others) assumes that women’s exemption from Tefillin is derivative of their exemption from at least one mode of Torah study; but the derashah deriving that exemption bears no more relationship to citizenship than the derashah deriving women’s exemption from other time-bound commandments from tefillin. Indeed, there is no particular reason to assume that citizenship, as defined by Roman political theory, was a relevant category for the Rabbis.

Furthermore, Rabbi Tucker’s read of the Mekhilta focuses on its last line:

“From here they said:
One who lays tefillin is as if he reads Torah, and one who reads Torah is exempt from tefillin.”

From here Rabbi Tucker says:

“the final line of the Mekhilta passage above emphasizes that learning Torah and wearing tefillin are essentially the same thing; indeed, one who is truly learning is exempt from wearing tefillin while doing so!”

But if tefillin symbolize membership in the Torah-studying elite, why should one reading Torah not wear them?

A possible answer is that wrapping tefillin in this stream of interpretation reflects inadequacy rather than mastery – tefillin are substitutes for Torah study, not embodiments of it. This idea explains why the Mekhilta says that studying Torah exempts one from tefillin, but not vice versa, and is stated explicitly in Masekhet Tefillin Chapter 1:
So Rabbi Eliezer would say:
Great is the mitzvah of tefillin
as this is what The Holy Blessed One said to Israel:
“My children, put tefillin on your heads and arms,
and I will treat this as if you recited Torah day and night,
as Scripture says
“And it will be for you a sign on your hand and a mnemonic between your eyes
so that the Torah of Hashem will be in your mouth.”

Later commentators even argue that the intent of the Mekhilta is that tefillin and Torah study are mutually exclusive – one is halakhically required to be consciously aware of tefillin whenever wearing them, and someone studying Torah with proper intensity would inevitably fail this requirement.
Wearing tefillin would therefore be a statement that one could not fulfill the true responsibility of Talmud Torah. Women would still be exempt because, not having the same obligation, they have no need for the black badge of as-if. But it is hard to see that badge as a critical marker of Roman-style citizenship.

In any case, practical halakhah and popular hashkafah do not follow the Mekhilta, as Rabbi Tucker acknowledges in his essay’s first paragraph. The observant community associates tefillin primarily with prayer rather than with Torah, and reasonably sees this association as continuous with the rest of the Talmudic record. So why should we treat the Mekhilta as the dominant voice of Jewish tradition, especially if doing so leads us to categorize that tradition as reflective of Roman chauvinism rather than Torah?

Rabbi Tucker’s choice to ignore these alternative understandings of women’s exemption fails to accord with the Talmud’s core value of intellectual generosity. The Talmud programmatically challenges its own assumptions by constructing hava aminas, by seeking out the best arguments for the positions it wants to reject and sees as obviously wrong – and arguments that begin as generously imagined hava amina often go on to win the day in some other sugya or later commentator. Failure to imagine the hava amina - to treat one’s own position as unproblematically peshitta (so obvious that it goes without saying) – results in a vicious cycle: texts are read exclusively through the lens of ideology, and then cited as evidence for that same ideology.

Note also that wrapping tefillin has acquired its own liturgy over time, and one core aspect of that liturgy involves men reenacting the betrothal of the Jewish people to G-d – in other words, playing the female role. Degendering tefillin is not simply a matter of overcoming qualms about crossdressing. It cannot be accomplished simply by painting the backs of the straps “various colors”, or by reducing male, prayer-based practice to “a strange, arcane ritual devoid of much meaning that is at best the basis for a
nostalgic male bonding ritual at a Men’s Club event.” Here Rabbi Tucker seems oddly dismissive of the lived experience of the halakhic community.

Halakhic practice can develop dramatically when someone with absolute faith that Halakhah expresses the binding Will of G-d for all Jews concludes that a conventional understanding of the law is incorrect because it is morally intolerable, and G-d could not Will the morally intolerable. By contrast, moral critiques of Halakhah perceived as coming from external ideology freeze the law; they generate a defensive reaction among those who love and identify with the tradition, along with a suspicion that halakhic conclusions stemming from that critique represent the will of the posek (halakhic decisor) subordinating that of G-d, rather than the other way around.

Therefore, it is particularly the most progressive and aspirationally revolutionary of halakhic thinkers who must try hardest to ensure that their critiques of existing practice are and are perceived as organically grounded in the tradition rather than transplanted. Otherwise their every argument damages the causes they believe in.

The Shiltei Gibborim (Rosh HaShannah 9b) cites the 13th-14th century Italian Talmudist Isaiah de Trani the Younger:

וכבר בארתי בקובוטוס הרואית
שאני אתני אשפרת על ב ל תוסך
בתתא של נצון עליה
ואunce, (כן) התשנא אסורהות תלקוע בים טוב של ראש נשנה
אפיל בלא ברכה
הנוזליא איני מחתות בדער הרר יז שיר ראש נשנה אשר שיאר יז טוב
שאומר לכל אדם תלקוע בשבחתות יז
וכו אמרי ל(Cs) ליתני תפלי
אפיל בלא ברכה

I have already explained in the Collection of Proofs that women do not violate the prohibition of adding to the Torah by performing commandments they were not commanded regarding . . . nonetheless women are forbidden to blow the shofar on Rosh haShannah, even without a blessing - since they are not commanded in the matter, Rosh haShannah is for them like any other holiday, and all people are forbidden from blowing the shofar on Shabbat and holidays . . . and so too it is forbidden for women to lay tefillin, even without a blessing, because it seems like the way of the outsiders, who transgress the words of the sages and do not wish to interpret Scripture as they do.

More than twenty years ago, as a student at Yeshiva University, I published a letter to the editor of Hamevaser making the technical halakhic case for permission and concluding that “a responsible posek who permitted women to wear tefillin, particularly in private on a case by case basis, could not be dismissed out of hand”. In practice, I have made clear that women wearing tefillin were welcome to daven in the Orthodox minyanim of Harvard Hillel and Gann Academy, and it seems to me good policy to be as generous as possible when assessing the motives of women who wish to wear tefillin.
But if a halakhic scholar were now to argue, waving Rabbi Tucker’s post as evidence, that the subjective motives of specific women are irrelevant because they are behaving like the “outsiders, who transgress the words of the sages and do not wish to interpret Scripture as they do” - meaning those who reject the Sages’ ruling that women are exempt – I would have a legitimately hard time persuading him or her otherwise.

Moreover - the halakhic community rightly takes the term chiyuv (obligation) as reflecting a metaphysical state of being, such that the claim that X is mechuyav necessarily carries the implication that everyone who is like X is also mechuyav – it is not a matter of personal choice or psychological recognition. Changing the prevalent halakhah to make women obligated to wear tefillin would transform many otherwise observant women into sinners. Not addressing this issue risks creating the perception that one views chiyuv as merely a social convention.

My own position remains that contemporary women who wish to wrap tefillin may do so. But there is value in specifically masculine and specifically feminine ritual, and religion must take into account and ideally channel the differences between male and female experiences rather than denying them. Those differences express themselves differently in different times, and it is the obligation of halakhic leadership to develop the practical expression of halakhah accordingly – and surely one positive such development is the explicit inclusion of women talmidot chakhamot among the halakhic leadership. In this regard there is a certain irony that at least the initial public conversation of this issue has been conducted without a woman’s scholarly voice participating on any side.
As rabbis of Modern Orthodox synagogues, we consistently advocate for greater women’s involvement in Jewish life. As a result, we are often invited to speak at local non-denominational Jewish schools about halacha (Jewish law) and the role of women. Often in these pluralistic environments, students discover what differentiates the various denominations and learn about the presence of a mechitza (a separation between men and women) in Orthodox synagogues. We arrive at these forums and hear questions like: Why is Orthodoxy anti-women? Why is your synagogue so backwards that it still treats men and women differently? Aren’t we well past the point where egalitarianism is the societal norm?

We understand what prompts these questions. We are sensitive to the political and social environment in which these students’ opinions are formed. Yet we sense something distorted about the assumptions these students bring to their thinking about faith, and sometimes we push back. We ask: Are you bothered by the common societal practice of a man going down on one knee to propose to a woman? Are you offended that women receive engagement rings and men do not? Do you think it speaks ill of society that there are numerous websites, magazines, TV shows and entire TV channels that cater to a specific gender?

None of those gender specific societal norms bother the students. So then why, we ask, does it bother them that men and women sit separately during prayer services? If we all agree that men and women have different interests and predilections, should a faith enriched by thousands of years of wisdom and experience not reflect that reality?

It’s a question we should all be asking. It’s a question that we as rabbis of prominent modern Orthodox synagogues also ask. We appreciate the necessity of finding space within our communities for women to take meaningful roles of religious leadership. We have led our communities to create leadership opportunities suited to well–educated and motivated women. While that will continue to be an important focus for our communities, it should not come at the cost of Orthodox Judaism’s commitment to fostering a gender-specific Judaism.

Gender is a crucial part of what we are. Western society is becoming more and more gender specific and modern science is encouraging that trend. While the 60’s and 70’s pushed an androgynous ideal, Western society, today, has pushed back and embraced masculinity and femininity. Girls’ clothing has never been more pink and boys’ has never been more blue.

Masculinity and femininity are a fact of life, not an inconvenience that might be easily disposed of. Orthodox Judaism believes in the importance of engaging reality, not a world we wish existed.

As Jews, we try to improve the world with an understanding that good intentions can have unintended harmful consequences. As rabbis, we approach a task with a humility that says few things long deviate from the mean, and few problems are solved without creating new problems.

The Talmud in Masechet Yoma (69b) tells a powerful story that illustrates this point. After the destruction of the first Temple, Ezra attempted to destroy lust, because it so often drives humankind to sin. He and his colleagues prayed and “lust” was delivered into their hands. They imprisoned it for three days; after that, they sought a newly laid egg (to cure a sick person of illness) and could not find one.
Sexual desire was necessary for the normal functioning of nature. In trying to improve the world, Ezra and his colleagues had failed to recognize the collateral damage they might cause. Changes need to be made with the greatest of care, as they often have unintended and undesirable consequences.

As much as we might like to live in a world without gender distinctions, we cannot. By underselling the reality of gender differences in Jewish practice, we would be doing ourselves a great disservice. If men and women are different and have different psychological, emotional and spiritual needs, why would we want a Judaism that ignores those needs?

Men are attracted to women and women to men, specifically because we are different. Hollywood and the music industry are well aware of this. Jewish leaders need to be as well. While attraction is one piece of the equation, our gender differences affect so many parts of our lives including how we deal with stress, how we communicate, and how we experience love.

Te mechitza is only one expression of how Judaism is gendered. Recent controversies regarding ordination of women, regarding young women donning tefillin, and regarding semi-egalitarian prayer groups – have often been conducted with an assumption that the arch of history will lead an enlightened Orthodoxy to egalitarianism while it is merely the recalcitrant parts of our community who remain fixated on a calcified legalism. We believe that traditional Judaism with its insistence upon gender roles has something to teach modernity. These lessons relate to a part of human nature that will not change; a community that ignores them will harm not only its cohesion but also the happiness of its members. While it is beyond the scope of this article to address each flash point between an egalitarian and a gendered vision of Orthodoxy, insightful explanations may be offered based upon a gendered vision of community for the roles men and women play in traditional services, in the rituals of halakha, and the clergy structure of our community.

At times, we wonder why a standard for egalitarian living would be demanded of religion, but not from the marketplace or from popular culture. Upon reflection, we believe it comes from the utopianism inherent in the spiritual quest. We want to live up to higher ideals and to divorce ourselves from our material and animal selves. Egalitarianism is in many ways a spiritual value. The quest is not ill intentioned, but like all utopian dreams, we will cause great harm if we do not temper our idealism with an appreciation for our full humanity.

Orthodox Judaism believes strongly in the eternal and divine wisdom of the Torah. While we have a long history of adapting to our times, we have never consciously reformed. Orthodox Judaism has kept the Jewish people alive for thousands of years. The recent Pew study on American Jewish life revealed that Orthodox Judaism has a much higher retention rate than the other denominations with a median age thirteen years younger than its closest counterpart. Our strength and vitality come from our strong commitment to Jewish education and practice, and the confidence that our Judaism is authentic and grounded. We see value in how each individual may express their God given uniqueness; we see value in how we may each contribute to our families, communities, and nation to become that much better, because we are part of a greater whole. We adjust to the times, but we don’t change because of them.

We will continue to embrace the Torah’s approach to the unique and special nature of men and women. This approach will continue to help make our boys and girls into strong, confident and proud Jewish men and women. We might be separated by amechitzah, but our pursuit of these values unites us.
Rabbi Chaim Strauchler is the spiritual leader of Shaarei Shomayim Congregation in Toronto, ON.

Rabbi Joshua Strulowitz is the spiritual leader of West Side Institutional Synagogue in New York, NY.
One of my favorite sports is intellectual judo. The essential insight of physical judo (or so I learned years ago from Captain America) is that exerting force always makes you vulnerable, as the force can be redirected, and your momentum makes you redirectable. Intellectual judo seeks to use the strength of an opponent’s argument to undo it.

This insight can be applied productively to the use of prooftexts. Using a particular text to support or embody your position leaves you vulnerable to other interpretations of that text, whose authority you can no longer deny. This is especially the case if the new interpretation is a subtle redirection rather than a blunt reversal.

One text with much cultural force in contemporary Orthodoxy is the first half of Proverbs 45:14 — generally translated along the lines of All the honor of a king’s daughter is within, and applied as an imperative for women to stay out of the public square and generally to avoid drawing attention to themselves.

There is no denying that this reading has deep roots in our tradition. The locus classicus is:

כבודה בת מלך פנימה
cìl kìvìdèh bìt mìlèk fìnìmà

Said R. Yose:
When a woman sequesters (matzna’at) herself within the house – she is worthy of marrying a High Priest, and will raise High Priests, as Scripture says: “All the honor etc.”

An enthusiastic collection of similar statements can be found in סימן י marches parshat v’shalà shìmìn y’mérìsh

What, however, is the connection between tzeniut and High Priests? The answer is in the continuation of the verse, ממשבצות זהב לבושה, which R. Yose understands as follows:

אמ חוכד עצמה בתור בית, "ממשבצות זהב מבושה" - תנים לבו של קורו והשבת חתנת ששת

If she honors herself within the house, then “from embroidered gold her clothes will be” - meaning that she will marry someone (i.e., a High Priest) about whom it is written: ושבת חתנה שיש.

It should be clear that this reading depends on a displacement that any feminist critique would call out immediately; the woman’s reward is achieved only vicariously, but she herself – in fact no woman – is ever allowed to wear the garments of the High Priest.

An underlying textual justification for the connection, but one subject to the same critique, is that the High Priest serves לפני הלכות, within the House of G-d.
Talmud Yoma 47a cites a story that apparently concretizes the connection.

A beraita:

Kimchit had seven sons, and each of them served as High Priest.

The Sages said to her: What have you done that merits this?

She said to them: In all my days the walls of my house never saw the weave of my hair.

They said to her: Many have done this, but it did not avail them.

Rashi makes the connection explicit:

"The walls of my house never saw etc." – I saw in the Jerusalem Talmud:

“All the honor of a king’s daughter is within; from embroidered gold her clothes will be” –

A tzanua women is fit to have a High Priest who wears embroidered gold descend from her.

Gevurot Ari (1695-1750), however, argues (against Or Zarua and Meiri) that the Rabbis’ response to Kimchit implies a rejection of this textual reading, at least in the Bavli. Perhaps in his understanding the Babylonian rabbis were in fact aware of many other women who had behaved similarly to no effect, or perhaps they shared the sense that a vicarious reward would be insufficient. But I suspect their primary motive for rejecting Kimchit’s claim was that they opposed her behavior and did not wish to encourage others to pursue what they saw as excessive tzeniut.

Why was her tzeniut excessive? For her walls not to have seen her hair, her husband must not have seen it either. Kimchit therefore was concealing her hair because she regarded it as intrinsically shameful, not to preserve the intimacy of revealing it. But the point of tzeniut is to preserve intimacy, not to preclude it.

This becomes clear when we look at a different reading of the verse, found in the Midrash Rabbah to this week’s Parashah.

“All the honor of a king’s daughter (is within) . . .” this refers to Mosheh . . .

“. . . than the one who wears embroidered gold” - this refers to Aharon.

Here the king’s daughter is Mosheh, whom G-d honors by revealing Himself only within the Tent of Meeting. Within is the place for meeting and for revealing oneself to another in perfect intimacy.

This midrash also reads the conjunction between the verse’s sections entirely differently. The mem is contrastive, “than”, rather, than consequential. The honor of intimacy within is greater than the honor of being allowed to wear the fanciest clothes.
If we take this reading back to the theme of women’s physicality – the verse now means that a woman is ultimately more honored by her husband’s private intimacy than by his buying her fancy clothes and jewelry. But wearing such clothes and jewelry in public still follows the model of Aharon, and surely is not subject to criticism.

Rabbeinu Bechayeh on last week’s parshah (Vayikra 27:13) offers yet another reading, with perhaps even more radical implications for tzeniut. In support of a mystical-symbolic reading of כל כבוד, he writes the following:

מדת הכבוד בת מלך היא מבפנים,
אף על פי שאיה לובשה מבחרת بمשמצות זהב.

The attribute of honor for a king’s daughter is within, even though she is wearing embroidered gold externally.

Here – and I suspect this may be the most straightforward reading of the verse – the embroidered gold is neither the reward nor the superseded competition, but rather the context. Even when wearing embroidered gold, one should be aware that one’s true honor comes from within, and not from external perceptions. “All the glory of a king’s daughter is within even when her clothing is from embroidered gold”.

Rabbeinu Bechayeh offers this reading as an explanation of various phenomena in which the feminine (mercy/rachamim) is embedded within the masculine (law, din), such as the angel within the fire at the Burning Bush. I think his point, in a Maimonidean vein, is that one can conceal something by encasing it in a plain cardboard box, but sometimes equally or even more effectively by encasing it in something so independently attention-worthy that observers never think to look beyond the surface.

In other words – the truest form of tzeniut is not concealment of the body, but rather preservation of the self for intimacy, and external beauty can conceal as well as reveal.

Now this reading is easily subject to reduction ad absurdum, and it is certainly not my intention to argue that Torah is or should be unconcerned about soulless sexual displays. But I do wish to problematize this particular verse as a source for modesty codes, especially enforced modesty codes; to make clear that modesty practices are intended to exalt intimacy rather than to make it shameful; and finally, to recognize that the interrelationship of body and soul, and how they should affect physical presentation, deserves much more extensive and nuanced treatment than I have yet seen.
On April 9, 1972, Rabbi Norman Lamm, then serving as Rabbi of the Jewish Center in Manhattan, delivered a sermon titled “As If Things Weren’t Bad Enough” that expressed his opposition to an Orthodox Rabbinic coalition that was lobbying against the Equal Rights Amendment. An aside in that sermon, which was edited out of the version published earlier this year, spoke approvingly of women forming minyanim and wearing tefillin.

Understandably, the most immediate reactions to the rediscovery of the aside were understandably framed by its potential role in contemporary controversies. (See here and here.) In the process, I think a chance was lost to introduce a new generation to Rabbi Lamm in his own terms, as the aside seems to me a quite wonderful introduction to what he was like in his prime (granted that the period in which I could claim to be his student, and on which the following speculations are based, was 18 – 20 years later) – creative and courageous, yet cautious and humble; serious, and yet in a very real sense intellectually playful.

Let me show you what I mean, and what I think he meant, and I will of course happily accept corrections.

Here is the most relevant section (the paragraph immediately after this one will be the topic of a subsequent post iyH).

The principle of separate seating in the synagogue must not be thought of as representing any claim of inequality of inferiority. Its purpose is to remove the distraction that may come because of erotic stimulation. If the purpose of coming to a synagogue is for American Jews to indulge in a kind of social ritual of self-identification as Jews, then there certainly is no reason for men and women to sit separately. But that is not our conception of prayer. For us, is the presentation of oneself before God, the focusing and concentration of all his thoughts on the One before Whom he stands, and hence any distraction must be banished. The ideal for prayer, so conceived, is kedushah or holiness; and the bane of holiness is eroticism. Kedushah is perishah me-arayot. If ten women so desire, they may organize a minyan, and conduct tefilah be-tzibbur, public services; and in such a case, if men straggle in to such a synagogue, it is they who are guests sitting behind the mechitzah. I am told that in Boston there is a group of young Orthodox students, all girls, who are highly concerned about their role in Judaism, and have decided to pray every morning while donning the tefillin. I have no objection to that, and would encourage them. There was a time that (according to Rema) such behavior was frowned upon as yuhara, or arrogance, but that was because it was an act of exhibitionism by an individual. However, the case is far different when a whole community of women has decided to accept such a mitzvah. More power to them! I wish that every man would join a minyan to lay tefillin.

Here is my commentary:

Was Rabbi Lamm issuing a psak halakhah? For sure not – I can’t see him making a ruling for people who had their own rabbis and had not turned to him, especially without specifically invoking the advice and counsel of the Rav. But I believe he was stating what he thought was likely the Halakhah, not merely engaging in a rhetorical flourish. In classical terms, he was speaking lehalakhah but not halakhah lema’aseh.
But exactly what did he intend to say leHalakhah? Rabbi Lamm as a darshan considered it proper to use words that were literally true in a narrow sense, but would be misunderstood by his audience as having a much broader reach. Note for example his famous description of nonOrthodox denominations as valid, with the subsequent and I believe sincere explanation that “valid” understood in light of its Latin etymology is a descriptive/sociological term – “strong” – and must be contrasted with the prescriptive term “legitimate”.

His 1972 sermon must also be read carefully and hyperliterally. Rabbi Lamm says that “If ten women so desire, they may organize a minyan, and conduct tefilah be-tzibbur, public services; and in such a case, if men straggle in to such a synagogue, it is they who are guests sitting behind the mechitzah”. He was well aware that the Rav (among others) distinguished tefillah be-tzibbur from tefilat hatzibur. Tefilah betzibur is the act of praying as a group, and refers to the silent amidah said by each individual in the presence of a praying quorum. Tefilat hatzibur refers to the repetition said by the sheliach tzibbur on behalf of the unified quorum. I suggest that Rabbi Lamm meant that women who prayed their individual amidahs together were considered to be praying betzibur, but in no way meant to endorse their instituting a chazan’s repetition, or saying devarim shebikedushah.

Where would this suggestion have come from? Rabbi Lamm was presumably aware that according to some positions ten women constitute a quorum for the purposes of Kiddush Hashem, keriat megillah, and birkat hagomel. His novel idea was that this worked as well for tefillah betzibbur, and yet that a men’s minyan as still essential for chazarat hashatz. But his audience would not have been expected to grasp that nuance – they would simply have heard him asserting women’s ritual equality. The very quick-witted might have noticed that he failed to explain why, when both ten men and ten women are present, it is the women who are presumptively guests. But generally it took some time for the effect of his rhetoric to wear off so that one felt comfortable raising such detail questions.

What about tefillin? Rabbi Lamm makes the suggestion that the prohibition of yuhara, spiritual arrogance, is the basis for RAMO discouraging women from wearing tefillin. He borrows this rationale from RAMO’s position regarding tzitzit (although RAMO’s sources do not indicate that it was the rationale re tefillin). Rabbi Lamm then argues that this prohibition applies only to individuals and not to groups. I believe his basis was Magen Avraham’s position that women as a class have accepted counting the omer upon themselves as obligatory, even though they are Biblically exempt since it is a time-related commandment. Why should tefillin be any different than counting the omer in terms of yuhara? Answer: There is no difference.

As per above, it is likely that yuhara is not the basis for REMA’s position regarding women and tefillin, which would limit Rabbi Lamm’s suggestion to tallit. One could also argue that Magen Avraham asserted that all Jewish women had accepted the mitzvah of the omer, so that none was being holier than any other when fulfilling the mitzvah, whereas a subgroup that began accepting tefillin would be engaged in mass yuhara.

In sum: I do not think Rabbi Lamm’s halakhic authority, however far that may extend, can be invoked based on this sermon. However, it does record two innovative halakhic theories that deserve further investigation.
No one enters a marriage thinking that it will end in divorce. But sometimes, it does. And no one enters a marriage thinking that their spouse might refuse a get--the religious divorce document--as leverage for a better divorce settlement or, worse yet, simply to inflict suffering. But sometimes, they do.

With all of the press surrounding our community-wide halakhic postnuptial agreement signing event this past Sunday in St Louis, many people have been asking me, “Why did you sign the postnup?” To which my only proper response is, “Why wouldn’t I?”

Rabbi Jeremy Stern, executive director of the Organization for the Resolution of Agunot, a New York-based nonprofit that aims to resolve the issue of get-refusal, says that about 150 to 200 women a year come to them for help. In an even more staggering statistic, Rabbi Yona Reiss, a noted Torah scholar, attorney and jurist who serves as the head of the beit din (religious court) of the Chicago Rabbinical Council (CRC) and is the former director of the Beit Din of America, cites that in 100 percent of cases of marriage in which a halakhic prenuptial or postnuptial agreement was signed, the get was issued and accepted in a timely manner.

We cannot afford not to sign this document.

In October of this past year, the FBI arrested a group of men, including rabbis, as part of a sting operation to expose a plot to kidnap and torture men who refused to give their wives a get. F.B.I. agents recovered masks, ropes and scalpels together with feather quills and ink bottles. The instruments of our rituals have become mixed-up with instruments of torture.

The cost of doing nothing is simply too high.

The halakhic prenuptial postnuptial agreements are not just for those people whose marriages will end in divorce; it is for all of us. It can happen to any of us. It is happening to some of us.

This past Sunday, I signed the halakhic postnuptial agreement together with over sixty other people. I signed alongside couples who have been married for over 50 years and couples holding newborn babies. I signed alongside members of every other Modern Orthodox congregation in my community.

I signed the halakhic postnuptial agreement because I do not believe that any marriage should be without this protection. I signed because I do not want to live in a world in which there is a single agunah--a woman chained to an empty marriage because her husband refuses to grant her a get. I signed because kidnap and torture should not and cannot be our halakhic solution.

Rori Picker Neiss serves as Director of Programming, Education and Community Engagement at Bais Abraham Congregation in St Louis, MO as she completes her studies at Yeshivat Maharat.
**Why We Have the Lonna Kin Situation** *(Fresh Ideas from HBI: The HBI Blog http://blogs.brandeis.edu/freshideasfromhbi/why-we-have-the-lonna-kin-situation/ May 9, 2014)*

On March 20, Meir Kin, right, married Daniela Barbosa in Las Vegas though he has refused his ex-wife Lonna Kin an Orthodox Jewish divorce. Kin invoked a clause of Jewish law that suspends the prohibition against polygamy if 100 rabbis agree in writing that the cause is sufficient; he claims to have a document to that effect, although it has not been released and only one rabbi – the one who officiated at the wedding – is on record publicly in favor of the remarriage. There is no precedent for permitting the remarriage without requiring the husband to unconditionally deposit a get for the wife to accept whenever she wishes. Meir Kin is said to be demanding $500,000 to authorize the writing and delivery of a get.

Fresh Ideas from HBI asked Rabbi Aryeh Klapper of the Beit Din (rabbinical court) of Boston to share his thoughts on this case.

The case of Lonna Kin legitimately outrages everyone who hears about it. How can a man who is using Jewish law to hold his wife prisoner to a dead marriage be free to marry another woman?

But legitimate outrage is not always the best teacher. If we are to prevent such cases in the future, even as we do everything we can to free Lonna Kin, we must be very careful to understand what happened and why.

So here are three takeaways:

1) The Kins did not sign the RCA prenuptial agreement. This agreement creates a support obligation that exists so long as the Jewish marriage continues.

Many agunah situations develop because the husband sees delaying the get as a risk-free negotiating tactic, essentially blackmail, and by the end of an antagonistic civil divorce process, it becomes a matter of spite. Signing the RCA prenuptial agreement makes delaying the get a financially risky tactic, as the husband’s liability increases each day, and generally results in the husband seeking to expedite the get.

MORAL: Friends try not to let friends get married halakhically without the RCA prenuptial agreement. I recall one of my teachers, a leading figure in American halakhah, saying to a prospective bride: “He won’t sign? Don’t marry him!”

2) The Kins initially summoned one another to different Rabbinic courts (batei din).

Since contemporary batei din have widely divergent approaches to property and custody issues, it seems reasonable for each side to seek the forum that by repute is most likely to favor its interests. But this is in practice a disastrous tactic – it breeds distrust in the other party and in the halakhic system, generates endless jurisdictional maneuvers, and as in the Kin case, often ends up with the husband withholding the get while honestly claiming to be following the ruling of “his” beit din.

The RCA prenuptial agreement includes an document in which the parties bind themselves to arbitrate before a particular beit din. Such agreements can be signed separately as well, and this should be suggested if couples are unwilling to sign the full prenup. It is sometimes useful under such circumstances to note that such agreements were supported by Rabbi Moshe Feinstein of blessed
memory (see Igrot Mosheh Even HaEzer 4:107), universally acknowledged as the leading American halakhic authority of the late 20th century.

Where the parties have not signed such a prenuptial agreement, it is vital that they sign such an agreement at the very outset of the divorce process.

MORAL: Friends make sure that divorcing couples arbitrate their divorce from the outset in a beit din that both parties respect and trust.

3) The Kin case is unprecedented in that a beit din allowed the husband to remarry without requiring him to unconditionally enable his first wife to extricate herself from the marriage.

How could a beit din endorse such outrageous behavior? Part of the problem is that we have no communally enforceable standards for batei din, and so it is very hard to effectively delegitimize idiosyncratic positions. Effective delegitimization would require a willingness by all sides to give authority to an institution they trust, even if it delegitimizes positions they favor. Currently, I don’t believe any such willingness, trust, or authority exists.

For example, many of those who would like the beit din in this case shut down were or would have been outraged when similar efforts were made in the late 29th century to shut down a rabbinic court (the “Rackman Beit Din”) by those who saw its standards for dissolving marriages as indefensibly lax. Indeed, the rabbis organizing the demonstrations on behalf of Mrs. Kin are the linear successors of those who most strongly opposed the Rackman beit din.

We need to realize that no “systemic solution” can completely solve the agunah problem – there will always be idiosyncratic batei din that reject mechanisms used to release particular agunot, let alone broader solutions. The challenge is to marginalize such batei din so that their rejection becomes practically insignificant for the agunot and any children from their subsequent remarriages. In the absence of trust, and consequently of formal authority, this is a very difficult challenge.

MORAL: Halakhah does not exist in a vacuum, and anarchy always has a cost. We should think very hard as a total Jewish community as to how we can create responsive communal batei din that we will be willing to give genuine authority.

Rabbi Aryeh Klapper is Dean of the Center for Modern Torah Leadership and a member of the Boston Beit Din.
Rashi famously asks at the beginning of Parashat Behar: What is the connection between shmittah (=the Sabbatical year) and Mount Sinai? This question becomes the idiomatic equivalent in yeshivish of the Americanism “What does that have to do with the price of tea in China?” But Rashi’s original question is not the same kind of rhetoric – he believes that it is a legitimate question about the meaning of the Torah, which specifies that the shmittah laws particularly were given on Sinai, and thus deserves an answer.

By contrast, and with apologies to Dirk Gently, many things in life have nothing at all to do with the price of tea in China. Nonetheless, I want to ask a similar question with great seriousness: What is the connection between shmittah and divorce?

This connection is not Biblical. However, it was asserted by the Vilna Gaon (GRA), who grounded an aspect of divorce law in shmittah; rediscovered by Rav Moshe Feinstein, who grounded an aspect of shmittah law in divorce; and at the end of this article, I will use their precedent to once again ground an aspect of divorce law in shmittah.

Here is some necessary background.

The biblical law of shmittah includes a provision for the forgiveness of all intra-Jewish loans at the close of the year. This is understood as a prohibition against dunning, but the Rabbis encourage paying such loans back voluntarily.

Recall that Jews may not lend each other money at interest, so intra-Jewish loans are really a form of charity. They are not investments, and it is likely that the lender anticipates and accepts the significant chance that his money will never be returned. The Torah directly warns against anyone refusing to make loans because of the likelihood of shmittah default.

However, in the time of Hillel, it became clear that virtue had waned, and the poor were facing a credit crunch. Hillel therefore instituted the pruzbul. The pruzbul was a document in which the lender transferred the loan to a beit din. Since the obligation to forgive loans does not apply to beit din, the loans remain collectible. The beit din then appoints the former lender as its collection agent, with a commission rate of one hundred percent.

Most authorities suggest that this trick would not work if shmittah-forgiveness were “deoraita” (formally rooted in the Biblical text). They accordingly conclude that shmittah-forgiveness in the time of Hillel and since (for as long as an absolute majority of the Jewish people lives in the Diaspora) is only Rabbinic.

The case before Rav Moshe was as follows: A poor man lent someone a significant sum of money, and the loan went through shmittah without being repaid. The poor man forgot to write a pruzbul, and the borrower refuses to repay the loan. The question is whether the poor man can press the borrower to repay it; whether if that fails he can sue for repayment in beit din; and whether if that fails he can sue in secular court.

Rav Moshe begins his answer by emphasizing that the borrower was committing a wrong by not repaying the loan, even if he was no longer legally indebted – “the spirit of the Sages was not pleased with him”. This suggests that the purpose of shmittah-forgiveness is to allow the poor to escape the
burden of debt, not to allow those with sufficient funds to avoid repayment. It would therefore be ironic and unfortunate if this law ended up benefiting a rich borrower at the expense of a poor lender.

One argument Rav Moshe suggests is reliance on the medieval positions that shmittah-forgiveness is not even a rabbinic rule nowadays, and indeed there seems evidence that it was not practiced in Provence. He makes the radical suggestion that the consensus custom for the past 800 years of writing a pruzbul may simply be just that, a custom, rather than a reflection of agreement that shmittah-forgiveness has Rabbinic legal force.

He supports this suggestion by citing Arukh HaShulchan (CM 67:10), who provides a limmud zekhut (post-facto justification) for those who have dropped the custom of writing a pruzbul. His fundamental argument is that refusing to loan money to the poor owing to the risk of shmittah-forgiveness is a deoraita violation, as is dunning for repayment of a loan after shmittah-forgiveness, and the rabbis would never have instituted rabbinic shmittah-forgiveness where that would lead to violations of those deoraita prohibition. Pruzbul was instituted to ensure that no such violations would result. In a time and place where pruzbul would not prevent deoraita violations, it can be presumed that the rabbis would withdraw their reinstitution of shmittah-forgiveness.

Why would a pruzbul be ineffective nowadays? Arukh HaShulchan provides two rationales.

The first is that batei din in our era have no enforcement power. The pruzbul works by transferring the loan to the beth din, so that when the lender seeks to collect it, he is acting as an agent of the beth din. However, since all lenders know that the beth din adds nothing to their capacity to collect, their collection efforts are really their own, and so in violation of the deoraita prohibition against demanding payment of private loans after shmittah-forgiveness. (It is not clear to me how this can be a deoraita prohibition in a time when shmittah-forgiveness itself is Rabbinic.)

The second is that a pruzbul technically functions by giving the beth din a lien on the borrower’s land. When a beth din has such a lien, the loan is formally considered already repaid (although the borrower can redeem the land by paying the loan back in cash), and thus it is not subject to shmittah-forgiveness. This works in a society where most borrowers own land. In an urban society such as our own, most borrowers don’t own land, and so a pruzbul could not be written for most loans. Therefore, as our Jewish society is presumably not more virtuous than Hillel’s, lenders will refuse to lend, despite the Biblical prohibition. Therefore the rabbinic reinstitution of shmittah-forgiveness does not apply to our society.

Rav Moshe finds Arukh haShulchan intuitively appealing, and ultimately one of a number of valid grounds for allowing the poor lender to collect, but he first raises a set of objections.

His first objection, which applies to both of Arukh HaShulchan’s rationales, is that the decree of shmittah-forgiveness may have been instituted unconditionally in the years before Hillel, when virtue reigned. It therefore could not be undone when societal virtue later declined, even when it became counterproductive.

The second, which applies only to Arukh HaShulchan’s second rationale, is that since the lender can go to secular court only with beth din’s permission, the pruzbul is in fact effective, and the lender is in fact collecting on behalf of beth din when he sues in secular court.
This last is a radical claim, but Rav Moshe suggests that it is supported by GRA. Shulchan Arukh (CM 26:2) rules that one may sue a fellow Jew in secular court if a beit din cannot practically impose its jurisdiction on the defendant. GRA suggests that this is based on Talmud Gittin 88b, where the rule is given that a divorce given under non-Jewish coercion is valid when, and only when, coercion is legally justified and the force is applied by non-Jews who explicitly demand that the husband obey the beit din.

Rav Moshe suggests that the cases are not really parallel, as in our case of pruzbul the secular courts will grant no authority and make no reference to the beit din. However, he argues, from the perspective of the beit din, since they authorized the lender to go to secular court, he is merely ensuring the enforcement of their verdict. Therefore a pruzbul today still works, as the debt can plausibly be transferred to beit din and the lender can plausibly be seen as their agent.

Therefore Aruch HaShulkhan’s second rationale falls, and a pruzbul should still be necessary.

Nevertheless, Rav Moshe concludes that his arguments are not dispositive and Arukh HaShulchan is a useful if not necessary piece if his argument.

I find Rav Moshe’s argument against Arukh HaShulchan brilliant, and as accepting it does not endanger his pruzbul ruling, I would like to apply it elsewhere for good purposes, namely in the area of divorce.

Let us take it as given that American courts cannot, for First Amendment reasons, ever tell a husband to obey the ruling of a rabbinic court that he must give a get. This means that the only case on Gittin 88b in which gentile coercion works should be impossible in the United States.

Many divorce agreements are written with explicit stipulations that a husband will remove all barriers to the other’s remarriage within his power, and some explicitly require the get, on penalty of contempt. This is necessary, as otherwise husbands may seek to renegotiate a civil agreement by the extortionist method of get-refusal. But it seems to be ineffective, as the threat of contempt is an instance of Gentile force, which makes giving a valid get impossible. (Writing into the divorce agreement an obligation to obey the ruling of a religious court is likely unenforceable.)

However- Rav Moshe here argues that from the perspective of the beit din, any coercion used by the secular courts on behalf of a Jew who appears there with the permission of the beit din because the beit din’s jurisdiction cannot practically be enforced, is considered to be the coercion of beit din itself. This is what is needed for pruzbul, but once GRA makes the connection in one direction, we can make it in the other. In other words, secular contempt citations should be considered Jewish coercion, in which case the divorce would be valid.

The problem with this is that the text in Gittin clearly validates the coerced divorce only if the Gentiles understand themselves as enforcing the beit din’s orders. Rav Moshe says that the Gentile’s self-understanding is relevant to pruzbul but not gittin, but why should that be? Furthermore, for GRA’s argument to work, the beit din’s self-perception must matter in gittin as well, or there would be no support from gittin for the legitimacy of using secular courts when beit din is impotent.

I suggest that GRA understands Gittin as discussing a case in which the beit din would not have authorized going to civil court, but that a get is valid if coerced by the civil courts on behalf of a party that beit din has authorized to appear there.
A divorce agreement is voluntary, and an agreement to give the get as part of a negotiation is enforceable in beit din. Once such an agreement is signed, the wife would be obligated to seek its enforcement in beit din. But if beit din cannot enforce it, and authorizes her to pursue the contempt citation, it seems that GRA would see this as the enforcement of beit din itself, and validate the get.

(Note: I discovered after posting this piece that I had been anticipated by R. Zvi Gartner, who also cites several prior discussions of the issue. I hope to produce a more comprehensive treatment of the issue incorporating Rav Gartner’s work in 2015)

The Business Halacha Institute is dedicated to the highly worthy cause of “Restoring the Primacy of Choshen Mishpat”. The Institute recognizes that a Judaism confined to ritual is impoverished, and that it is a stunning indictment of contemporary Orthodoxy in all its flavors that its members generally see halakhah as irrelevant to their financial relationships and affairs.

I agree, and I further believe that the project of reclaiming Choshen Mishpat can bring scholars and community together and make a significant contribution toward undoing the pervasive cynicism that often governs their relationship when questions of ethics arise. My hope is that what follows will generate a discussion that helps reverse these negative situations.

Among the Institute’s many programs is a weekly printed newsletter that presents contemporary vignettes and provides halakhic commentary on them. A recent vignette (Parashat Metzora) involved a person ordering a cab and, during the subsequent ride, finding a one hundred dollar bill on the floor. The question was: May the passenger keep the money? Must the passenger give the money to the driver? Must the passenger announce finding the money?

The newsletter’s analysis addresses the following issues in the following ways:

Q1. Has the person who lost the money realized the loss? If yes, have they abandoned hope of reclaiming it?

A1. The Talmud states that people check their wallets regularly, and so the owner would have realized that it was lost. Since money has no identifying mark (סימן), the owner has also abandoned hope of reclaiming it.

Q2. A person’s physical space (“courtyard”) is halakhically capable of acquiring objects for them, and utensils can under some circumstances play the same role (a reference is made to the exclusion of some “moving courtyards”, but this category is presumed not applicable to cars). Has the cab automatically acquired the money on behalf of the driver?

A2. Money found in a store, in an area where customers regularly go, belongs to the finder. This may be because such an area is for practical purposes public, and so the storeowner has no expectation of obtaining any money lost there. (Shakh 260:18). Furthermore, at the moment the money was dropped, its owner was unaware of the loss had not yet abandoned hope of reclaiming it. (Shakh 262:1 and 282:1) Therefore, if the cab is capable of acquisition, all it acquired was an obligation of returning the money. Finally, a taxicab may be like a rental property, and the owners of such properties do not acquire property left behind by tenants, as they presume the next tenants will find such property first and keep it (Ketzot 200:1).

Q3. What if you found a more identifiable object, such as a wallet?

A3. You would be obligated to call the cab company and ask them to contact you if anyone calls claiming to have lost something in that cab.
There is much room here for discussion of the precise meaning of the precedents and of which precedents are authoritative. But I want to take those as given, for the sake of the broader conversation about how we can best reclaim Choshen Mishpat.

Here are two fundamentally divergent judicial approaches:

The first approach, which I will term “analogist” or “common law”, decides cases by finding the most similar precedent and ruling the same way. It is a given of this methodology that not all cases are on “all fours” with any specific precedent, but the goals is to find the narrowest gap, not to address the uniqueness of a particular case. (This is related to Chazon Ish’s position, in contrast to SHAKH, that there cannot be a case which Halakhah does not address; there must always be a case which has the narrowest gap, and the halakhah should be taken from that case.)

The second approach, which I will term “rationale-ist”, seeks to decide cases in accordance with abstract principles. Those principles are generally derived from precedent, but they may also be generated from natural law, religious or moral intuition, or creative textual interpretation. In this approach it may well be proper to decide a case in a manner that differs in practice from all close precedents on the ground that social or physical or intellectual or religious circumstances have changed.

Each of these approaches has its virtues. But I contend that a common law approach is most viable when it represents a live tradition, so that the constant process of applying precedents keeps their meaning fresh and generates new cases that will often be almost exactly analogous to what follows them. A common law approach can be unhelpful when one seeks to revive a tradition that has lain dormant during a period of tremendous upheaval.

So for example: Students are often taught that Bava Kamma is immediately relevant because “What’s the difference between two oxen goring each other, and two cars crashing into one another?” From a common law perspective, it is possible to argue that oxen are the closest precedent we can find to cars. But students will recognize immediately that cars have no independent volition; that they are directly controlled by their driver; that they are primarily intended for transportation rather than for work; and so on. Very few will see it as reasonable to have the outcome of cases depend on whether the car has been involved in prior accidents, rather than the driver. It is possible to follow the Biblical bovine precedent and legally construct cars that are “tam” and cars that are “muad”, and to have one possible ruling be for both cars to be sold and the total gained split between the parties, but I don’t know that would be best.

Back to our taxi case: Here are some ways that one would interrogate precedent if one were using the rationale-ist approach.

Does the Talmud’s assertion that people “check their pockets/purses regularly”, and therefore presumptively know when they’ve lost currency, apply to paper currency in our day? One might suggest that nowadays people check for their wallets regularly, but don’t take out their bills and count them, and weight is no longer a spur to recheck.

Does the Talmudic presumption that “money has no distinguishing characteristic” apply to paper currency, which contains a uniquely identifying serial number? Perhaps with smaller bills one can presume that the owner did not make a record of the number, but is this so with larger bills?
Does the existence of cellphones, and receipts (paper or, if paid by credit cards, electronic) mean that the presumption of abandonment (yeush) no longer applies to property lost in taxis? In other words, if a person realizes immediately that the money is lost, won’t their first reaction be to call?

With regard to the capacity of space to acquire lost property – are there local laws that would affect the ownership of such property by changing presumptions or duties, or even via dina demalkhuta dina?

I’m also interested in whether, at least where Jews are fully integrated into Gentile society, the first question should not be “may I keep this?”, but rather “is this an opportunity for a Kiddush Hashem”? Indeed, the unexpected returning of lost objects, whether wallets by taxi drivers or inheritances found in desks by rabbis, is a regular source of such sanctification in our society.

Interrogating precedent so rigorously, however, can lead ironically to a reverse paralysis. My teacher R. J. David Bleich shlita, for example, has argued that many changes must be made to existing Choshen Mishpat rulings for halakhah to be functional, but that these changes can only be made by legislation using powers not operative today. Chief Rabbi Herzog z”l also argued for takkanot (which he thinks the Chief Rabbinate could make) in his proposed halakhic constitution for the State.

Both the Beit Din of America and Rav Asher Weiss shlita, however, seem to be taking approaches that allow the appropriation of secular law when necessary to achieve equity, and their work has at least the potential to accomplish a great deal, and to open up the possibility of even more.

In my conversations with a group of the best and brightest of Modern Orthodox shanah baaretz students this past Shabbat, a constant theme was the need to rebuild trust in the ethical leadership capacity of rabbis and halakhah. This cannot be accomplished only by playing defense, and in some areas, such as gender, it is likely that for the time being playing defense is our only option. But Choshen Mishpat, if we are up to the challenge, provides a field in which we can be in the ethical vanguard, and it behooves Modern Orthodoxy davka, with the vast intellectual resources we possess with regard to the law, to meet this challenge.

Introduction

Halachic business ethics primarily rest on a biblical tripod. One leg is a set of laws regulating employer-employee relationships, with the primary goal of maximizing worker dignity and autonomy while enabling employers to make a reasonable profit. The second leg is a mixed set of prohibitions and obligations aimed at maintaining an honest market without eliminating the profit motive. The third leg is a two-pronged prohibition that both forbids taking advantage of ignorance and imposes responsibility for the effect one’s words and actions have on others’ ethical and spiritual choices. Each leg of this biblical tripod generates a dense web of interpretation, legislation and practice.

This essay focuses on the third leg, which we can describe as “concern for one’s spiritual environment.” The central biblical passage for this ethical aim is found in Leviticus 19:23-24.

You must not oppress your peer, and you must not rob. You must not keep your worker’s wages with you until morning. You must not curse a deaf person and before a blind person, you must not place a stumbling-block. You must be in fear/awe of your G-d I am Hashem.

The Rabbis interpreted “before a blind person you must not place a stumbling block” (henceforth referred to by “lifnei iver”) metaphorically. In their interpretation, “the blind” does not mean the visually impaired but rather refers to those who lack relevant practical or spiritual knowledge, and “stumbling blocks” is interpreted to mean words, actions, or circumstances that make that lack of practical or spiritual knowledge consequential.

The law of lifnei iver, as applied, prohibits giving self-serving advice, i.e. taking advantage of someone else’s practical ignorance, as well as being an accomplice to sin, i.e. abetting someone else’s spiritual ignorance. Each of the applications of this statue has broad and immediate relevance for commercial practice.

Self-Serving Advice

The primary source for understanding the law of lifnei iver as banning self-serving advice is found in the Sifrei, the Rabbinic halachic midrash on Leviticus:

“... And before a blind person you must not place a stumbling-block”

– [This means] before one who is blind in a particular matter . . .If he were taking advice from you, do not give him advice that is inappropriate for him, e.g. . . . do not tell him “sell your field and buy yourself a donkey” when you have intent to take the donkey from him by trickery.

In a later text, the Midrash Aggada sharpens the Sifrei’s point:

“Before a blind person” - One who is blind in commerce, or in any other matter, and you gave him advice that was appropriate for your interests but not his.

What is the boundary of “advice appropriate for your interests but not his”? Read most broadly, this might prohibit taking advantage of any information inequality. This interpretation could bring large swaths of contemporary marketplace regulations, such as insider trading laws, under this halachic
prohibition. It could compel advertisements to be truthful and ban what the Tammany Hall wardheeler George Washington Plunkitt memorably called “honest graft”. Note that deliberately taking advantage of an information imbalance may also violate the prohibition against “mental theft” (g’neivat da’at).

On the other hand, information imbalances often lie at the heart of conventional commerce, and halachah imposes a duty of complete disclosure on sellers only where the buyer could not reasonably be expected to make an effective inspection. Moreover, halachic marketplace regulations can generally be cancelled by either a specific contrary agreement between parties, or by general marketplace practice. In other words, some halachic rules are only default settings, not imperatives, and the Torah has no objection if parties to a contract or market agree to different terms. Default settings are not the same as statements of value, and it would be a mistake to claim that Jewish ethics mandate following the halachic defaults.

The ideal of a fully transparent market – in essence, a world without salespeople – works well for some people, but others enjoy bargaining and will risk occasionally overpaying for the joy of “getting a steal” at other times. One can create a reasonable argument for the immorality of a CEO selling off their stock the day before a bad earnings report and yet think it perfectly fine to buy a stock because one’s brother in-law, working in human resources, gives you a favorable report about staff quality at his company. The law of lifnei iver does not require us to criminalize every action taken as the result of an information imbalance.

I suggest the following values formulation of this prohibition: It is forbidden to use the trust engendered by or endemic to a relationship to create and take advantage of an information imbalance with another party in the relationship. Perfect examples of such violators include: salespeople or traders who talk clients into buying securities against which their company was betting, repairmen who advise the purchase of unnecessary parts, insurance agents who persuade buyers into purchasing larger policies than needed, or work mentors who give career advice that aids the employer rather than the employee. In each of these cases, X comes to Y for advice because Y represents himself as an expert whose knowledge is used to benefit advisees, and Y abuses the trust created by that self-representation. This is a clear violation of the kinds of fair relationships advocated for by the Torah precept of lifnei iver.

**Being an Accomplice to Sin**

Almost every action we take as members of an imperfect society can be seen as violating lifnei iver, by supporting or participating in sinful activity. We are always entering into situations where acting for the sake of one value brings us into real conflict with other values and principles we hold dear. This is true even before we touch on the array of Rabbinic prohibitions related to lifnei iver, such as encouraging or assisting transgressors, or the Rabbinic obligation to prevent others from sinning. Each of these extends the boundaries of responsibility past the scope of the biblical law of lifnei iver.

Understood most broadly, the lifnei iver legal complex makes almost any interaction with the non-halachic world fraught. Every sympathetic interaction encourages transgressors; every helpful interaction enables their transgressions, however indirectly. Every choice we make privileges one value and eventually contravenes another. Such a maximal understanding of lifnei iver would require Jews to be hermits and would preclude their participation in such an imperfect society.
However, the Talmud recognizes the value and necessity of belonging to society, even if the society you perforce belong to does not completely share your values and commitments. Lifnei iver does not always take priority over darchei shalom, “the ways of peace”, or mishum eivah, preventing hatred. Understood most narrowly, the lifnei iver and its ancillaries:

A) obligate you to prevent only the accidental sins of only halachically observant Jews;

B) forbid only actions that will directly cause someone else to sin;

C) apply only if the other person could not sin without your help

D) allow you to participate in another’s sin if s/he would sin more or sin worse if you refused to participate, and

E) cannot prevent you from engaging in normal commercial and personal life. You do not need to give in when someone else threatens to sin unless you surrender to their demands.

I do not, however, see the consistent adoption of the law’s narrowest interpretation as a compelling or even plausible reading of the evidence. The Talmud’s examples of lifnei iver strikingly focus on the “blind” who are outside the halachically observant community, such as Sabbatical year violators, or even outside the Jewish people, including genuine idolaters! It is therefore clear that lifnei iver is not an outgrowth of areivut, the guarantor responsibility all Jews have for the actions of other Jews. The law of lifnei iver is an environmental rather than a relational obligation – it is about one’s responsibility for the context in which every other human being makes decisions.

The nature, extent, and practical expression of that environmental responsibility may vary by society and area of human activity. Moreover, the halachah of lifnei iver may express the particularistic obligations of Jews rather than a universal obligation binding on all human beings. Using halachah as the basis for ethics requires translating the legal framework binding on Jews into universally binding ethical standards.

I propose the following set of ethical standards as a step toward a full translation of the laws of lifnei iver into the realm of commercial ethics:

A) You must create accountability for misbehavior, rather than simply appealing to the best in human nature. This includes effective anti-harassment policies, independent oversight of financial transactions and salaries, and close attention to the power dynamics of hierarchical relationships. This translates the Talmud’s prohibition against lending significant sums of money without a receipt, lest the borrower be tempted into not fulfilling the biblical obligation to repay.

B) You must clearly state and act on the principle that values are not subordinate to profits. This translates the Talmud’s prohibition against saying encouraging words to those who are violating the Sabbatical year.

C) You must not enable the behavior of firms that you know behave unethically or illegally as a matter of course. For example, you may not buy products from firms that egregiously maltreat their workers, or that keep two sets of financial records. You may not provide advertising services to manufacturers who misrepresent their products. This translates the Talmud’s prohibition against selling weapons and buying or selling sacrificial animals to idolaters.
D) You must not produce products whose primary use is unethical or illegal, unless such products are so completely integrated into the culture that failing to sell them would make you commercially or socially unviable. For example, if one believes speeding to be unethical or illegal, one could not produce radar detectors. On the other hand, one might be permitted to sell televisions, even if one believes that a television’s primary uses are to promote the sexual objectification of women and the public humiliation of reality-show participants, on the presumption that any particular customer will use the television to watch only worthwhile shows. This translates the Talmud’s nuanced discussion of selling dual-use objects.

**Conclusion**

The Talmud (Megillah 24b) records the following story:

Said Rabbi Yose, “All my life I was troubled by the verse (Deut. 28:29) ‘And you will feel your way at noon the way a blind man feels his way in the darkness’ – why would a blind man care whether it is noon or darkness? Until once, when I was walking in the darkest of night, I saw a blind man walking with a torch in his hand. I said to him: ‘My son, what purpose does this torch serve for you?’ He said, ‘While I have the torch in my hand – people see me, and they save me from pits, brambles, and briars.’”

Lifnei iver and associated halachic categories provide a useful basis for a powerful, practical, and sophisticated Jewish framework for commercial ethics. In the Jewish (and hopefully) ethical market or workplace, adviceseekers can safely call attention to their ignorance, and maintaining norms of integrity and justice is a collective responsibility rather than a task delegated to enforcement officers. We must light torches for those who cannot see, not take advantage of the darkness.
Does G-d want believers, or rather empiricists? (Parashat Beshallach)

Does G-d want believers, or rather empiricists?

A signature fallacy of contemporary thinking is the conflation of rationalism and empiricism, often under the banner of science. Rationalism and empiricism are actually radically opposed epistemologies.

Empiricism holds that truth-claims can only be verified through experience, preferably repeated experience; anything we experience – whether or not it makes sense to us - actually happened (or: is fact), and anything we don’t experience – no matter how much sense it makes to us - cannot be known to have happened.

Rationalism, by contrast, holds that truth-claims can be verified through thought; things that make inevitable sense can be said to happen even if we don’t experience them, and experiences that don’t make sense are illusions or delusions.

The signature fallacy of empiricism is “post hoc, ergo propter hoc” (afterward, therefore because of). It cannot distinguish between “constant conjunction” and “causality”. It cannot distinguish between coincidence and connection, and is vulnerable to statistical flukes and unable to penetrate complex interrelationships.

The signature failing of rationalism is hubris, the assumption that the human brain – individual or social – is capable of knowing which potential causal mechanisms are possible and which are not. Who would have thought that microbes could cause illness in macroscopic creatures, or that flicking a switch could loose an invisible stream of energy that could heat a filament to glowing and so light a room?

Science at its best balances rationalism with empiricism – it gives more weight to experiences that accord with intuitively compelling causal mechanisms, but refuses to reject consistently repeated experiences even if they make no sense. It looks to confirm intuitively compelling (elegant) theories, but is willing to treat inelegant theories as true so long as they accord better with the available empirical data.

What about religion, and Judaism in particular?

My context is Shemot 15:22-26, the Marah episode.

The narrative begins with the Jews leaving the Reed Sea and traveling for three days in the wilderness without finding water, but apparently also without complaining. They arrive at Marah, where there is water, but the water is not potable because “bitter” – and now the complaints start. Mosheh turns immediately to G-d; G-d directs him to a tree; he (He?) tosses the tree toward the water; the water is “sweetened” (or: they “sweetened” the waters).

At this point – in the middle of verse 25 - the time-sequence becomes confused, and we are enmeshed in a thicket of pronouns with ambiguous antecedents. The narrator tells us that “there he (He?) put to them (דבר ודבר = sham sam) a chok and a mishpat, and there he (He? they?) tested him (Him? them?).” When? Before the waters were sweetened, or after? Furthermore, the chok and mishpat are never identified, and we are not told the outcome of the test.

Finally, someone (Mosheh? Hashem?) makes a statement: “If you surely heed the voice of Hashem our G-d, and you do what is straight in His eyes, and you hearken to His mitzvoth, and you observe all His
chukim – (then) all the illnesses which I have put (娈) in Egypt I will not put (איש) on you, because I am Hashem your healer”. It is not made explicit whether or how this statement relates to either the sweetening of the water or the chok, mishpat, and test. However, the language of the statement incorporated both the verb חם and the term chok.

The earliest interpretive traditions we have wonder how G-d can describe Himself as our healer if He will never make us ill. Their solution is that preventive medicine is healing-in-advance, and that the verse should not be understood as a promise-of-reward - “if you do what is straight etc. then I will not place the illnesses etc.” – but rather as a natural consequence – “if you do what is straight etc., then you will not become ill”.

But how can obedience to Divine commandments yield health? Here the Derashot HaRan (Derashah #6) offers a reading that connects all three elements of the episode, as follows: The tree – let us assume that it was a tree that by nature would add bitterness to water – sweetened the water solely because Mosheh tossed it there in fulfillment of a Divine chok. G-d then commands additional chukim, which He can do effectively because He has already demonstrated their effectiveness – by sweetening the water, his chok passed the test! He can therefore plausibly tell the Jews that obeying all his chukim will have the physical effect of preventing illness. In other words, He empirically demonstrated a causal relationship between commandedness and effectiveness in a specific case (empiricism), and then asked that we recognize this as an intuitively compelling general relationship (rationalism).

Derashot HaRan presents G-d as acknowledging and perhaps even endorsing empiricism – the Jews would not, and likely should not, accept commandments which seem purposeless, but they should accept the results of His experiment as proof that His commandments are purposeful, even if the methods by which they achieve their purposes are inscrutable.

Rabbeinu Bechaya (Commentary to Shemot) goes further. He asserts that the distinction between chukim and mishpatim popularized by Rashi, that chukim are rationally incomprehensible while mishpatim are rationally comprehensible, applies as well to medicine, and chok and mishpat here refer to cures rather than commandments. G-d taught Mosheh at Marah both natural and “magical” (segulah) cures; the Jews correctly would have accepted only the natural had the effectiveness of the “magical” not been experimentally demonstrated by the tree’s capacity to sweeten water. The tree’s effectiveness is not a function of the Divine command to use it; rather, G-d commanded Mosheh to use this tree because it would work, albeit not via a physically explicable causal mechanism.

Here I think Rabbeinu Bechayay diverges from Rambam. Rambam held that apparent segulah cures whose effectiveness had been experimentally demonstrated were not violations of darkhei emori because the fact that they were effective demonstrated that they were not magical at all – he does not allow for the possibility of effective magic. The question is whether the issue between Rabbeinu Bechaya and Rambam is more than semantic, i.e. whether Rambam simply calls paraphysical causality natural when it works, or whether he assumes physical causality even where its basis is unknown. My sense is the latter.

Where they agree, however, is that G-d set out to give the Jews an experience that would let them make an empiricist case for the effectiveness of religion, rather than simply asking them to believe it, or asking them to practice it regardless of its effectiveness.
Now this likely sets up a future epistemological crisis: What are Jews to do if they – to the best of their knowledge – are keeping the commandments, and yet they keep falling ill?

Should they – as good empiricists – assume that the connection between commandment-observance and health is false (and therefore reinterpret the Torah so that it no longer claims that this connection is factually true),

or rather – as good rationalists – should they assume that they have not in fact kept the commandments (or that they are not in fact ill)?

My tentative argument here is that the experiment of the tree teaches us that G-d wants us to question our religious paradigms when they don’t seem borne out by the empirical evidence. This does not mean that we should reject them when they don’t seem to be borne out – but we should consider the possibility that we have misunderstood.

Some concrete examples I have in mind are the propositions that ritual observance generates ethical improvement and that insulating a community from external influence improves its ethical sensibility. Do these match our experience? If not, should we assume that the propositions are false (and were falsely attributed to the tradition), or rather that we are misevaluating levels of observance, or degrees of insulation?

What causal propositions about religion does Modern Orthodoxy in particular assert, and how well do they conform to empirical experience?

דרשא המ’ הרדיש השיש

זהו השבתניך הבכש הנמאן (שמתוי טו) און שמעון נתנשע לך חי, וגו’ כמ’ העץ.

וביס מתייה מה הפסוק, אין יאמר און תעשה לנו השווייך על השילוח, אל אומייך בהליאוםربع פעמים.

הכתי המזרד אונשושע ייב

והביאו לך ספיבים

האמוד שעתנו של‡ הבכש השם יתבכר אלixo שלא שיענ על פיידי כהמחלה וגו’ [אבל כלף יתבכר ישים]. זוו מז

היתמה, אין יבייח עבידי שלא שיש עליה כמ’ מזרד [אבל כלף יתבכר ישים].

והושפ שעתנו של‡ ההליאום כולם במצרי, ולק לא יביסי זה הפסוק הבסרת כל ההליאום ליפעם. יושר אצל פירוש הפסוק בפסק.

והזה דעתי בפיורו.

בתריחם אמר (שם כה) וויורנו ר’ עצי ישראל אל הצימ עימיו הקים ושא שמי לא קק ומשמפ והמש אנה.

וזה הבטוי צרי להבצר, והו כי לא פסק שנכון אלה לייזא לא כשהמש דרמי.

וא לתריעת המשנה, ואל לתריעה הכלל.

לתריעה המשנה, כי בהיות מחשבת הצדק טובות again הבארת השם יתבכר, מבריא לייזי לטמי נתנף.

מחשבת הצדק טובות,اهل לא ינשך קר הצדק המ démarche, והא יאת (ה𝑡הילמ כי) ר’ דניאל, בק.

אמור במדרש (הנה אחリア על התנ(fieldName)ר א) היוצר זה אחיא בקודקוקIBUTES ושני פסק.

לתקוש עלים דע שלחון משבר.
וושיה להנהל את הכלל, שיאיר כל האנשים setbacks והבך בבכי גוזר כי היך היא מתעה, ויקח מה מעשי
dודגמה

זה עניי הנפש, או הולות. כי אין放过 שלא gehören יתברך ליודא עמוד בנו, כי השם יתברך זבא ומזיב
cל העדנים העתידים, או את על ספס כלל

אכל בנינו זה לא אני מ cưב את משפע הוהיל, אבד הסמים, כי [מען] לא (היה הוהיל) (섵 הוהיל)
למעשים, אוכל, כל שלא ימעי, אבד התנהלות על משה רביניה, ואיזו נקמה על הבנין
שהם לא ועד דבוניז

אכל נראיה כי לא יש ססה, של זה משמעו משעול וברך, והויה לשם כיメンבע והושפע יספיק הבטחתו, כי בבר קרואו לו
cל השח阿森 שפ, וליהוינ בברס שיבבע והושפע יספיק הבטחתו, כי בבר קרואו לו

יבלמודנו (הנהאום כשעלו פ"ר) שבוח אושר השוליות משמש להימדרוף, הוא אשר היה תבוע להמת מירית
וללוויהי התמחותים, לא ללפרואו התוסיפו, או אף כי רגאו הרך תביעה, ויש השוליות שהמצבת השב
יותבר, הוא והשמו אזאiero אמא שלום ושממה, אופר כלה התנהלות, הוצר לוumperמל התנהלות, כי סרב פירוש כל
ומכל, קני מפוריש בברות (ג) הבנדהורי (精子). נמצא השבטיי בשמיות כמות התנהלות כל התנהלות
ואמר כי איני רופא נטעקכיו ו=tmpרפור, איני מניחו אמא לא יושביי

ודעת בףראשא, הוא כי, ידע הוא כי הרופאים אינון מרשופי התחל בעבע, אבל בברק, ואינו קראו רופאים
אלוא לע דההברעה, כי ביאו מכינים הספם לעבש האזרות, וליהו פעל infix כהכיל ארש יוסכל בח, כי אם כי היו אתמונא לשביש יוסכל בח, ואינו יני בברק חנטות ואיננו מנדבים, כי אינן קרו בברק

ימש המה לא עלא האפעולת כל, על השם יישבר indent יישר האמתים המופר באב, או יפעלים.

משמש nokטולול לאר לא ממה פייע, אבכל הככים משועבדים זא, אנו כי יסרף לכתחלא הכל המ שירצה. וכל
אמר כי zostały שונים לספר התמחות סבריר התווקות והשפשופים, א셔 ראה כי שני ביבשה נ ember
התחל עלה, כי אלי רפס, או ויול הספרים מסחר יתיוב אליה ביאי משער, כי כמות השHorizontalAlignment
שיבמי יברח שונים Races, או בכלי החכמה שפירש על ישע ובר, כי בכל החכמה שפירש התמחות مدريد בברב שיש שלום יחרר לכל ליפ יעדך

רבע ברי, שמיא פקר כי פלבן הכ

(כה) שופ שיש כי אותה התמחות ע"ז השפתה והשיק המדבר כי משמא היא ביוורה ملف מניה, והوية מוכת אחמנה
וזמה לייער כי ניניו בן מדברعتمد הניסיון והולידם, בג שעמות האימונים הביאו שימאר מרקוקים למקור
ולחם דרימ רכיב

ויוש שפירש: "שם שיש כי/fonts教えて" שולדו הקדשו בורח את הנחת התמחות ח Consort הישנו והבנה בבניא, ובניא, ובניא
לפי שיש חמה עסיבור מתופים, ויוש מאפרים, ויוש מדאיגים, ויוש ממדוקיקת את השורה, ושוי
שמןיר יאパタמחות, כי זה יברת ביב בצונה, והזה לשון: "думフラט" כי אז הסגולה שאיני טעמה, דועי
ומשפט אז הנחתה שמשפותו שניהי יכלו

ושם נפש. האמת הזה.
Miss Weasley is a 12 year old Jewish prophetess living in Stoatown MA. Her bat mitzvah was on the last day of Pesach.

That night, she counted the Omer for the first time, saying “Tonight is 8 days, which are 1.142857 (repeating infinitely) weeks of the Omer.”

The next afternoon she crosses the international dateline going westward, so that evening she counts again (to be safe, she counts both 9 and 10, this time actually mentioning the days), and does so for the next 4 days.

On day 13 (14), she crosses back at night and forgets to count until the following morning.

The next evening (day 14 for her acc. to everyone), she goes to shul and davens maariv and counts before tzeit hakokhavim. She has intent to fulfill her obligation if and only if she remembers to count that evening – and she forgets.

On day 20, she hears a Heavenly voice say that she will be asleep for at least one 25 hour period before Shavuot, and that very afternoon she is diagnosed with a condition that requires surgery under general anesthesia the next day, and the doctors confirms that owing to the pain she will likely not be fully conscious for at least a day.

Should/may Miss Weasley make the berakahah before counting that night? On the nights a after she emerges from anesthesia?

On Erev Pesach I suggested that rishon-shitah-maximization, the art of constructing one’s religious life so that it fits with as many halakhic positions as possible, should not be the primary metric of behavioral religious success. Thus I objected to the position that one is required to, or even should, fulfill the mitzvah of eating matzah on the seder night by swallowing two large kezayits after having carefully chewed them in distinct mouth quadrants. I pointed out that the result was unaesthetic, unpleasant, and likely dangerous, and each of those descriptions also carries significant halakhic weight.

It is also clear, as Professor Chaim Saiman has argued forcefully, that the result creates an enormous gap between the conventional and ritual acts of eating – no one would consider eating matzah that way absent the particular confluence of halakhic positions (of course, some of us wouldn’t consider eating matzah at all absent the mitzvah, but I don’t think that is relevant here).

The challenge for me is that I very much enjoy similar ritualizations of the act of counting. For example, I happily adopt the position that if one is in shul before starsout, one should listen to the chazan’s berakahah and then count oneself with the mental or verbal stipulation that one intends this counting to fulfill one’s obligation if and only if one does not remember to count again after starsout, thereby preserving the capacity to make the berakahah when counting after starsout.

Is there a difference, other than personal aesthetics and the risk of choking, between the two cases?

I want to make a very tentative suggestion.
It is very important for ritual to relate to life – I do not think it would be positive for us to adopt the position that the phonemic relationship between mitzvah-akhilah and non-mitzvah-akhilah is sheer coincidence, as per Rambam’s negative theology.

But it is also important for ritual to relate to Talmud Torah, to the experience of learning Torah as the ritual actor has experienced it. As Rav Lichtenstein memorably argues, action is necessary (only) because it diminishes the worth of one’s learning if, given the opportunity, one fails to give it a practical outlet.

There is a chicken-and-egg question here – for those who never enjoyed thinking scenarios such as Miss Weasley’s, and always felt that the proliferating uncertainties I tried to create in her case should simply be paskened away, imitations of learning and of the natural world may well yield the same result. Perhaps that would be best, but I am not yet convinced.

That leaves many of us with the question of when and how it is better for ritual to hew closer to life, and when to learning. I welcome your suggestions. Bonus points to the person who identifies the most issues in Miss Weasley’s case, and nonetheless gives a clear halakhic answer.
Why I Oppose Adding Symbols to the Seder Plate (moderntoraleadership.wordpress.com April 14, 2014)

Seder plates can get awfully crowded these days, with all the causes vying to place a new symbolic food on them. Some of these causes are dear to my heart, and some of the foods are delicious. Nonetheless, I think the effort to formally incorporate them into seder ritual is a mistake. Here’s a very rabbinic and somewhat winding explanation of why.

We say the complete Hallel on the first day(s) of Pesach, but we say an incomplete Hallel on the remaining days? Why?

Pesikta Derav Kehana cites as explanation Proverbs 24:17: “Do not rejoice at the downfall of your enemy”. This explains why we don’t complete Hallel, but what is different about the first day(s) that allows us to complete it?

Here is a parallel question. Talmud Sanhedrin 39b states that after G-d drowned the Mitzriyim in the Reed Sea, the angels sought to sing His praises, but He restrained them: “My handiworks are drowning in the sea, and you want to sing?!” But the context, of course, is that the Jews were singing the Song of the Sea, and by all accounts they are praised for doing so. Why was it proper for the Jews to sing while His handiworks were drowning?

One more question: The Haggadah tells a story in which a group of rabbis stay up all night telling the story of the Exodus, until their students come and tell them that the time has come for the morning Shema. Now the third paragraph of the Shema is intended, the rabbis tell us, to fulfill the commandment of . . . telling the story of the Exodus. What is the difference between these mitzvot?

I have one answer for all three questions. The mitzvah on the first night of Pesach is to tell the story not as an observer, but rather as a participant. In Yosef Yerushalmi’s famous framework, it is intended to create memory rather than to teach history.

Direct beneficiaries of a miracle have an overwhelming obligation to express gratitude, even if a third party would note that the miracle caused harm to other human beings. Thus the Jews were obligated to sing, but the angels were not permitted to.

On the first night(s) of Passover, we place ourselves in the position of the generation of the Exodus, in other words as direct beneficiaries of G-d’s miracles. We therefore may and must sing the complete Hallel. On the remaining nights, we are more like the angels (although unlike them, we are second-degree beneficiaries), and so we cannot complete Hallel – did not His handiworks drown even as we were redeemed?

How does this relate to the question of whether contemporary social justice causes should find symbolic expression at the seder?

Let me be clear. The ultimate purpose of the Seder is to recommit us to justice, to recognizing that everything in Torah is mediated by our experience of the G-d Who hates slavery intervening to redeem us from slavery. But the immediate purpose of the Seder is to root that experience in our minds, and the minds of our children, as uncontroversial and incontrovertible memory rather than as potentially controversial history. The immediate purpose of the seder is to establish a narrative, not to draw morals from it.
When we impose meaning on the story, rather than simply telling it, we transform experience into opinion. The story by itself must generate the meaning. So long as we share memory, our conflicts as to the obligations imposed by that memory will occur within, and perhaps even strengthen, our shared identity. They will be conflicts of interpretation about a common text. But if the controversy is allowed to feed back into the memory – if our political differences no longer stem from a shared memory – those same conflicts risk turning us into multiple people, with multiple Torahs.

Now it is human and proper for Jews’ opinions to find their way into their divrei Torah at the Seder, just as every Jew experienced the original Exodus and Revelation at Sinai uniquely. And it is beautiful and necessary for Jews to experience the Seder as generating obligations to act, to change the world toward greater morality and justice. But we need the Exodus to be available to inspire our descendants as it inspired us; we cannot risk having it be seen as the constructed past of a dead ideology.

As we preserve a common text of Torah, we need to preserve a common core of Exodus narrative, and my strong sense is that this is best done by keeping the seder plate as is.
Some First Thoughts on the Procedure for Immersing Female Converts

The question of whether a male beit din must be present at a woman’s immersion for the sake of conversion has a very long intellectual and social history. Most recently, Rabbi Jeffrey Fox of Yeshivat Maharat has published a responsum to the clergy of the National Synagogue on this subject. My intention here is to post a series of sources and analyses without a defined endgame, simply to explain or argue for the state of the evidence as I see it. At this series’ conclusion I may choose to write a responsum or persuasive essay, but I hope that along the way readers will become invested in the process of thought as well as the bottom line.

Here is the first installment.

Rabbi Shlomo Kluger (1783-1869, acc. to Wikipedia) is known in yeshivot as a brilliant, clever, original, idiosyncratic, and remarkably prolific halakhic writer. There is considerable discussion as to the advisability of relying in practice on his more creative responsa.

In the “Gush” world specifically this issue is treated via one of the classic stories intended to convey the differences in approach of Rav Amital z”l and yibadel l’chayyim R. Lichtenstein shlita, regarding which of course “These and those are divrei Elokim chayyim.”

The responsum below has not, to my knowledge, been quoted often by subsequent halakhists, and as is often the case with R. Kluger, there are many, many, many grounds, both obvious and subtle, to disagree strongly with it and consider it beyond the pale of plausibility. At the same time, there is no denying its intellectual flair, and in Halakhah as in physics, beauty may be a legitimate criterion of truth. I have chosen to present its argument in outline form rather than by direct translation, but have also provided the original, with numbering to match the thought units of the outline.

1. GIVEN
The Mechaber (R. Yosef Caro in Shulkhan Arukh) reports that RIF and RAMBAM each rule that a conversion immersion done not in the presence of a beit din is invalid even bediavad =post facto.

2. KUSHYA:
How can RIF and RAMBAM explain Talmud Yebamot 45b, which appears to say that a woman who immerses to become tehorah from niddah-status, or a man who immerses to become tahor from keri, Is thereby Jewish?!
(This is the kushya which compels Tosafot to say that the presence of beit din is only required lekhatchilah =ab initio).

3. TEIRUTZ
   a. GIVEN
      1. A sukkah requires three walls
      2. Ordinarily those walls must meet the legal standard of mechitzah =physical separation
      3. To be considered a reshut hayachid on Shabbat, a space must be enclosed on all four sides. A mechitzah suffices to enclose a side. However, the sides can also be enclosed by symbolic walls that do not meet the legal standard of mechitzah,

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4. However, when a symbolic wall is serving on Shabbat to enclose a *reshut hayachid*, it may also serve as one of the three required walls of a *sukkah*, even though it does not meet the legal standard of *mechitzah*.

b. **THEREFORE**

When two areas of halakhah have similar requirements, but one has higher standards than the other, and an act or object

α. meets the lower but not the higher standard and

β. is actually in use for the halakhic purpose for which the lower standard is sufficient, then

γ. it is also sufficient for the halakhic purpose which requires the higher standard.

c. **THEREFORE, GIVEN**

α. Conversion and becoming *tahor/ah* from *niddah/keri* each require immersion, but

β. the conversion immersion requires the presence of a beit din, whereas the conversion to become *tehor/ah* does not

γ. However, based on the logic in the previous section

An immersion done for the sake of becoming *tehor/ah* from *niddah/keri* is effective for conversion even if no beit din was present.

4. **KUSHYA**

Conversion immersion is not parallel to sukkah walls in the following way – the validity of the non-mechitzah wall for Shabbat does not depend on its validity for Sukkot, whereas the validity of this immersion for taharah depend on its validity for conversion, since non-Jews are not subject to tum'ah resulting from niddah or keri?

5. **TEIRUTZ A**

This is an example of the halakhic phenomenon of simultaneous consecutivity, meaning that two things happen after each other at the same time. (I owe the term to my teacher R. Yehuda Parness shli.)

The locus classicus is freeing a Canaanite slave via a writ of manumission.

The writ can take effect only when the slave acquires it from the master, but the slave is legally incapable of acquisition until he is free – so the fact that the writ works means that he is free after he acquires it, and he acquired it when he was already free.

So too here – the immersion cannot effect conversion unless it accomplishes taharah, which it can only do if the conversion has already been accomplished, but we can say that the immersion works for taharah because s/he was already converted at the time they immersed, and the immersion works for conversion because s/he had was already in need of taharah.

6. **TEIRUTZ B**

Conversion is a mode of being acquired by G-d as a slave.

One of the ways in which one acquires a slave is by having the slave obey one of a defined set of commands.

So too conversion can be accomplished by obeying a defined command, even without the presence of a beit din, and even though all earlier aspects of the conversion, such as acceptance of the commandments and circumcision, must take place in the presence of a beit din.
7. KUSHYA
Rambam himself explains Yebamot 45b entirely differently, in a way that nonetheless resolves the apparent contradiction we have been trying to solve?

8. TEIRUTZ
What I have suggested nonetheless seems an independently compelling read of Yebamot 45b and of the Halakhah.

9. KUSHYA
Yebamot 46b seems to say that
a. there is a position that males can covert via circumcision without subsequent immersion, and
b. according to that position, conversion circumcision is invalid if performed without the presence of a beit din, but
c. according to that position, circumcision for males should be the equivalent of conversion immersion for females, and
d. that means that conversion immersion must require the presence of a beit din as well?

10. TEIRUTZ
This suggestion is a hava amina, a line of thinking the Talmud proposes but ultimately rejects.
The conclusion of the Talmud is that there is no position that males can covert via circumcision without subsequent immersion, and perhaps the basis for concluding that no such position exists is precisely our argument – since it is given that circumcision requires the presence of beit din, it follows that circumcision cannot be the last action required for conversion.
אף דא לא ינימ שלאו עהבה תלויה וגלתו ומקימ באלת דלאו יעייא אן קלאו, שבכניא, וזכיות דאיא
שישיב במצות הלאו עיהלו סבילה וגלתו.

דהוא מ"ת לא תלעיין ברא חפאמ, דאיכאחרין דא לא ינימ טבילה וגלתו ובלתה ובלתן דא לא עיהלו טבילה וגלת.

לזומאה, לפל אפרים דברת עליה טבילה ובלתה ומקימ בלת ואילוillow חדה - פורת טעמא והיינו דאיא.

סומאיה החיהיג וינא זיא.

1. לאו יש להמקיוב בכר, יוער מהתמה בקכה.

דהואו"ל" שים בא"ד לא ינימ בטליה ובלתי ינימ שזאלות בוא קא אינא운 שטשבו בוא ען"ו, מילוי ויהו, וודיאי לא זאטש
ובמימה אף שיאו ממקים מمناق מילוי, מ"ת יניינן בפגין ו', היינו דאף לא ינימה שטשבו ען"ו, מילוי ויהו, וודיאי לא זאטש
כי יערל לא יערל טבלי וכד"ם שאל טבלי עא כירארא מעילא, א' וכד"ם מהוא מנייל טבלי עא זאטש עלא
 KeyValue מזאת משמע, שודיאי היא יושיב לצעות ממץ כל זאמ טבלי, זאל לא ויינו ויהי יתקף יצבאות, זלי ברניק
בפגין ו',

abolic בטיםיא סאיחו המילה, א' ילוא טלביך זאלו, "א' אמא ינימ טבילהו זולו והייוו זאלת זאלו, זגי, "ע"ל ממקים זאו יער
מדא וערל אנא ממקים יער טבילהו זולו והייוו לצבאות זאלו, זגי, "אף טבליאה יעיין עלא, יעיין עלא, יעיין עלא

ב.tile יניינן בפגין ו',

שהobjectId לקין זוקה הנישה בעבד דיזמות;

ן מ"ת, כו יניינן מתינים לקין יאזכ מתימא שקיבל עליי, זאר בדו דום הוקיק, זולו די, אפי טבליאה
ב.tile יניינן בפגין ו',

ן ליל כנין זוקה.

7. שוזי עיינייב יבכרנס"ו עזעמו פ"יא מלה, "א"ב שיאו מפורש פי' אחור באא דאמרין מיא לא טבלאה לנדתה ולז presenta

เหมาะสม לא קישה עלייו קושיוצ הניד.

8. מיה אפרים גוןימ מצא עזעמו יבשוא ק' הוטפה' הניד

9. מיהו ממה דאמרין שיש הז"ב בכרמה מ"ת"עב

מחת דהימיא עיינא מילוי העיגה ומחמות דלאו הומייל בפוןינ

שניא דהיזא דיבר

דיא ל"ד, עיינא מילוי עיגר, וד דמילא לבלב, א"כ הנה בכו שא', שאל בפתינ', ויהי היכו דמקים בהזא מן המזאת
שקריב עלייו ממה אף שא בלפונינ!

10. אופישו דריך להס' דשת"ם קאמרנ, דיה, אפושר לטעות, קנ

אברל לפי עזעמו ח"מ ראבאר מ"ת_Frame"ד, עיינא בטליה בך דרי, עיינא בטליה בך דרי, מפורש היד
שלא בפתינ, כ"ד דצלית לבלב, מיהו היד, עיינא בפתינ.