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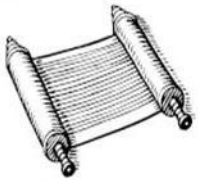

חרות ואחריות

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"Taking Responsibility for Torah"

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When Majority Rule Breaks Down (Sept 10, 2015)

If the Torah is "not in the Heavens" (*Devarim* 30:12), where is it? In the story of the Oven of Akhnai, the *tanna* Rabbi Yehoshua cites this phrase to reject Rabbi Eliezer's use of a Heavenly voice (בת קול) as halakhic evidence, but he provides no explicit alternative. The *amora* Rabbi Yirmiyah fills the gap by claiming that at Sinai G-d handed the Torah over to human majority rule. What happens when majority rule breaks down? Does the Torah remain on Earth, or does it return to the Heavens?

Majority rule can break down in at least three ways. First, we can disagree as to whose vote counts, so that each side believes itself to have the true majority. Second, we can deny that the votes of those we disagree with are the result of genuine deliberation, rather than unreflective support of interests or ideologies; majority rule works only when minorities have a plausible hope of becoming majorities. Third, we can deny that the votes of those we disagree with reflect their free choices, rather than the implicit or explicit coercion of the powerful.

It is no secret that majority rule in Modern Orthodox *halakhah* has broken down in each of these ways. So we are left to face the question: Where should Halakhic authority rest?

The possibility that authority returns to Heaven is real. Tosafot point out that while we accept Rabbi Yehoshua's rejection of Rabbi Eliezer's Heavenly voice, the*halakhah* also follows Beit Hillel over Beit Shammai *because a Heavenly voice said so*. Tosafot answer that we accept Heavenly voices when they support the majority, but not when they oppose it. This seems trivial; what does the Heavenly voice add? The answer is that *Talmud Yevamot* tells us that Beit Shammai and Beit Hillel disagreed as to which had the majority, as Beit Shammai thought many of the pro-Beit Hillel voters were unqualified. Heavenly voices can decide the meta-question of who gets to vote.

This solution has potentially broad implications; there are many potential meta-questions. Rabbi Norman Lamm in *Halikhot VaHalakhot* argues, for example, that majority rule does not apply to arguments about jurisdiction or authority. In the first *Mishnah* in Shas, there is a dispute between Rabban Gamliel and the Sages as to how late the evening *Shema* may be said: the Sages say until midnight, whereas Rabban Gamliel permits until dawn. Rabban Gamliel then rules in practice for his sons that they may say it after midnight, despite being fully aware (see *Talmud Berakhot*) that his is the minority position. How can he do this? Rabbi Lamm suggests that the Sages' position was that a rabbinic decree had limited the acceptable time to midnight, but Rabban Gamliel denied the right of the Sages to make such a decree, and as a result felt free to disregard their majority. It might follow that according to Tosafot, this dispute as well was potentially subject to arbitration by Heavenly voice.

Now Rabban Gamliel and Rabbi Yehoshua are protagonists in *Mishnah Rosh HaShannah* of a different drama about halakhic authority. In that story, Rabban Gamliel crushes Rabbi Yehoshua's attempted dissent by social force. When Rabbi Yehoshua seeks support afterward, he is told by his colleagues, on various grounds, that Rabban Gamliel's decision is final, even if it does not accord with the truth, and in some versions—which fit well with the story—even if it deliberately fails to accord with the truth.

In this drama it is Rabban Gamliel who stands for social authority, and Rabbi Yehoshua who stands for the right to follow personal truth. In other words, Rabban Gamliel and Rabbi Yehoshua each believed that halakhic majorities do not have unlimited authority, although they disagreed as to what those limits were. The question for us is: did they return authority to the Heavens outside those limits?

The short answer is no. Rabbi Yehoshua ultimately agrees to publicly violate the day he held should really have been Yom Kippur. And in *Talmud Berakhot*, when Rabban Gamliel is temporarily removed from his office as *nasi*, he remains in the*beit midrash* and to the best of our knowledge accepts the outcome when his position on a conversion case is outvoted. Neither Rabbi, no matter how deeply convinced of their own truth, resorts to Heavenly voices or denies human authority when confronted by a majority of their colleagues.

I suggest that each of them understood that "not in Heaven" is not descriptive, but rather prescriptive. In other words: A goal and challenge for every halakhist is to make sure that authority is not ceded to the Heavens.

Why should this be so? Because a resort to the Heavens opens religion up to exploitation by charismatic frauds and sincere lunatics. It enables the worst of decisions to simply evade critical scrutiny, and indeed often to revel in their irrationality. It removes our responsibility to work together to build communities that implement the word of G-d as best we understand it.

All this is worse than almost any system in which human beings remain accountable to one another.

Of course, there are human systems in which human beings are not accountable to one another, and *halakhah* can fall prey to those as well. When majorities are consistently achieved by intimidation rather than persuasion; when *psak* in crucial cases is wholly predictable on the basis of ideology; or when eligibility to vote is determined by outcomes rather than abilities, nothing is left for dissenters other than secession, and ultimately, the claim that they have Heavenly authority for their spiritual or ethical intuitions.

Yet how long will their leaders remain accountable? Or, how will they be able to build community when real differences of opinion surface?

What kept Rabban Gamliel and Rabbi Yehoshua inside the system was their recognition that even if some things were going terribly wrong, overall there was still human accountability. Rabban Gamliel could rule specific votes with an iron hand, but he could be deposed; Rabbi Yehoshua was willing to submit himself when the alternative was anarchy. Furthermore, Rabbi Yehoshua did not force a confrontation on every issue, but was willing to tolerate Rabban Gamliel's nonconformity about the time of Shema. Rabban Gamliel was properly deposed when he began seeking a formal ruling every time there was a whisper of dissent.

With its mechanisms of accountability broken, Modern Orthodoxy is more and more vulnerable to claims of direct Divine inspiration and non-accountable certainty (often well-disguised as their opposites). A natural reaction to this risk of anarchy is to double-down on eligibility, ideology, and intimidation; these work in the short run, but lead almost inevitably to schism (and intimidation is a very hard habit to break).

In the coming year, let us bless ourselves, and invite Divine blessing upon us, by working instead to rebuild our willingness to be accountable to each other.

Teaching Rabbis Rabbinic Ethics (June 10, 2015)

In light of recent rabbinic scandals, Rabbi Josh Yuter properly suggests on his blog that a course on rabbinic ethics be part of *semikhah* programs, and puts forth a suggested curriculum. Certainly our *parsha*, a story of how *klal Yisroel* was failed by its best and brightest, is an appropriate time to reflect on educating our future leaders.

However, I am not confident that courses on professional ethics significantly improve professional behavior, especially where no professional association has the mandate to seek out and punish malfeasance. I don't believe the spies would have made better choices had Mosheh Rabbeinu given them a great *shiur* in*Hilkhot Meraglim*, or even a series of such *shiurim*.

I am also unsure that teaching texts is the best mode of teaching a narrow subset of Jewish ethics. One outcome of general halakhic training is that students learn how to evade and manipulate texts; those of good character use these powers for good, while those of bad character use them for evil. Students of bad character often corrupt the texts they learn, and may even learn new techniques of evil from them.

Let me use one of Rabbi Yuter's suggested texts to illustrate. On *Chullin* 44b, Rav Chisda gives a definition of the status *talmid chakham* that Rashi reads as suggesting a direct connection between Torah academic stature and ethical character. Other *rishonim* read it very differently, however. Here is the statement:

Said Rav Chisda:

Who is a *talmid chakham*? One who examines a *tereifah* for himself.

Rashi explains:

When a doubt arises that perhaps one of his animals has become a *tereifah,*

and there is a reason for prohibition and a reason for permission,

and he does not take pity on it (ADK: meaning on its potential use) and forbids it.

In other words, the true *talmid chakham* is one who is willing to rule against his or her economic interests even when it would have been easy, but not honest, to avoid doing so.

Piskei RID perhaps does not understand the *hava amina*; obviously a true *talmid chakham* cannot permit the forbidden! He therefore transfers Rav Chisda's statement from the realm of substance to that of appearances:

Something in doubt,

where one person gives a reason to permit and another to declare it *tereifah,*

and this (true *talmid chakham*) adopts the reason to declare it *tereifah* and is stringent upon himself.

It is appropriate for a *talmid chakham* to act in this way,

as if he would be lenient, people would besmirch him, saying

"He was lenient for himself, but if it had belonged to others, he would have declared it *tereifah."*

In context, RID's reading seems a better fit than Rashi's. Immediately preceding Rav Chisda's statement, the Talmud tells the following story:

Rabbah permitted a *tereifah* and bought meat from it.

The daughter of Rav Chisda said to him:

When my father permitted a firstborn animal (for the use of *kohanim,* by declaring it blemished and therefor unfit for sacrifice), he did not buy meat from it (despite being a *Kohen)!?*

He replied to her: That was only regarding a firstborn animal, which is sold by estimate; here, the weight is evident.

What grounds are there for suspicion – that they might give me the best cut (for the same price)? They give me the best cut every day!

Here the issue is not direct self-dealing, but rather the suspicion of a kickback or bribe from the animal's owner. Rav Chisda's daughter accuses her husband Rabbah of insufficient concern for the appearance of corruption, which supports RID's reading. Perhaps Rashi thought that Rav Chisda's daughter went so far as to accuse her husband of actual corruption. Either way, Rabbah's reply compounds the ethical difficulty rather than resolving it.

Rav Chisda's statement about the true *talmid chakham* is followed by two more using the phrase "one who examines a *tereifah* for himself." Rashi's reading becomes progressively harder to sustain as we read through the series.

Said Rav Chisda:

Who is the referent of the verse "One who hates gifts will live"?

This refers to one who examines a *tereifah* for himself.

Mar Zutra taught in the name of Rav Chisda:

Anyone who reads Scripture and repeats Oral Torah

and examines a tereifah for himself and served *talmidei chakhamim* –

Regarding him Scripture says: "When you eat (the product of) your own hands' exertion, you are fortunate and possess the good."

Rashi explains that one who examines a *tereifah* for himself "certainly hates gifts from others, as even regarding his own he is not greedy to decide for the side of permission." Furthermore, "all the more so he will not be greedy regarding the property of others, to steal and rob," and so he eats the product of his own hands' exertion. But it is hard to say that "One who hates gifts will live" refers to someone's relationship to their own property. It is even less plausible to say that the direct referent of "when you eat (the product of) your own hands' exertion" is someone who refuses to eat the product of their own halakhic leniency! These difficulties leads Rabbeinu Nissim to cite a diametrically opposed explanation:

But others interpreted:

"Who is a *talmid chakham*? One who examines a *tereifah* for himself.

Meaning – that he has reached the level of being able to explain which is kosher and which is *tereifah,* and is fit to rely on himself and does not need the rulings of others.

Therefore (Rav Chisda) said that "Regarding him Scripture says:

"When you eat (the product of) your own hands' labor, you are fortunate and possess the good."

Meaning that the exertion he has exerted in Torah causes him not to lose money because of a doubt.

Maharsha argues that the next line of Talmud proves that this explanation is correct:

Rav Zvid said: He merits obtaining a homestead in two worlds, this world and the Coming World.

"You are fortunate" – in this world; "and possess the good" – in the Coming World.

According to Rashi's understanding, the scholar who "examines a *tereifah* for himself" is giving up this world!? So RAN's alternate explanation must be accepted.

The Talmud next describes the behavior of a pair of rabbis, Rabbi Elazar and Rabbi Zeira. Each turned down food sent them from the *nasi*'s table, citing the verse "who hates gifts will live"; but whereas Rabbi Elazar also refused the *nasi*'s invitations to meals, Rabbi Zeira accepted them, asserting that he was conferring rather than receiving honor by attending.

Rabbis Elazar and Zeira are bookends to Rabbah and Rav Chisda. Like Rav Chisda, who refused even the appearance of benefiting from his own rulings, Rabbi Elazar goes the extra mile to avoid even the appearance of impropriety; and like Rabbah, Rabbi Zeira not only accepts the risk that people will see him as benefiting from his position, he argues that one privilege of his position entitles him to the next. Now that we've learned this text ourselves, it may be tempting to say that students should be taught to emulate Rav Chisda and Rabbi Elazar, and to see Rabbah and Rabbi Zeira as bad examples in this regard, but I contend that would be simplistic.

Rabbis must fundraise, so there's no possibility, especially in small communities, that they will be unaware of who contributes and how much. They cannot fully avoid either the appearance or reality of owing something to the wealthy. That's why Rambam and Shulchan Arukh describe even Rabbi Zeira's behavior as *middat chassidut,* beyond what is required. More sharply, if we are simply placing the text in front of students, what if they are convinced by RAN rather than Rashi, and see in this text no concern for self-dealing or the appearance of impropriety? Even if they adopt Rashi's understanding, what if they choose to see Rabbah as their model in this area, as he is in so many others?

In sum, Rabbi Yuter deserves much gratitude for raising the issue. But teaching rabbis ethics through texts is setting foxes to guard henhouses, unless the teachers and texts have been domesticated. Nor do we wish our rabbinic foxes to become sheep; rabbis who see one interpretation of a multivalent text as absolute in the realm of rabbinic ethics will likely have the same monovision when it comes to releasing *agunot*, or conversion, etc.

I therefore suggest that while deep and intense Torah study is needed here as everywhere to determine our ends, the means for improving rabbinic ethics must primarily involve the development of unambiguous standards, effective and fair modes of investigation, and readily enforceable consequences.

Leadership in a Time of Possibly Radical Change (September 17, 2015)

Endings are hard, and I don't believe that the collective wisdom of humanity will ever determine whether gradual or abrupt endings are easier to bear. Jewish tradition will not help either. The Rabbis tell us that illness entered the world when Yaakov prayed for a transition toward death. But Moshe Rabbeinu dies in defiant full possession of his faculties, "his eye undimmed and his moisture not fled."

Transitions are also hard. Moshe Rabbeinu was a political leader and he and G-d seem to agree on the need for a political transition. The Rabbis tell us that Moshe was the sun and Yehoshua the moon, so Yehoshua needed Moshe to shine on him. The problem is that Yehoshua must become visible while Moshe is still shining, and then remain visible when Moshe's radiance has ceased. One can play with the metaphor and suggest that for Moshe, death means only sinking behind the horizon, but this solution seems cute rather than compelling.

Moshe himself seems to tell the Jews, against the narrator's later assertion, that he has aged. "I am aged 120 years as of today; I will no longer be able to go out and in," apparently meaning that he can no longer lead the Jews in battle, and thus must be replaced. But this is an unconvincing argument, in two ways: First, Yehoshua led the Jews in their very first battle, with Amalek, while Moshe prayed behind the scene, so why can't that be the ongoing practice? Second, it seems likely that Moshe's vigorous delivery of this speech would put the lie to his claim, just as no one reading his eloquent initial attempt to refuse G-d's initial mission could believe that he was genuinely כבד לשון (heavy-tongued).

On *Sotah* 13b, Rav Shmuel bar Nachmeni in the name of Rabbi Yonatan suggests that Moshe is referring here to מלחמתה של תורה, the battles of the *Beit Midrash*: "*to go out and come in* – regarding Torah matters." Why could he no longer lead these battles? נסתתמו ממנו שערי חכמה" – the gates of wisdom were closed off from him."

I think it is clear that Rabbi Yonatan did not mean to suggest that Moshe lost his overall intellectual acuity, or that he forgot his Torah knowledge. Rather, as the late Lubavitcher Rebbe noted, Rabbi Yonatan is walking a delicate line. He needs Moshe to remain the sun, and yet must also make clear that the sun is setting. So t gates of wisdom must refer to a specific and bounded disability.

The problem (also noted by the late Rebbe) is that the text of Rabbi Yonatan's statement is itself unstable. Shitah Mekubetzet reports that other manuscripts had מסורת חכמה = the tradition of wisdom. Manuscripts of the Ein Yaakov had מעינות החכמה = the springs of Wisdom. Rashi to our verse has מסורות ומעינות החכמה = the traditions and springs of Wisdom.

It seems plausible that each of these different versions reflects a different approach to the delicate line Rabbi Yonatan seeks to walk. What capacities can a Torah leader lose that will leave them radiant, yet point to the need for replacement, and allow for successors to become visible?

The text as we have it – שערי חכמה – suggests that a leader can lose their flexibility, their capacity to learn new things. Having myself sat willingly in the *shiurim* of at least two great scholars at that point in their careers, I find this an eminently reasonable suggestion. There was no question that they were the sun, and we students at best aspiring moons, and yet it was also clear that they could no longer make vital practical decisions for a community. Effective generals do not *always*fight the last war, and effective *poskim* (halakhic decisors) do not always *pasken*the last *sheilah*.

The version “springs” makes a somewhat stronger claim. It is not enough to be able to learn new things; you have to be able to adjust previous conclusions in light of new evidence. A leader who learns, but can no longer be creative, will just end up fighting one of several previous wars. Perhaps there is nothing objectively new under the sun, but no individual life is ever broad enough to preclude subjectively new experiences.

But it is very challenging to imagine Moshe Rabbeinu, or *lehavdil* any great scholar, maintaining their identity when they have lost access to their traditions of wisdom. For this reason among others the Rebbe *zt”l* suggested narrowing this term to traditions that have no point of origin in the text of *chumash*, the *halakhot leMoshe miSinai* that G-d for His own inscrutable reasons whispered to Moshe at Sinai. Without access to those traditions, Moshe remained great but was no longer irreplaceable.

Rashi, however, was satisfied with none of these. He believes that Moshe had to lose both the traditions and the spring, both the past and the future, if Yehoshua were to succeed and thrive. Why? Perhaps Rashi, better than any other version, truly does justice to Rabbi Yonatan’s task. Moshe had to lose access to the past, or else Yehoshua could not become visible. But he also had to lose access to the future, so that Yehoshua could become a sun in his own right. There had to be a recognizable limit to the questions Moshe could answer, so that Yehoshua could be recognized as a contributor and not merely as a sustainer.

The truth is that just about every halakhic decisor over time ossifies in both these ways. Initial intuitions become hardened into formal concepts and rulings, and new cases are more and more easily categorized as minor variants on established precedents. All this has a salutary impact with regard to predictability and accuracy, which are virtues of great significance, especially in stable communities and environments. But Bnei Yisroel were about to experience an enormous discontinuity as they crossed into Israel.

The problem is that in just about every generation there are those who see radical discontinuities, and those who see fundamental stability. Is postmodernism a passing fad or a seismic philosophic shift? Does the routine participation of women fundamentally change the nature of halakhic discourse? Do contemporary*roshei yeshiva* (be they from RIETS, YCT, or Bnei Brak) consistently relate to their lay communities differently than did the leading halakhic decisors of past decades and centuries?

I hope it is clear that the question of when these changes are radical, or not, it has not settled the question of whether they are positive or negative. But nonetheless matters a great deal how we answer that question. As a simple example: If post-modernism is a noxious but passing cloud we should not make painful sacrifices to combat it. If it is a healthy but passing cloud, we should not build our theologies on it. But if it is healthy and enduring, or noxious and enduring, then such sacrifices and constructions can be justified.

Perhaps we can argue further that in every generation there are radical discontinuities, but there are also exaggerated claims of discontinuity. I am tempted to assimilate this suggestion to the classic rabbinic categories of repentance. Radical discontinuities turn past vices into virtues while minor discontinuities simply allow us to correct and overcome those vices. But few things are more dangerous than a mistaken claim that a past vice is newly virtuous.

And the Number One MO Meme is….(January 27, 2015)

Designers of Modern Orthodox curricula need to think not only about ideas but about how to embed those ideas in memorable textual readings. What are the ten best Modern Orthodox *vorts* on the *parshah*? What are the three standard Modern Orthodox *divrei Torah* to give at a *sheva berakhot*?

One of my top 10 MO memes is that G-d stopped the angels from singing when He unsplit the Reed Sea. "The products of My hands are drowning in the sea, and you seek to sing?!" This sentence and setting beautifully capture and affirm the tension between universalism and particularism so central to Modern Orthodoxy. G-d loves us Jews, and protects us Jews, and yet He sorrows whenever His relationship with us comes at the expense of His other human creations.

So it was deeply upsetting to me when, in my freshman year at YU, I heard Meir Kahane claim that this midrash was a liberal invention, and that the *midrash*actually spoke of the angels being refused permission because the Jews were not yet fully across.

I found the overall experience of Kahane, in particular his capacity to insult his followers without consequence, simply terrifying. It gave me a lasting distrust and fear of charismatics and charismatic education. But what if he was right, and one of the foundations of my religious identity was hollow? Disliking a Torah claim is not sufficient grounds for rejecting it.

Here is the version of the Midrash found in Tanchuma Beshallach 13.

ד"א: "אז ישיר"

בשעה שהיו ישראל חונים על הים, באו מלאכי השרת לקלס להקב"ה, ולא הניחן הקב"ה

שנאמר "ולא קרב זה אל זה וגו'"

ואומר "וקרא זה אל זה" (ישעי' ו ג)

למי היו דומיין?

למלך שנשבה בנו. לבש נקמה באויביו והלך להביא אותו, ובאו הבריות לומר לו אימנון

אמר להן: לכשאני פודה את בני אתם מקלסין אותי

כך-

ישראל היו נתונים בצרה בים. באו מלאכי השרת לקלס להקב"ה, נזף בהם

אמר להם הקב"ה: בניי נתונים בצרה, ואתם מקלסין?!

"Then did (Mosheh and Bnei Yisroel) sing" –

At the time that the Jews were camped by the sea, the Ministering Angels came to extol the Holy Blessed One, but He did not give them leave,

as Scripture says (Exodus 14:20): "they did not near (karav) one to the other . . .",

and it says (Yeshayahu 6:3) "and they called (kara) one to the other".

To whom were they comparable?

To a king whose son was captured. He dressed for revenge against his enemies and set out to rescue his son, and the populace came to recite his glory.

He said to them: “When I redeem my son you may extol me!”

So –

The Jews were in peril by the sea. The Ministering Angels came to praise the Holy Blessed One, but He angrily rebuked them.

He said to them: “My children are in danger, and you are extolling Me?!”

It is indisputable that in this version G-d stops the angels from singing because the Jews are still in trouble, not because the Egyptians are drowning. The whole point is that G-d has not yet intervened, and so the Egyptians are not yet drowning. The clear implication is that the angel’s singing would be premature rather than inherently inappropriate.

On *Megillah* 10b and *Sanhedrin* 39b the text is as follows:

מאי דכתיב (שמות י”ד) “ולא קרב זה אל זה כל הלילה”?

בקשו מלאכי השרת לומר שירה

אמר הקדוש ברוך הוא: ‘מעשה ידי טובעין בים, ואתם אומרים שירה?!’

What is meant by the verse “and they did not draw near one to the other all that night”?

At that time the Ministering Angels sought to say the Song before the Holy Blessed One.

The Holy Blessed One said to them: “The products of My hands are drowning in the sea, and you are saying the Song before Me!?”

Only the Egyptians were ever drowning in the sea. Furthermore, the Talmud in both contexts uses this statement to support the claim that G-d does not rejoice at the downfall of the wicked, although he allows those saved from the wicked to rejoice; thus Moshe and Israel sing, but the angels cannot. So clearly the Talmudic version cannot be read the way Kahane suggested.

But which version is correct?

The *Tanchuma* is almost certainly the original, because the prooftext – “they did not draw near one to the other” – discusses the night before the Jews even enter the sea, let alone before G-d drowns the Egyptians in it.

On the other hand, the *Tanchuma* cannot fit in the *Bavli* at all! So the “Modern Orthodox version” was accepted by the editors of the Talmud. In other words, if this version is a liberal invention, we can only conclude that the compilers of these*sugyot*, the *stammas d’gemara*, were liberals. The weakness of the exegetical argument strengthens the authority of its substance.

I would be very comfortable religiously if my universalism places me with the editors of the Talmud against Meir Kahane.

I want to suggest further that applying the phrase "products of My hands" to Gentiles is a Talmudic Modern Orthodox meme. Here is my evidence, from*Sanhedrin* 98b. The context is a discussion of why Joshua's conquest of Israel was supported by miracles, whereas Ezra's return was not:

"שאלו נא וראו אם ילד זכר – מדוע ראיתי כל גבר ידיו על חלציו כיולדה, ונהפכו כל פנים לירון"

מאי "ראיתי כל גבר"?

אמר רבא בר יצחק אמר רב: מי שכל גבורה שלו

ומאי "ונהפכו כל פנים לירון"?

אמר רבי יוחנן: פמליא של מעלה ופמליא של מטה, בשעה שאמר הקדוש ברוך הוא: 'הללו מעשה ידי והללו מעשה ידי, היאך אאבד אלו מפני אלו

(Yirmiyah 30:6) "Investigate please, and see, whether a male is giving birth – why do I see every man with his hands on his loins like a birthing woman, and all faces turned green?"

What is the referent of "I see every man"?

Said Rava bar Yitzchak said Rav: He to Whom all male virtue belongs;

And what is the referent of "and all faces turned green"?

Said Rabbi Yochanan: The famalia above and the famalia below, at the time when The Holy Blessed One said: 'These are the products of My hands, and these are the products of My hands – how can I destroy these for the sake of those?'

Rashi identifies the two *famalias* as the angels and the Jews, and makes the contextual meaning clear:

מי שכל הגבורה שלו" – הקדוש ברוך הוא מצטער בעצמו כיולדה ואומר בשעה שמעביר העובדי כוכבים מפני ?' "ישראל: 'היאך אאביד אלו מפני אלו

"To Whom all male virtue belongs" – The Holy Blessed One is Himself in pain like a birthing woman and says, at the time that he removes the idolaters for the sake of the Jews, "How can I destroy these for the sake of those?"

Orthodox subcultures replicate successfully when their key ideas can be captured in viral rabbinic soundbites. Think "*hechadash assur min haTorah*," or "*avira d'Eretz Yisrael makhkim*." Each of these can be funny to sophisticates. After all, the Chatam Sofer's use of the first phrase to oppose creativity was a creative pun, and contemporary Israel programs cite the second phrase to prove that true Torah learning can only take place in Israel, when the quote itself is taken from the Babylonian Talmud! But they are nonetheless the engines of cultural success.

The idea that G-d's love of Jews does not exclude His regarding all humanity as His handiwork, and that He cries when forced to choose between them, is demonstrably the intent of *Chazal*, albeit not the intent of *Shemot* 16:20. One measure of a Modern Orthodox day school's success should be whether every student knows the sentence מעשי ידי טובעים בים and its attendant *vort*.

I invite nominations for the other nine members of the top 10.

<u>The International Beit Din Controversy: A Statement and a Proposal</u> (*Jewish Link of NJ*, October 15, 2015, http://www.jewishlinknj.com/index.php?option=com_content&view=article&id=9844:the-international-beit-din-controversy-a-statement-and-a-proposal&catid=155:op-eds&Itemid=567)

The decisions of the International Beit Din for Agunot (IBD) have generated powerful rabbinic critiques and countervailing declarations of unconditional support. Because the freedom of specific women is in dispute, and because the line of engagement runs roughly along the RIETS/YCT border, we cannot afford to dismiss these disagreements as mere intramural rabbinic squabbling.

Here are five things that everyone should understand about the controversy:

1) The teshuvot published on the IBD website are inadequate. They do a poor job writing up the facts, and make insufficient arguments. A serious scholar who had only read the teshuvot, and had no relationship with or experience of the rabbis involved, could not feel comfortable relying on these permissions.

2) The dayanim for those cases—Rabbi Simcha Krauss, Rabbi Yehuda Warburg, and Rabbi Yosef Blau, are mainstream Modern Orthodox talmidei chachamim with long, admirable records of Torah service. Personally belittling them is a case of Modern Orthodoxy eating its own leaders.

3) The women involved should almost certainly not be agunot; their freedom should not depend on creative legal argumentation. A weak teshuvah does not change the facts, and the facts, as both Rabbi Krauss and Rabbi Blau relate them in person, make a very strong case for permission on conventional halachic grounds.

4) The IBD was generally not overruling other batei din; it was taking on cases which other batei din had completely failed to address. Most, if not all, of the women involved had not succeeded in getting any other beit din to examine their cases to see if they could be freed without a get.

5) The IBD controversy genuinely risks creating an irrevocable split in Modern Orthodoxy. One side is threatening declarations of mamzerut; the other, willingness to preside at marriages regardless. Neither side is bluffing, although each believes the other is, and the result is that the women in question have become gambling chips in a game of halachic poker.

The proper, humane, halachic response to this set of facts is obvious—a statement of regret that the teshuvot are inadequate, together with an expressed desire to listen to the facts, or investigate the cases independently, and to write, or help write, adequate teshuvot freeing the women, if at all possible.

This response must be accompanied by commitment to creating permanent processes for ensuring that no women in North America are left as agunot because their cases have not been given every possible attention. These processes must be transparent and credible across the spectrum of Orthodoxy, and those involved in these processes must see their constituency as at least the full spectrum of the Modern Orthodox community, and hold themselves accountable across that spectrum.

Let me be crystal clear what that would mean. Many halachic mechanisms for freeing agunot are the subjects of dispute in which each side acknowledges the legitimacy of the other. For example, there are deeply-held disagreements regarding Rav Moshe Feinstein's position that marriages officiated by Conservative rabbis are presumptively invalid (when the alternative is iggun), and about whether a

marriage is invalid if the husband concealed a major physical blemish. It is the job of the rabbinic community to ensure that every agunah is given the opportunity to tell her story in full; to have all necessary efforts made to verify and document all halachically relevant facts; to have brilliant, rigorous and creative halachic minds formulate the strongest possible arguments for her freedom; and to have those facts and arguments presented to the broadly accepted halachic authority or authorities who will be most likely to free her. Every rabbi must direct agunot to such authorities, even when not willing to issue permissive rulings themselves.

Let me be crystal clear what that would not mean. Some proposed halachic mechanisms for freeing agunot are currently regarded by much of the Orthodox community as simply invalid, even if the alternative is iggun. An example is the annulment of abusive marriages by rabbinic fiat. Such mechanisms will have no role in a consensus system. This means that some agunah situations may not be resolved. However, the IBD's caseload suggests that such cases are few and far between, and that most current agunah cases are the product of insufficient access and communication, particularly when local batei din adopt strict positions and do not inform women of alternatives.

Effective local batei din would be encouraged to continue their efforts to help agunot, both at obtaining gittin and at freeing women in other ways when necessary. Women would still be able to seek leniencies in such circumstances from non-consensus batei din, in accordance with their own religious consciences and social needs. New ideas, such as Rabbi Krauss's *zikui* suggestion, should be welcomed eagerly, critiqued thoroughly and constructively, and to the extent useful and possible adapted and adopted.

In previous generations, many agunah cases were sent to such luminaries as Rav Ovadiah Yosef, Rav Yitzchak Elchanan, and Rav Chaim haCohen Rappaport. The reason for this was twofold: first, that they had sufficient respect and halachic authority that one could be sure their lenient rulings would be accepted, and second, that they were known to be willing to issue lenient opinions in hard cases, and on the basis of minority or original opinions.

Here is a description of Rabbi Yitzchak Elchanan's attitude in such cases from his contemporary Rabbi Mordechai Gimpel Jaffe, a great scholar in his own right:

ומ״מ לפ״ד יעצתיו עוד הפעם לשלוח מכתב להגאון האב״ד דקאוונא שיחי׳ ולהודיעו תורף דברי התשובה ומהזהר החדש וכדומה, ויבקש כי יען יצא הדבר בהיתר והלא הוא בעצמו הסכים לסברא דגלוי דעתה, ויחוס על האשה העלובה הזאת, אדמה כי יסכים בהיתרא. וגם אם חס ושלום לא יסכים אבל גם להיפך לא יכתוב. ואתפלא על הרב ששלח איסור בפירוש וכפי דברי מכתבו הלוטה במכתב חתני הגנ״י ששלח לי, דלא חזינן לרבנן קשישאי דעבדי הכי, חותרים בתק׳ע בכל עוז כמ״ש הרא״ש והרא״ם ועוד הרבה גאונים לחפש בעיגונא דאיתתא צידי צדדים להקל. וגם אלו שאין דעתם מסכמת לשריותא דאיתתא הצנועים מושכים את ידיהם. אבל לכתוב לאיסור

... אינם עושים רק במקום איסור הברור ופרצה גדולה לא על פי הוראת גאון אדיר וגדול הדור

Regardless, in accordance with my usual practice I have advised him once again to send a letter to the Gaon the Av Beit Din of Kovno (Rabbi Yitzchak Elchanan), may he live, and to inform him of the substantive content of the responsum and of the Zohar haChadash (that you cite as evidence for your argument) and the like, and to request that since the matter has emerged with a permission (for the agunah to remarry), and since he himself has agreed with the rationale that a woman's indication of her mindset (is sufficient demonstration that she entered into marriage only on the basis of a particular assumption, and if that assumption turns out later to be untrue, the marriage was invalid and she may remarry without a get), he will have pity on this suffering woman, so I imagine that he will agree to the

permission. And even if, God forbid, he does not agree, he will certainly not write the opposite. I am astonished at the rav who sent an explicit prohibition, as per his letter which was [enclosed] in the letter that my son in-law sent me, as we have not seen experienced rabbis behaving in that way; rather they strive [fixedly] with all force, as ROSH and R'EM and many other Geonim wrote, to seek for agunot the subtlest considerations that enable permission. Even those whose opinion did not agree with the permission of a particular woman—they modestly withdrew their hands from the matter. But to write to prohibit—they do this only in a place where the prohibition is clear and the breach is great, not when it was done on the basis of a powerful gaon among the greats of the generation...

The public rabbinic letter attacking the IBD stated clearly its opinion that the IBD's decisions were not done "on the basis of a powerful gaon among the greats of the generation," and that "the breach is great." But the prohibition is certainly not clear, and it should now be obvious that our community has not given these agunot the admirable and sustained individual attention that we gave the widows of 9/11 victims—all of whom were freed, a remarkable halachic accomplishment that is largely owed to current critics of the IBD (some of whom also get enormous credit for the halachic prenup, which is an ounce of prevention worth many pounds of cure).

This attention can and must now be given. Any critique of the IBD must be accompanied not by pro forma sympathy with agunot, but by recognition that it deals with women whom the current system has unjustly and unjustifiably failed, and that this failure has legitimately undermined trust. It must be accompanied by concrete willingness to invest in and endorse mechanisms that will give women transparent access to recognized halachic leniencies, without centralizing power and creating halachic gatekeepers.

If we spend more energy attacking the IBD than helping the women it served—is it a wonder that many learned and God-fearing men and women will choose to sacrifice analytic rigor rather than sacrifice women?

If we spend more energy defending the IBD than helping the women it served—is it a wonder that many learned and God-fearing men and women will see us as engaged in political posturing rather than in sincere halachic argument?

A Note on Values, Law and Gender Polemics in Modern Orthodoxy (December 2, 2015)

There is and must be a middle ground between the claim that all my values are *"masoret"* and therefore inarguable, and the claim that all values are equally legitimate Jewishly and the only issue is legality.

Another way of saying it: There is and must be a middle ground between authoritarian Daas Torah and postmodernist halakhic relativism.

There are enough critiques of authoritarian Daas Torah on the web, including several of my own, so I will take on the other side.

Replace *"masoret"* with *"ruach chakhamim",* "(*naval bi)reshut haTora*h",*"derekh eretz",* "*lifnim mishurat hadin*", and so on – is it worth ordaining women if the price is denying all normative sway to all extralegal religious or ethical principles?

Must we now give public honors to those who steal from nonJews because they have a halakhic leg to stand on, or tolerate as members of Orthodox rabbinic organizations those who follow the minority medieval positions that justify wifebeating? Must we stand idly by as converts are systematically oppressed, or as the economics of Orthodoxy deprives the poor and even middle class of the dignity of self-sufficiency?

Surely not – and surely then as well, even the strongest supporters of women's ordination must recognize that it is possible and legitimate for fervent opponents to completely reject their position even while conceding the weakness of formal halakhic arguments for prohibition.

There is much room for passionate argument about the proper nature of women's Torah leadership in Orthodoxy, and passionate argument always risks devolving into schism. My hope is that a shared commitment to honest, deep, rigorous, holistic Jewish conversation, including but not limited to formal halakhic discourse at the highest level, would prevent schism. But for G-d's sake – *leshem Shomayim* – let us all recognize and agree that Orthodox arguments about values are possible and matter, and are allowed to have real consequences.

***Chok*, *Mishpat* and *Obergefell* (July 3, 2015)**

In *Numbers* 24:5, Bilaam blesses the Jewish people: "How goodly are your tents, O Jacob." The Rabbis understood him to be praising the Jews for ensuring that the openings of their respective tents did not face each other, thus preserving modesty. Soon after, the Rabbis depict Bilaam as inverting his blessing by sending Midianite seductresses out to tempt the Jews into sexual exhibitionism. Bilaam does this because he understands that Jewish modesty is like Samson's hair: shorn of this virtue, we lose our superpowers and become vulnerable. Why did G-d use Bilaam to bless the Jews, if by doing so He enabled Bilaam to learn how best to attack us?

Imagine pre-snake Adam and Eve walking into the Jewish camp. They would not praise the Jews for their modesty, and they would have no idea why the tents' openings did not face each other. For Bilaam to praise the Jews' virtue, even in the context of his deep and unremitting hatred, he had to be capable of understanding that modesty was a relevant evaluative category.

What would it take for Bilaam to have this capacity? Unlike the prelapsarian original couple, he would have to be conscious of his own sexuality, and experientially aware that sexuality could be associated with shame. He might nonetheless choose exhibitionism for himself, and for his culture. He might decide that sexual shame is the root of neurosis and dedicate himself to its cultural eradication. But he would understand what he was eradicating. Perhaps there would even be moments when he regretted his victory.

My tentative suggestion is that the Torah teaches us here that there is a value in making our moral premises intelligible even to our enemies; this is part of our mission to be the light of the nations. I want to be clear that this value is not pragmatic, and that we are not safer, or less likely to be hated, if we are understood. Like Bilaam, the world may use its understanding of our virtue to learn how best to undermine us. It is simply part of our job to enable as much as we can of humanity to make informed moral choices.

I suggest further that perhaps we can understand the Seven Noachide Commandments as intended not to provide a formal code of behavior, but rather to identify a set of moral premises. Perhaps our mission is particularly to make those premises universally intelligible. Making premises intelligible is not accomplished through rational argumentation. Rational arguments *depend* on mutually intelligible premises.

For example: The prohibition against eating flesh taken from live animals may make sense only to those who have the capacity to empathize with animals, or at least to believe via analogy to their own experience that animals have a self that can feel pain. With those givens, we can argue as to whether causing pain in this way is justified, or whether we should prohibit the meat rather than the action of obtaining it. But that argument makes no sense to someone who sees no resemblance between animals and ourselves, or is generally incapable of empathy.

What we can do is to live lives that inspire admiration and that make much better sense when framed in terms of those premises. When the intelligibility of our premises erodes, when the society we live in reacts to our premises with bewilderment, every halakhically committed community needs to ask itself: Have our lives inspired admiration, and if not, why? Have we lived in accordance with our premises, or

have we self-contradicted in ways that make it impossible for anyone to understand them without cynicism?

Asking this question requires us to be able to think of ourselves as separate from the broader society our community inhabits. This is legitimately challenging for Modern Orthodoxy, which sees value in being part of American society. When halakhic premises become unintelligible to the society outside our community, they will likely become, or have already become, unintelligible within our community.

One core premise: let us identify it with the Noachide commandment against forbidden sexual relationships, or *arayot*—that is no longer intelligible to many Americans is that sexuality can be evaluated in nonutilitarian terms, that a sexual act can be **wrong** even if no one gets hurt. We have replaced sexual morality with sexual ethics. Conversations on topics such as chastity, masturbation, and adultery are wholly changed from what they were even two decades ago, and tracts from back then can seem less contemporary than prehistoric cave art.

There are many reasons that traditional rationales in the area of sexuality have moved rapidly from self-evident to unintelligible. Here are two: (1) Effective birth control and in vitro fertilization have broken the connection between intercourse and procreation. It is no longer self-evident to speak of intercourse as potential procreation, or as inevitably associated with the risk of pregnancy. (2) Many human beings with homosexual orientations have told compelling personal stories of pain and alienation.

In the secular world, the natural reaction to a premise's social unintelligibility is the repeal of any laws that depend on it. In the Orthodox world, where immediate repeal is rarely a viable option, one reasonable reaction is what I call "*chok*ification," or the declaration that laws that once depended on the now-unintelligible premise should be regarded as either beyond human comprehension or else as arbitrary rules intended to train us to obedience. Chokification generally has two consequences: It forestalls attempts to change the law while discouraging any attempt to extend the law's reach by applying it to new situations. Over time, as reality diverges more and more from the law's original situation, the law will become less and less relevant practically.

A trend toward chokification of the halakhic prohibitions against homosexuality has been evident in Modern Orthodoxy for some time, and as in the general society, it is more pronounced among the young. This suggests that rationales seen as self-evident in the past are no longer intelligible to them. My suspicion is that this is true as well for a significant percentage of the Charedi world.

The question is whether chokification is an effective long-term strategy, or only a holding pattern. Even if it is sometimes an effective long-term strategy, the case of homosexuality may be harder, as the laws generated by the original premise are now seen by many within our community as deeply wrong ethically rather than only incomprehensible. Perhaps chokification can help hold the halakhic line only if it is rooted in unshakeable belief that this law, as is, represents the will of G-d. In other words, chokification is perfectly compatible with calls for social change. R. Shalom Carmy, for example, argues in *First Things* that Orthodoxy must repent for past mistreatment of people with homosexual orientations. Such mistreatment has no warrant in *Halakhah* and likely results from the basest of motives.

However, chokification is less compatible with calls for dramatic legal change. Such calls can reasonably be seen as resting on the belief that one knows why the law is as it is, and sees the law not as a *chok* but

rather as a **mistaken** *mishpat*. Furthermore, it must be challenging to tell people that they are religiously obligated to follow a mistaken *mishpat* until the law is changed, even if that law causes them great suffering.

My own sense is that effective and authentic responses to homosexuality must be able to claim that the law as understood within past Halakhic tradition was in fact the Will of G-d, and further that an interpretation of that law which is genuinely continuous with that tradition has religious significance today. Until such responses are developed, chokification is likely the best strategy. But while it may be reasonable to welcome *Obergefell*'s outcome as a civil rights advance, or to acknowledge that outcome as a necessary response to a shift in public sensibilities, we should recognize that a deep and likely very important religious understanding has been lost. That understanding had been perverted to justify cruelty, and it may take a long time to reclaim it. But any celebration cannot be unmixed.

Obergefell represents our failure to make our premises intelligible even to our best friends; unambivalent celebration of *Obergefell* represents our failure to keep them intelligible even to ourselves. This should at the least generate a serious*cheshbon hanefesh* (spiritual accounting).

Do Halakhic Husbands Own Their Wives? (September 22, 2015)

The kinyan kiddushin *does not effect a one-way acquisition, but rather a unification of husband and wife, a blending of identity. The High Priest needs to be married, not to possess a wife. Only someone who is part of a private relationship of mutual obligation and shared identity—and perhaps, only someone who understands marriage in those terms—can properly stand as the public religious representative of the Jewish nation.*

Some Jews have the custom of preparing for repentance by praying at ancestral or rabbinic graves; others fear that this custom borders on idolatrous ancestor worship. Perhaps a reasonable compromise, and one I enjoy, is to seek merit by studying the Torah of late great scholars whose Torah currently languishes in obscurity, thereby causing their "lips to move in the grave"; indeed I have rescued many their books from imminent burial in a graveyard *genizah*.

The argument I will share here is from R. Yitzchak Isaac Milikovsky. According to his son in-law Rabbi Yosef Leib Arnest, a longtime Rosh Yeshiva at RIETS (d. 1982), Rabbi Milikovksy was an intimate of Rav Elchonon Wasserman in Baronovich and had great influence on the top students who passed through Rav Wasserman's yeshiva there. He was also a creative and broad-ranging scholar who lacked the means to publish, and only this one segment of what was apparently a longer treatment of halakhic marriage survived his death in the Holocaust. Rabbi Arnest published it toward the end of his own collection Torat Eretz Tzvi.

A brief introductory comment on intellectual history seems fitting. Moderns often presume falsely that their ideas and sympathies are unprecedented. Sometimes this leads to the resurrection of long-rejected heresies in sublime ignorance of harsh past experience; sometimes it leads to the wholesale rejection of tradition in equal ignorance of halakhic and hashkafic precedent; sometimes that same ignorance leads to the rejection of perfectly traditional ideas as heresy.

One of my goals in presenting Rabbi Milikovsky's thoughts here is to challenge the notions, prevalent on both the Right and Left, albeit to very different ends, that the *kinyan*-act which effects marriage involves the acquisition of the wife by the husband, and that attempts to explain *kiddushin* otherwise within Orthodoxy are marginal feminist apologetics. Rabbi Milikovsky predates feminism, and exercised his influence in a perfectly mainstream Orthodox institution with the favor of a perfectly mainstream Torah great. Yet he too was unwilling to conceive of marriage as the *kinyan* of the wife by the husband. This should put the lie to both those who see such sexism as demanded by tradition, and to those who justify their rejection of *kiddushin* by claiming that it necessarily sanctifies subordination.

So here at long last is the argument.

1.a. On *Kiddushin* 6b, the Talmud assumes that a man who lends money to a woman on condition that she marry him does not thereby violate the prohibition against taking interest. Why not? Rashba explains that this is because the husband does not "actually acquire her body."

b. *Avnei Miluim* 42:1, citing the above Rashba, suggests that even according to those who hold that a coerced purchase is invalid, a coerced marriage may be valid, because marriage is not the acquisition of the wife's body by the husband.

c. Therefore it is clear that *kinyan* in the context of *kiddushin* does not involve the husband's acquisition of the wife's physical being.

2.a. Talmud *Kiddushin* 67b asks how we know that one cannot perform *kiddushin* with an already-married woman, and answers that there is a general rule that *kiddushin* cannot take effect when consummating the relationship would make the couple liable for *karet*. *Avnei Miluim* concludes from this that when *kiddushin* does not generate a *karet* liability for adultery, a second *kiddushin* can be effective. An example is the case of a non-Jewish maidservant in relation with a Jewish slave,

b. *Terumat haDeshen* 2:102 rules that the wives of men who ascend to Heaven while still alive are permitted to remarry. Why, if death has not broken the original *kinyan*?

c. It follows that *kinyan kiddushin* does not generate the prohibition of adultery by giving the husband rights over the wife, as there are cases when the *kinyan* is valid and yet the prohibition is not in force.

3. If the *kinyan kiddushin* does not generate physical or legal ownership, what is its nature?

a. The original Adam says that the end of marriage is that man and woman "become one flesh," and the Rabbis say that literally "his wife is like his body." This means, for example, that women married to *kohanim* are not only permitted to eat *terumah*, they have a *mitzvah* to do so, and should make a blessing when doing so.

b. It also means that when sacred rituals may be performed naked, they may also be performed in the presence of one's naked spouse.

c. Therefore, we must say that the *kinyan kiddushin* does not effect a one-way acquisition, but rather a unification of husband and wife, a blending of identity.

I want to emphasize that my point in no way depends on Rabbi Milikovsky's argument being convincing (and indeed Rabbi Arnest points out some cogent weaknesses, and offers an admirably ingenious and creative resolution). My argument's strength is inversely proportional to the strength of his, as the weaknesses of his argument demonstrate the congeniality with which he regarded its implications.

Rabbi Milikovsky concludes by noting the requirement that the High Priest on Yom Kippur be married. This requirement is not satisfied by a relationship with a concubine, which might well be conceived of as acquisition; the High Priest needs to *be married*, not to possess a wife. Only someone who is part of a private relationship of mutual obligation and shared identity—and perhaps, only someone who understands marriage in those terms—can properly stand as the public religious representative of the Jewish nation.

Restoring Challenging Halakhah (May 11, 2015)

The default setting of Orthodox theology is that all biblical commands have eternal relevance. Now a default is not an absolute, and the halakhic tradition recognizes explicitly that some Torah commands were intended only for the Exodus generation. Many have suggested further that the laws of slavery are irrelevant wherever complete abolition is socially practicable. The question is how far and how often we can move off the default.

Some argue that when a Talmudic rabbi declares that a law "never was and never will be," he is actually signaling a moral shift in which a Torah law is quietly put out to pasture.

I am not convinced by this argument. It is true that the laws that "never were and never will be" include the ethically challenging cases of the "rebellious son," in which a 13-year- old boy is executed for gluttonous disobedience, and the "idolatrous city," which involves mass executions. Each of these properly causes moral discomfort. But they also include the relatively innocuous law of the leprous house, which suggests the operation of an exegetical principle other than moral discomfort.

In other cases, the rabbis or common practice have developed workarounds that in practice prevent the application of certain laws. The *prozbul* document, for example, largely eliminates the rule of *shemitat kesafim* (loan-forgiveness every Sabbatical year) by formally assigning loans to rabbinic courts, which are allowed to collect loans eternally. The courts then hire the original loaner as their collection agency, at a 100% commission.

Modern Orthodox Jews often express ambivalence about these workarounds. On the one hand, the rabbis' "judicial activism" is celebrated. On the other hand, there is a perception that such activism comes at the cost of integrity, that this is not really what the Torah wanted.

Moreover, if rabbis refuse to admit that they are free to legislate as they will, and insist that they are heteronomously bound by their most authentic understanding of Torah, they are critiqued as lacking ethical sensitivity. The implicit subtext is that if rabbis have the authority to do so, they should find ways to sideline all areas of *Halakhah* that are in moral tension with the values of their laities.

I suggest a different perspective on these workarounds. Perhaps they are best seen as attempts to shore fragments against ruins, as efforts to salvage some remnant of a law from a failure of interpretation.

Let us take *prozbul* as an example. *Shemitat kesafim* seems intended to prevent the accumulation of debt, and loan forgiveness has been a tactic for relieving the poor, and preventing revolution, from ancient times until today; consider the ongoing conversations between the European Union and Portugal. The Torah is unique in scheduling such forgiveness in advance rather than doing so reactively.

Halakhah permits explicitly negotiating loans with terms longer than seven years, so enforcing *shemitat kesafim* would not shut down the mortgage markets. But the standard halakhic loan comes due in thirty days, and thus is subject to mandatory forgiveness. The Torah warns us against using this as an excuse not to give out loans, but Hillel discovered that the poor were nonetheless being denied access to credit, and so developed the *prozbul*.

The result is that *shemitat kesafim* can be avoided for all loans, of whatever term. The only consequence of the law is the requirement to write a *prozbul*. In some cultures even that requirement fell away, and Rav Moshe Feinstein suggests that where there are secular legal barriers to the effective use of

a *prozbul*, the requirement is waived. In other words, the *prozbul* is not a substantive requirement, but rather a mnemonic, a reminder that such a law existed even though it no longer has meaning.

The process of *chok*-ification, of relating to a *halakhah* as lacking any humanly discernible purpose, often leads to that *halakhah* having its application narrowed to the point of nonexistence. But I submit it would be better, if possible, to find a way to restore meaning to the law.

What would that entail? My favorite example is from the laws of *ribbit* and*neshekh*, the prohibitions against charging interest to fellow Jews. The Torah sets these out in *Shemot* 24:34, *Vayikra* 25:35-38, and *Devarim* 23:20-21. Like*shemitat kesafim*, enforcing these rules freezes credit, and so the rabbis developed the *heter iska*, a document that formally converts interest payments into a distributions of investment profits. This again serves a purely mnemonic function, and Israeli banks write one such document to generically cover in advance of all their otherwise forbidden activities.

Rabbi Chayyim Dovid HaLevi, the late Sefardi Chief Rabbi of Tel Aviv, suggested boldly that it was simply wrong to use a *heter iska* indiscriminately. Here is my translation of his words as found in the first volume of his response *Aseh Lekha Rav*, p. 182:

It seems worth a slightly extended discussion, not of the ground of the permission, which is straightforward, but rather of the circumstances in which it is possible and permitted to make use of it, because in that regard, in my humble opinion, there are practical halakhic implications.

The rationale for the Torah's prohibition of *ribbit* is straightforward, and is hinted at in the term *"neshekh"=biting,* as is known. There are two circumstances in which a person is compelled to borrow money from his fellow, under duress.

1) A person poor from the start whose regular life is one of want and poverty, but occasionally needs a sum of money greater than he can earn for a relatively unusual expenditure. To such a person there is an obligation to lend with no interest at all, as he will be compelled to repay the loan from his paltry stream of income, and if they take interest from him, he will pay only the interest for the rest of his life (and never pay down the principal). In my humble opinion this is hinted by the Torah in the prohibition of *ribbit* in *Parashat Mishpatim*: "With money you must lend my nation, the poor among you . . ."

2) A person not poor from the start, but rather has been brought low by a commercial loss of whatever cause, and he needs much support in order to recover. This person's friends are commanded to lend him the amounts of money he needs to reestablish himself. This is the intent of the Torah in the prohibition of *ribbit* in *Parashat Behar*: "Should your brother sink . . . "

In such circumstances, if the lender uses a *heter iska*, he is distorting the intent of the original *mitzvah* and the intent of the *iska-permission.* Therefore, it is clear that if someone comes seeking to borrow a reasonable sum as an act of*chessed* (lovingkindness) in his time of duress, there is an obligation to lend to him interest-free, which is the Torah's straightforward commandment.

But if a person comes and seeks to borrow great sums in order to initiate profitable new businesses, we find no obligation in the Torah to lend to such a person, who is not poor, nor brought low. However, since the Torah banned interest per se, such a person would be unable to borrow at all, as no one would lend him great sums so that he can use them for his own profit, since the lender could enter the same

business himself. This generated the straightforward idea of the *iska,* which is in practice a partnership on the conditions made clear by*halakhah.*

Rabbi Halevi here restores the prohibition of *ribbit* as rational and morally powerful in the most capitalist of societies. In his understanding, the *heter iska* is a mechanism for protecting the genuine purpose of the eternally relevant law, rather than an effort to preserve the form of law whose purpose is defunct.

I submit that Modern Orthodoxy would be wise to adopt Rabbi Halevi's approach as a model for dealing with apparent cases of biblical law and rabbinic evasion.

Science, Halakhah and the Halakhist's Dilemma (November 20, 2015)

"And *afterward* she gave birth to a daughter. She called her name: 'Deenah' (*Bereshit* 30:21)."

The Rabbis noticed that the Torah describes Leah as having become pregnant and given birth to her sons, whereas here only the birth is mentioned. One solution is that Deenah was the twin of the last male child, Zevulun. The second is that Leah became pregnant with a potential male, but gave birth to a female. This solution itself exists in multiple versions. In the simplest (*Talmud Berakhot* 60A), at least some pregnancies are gender-flexible, so that prayer can alter gender within the first 40 days after conception without requiring a miracle. In *Yerushalmi Berakhot*, prayer can affect the gender of a fetus even in labor. In *Targum 'Yonatan'*, Leah and Rachel were pregnant simultaneously, Leah with a male, Rachel with a female, and their fetuses were miraculously switched at some point before birth.

In each version, the reason for the transformation is to enable Rachel to generate at least as many tribes as Bilhah and Zilpah, and the presumption is that tribes are determined patrilineally. In the *Talmud Yerushalmi*, it is Rachel who prays for her own interest; in the *Bavli*, it is Leah who prays altruistically. There is also dispute as to whether the male fetus in the last version turns out to be Binyamin or rather Yosef. One might reject all the above and adopt Rashbam's position that Deenah was literally an afterthought, and then focus on whether Leah's self-abnegating sexism is a crucial error and generates horrible consequences, or rather is a matter of course. But two areas of contemporary *halakhah* have taken respective versions of the second solution as a primary source.

The version in which the fetuses are switched with each other is used as evidence that halakhic motherhood is determined at birth rather than at conception. The version in which the gender of the fetus is switched is taken as a possible ground for halakhically recognizing the possibility of switching gender. This argument was introduced into contemporary halakhic discourse by Rabbi Eliezer Waldenberg in*Tzitz Eliezer* 10:25:26:6.

Obviously, the argument is not a demonstration: any halakhic tyro can distinguish between miraculous, natural, and artificial gender transformation, and similarly between prenatal and postnatal; leaving aside the question of how substantial or comprehensive a physical, metaphysical, social or psychological transformation must be to affect any particular legal issue. But the impression that Rabbi Waldenberg was sympathetic to it lends it gravitas. I recall, however, Rabbi Mordekhai Willig telling his freshman YU shiur in 1984-5 that this responsum was an "error that came out of the mouth of a ruler," a Biblical phrase used in Rabbinic tradition to completely dismiss a position while expressing great respect for the one who developed it.

One reason to dismiss the position is that it seems based on a third-hand report of an earlier responsum which bases itself on the empirical claim that female and male genitalia are indistinguishable except by location, external vs. internal, and which provides a scientific rationale for such transformation occurring spontaneously even in adults. Perhaps this claim is so divorced from reality as to be halakhically illegitimate, and perhaps it is even the distorted result of a game of telephone: *Tzitz Eliezer* is citing *Zikhron Berit laRishonim* citing *Yad Ne'eman*citing an anonymous manuscript. Here is *Tzitz Eliezer*'s citation, beginning after a long argument for the position that a transplanted heart would not change the identity of the recipient:

There remains however a great investigation to investigate

where there is an essential organic change in a person's body

such as one who transformed from male to female or vice versa

and I have heard, and this is also publicized in various periodicals,

that today they carry out such operations in special cases (obviously rare).

Such an essential change genuinely creates many questions

that touch on the identity and human particularity of such a person

I will mention here what I saw in the book *Zikhron Berit laRishonim*

written by R. Yaakov Gozer (published 5652)

in the section of addenda from the publisher, chapter 5

where in the midst of his lengthy telling of case of *tumtum* and androgynous and other diverse creations

he brings what he found written in the book Responsa Yad Ne'eman(Salonika 5564)

in his miscellany on *Yoreh Deah* 64b

that he saw written in a manuscript compilation of a holy sage of *Yerushalayim*

that cites and tells of such incidents of transforming from female to male,

and he also explains the phenomenon

saying that we don't find any difference between the characteristics of the male genitalia and the female

except that he has his organs external and she internal

(because a woman internally has a foreskin and eggs/testicles, even though they are not comparable to the male eggs/testicles)

and since this is so,

the compilation goes on to wonder whether that woman is obligated in circumcision or exempt . . . and concludes that she is exempt based on Scripture writing and a foreskinned male

which implies that a male-from-origin is the one obligated in circumcision,

but an original female who became male is not.

Through the wonders of Hebrewbooks.org, however, both *Zikkhron Berit laRishonim* and *Yad Ne'eman* are available. It turns out that *Yad Ne'eman*, published in Salonika in 1804, derived his claim about genitalia from "the discipline of dissection, also known as anatomy." *Zikhron Berit laRishonim* is not satisfied with this, adding a citation from 19th-century French literature attesting to the phenomenon. In other words, this is not a case of a traditionalist deriving claims about the world from religious texts. Nothing in premodern Jewish texts suggested the possibility of postnatal gender

transformation, or that transformation can be effected by means other than prayer. That claim was made, and buttressed, by moderns on the basis of exposure to and belief in the science of their day.

Tzitz Eliezer, at least in this *teshuvah*, is uninterested in the empirical reality; his concern is for the abstract question of whether a physical change subsequent to birth can change halakhic identity. That a serious halakhist seriously considered the possibility that a woman-become-man requires circumcision (or that the wife of a man-become-woman is free to remarry without a get), is relevant to that point, even if the cases discussed are pure fantasy.

The point I wish to make is that the issue of the integration of contemporary science into *halakhah* is a double-edged sword. Hermetically sealing Jewish legal tradition off from contemporary empirical claims can make *halakhah* seem ridiculous, or of purely antiquarian value. But extending that tradition on the basis of external claims about reality is likely to make *halakhah* that will seem ridiculous in a not-too-distant future, when our science becomes obsolete.

There is ultimately no choice; law must relate to reality, and the long-term fate of a cloistered law is complete irrelevance to life. The existence of many *teshuvot*such as this *Yad Ne'eman* is evidence that halakhists through the ages have taken the risk of directly relating to reality. At the same time, not every law derives its relevance from relationship to empirical reality. The laws of *kashrut*, for example, maintain their religious impact in modernity even for those who know that *pareve*products can trigger allergies to dairy, or believe that sodium chloride does not remove all blood from meat. Stability and continuity are often per se religious values. And I think it is very, very wise for halakhists to maintain a healthy and deep skepticism about the empirical beliefs of the culture in which they are embedded. Finally, claims that past halakhists had different empirical beliefs than we often turn out to be "reverse anachronisms." *Chazal* knew that the earth was round, for example.

On a whole host of issues, gender transformation among them, my sense is that this balance should lead to great caution about halakhic arguments, especially arguments for halakhic change, that are framed directly as necessary responses to advancing scientific knowledge. We are often better off using the pressure of reality on the halakhic imagination as a spur to developing new understandings that are compatible with old assumptions.

Keeping Heretics Safe and Out of Pits (Febraury 10, 2015)

There is a sort of analogue in Torah to the scientific suspicion of unrepeatable results. If only one scholar in history has ever seen a particular textual phenomenon as significant, or a particular conceptual approach as plausible, then I might well be hesitant to implement it as *halakhah*, or to give it a vital role in a curriculum. Conversely, if I find two great scholars widely separated in time and space independently coming up with the same approach, I have increased confidence that this approach has "real legs," that it is a plausible or compelling read of the tradition.

One of the most famous modern rabbinic texts is *Chazon Ish* to *Shulchan Arukh Yoreh* Laws of *Shechitah* 2:16. As with many such rabbinic texts, the price of fame has been significant loss of nuance, even distortion. I intend here to reclaim its original meaning, make explicit the radical presumptions that generated it, argue that those presumptions are shared by a very different thinker, and, finally, argue that this convergence should give us more confidence in following them.

Among the more challenging rabbinic texts for moderns is the *beraita* (*Avodah Zarah* 26a) that rules that informers, heretics and religious rebels "we lower (into pits) but do not raise (out of pits)." *Shulchan Arukh YD* 158 codifies this ruling and adds the piquant illustration of removing one's ladder from a pit on the excuse of a family emergency, and then conveniently forgetting to return it. The sense seems to be that the person is left to starve, although the literary resonances to the Joseph story seem an almost unveiled hint that actually implementing this ruling would be reprehensible.

To my knowledge there is no record of it being applied in practice to anyone other than informers, who could also be directly killed as dangers to the entire Jewish community in an environment of pervasive genocidal anti-Semitism. However, it nonetheless colored the relationship "Orthodox" Jews had to perceived heretics, and perhaps even more so, the relationship of self-perceived heretics to Orthodox Judaism. It is may be easier to disregard a law that is "merely on the books" when it relates to one as executioner than when it relates to one as executee.

Chazon Ish states that this ruling has no relevance in modernity. He is often quoted as adopting this position because all contemporary heretical Jews are*tinokot nishbu*, infants captured by Gentiles and raised in Gentile culture. Now the Talmud claims that such infants are exempt from punishment for their specific misdeeds since they had no real opportunity to make proper Jewish choices, and*Chazon Ish* allegedly extends this category to all contemporary nonobservant Jews so as to obviate our ruling.

This approach was adopted in a limited fashion by R. Yaakov Ettlinger in the nineteenth century, and extended in startling ways by Rav Moshe Feinstein in the twentieth. But it bears little relationship to *Chazon Ish*'s actual statement.

Here are *Chazon Ish*'s actual words:

חזון איש שחיטה ב:טז

עיקר מורידין ע"כ הוא משום מגדר מלתא וכדאמר סנהדרין מו. מכין ועונשין שלא מן הדין והכא קבעו ב"ד . . . הראשנים שאלו המומרין פורצין גדרי עולם ושעה צריכה לכך לעשות גדר לצורך שעה

ונראה דאין דין מורידין אלא בזמן שהשגחתו יתברך גלויה

כמו בזמן שהיו נסים מצויין ומשמש בת קול, וצדיקי הדור תחת השגחה פרטית הנראית לעין כל, והכופרין אז הוא בנליזות מיוחדות בהטיית היצר לתאוות והפקרות, ואז היה ביעור רשעים גדרו של עולם שהכל ידעו כח הדחת הדור מביא פרעניות לעולם ומביא דבר וחרב ורעב בעולם

אבל בזמן ההעלם שנכרתה האמונה מן דלת העם, אין במעשה הורדה גדר הפרצה אלא הוספת הפרצה, שיהיה בעיניהם כמעשה השחתה ואלמות ח"ו, וכיון שכל עצמנו לתקן, אין הדין נוהג בשעה שאין בו תיקון, ועלינו להחזירם בעבותות אהבה ולהעמידם בקרן אורה במה שידינו מגעת

The fundamental law of "lowering (into pits)" must be for practical purpose (creating a necessary fence), under the same authorization as the statement on Sanhedrin 46a that "We flog and punish even when there is no formal legal justification for such punishment," and here the early beit din established that those apostates who breach the fences of the world, when it is the need of the hour – therefore to create a fence and to meet the need of the hour (we lower them into pits) . . .

So it seems to me that the law of "lowering" applies only when His the Blessed's Providence is evident,

because in the time that miracles were common and Heavenly voices were in use, and the righteous of the generation were under specific Providence evident to all, so that denying (G-d and His Providence) at that time required radical boldness and being turned by one's evil inclination to lusts and license, so in that circumstance the excision of the wicked sets the fence of the world, because everyone knew the power of the straying of the generation to bring punishment to the world, and to bring plague and sword and famine to the world,

but in a time where His presence is obscured, when faith has been cut off from our poor nation, the deed of "lowering" does not fence the breach but rather adds to the breach, as it will seem in their eyes like an act of destruction and intimidation chas veshalom, and since our whole purpose is to improve , this law is not practiced in a time where it would not accomplish improvement, and it is our obligation to return them via the bonds of love and to stand them up in the realm of light to the extent that this is in our power.

Chazon Ish argues that extra-legal punishment can be justified only on practical but not religious grounds. Religious violations *per se*, however egregious, do not justify human reactions unless specifically mandated by Torah. In our age, where such punishments would be practically counterproductive, there is no excuse for implementing them.

I am unaware of any clear precedent for Chazon Ish's analysis in the Talmudic context, or in *Shulchan Arukh*. But there is a parallel idea, perhaps even more radical, in *Meshekh Chokhmah* to *Shemot* 24:3.

משך חכמה שמות פרשת משפטים פרק כד פסוק ג

ויספר לעם את כל דברי ה' ואת כל המשפטים

דע דבני נח הוזהרו על הדינים (סנהדרין נו, ב)

ושיטת ראשונים דהוא נימוסים שדעת האדם נותן עליהם

אבל לכוף ולרדות על חוקי התורה ונדריה הוא רק מצד ש'כל ישראל ערבים זה בזה' (שבועות לט, א ועוד), ואם יעבור אחד, הוא מזיק לחבירו ולהכלל כולו, בזה יש לבית דין לכוף ולשפוט העובר את מצות השם יתברך, דבלא זה אין זה מהראוי שיתערב אחד במה שיש להאדם עם קונו

לכן מקודם אמרו (פסוק ג) "כל הדברים אשר דבר ה' נעשה" – ולא קיבלו עדיין המשפטים, אבל כי זרק הדם על העם (פסוק ח) להכניסן בברית וכמו דאת אמרת במכילתא יתרו (פרשה ג ד"ה ויקח ספר הברית), אמר להם אתם קשורים ענובים ותפוסים, וזה "ספר הברית" (פסוק ז) שכרתו כל ישראל יחד, לכן אמרו "כל אשר דבר ה'" (פסוק ז) – בין ה"דברים" בין ה"משפטים" – "נעשה", שהעובר מצות ה' הוא גדר בין אדם לחברו, שמזיק להכלל ודו"ק

"He told to the nation all the words of Hashem, and all the mishpatim" –

Know that Noachides are commanded regarding denim (the obligation to establish an effective legal system)

and the position of the rishonim is that these refer to laws that appeal to human reason,

but to coerce and compel regarding the statutes and commitments of Torah is justified only on the ground that "All Jews are guarantors for each other," so that if one transgresses, he damages his friend and the entire community, and therefore beit din is justified to coerce and to judge the one who transgresses the commands of Hashem the Blessed, as without this it would be inappropriate from one person to mix into another person's relationship with his creator.

The *Meshekh Chokhmah* goes beyond *Chazon Ish* and argues that even the formal legal punishments authorized by the Torah for religious offenses can be justified only by the practical good of the community; otherwise, irreligion is by nature a private matter between each human being and G-d.

For both *Meshekh Chokhmah* and *Chazon Ish*, religious voluntarism is not a concession to modernity accompanied by a yearning for the halcyon days of religious coercion. Rather, religious coercion was a prudent concession to the reality of collective Divine punishment. Surely *Chazon Ish* looked forward to the restoration of explicit Providence, and *Meshekkh Chokhmah*, if he agreed with*Chazon Ish*'s diagnosis of modernity, to the restoration of genuine collective responsibility. But they also recognized the virtue and opportunity of a world in which religion and state are disentangled.

Uniformity and Diversity in Halakhah (August 6, 2015)

Among the more famous passages in the Talmud is the following from *Eruvin* 13b:

אמר רבי אבא אמר שמואל:

שלש שנים נחלקו בית שמאי ובית הלל – הללו אומרים הלכה כמותנו; והללו אומרים הלכה כמותנו.

יצאה בת קול ואמרה: לו ואלו דברי אלקים חיים הן, והלכה כבית הלל

וכי מאחר שאלו ואלו דברי אלקים חיים, מפני מה זכו בית הלל לקבוע הלכה כמותן?

מפני שנוחין ועלובין היו, ושונין דבריהן ודברי בית שמאי

ולא עוד, אלא שמקדימין דברי בית שמאי לדבריהן

Said Rabbi Abba said Shmuel:

For three years Beit Hillel and Beit Shammai disputed – these said "The Law follows us" and these said "The Law follows us."

A Heavenly Voice emerged and said: "These and those are the living words of

G-d (or: the words of the Living G-d), but the law follows Beit Hillel.

But since these and those are the living words of G-d, why did Beit Hillel merit having the Law established as following them?

Because they were pleasant and forebearing, and taught their own words and the words of Beit Shammai.

Not only that, they put the words of Beit Shammai before their own.

This passage can be interpreted as follows: The full truth of G-d's Torah is beyond human understanding, and therefore positions that appear radically distinct or even polar opposites to our limited comprehension may both be genuine and true interpretations of Torah. However, in the realm of action, opposites cannot be tolerated—the Law must follow somebody, after all—and thus a Heavenly voice emerged to declare that the law followed the House of Hillel.

But that the *Halakhah* was eventually decided does not mean that it was necessary for it to be decided. In other words: rather than understanding this passage to say that:

a) a decision being necessary, Beit Hillel's position was chosen because Beit Hillel were of superior relevant character, we can understand it to say that

b) no decision was necessary, but when it became clear that Beit Hillel were of superior relevant character, it became possible to choose their position.

One can make a similar point along a different axis. The passage can be interpreted to say that:

a) In general, halakhic disputes involve a right and a wrong position, and *psak halakhah*, legal decision-making, involves choosing the right position over the wrong. In such cases only the right position is truly the living word of G-d, or at least the right position is somehow more the living word of G-d than is the

wrong one. The dispute between Beit Shammai and Beit Hillel was unusual in that it involved conflicting positions of precisely equal truth, and thus it took a Heavenly voice to resolve it, and on grounds of character rather than of truth.

I suggest the following alternative:

b) Many, perhaps most, halakhic disputes involve conflicting positions each of which are genuinely the living word of G-d, although this may not be recognized by the disputants. Ordinarily, there is no reason to resolve such disputes; rather, each person can follow their own reasoning, if they are competent halakhic reasoners, or else follow the *psak* of their rabbinic authority, or under some circumstances follow the dictates of conscience. The dispute between Hillel and Shammai was unique not because both sides were equally "true," but rather because G-d found it necessary to Divinely resolve a dispute between sufficiently true positions. (I plan *iyH* to explain that necessity in a future *dvar Torah*.)

Each of the readings I propose carries the implication that diversity of halakhic practice is a perfectly acceptable halakhic outcome; there is no need for every Jew to practice exactly the same *halakhah*. When practical conflicts arise—e.g. when food held to be kosher by one is served to another who holds it non-kosher—we should disclose the issue to each other, as the Talmud suggests Beit Hillel and Beit Shammai did with regard to marriageability when their halakhic positions conflicted. This precedent implies that diversity of *psak* is possible even with regard to personal status issues, so long as there is genuine trust—and perhaps even when the parties do not recognize each other's positions as halakhically legitimate.

Now the dispute was likely eventually resolved, according to the Talmud (although not necessarily; one position holds that Beit Shammai followed Rabbi Yehoshua in rejecting the Halakhic authority of Heavenly voices, and so did not accept that the*halakhah* did not follow them), so I do not wish to suggest that the existence of diverse halakhic communities of practice is a value that should trump issues of social order and the like. But neither is it clear, at least to me, that uniformity of practice (let alone an artificial uniformity achievable only by defining non-conformers out of the community) is important for its own sake, rather than an optional means for achieving religious ends.

This insight may be useful in approaching some of the more divisive issues facing our communities. I suggest that often there is a felt need to create a uniform*halakhah*, even when that theoretical uniformity as to the practical law may ironically serve to divide rather than unify the Jewish people in practice. An ironic effect of the OU's phenomenal success, for example, is that *kashrut* often is a more effective social barriers among Jews, and particularly among observant Jews, than between Jews and non-Jews (non-Jews do not resist simply buying off-the-shelf goods for social events, or even providing separate meals from super-glatt caterers at major events, as they have no personal standard of Jewish observance to thereby symbolically undermine).

The presumption that there can be only one *halakhah* at a time compels those who resist a current consensus to break off from the homogenizing community. Rather, we should all strive for *halakhah* to accord with truth, acknowledging that this may at times—not at all times, and not on all issues, and only in an atmosphere of genuine mutual trust—allow us to acknowledge multiple practices as legitimate, or even to live in community with those whose practices we see as badly mistaken. *Adapted from a 2010 *shiur*.

Diversity, Difference and Dignity (March 26, 2015)

Diversity is the spice of life, but the scandal, of science, philosophy, and theology. How can there be difference?

For physicists, all matter is made of the same stuff, and for many cosmologists, it all started at a singularity—so why do we have both hot dogs and buns?

For Maimonides, G-d is the only necessary existent and diversity can occur in contingent existence. But it's not clear why this explains diversity, as all contingent existents relate to the Necessary Existent in the same way.

For the kabbalists, and perhaps for Kant, diversity exists in perception but not in reality. Everything that exists is the simple undifferentiated G-d, but we perceive Him through glasses rainbowly. But it is not clear why a homogeneous reality generates diverse perceptions, or how human perceivers exist, and I don't fully understand what happens when a tree falls in the forest with no one there to hear it.

The challenge for each approach is to properly calibrate when to focus on unity and when on diversity. My dear friend Rabbi Yaakov Nagen argues in his new book, התעוררות ליום חדש, that this is a key to understanding the ritual of the *Beit HaMikdash* and its role in Judaism. As the place where G-d's Presence is most manifest on earth, and therefore where the perception of diversity is most likely to be lost, it necessarily has rigidly defined roles and limited-access spaces as constant reminders of difference.

Rabbi Nagen fascinatingly develops his explanation by comparing and contrasting the *Beit HaMikdash* with the Golden Temple of the Sikhs, a religious community that he argues we should be building a relationship with. He argues (all descriptions of Sikhism here are my reading of Rabbi Nagen, without appeal even to Wikipedia) that Sikhism blends the monotheistic incorporealism of Islam with the tolerance of Hinduism, while rejecting the rigid caste system as unjust. Sikhism, he argues, is Judaism's religious grandchild, and relationships with grandchildren are generally less fraught than those with children.

The Sikh Temple has sacred scripture at its core, and white-garbed musical attendants. Unlike ours, it is open on all four sides, and has a space specifically intended to host non-Sikhs. Unlike ours, it does not have crucial religious importance. Rabbi Nagen argues this is because Sikhism lacks Judaism's sensitivity to the relationship between difference and holiness. Sikhs see their Temple as significant only because it houses their Book; the notion that some spaces are *per se* holier than others is alien to them. One of the rituals of the Golden Temple is that each visitor receives a portion of food to eat. This reminds Rabbi Genack of the *Pesach* sacrifice, which is eaten by all members of the Jewish community.

But here we reach a point that is perhaps somewhat elided in his presentation. Difference does not logically entail exclusion or hierarchy, and Judaism, specifically the Temple, institutionalizes both. Even the *Pesach* sacrifice explicitly excludes non-Jews. Why must the *Beit HaMikdash* be more holy than other places, rather than differently holy? (*Mutatis mutandum*, this point is also given insufficient attention in Rabbi Lord Jonathan Sacks' Dignity of Difference.)

A recent online discussion addressed the question of whether one may invite non-Jews to the *seder*. One argument against was that since non-Jews cannot eat the Paschal sacrifice, it would be

inappropriate to invite them to our symbolic commemoration of eating that sacrifice. A counterargument was that Halakhah demands that we make crystal clear that we are not in fact eating a sacrifice, so as not to convey the impression that sacrifices can be brought outside the *Beit HaMikdash*. The presence of a non-Jew therefore serves the positive function of demonstrating that no Paschal sacrifice will be eaten. Blurring distinction among humans serves to emphasize distinction among places.

The issue at the heart of the disagreement may be this: One side feels that the absence of the *Beit HaMikdash* generates a risk of flattening, that Jews will elide other vital distinctions when they no longer have a regular ritual connection to super-sacred space. The other side feels that those other distinctions are intended to be ancillary to the fundamental reality of sacred space, and so when the *Beit HaMikdash* is gone, there is much less meaning to the other distinctions. One can see the same conversation with regard to the social privileges and duties of*kohanim* post-Destruction.

Judaism of course has sacred time and sacred space, and the sacred space of Shabbat specifically may be largely unaffected by the absence of the Temple. Perhaps that persistence also serves to justify the persistence of human distinctions.

Rabbi Nagen emphasizes that Sikhs reject the notion of an untouchable caste, but he suggests that the price of their human egalitarianism is egalitarianism in time and space.

The emphasis on difference as a fundamental component of holiness is classically rooted in the notion that *kedushah* is really best translated as "separated." In the classical form that separation seems almost always to be hierarchical, *kodesh* as opposed to *chol*. The philosophic and kabbalistic analyses seek to make *kodesh*and *chol* into aspects or perceptions of the same underlying matter, but it remains clear that *kodesh* is the goal.

The question for those with fundamentally egalitarian commitments is whether celebrating differentiation as enabling the perception of holiness, even if it entails hierarchy in the realms of time and space, can be transferred to human beings without the same hierarchy. This does not seem to have been a major Jewish concern historically, as hierarchical categories such as "form" and "matter" were often used in the context of Jewish chosenness or gender. But it is very much a modern concern.

To be specific: Some kabbalists respond to the scandal of difference by maintaining a dual consciousness, recognizing that one must relate to our reality as if difference exists while understanding that our reality is fundamentally an illusion. This may work well with regard to rocks and trees, but with regard to human beings, I submit, a recognition of underlying sameness does not justify maltreatment in the here and now.

I would prefer to go with Levinas and see difference as the ground of value and of ethical obligation. It is because you are different than me that you are infinitely valuable to me, not because of what you share with me. At the same time, this powerful argument doesn't well account for family love, and perhaps even for human speciesism, both of which I have no interest in overcoming.

Celebrations of diversity *per se* must constantly slide toward notions of "separate but equal," which tends more or less inevitably to "different but equal." This can be resisted politically to some extent by libertarianism, which seeks to limit government to the negative role of preventing coercive imposition. This enables separateness to be choice rather than mandate, but on the other hand gives private

prejudice free reign. It is unclear whether religious approaches celebrating difference can resist the slide to “different but equal.”

Perhaps such resistance is unnecessary. Contemporary America properly anathematizes “separate but equal,” and manages to celebrate multiculturalism at the same time without irony. But multiculturalism without separation consumes itself, as children raised equally in all cultures will grow up homogenized.

The tensions I’ve tried to outline throughout this discursus are at the heart of*Pesach*. G-d intervened in history to rescue one people, and that intervention justifies our religious particularism by giving Him a special claim on us. But the claim He makes on us is grounded in the universal claim that what was being done to us was wrong, not because of who we were particularly, but simply because we were human.

The difference in value created by relationship is inevitably hierarchical: *a*becomes more valuable to *b* as their (positive) relationship deepens. But in the best of such relationships, our acceptance of greater subjective value—we love each other—also heightens our awareness of objective value—other people are capable of love. The challenge for us is to use all the privileged religious experiences of Judaism as catalysts for appreciating the spiritual capacities of all humankind.

A Memory of My Late Teacher, Rabbi Aharon Lichtenstein by Rabbi Dr. Eliezer Finkelman

CMTL is proud to post the following recollection from Rabbi Dr. Eliezer Finkelman, a dear friend and contributor to many of our programs. Rabbi Finkelman would love to hear from anyone who can add more details, such as the date or the name of the moderator of the event he describes.

Students opposed to the role of the United States in the Viet Nam war held a teach-in 1970 or 1971. We attended classes in limmudei kodesh in the morning and early afternoon, but refrained from attending secular classes in the afternoon and evening. Highlight of the program was the teach-in that evening, at which the committee invited Rabbi Lichtenstein to deliver the keynote talk. I attended that night, along with my bride of a few months.

Rabbi Lichtenstein began by apologizing, explaining that his words would probably not satisfy his audience. He then spoke in his usual measured way, considering alternatives and counter-arguments, generously treating with respect the range of possible opinions, including that of the government in pursuing the war.

When he concluded, the master of ceremonies announced that Rabbi Lichtenstein had agreed to take some questions from the floor. Rabbi Lichtenstein then asked the m.c.'s permission to allow one person in the audience to ask the first question, as this person had requested of Rabbi Lichtenstein earlier that day.

Of course, the m.c. went along with the plan.

Dr. Tova Lichtenstein then stood up and lit into her husband's talk, explaining that he had given the position of the U.S. Government far more respect than it had earned, and pointing out many other ways in which the talk was not adequate.

I do not remember the details of her powerful words. I remember the expression on his face as she spoke. As she took apart his arguments in public, he gazed upon her with such affection and admiration, as if to say, "Now you can all see why I married her."

Marilyn and I may not have learned much about the war in Viet Nam that night, but we learned an unforgettable lesson about marriage.

Though I feel sadness remembering my late teacher, I have to smile as I remember that evening.

Shalom,

Eliezer

Who Was Aharon Lichtenstein? by Rabbi Elli Fischer (SBM 1997), *Mosaic Magazine* (April 30, 2014), http://mosaicmagazine.com/observation/2014/04/who-is-aharon-lichtenstein/

Among this year's recipients of the Israel Prize, the country's highest honor, is the eminent thinker and educator Rabbi Aharon Lichtenstein. To those many Jews in Israel and elsewhere who are acquainted with or have been touched by his life and work, this award, to be conferred on May 6, Independence Day, will signify one of those rare instances when government committees get things right.

In America, where he was raised and educated, Rabbi Lichtenstein's name is bound to resonate much more faintly. Within the Orthodox community, it may be familiarly known that he is the leading sage of "modern" or "centrist" Orthodoxy; that he holds a Ph.D. in English literature from Harvard; that he is clean-shaven; and that he is the son-in-law of Joseph B. Soloveitchik (1903-1993), the towering figure widely regarded as the founder of modern Orthodoxy. In other Jewish circles, most will have never even heard of him. In mentioning his name a few years ago, the columnist Jeffrey Goldberg cited "Orthodox informants" to the effect that the rabbi was "quite the genius of Jewish law" and a "great dude of halakhah."

With this in mind, my goal here is less to summarize his achievement, a daunting and ultimately futile task, than to offer a portrait of the man sufficient to motivate readers to learn more. (A place to begin might be the online bibliography of his myriad published essays, books, and lectures.)

Aharon Lichtenstein was born in Paris in 1933. Eight years later, his family fled Vichy France to the United States on visas arranged by the courageous American diplomat Hiram Bingham, Jr. After brief stops in Baltimore, where the young boy was already recognized as a prodigy of traditional learning, and then Chicago, they settled in New York in 1945. There he entered a yeshiva before his bar mitzvah and subsequently went on to undergraduate studies and rabbinic ordination at Yeshiva University (YU). The following years, spent studying English literature at Harvard, were crucial to the development of his particular strain of religious humanism; Boston also afforded the opportunity to study closely with his future father-in-law.

Upon returning to YU in a teaching capacity, Rabbi Lichtenstein oversaw the rabbinical school's program for its most advanced students. Then, in 1971, he accepted an offer to join with Rabbi Yehuda Amital in heading a new yeshiva south of Jerusalem in the Etzion Bloc (in Hebrew, Gush Etzion, with Gush pronounced goosh as in "push"). He has been there ever since. Formally known as Yeshivat Har Etzion but universally called "the Gush," the school represents his (and Rabbi Amital's) vision for the role of the yeshiva as a unique educational institution within Jewish society; it is perhaps his greatest legacy.

Increasing in stature and influence over the decades, the Gush and its satellite initiatives are famous for providing an open, intellectually curious, and non-dogmatic alternative to other Israeli yeshivas. This is no accident; having spent virtually his entire adult life within the yeshiva world, Rabbi Lichtenstein believes that, properly conceived and managed, these schools can be places not only for single-minded devotion to talmudic excellence but also for the development of moral character and leadership. In his holistic vision, the moral goal is not self-mastery or ascetic self-discipline (as in some yeshivas of old) but, to the contrary, well-roundedness and other-directedness.

The same moral vision explains Rabbi Lichtenstein's readiness to cite sources outside the Jewish tradition that, even as they complement and support the uniquely Jewish system of values and virtues,

are reminders that immersion in Torah must not come at the expense of universal responsibilities. The thinkers to whom he regularly returns—Matthew Arnold, John Henry Cardinal Newman, and F. H. Bradley, to name only a few—are precisely those who best articulate how to combine a life of devotion with fruitful engagement in the outside world, an alien and sometimes problematic reality.

Of course, this is not to say that moral and religious development takes priority in his mind over his students' intellectual growth and erudition. For one thing, he views the two spheres not as distinct but as interrelated. For another and more important thing, Rabbi Lichtenstein is staunchly within the Lithuanian rabbinic tradition that views Talmud study as the ultimate religious act, a merging of the minds of God and man.

As a talmudist, Rabbi Lichtenstein is a proponent of the "Brisker" method, for which his wife's family is renowned. In this pedagogical approach, legal disputes or contradictions within the Talmud may be understood by analyzing the logical or "conceptual" underpinnings that account for the divergent rabbinic rulings under examination. In Rabbi Lichtenstein's hands, the method has been further abstracted so that it can be employed at the very outset of any exercise in talmudic analysis.

Brisker-type interrogations thus become hermeneutical keys, to be tested in a variety of settings. Does a given rule require the attainment of a particular result, or does it mandate a specific act? Is a particular rabbinic enactment an expansion of a biblical law, or a separate institution? Does a speech-act hinge on the technical or the commonsense meaning of the words uttered? Taking the metaphor of "key" questions still further, Rabbi Lichtenstein has spoken of developing a "key ring": the more keys on a student's ring, the more talmudic "locks" can be opened, and the larger and more complex become the conceptual structures within which one assimilates talmudic data.

This mode of discourse can be discerned in Rabbi Lichtenstein's non-legal thinking as well. His treatment of "The Universal Duties of Mankind," for example, begins with Genesis 2:15: "The Lord God took the man and placed him in the Garden of Eden to cultivate it (l'ovdah) and to guard it (l'shomrah)." He then abstracts these two verbal charges as fundamental yet distinct and often competing categories of mankind's duties toward the world, to which the remainder of the essay is devoted:

Here we have two distinct tasks. One, "l'shomrah," is largely conservative, aimed at preserving nature. It means to guard the world, to watch it—and watching is essentially a static occupation, seeing to it that things do not change, that they remain as they are. This is what Adam was expected to do, and part of our task in the world is indeed to guard that which we have been given: our natural environment, our social setting, our religious heritage. . . .

At the same time, there is the task of "l'ovdah" (to cultivate it), which is essentially creative: to develop, to work, to innovate.

I think that we would not be stretching things too far if we were to understand that this mandate applies far beyond that particular little corner of the Garden where Adam and Eve were placed. What we have here is a definition of how man is to be perceived in general.

This example also typifies another salient feature of Rabbi Lichtenstein's oeuvre: a frank acknowledgment of the tension and equivocation between competing claims. Numerous demands are made on one devoted to the path of Torah, demands that must be ordered within a hierarchy of values and then implemented in life. Neglect of even a trivial demand can denote failure to maintain proper

balance, a flaw in one's discharge of his duties. In an essay in this vein, Rabbi Lichtenstein articulates the desired ordering of study of Torah with the duty to serve in the Israel Defense Forces.

Clearly, the resulting approach to life is itself very demanding. But it can also be characterized as both moderate and balanced: moderate not because it shuns extremes, but because it embraces competing extremes; balanced not because it stands on many legs at once but because it seeks a subtle equilibrium that will allow one to remain upright amid the swirl of external forces.

It is also an approach that countless students have found inspiring and life-changing. And that is because Rabbi Lichtenstein, in addition to being its master exponent, is also its greatest role model. Far from flamboyant or charismatic, he is shy and unpretentious to the point of sometimes seeming aloof. But that impression is deceptive: a video produced in honor of his 80th birthday includes footage in which he is pictured doing the dishes, in a rowboat, playing with his children and grandchildren. The canonical stories about him do not recount his genius or erudition but his humility: answering the yeshiva's public phone with a simple "Aaron speaking," or, after students in an army classroom have all fallen asleep, continuing an involved talmudic lecture so as to allow them to get some much-needed rest.

Such stories abound. They may help to explain why, in the end, his many disciples can only describe him by speaking personally of what he has meant to them. And so I will now proceed to do.

In recent years, the Orthodox spirit in Israel and the U.S. has suffered shock after shock. Leading and respected rabbis have been exposed as frauds, bigots, or manipulators entangled in political jockeying for plum appointments. Other renowned figures have been revealed as racists, plagiarists, protectors of sexual predators, abusers of power. Intellectual and moral lightweights have promoted themselves as Orthodoxy's exponents and arbiters, influencers and opinion-makers.

All this has had a traumatic effect. Every saint who turns out to be a sinner further erodes the bulwarks of religious commitment. Was it, we wonder, only ever thus? Were our revered rabbis and sages always so petty, self-absorbed, and power-hungry?

On May 10, 2013, among the 1,500-some students who gathered to celebrate Rabbi Lichtenstein's 80th birthday with him, I experienced a powerful restorative of my faith in God and in the Torah transmitted to us through the generations. To adapt a Shakespearean tag favored by Rabbi Lichtenstein (though never to describe himself), I was reminded that one figure doth bestride this phalanx of fallen saints and discredited chief rabbis like a colossus, his erudition fully matched by his humility and humanity, and by the harmonious balance and wholesomeness of his life. Such multifaceted greatness is wholly unattainable by me, but acquaintance with it helps me believe that such paragons of service to the Almighty have existed in the past and will continue to exist in the future.

This may seem a strange basis for faith. Can one's faith in God and in the halakhic tradition really be rooted in love and reverence for a human being? Is it appropriate for a fellow human to be treated as an object of reverence in the first place?

According to the Talmud (Pesahim 22b), the answer is yes: reverence for Torah scholars is indeed an extension of reverence for God, their greatness being a reflection and refraction of His. The same idea is developed in a 1996 article by Rabbi Lichtenstein himself.

The article is about his mentors, and he begins by quoting the first line of Matthew Arnold's sonnet "To a Friend": "Who prop, thou ask'st in these bad days, my mind?" About this formulation of Arnold's he comments that, "In my case, at least, the critical factor is indeed 'who' rather than 'what,'" and he proceeds to describe how three men—Rabbis Aharon Soloveichik, Yitzhak Hutner, and Joseph B. Soloveitchik—constitute, in part, the source and grounding of his faith in God and the Jewish tradition.

As for my own feelings of gratitude toward Rabbi Lichtenstein, they are well expressed in another passage in Arnold's poem:

But be his/ My special thanks, whose even-balanced soul/ . . . saw life steadily, and saw it whole.

The same feelings are expressed, most beautifully, in words of the Psalms (84:6) that in the original are clearly addressed to God. In singing them, Rabbi Lichtenstein's students are altogether right to have in mind, as well, their peerless guide and mentor:

Ashrei adam oz lo bakh

Fortunate the person who finds strength through you.

Bearing the Weight of a Complex World (April 22, 2015)

One of the first times I had the *zekhut* to learn Torah from Rav Aharon Lichtenstein *zt"l*—I believe on a Friday night in YU—his base text was *Avot* 1:2: The world stands on three things: Torah, a*vodah*, and *gemilut chassadim*.

In his endlessly imitable style, Rav Aharon asked:
a) whether the world falls if any of these three is lacking, or only if all three are lacking; and
b) if all three are necessary, is it because of their interaction, or rather because each has a wholly independent task?

Those deeply familiar with his methodology know that, given the opportunity for a comprehensive *shiur*, Rav Aharon would surely have considered as well the possibility that any two of three would be sufficient, or perhaps even one plus more than half of another. This might—here I say *might*—in turn have led him to ask whether or how one might evaluate quantitatively the extent to which these pillars exist in our world.

I want to ask instead: What precisely would happen were the world no longer to stand? Would we know it had fallen, or remain unaware until a stray hint of G-d's Presence sent us scrambling to hide, overwhelmed by shame?

Keeping that question in mind, let us move to (my radical oversimplification of) an article by Rav Lichtenstein, found in *Minchat Aviv* that is relevant to this week's *parashah*. (My thanks to the ever-wonderful Dov Weinstein for the *sefer*.)

In *Vayikra* 15:4 we read that anything that a *zav* (male with genital emissions) lies on becomes *tamei*. *Mishnah zavim* 4:7 records a dispute regarding a case in which a *zav* sits on a four-legged bed, with each leg resting on a garment. The anonymous initial position holds that all four *tallitot* become *tamei*, since the bed cannot stand on only three legs. Rabbi Shimon holds that none of the *tallitot* become *tamei*.

What is Rabbi Shimon's logic?

Rambam suggests that Rabbi Shimon regards each of the *tallitot* as bearing only one quarter of the *zav*'s weight, whereas bearing a majority of a *zav*'s weight is necessary for them to become *tamei*.
Rambam thus assimilates this case to Rabbi Shimon's explicit logic in a dispute in the previous *mishnah*. The case there is as follows: If a *zav* is in one palm of a scale, and multiple objects in the other, such that they collectively outweigh the *zav* even though individually each of them is lighter, the objects do not become *tamei*, since "no one of them is lifting the majority of his weight."

Rashi uses a different analogy, drawn from the laws of Shabbat, to explain Rabbi Shimon's position in 4:7. According to a *beraita* (*Talmud Shabbat* 92b), if an object too heavy to be carried by one person is carried by two people (from inside to outside or vice versa), Rabbi Shimon holds that neither is liable. Here too, the *zav* is being lifted by multiple objects, none of which is capable of lifting him independently, and so neither becomes *tamei*.

Rambam's model seems superior for four reasons: First, his analogy is drawn from within the field of *tum'ah vetaharah*, whose rules are often not generalizable to other halakhic fields.

Second, in the Shabbat case Rabbi Shimon exempts a carrier who bears 99% of the object's weight, so long as s/he could not bear 100%, but as Rambam notes, in *Mishnah zavim* 4:5 Rabbi Shimon explicitly makes "majority" a relevant factor. (I do not see this point in Rav Lichtenstein, so perhaps it is mistaken.)

Third, the Talmud explicitly states that the rule regarding Shabbat is based on a Biblical verse that applies only to the transgression of negative commandments whose accidental violation compels the bringing of a sacrifice; it cannot be generalized to cases of *tum'ah vetaharah*.

Fourth, the rule in Shabbat relates to the responsibility of persons, whereas the rule regarding *zav* relates to inanimate objects.

So why did Rashi not adopt Rambam's approach? The simplest answer is that Rashi thought Rambam's approach begged the question. Saying that Rabbi Shimon' position in 4:7 depends on his position in 4:5 leaves us to ask: Why does Rabbi Shimon think all the *tallitot* remain *tehorot* in 4:5? Rashi's answer is that he presumably derives this from Shabbat.

But how can rules of *tum'ah vetaharah* be derived from a verse that relates only to prohibitions? Rashi understands the verse as recording a halakhic outcome that depends on an abstract "prehalakhic" point, namely that an action with multiple necessary immediate causes is considered to be caused by none of them rather than by each of them. This naturally leads to Rabbi Shimon's positions regarding the *zav*, and the verse comes to prevent us from thinking that we should not apply the same principle when we are dealing with human responsibility.

Those who disagree with Rabbi Shimon, if they disagree regarding both Shabbat and *zav*, hold that an action with multiple necessary immediate causes is caused by each of them. If they disagree regarding *zav* only, they believe that the rules for human responsibility are not the same as those for causality per se.

So why isn't Rambam begging the question, or: from where does Rambam derive for Rabbi Shimon a principle that applies specifically to *tum'ah vetaharah*? This requires us to investigate on what basis Rabbi Shimon introduces the category of "majority." It turns out that we can ask the following question, is *tum'ah* created in an object by:
a) the condition of supporting the weight of a *zav*, or rather by
b) the action of a *zav* in putting his weight on something?

Put differently, is *tum'ah* the result of:
a) being a *zav*'s *mishkav*, or
b) having been sat on by a *zav*?

If the relevant factor is "sat on by a *zav,*" the parallel to Shabbat works, because in both contexts we are discussing the character of an action.

But if the relevant category is "a *zav*'s seat," the parallel breaks down. The violation of carrying on Shabbat clearly inheres in the human action of carrying the object, not in the object becoming something that has been carried by a human.

Now perhaps we can say that an object can be defined as "the seat of a *zav*" only if most of a *zav* sat on it. But if the question is whether it was "sat on by a *zav,*" the answer is yes if any part of a *zav* sat on it.

I suggest that we can apply the same analytic framework to our *Mishnah* from *Avot*. Must the world be defined as "resting on Torah, *avodah*, and *gemilut chassadim*" in order to stand? In that case, each of these three pillars must relate to at least a majority of the world. Or is it enough for the world simply to rest on those three pillars, in which case each can support its own third of the world with no participation from the others?

Put differently, is the religion necessary for the world's continued existence:
a) a simple unity (like G-d), or rather
b) a complex unity (like the human being)?

In our own day, there is a growing socio-religious gap between the realms of profoundly rigorous study of Torah, spirituality (*avodah*), and the aspiration for social justice (*gemilut chasadim*). Perhaps Judaism, *medinat Yisrael*, and the world can survive this trifurcation, as they certainly cannot survive if any of these three disappear. Perhaps complex unity is sufficient.

But Rav Aharon Lichtenstein modelled and created for us the gold, the vision, and the dream of a fully integrated religious life, in which Torah, *avodah*, and *gemilut chasadim* could never be pried apart. Perhaps that simple unity never was a viable religious aspiration for everyone. But I suggest that the world requires the possibility of such unity to survive, or at least the genuine world of Torah. If that world yet stands, it is and will be in his merit. זכר צדיק לברכה

From the Moment Rav Lichtenstein zt"l's Death Became Known…by Dr. Tamar Meir, translated by Rabbi Aryeh Klapper, Original Facebook post can be found here: https://www.facebook.com/permalink.php?story_fbid=1623747604537912&id=100007080643183&fref=nf

Dr. Tamar Meir is head of the Department of Literature at Mikhlelet Giv'at Washington, Rosh Beit Midrash at Kulanah, and a lecturer at Bar Ilan University. The reflection below is a translation by Rabbi Aryeh Klapper from her Facebook posting. It is posted here with her permission:

From the moment Rav Lichtenstein zt"l's death became known, I have walked about with a deep consciousness of mourning.

I did not merit being his direct student. I did not hear many of his lectures (although I was insistent on going whenever I had the opportunity). Nonetheless – I have the sense of having lost something significant and meaningful.

I tried to sharpen for myself what I received from him, to understand precisely what it is that I am mourning. I reached several understandings, but I will share only the most central, which became clearer to me in the course of the funeral.

Rav Lichtenstein saw me – by which I mean not me the individual, whom he certainly did not know, but rather me as a woman. I was not transparent to him, nor was I "woman," but simply human. A subject. By "I," I mean "we" – women.

Rav Lichtenstein made a space for us. He saw our presence in the aisles of the beit midrash as natural. He made it possible for us to enter the beit midrash both physically and spiritually, and I believe that there is a tight connection between these two possibilities.

I remember myself, a young student in Midreshet Nishmat, staying with several of my midrashah friends at the house of one of our rabbis, who also taught in Yeshivat Har Etzion. I remember how astonished I was when I realized that we would eat seudah shelishit in the yeshiva's dining hall. No – this was not during the yeshiva vacation. The boys were present there, but also the families of the faculty, and also us – a group of young girls. And it was permitted for us to walk there, to walk about the yeshiva, the building, the gardens, in the dining hall, and not merely to be swallowed up in a women's section hidden from the eye during prayer. What was most astonishing – no one stared at us, angrily or otherwise. No one related to us as distractions, averted their eyes, or fainted.

Simple – so simple. From then until today, every time I visit the yeshiva, or the adjacent midrashah, I pay attention to this. The presence of women in the building is something natural, whether they are passing through, working in the yeshiva, coming to ask a halakhic question, or in recent years – to be tested on their halakhic knowledge.

Many women came to the funeral. Many women saw themselves as his students. Today as well, at the time of the funeral, the presence of women in the yeshiva building was self-evident, and they were given a place of dignity. It was no accident that his daughter gave eulogies in the central hall of the yeshiva with the same naturalness. It was their place.

To the men among you: I assume that you do not know the feeling, which alternates between bafflement and degradation, that occurs when I am compelled for one reason or another to enter a

"male" religious space - I am not speaking here of times of tefillah and halakhic necessity. The sense is of a thick wall separating me from the beit midrash or beit Knesset. The perplexity of what to do when one needs a book, or to look for someone, or to ask. This is a bafflement that men generally do not feel in the reverse circumstances. The women's gallery is not regarded as extra-territorial. Men teach in midrashot. Whenever necessary, they enter.

And I have not yet spoken of that moment, in which you begin to pray with no introduction or request, and in a moment turn the shared public space - which we were in but a moment before – into male territory that may not be entered, meaning that I must have somehow disappeared, or must do so immediately. Transparent, as I said above.

Rav Lichtenstein's relationship to the presence of women in the beit midrash space as something natural did not end with permitting us to enter physically. Absolutely not. Much has been written, and more will yet be written, about his encouragement and support for women's learning. About the education he gave his daughters, and his learning with them as a privilege, obligation, and aspiration, in a manner simple and self-evident. (How much awe, astonishment, and even jealousy I always felt when I heard Rabbanit Esti's descriptions. How her words and those of Toni at the funeral warmed my heart.)

But I wish to describe another experience, one that emerged from the participation of various women in meetings with Rav Lichtenstein, and events I was present at. Exactly as he saw their presence in the physical yeshiva building, Rav Lichtenstein saw the presence of women in the world of learning, and the presence of Torah knowledge among women, as natural and clear. When he lectured to women it was evident that he related to them as knowledgeable and as living in the world of Talmudic discourse.

Even today, twenty years later, this is not self-evident. For years I have kept my feet away from lectures labelled "Lecture for women," since in general I have found that in such lectures the speaker assumes that the listeners lack not only knowledge, but even common sense and the capacity to think. But not Rav Lichtenstein. He related to the intellectual achievements of women in Torah as something that was permitted and even necessary to assume its existence and possibility. As Rav Bick said at the funeral (regarding his study of literature and more): Not as permitted but as an obligation. So too in his personal dealings with women.

When he conversed with the woman of a house about the proper location of a mezuzah, he would not be satisfied with discussing the sugya with the husband, but would clarify it as well with the wife, looking her in the eyes. When he spoke to a bride about jewelry at the chuppah – not via her father or the groom, but directly with her. How simple – Woman. Human. Subject. And how much, to the point of pain, this is not self-evident.

Rav Lichtenstein in his greatness, integrity, and humanity, made a space for us. Not patronizing – including. He did not "advance us" – he believed in us.

His daughter Esti thanked him today in the name of the community of women for opening the doors of the beit midrash to them. With thanks and tears I join myself to her words, and I thank her as well, and Toni, for giving us the privilege of access to the awesome model of daughters' education they merited.

May it be Hashem's will that we too merit educating our daughters and students in this manner.

May it be Hashem's will that our granddaughters will feel themselves at home in the world of Torah.

American-Raised Rabbi Aharon Lichtenstein Wins the Israel Prize by Yair Rosenberg (SBM 2008), *Tablet* (February 23, 2014), http://tabletmag.com/scroll/163893/american-raised-rabbi-aharon-lichtenstein-wins-the-israel-prize

Rabbi Dr. Aharon Lichtenstein, a French-born and American-raised leader of Modern Orthodox Jewry, will receive the Israel Prize in Jewish religious literature this year. The 80-year-old scholar was born in Paris, but grew up in the United States, where he was ordained at Yeshiva University, studied under his father-in-law Rabbi Joseph Soloveitchik, and received his PhD in English literature from Harvard. In 1971, he moved to Israel at the invitation of Holocaust survivor Rabbi Yehuda Amital to join him at the helm of Yeshivat Har Etzion, a religious Zionist yeshiva in the West Bank region of Gush Etzion. (The area had been inhabited by Jews until they were massacred in 1948, and was resettled after the Six Day War in 1967.)

As dean of the yeshiva, Lichtenstein has educated generations of Israeli and American Orthodox leaders in a humanistic tradition that seeks to combine religious learning and striving with the intellectual fruits of the secular world. His writings in Hebrew and English have become staples of the Modern Orthodox bookshelf, and under his leadership, Har Etzion has opened both an academic teacher's college and a sister seminary at Migdal Oz run by his daughter Esti Rosenberg, which launched an advanced Talmud and Jewish law institute for women in 2013. Har Etzion's Virtual Beit Midrash, one of the earliest efforts to teach Torah over the internet, now reaches thousands of subscribers.

Lichtenstein has also distinguished himself on the Israeli scene for his dovish political stances. Together with Amital, he supported the Oslo Accords and subsequent peace process. (A founding father of the religious peace party Meimad, Amital would serve as a minister without portfolio in the government of Shimon Peres.) When several prominent religious leaders in the settlement movement eulogized Baruch Goldstein after he massacred Muslim worshipers in Hebron in 1994, Lichtenstein famously rebuked them. Drawing on his vast Talmudic and halakhic erudition, he has also defended the right of the Israeli government to cede territory under Jewish law, publicly inveighed against price tag attacks against Palestinians, and refuted the rationales for rabbinic bans against selling Israeli land to Arabs.

The Israel Prize will be awarded on May 6, Israel's Independence Day.

From Aharon to Aharon: Immediate Reflections on the Death of Rav Aharon Lichtenstein zt"l by Rabbi David Wolkenfeld (SBM 2003), (April 21, 2015), https://drive.google.com/file/d/0B1xGwp0vdYtgUnp6OVJzM196YWM/view?usp=sharing

I.

I was once shown a letter that my father sent to a friend who was living in another city. Inter-alia, my father mentioned that he had recently attended the funeral of Rav Aharon Kotler. "There were 25,000 people there; I cried like a baby."

Since seeing that letter I've wondered why my father was so moved by the experience of attending Rav Aharon's funeral. Although he would refer to Rav Aharon as the "greatest man" he had ever met, my father was not Rav Aharon's student and had only spent a few yamim tovim in Lakewood. I think my father himself was surprised by the force of his emotions at the funeral and that is why he confided in his friend (a former hevruta who, like my father, had pursued a graduate degree in psychology).

I suspect that my father's reaction to Rav Aharon's death had two origins. Rav Aharon's funeral, which was attended by tens of thousands, was the first show of strength for an enduring American Orthodoxy. It exemplified the astonishing fact that not only had Judaism survived the Nazi effort to annihilate it, but the most refined and rarified component of Jewish civilization, Torah study as it was distilled in the great Lithuanian yeshivot, had been planted securely on American soil. Rav Aharon was a surviving remnant of the conflagration that had consumed my father's family and mourning Rav Aharon was a way for my father to mourn for all that had been lost in Europe. Second, undoubtably, Rav Aharon's funeral evoked wistful feelings in my father for the idealism and innocence of youth, of roads not taken, and of the tragedy of finding oneself yearning for something one knows one cannot reclaim.

II.

This morning, I sat at my computer in a still sleeping house, with tears streaming down my face as I read the initial reports of the death of Rav Aharon Lichtenstein zt'l. Tears accompanied me throughout the day: I struggled to maintain my composure while sharing a few words of Torah following Shacharit, I choked-up while preparing to teach a Mishnah class at my sons' school, and I cried while reading eulogies from Rav Lichtenstein's students that appeared online during the course of the day. I've never been this strongly affected by the death of any public figure and that has pushed me to interrogate the source for the intense sadness that has hung over me today.

Rav Aharon was not a father-figure to me or a beloved personal mentor. I learned far more from reading his books and essays than I did from the relatively few personal interactions that I had with him. I have powerful memories of interacting with Rav Aharon, but they cannot explain the depth of my grief. A written hamlatzah that he wrote on my behalf has been of significant professional benefit to me, but that is not why I have been crying. I have identified three sources for the intensity of my response to today's sad news:

1. Rav Lichtenstein was a man who lived his values to a degree that is hard to fathom. His devotion to Torah study, his passionate cultivation of service of God (who can forget the haunting sound of his rendition of the Haftarah for Ta'anit Tzibur or his plaintive recitation of kaddish), and his gentle humility were not just aspirations but were the building blocks of his daily life. I am crying for the death of an

intellectual and ethical role model, and also for the awareness of how far I have strayed from the idealism and intensity of the beit midrash.

2. As my teacher, Rabbi David Ebner, explained with such pathos and urgency to his students this morning, Rav Lichtenstein was the living and breathing example we could look at to see Modern Orthodoxy at its best.

Rav Lichtenstein taught us that one could produce Torah scholarship of enduring value, teach students and involve oneself in the concerns of the community, and appreciate "the best that has been thought and said" by intelligent men and women of all faiths and nationalities. Who can we look to today who combines the sophistication, piety, and Torah scholarship of Rav Aharon Lichtenstein? Can our community survive without such role models and without such guides? The burden that now falls upon Rav Lichtenstein's students is formidable.

3. King Louis XV of France is reported to have said, "apres moi le deluge," indicating his awareness that only the strength of his personality was preventing seismic upheaval from overpowering his kingdom.

Contemporary Orthodoxy is beset by ideological turmoil, dissent, and the specter of schism. The personality, moral authority, halakhic gravitas, and ethical integrity of Rav Aharon Lichtenstein have kept the Orthodox community from splintering into irreconcilable factions. A contentious debate about some synagogue practice could be brought to an immediate end by invoking the authoritative pesak of Rav Aharon. Liberals trusted that Rav Aharon understood their values and were therefore willing to accept his authority when he ruled restrictively. Conservatives trusted Rav Aharon's scholarship, piety, and authority and so were willing to accept lenient positions or halakhic innovations that he endorsed.

As one era comes to an end, another necessarily begins. May we help each other find inspiration in the example that Rav Aharon Lichtenstein left behind and may the memory of the righteous serve as a berakhah.

Some Thoughts from, and about, Rav Aharon Lichtenstein by Rabbi Jonathan Ziring (SBM 2009-2012), *Sha'ashuim* (April 20, 2015), https://shaashuim.wordpress.com/2015/04/20/some-thoughts-from-and-about-rav-aharon-lichtenstein/?fb_action_ids=10203727708137583&fb_action_types=news.publishes&fb_ref=pub-standard

Many of my friends and teachers have been posting memories and reflections on the passing of Moreinu V'Rabbenu Rabbi Aharon Lichtenstein zt"l. I'm not sure I'm ready to do that quite yet, nor am I sure I have something profound to say. While there will be eulogies here in Yeshiva tomorrow, today we are having several shiurim focusing on R. Aharon's Torah, allowing his lips to continue to move even after his passing, as the Gemara so beautifully captures here:

תלמוד בבלי מסכת יבמות דף צז עמוד א

אמר רבי יוחנן משום רבי שמעון בן יוחי: כל ת"ח שאומרים דבר שמועה מפיו בעולם הזה, שפתותיו דובבות בקבר. אמר ר' יצחק בן זעירא, ואיתימא שמעון נזירא: מאי קראה? וחכך כיין הטוב הולך לדודי למישרים דובב שפתי ישנים, ככומר של ענבים, מה כומר של ענבים – כיון שמניח אדם אצבעו עליו מיד דובב, אף תלמידי חכמים – כיון שאומרים דבר שמועה מפיהם בעוה"ז, שפתותיהם דובבות בקבר

So, to focus on one of R. Aharon's pieces that is both brilliant and reflects (for me, at least) so much of who R. Aharon was. This piece was originally published in Kavod HaRav, and has been republished and translated several times since then. It focuses on the nature of Talmud Torah. It is referenced and linked at numbers 47 and 95 on his bibliography (here).

The Gemara in Moed Katan 9b rules that while in general osek bimitzvah patur min hamitzvah, one who is involved in the performance of a mitzvah is exempt from performing other mitzvot, this rule does not generally apply to Talmud Torah. If the mitzvah can be done by others, one is permitted to continue learning. If, however, it cannot be, then one must stop learning to perform the mitzvah. While the Rambam rules in accordance with this law generally, in the context of marriage, the Rambam writes that one can push off marriage and having children on the basis of osek bimitzvah – claiming that this is a kal vachomer – meaning Talmud Torah, far from being an exception to the rule, is the mitzvah most likely to override all others! Many answers have been suggested by the achronim. Some claim (ex. Maharm Shick) that having children is fundamentally a mitzvah on society overall, making it a mitzvah that can be done by others. Others (Shulchan Aruch HaRav) argue that in fact there are two aspects to the mitzvah of Talmud Torah, studying and knowing, and the exemption only applies to the latter, but not the former. Some (ex. The Gra) claim that every word is a separate mitzvah, so one can never really be osek in a unified mitzvah of Talmud Torah.

R. Lichtenstein suggested something different. He claimed that Talmud Torah should exempt one from all mitzvot, just like any other mitzvah. However, Torah by its very definition must be al menaot laasot – studied with the intent to fulfill. If not, the Torah is not Torah. Thus, in general, the reason that osek b'mitzvah does not apply to Talmud Torah is that if one would turn one's back on doing a mitzvah because he was learning, his learning would lose all value, cease to be a mitzvah, and therefore eliminate the exemption. In the case of marriage, however, one is only delaying getting married to learn, and therefore it is not considered turning one's back on the Torah, allowing the normal rule of osek b'mitzvah to apply.

Not only is this answer brilliant and beautiful, but I think it highlights R. Lichtenstein's personality and thought in many ways, as well as attempts to square a circle in Litvish thought more generally. Starting with the latter – R. Lichtenstein very much came from the world of Brisk, which had internalized R. Chaim Volozhin's notion of Talmud Torah Lishmah – that the highest level of Torah is that learned for it's own sake. Hence, the Briskers in all their permutations are known for studying kodshim and other esoteric, not yet practical, areas of Halacha. Yet, this commitment often comes into tension with the emphasis in many places in Chazal and poskim that Halacha is great because it leads to action (a statement I cannot try to analyze fully here). R. Aharon manages to square that circle, I think, with this answer. On the one hand, he embraces the notion that Talmud Torah is the greatest of mitzvot, in and of itself. Hence, fundamentally, Talmud Torah should be able to push aside all other mitzvot even more than anything else. On the other, he uses the conviction that Talmud Torah must not remain theoretical but be implemented to define Torah itself, thus preventing this rarification of study from overshadowing the importance of action.

As for the former – more than anyone I have ever met, was balanced and insightful, and had profound things to say about everything important. His positions were permeated by his Torah, his general knowledge and wisdom, and his perfection of character – his tzidkus. He was committed to the world of the mind, of perfecting and clearly articulating his Torah infused thoughts in all areas of life, from the most practical to the most esoteric, from the mussar he would give to us, to his shiurim on kodshim and taharos. Still, more amazingly, it was always al menat laasot. There was no distance between the ideals he articulated and the ideals he lived. If he thought it and said it, he meant it and did it. Even more scary for us was that he expected that of his students as well.

I was zoche for several years to have studied with him, but more importantly, I, my family, friends, and so many others will do our best to be worthy of being called his students for the rest of our lives.

יהי זכרו ברוך

Rav Lichtenstein and Intensity by Rabbi Shlomo Zuckier (SBM 2012), Post from Facebook

When I think of Rav Aharon Lichtenstein, ztz"l, the first thing that comes to mind is his intensity. This might seem unusual, given that one usually hears about Rav Lichtenstein's Talmudic genius, his thoroughgoing modesty, his complex worldview, and his educational methodology. But I believe all of these can only be fully appreciated from the vantage point of his intensity.

I cannot shake the image of Rav Lichtenstein in Tefillah, his booming voice echoing throughout the Beis Midrash, his eyes shut and his face knotted in deep Kavvanah in his encounter with God. We often hear about the intellectual, rationalist Rav Lichtenstein, but his religious persona, broader than any such characterization, encompassed an intensely spiritual dimension, as well.

For someone renowned for his sharp conceptual analyses (Iyyun), Rav Lichtenstein possessed a remarkable erudition and knowledge base (Bekius) within the traditional Jewish canon. In his later years, when he would consult his Sefarim to cite a relevant source, his eyesight had failed to the point where he could not read the tiny print of his worn reference Shas, and his ability to summon these sources was a testament to both his Bekius and his Anavah.

And that is not to say anything of his secular knowledge, which was impressively vast. One imagines what it might be like to have a snapshot of Rav Lichtenstein's years in Boston, where he split his time between a PhD in literature at Harvard and advanced Talmudic studies with Rabbi Joseph B. Soloveitchik, his primary Torah teacher and future father-in-law.

For someone widely perceived as the Gedol Hador of the Modern Orthodox community, Rav Lichtenstein managed to retain a clear (and understated) sense of Anavah. For him, there was no pretense and no grandstanding; while he understood the weight of leadership placed upon him by his community, he did not allow that position to negatively affect his refined Middos and humility.

And what of his perspective on Halacha? Or, rather, perspectives on Halacha. Rav Lichtenstein was not a professional Posek, in the sense that he did not publish Teshuvos, but his Halachic decisions are known to his students and have affected generations of Posekim. He was able to incorporate a deep compassion and fundamental humanism in his Pesak, while simultaneously holding the law in the highest regard. This becomes clear when one considers Rav Lichtenstein's personal stringencies (Chumras) in all realms of Halacha, ranging from Eruvin to Hashavas Aveidah. Both the Halachic system and its participants must be shown the utmost regard.

For someone whose worldview integrated such complexity at every turn, Rav Lichtenstein somehow still managed to have the passion for Avodas Hashem burn within him more brightly than anyone else. The various obligations he took upon himself did not dilute but intensified one another.

How did Rav Lichtenstein succeed in living both sides of these equations, of rejecting these dichotomies? I distinctly remember, towards the beginning of my time in Yeshivat Har Etzion, Rav Lichtenstein explaining that in order to both be a serious Oved Hashem and participate in the broader world, one must redouble one's efforts in these pursuits, to put in more hours and expend maximal toil.

In effect, then, it was Rav Lichtenstein's intensity that allowed him to simultaneously be a rationalist and spiritual man; a Meayyen and a Baki; an expert in all Torah and the Western canon – while maintaining

his humility; a Mekil and a Machmir; a complex thinker with the overarching intensity to not allow any of his multifarious commitments to waver one bit.

I was lucky enough to call Rav Lichtenstein my primary teacher (Rav Muvhak), and he has inspired me, and will continue to inspire me, to invest the greatest intensity of effort in my Avodas Hashem.

Baruch Dayyan Ha-Emes.

A Piece of Lomdus on Avelus for One's Rav by Rabbi Shlomo Zuckier (SBM 2012), Post from Facebook

I wanted to share a short piece of Iyyun relating to Hilchos Avelus in honor of the passing of Rav Lichtenstein, hk"m.

The Rambam provides an interesting source (based on Moed Katan 26a) for the obligation to mark one's Rebbi's death by tearing one's garment:

רמב"ם הלכות אבל פרק ט הלכה ה

ומנין שקורע על רבו כדרך שקורע על אביו, שנאמר והוא מצעק אבי אבי רכב ישראל ופרשיו ולא ראהו עוד ויחזק בבגדיו ויקרעם לשנים קרעים, מכאן שחייב להבדיל השפה

Elisha's cries over the death of Eliyahu, his teacher, are marked by the rending of his garment into two. This source is particularly fitting because it demonstrates Rambam's comparison between a Rebbi and a father, as Elisha calls out "My father! My father!" for his teacher. But the source is also problematic; the example of Keri'ah noted in this Pasuk is very unusual because Eliyahu has not died! How can there be Keri'ah, a sign of mourning, without a death?

Let us consider a different Halacha by the Rambam in this same chapter (based on Moed Katan 25a):

רמב"ם הלכות אבל פרק ט הלכה יא

כל מי שעמד עם המת בשעת יציאת נשמתו אע"פ שאינו קרובו חייב לקרוע וכן אדם כשר שמת הכל חייבין לקרוע עליו אע"פ שאינו חכם

Here, someone present at the time of another person's death tears their clothing, despite the lack of any connection between the deceased and the observer. Why does one tear their clothing in this case?

I believe we see in the Rambam two different triggers for tearing one's clothing that are separate from one another, which really are two different aspects (Tzvei Dinim) of that obligation. The first trigger for Keri'ah is experiencing the end of a person's life. This encounter with human frailty suffices to bring into effect an obligation of Keri'ah, as one rips their clothing to symbolize the soul leaving the body. The other aspect relates not to death per se but to the loss of formative influences and close relatives from one's life. The sense of loss, of something being wrenched away, is symbolized by tearing one's clothes, as well.

These two sources typify the two aspects: being present at a death, even of a person with whom one is unacquainted, necessitates Keri'ah; additionally, one whose Rebbi leaves the world, even without experiencing death (as Eliyahu), must rend their clothes.

Yesterday, we experienced both forms of mourning. We saw the end of Rav Lichtenstein's life, showing that even the strongest of men is still human. And we have all suffered the loss of Rav Lichtenstein's presence, as we are an orphaned generation who now must go on without our irreplaceable Gedol ha-Dor.

A Talmud Test (November 27, 2015)

Rashi to Genesis 35:13: "In the place where He had spoken with him" – I do not know what this teaches us.

"I don't know what this teaches us"– why not simply be silent? I suggest Rashi is taking a stand for his methodology. One might think this unanswerable exception disproves the rule that every word in *Chumash* teaches something, undermining a fundamental basis of Rashi's comments about everything else in Torah. No, Rashi says; I am sure this phrase and every phrase teaches something, even if I can't figure it out what it is. Perhaps you will figure it out.

Lehavdil, I had a similar experience this week. I had the privilege of discussing how to teach Talmud with wonderful educators at two NY day schools. One sterling young *mechanekh* and I later glanced together at a *sugya* he was teaching, and I tried using it to instantiate one of the principles I evangelize for: that students cannot understand a Talmudic passage fully unless they precisely and rigorously understand the logical forms represented by the technical terms in the passage. A few minutes later, I blithely repeated the example to another thoughtful teacher. He pointed out that I had been thinking mechanically; in this case it was not clear that following the form increased rather than decreased understanding, and in my haste to make a point I hadn't taken the time to think through the specifics of the text. This was great *mussar* to me, and a challenge as well. Is this really an exception? If yes, does my principle survive? Perhaps the general principle is correct, but I simply misunderstood the particular form.

I decided to honor these beautiful conversations, and try to follow in Rashi's spirit, by committing to publishing about the specific case without knowing what conclusion I would reach. This happily generated another spirited and thoughtful conversation with Deborah Klapper, who insisted that I try to model a research path that high school teachers could reasonably use to test hypotheses similar to mine, and that high school students could be taught to use independently. Here is the first part of the *suyga*, as it appears in the *Vilna shas* on *Kiddushin* 30a:

1. *How far must a person go in teaching his son Torah?*
2. *Said Rav Yehudah said Shmuel:*
3. *כגון(=As in the case of) Zevulun son of Dan, who was taught by his father's father mikra, Mishnah, and Talmud, halakhot and aggadot.*
4. *מיתיבי(=An attack question based on a text seen as more authoritative):*
5. *If he taught him mikra – he does not teach him Mishnah.*
6. *and Rava said: Mikra – this refers to Torah.*
7. *Like Zevulun son of Dan, and not like Zevulun son of Dan.*
8. *Like Zevulun son of Dan – in that he was taught by his father's father.*
9. *Not like Zevulun ben Dan –*
10. *There it was mikra, mishnah and Talmud, halakot and aggadot*

11. *whereas here it is mikra alone.*

The fundamental structure here seems clear.

1-3: Rav Yehudah, citing Shmuel, uses the case of Zevulun ben Dan to instantiate a principle that answers the opening question. The problem is that Shmuel's case has at least two possibly significant particulars: the grandfather as teacher, and the comprehensive curriculum. The Talmud initially understands Shmuel's case as instantiating the principle that a father must teach his son all the things that Zevulun ben Dan was taught by his grandfather.

4-5: The Talmud attacks Shmuel by claiming that he is contradicted by a *beraita*(a Tannaitic text not found in the Mishnah. Tannaitic texts are generally treated as more authoritative than *memrot* of Amoraim, such as Shmuel's statement here).

7-11: The Talmud responds that Shmuel and the *beraita* agree that Zevulun ben Dan's grandfather taught him far more than he was required to. Shmuel was using Zevulun ben Dan only to instantiate the principle that grandfathers, and not just fathers, are obligated to teach children.

You perhaps noticed that this outline completely ignores line 6, Rava's statement. Why does that matter? I was confident that the *vav*/and of "and Rava said" is formally a subordinating conjunction, by which I mean that it makes Rava's statement part of the argument from the *beraita*. If this is correct, we should expect the attack on Shmuel to be valid if and only if we understand the *beraita* in the way that Rava understood it. But this seems not to be the case. The *beraita*clearly says, before any interpretation from Rava, that a father need not teach his son both *mikra* and *mishnah*, whereas we initially understood Shmuel to require both (plus *Talmud, halakhot,* and *aggadot*). Rava's comments therefore seem irrelevant to the argument based on the *beraita*. Does this mean I misinterpreted the form, or that forms are less crucial than I had argued?

One way to test a claim that Talmudic literary form A = Talmudic logical form 1 is to look up a number of parallel cases. So I opened the Bar Ilan Responsa Project and asked it to search for the words מיתיבי and ואמר, in that order, and with no more than a 25 word gap between them. This yielded a total of other 15 cases, of which 11 were irrelevant (for example the ואמר was said by a character in a *beraita* rather than an Amoraic legal authority). Here's what I found in the 4 parallel cases:

Eiruvin 29a: Rav Nachman states one can make an *eruv techumin* with a *kav* of*tapuchim.* מיתיבי introduces a *beraita* that states that for the purpose of distributing the poor tithe, 5 *afarsakim* is considered "giving", **and Gorski bar Dari in the name of Rav Manashe bar Shkovli in the name of Rav said: The same is true regarding eruv.** This attacks Rav Nachman, as our initial assumption is that *tapuchim* and *afarsakim* are alike for the purposes of*eruv*, and that it takes more than 5 *tapuchim* to make a *kav*. In this case, the attack question works only if one accepts the statement introduced by **and X said**; otherwise we would be comparing *eiruvin* and *maaser ani* with no basis, which would be like comparing apples and apricots. Score one for my hypothesis.

Bava Kamma 16a: The *Mishnah* has a list of animals including the *bardelas*. Rav Yehudah identifies the *bardelas* as the *nafreza*, and Rav Yosef (or the editor) identifies the *nafreza* with the *afa*. The מיתיבי introduces a *beraita* in which R. Meir adds the *tzavua* to the Mishnah's list, **and Rav Yosef said: The *tzavua* isthe *afa***! This attacks our previous identification of the *bardelas* as the *afa*; in

that case R. Meir would merely be repeating an item already on the list. Here, the attack question works only if we accept Rav Yosef's statement that *tzavua = afa.*Score two for my hypothesis.

Meilah 16b: The Talmud reports that Rabbi Yose bar Rabbi Chaninah was praised by Rav Yochanan for reciting a *beraita* that declares that for both *tum'ah*and eating, less than an olivesize of *sheratzim* is sufficient. The מיתיבי introduces a*beraita* which declares that for the purposes of *tum'ah* less than an olivesize is sufficient, **and Rav Yochanan said: One only receives lashes for** (eating)**an olivesize.** This attacks the earlier report that Rav Yochanan praised the*beraita* which did not require an olivesize. Score three for my hypothesis.

Pesachim 54a: Someone reports that Rav Yochanan agreed with a statement that one makes the berakhah over flame after Shabbat and after Yom Kippur. The מיתיבי introduces a beraita that declares that one makes this berakhah only after Shabbat, with R. Yehudah commenting that one makes it together with the berakahah over wine rather than on the first flame one sees, **and Rav Yochanan said: The Halakhah follows Rabbi Yehudah.** This attacks the earlier report about Rav Yochanan's position. Score four for my hypothesis. Four out of five isn't bad, but it certainly isn't absolute proof, and of course one might suggest that my interpretations of the four cases suffer from confirmation bias (albeit a bias that seems to be shared by many *rishonim*.)

A second test was to check whether my hypothesis was shared by great classical commentators. A quick check of Bar Ilan's *mefarshim-acharonim* tab showed me that the *Pnei Yehoshua* and *Hamakneh* along with many, many other *acharonim*make yeoman efforts to explain how Rava's comment in our *sugya* is a necessary component of the מיתיבי attack. However, I admit that I do not find any of their answers satisfying. Therefore, at least for now, I thank my colleagues very much for their stimulating conversation, and can only say, as per Rashi on *Chumash*, that I don't know what Rava teaches us here, but I remain confident in my methodological hypothesis.

I am very open to discussion as to how high school students would react to this admission from a teacher, or to reaching this point themselves.

2015 SBM Shayla (August 10, 2015)

**Here is the full-text of the shayla that Rabbi Klapper gave the 2015 Summer Beit Midrash fellows to answer. Stay tuned for Rabbi Klapper's teshuva, which we'll post online next week!*

BARGAINS is a chain of for-profit thrift shops. It is owned by a private corporation whose sole and equal shareholders are Mara Spade, a Jewish woman with growing halakhic sympathies, and her non-Jewish business partner Samuel Hammett. For reasons that have become increasingly esoteric over the years, the corporation's symbol is a peregrine in silhouette.

BARGAINS has been expanding tremendously in recent years, and where BARGAINS' gleaming emporia go, other thrift shops tend to wither. BARGAINS offers more consistent quality, better selection, longer hours, and generally sets its prices slightly lower than any major competitors, which it can afford because of its economies of scale and large capital reserve. Some online critics have also claimed that it benefits from a false impression that donations of goods to BARGAINS stores are fully tax-deductible. Although it is not clear that BARGAINS is responsible for this impression. BARGAINS is currently the only significant chain of its type.

Mara is responsible for developing new stores and is responsible for all stages of the process from selecting a location through the Grand Opening. She is currently scouting locations in Western MA. The only nearby Orthodox shul is the Young Israel of Dayberry, which is hosted by the Barney Fife Jewish Center. BFJC also hosts Modest Requirements, the Young Israel's Thrift Shop. Mara has been looking at houses near BFJC and expects to rent one for her family (husband and four kids) soon.

Modest Requirements is open Mondays – Thursdays from 10 – 6 pm and is staffed entirely by Gladys Blueoat, a 60 year old member of Young Israel with no family other than her 12 tomcats. Gladys is paid $18 an hour for the job, which together with her late husband Warren's life insurance, enables her to live at roughly the lower-middle-class standard of living she enjoyed during their thirty-year marriage. The salary is rather high for the nature of the work, and some complaints about this have occasionally been raised, but the store nonetheless contributes significantly to the shul's budget, and most of the administration views this as a dignified form of communal *tzedakah.*

Mara so far has found two possible locations for the new BARGAINS store. The first is some thirty miles down the highway in Wolomolopoag; it will mean a long commute for Mara, but is unlikely to draw business away from Modest Requirements. The second is in the very same mall as BFJC, and is attractive among other reasons because of the traffic BFJC generates.

Mara subscribes to the CMTL Weekly Dvar Torah, and the 2015 weekly summaries of SBM learning have made her wonder whether it could be Jewishly permissible for BARGAINS open its new store in Dayberry. For that matter, she realizes that the opening of every BARGAINS store has driven thrift shops like Modest Requirements out of business. Is she halakhically or ethically required to change BARGAINS' entire operating model, or to sell her share? Does she owe damages to the beneficiaries or employees of those shops? She approaches the rabbi of YID, Rabbi Milton Friedman *shlit"a*, who refers her question to you.

Rabbi Friedman adds his own question: If you rule that Mara may or should not open a BARGAINS in Dayberry, and she does so anyway, how should he and the shul react when she applies for membership?

Why Does Being Commanded Matter (February 24, 2015)

Why does being commanded matter?

Some Jewish theologians are comfortable with the idea that some ritual *mitzvot*are purely arbitrary and given meaning solely by the fact of being commanded. My question would not apply to such *mitzvot*.

More Jewish theologians follow Maimonides in believing that some *mitzvot* are arbitrary in form but not content; for example, it may be vital to ritualize the killing of animals for meat, but G-d could have commanded us to slaughter from the back of the neck rather than the front without changing the meaning of the mitzvah. Here commandedness serves to make a national language of ritual possible. But I am looking for a deeper answer.

So let me sharpen the question. There are *mitzvot* which many Jewish theologians describe as "fit to be commanded even had they not been," implying that G-d would will us to perform them if He had not commanded us to perform them. Is there a difference between acting in accordance with G-d's will, and acting in obedience to His commands?

Put differently: When the result is the same, (why) should we care whether the motive for action is an expression of autonomous ethical intuition, or rather acknowledgement of legitimate heteronomy?

One more formulation: Is it coherent to speak of uncommanded moral or ethical obligations, or are all human obligations by definition Divinely commanded?

In purely halakhic terms, I believe the legal consensus is that even those who understand the position "*mitzvot tzerikhot kavvnah*" in its most radical and fundamental sense—namely that *mitzvah*-acts are legally and spiritually inert unless performed for the sake of fulfilling a Divine command—do not apply that position to interpersonal *mitzvot*, such as charity. And yet, I think commandedness makes a difference in those *mitzvot* as well.

For many years, I tried to explain that difference to my high school students at Gann Academy via a very technical Talmudic passage (*Kiddushin* 31b). It never worked, and the truth is that I never succeeded in clearly expressing the difference. Nevertheless, I continue to think that passage is potentially a powerful demonstration that *Halakhah* itself recognizes the difference and considers it important, and so I will try to lay it out clearly here in the hope that it will inspire productive thought on your parts. I welcome your subsequent critiques and formulations.

The *sugya* reports an Amoraic dispute as to whether costs associated with the mitzvah of honoring parents (*kibbud av vaeim*) are borne by children (*mishel ben*) or rather parents (*mishel av*). The second *beraita* brought as evidence regarding that dispute goes as follows:

Two brothers, two partners, a father and his son, a teacher and his disciple – they may redeem *maaser sheni* for each other, and they may feed each other*maaser ani* (=poor tithe).

Our interest is in the last clause, for which some halakhic background is necessary.*Maaser Ani* is a Biblical tax that, in the third and sixth years of the seven year*shemittah* cycle, obligates Jewish landowners in Israel to give approximately 8.82% of their produce to the poor. (Nowadays biblical agricultural taxes are generally evaded via rabbinically approved loopholes, for reasons beyond the

scope of this *dvar Torah*.) That percentage of the produce is understood to be held in trust for the poor as a class, although the landowner may distribute it to whichever poor person(s) he chooses.

Now the *beraita* cannot mean that all children can feed their parents *maaser ani*; rich people can never eat *maaser ani*. Rather, it must mean that children can feed their parents who are poor *maaser ani*. But even so, the Talmud initially argues, this *beraita* demonstrates that children do not bear responsibility for the costs of*kibbud av va'eim*. The argument is that otherwise the children would be using the same money to satisfy both their obligation to the poor and their obligation to their parents. This would be illegitimate double-dipping, as they would be satisfying their *kibbud av vaeim* obligation out of money that already belonged to the poor. The *beraita* therefore demonstrates the correctness of the *mishel av*position.

The Talmud rejects this proof by asserting that, at least according to the position*mishel ben*, the obligation to feed parents generated by *kibbud av vaeim* is measured objectively; one must provide parents with the amount of food consumed by an average person. Therefore, the obligation can terminate while parents are both poor and hungry, if they have large appetites. Under such circumstances, a child can provide the parents with additional food drawn from*maaser ani* without double-dipping, since they have already fulfilled their *kibbud av vaeim* obligation,

But, the Talmud goes on to say, this assertion seems not to fit the next line of the*beraita*. In that line, Rabbi Yehudah asserts that any child who feeds their parents*maaser ani* deserves to be cursed. Why should they deserve cursing, if they have already fulfilled their legal obligation of *kibbud*?

The Talmud answers that they deserve cursing because it degrades their parents to be fed from charity, so long as the children have other resources.

Here is what emerges:

1) According to the position *mishel ben*, the Torah sets a clear limit to the obligation of *kibbud*. This is in principle a legal but unenforced obligation, since the rule is that *mitzvot* for which the Torah explicitly promises an explicit reward for are not humanly enforced, and the Ten Commandments promise long life (which the Rabbis understand as referring to the Coming World) as a reward for*kibbud*.

2) However, Rabbi Yehudah declares that anyone who takes advantage of those limits is curseworthy! Rabbi Yehudah does not mean that it would be better to leave your parents hungry, but rather that one should feed one's parents out of food that is not charity even after the obligation of *kibbud* has been exhausted. But why not simply extend the obligation?

In other words, Rabbi Yehudah believes that there are obligations that are law, and humanly enforced; obligations that are law, but not humanly enforced; and obligations that are not law, and not humanly enforced. (We will leave for some other time the question of obligations that are not law, but humanly enforced.)

My students generally had serious difficulty with the notion of humanly unenforced law. What makes it law, rather than ethics? They could resolve this by saying that Judaism formulates all obligations as *Halakhah*, which is not law in the ordinary-language sense. But this *sugya* eliminates that resolution, as it creates an obligation that is sharply distinguished from the halakhic obligation it supplements! (We know that it is an obligation because one is cursed, i.e. Divinely punished, for not fulfilling it.)

My suggestion is that the Rabbis saw value in preserving both motives for ethical behavior, the heteronomous and the autonomous. They tried to establish a system in which human beings recognized and responded to legitimate authority, but never defined their value and purpose solely through obedience, and never abdicated their responsibility to independently perceive value, and to act in accordance with that perception.

Modern orthodoxy is philosophically hostile to heteronomy, and modern Orthodoxy is often philosophically hostile to autonomy. Creating a religious and intellectual space that is genuinely hospitable to both autonomy and heteronomy is the central philosophic task of Modern Orthodoxy. May we succeed in doing so.

The Dangers of Knowledge Addiction (October 8, 2015)

In eleventh grade, my rebbe turned to our class and said: "Whoever doesn't understand that the Garden of Eden is a metaphor/*mashal* – is an idiot." That moment has been a useful religious bulwark for me over the years. It also gives me space to focus on the more important question: a metaphor for what? And how should I go about answering that question?

One might think to search for the *nimshal* that best accounts for all the details of the *mashal*. But (as Maimonides warns) narrative metaphors often include details that are not directly significant to meaning. The *mashal* has its own literary integrity, and some details may be necessary for the story to work even though they don't affect the *nimshal*.

Moreover, *meshalim* have two, diametrically opposed, pedagogic purposes. One is*kedei lesaber et ha'ozen*, to relate complicated or abstract ideas to concrete human experience. The other is to convey knowledge to the worthy and ready while denying it to the unworthy and unready. A useful technique for accomplishing the second purpose is the "red herring," the inclusion of a seemingly significant but actually meaningless detail. So the "omnisignificant" interpretation may fit the text best, and yet be inaccurate or superficial, silver filigree disguising a golden apple.

Reading Chapters 2-3 of Genesis, I tend to focus on the Tree of Knowledge, Good and Bad, and build interpretations of the Garden inductively, rather than trying to deduce the nature of the Tree from the overall Garden. And so it is a great joy to come across a genuinely new (to me) interpretation of the Tree, and even more so to share it with you. Rabbi Itzile Volizhin, in his remarkably original Torah commentary *Peh Kadosh*, says the following:

ומעץ הדעת טוב ורע לא תאכל ממנו

כי ביום אכלך ממנו מות תמות

ופשוטו שעפ״י דרך הטבע כך הוא

דבר שאדם חושק בו תמיד ומתאוה לו למאד, ואז אפילו הדבר טוב לו ואוכל בגודל תשוקתו, יכול להיות שמזיק לו מאד, ויוכל לגרום לו מיתה. ואף שאינו מת תיכף, אך מפני שבכל יום ויום ובכל שעה ושעה הוא הולך וקרב למות, ע"כ יקראו לו כבר מן עת האכילה מת

וכן ביום אכלך ממנו – היינו מאותו יום ואילך – מות תמות – פ' מעט מעט, כי בכל יום ויום הוא קרוב למיתה יותר ויותר

כי באמת שקודם אכילתו מעץ הדעת לא היה עדיין מיתה בעולם, ומן עת האכילה, שאז נגזרה עליו מיתה, הלא הוא מתקרב בכל יום ויום אל המות

ועל כן אומר הכתוב בכפל לשון מות תמות – היינו בכל יום אתה מתקרב אל המות וד"ל

And from the Tree of Knowledge, Good and Bad – you must not eat from it, because on the day of your eating from it you will die, yes die:

The *peshat* of this is that this is the natural way: something that a human being continually yearns for and desires extremely, even if the thing is good for him, when he eats it to the great extent of his aspiration, it may greatly damage him, and can cause his death. Even though he does not die immediately, since every day and every hour he comes nearer to dying, he can be called dead from the moment of eating.

Thus on the day of your eating from it – meaning from that day on – you will die, yes die – meaning little by little, because each and every day he comes more and more near to death.

Because the truth is that before he ate from the Tree of Knowledge death was not yet in the world, but from the time of the eating, at which point death was decreed upon him, he indeed comes nearer each and every day to death.

Therefore the Torah says redundantly *die, yes die*, meaning that every day you come nearer to death. Enough said, for those with understanding.

Now the phrase "enough said, for those with understanding" suggests that Rav Itzile's interpretation itself has an exoteric and esoteric component. Let's see how much of that we can unpack. Exoterically, he resolves the problem of Adam's failure to die *on the day* he ate the fruit by positing that he *began the process of and the march toward dying*. This interpretive move can be accomplished without saying anything about the nature of the fruit; mortal beings are by definition always on the march toward dying, and processes are notoriously difficult to define. But R. Itzile goes further; he says that while eating the fruit generated mortality, it did not generate **inevitable** mortality. Adam would still have lived forever had he been able to resist the fruit the next day, or the next, or the day after that. But one taste of the fruit made it impossible for him to ever resist it for long, and eventually he overdosed.

I think the textual clue here is that it is *the Tree of Knowledge, Good and Bad*. Most readers understand this to mean "*knowledge* of *good and knowledge* of*bad,"* but Rav Itzile is perhaps more precise in choosing "*knowledge that is* both*good and bad*." This in turn raises the question of how something can be simultaneously good and bad, to which he responds with his own metaphor of addiction.

So far, so good. Now we must ask: why is it the *Tree of **Knowledge**?* Perhaps knowledge is a red herring, and addiction per se is the original sin; R. Eliezer of Metz in his *Sefer Yereim* posits that the *ben sorer umoreh* (the rebellious son) is executed *al shem sofo*, because of what he is yet to do, because he is an addict, and the Torah knows that uncontrollable addiction leads inevitably to robbery and murder. But while the *Yereim* is a tempting read of the rebellious son, I am nervous about taking the metaphor that literally. Addictions can at least sometimes be broken; Deborah Klapper just today referred me to studies that suggest that a positive social environment significantly improves prognosis. And I find it very hard to believe that knowledge is red herring. So what we are really looking for is a type of knowledge that is dangerously addictive.

We don't have to look very far. Here is *Berakhot* 28b:

תנו רבנן

כשחלה רבי אליעזר, נכנסו תלמידיו לבקרו

אמרו לו: רבינו, למדנו אורחות חיים ונזכה בהן לחיי העולם הבא

אמר להם: הזהרו בכבוד חבריכם, ומנעו בניכם מן ההגיון, והושיבום בין ברכי תלמידי חכמים, וכשאתם מתפללים – דעו לפני מי אתם עומדים, ובשביל כך תזכו לחיי העולם הבא

A *beraita:*

When Rabbi Eliezer fell ill, his students entered to visit him.

They said to him: Rabbeinu, teach us the paths of life and we will thereby merit The Coming World.

He said to them: Be careful of the honor of your colleagues; restrain your children from *hahigayon;* place them between the knees of scholars, when you pray – know before Whom you stand; and for this you will merit the life of the Coming World.

The mystery term here is *hahigayon*, which seems etymologically to refer to some form of intellection. Rashi comments: "מהגיון – לא תרגילום במקרא יותר מדאי, משום דמשכא /From *hahigayon* – do not familiarize them with Scripture overmuch, because it attracts them." The study of Written Torah is addictive, as a brilliant satire in *Hamevaser* pointed out years ago. But this does not mean that it should not be learned, just that is should not be learned overmuch. I suggest that this means that one should not try **overmuch** to learn the text of Torah without reference to Oral Torah, traditionally attested interpretations. Might *peshat* be the knowledge that Rav Itzile attributes to the Tree?

On this reading, the metaphor of Genesis is self-referential. To seek to understand the Tree, one must first recognize that one cannot understand it without help from others who already do so. One must honor the knowledge of one's friends, and train children to respect tradition.

Three uncautionary notes in conclusion:

1. Rabbi Eliezer is often represented as particularly devoted to traditional knowledge. Perhaps Rav Itzile has recreated Rabbi Eliezer's understanding of the metaphor, but the bulk of Jewish Tradition has adopted others' understandings.
2. As Rabbi Itzile implies, the knowledge of the Tree is good, perhaps essential. Perhaps forewarned is forearmed, and we can taste it without becoming addicted.
3. All the other trees of the garden were simply good to eat. There is no religious danger in addiction to knowledge, so long as we do not become convinced that the individual or collective human literary sensibility is the measure of all things.

The Art of Saying Sorry by Jenna Englender (November 26, 2015)

Parashat *Vayishlach* contains two moments of attempted reconciliation. The first ends well; the second ends badly. I suggest that these disparate outcomes have much to teach us, not just about the immediate process of reconciliation, but about how to prepare ourselves and live in a way that makes reconciliation possible.

The *parasha* opens with the well known encounter between Jacob and Esau, over twenty years after Jacob fled to Haran fearing for his life at the hands of the angry Esau. We watch with apprehension as Jacob and Esau approach each other and we breathe a collective sigh of relief as Esau seems to forgive Jacob and Jacob leaves in peace.

Jacob and his family then make their way to the city of Shekhem, where almost immediately Jacob's daughter Dinah is kidnapped and raped by the prince of the land. Shekhem (Dinah's rapist) decides he wants to keep her as his wife, and asks his father, Chamor, to speak with Jacob and his sons. This attempted reconciliation fails, with horrendous consequences.

Why? In both stories, one party has transgressed against the other by taking something that does not rightfully belong to them (Jacob steals Esau's blessing and Shechem steals Jacob's daughter). Hamor's negotiation with Jacob and his sons echoes Jacob's approach to Esau earlier in the *parashah*. Both speak respectfully, offer elaborate gifts and are genuinely hoping that in doing so, they will successfully appease the person they have wronged. And yet, Jacob's meeting with Esau goes exceedingly, almost unbelievably well, while Chamor's negotiation ends with the slaughter of the entire city of Shekhem at the hands of Jacob's sons.

It is important to note that Jacob's successful approach is actually his second try. His first attempt, at the very beginning of the parasha, has none of the nuance of his second. When Jacob arrives from Haran, he sends angels to Esau with explicit instructions of what to say:

Bereishit 32:4-6:

וַיִּשְׁלַ֤ח יַעֲקֹב֙ מַלְאָכִ֣ים לְפָנָ֔יו אֶל־עֵשָׂ֖ו אָחִ֑יו אַ֥רְצָה שֵׂעִ֖יר שְׂדֵ֥ה אֱדֽוֹם׃ וַיְצַ֣ו אֹתָ֔ם לֵאמֹ֖ר כֹּ֣ה תֹאמְר֑וּן לַאדֹנִ֣י לְעֵשָׂ֗ו כֹּ֚ה אָמַ֣ר עַבְדְּךָ֣ יַעֲקֹ֔ב עִם־לָבָ֥ן גַּ֖רְתִּי וָאֵחַ֥ר עַד־עָֽתָּה׃ וַיְהִי־לִ֤י שׁוֹר֙ וַחֲמ֣וֹר צֹ֔אן וְעֶ֥בֶד וְשִׁפְחָ֖ה וָאֶשְׁלְחָ֣ה לְהַגִּ֑יד לַאדֹנִ֕י לִמְצֹא־חֵ֖ן בְּעֵינֶֽיךָ׃

And Jacob sent angels before him to Esau his brother to the land of Seir, the field of Edom. And he commanded them, saying: 'This shall you say to my lord Esau: Thus says your servant Jacob: I have sojourned with Laban, and stayed until now. And I have oxen, and asses and flocks, and men-servants and maid-servants; and I have sent to tell my lord, **that I may find favour in thy sight.**'

The reader can feel the sense of superiority in Jacob's message. He sends the angels (see how far he has come – angels who do his bidding!) with no instruction to listen to Esau, but rather to present very matter of factly the deal he is offering. I have acquired many possessions (fulfilling the birthright that I stole from you). I will give you some of these possessions and then you will forgive me. Despite Jacob' use of the words lord and servant, one can imagine Esau hearing it as intimidating and presumptuous. Thus it should be no surprise when the angels return from their journey with bad news: Esau did not concede, but is rather greatly angered and is on his way (according to some meforshim) to kill you!

And so Jacob rethinks his approach. He takes account of his life and everything he has accomplished so far, wrestles with himself, with G-d, with an angel (interpret the scene as you will) and prepares to face Esau with an open heart. We now arrive at his second attempt to regain Esau's favor, which he does through an incredibly mature and beautiful approach built around the following five things:

1. **Time to heal.** Esau is incredibly angry when Jacob steals his blessing. His distress upon hearing what he has lost is haunting (וַיִּצְעַק צְעָקָה גְּדֹלָה וּמָרָה עַד־מְאֹד *Bereishit 27:32*) and his intent to kill is real enough that Rivka is willing to send her favorite son away out of fear for his life. Certainly, we do not think Esau forgave Jacob because he was less angry than Shimon and Levi were at the assault on Dinah. Jacob, however, is able to give Esau time and distance, two incredibly important things that allow him to cool off and regain his pride by building a successful life separate from his family (וַיֹּאמֶר עֵשָׂו יֶשׁ־לִי רָב אָחִי יְהִי לְךָ אֲשֶׁר־לָךְ I have enough my brother, you keep what is yours, *Bereishit 33:9*). Sometimes allowing the initial pain the time to heal is an important precursor to reconciliation.

2. **Let the aggrieved party speak first.** Jacob sends his servants across the river ahead of him, laden with gifts, and under strict instructions:

Genesis 32:18-19:

וַיְצַו אֶת־הָרִאשׁוֹן לֵאמֹר כִּי יִפְגָּשְׁךָ עֵשָׂו אָחִי וּשְׁאֵלְךָ לֵאמֹר לְמִי־אַתָּה וְאָנָה תֵלֵךְ וּלְמִי אֵלֶּה לְפָנֶיךָ: וְאָמַרְתָּ...

And he commanded the foremost, saying: 'When Esau my brother meets you, and asks you, saying: Whose are you? Where are you going? Whose are these before you? Then you should say…

Much like we do with a mourner, it makes sense to approach someone we've wronged without a preconceived notion of what we want them to feel or think. Yes, it is important to spend time formulating our thoughts and options of what we might say, but we need to let them speak first so that our apology can be in honest response to their needs as the wronged party. Jacob instructs his servants to speak only after Esau has started the conversation.

3. **Enter the conversation (as much as possible) without agenda.** In Jacob's first attempt, his ultimate goal of gaining Esau's forgiveness is front and center. Even the second time around he is by no means able to leave this goal out entirely. When Esau asks what all the gifts are for, he answers honestly that it is to find favor in his eyes, but he does so only once he and Esau are already in dialogue. In the first attempt, he tells the angels to say this same line (לִמְצֹא־חֵן בְּעֵינֶיךָ) but here it has an entirely different effect when given as an answer to a question rather than as a precondition. To underscore the point, this time Jacob also sends his gift ahead of him, whereas with the angels he simply instructed them to list for Esau what might be his should he choose forgive Jacob. With this approach, Esau is more able to believe that Jacob wants to repay what he has taken, namely the blessing of wealth that Esau was supposed to have received, with no strings attached.

4. **Be prepared for a disappointing outcome.** Jacob is appropriately fearful. He understands the heaviness of what he has done wrong and truly believes Esau may try to kill him. He awakes in the morning unsure whether he or any of his family will survive the day and it is possible that his wrestling match the night before is a process of coming to terms with this possibility. Jacob sends servants this time, not angels. He and his family prostrate themselves before Esau, a great

gesture of submission and a position that offers no means of defense should Esau decide to attack. In a sense, Jacob has accepted that Esau may choose to attack him and is showing his acknowledgement that Esau has the right to do so. He thus gives Esau the space to freely decide whether he is ready to forgive.

5. **Don't push it.** Lastly, Jacob knows when enough is enough. Esau invites him to continue along with his camp, to essentially combine their lives. Yet Jacob is aware that when such a great wrong has been perpetrated and two lives have taken such different paths, even a moment of forgiveness cannot make everything whole again (see Radak and the *Akeidat Yitzchak* on 33:13). He essentially says: I will go my way, and you go yours, and that is okay.

The attempt of Shechem and Hamor to reconcile with Jacob and his sons looks much more like Jacob's first attempt than his second:

Bereishit 34:8-12:

וַיְדַבֵּר חֲמוֹר אִתָּם לֵאמֹר שְׁכֶם בְּנִי חָשְׁקָה נַפְשׁוֹ בְּבִתְּכֶם תְּנוּ נָא אֹתָהּ לוֹ לְאִשָּׁה: וְהִתְחַתְּנוּ אֹתָנוּ בְּנֹתֵיכֶם תִּתְּנוּ־לָנוּ וְאֶת־בְּנֹתֵינוּ תִּקְחוּ לָכֶם…וַיֹּאמֶר שְׁכֶם אֶל־אֲבִיהָ וְאֶל־אַחֶיהָ אֶמְצָא־חֵן בְּעֵינֵיכֶם וַאֲשֶׁר תֹּאמְרוּ אֵלַי אֶתֵּן: הַרְבּוּ עָלַי מְאֹד מֹהַר וּמַתָּן וְאֶתְּנָה כַּאֲשֶׁר תֹּאמְרוּ אֵלָי וּתְנוּ־לִי אֶת־הַנַּעֲרָ לְאִשָּׁה:

And Hamor spoke with them, saying 'The soul of my son Shechem longeth for your daughter. I pray you give her unto him to wife. And make ye marriages with us; give your daughters unto us, and take our daughters unto you…And Shechem said unto her father and unto her brethren: '**Let me find favour in your eyes**, and what ye shall say unto me I will give. Ask me never so much dowry and gift, and I will give according as ye shall say unto me; but give me the damsel to wife.'

Father and son list their demands and give no acknowledgement of the wrong they have committed. In fact, they rub it in by suggesting that Jacob's family give them more daughters to marry. They state their goal, again our phrase of finding favor in Jacob's eyes, without stopping to notice how Jacob and his sons are feeling. Jacob has not said a word since he found out what happened to Dinah, perhaps out of grief or a feeling of helplessness, and his sons are murderously angry. If Shechem and Hamor had stopped to listen or consider how this family must be feeling, how could they have thought a compromise was possible at this moment?

Moments of anger, reconciliation and forgiveness intimately shape the lives of individuals and the course of history. They are pivotal opportunities to shift course and yet they are also fraught with strong emotions and it is incredibly difficult to go into them with the wisdom and insight that Jacob does in this *parasha* (in fact we see that he doesn't get it right every time). It is an ideal to strive for, perhaps first in the little moments: moments of prayer, daily apologies to our friends and loved ones, discussions in our communities, so that when the big moments come we will be well practiced in the art of apology and forgiveness.

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Omnimerciful Rejections, Or: How to Turn Down Requests for Unviable Halakhic Reform by Rabbi Shlomo Zuckier (July 8, 2015)

Our Parsha features two different stories of struggles by those who are committed to G-d and to Torah, and who make significant requests to change the status quo. Moshe asks to enter the land of Israel and is rebuffed, while *Benos Tzelofchad* (the daughters of Tzelofchad) request and are granted a share in the Land of Israel.

These two stories are juxtaposed in *Perek* 27 of *Bemidbar* (and its *Sifrei*commentary): *Benos Tzelofchad*, pursuant to their request, are offered to inherit their father's plot of land in Israel, the general laws of inheritance are established, and Moshe is told that he will die before entering the Land, despite his requisitions that he be granted entry. In reading and considering these two stories, similar but divergent in their structure, we can examine phenomenologically the process of requesting a change the Halachic status quo – both the stakes involved and the appropriate response. Let us analyze the two cases.

The request of *Benos Tzelofchad* to receive a portion in the Land is positively received, and part of this may be due to the stakes that they saw tied up in this issue. Let us consider the *Sifrei*'s insightful presentation of the story (133):

כיון ששמעו בנות צלפחד שהארץ מתחלקת לשבטים לזכרים ולא לנקבות נתקבצו כולן זו על זו ליטול עצה אמרו לא כרחמי בשר ודם רחמי המקום בשר ודם רחמיו על הזכרים יותר מן הנקבות אבל מי שאמר והיה העולם אינו כן אלא רחמיו על הזכרים ועל הנקבות רחמיו על הכל שנאמר [נותן לחם לכל בשר וגו' (תהלים קלו כה) נותן לבהמה לחמה וגו' (שם /תהלים/ קמז ט) ואומר] טוב ה' לכל ורחמיו על כל מעשיו (שם /תהלים/ קמה ט

When the daughters of Tzelofchad heard that the Land was being divided into tribes to men and not to women, they all gathered together to consult. They said: Not like the mercy of flesh and blood is the mercy of G-d. Flesh and blood have greater mercy for men than for women, but the One Who Spoke and the World Was is not so; rather His mercy is on men and on women. His mercy is on everything, as it says "He gives bread to all flesh…" *(Ps.* 136:25); "He gives to an animal its bread…" *(Ps* 147:9); and "The Lord is good to all, and His mercy is on all His creations" *(Ps.* 145:9).

Benos Tzelofchad object to what seems to be unfair treatment stemming from insufficient concern for women. They reject the prospect of a G-d Who is merciful to men more than to women, which they know to be inconsistent with G-d's true nature, and thus assume that the current state of affairs must be a human rather than a divine construction. Moshe conveys their concerns to G-d, who rules that*Benos Tzelofchad* can inherit the Land, proving their presumption right.

It certainly was convenient that G-d deemed this arrangement viable and incorporated it into the laws of inheritance. Otherwise, formulating a response to*Benos Tzelofchad* that both held firmly to the *Halacha* and offered a degree of mercy befitting G-d and G-d's Torah would have been extremely difficult. Happily, in clarifying this law, G-d once again emerges as the Omnimerciful, and the Torah is properly interpreted.

If we consider Moshe's situation, the picture is quite different. Moshe is famously denied the possibility of entering the Land of Israel, which is discussed in multiple*Midrashim* elsewhere, especially at the outset of *Parshas Va'eschannan*. In our*Parsha* and its *Sifrei* commentary, although the rejection itself is not discussed, we find a discussion of what comes after the rejection. In the *Midrash,* G-d offers a dual mitigation of the rejection that Moshe experiences.

First, Moshe is shown the entire Land tow which he was denied entry *(Num.* 27:12-13). The *Midrash* presents this as a sort of consolation prize, or maybe even a coping mechanism, as Moshe is shown not just the entire geographic landscape of Israel (or the entire world, as R. Eliezer argues in *Sifrei Num*. 136), but is given temporal perspective as well, viewing all future generations (see *Sifrei Deut*. 357). This satiates Moshe's curiosity to understand G-d's ways (as depicted in *Ex.* 33), and gives him a virtual presence in Israel's future in the Land.

Second, Moshe is told about the continuity of leadership, which he is deeply committed to knowing, out of concern that the people should have sufficient governance in place after his passing. Moshe uncharacteristically initiates a conversation with G-d, with the inverted וידבר משה אל ה' לאמר, "and Moses spoke to G-d" *(Num* ץ27:15), indicating a sense of urgency on his part. Moshe insists on appointing a leader over the community, in order that "G-d's congregation not be like shepherd-less sheep." As *Sifrei Num* 138 explains (possibly drawing on the strong opening), after Moshe's personal request to enter the Land is rebuffed, he is assertive in saying to G-d "tell me if you are appointing leaders or not." This is the genesis of our section about appointing Yehoshua, for the *Midrash.*

Thus, despite being spurned in his great wish to enter the Land, G-d still supports Moshe by showing him the Land of Israel throughout history, and by ensuring that the people have future leadership in place for after his passing.

Any Orthodox Halakhist knows that there is not always a "Halakhic Way," even in extremely difficult cases. But there remains the vitally important, but often overlooked question of how to conduct the process of relaying the unfortunate news of a "no" answer while remaining faithful to G-d and Divine values of mercy, love, and support.

In a scenario where the request for change is answered with a "no," responsibilities are incumbent on each of the involved parties. First, and more trivially, the*Halacha-abiding* requester *(Shoel)* has an obligation to follow the clarified*Halacha,* as difficult as that may be.

Simultaneously, the responder *(Posek)* is faced with a dual obligation, as we learn from Moshe and Benos Tzelofchad: 1. The *Posek* must make it clear that the "no" answer is due not to a deficiency of mercy inherent in Torah, but to moral or structural constraints imposed by the Omnimerciful G-d which cannot be averted. 2. The *Posek* needs to make clear what the road forward is, what alternate routes might be appropriate for the Shoel.

If we are to follow G-d and G-d's ways, we are obliged both to be loyal to the Torah and to emulate G-d's omnimercy. Moshe Rabbenu and *Benos Tzelofchad* deserve no less.

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Thoughts on the Akedah by Avram Shwartz (October 30, 2015)

Every time I read the *Akedah*, I cannot help but recall Rav Soloveitchik's extensive teachings about the importance of this passage to Judaism. In **Emergence of Ethical Man** (*p.* 157 n.2) he calls it "*the motto of the covenant and its symbol*", and in **Ra'ayanot al ha-Tefillah** he goes perhaps even further, describing the*Akedah* as the paradigm for prayer, and thus for Judaism itself:

Build an altar. Arrange the pieces of wood. Kindle the fire. Take the knife to slaughter your existence for My sake. Thus commands the awesome G-d Who suddenly appears from absolute seclusion. This approach is the basis of prayer. Man surrenders himself to G-d. He approaches the awesome G-d and the approach expresses itself in the sacrifice and *Akedah* of oneself.**[1]**

I have been haunted by these words since I first read them. Rav Soloveitchik insists that utterly submissive obedience is the theme of the *Akedah,* and therefore the ideal Jewish relationship with G-d. This does not sit well with me.

To be sure, this is by no means a far-fetched reading of the story. And while the Rav's reading is heavily influenced by Kierkegaard, its theology has ample precedents in Jewish thought. Take for instance the language of Ibn Gvirol in one of his more famous poems:

שְׁפַל רוּחַ שְׁפַל בֶּרֶךְ וְקוֹמָה אֶקַדֶּמְךָ בְּרֹב פַּחַד וְאֵימָה

לְפָנֶיךָ אֲנִי נֶחְשָׁב בְּעֵינַי כְּתוֹלַעַת קְטַנָּה בָּאֲדָמָה

Lowly of spirit, lowly of knee and stature I come before you with fear and awe abounding

Before you, I consider myself Like a tiny worm in the ground.**[2]**

Here too the prayerful Jew admits to something like worthlessness, helplessness in the face of G-d.

In spite of the power of the imagery of both Ibn Gvirol and the Rav, I wonder whether the value of this sort of submission is the best Jewish reading of the story. For one thing: To make the *Akedah* a model for prayer, one has to twist it slightly. The *Akedah* is a story of child sacrifice, of accepting G-d's nullification of G-d's own promises,[3] but the person bent in prayer, in Rav Soloveitchik's words, lifts the metaphorical knife to their own neck, engaging in *self*-sacrifice. For another:
Many *mefarshim* explain the story very differently, and Ralbag in particular seems to directly undermine the claim that obedience is the *Akedah's* core theme.

Even before Ralbag, Rashi[4] points out a feature that will become core to the Ralbag's reading: the language of G-d's commandment[5] does not precisely ask for sacrifice. Rather, G-d asks/commands Avraham to "bring Yitzchak up לעולה. " To be brought up לעולה generally means being wholly burnt as a sacrifice. A hyperliteral reading, though, would understand the phrase to mean "in order to go up," implying that he will also be brought down again. In this case, as becomes apparent by the end of the episode, G-d actually meant the latter.

Ibn Ezra rejects this reading outright. The opening of the passage *(Gen.* 22:1) says that "G-d tested Avraham" – Was this merely a test of Avraham's ability to comprehend G-d's instructions? Certainly not! says Ibn Ezra. This is a test in order to give Avraham a reward, and any other reading, according to him, ignores the opening line: this was a test in the sense of a challenge. But Ralbag disagrees.

Ralbag's focuses in on the same ambiguity as Rashi, and, with some elucidation, comes to a wildly different idea about G-d's intentions.

This test, in my opinion, is that the prophecy came to him in an imprecise language (לשון מסופק). That is, that G-d, may He be exalted, said with regard to Yitzchak "And bring him up לעולה."

This statement can be properly understood to mean that he (Avraham) should slaughter him (Yitzchak) and make of him a burnt offering (=bring him up **as**an olah).

Or – that he (Avraham) should bring him up there in order to offer a burnt offering (=bring him up **for** an *olah),* so that he (Yitzchak) will be educated with regard to the [sacrificial] service of G-d, may He be exalted. **[6]**

So what was the test? We must note here Ralbag's non-Maimonidean theology, which understands G-d to have imperfect knowledge of humans and their actions because otherwise we could not have free will[7]. Given this theology, it makes perfect sense for Ralbag to say that G-d wants to find out what Avraham will do when presented with a seemingly impossible request. The "test" is not a challenge, as Ibn Ezra has it, but an experiment. Avraham was not able to pass this test because it was only initiated so that G-d could glean information about his character.

He continues:

G-d, may He be exalted, tested him (Avraham) to see if it would be difficult for him to do anything that G-d commanded him, such that this would be a reason for him (Avraham) to understand from the statement something other than what might be understood at first glance, that is to say, if he would understand that he should offer up a different sacrifice, and not slaughter his son.

G-d seeks to learn about Avraham's nature as a hearer/reader. Is Avraham a*lamdan* or a *balabus*? Will he look deeper for a different, more amenable way to understand G-d's word, or will he obey its plain meaning?

In the end, as we already know, Avraham fulfills what *he understands* to be the divine request with a full heart, and in this he is an example to all of us *(Gen.* 22,*Ha-to'aliot*, 1).[8] Avraham's love for G-d was so great that he did not even think to imagine that another meaning might be intended – although this was indeed the case.

One might ask whether it is implied in Ralbag's praise of Avraham that we too ought to be *balabatim* in our study of Torah. I would argue that, while a plausible reading of the Ralbag, it is not sensitive to the particulars of the story. Ralbag, in re-envisioning the *Akedah* as an experiment, has particularized the challenge of G-d's request/command. G-d does not regularly put before humans impossible choices to which submission is the only answer; indeed, G-d has never done so. Avraham shows G-d, in jumping at the bit before any significant *iyyun*, just how much love for G-d he has – so much love that it overcomes his love for his child and his intellectual faculties. And while this love is praiseworthy, we must recall that such actions were never even asked for. G-d does want our devotion, our obedience and yes, our submission, but it is not an overwhelming love. It is all-consuming – בכל לבבך, נפשך, ומאדך – even while it does not consume the self. It has to be mediated with study, with *iyyun*. This is not blind obedience, it is obedience with thought, and, more importantly, obedience with dignity.

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[1] Translation based on Hartman, *Love and Terror in the G-d Encounter*, 181-182. Shalom Carmy's excellent edited volume *Worship of the Heart* was unavailable to me at the time of writing.

[2] Translation my own, based on Zangwill.

[3] See the note from *Ethical Man* cited above. Medieval commentators have noted this element of the story, some only to reject it, e.g. ibn Ezra Gen. 22:1 s.v.*Ve-ha-Elohim nissah.* Ibn Ezra is responding to the opinion held by Rashi as well as Ralbag, which we will discuss below.

[4] Gen. 22:2 s.v. *Ve-ha'alehu*, citing *Pesiqta Zutreta*

[5] Really a request, see Rashi Gen. 22:2 s.v *qah na*; Soloveitchik, *Ethical Man,*153-157

[6] *(Gen. 22:1, Be'ur Ha-millot, s.v. Nissah).*

[7] (cf. Shapiro, *The Limits of Orthodox Theology*, 134)

[8] Note that for Ralbag this is an example of the supreme love of G-d, as opposed to fear or awe.

Zimun and Models of Communal Leadership by Rabbi Elli Fischer (September 21, 2015)

The familiar "*zimun*" (or "*mezuman*"), wherein three people who ate together must recite *Birkat Ha-mazon* together, prefaced by a formulaic "invitation" to bless G-d, is introduced by the first *mishna* in the seventh chapter of *Berakhot*: "Three who ate as one are obligated to make a *zimun*."

The Gemara (*Berakhot* 45a) begins its discussion of *zimun* by asking: "Whence is this matter [derived]?" Rashi explains that the inquiry is specifically about the number three: How do we know that three people are fit to jointly bless G-d? The Gemara offers two prooftexts:

Asi says, "For Scripture states: 'Praise (plural) the Lord with me, and we will exalt His name together' (*Tehilim* 34:4)." R. Abahu says, "From here: 'When I call the name of the Lord, attribute (plural) greatness to our G-d' (*Devarim*32:3)."

In each verse, a speaker, in the first-person singular, exhorts others, in the second-person plural, to praise G-d. That is, three people, one speaker and an audience of at least two, are required to dramatize these verses.

Yet even if the two prooftexts achieve the same goal, they are far from identical. In the first place, the former verse is from *Tehilim,* whereas the latter is from*Ha'azinu*, Moshe's parting poem at the end of *Devarim*—that is, from the Torah itself. Usually a prooftext from the Torah is considered stronger than a prooftext from elsewhere in Scripture, but in this case the prooftexts seem to be on equal footing. If anything, commentators from Rashi (45b s.v. "*de-ika*") to Rav Soloveitchik (in the chapter titled "*Ehad Mevarekh Birkat Ha-mazon Le-kulam*" in Vol. II of *Shi'urim Le-zekher Abba Mari Za"l*) grant pride of place to the verse from *Tehilim*, all but ignoring the prooftext from *Devarim*.

Upon closer scrutiny, it seems that the two verses are also quite different in their content. They do not envision the same scene. In the verse from *Tehilim*, the speaker exhorts the audience to praise G-d along with him. In the verse from*Ha'azinu*, the speaker informs his audience that he alone will call out in G-d's name, and that they should respond by giving praise. The verses model two distinct forms of leadership: in the *Tehilim* model, the leader's job is complete once he has inspired his audience to join him in exalting G-d's name. The hierarchy dissolves and the entire group offers praise together. In contrast, in the *Ha'azinu* model, the leader remains the leader. He alone calls out in G-d's name, and the audience responds to his overtures by praising G-d.

It is no stretch to extend these models to other forms of communal leadership. After all, the requirement of *zimum* is itself premised on the principle that a communal meal generates a communal obligation to praise G-d. Three people who eat together form a mini-community, which in turn has an obligation to become a holy community. If they form a community around food but fail to elevate that community by praising G-d together, then the community is godless (*Avot* 3:3, and see R. Yona *ad loc.*), even if each member of the community prays individually.

The leadership modeled in *Ha'azinu*, and indeed by Moshe throughout his career, is one where the gap between leader and followers is immense, like that of a shepherd tending to his flock. The leadership modeled in *Tehilim* strives to eliminate the gap between leader and follower.

Historically, Moshe-style leadership is indeed most common. However, by giving primacy to the verse in *Tehilim*, perhaps the Gemara and our sages are acknowledging that the type of leadership it models is

superior. Perhaps we are not yet ready for a society in which one can extemporaneously lead without being a “leader” and then immediately dissolve back into the community, but it remains something to which we may aspire.

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Singing the Mitzvot: Pedagogy with Moshe Rabbeinu by Leah Sarna (July 30, 2015)

When we teach people about *Halacha,* how do we best encourage observance? What about when the *mitzvot* we are detailing require time, effort and funding? In*Parashat Vaetchanan*, Moshe Rabbeinu models one answer to this question.

The book of *Devarim* is more or less a recording of lectures that Moshe presented to the Jewish people immediately before his death and their entrance to the land of Israel. Dr. Jeffrey Tigay in the *JPS Commentary to Deuteronomy* points out that our *parasha*, *Parashat Vaetchanan*, marks the end of Moshe's first discourse and the beginning of his second. Tigay describes Moshe's first speech as an "exhortation" about "obedience to [Hashem's] laws as a way of life in the land." The second speech is an "exposition of the laws."

In between the two speeches, we have a short interruption.

(מא) אָז יַבְדִּיל מֹשֶׁה שָׁלֹשׁ עָרִים בְּעֵבֶר הַיַּרְדֵּן מִזְרְחָה שָׁמֶשׁ:

(מב) לָנֻס שָׁמָּה רוֹצֵחַ אֲשֶׁר יִרְצַח אֶת־רֵעֵהוּ בִּבְלִי־דַעַת וְהוּא לֹא־שֹׂנֵא לוֹ מִתְּמֹל שִׁלְשֹׁם וְנָס אֶל־אַחַת מִן־הֶעָרִים הָאֵל וָחָי:

(מג) אֶת־בֶּצֶר בַּמִּדְבָּר בְּאֶרֶץ הַמִּישֹׁר לָרְאוּבֵנִי וְאֶת־רָאמֹת בַּגִּלְעָד לַגָּדִי וְאֶת־גּוֹלָן בַּבָּשָׁן לַמְנַשִּׁי:

41 Then Moses set apart on the east side of the Jordan three cities

42 to which a homicide could flee, someone who unintentionally kills another person, the two not having been at enmity before; the homicide could flee to one of these cities and live:

43 Bezer in the wilderness on the tableland belonging to the Reubenites, Ramoth in Gilead belonging to the Gadites, and Golan in Bashan belonging to the Manassites.

(*Devarim* 4:41-43)

I want to argue that this interruption is a purposeful, pedagogic tool.

The *Bavli* in *Makkot* 10a points out that Moshe did not need to set apart these three cities of refuge quite yet. The mitzvah of creating cities of refuge does not apply until all six, including the three on the not-yet-conquered west side of the Jordan River, could be established (*Mishnah, Makkot* 9b). But Moshe made these three now, because אמר: מצווה שבאה לידי אקיימנה. He thought, if the opportunity to do a *mitzvah* comes into my hand, I will do it. And this is no small *mitzvah*. If we feel that building a shul, yeshiva or mikvah is difficult– try building three cities.

But more than that, the Talmud compares Moshe to the money-lover criticized in*Kohelet*, אוהב כסף לא ישבע כסף– the one who loves money will never be satisfied with his money. The Talmud flips the critique into a compliment about Moshe who loved *mitzvot*, who was greedy for *mitzvot*, and who was never satisfied with his quantity of *mitzvot*, so he did more *mitzvot* than he needed to– like setting aside these three cities of refuge.

But Moshe was doing more than modelling an enthusiasm, a greed, for *mitzvot*.*Devarim Rabbah* tells us that Moshe had a special connection to this *mitzvah*.

אז יבדיל משה, מהו אז? זה שירה, שנאמ' אז ישיר משה (שמות ט"ו א'), מי אמ' שירה, משה אמ' שירה. למה? שהוא הרג את הנפש.

When the verse says "Then Moses set apart," what is meant by "then?" It is a song, as we saw "and then sang Moshe" (*Shemot* 15:1). And who sang? Moshe sang. Why? Because he had killed a person.

The *Midrash* continues:

ולמה אמ' שירה? שהוא היה יודע צערו של רוצח

And why did Moshe sing a song? Because he knew the suffering of the murderer.

In Egypt, at the transition point between his childhood and adulthood, Moshe killed an Egyptian. Moshe fled and took refuge in Midian, because Pharaoh wanted to kill him. Although Moshe was not an accidental killer, he knew the suffering of the killer– and, the Midrash suggests, he was particularly passionate about mitzvot which address it.

Moshe, at the time when he designates the three cities of refuge, is about to begin teaching a massive *halacha* shiur, spanning 24 chapters until *Devarim* 28. Before he can teach the details, he needs to show the assembled Jews what a life full of mitzvot can mean. He needs to model a life of energetic, emotional *shmirat hamitzvot* to his audience. By singing as he designates the three cities of refuge, a*mitzvah* which did not even need to be performed yet, Moshe shows the people that *mitzvot*, even difficult ones, are personal and sweet. That they can speak to the very core of the Jew who performs them. This is Moshe taking responsibility for the Torah, by teaching it in a way that inspires connection and commitment.

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Why Moshe? by Sarah Robinson (January 22, 2015)

Why was Moshe fit to lead the Jewish people? At first glance, Moshe is an unlikely choice. He was raised in Pharaoh's palace, thus making him an outsider to the trauma of enslavement. He married Tziporah, a non-Jewess, thus compounding his remoteness from the cultural realia of the enslaved Jews. And even further, Moshe was in his eighties when he embarked on his leadership career. So why was Moshe fitting for the job?

While there are a multitude of excellent reasons why Moshe was deserving of the honor, I'd like to present a circuitous though unique approach: a *peshat* analysis of*Ma'amad Har Sinai* and Moshe's first encounter with HaShem at the burning bush to explain why Moshe was most deserving of this honor.

In preparation for *Ma'amad Har Sinai*, Bnei Yisrael are commanded to prepare themselves in various ways including a prohibition from touching Mount Sinai lest they suffer the death penalty as a punishment *(Shemot* 19:12) and during the revelation, Bnei Yisrael should climb the mountain upon hearing the sound of the shofar *(Exodus* 19:13).

But the Jewish People don't follow the command as told. Upon hearing the sound of the shofar, the people respond in fear instead of going up the mountain *(Exodus*19:16). And again, the shofar sound intensifies but the people respond with fear and do not go up the mountain *(Exodus* 19:19). What prevents them from following their command? Moshe provides G-d with a weak apologetic explaining that the people did not climb the mountain because they cognitively couldn't undergo a paradigm shift where the mountain is forbidden and then becomes permitted *(Shemot* 19:23).

But here's the rub: why can Moshe go up the mountain but Bnei Yisrael respond with fear? What makes Moshe different? The answer to this question is the key to understanding why Moshe was an excellent fit for leading the Jewish people.

The key is to have a close reading of Moshe's thoughts and actions upon seeing the bush, his first encounter with G-d and G-dliness. It is appropriate to seek an answer from this narrative because it is thematically similar to *Ma'amad Har Sinai.* Both narratives occur at *Har Sinai*, both are revelations (though the former is a national one whereas the latter is for Moshe alone), both involve G-dly fire, and supernatural occurrences (where at Sinai there was a series of thunder and lightning, and the bush itself was a miracle because it was burning but wasn't being consumed). Although the stories differ in that the Sinai Revelation was a planned event for which the Jewish people had advance notice and Moshe came across the Burning Bush unexpectedly, the overwhelming commonalities between the two stories justify why we can look to the story of the burning bush to answer our question.

In this narrative, Moshe happens upon the bush and reacts with pause, a daring curiosity, and reflection. He says, "I will turn aside and look and this great sight; why isn't the bush burning?" *(Shemot* 3:3) It is precisely this curiosity and contemplation that indicated Moshe's capacity for spiritual engagement, a trait which is absolutely critical as G-d's representative on earth. And it is for that reason that the text continues with "And G-d saw that because Moshe looked, [G-d called] 'Moshe! Moshe!' and he said 'Here I am.'"

So the answer to our original question is now very clear: Moshe was fit for leadership because he reacted to holiness with a daring curiosity. Clearly the bush was a litmus test to determine Moshe's spiritual capacity, and Moshe's response warranted G-d's calling out to him. On the converse, the

Jewish people reacted with fear upon engaging with G-dliness, implying their insufficiency for an intense face-to-face relationship with G-d.

In this is a key lesson for a Torah-observant Jew. We are Halakhic Men and Women who can view every element of our surroundings as vehicles for G-dly engagement, like our own burning bush or *Ma'amad Har Sinai*. We walk through a doorway and we can think about *hilchot mezuzah* or the *korban pesach*. We look at the light-fixture in the ceiling and consider whether it has the halachic status as "fire." We consider whether the words on a computer screen have the halachic status of "writing." The list is endless because every single element of our world can be conceptualized as a vehicle to G-dly experience. Like Moshe, it is our choice whether we want to respond with fear or daring curiosity.

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Beyond Mishpatim by Yedidya Naveh (February 11, 2015)

The *mishpatim* described in *Parashat Mishpatim* include commandments that fall into familiar domains of law such as criminal law (Exodus 21:12-17), torts (ibid 18-37, 22:1-14), family law (ibid 15-16), fiscal law (ibid 24-26), procedural law (ibid 23:1-3, 6-8), and agricultural law (ibid 10-11), as well as some less familiar ones such as slave law (ibid 21:1-11). Some ritual law is also included (22:28-30; 23:12-19). Together, these comprise many of the types of law necessary for any just society.

However, even the aggregate of all the *mishpatim* outlined in the Torah is insufficient for the administration of a polity. For example, any society with motor traffic must have traffic regulations, but the Torah enumerates neither traffic regulations nor any clear precedent for formulating them. If so, the question arises: Who has the responsibility to fill in the legal gaps left by the Torah? Who has the authority to formulate the additional laws necessary and proper to the function of a Jewish state?

The most famous answer to this question is offered by Rabbeinu Nissim of Gerona (Ran):

> מינוי השופטים היה לשפוט משפטי התורה בלבד, שהם צודקים בעצמם, כמו שאמר ושפטו את העם משפט צדק, ומינוי המלך היה להשלים תיקון סדר המדיני, וכל מה שהיה מצטרך לצורך השעה. -דרשות הר"ן הדרוש האחד עשר

The appointment of judges was for adjudicating the laws of the Torah, which are just per se, as [the verse] states: "And they shall judge the people with righteous judgment. [Deuteronomy 16:8]" And the appointment of a king was to perfect the institution of public order and everything necessary for the need of the hour. (Derashot HaRan 11)

According to Ran's hypothesis, judges (read: rabbis) are responsible for interpreting and judging only the laws of the Torah, which constitute absolute justice. Since absolute justice is insufficient to maintain public order, the king has the dirty work of legislating ordinances that are necessary at the time, if not truly just. This thesis is often invoked as a rabbinic support for doctrines such as separation of powers and separation of church and state, or as justification for a secular legal system in a Jewish state.

However, Ran takes a step back from this thesis in addressing a powerful prooftext against his claim, the talmudic dictum that "בית דין מכין ועונשין שלא מן התורה / a court may administer lashes and punishments not in accordance with the Torah"*(Sanhedrin* 46a). This appears to lay responsibility for extra-legal ordinances with the judges, not the king. In answer, he first suggests that this statement applies only where there is no king. This assertion is difficult in light of the Talmud's citation of the principle with regard to Shimon ben Shettaḥ, who hanged eighty women in a single day under the Hasmonean dynasty *(Sanhedrin* 45b), and Rambam (*H. Sanhedrin* 24:4) apparently disagrees, since he makes no mention of such a caveat.

Alternatively, Ran owns:

> אפשר עוד לומר שכל מה שנמשך למצות התורה, בין שהוא כפי (הפשט) [המשפט] הצודק, בין שהוא כפי צורך השעה, נמסר לבית דין... אבל תיקונם ביותר מזה, נמסר למלך, לא לשופט.... נמצא ענין המשפט מסור רובו ועיקרו לסנהדרין, ומיעוטו אל המלך. -שם

One may also say that all ramifications of the commandments of the Torah, whether according to the just law or according to the need of the hour, are the purview of the court… but their ordering beyond

this is the purview of the king, not the judge…. Thus, the matter of law is delegated in its majority and principally to the Sanhedrin, and in its minority to the king. (Ibid)

In sum, according to Ran himself, the legislative powers of the king are heavily circumscribed. He may formulate only ordinances that are not subject to Torah law or necessary for its application. If so, even traffic ordinances are arguably rabbinic domain, since they are necessary to fulfill the commandment: "ונשמרתם מאד לנפשתיכם / Take ye therefore good heed unto yourselves" (Deuteronomy 4:15).

From those who have read until the end, I am interested in hearing historical examples of laws issued by Jewish kings or political leaders who were not also judges (either in statutory form/*takkanot* or any ruling that could constitute some precedent within a Jewish "monarchic" legal tradition) from the Bible or Rabbinic Literature before the Middle Ages. I cannot think of any myself.

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The Holiest Act by Miriam Pearl Klahr (February 24, 2015)

The *miluim* at the end of Parshat Tetzaveh appear to be the culmination of our last two Torah portions. After describing the *keilim*, the *mishkan* itself, and the priestly garments, the Torah tells of a seven-day initiation process for the*kohanim,* after which G-d will dwell among the Jewish people. Thus it is surprising to find that following the *miluim,* Parshat Tetzaveh discusses the*mizbeach haZahav.* In fact, many commentators ask why the command to build this *mizbeach* is stated after all the commandments regarding the *mishkan* and the*miluim*, isolated from the listing of the *keilim* at the start of Parshat Terumah.

Reading about the *mizbeach hazahav* after so many *psukim* concerning the preparation for the *mishkan* and then G-d's dwelling within it, may cause the reader to feel that this altar's service is the pinnacle of the *avodah* performed within the *mishkan*. Sforno suggests a similar idea, explaining that the laws of the*mizbeach haZahav* are stated last because they did not serve a utilitarian purpose. The other vessels and *karbanot* were meant to bring down the glory of G-d and provide a resting place for his *shechina*. But the purpose of offering the *ketoret* on the *mizbeach* hazahav was solely to give honor to G-d, without any specific benefit to the Jewish people.

Furthermore, the service upon the *mizbeach HaZahav* seems more elevated not only because of its dramatic placement within the text, but also by nature of the physical service itself. In contrast to the slaughtered animals and physical blood offered upon the *mizbeach haNechoshet*, incense was brought upon the golden altar. According to Rav Hirsch, the offering of the *ketoret* represents the Jewish ideal of an "earthly existence, completely permeated with spirituality, without leaving any residue," just like incense leaves no residue. Furthermore the *ketoret's*fragrance was impalpable. According to kabbalah the sense of smell is considered to be more removed from physicality than the other senses; olfaction is deemed the sense of the soul.

Yet, on this golden alter, this place of almost other worldly non-physical worship, a very different service was performed once a year. On Yom Kippur, on the altar of the most spiritual of services, blood was placed on the *mizbeach* as an atonement for the Jewish people. And of all services, the Torah calls this one "*kodeshkadashim hu laHashem*."

It is valuable to create sacred places and moments where one can almost escape the physical nature of this world and serve G-d only through the soul. But what G-d calls most holy is the acknowledgment of human imperfection, serving him with blood, the physical substance man is made of. As people, we need instants of pure spirituality to remember what to strive for, that there is more to life than the material world we see. But the holiest act is to use the inspiration of such moments to acknowledge our shortcomings and serve G-d with our physical imperfect selves, working to atone for and better the world.

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Reading Bereshit Metaphorically and Meaningfully by Joshua Skootsky (September 27, 2015)

Each year, we return to the story of G-d's Creation of the world, and the surrounding universe, a cosmic event mediated by the power of speech. These events are referenced each week as part of Shabbat, when we "remember" or recognize the active role that G-d took as the author of Creation. These events are both general and specific.

Perhaps, in the absence of other knowledge, we would attempt to understand this passage literally. But traditional commentators have noted the immense difficulty of sustaining even an internally consistent understanding of Creation, especially on the basis of a "simple" understanding of the verses.

Rashi to Bereshit 1:1, at the end of **"bereshit bara,"** comments that if we understand the first verse as "In the beginning, G-d created the heavens and the earth," we ought to immediately be puzzled by verse 1:2, which describes the spirit of G-d hovering over the waters. When were the waters created? And if the "heavens" are a mixture of fire and water, as Rashi understands they are, when were the fires created? "Against your will, the verses do not teach what was created earlier and what was created later."

Similarly, Ramban notes that the creation of the world is a "deep secret" that "cannot be understood from the verses themselves" without the traditional Kabbalistic knowledge taught to Moshe. "It is enough for Torah people to get by without these verses, and to believe in the general principle taught later *(Shemot*20:11) "For in six days G-d made the Heavens and the Earth, the ocean and all that is in it, and on the seventh day He rested."

The Ramban emphasizes the impossibility of verses alone, without a tradition, providing a detailed understanding of Creation. Rashi even suggests that we cannot learn from the creation story the "order" in which things were created. These insights suggest a few guidelines for reading the creation story "metaphorically."

1. Some teachings ascribe significance to the order in which the Torah speaks about creation occurring. For example, "Humans were created last, to remind us that even a mere insect preceded our existence," *(Sanhedrin* 38a) teaches humility, and perhaps ecological awareness. But this in no way commits us to understanding literally the order of the Torah's verses as absolute or binding.

2. A metaphorical understanding should be more than the absence of knowledge. Our baseline ought to be that a sustained "literal" understanding is impossible, and that therefore we are forced to engage in metaphorical readings. But these readings should not just be the absence of literalism, but rather a sustained attempt to "read for meaning" from the verses. The*ba'araita* on *Sanhedrin* 38a is one example of this. Rav Soloveitchik's *The Emergence of Ethical Man* is another.

3. Scientific truths should not be squared with the written text of the Torah. For quite some time in mathematics, attempts to "square the circle" – to construct with straightedge and compass a square with the same area as a circle – was viewed not as an impossibility, but rather as a goal. Now, with our more sophisticated understanding of mathematics, we understand that this is impossible. Similarly, with our sophisticated understanding of Torah, we ought to not try to read

the creation of the light into the evolution of a quark-gluon plasma in the Plank seconds that followed the Big Bang.

There is much work left to be done. I believe it is quite critical that we eventually understand the main themes of Bereshit, with G-d the Author of Creation. Here is a simple goal: maybe we could eventually understand why the metaphor of working in six days was used. We talk about this every week on Shabbat repeatedly in the liturgy, and in the 10 Commandments in *Parshat Yitro*, which the Ramban referenced. Perhaps most poignantly, our lives are patterned on the same work cycle. I look forward to a new year, and a Modern Orthodox discussion of what a meaningful metaphorical understanding of Bereshit would be.

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