The 2012 Aryeh Klapper Reader

From inside the book:

Halakhah does not allow one person to take advantage of the covenant of mutual responsibility so as to prevent another from living a normal fulfilling human life.

Human beings cannot truly deserve the blessings of this world, but it is critical that they also not be wholly undeserving of those blessings.

We are entitled, even encouraged, to think of ourselves as somewhat better than we actually are. Repentance – or at least some kinds of repentance - requires a strong and confident sense of self.

Adolescence may be a disease, but like many diseases, aggressive treatment may have little impact on outcomes, and the side effects can be serious.

Unexpected kindness can be as challenging to a worldview as unexpected cruelty.

Rabbinic literature regularly concedes that Torah study does not guarantee proper behavior or even good character. The texts of the tradition cannot reliably defend themselves against corrupt interpreters.

Does the leisured human life, i.e. the life which consumes time for flavor as well as nutrition, have worth that simply cannot be captured, even if it can be matched or surpassed, by the absolute matmid?

There are at least five reasons and ways that Halakhah fails to exhaust or encompass the totality of Jewish normative obligations.

It is vitally important for us to develop a rhetoric that firmly opposes intermarriage but does not depend on devaluing Gentiles.

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TZENIYUT

My purpose here is to offer a vigorously Orthodox and halakhic understanding of the purposes and parameters of *tzeniut* that opposes the goals and not just the means of those who seek to use *tzeniut* as a weapon to subordinate women or intimidate them out of the public square.

Here are four key points:

1. *Tzeniut* is a broad Jewish value whose practical expression is opposition to unnecessary and meretricious self-exposure, whether of the body or of the soul. It relates to all people, male and female alike, and all of life. Reducing it to a code for women's dress and actions reflects an unhealthy obsession, equivalent to reducing love to an expression of (exclusively male) lust.

2. Tzeniut is intended to preserve and expand the domain of intimacy. Intimacy is constructed by exclusivity of exposure, by sharing things about oneself that one does not share broadly. People with inadequate emotional boundaries are less capable of achieving relationship though emotional sharing, and people with inadequate physical boundaries are less capable of achieving relationship through physical intimacy.

3. Tzeniut is intended to preserve the integrity of personal space – physical, emotional, mental, and spiritual. People who "spill" emotionally compel others to respond to them – to feel pity when they express suffering, anger when they express betrayal, and the like. This legitimately feels like a violation. The same is true of unwanted touch, or of unwanted visual erotic stimulation.

4. Tzeniut is one value in the complex web of Jewish values, which must constantly negotiate its place in that web. It can be trumped, or attenuated, when it comes into conflict with other Jewish values. From the halakhic perspective, once tzeniut is correctly defined as *unnecessary* self-exposure, it becomes clear that it should not be applied mechanically, but rather on the basis of a sensitive and dynamic understanding of the necessary.

Indeed, we need to recognize that Halakhah does not directly obligate women to dress or behave modestly [1], however that is defined. Such obligations emerge instead via the obligation *v'lifnei*

iver lo titen mikhshol – "you must not place a stumbling block before the blind" (Leviticus19:14), The Talmudic Rabbis understood this verse metaphorically as creating a covenant of mutual responsibility, with the specific consequences that Jews are responsible not to create circumstances that cause others to violate prohibitions, preclude them from performing ritual obligations, or distract them from the study of Torah. Each of these consequences is readily conceptualizable as an obligation to respect the others' space.

Now the "stumbling block" argument is always a potentially dangerous weapon. Here is an illustration: The Talmud states that *lifnei iver* forbids fathers to give corporal punishment to grown children (Moed Qatan 17a), because this will cause the children to rebel and therefore violate their obligations to treat their parent with honor and reverence. But what if children will rebel even when asked to perform minor household chores? Worse, what if children learn this rule, and then give preemptive notice that they will disobey any parental command – does this effectively bar any exercise of parental authority? If I tell my neighbor that if she ever cooks broccoli again, I will be driven to eat a cheeseburger – can I control her diet by claiming potential spiritual injury?

The answer is of course not – Halakhah does not allow one person to take advantage of the covenant of mutual responsibility so as to prevent another from living a normal fulfilling human life. By the same token, Jewish law does not allow men to use erotic *lifnei iver* to prevent women from living normal fulfilling lives.

Now what constitutes a normal fulfilling life? It should be clear that this is a sociologically dependent category. In some societies it may be necessary to jog in public, but not in others; in some societies it may be necessary to sing in mixed company, but not in others; and so on. It is likely that in each society, whatever is done habitually will have minimal erotic impact, and have minimal capacity to express intimacy. None of these societies is intrinsically preferable according to Jewish law, so long as they are fully compatible with taking the obligations and values listed above with great seriousness.

Tzeniut is more easily implemented in a homogeneous society, where expectations of dress, behavior, and fulfillment are largely made by consensus. It becomes much harder in a heterogeneous society, and harder still at the intersection of sharply distinct homogeneous cultures, where each side

has difficulty even imagining why the other might see a particular behavior as an assault on psychological space, or conversely, as an infringement of normal human fulfillment.

But people of good will negotiate such situations while making every effort to find solutions that serve everyone's interests. By contrast, thugs beat up their opponents and try to make them leave or hide. No one who properly understands *tzeniut* could believe that physical, psychological and emotional assault, i.e. violent intrusions on the space of others, are viable means of implementing the values behind it. The thugs in Beit Shemesh should be condemned by all those who hold *tzeniut* dear, not because they are overzealous, but because their understanding of tzeniut is warped.

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[1] With the possible exception of an obligation (probably for married women) to cover (or braid or tie up) their hair, which requires a separate analysis, as does the prohibition against crossdressing. For a more extensive halakhic and textual treatment of the points raised in this article, please see the version found at www.torahleadership.org.

THE BOUNDARIES OF TORAH STUDY

By Deborah Klapper

Shavuot is all about "Torah". The Kadosh baruch Hu gave us the Torah today, to tell us who He is and what He wants. But what do we mean by "Torah"? "Torah" has a wide range of definitions. At its most narrow, it refers specifically to the 5 books of the Torah (Bereshit, Shmot, Vayikra, Bamidbar and Devarim) and at its most broad it can refer to almost any endeavor designed to understand God, what he wants from us, and how best to carry out His will. In the gemara, for example, Rabbi Yehuda haNasi asks Rabbi Yehoshua ben Karcha, "How did you live so long?" When Rabbi Yehoshua ben Karcha responds with "why, are you tired of me being alive?" Rabbi answers "תורה היא וללמוד אני צריך". There are three other instances of this phrase, all of which involve inappropriate invasion of privacy in order to learn how great people conduct their private lives, but the specifics do not really belong in a "family dvar Torah".

Somewhere in the middle is the meaning we most often intend when we speak of "learning Torah". We mean to include all of Rabbinic tradition, and any new thoughts we might be inspired with while reading Rabbinic or Tanakhic books, but not science, history or philosophy books, however much they may affect our understanding of how best to live. This middle position is a convenient way of distinguishing "our" learning from the learning we share with the rest of the world, which is very important – our relationship with God is built on yetzi'at mitzrayim and matan Torah, which are particularistic events. We are special precisely because we have experiences and information the rest of the world does not have. That is what happens in this morning's laining – we become God's people because we receive God's message.

But does this distinction between "Torah" and shared or secular knowledge actually work? 6 years ago, in daf yomi, I learned through several pages of astronomy in masechet Pesachim. I remember complaining to my husband that my time would be better spent reading a "real" physics or astronomy textbook. Why, I asked, should learning ancient Greek astronomy count as Talmud Torah? Could it be, as someone suggested to me, that it is because it is printed in Hebrew letters in an official-looking book?!

Perhaps the distinction I made a moment ago doesn't work; maybe we should be prepared to include learning about God from other sources in our definition of learning Torah. If learning these pages of gemara is Talmud Torah because it is meant to teach us about the universe that God created,

then shouldn't modern astronomy, which we think is true, be Talmud Torah by kal vachomer? The same could be said for the many times that math, medicine, physics, and other information or misinformation about the physical world is included in the Talmud and other rabbinic texts.

Let's look further at the value Torah and Judaism place on learning about the world around us. The Torah commands us, as we recite every day in kriyat shma, to "love" Hashem. In the second chapter of hilchot Yesodei Hatorah, the Rambam tell us that the proper path to love of God is knowledge of his creations. The theory is that knowing what God has created fills one with awe and love of the Creator. The Rambam even goes so far as to include a fair amount of physics and metaphysics, as they were known in his time, to facilitate this knowledge.

Rav Yitzchak Twersky, zichron tzadik l'vracha used to say that for the Rambam, there were 2 sources of truth: The Torah and Aristotle. We would have to substitute modern science for Aristotle, but I suspect that given that substitution most of our community would feel the same. If reality is a coherent whole, and we are to be whole people, we must, as Rav Twersky said the Rambam did, integrate these sources of truth into one coherent understanding of ourselves and the world around us.

Claiming that Aristotle and the Torah are on par with each other as sources of truth seems, at first glance, religiously problematic. However, I think if we look at it from the right perspective, it works perfectly. The Kadosh baruch Hu gave us the Torah, and that tells us a lot about who He is and what He wants, but it also gives us clues as to other places in which that information might be located. The Torah tells us the He created the world. Presumably, insofar as a human can understand God or his motives and behavior, God expressed his personality and values (keveyachol) in His creations. Kal vachomer in his creation of people, who are supposed to resemble God in some ineffable fashion. That is why so many ancient and medieval rabbis studied physics and metaphysics – they were seen as windows into the mind of God Himself. I see no reason that modernity should change the basic truth that reality is a source for information about God.

Perhaps my argument only applies to the sciences, and not to the humanities? I think not. Since the Torah tells us that people are created in the image of God, it follows that the study of human nature can also tell us about God. There are countless places in midrash and Talmud where some action of God is explained by telling a story about a flesh and blood person, usually a king, who found himself in a

similar situation. That process should be reversible – that is, the study of what real people have actually done and wanted and thought should tell us something about their Creator.

For much of Jewish history, higher-level study of any topic was restricted to the privileged few. And so the mitzvot of Talmud Torah and Ahavat Hashem were fulfilled by most people only in a limited way. In our time and place, though, things have changed. For the first time ever, we have a religious school system that is teaching almost all of our children science, math, history, and other subjects at a sophisticated level. Our children are some of the best educated laypeople in the history of the Jewish people, and they are being educated in a Jewish environment that we can control. This seems like a perfect opportunity to imbue all of our children's learning with religious meaning by putting all of this information into religious context. We have the best opportunity ever seen by the Jewish people to engage in true ahavat Hashem as a community.

In our classrooms full of Modern Orthodox children, we could ask students to contemplate the religious meaning of each thing they learn. This would, of course, have to be done according to the age and sophistication of the students and the specific content being taught. We could train our students in a habit of mind – to treat each event in life and each learned fact as an opportunity to connect to Judaism and God. That is, the purpose of asking a student to consider the religious meaning of what they learn is for them to understand their education as one coherent and religious whole and for them to develop a relationship with God. The specific meanings they derive are secondary.

Let me offer a couple of examples that I find personally meaningful. My examples are the meaning I find, obviously, not an authoritative treatise on theology. First, in honor of the Rambam, an example from astronomy. We see that moons revolve around planets, planets around stars, solar systems around the centers of galaxies, etc. It seems to me that God might be demonstrating through this that whatever appears to be at the "center" of a particular system is still just a small detail in yet another system. I take this as a great lesson in humility – I may be the center of authority in my classroom or my home (at least I wish I were), but in the grand scheme of things I am a relative nobody. Likewise with the people who hold authority over me. The only exception to this rule is God Himself.

Whenever he hears an evolutionary biology theory of why a species has a particular feature, my husband likes to say that maybe that species has that feature because Hashem finds it cute, nothing more or less. He may intend this comment as a joke, but I think there is actually a great insight here –

what survives in this universe is what Hashem likes and approves of, and we should be able to learn from that. This sort of understanding would stand in contrast to the reactionary response to evolution sometimes found in the Orthodox Jewish community. Just last week, someone told me of a school (not a Modern Orthodox one) that tears out the evolution chapter from the biology textbook before distributing it to students. It seems to me that this is kfira – they deny students scientific knowledge because they think Torah isn't compatible with it, and if Torah isn't compatible with reality, then Torah is false. That aside, the study of how species come to be should be able to tell us a great deal about what God likes and does not like. For example, it seems that God has an esthetic sensibility -- acts that are pointless except as a sort of decoration are common in many species. Yes, I know the theory about demonstrating fitness by using energy for something pointless, but the two are not incompatible.

A midrash in Sanhedrin 38b tells us that before creating people, God asked the angels their advice. They advised against creating people, predicting that people would not behave well. God has to destroy two sets of angels before the third set finally sees that what God really wants is to be told that He's in charge and can do as He pleases. It may be that this midrash indicates that God himself engages in artistic but inefficient endeavors. Which is to say that we can learn from the species God created, including ourselves, that there is purpose and beauty even (or maybe especially) in that which is not useful.

In addition to reflecting on our theology, knowledge of the world can also directly impact our understanding of the written Torah. The Torah tells us what Hashem thinks about events, but it doesn't actually tell us what happened. I like to think of it as the op-ed page or blog. The problem with such things is that they only have their complete meanings when the history is also known. To some extent, we have preserved this information in Torah She'be'al Peh. To the extent that we have lost this information, though, archeology is vital. Of course, since archeology is very much a work in progress, it is wise to refrain from making any hasty conclusions, but nonetheless one can look for information and meaning.

When we study literature, we can also find new meaning that reflects back on our study of Torah. I did not really understand why we needed 40 years in the desert until I read *Beloved*, by Toni Morrison. It was very clear to me that her characters were not ready for independent existence, and they could really have used a generation or two of specialized care in the isolation of the desert before they tried to cope on their own. When I tried to explain this to my very secular public school English

teacher, I was met with blank stares, but I hope that in a Modern Orthodox day school the response would be different.

Likewise, I find I can no longer read or teach the story of Moshe Rabbeinu's infancy without using what I have learned reading the Harry Potter series. It is, in many ways, a meditation on what it means to grow up with other people knowing that you are the savior, even though you do not. Rashi indicates both at Moshe's birth and at the moment when he is pulled from the Nile that his appearance is unusual and miraculous. Is this to indicate that Yocheved and Bat Paro know what he is and what he will do while he is still a baby? How did this impact on his upbringing? For me, anyway, I really only understood these questions after seeing J K Rowling's fictional treatment of a savior character being manipulated by his adults, so that he will be in exactly the right places, with exactly the right tools, feelings, and beliefs, at exactly the right moment. In that light, I now wonder, when Moshe went out to his brothers, who made sure that he went out at that moment, in that place, and saw those people? What preparation had he received for that moment? Was it divine providence? Human interference? Chance?

I hope that we have designed our Modern Orthodox day schools to facilitate this sort of thinking and learning. I am concerned, though, that our schools teach children that some subjects are "secular" and others are "holy". Also, at some schools many "secular studies" teachers do not share our religious beliefs and values, and many Torah teachers are unsure of the value of learning secular subjects. I fear that sometimes we may give our students the impression that it is best to leave their souls at the door when they enter a science classroom and to leave their scientific minds at the door when they enter the beit midrash.

I have been asked, doesn't the school system you're asking for require all of our teachers to be modern Orthodox? Wouldn't that be impractical? Are there enough modern Orthodox teachers? I answer with some questions of my own: if we have to ask if it is a good idea for the people raising our children to share our values, in what sense are they our values? If we do not educate our children to be the best Jews they can be, then who are we? The Kadosh baruch Hu gave us the Torah. Now it is our role to find out who He is and what He wants.

TIKKUN OLAM

(from Jewish Values Online)

Where does the concept of tikkun olam (repairing the world) originate, and is it a mitzvah (commandment), or does it hold the same level of importance as a mitzvah?

The term tikkun olam nowadays generally refers to a perceived obligation for Jewish individuals, and the Jewish community, to actively contribute to the advance of justice. This mandatory contribution is in practice generally identified with one or more of a set of actions and causes favored by self-identified liberals in America, and indeed, tikkun olam is often cited as a spur to lobbying efforts for liberal causes. Wikipedia cites at least one example of an attempt at a politically conservative definition and program for tikkun olam, but this should be recognized as countercultural.

This definition of tikkun olam has at best weak roots in Jewish tradition. The Aleinu prayer includes the hope that G-d will be "metaken olam" via His Kingship, meaning that idolatry will be banished and all will worship Him (although a recent article argued that this is a typo for "letakhen olam"). Mishnah Gittin Chapter 4 includes a list of rabbinic decrees justified on the basis of tikkun haolam, and many of these seem aimed at preventing the exploitation of the weak. For example, there are decrees that prevent slaves or women from being placed in positions that compel celibacy. It would be incorrect, however, to generalize this; one of the decrees, for example, is a ban on paying more than the "market price" to ransom captive people or ritual objects.

Rather, the Mishnaic concept of Tikkun Olam relates to Rabbinic legislators, rather than on Jewish individuals, and it refers to an obligation to prevent the Law from generating perverse consequences as the result of human perversity, rather than an affirmative obligation to seek methods to improve society. Thus the rule about ransoming is to prevent captors from taking advantage of the law mandating the redemption of captives, and the laws relating to divorce are designed to prevent women from being trapped by technicalities in the divorce law.

Tikkun Olam plays a very different role in Lurianic Kabbalah, where it refers to an obligation to mystically undo the consequences of sin in the world. This vision as well has been adapted by moderns into an obligation to correct social injustice.

None of this is intended to suggest that Jewish tradition necessarily opposes any of the elements of the Tikkun Olam agenda, and of course politico-religious movements often coalesce around intellectually imprecise but emotionally powerful slogans.

"Tikkun Olam" is often a spur to mitzvot, especially for those Jews who have little direct access to the content of Jewish tradition. I tend to agree with its promotion of the anti-quietistic elements of that tradition. The risks posed by its popularization are that Jews with conservative political instincts will feel excluded, and that we will lose the capacity to authentically test whether particular policies, programs, or actions are in accord with Jewish values.

The best way to meet these risks is deep and substantive Jewish education. Tikkun Olam has its uses, and its dangers. I am happier to meet Jews who can cite it than Jews who cannot – but I would like going forward to meet fewer Jews for whom it constitutes their entire Hebrew vocabulary and Jewish conceptual framework.

WHY STUDY TALMUD?

From Milin Chavivin

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B. The Humility of Reason

Any Jewish epistemology must begin by explaining the necessity of Revelation. After all, our minds were created by God, so why should He not have made them capable of apprehending truth independently? The compelling Kantian argument that ethical obligations, since they are universally binding, must also be universally accessible and discoverable, makes the idea of a private Revelation to a particular ethnic group downright scandalous.

Should we come to terms with Revelation, a uniquely Jewish conundrum arises. Halakhic tradition declares that "The Torah is not in Heaven", meaning that claims of direct Divine Revelation are inadmissible in Jewish legal discourse. This means that Revelation can only affect Jewish law through the medium of interpretation, i.e., through the use of human reason. But what ground do we have for supposing that reason is more capable of reliably deriving truth from God's Word than from God's World?

To avoid this problem, we might suggest that God provided us with the Oral Torah, a readymade guide to interpretation. But this suggestion can only remind us of the elderly woman who suggested to Bertrand Russell that the world was held up by an elephant. Challenged as to what held up the elephant, she responded that it stood on a tortoise. Challenged as to what held up the tortoise, she wagged her finger and said: "You can't catch me out, Lord Russell! It's tortoises all the way down". In other words, no matter how many layers of interpretation God provides us with, the last will itself require interpretation, and the layers, however exquisitely detailed, are in the end only so many tortoises.

So reason must be insufficient, else revelation is unnecessary. But Judaism makes the content of revelation accessible only through reason. So we ask again, why is reason sufficient to interpret God's Word when it is insufficient to interpret His world?

My suggestion is that the Divine provision of a Revelation accessible only through Reason is designed to teach us that while we are, in the end, responsible for all our decisions, the recognition that all our conclusions are tentative is a key component in properly assuming that responsibility. The mere fact that God thought Revelation necessary teaches us the insufficiency of Reason. But Revelation embodied in text cannot absolve us of responsibility, as texts are incapable of defending themselves against the human capacity for projection.

So Talmudic thought involves the application of reason to the Revelation that demonstrates reason's insufficiency. It therefore ensures that reason remains humble, while at the same time ensuring that the claim of Revelation can never be a source of personal power.

When I introduced this idea to a class of non-Orthodox high school seniors recently, they protested that Orthodox rabbis often present their conclusions as absolutes. I responded by talking about how my kollel havruta and I often used to "warm up" for a full-scale *milhamtah shel Torah* (intellectual Torah battle) by making the strongest statements we could invent of our own correctness and the other's incorrectness, seeking to inspire ourselves to do battle for *emet* (truth), but learned in fine concord the moment our argument ceased being intellectually productive.

The Talmud teaches us that *milhamtah shel Torah*, engaged in properly, leads to deepest friendship. I submit that this is because all our battles take place in the constant consciousness of "*eilu v'eilu divrei Elokim hayyim*" (these and those are the living words of God), that we must fight for our own perception of truth but never see triumph as proof.

I hope that our *batei midrash* (houses of Torah study) live up to this principle, and encourage students to be suspicious of any Torah source that does not.

C. The Vulnerability of Authority

My Advanced Talmud for Beginners class begins by introducing participants to the four layers of Talmudic text—Biblical, Tannaitic, Amoraic, and Stam. I carefully explain that Tannaim cannot argue with the Bible, and that Amoraim cannot argue with Tannaim. Then I ask: If a Tannaitic statement apparently conflicts with a Biblical verse, what happens? The participants invariably reply confidently that the Tannaitic statement must be rejected, and are stunned when I tell them this is wrong.

Yeshiva students know better, of course. We assume (although their colleagues did not always assume) that every Tanna knew all of Tanakh by heart, and would never consciously argue with Tanakh, and therefore any contradiction is evidence not that the Tanna is incorrect, but that we are failing to understand how he understood the verse in question. Similarly, a contradiction between an Amora and a Tannaitic text leads most often to a reinterpretation of the latter.

The result of this process is that Amoraic statements in the Talmud often have only one meaning, which often seems to be pretty much what the words say. Tannaitic texts, by contrast, are often limited to esoteric cases, emended radically, or otherwise creatively interpreted, and Biblical texts

generate so many interpretations that six-digit metaphors (e.g., 600,000 facets) are needed to describe the phenomenon of Rabbinic reading.

The broad principle illustrated here is that the more power and authority a text gains, the more likely its meaning is to change or fracture over time. This principle seems to me intuitive, as the following example demonstrates. Imagine two rules made in a school: The first, promulgated by a random secretary with delusions of grandeur, declares that all albino students under four feet tall must henceforth wear green sneakers each February 29th. The second, promulgated by the principal, requires all students to wear green sneakers each day. It seems to me that the first rule would likely be left intact intellectually, as it would apply almost never and to no one and could be safely ignored in the rare cases that it applied. The second rule, however, would rapidly generate very broad and/or creative definitions of "green" and "sneaker", and, conversely, creative narrow interpretations of "student".

Properly understood, Talmudic reasoning thus leads to a deep awareness that attaining and maintaining the power to constrain the choices of others leads inexorably to profound constraint on one's own choices. It also leads to the recognition that Jewish practice is never and can never be determined entirely by text, but rather by the ongoing negotiation between texts and the practical needs and moral convictions of the community that genuinely accepts their authority.1

Recognizing the vulnerability of authority to reinterpretation also helps us steer clear of the mirages of charisma-based leadership and personality cults. If heteronomous commands are always mediated by the commanded's parameters of practicality and plausibility, then the content of charismatic authority is always granted by the commanded, and Nuremberg defenses are as illegitimate in religion as in politics.

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1. It is necessary to stress that this negotiation does not take the form of a conscious effort to balance conflicting interests. Rather, dedicated talmidei chakhamim (rabbinic scholars) enter into the task of interpretation with an almost total commitment to both the text and the community, and thus with a sincere belief that the two are almost always reconcilable. They therefore legitimately and with integrity see readings that reconcile the two as compelling even when they might out of context seem forced.

TANAKH EDUCATION

(from LOOKJED)

I want to attempt here a critique from first principles of Tanakh education in day schools. But to prepare the ground for that critique, I need first to establish some distinctions and challenge a variety of assumptions.

a) Let's start from the question of whether the techniques of modern literary analysis are radically different from those employed by the rishonim. The argument generally is that the rishonim focus on philology, grammar, and individual verses, whereas moderns focus on larger units, boundaries of stories and the like.

The first distinction I want to make is between the form and the method of a commentary. Rashi, Rashbam, Ibn Ezra and Bekhor Shor's commentaries generally take the form of verse-by-verse commentary, but that does not necessarily mean that they thought only or primarily in those terms. (Think of the difference between the Rav's yahrtzeit shiurim and the presentations of the same material in Rabbi Reichman's volumes.)

Furthermore, some rishonim explicitly wrote in terms of larger units, including at least Ralbag, Abravanel, and Ibn Caspi. Making a distinction between medievals and moderns on this issue may just reflect a bias as to who are the "real rishonim".

b) This, in turn, leads us to the question of whether a shift to teaching literary techniques, rather than rishonim, would be a choice of the untested over the time-tested.

I want to begin by noting the irony of arguing for teaching Rashbam and his ilk on the grounds of time-testedness, as the essence of their method is the willingness to interpret Torah anew (sola scriptura, as Martin Luther put it), without deference to the time-tested interpretations of Chazal. Furthermore, many of these rishonim were at best peripheral to the tradition for hundreds of years, until their rediscovery over the past two centuries.

But the distinction I want to focus on here is between content and pedagogy. I suggest that teaching the pashtanim as a means of mass access to Torah is unprecedented. The way that traditional Jews learned Tanakh, especially Chumash, was via Rashi, anthologies of midrashim (such as Tzena

uR'ena), and moralistic acharonim. The rishonim-shiur method of teaching is a modern innovation, for which Nechama Leibowitz may deserve the lion's share of credit.

With this in mind, furthermore, I think it is reasonable to suggest that what the literary method actually replaces, in terms of popular education, is not the study of rishonim, but rather the study of acharonim, in particularly of the baalei derush such as the Alshikh.

c) Both sides of the conversation, for some reason, leave Chazal completely out of the picture. Both those who advocate learning rishonim, and those who push for Rav Bin Nun, assume that access to Chumash should be mediated by post-Talmudic literature, with the materials of the Tannaim and Amoraim brought as background source material, if at all. Why should this be so?

I suggest it is not out of ideological conviction, but rather because teachers of Tanakh are generally not comfortable teaching Chazal's conception of chumash, not least because they have not been taught it as a mode of interpretation, rather than as ideological eisegesis. Teachers of Tanakh often have bare exposure to rabbinic literature in its original context, and they assume that Midrash – Halakhah or Aggadah – can be viewed as the meaning of chumash only pietistically.

d) Which brings us to the underlying issue: What are the goals and purposes of teaching Tanakh in day schools?

Standard formulations suggest that the primary goal should be to "enable students to learn Tanakh on their own", or to "find the study of Tanakh meaningful on their own". But it seems to me that these formulations must be significantly qualified. We would not be happy, for instance, if chas vechalilah a student adopted a Christological reading of Tanakh, or, at least within the Orthodox world, any reading not consonant with commitment to observance of Halakhah, belief in G-d on terms consonant with Jewish tradition, and the like. So we need to reformulate at the least to "enable students to develop Jewishly legitimate interpretations of and/or modes of study of Tanakh that they find meaningful".

I want to argue further, though, that we should and do have preferences among Jewishly legitimate interpretations. For example: many or most Rishonim do not understand the phrase 'tzelem Elokim' as meaning 'in the image of G-d', implying that human beings are in some way representative of

G-d; alternatives include translating 'tzelem' as mold, so that the phrase means only that we were manufactured by G-d, or repunctuating the verse so that 'tzelem' ends one phrase and 'Elokim' begins the next. Since much of Modern Orthodox ideology, however, is intimately bound up with the notion that all human beings are Divine Images, I would be deeply disturbed if my students rejected that as the meaning of Chumash. On the same ground, I would be deeply unhappy if they were compelled by the Kuzari's literarily plausible reading of the pre-Yaakov narratives of Genesis as being about the survival of the tzelem Elokim in one person per generation, until finally Yaakov has multiple children born in the Image. Many others may feel similarly about "bereishis boro" and creation ex nihilo, "eizer kenegdo" and women's equality, and many others.

Now some readers may object that surely our students will continue to use the phrase tzelem Elokim ideologically even if they don't believe it to be peshat in Chumash, or believe in beriah yesh meiayin (creation ex nihilo) even if they translate the Torah's opening as "somewhere toward the beginning of the creation of the Heavens and Earth". They will argue that our students already know how to disassociate "peshat" from Judaism – have we not taught them Rashbam's Averroeist willingness to accept Halakhah as the true meaning of Chumash even when peshat means something else? I disagree – even if one believes that this approach works with regard to Halakhah, and I suspect it has tremendous costs there, albeit ones that are only revealed obliquely, I don't think it can work with regard to Halakhah and Hashkafah simultaneously. What is the purpose of learning Chumash, if it can teach neither what to do nor what to think?

e) I suggest accordingly that our primary goal must be for students to see Tanakh as a/the foundation of their hashkafot, and for those hashkafot to be within the boundaries we consider acceptable or ideal.

The question of which method to adopt in the classroom, then, is not one of principle. Neither the rishonim-shiur nor the literary method have the weight of tradition behind them, and from a pure traditionalist perspective, we would be better off teaching midrash. The question is which method is more likely to reach the desired goals.

Here it seems to me that the first-level answer is straightforward – the method which teachers can teach with the most excitement, and genuinely see as generating their own Jewish worldviews, is the best. This will legitimately vary by generation, institutional background, and the like.

It is fair to say that methods which allow teachers to put their own creative readings front and center are more likely to generate significant errors than methods which have teachers as the conduits of others' ideas. I'm not sure, however, whether most teachers of the literary method use their own material rather than simply teaching the interpretations of Rav Leibtag, for example. It is perhaps also fair to suggest that Rav Leibtag's interpretations themselves are more likely to be in significant error than those which have been vetted by hundreds of years of Jewish tradition.

But here we need to recognize that much of what the rishonim wrote, and even much of the subset of their writing that we currently possess, has not actually stood the test of time. They interpret chumash in light of astrology, Aristotelian philosophy, medieval medicine and aesthetics, and so on and so forth. Furthermore, many of the rishonim that Modern Orthodoxy is particularly fond of are the ones that were censored in the past, or consigned to obscure shelves in esoteric private libraries. So with regard to broad issues, a contemporary from within our community is less likely to fall outside our pale than a rishon.

With regard to narrower issues, it may be true that contemporary scholars will make more errors than great medievals, despite current access to a much greater store of parallel ancient texts and other useful tools, or it may not be true. It may be true that we are more likely to mistake the incompetent for the competent among contemporaries than among the past, but this is not certain either.

f) All this begs the question of how we ought to educate our teachers, as well as how schools ought to structure their curricula so that students can have a coherent and progressive educational experience.

The latter question deserves its own essay, and I cannot address it here. But with regard to the first question, I have a few preliminary remarks.

a) As with all methods, the creative element of the literary method will likely be exhausted soon, if it has not been already. Interpretations using the method will have to become progressively more farfetched to be new.

b) This has in large measure already happened to the rishonim method. It is no accident that we are being surfeited with books seeking to explain Nechama Leibowitz to us, and it seems to me very few that use her methods to make creative points. In any case, I suspect that part of what made her method

so attractive was precisely her capacity to use the rishonim as springboards to broader points (which, as noted above, may have captured their intent precisely).

c) Therefore, for both purely pedagogic and religious/ideological reasons, I suggest that we would be well-served by

a. Developing a mode of teaching for the next generation that focuses on reclaiming the methodologies of Chazal

b. Recognizing that derush is a necessity in all times, but that it needs to be held to standards, both literary and ideological, and figuring out what the standards of acceptable derush are for our era.

TOWARD A DIALECTICAL THEOLOGY OF PLURALISM

…

Unexpected kindness can be as challenging to a worldview as unexpected cruelty. The Jewish experience of America is accordingly a profound challenge to any theology grounded on the inevitability of Christian anti-Semitism – הלכה עשו שונא את יעקב – and challenges us to consider, perhaps more deeply than ever before, the moral challenges of sharing power with, and therefore having genuine power over, people and communities whose characters and social behavior we respect and admire, but whose religious lives and beliefs contrast sharply with our halakhic and theological standards. In addition to our sense that they inherently deserve our human engagement, we feel basely hypocritical for demanding that they respect our religious commitments if we are unwilling to reciprocate.

…

FACILITATED SUICIDE – Version 1

Vote "No" on Ballot Question 2 this Election Day.

Human beings reasonably and responsibly differ, on the basis of reason, religion, or intuition, as to whether all human life must be preserved by all possible means and lived at any personal cost. Jewish tradition takes a complex and nuanced approach to this question, and I have no interest in imposing its specific outcomes on a secular polity. However, the "Death with Dignity Act" ironically violates fundamental and universal aspects of human dignity. I accordingly urge all Massachusetts citizens to vote "No" on Question 2.

...

Proponents stake their case on the values of autonomy and dignity. It was the writings of Rabbi Joseph B. Soloveitchik of blessed memory that taught me the religious centrality of those values. But I see precisely those values as demanding a "No" vote. Here's why:

Jewish tradition takes as a primary moral premise that the question "what makes your blood redder than his" is unanswerable. The fundamental consequence of this act is not to empower the terminally ill, but rather to persuade them that their lives are less valuable and less worth preserving than those of everyone else. Otherwise, we would treat the terminally ill exactly as we do anyone else who states a desire for death. This proposal seeks to enlist society and the law in support of the proposition that while all human beings are created equal, some become less valuable – their blood becomes "less red" - as their bodies deteriorate. What greater indignity could there be? It is for this reason that Jewish law emphasizes that murdering the imminently dying (*goses*) is no less murder.

A second key premise, drawn from Jewish sources but deeply rooted as well in American moral tradition, is that a decision whether to end or rather continue human life is never morally neutral. Human life is intrinsically valuable, and the default setting must always be to "Choose life!". That default may be legitimately overcome, as for the sake of individual or societal self-defense, or resistance to evil - but the burden of proof rests heavily on those who advocate death, whether their own or that of others. It rests with added weight on those who seek to choose death actively and by ending a conscious life.

This is not a violation of the value of autonomy, but rather its fulfillment – we value life precisely because it enables choice, and the choice of death is a declaration that potential human choices, and

therefore human lives, are meaningless. It should therefore be a social goal to make that choice harder, to make the costs of that choice as clear and as high as possible.

Question 2 seeks to lower the moral and physical costs of choosing death. It seeks to support and enable suicide by those who would choose death only if it involves no pain, and only if their choice is not morally challenged. It seeks to make the decision between life and death morally neutral, to be decided solely on utilitarian grounds.

As a citizen who happens to be an Orthodox rabbi, I do not wish to give my imprimatur and the sanction of my society to the propositions that the terminally ill are less equal, or that the life or death of any human being is a matter of moral indifference to us. Accordingly, I urge a "No" vote on Question 2.

FACILITATED SUICIDE – Version 2

There are at least five reasons and ways that Halakhah fails to exhaust or encompass the totality of Jewish normative obligations.

1) Potentially infinite volume –

   A rulebook sufficient to cover every meaningful choice in life would take more than a lifetime to read, so it is necessary to leave some principle at a level of vagueness short of law.

   This is the argument made by Ramban when he creates penumbras around the rule of Shabbat from *shabbaton*, around ethics from *veasita hatov vehayashar,* and around holiness from *kedoshim tihyu.*

   It is possible to argue that this is a purely semantic exception to Halakhah. This approach is adopted by R. Aharon Lichtenstein Shlita in his "Is there an Ethic Independent of Halakhah?"

2) Law is by definition an abstraction -

   Law is created by writing one principle that covers many circumstances, by eliding the unique features of any particular situation. Inevitably, in some circumstances the unique features affect the "rightness" or "wrongness" of a particular action in a way that the law cannot account for, or at least cannot reasonably be expected to account for in advance.

   This may be the basis of Netziv inter alia's concept of *aveirah lishmoh*, a sin for the sake of Heaven, which he believes can be justified by a spiritual utilitarian calculus (*mechashev hefsed aveirah k'negged skharah*).

   I tend to view *aveirah lishmah* through the lens of civil disobedience, as pointing out a gap between the law as currently interpreted and decided and the law as it ought to be, as it would more perfectly conform to the Will of G-d (*retzon Hashem*).

   On that approach, one can also argue that the exception is semantic in the sense that the aspiration of Halakhah is to encompass the totality of Jewish normative obligations, and that the claim that an action is normative is equivalent to saying that a correct interpretation of Halakhah would include it.

3) Depends on the person (saints vs. sages) -

   Rambam makes clear that Halakhah is designed to accomplish the greatest good for the majority of people, and I think he also holds that Halakhah therefore adopts and seeks to inculcate the approach of the Golden Mean. However, Rambam also acknowledges in various ways the spiritual burden this places on exceptional individuals, and the spiritual legitimacy of those who

seek at least to overdevelop some aspects of character at the expense of others. He calls these last *chassidim* as opposed to *chakhamim*.

In the fifth chapter of Shemoneh Perakim and elsewhere, Rambam implies that the exceptional may engage in halakhically illegal behavior for their own spiritual needs (for example praying silently even though Halakhah mandates verbalizing). He does not to my knowledge directly address this issue with regard to *chassidim*, but I suggest that he would also recognize that, for example, the *chasid* of generosity can properly violate strictures against distributing more than 20% on one's principal to charity.

I have argued elsewhere that Rambam's sometimes ambivalent accommodation of the *chasid* represents a rejection of Kant's principle of universalizability, namely that na action can be ethical only if one would wish every person to behave the same way in the same situation. Here I want to suggest a reconciliation–perhaps Kantians can and should also acknowledge the possibility that their ethics do not exhaust the totality of human normative obligation, even on interpersonal issues.

This may also be a useful frame for the life of Avraham Avinu, remembering that tradition regards him as a *chasid*.

4) Cannot set precedent (different limit of universalizability) -

Some actions may be proper only of they are explicitly categorized as exceptions to the law rather than as legal. This categorization may be necessary to prevent slippery slopes, or because the same choice made repeatedly will hard individual or social character.

I think this idea is captured in Jewish tradition by the term *hora'at sha'ah*. The classical example is Eliyahu HaNavi bringing an extra-Temple sacrifice at Mount Carmel as part of a public showdown with the priests of Baal. I have argued elsewhere that the cost of that decision was the impossibility of eliminating sacrifices on private altars to G-d (*bamot*) during the First Temple, even under the most righteous and halakhically committed kings.

This exception can also be treated as semantic in the sense that Halakhah codifies the necessity of suspending it in the face of emergency.

5) Can only be ratified post facto (Heisenberg Uncertainty Principle) -

Some actions may be justified only if they result from pure intuition rather than considered analysis, so that even considering the question of whether they are halakhically justifiable may

render them halakhically unjustifiable. It may therefore be necessary to avoid teaching the law regarding them.

The generative case for this in the Tradition is "*kannaim pog'in bo*", that zealots may kill people engaged in a particular set of halakhically forbidden actions that are not ordinarily capital. Note that the transgressor is not halakhically liable if he kills the zealot in self-defense, i.e. the zealot is treated as a *rodef* (pursuer with intent to kill) rather than as an office of the court. Many rishonim argue that Moshed refused to tell Pinchas in advance whether he was permitted to kill Zimri, as telling him it was permitted would have made it forbidden.

Rabbi Ariel Burger, Jeff Spitzer, and Rabbi Ysoscher Katz respectively and variously have challenged me often to consider the possible necessity of "aggadic" as opposed to "halakhic" thinking. In the academic world this argument is usually made via the late Robert Cover, and accompanied by a claim that aggadic thinking should literally be prioritized over halakhic thinking, meaning that we should see narratives as the precursors and sources of law, and law as a translation of the values encoded in narrative.

I often consider in this context the thesis of Rabbi Kuperman of Mikhlalah that Biblical narratives are intended to show the limits of law, which is why they are full of heroic characters behaving in halakhically unjustifiable ways, for example Yaakov Avinu marrying two sisters.

Now one of the major difficulties facing halakhic analyses of suicide is the sheer number of aggadic narratives that incorporate individual or group suicides as heroic. The motives vary, but they include fear of rape, fear that one will eventually violate a *yehareg v'al ya'avor* offense otherwise, and penitential regret for a past transgression.

My suggestion is that we may wish to view suicide as an example of the last category above, as an action which cannot ever be justified if taken as the result of halakhic analysis.

Perhaps "kannaim pog'in bo" principles require the decision to be made *against* the moral pressure of whatever establishment one recognizes, in other words such decisions may be justified only if one is deeply and autonomously certain.

It may also be that such decisions must also be made regardless of consequences – a decision made after reflecting on personal economic impact might be unjustifiable, for instance. It would certainly be unjustified it was made with a conscious calculation that one would have acted differently if the costs had been higher. For example – if Pinchas had decided to kill Zimri only after considering

whether his stock portfolio would decline as the result of his actions, and certainly if he was aware that he would have acted differently had there been a realistic chance it would lead him to bankruptcy, his action would have been simple murder.

Legalizing prescriptive suicide has the effect of enlisting the establishment as moral supporters of the decision for death, and in practice the drugs are intended to lower the costs in pain and risk of suffering in attempting suicide. It therefore may have the ironic impact of making suicide absolutely unjustifiable. It removes the decision from the realm of aggadah.

RABBIS AND POLITICS

Dear Colleagues,

I have followed with interest and appreciation the conversation about rabbinic political involvement, and hope posing the following question will usefully extend it: Why is it obvious that political positions should not lead to discomfort in shul?

In other words, if the choice to vote Democratic is in fact a vote to fund the abortion of many late-term fetuses that would otherwise be born, and one sees late-term abortion as murder, why should a rabbi not say so, and make the people who vote otherwise uncomfortable? Conversely, if the choice to vote Republican is a choice to deprive many people of their basic human dignity, why should a rabbi not say so, and the people who vote otherwise uncomfortable?

I see at least two possible philosophic responses:

1) Political parties take positions on many, many issues, and individual politicians do not agree with all the positions of their party, so a religious claim that one must vote a particular way is always oversimplified.

To which I reply – the job of a religious leader is to set priorities and make decisions in complex circumstances.

2) Voting involves judgment of consequences, not just of intent, and rabbis have no particular qualifications to judge consequence.

To which I reply – Really, neither do politicians, and in any case, all legal and moral decisions require judgments as to facts and consequences.

Therefore, it seems to me more likely that we have simply made a communal decision to aggregate along ritual rather than ethical/political lines, and therefore it is generally practically necessary for rabbis to get along with both sides so as not to get fired. This is not different than a decision to aggregate along ritual rather than theological grounds, or on ritual rather than Zionist grounds, etc., which do not require us to consider nusach hatefillah more important than the national existence of the Jewish people, or that we consider precise kashrut standards more important than

precise standards of monotheism – they may simply reflect a political judgment that this is the best way to overall advance our collective interests in the current American reality.

If that is correct, there should be no moral or religious barrier to individual rabbis seeking to set up Republican or Democratic shtiebels.

TORAH AS BLUEPRINT

בראשית רבה (וילנא) פרשת בראשית פרשה א

רבי הושעיה רבה פתח

(משלי ח) ואהיה אצלו אמון ואהיה שעשועים יום יום וגו'

...

ד"א אמון = אומן,

התורה אומרת אני הייתי כלי אומנתו של הקדוש ברוך הוא,

בנוהג שבעולם מלך בשר ודם בונה פלטין, אינו בונה אותה מדעת עצמו אלא מדעת אומן, והאומן אינו בונה אותה מדעת עצמו, אלא דיפתראות ופינקסאות יש לו לדעת היאך הוא עושה חדרים היאך הוא עושה פשפשין,

כך היה הקדוש ברוך הוא מביט בתורה, ובורא את העולם,

והתורה אמרה בראשית ברא אלהים, ואין ראשית אלא תורה, היאך מה דאת אמר (משלי ח) ה' קנני ראשית דרכו.

Rabbi Hoshayah the Elder opened...

The Torah says: "I was the craft-tool of the Holy Blessed One.

The practice of the world is that when a flesh and blood king builds a palace, he does not built it based on his own mind but rather relying on a craftsman, and the craftsman does not build it out of his own mind, but rather has blueprints and checklists to know where he should make rooms and where ...

So too the Holy Blessed One would look in the Torah and create the world.

...

To me, the genuinely creative endeavor in this midrash is the architectural metaphor. Why must G-d have blueprints to look at when creating, rather than freeforming? Note how this metaphor has the Torah describe itself as a craftsman, rather than as a set of plans, so that it appears to play a volitional part in Creation.

Finally, the mashal has three levels – the king, the craftsman, and the plans. The nimshal has only two – The Holy Blessed One and the Torah. How, then, do nimshal and mashal match up? ...

THE RESPONSIBILITY OF A Rrighteous INDIVIDUAL IN A CORRUPT SOCIETY

What is the stance, and what are the responsibilities, of a good person in a corrupt society? What does it mean to be a good person in a corrupt society?

One possibility is revolution – that a good person is obligated to overthrow evil wherever he or she finds it. But the costs of revolution are always high, success is rare, and not everyone finds the rebel stance psychologically congenial.

A second possibility is withdrawal – the good person must live as if alone in the midst of evil. But if good men do nothing other than withdraw, does this not assure the triumph of evil? And total withdrawal is rarely practical – the society comes to collect its taxes and tolls regardless, and not everyone has the multiple talents necessary to be wholly self-sufficient with regard to food, clothing and shelter, let alone sanity.

So lekhatchilah or bediavad, religion must face the question of how its followers should behave while members of a corrupt society. How should they relate to the norms of that society, especially when those norms are embodied in law? Perhaps most challengingly, how should they react when they are offered the opportunity to exercise power within that society? In modern terms, should Jews have agreed to serve on the courts of apartheid South Africa, and the like?

Chazal read the story of Lot in Sodom as a case study. This is not a self-evident reading – one might assume that Sodom was an anarchic society, that Lot and the angels are threatened by a mob which lacks the constraint of law. But Chazal instead described Sodom as a hyperlegalistic rights-based society. Middat Sodom, the character of Sodom, refers to someone who refuses to let others benefit from his property even when that would cost him nothing, or according to the second position in Avot 5:10, to someone who says “Mine is mine and yours is yours”.

Note that on Sanhedrin 109b Chazal describe Sodom as having a Procrustean bed – all visitors are required to sleep on it, and those too long for it are shortened, while those too short for it are stretched. But Eliezer, Avraham’s servant, asserts that he swore an oath after his mother’s death to never sleep in a bed again – and he escapes unscathed, as Sodom would never force anyone to break an oath. Indeed, the Procrustean bed is itself a very useful metaphor for law, when law is interpreted and applied mechanically rather than humanistically.

...

My sense is that Chazal never reached a clear answer to this question – when, exactly, a society becomes so corrupt that it is better to let it collapse than to participate in any way. Their recognition of

the dangers of hyperlegalism often comes across as self-parody, and I am always heartened by their capacity to laugh pointedly at themselves. In other words, they knew that their own society was subject to corruption, but they felt obligated and compelled to work within for its improvement, and yet they recognized that at least theoretically there could be a point at which they would be enforcing the laws of Sodom. I suspect that it is the failure to recognize that possibility which makes it most likely to occur in practice, which is why we do well to remind our community of it today.

TIME

"The Devil makes work for idle hands" is not, to the best of my knowledge, a Jewish proverb, although our Tradition generally seems in sympathy with the sentiment. But yeshiva culture makes a stronger claim, in which idleness – not of the hands, but of the mind or soul – is intrinsically wrong, not only because human nature abhors a vacuum, and therefore time left unfilled by worthwhile pursuits will inevitably be occupied by sinful pursuits. In formal terms, the claim is that all human, or at least human male, time is presumptively allotted to Torah study, so that any other use of time is presumptive *bittul Torah* and demands a justification sufficient to legitimate doing it instead of Torah study.

This concept of *bittul zman*, the prohibition against devaluing time, in my experience creates a fundamental dissonance between yeshiva culture and the rest of even fully observant Jewish life. This dissonance can occur within as well as between individuals and subcultures. But in a wonderful (at least so far- I'm only a few chapters in) book titled Bein HaZmanim[1], Rabbi David Stav sets out to bridge this gap by colonizing leisure for Halakhah, in other words to create philosophic and especially legal justifications for time spent in pursuits that have no direct halakhic significance. Rabbi Stav's goal is to present Jews who are fully committed to Torah while unselfconsciously immersed in leisure culture as integrated religious beings. His hope is that, recognizing themselves in his portrait, such Jews will willingly accept the halakhic and hashkafic guidelines he provides for leisure, in the same way that frum gourmets willingly accept the boundaries of kashrut.

This approach should be distinguished from the more common attempt of Modern Orthodox intellectuals to valorize the experience of literature and the like. Rabbi Stav occasionally slips into the approach of finding Torah-equivalent purpose in other pursuits, but more often he seeks to defend good reads as well as great books. His paradigmatic leisure activity is the *tiyul*, which encompasses friendly strolls, romantic outings, pilgrimages to natural and architectural wonders, and the experience of physical Israel.

Along the way, Rabbi Stav correctly notes that even the most extreme anti-*bittul zman* culture acknowledges the human need for and value of relaxation; it simply develops playful and relaxing modes of Torah study, such as gematria...

I have an abiding fondness for anti-*bittul zman* culture, and therefore a real ambivalence about the full scope of Rabbi Stav's project. Several rabbis whose approbations introduce the book make clear

[1] My deep gratitude to Dov Weinstein for the book, and for calling my attention to it

that they see it as outlining a *bedieved* life, one justified only for those who cannot reasonably expect to meet the Meshekh Chokhmah's standard, and Rabbi Stav himself sometimes seems to agree. At other times – with the obligatory citations from R. Kook – he seems to lean toward the position that the leisured human life, i.e. the life which thinks time can be eaten for flavor as well as nutrition, has worth that simply cannot be captured, even if it can be matched or surpassed, by the absolute *matmid*. Simply getting the aspiring *matmid* to consider that possibility – perhaps even, dangerously[2], to savor it – is a noteworthy contribution.

[2] Or, for those who aspire to *hatmadah* but are incapable of achieving it, therapeutically

TRUTH

"You can't handle the truth!" Jack Nicholson's famous line, I believe from the movie A Few Good Men, captures the point of Rabbinic stories which describe G-d hurling the angelic avatars of Truth out of Heaven so as to allow the creation of human beings. It seems that His democratic court was evenly divided, with *Chesed* and *Tzedek* supporting the creation of humanity, while *Shalom* and *Emet* opposed – so G-d expelled *Emet,* leaving a majority in favor.

At least, that is one way of reading the story. Another is as follows: Truth opposed the creation of humanity because "humanity is entirely lies", in other words because humanity had no access to truth. G-d accepted the argument that human survival required access to truth, and so threw Truth to earth where humans could find it – in other words, he agreed to reveal the Torah. In this version truth is essential for human existence – we can't handle the absence of truth.

Talmudic thinkers will recognize immediately that these two readings are not mutually exclusive – perhaps some truth is essential for human existence, but too much is deadly. I want to explore the contours of that accommodation through readings of two traditional Jewish stories, the first the narrative of the Deposition of Rabban Gamliel (Talmud Berahkhot 27b-28a) and the second Sefer Yonah. a.

After Rabban Gamliel is removed from his *nesiut* for repeatedly humiliating Rabbi Yehoshua in public so as to preserve his absolute halakhic authority, the new administration immediately overturns his restrictive admissions policy, and the result is an efflorescence of Torah study. This depresses Rabban Gamliel, who wonders whether he has been responsible for constraining the growth of Torah in Israel. But he then has a dream, in which the new students are symbolically represented as whited sepulchers, as fancy barrels containing nothing but ashes. As the result of this dream he finds the strength to return to the Beit Midrash as simply a colleague, to accept defeat in halakhic conversations, and finally to apologize to Rabbi Yehoshua. In other words, he does *teshuvah*.

On the surface, this is a fairly conventional, though beautifully executed, story of an arrogant but essentially good-hearted aristocrat who is taught humility. But it contains an astounding interjection by the narrator – the dream was not true, but rather was sent by G-d so as to ease Rabban Gamliel's depression! All the subsequent developments – specifically, Rabban Gamliel's return to the rabbinic conversation, his willingness to accept defeat, and his apology – stem from Rabban Gamliel's false belief in that dream.

Here G-d preserves Rabban Gamliel for His service by abandoning truth.

b.

Yonah is introduced as "the son of *Amittai* = my truth". While it is of course possible that this was simply his father's name, the Rabbis did not see it that way. Instead, they identified Yonah as the boy resurrected by the prophet Eliyahu, whom they saw as the human embodiment of the value of uncompromising Truth.

Emet is also conspicuous, albeit by its absence, when Yonah explains to G-d his objection to participating in the warning of Nineveh. "For I knew that You are a Divinity Who is gracious and merciful, long-tempered and *chesed*-abundant, Who can be reconciled to evil (alt. "Who changes his mind regarding punishment"). Yonah presumably has in mind Exodus 34:6, where Hashem describes Himself to Mosheh as "a Divinity Who is gracious and merciful, long-tempered and *chesed*-abundant and *emet*.", and he deliberately replaces *emet* with changeability. This is not intended as praise.

Yonah's resurrection and his mission both center on whether the survival of human beings is compatible with Truth. Eliyahu was willing to let a deadly and devastating comprehensive drought continue until Israel acknowledged and acted on the truth that only the one G-d exists. G-d, however, is unwilling to risk the chance that Israel will refuse, and so be destroyed. Accordingly, he plays on Eliyahu's one human connection – to Yonah's mother – so as to compel Eliyahu to ask for mercy at the expense of Truth. Having requested and received mercy, Eliyahu cannot with consistency thwart the Divine desire to save Israel. Accordingly, the trial at Mount Carmel is convened – the people, caught up in Eliyahu's moment of triumph, slaughter the prophets of Baal and declare Hashem to be the only true divinity – and so it rains. The next day, of course, the people are back as they were.

So Yonah grows up knowing that his very existence undermined Eliyahu's commitments. Of course he does not wish to be part of yet another such charade. One wonders what he – and Eliyahu - thought each year on Yom Kippur, surrounded by crowds of deeply moved penitents who would be no different tomorrow than they had been yesterday. They saw the Divine willingness to accept *teshuvah* as a failure to uphold Truth.

Yet Hashem here is not changeable – in each case he seeks out and accepts even ephemeral repentance, even at that means the Eliyahus and Yonahs must leave His service. Perhaps what He keeps trying to teach them is that their job is to bring Truth to Earth rather than to discover where/if it can already be found.

c.

Rabban Gamliel's policy was to instruct the Beit Midrash guard that only students whose "insides matched their outsides" could enter. Some of my students imagined the guard as having a mirror to hold up that displayed each applicant's soul, to see whether it matched their immaculate appearance. The Kotzker Rebbe's coruscating vorts sometimes play that role in my life.

If we could not recognize that there is a standard of truth toward which we broadly aspire, not even the most ephemeral of repentances would be possible. Without the stories of Eliyahu and Yonah, the Talmudic narrator would not have dared say that the dream was false.

But Rabban Gamliel's policy was mistaken – like the mirror of Erised, the mirror of Truth About Oneself should not be freely available, perhaps especially at a school. We are entitled, even encouraged, to think of ourselves as somewhat better than we actually are. Repentance – or at least some kinds of repentanc e - requires a strong and confident sense of self. G-d k'b'yakhol perjures Himself to permit this, as He does to preserve marital harmony. This is a lesson that those of us with a particularly critical bent should take to heart. If I looked in the mirror, I suspect I would know this includes me.

May this Yom Kippur, and this year, provide us all with the ideal combination of self-worth and self-knowledge, so that we may collectively achieve the state in which self-worth and self-knowledge are one and the same.

METAPHOR

"For the ways of Hashem are straight, and the righteous will walk in them, but the *posh'im* will blunder in them."

Rabbinic literature regularly concedes that Torah study does not guarantee proper behavior or even good character: "If he merits, it becomes an elixir of life for him; if he does not merit, it becomes an elixir of death for him." (See "Learning Torah is Like Taking Deadly Poison" audio and sourcesheet.) The texts of the tradition cannot reliably defend themselves against corrupt interpreters, nor can they redeem the interpreters' corruption.

The concluding verse of Haftarat Shuvah suggests that this is true not only of study, but of practice, that the intrinsically straight Divine paths will somehow mislead anyone crooked who enters them. This seems to be an antecedent for Ramban's famous notion of the "*naval birshut haTorah*", the one who behaves disgustingly despite not violating any formal Torah prohibitions.

But making that connection requires us to identify the "paths of Hashem" with the Law, so that one can walk in them without truly following His Will, which extends beyond the Law. Talmud Nazir 23a considers this possibility but seems to move beyond it, instead reading this verse as referring specifically to cases where the "path of Hashem" goes not only beyond the Law but even contradicts it. The conversation takes place via a series of dueling and sometime shocking parables, as follows:

Said Rabbah Bar Bar Channah said Rabbi Yochanan:

"What is the meaning of "For the ways of Hashem are straight, and the righteous will walk in them, but the *posh'im* will blunder in them"?

A parable:

Two men who roasted their Paschal lambs.

one ate it with intent to fulfill the mitzvah,

but one ate it with intent to overeat;

the one who ate it for mitzvah-sake – "and the righteous will walk in them",

but the one who ate it for gluttony-sake – "but the *posh'im* will blunder in them".

Resh Lakish said to him:

You call such a one a *rasha*?! Grantin that he did not do a choice mitzvah, he nevertheless ate a Paschal lamb!? Rather,

A parable:

Two men, each having their wife and their sister with them;

this one found his wife (in his bed)

but this one found his sister (in his bed)

the one who found his wife - "and the righteous will walk in them",
while the one who found his sister - "but the *posh'im* will blunder in them".

How is that comparable?! We spoke of one path, but here there are two paths!? Rather
A parable:
Lot together with his two daughters.

They intended (their incest) for mitzvah-sake - "and the righteous will walk in them",
He, who intended simply to sin - "but the *posh'im* will blunder in them".

Perhaps he also intended for mitzvah-sake?!
Said Rabbi Yochanan…

The first parable assumes that the Divine Path is the law, here the obligation to eat a Paschal lamb. Resh Lakish, however, cannot understand how one can see fulfillment of the law as a blunder. (Tosafot note that actually gluttonous eating may not fulfill the law, and accordingly offer distinctions, but laaniyut da'ati Resh Lakish deals only with intent, not actuality.) The first alternative parable offered, however, seems bizarre and off-topic – the *posheia* is caused to commit a sin by doing something never intended – thus the person is not in any way following the Divine path. The second alternative moves to a case in which the law is being deliberately violated, but for a worthwhile cause – here the conclusion is that the Divine path in fact sometimes contradicts the Law, but that the *posh'im* will blunder when they follow it against the Law since they will not have pure intentions, and thus will be justified neither by form nor by the intent of their action. (This seems to me likely the basis of Netziv's understanding of *aveirah lishmoh*). Meiri, relating back to the previous phrase in our verse, suggests that "posh'im" will always perform the law by rote rather than out of understanding, and accordingly their violations of the law cannot be attributed to a realization that the purposes of the law are here better accomplished in the breach.

Read this way in Biblical context, the last line of the haftorah – and of Sefer Hosheia – suggests that repentance can happen in two ways – either by accepting ourselves as so flawed that our only behavioral option is complete obedience to law, or else by improving ourselves to the point that we can violate the law when necessary in perfect submission to the true Divine Will.

My sense, in our day, is that those who declare themselves capable of following Divine Will against Halakhah turn out to be radically deficient in self-awareness, with tragic consequences. But the recognition that the law is more binding than ever in our day, that we legitimately have less room than in the past for the ad hoc exception or civil disobedience, should drive us to redouble our efforts to minimize the gap between Will and Law. To the extent that the Orthodox community has instead

sought to deny that Will has any meaning other than Law, i.e. to deny that currently dominant halakhic interpretations are legitimately subject to practical and ethical critique, repentance is urgently necessary.

JUSTICE

…

Here's what I see as a key teaching of Sefat Emet's reading. Human beings cannot truly deserve the blessings of this world, but it is critical that they also not be *wholly* undeserving of those blessings. There is no dignity in receiving rewards which have no basis in justice, but that does not mean that there is no dignified basis other than justice for receiving rewards.

This has important implications for grading in school, for welfare policy, and simply for the way in which we treat each other in relationships.

…

RESPONSIBILIY AND PATERNALISM

One of my (two) favorite Zen koans goes as follows:

Two monks are preparing to wade across a river when a beautiful woman appears and asks if they can carry her across. One of the monks immediately agrees and carries her as they wade across. He puts her down, and the monks continue on their journey. After a while the second monk asks: "Are you sure you should have done that?" The first monk replies: "I put her down when we were safely across; are you still carrying her?"

I was reminded of this koan by a comment of Meshekh Chokhmah to Devarim 29:16. Meshekh Chokhmah there offers the following parable:

A man walked in the city with his son near a brothel. His son stood and gazed at the brothel. Afterward the father left the son alone, saying to him: "My son – you must not sin and stumble via the brothel that you passed".

...

Shepherds cannot ultimately be responsible for the choices their flocks make, but they can be responsible for the choices their flocks face.

...

Now modernity has an often pejorative term for the attempt to regulate the choices other people face – 'paternalism', and Judaism understands well that character development requires the experience of making difficult choices. On the other hand, "do not place a stumbling block before the blind" halakhically prohibits placing, and perhaps even leaving, others in the way of temptation.
The proper balance between these imperatives is heavily affected by overall social circumstances. Differing intuitions about that balance may lie at the heart of some key divisions within contemporary Orthodoxy.

My bias is generally toward the expansion of autonomy. But I and we should make certain that a pro-autonomy stance does not degenerate into an abdication of *areivut*, of the universal Jewish responsibility for each other's ethical, moral and religious condition. !חרות ואחריות

LAW AND NORMATIVITY

An underappreciated beauty of Jewish thought is its concern for subtly and precisely delineating the exact normative stature of a religious law. Not just deoraita vs. derabbanan, each with its respective subdivisions, but – and this only a partial categorization of "things one ought to do" -

bediavad = acceptable after the fact but not ideal

lekhatchilah = perfectly acceptable

mitzvah min hamuvchar = better than acceptable

latzeit yedei shomayim = necessary to satisfy Heaven although not legally necessary

lifnim mishurat hadin = further in than the letter of the law

midat chassidut = a characteristic of those who go beyond the norm

I emphasize that all of these are **legal** categories, even though not all of them are categories of **mandatory behavior**. The idea that actions can be **legal oughts** and yet not **mandatory**, let alone **enforceable**, is intellectually critical to Rabbinic Judaism.

There is similar subtlety with regard to "things one ought not to do". Halakhah recognizes not only different categories of *issur* = formal prohibition, but also categories such as

yesh alav tar'omet = cause for interpersonal complain

naval birshut haTorah = disgusting but formally permitted

zila bei milta = legal but degrading to another

ein ruach chakhamim nocheh heimenu = the Sages are displeased with him

asah shelo kehogen = behaved improperly, etc.

...

Each of these provides fruitful ground for considering both the value and the limitations of legal rhetoric in the context of a comprehensive system of human behavior...

THE BEAUTIFUL CAPTIVE AND DEENAH: A STUDY IN THE RELATIONSHIP OF LAW AND NARRATIVE

What is the relationship between Torah stories and Torah law? Here are two approaches I find stimulating:

a) The stories help us understand why the laws are necessary. For example, the story of Joseph helps us understand why the Torah forbids a father to favor the son of a more-loved wife over an older brother from a less-loved wife.

b) The stories make clear the limits of law, in other words that there are always special circumstances in which following the Law will not accomplish the Divine Will. For example, it was necessary for Yaakov to marry two sisters. (I learned this broad *derekh* from a marvelous article by Rav Yehuda Kuperman of Mikhlalah.)

Of course, these two approaches generally yield opposite results when applied to the same texts. Thus b) would learn from Yosef that sometimes the Divine Will requires us to illegally favor the son of the less-loved wife, and a) would use the story of Rachel and Leah as an object lesson of why one ought not to marry sisters.

Furthermore, these approaches share the position that the Law is primary, and stories serve the law. This position may reach its extreme in Rashbam's apparent argument that the entire Creation narrative is included in Torah to justify the rationale offered in the Aseret HaDibrot for the legal obligation of observing Shabbat.

One might, however, argue the reverse – that the stories are primary, and the laws provide necessary context for understanding them. Thus, for example, one cannot even begin to understand the "motel episode" without knowing that Jews are commanded to circumcise their male children on their eighth day of life.

My primary thesis for this week is that the Law of the Beautiful Captive, which opens our parashah, should be read together with the episode of Deenah at Shekhem...Granting the connection, which of the above approaches is most compelling and/or productive?

It is important to acknowledge that both sections are deeply troubling ethically. The Law of the Beautiful Captive seems to accommodate rape, and the episode of Deenah seems to have no fundamental objection to revenge massacres. I would very much like to find an approach that sees the two challenges as almost cancelling out, so that each story becomes more ethically comprehensible in

light of the other. In other words, the Law seems to underreact, and the narrative seems to portray an overreaction – but is there a possible middle ground?

I think we can begin developing such an approach (which I admit I cannot as yet fit directly with any precedent) by closely studying the outcome of the Law. A beautiful woman is captured after her community loses a war; as a result, she ends up either a fully legal wife or else a divorcee, with the Torah having a clear bias toward the latter. She is not returned to her family, and she may not be enslaved. Either way, she is given a month in which to express her grief about her parents without interference.

What of Deenah? She is not given any time or power to process or affect what happens to her, by either Shekhem or her brothers. Shekhem tries to seduce her immediately after raping her, and the brothers intervene violently and then remove her from the scene without speaking to her.

In other words, the one option Deenah is not given is independence.

Rashi famously cites the Rabbinic dictum that the Law here is not a moral ideal, or even reflective of moral toleration, but rather an accommodation to an immoral reality – "the Torah spoke only in the context of the evil inclination". Essentially all commentators interpret the regimen laid down by the Law as an attempt to prevent the move from חשק to חפץ, from lust to sustainable desire. This is generally understood as a way of protecting the Jewish soldier from the consequence of a (possibly polygamous) quasi-intermarriage, which will inevitably lead to marital strife, favoritism, and eventually evil children.

But we can also understand the Law as an attempt to give the captive women a chance at self-determination, to make the best of her terrible situation. It is not enough simply to release her – as a rape victim, she runs the risk of being killed by her own family to prevent their disgrace (which may not result from her supposed lack of chastity, but rather from their obvious lack of power to protect her), and as an unmarried nonvirgin, she runs the risk of ongoing sexual abuse. She can reconstruct her life in two ways – as a wife, albeit the wife of a man who previously has shown ultimate disrespect for her autonomy, or as an ex-wife. (Note: It is not clear to me why divorcees are less vulnerable sociologically than unmarried rape victims, but it seems clear to me that they are.) But recognizing the emotional vulnerability of victims (Stockholm syndrome), and the toxic mélange of guilt and affection that abusers often feel, the Torah insists that she be given an autonomous space – mourning her family – and time before the decision is made. It is exactly this that Shekhem fails to give Deenah. But Shimon and Levi likewise fail.

The Torah goes out of its way to express the subjective genuineness of Shekhem's attachment to Deenah – "his soul cleaved to Deenah son of Yaakov, he loved the lass, and he spoke to the heart of the lass". He does not hesitate to circumcise because he is genuinely חפץ בבת יעקב. But his father Chamor understands none of this – "Shekhem my son – his soul has חשק for your daughter".

Shekhem understands that his father cannot understand. To his father he says only "Get this *girl-child* for me as a wife". To his people he makes no romantic appeal, only a cold-blooded commercial argument. In other words, even if he repents what he has done to Deenah - and the Torah does not mention that his newfound love entails regret for what he did to her – his repentance does not lead him to challenge the cultural framework that led him to abuse, to prevent it from happening again.

Shimon and Levi respond on the axis that he sets up – they see Deenah as a pawn in a power game, and they seek only to win the game. So now it is Shekhem's women who become captive, and the cycle can go on. Thus we reach the story of the Concubine of Giv'ah end of the Book of Judges, when the Tribes of Israel play both sides of the story, rapists and avengers, and G-d's oracle sends them into battle to kill one another.

Thus the Law and the story work together – without the story, we might not realize that the Law is a salvage attempt, and without the Law we might not understand why no one in the story acts properly even after the abuse. Reading them together can enable us to escape the trap of Judges and build a genuinely just society with the positive goal of giving every human being the capacity to make their own decisions. May the Almighty grant that we build such a society.

IN THE AFTERMATH OF A LYNCHING

...Commitment to *toras emes* requires the admission that the Torah contains at least two narratives which seemingly leave space for vigilantism, and worse, both deal with physical intimacy between Jews and non-Jews. And it seems possible that the Jews who nearly murdered Jamal Julani were, in their own minds, heroically reprising the roles of Shimon, Levi, and Pinchas. Almost certainly the Jews who valorize the mob see them that way. We are at risk of another Yigal Amir-style perversion of Torah.

The question is how best to respond to such perversions. In the aftermath of the Rabin assassination, I published and taught what I consider legally compelling explanations of why one could not halakhically declare an elected prime minister a rodef because he pursued polices that one believed were tragically mistaken. Similar expositions are necessary here - It is vitally important for us to develop a rhetoric that firmly opposes intermarriage but does not depend on devaluing Gentiles.

But in the short term, what I think is necessary is that an overwhelming halakhic voice be heard simply rejecting this act of violence, and more – that a powerful public halakhic voice emerge that can be counted on to reject all similar actions. I am cheered that those rabbis to whom I have reached out thus far to discuss this specific issue – including a shul rabbi, a high school mechanekh, a rosh yeshiva, and a political activist – have shared my moral outrage. Perhaps some redemption can yet emerge from this tragedy...

MARTYRDOM AND LAW

Sanhedrin 13b

"Said R. Yehudah said Rav: Especially remember that man for good – his name was Rabbi Yehudah ben Bava – as if it were not for him, the laws of fines would have been forgotten in Israel.
Because once the wicked government decreed religious suppression on Israel, (specifically) that anyone who gave semikhah would be killed, and anyone giving semikhah would be killed, and any city in which semikhah was given would be destroyed, and the areas near it would be uprooted...
What did Rabbi Yehudah ben Bava do?
He went and sat between two great mountains and between two great cities at the border of two Shabbat-boundaries, between Usha and Shafram, and gave semikhah there to five elders, namely: Rabbi Meir and Rabbi Yehudah and Rabbi Shimon and Rabbi Yose and Rabbi Elazar ben Shamua...
When their enemies spotted them, he said: "My sons, run!"
They said to him: "Rebbe, what will happen to you?"
He said to them: "Behold, I am in place before you like a stone that no one can overturn?"
It was said: "They did not move from there until they has pierced him with 300 iron lunbiot and made him like a sieve."

While based in Efrat over the past two weeks, I've been reading Rabbi Shlomo Riskin's semi-autobiographical collection "Tziyunei Derekh". Among the many highlights of the book is a citation from the Rav's shiur at Rav Riskin's Chag HaSemikhah (I believe it is given full treatment elsewhere). The Rav cited the story on Sanhedrin 13b of Rabbi Yehuda ben Bava giving up his life to preserve "real semikhah", the direct-line-from-Mosheh-Rabbeinu ordination. I want here to analyze both the story itself and the Rav's reaction...

Rather than sharing the gemara's celebration of Rabbi Yehuda's action, the Rav asked: Since "real semikhah" is not one of the mitzvoth which one must die for, what justified his sacrifice? (This question has particular force according to the Rambam's position sacrificing one's life for other mitzvoth is forbidden.)

The Rav began his answer by noting that "semikhah" literally means "leaning on", and generally it is the weak who lean on the strong, as the elderly lean on the young. So the act of "giving semikhah" to students really means that one leans and relies on them. More dramatically, every word that a

teacher learns dies with him unless his students repeat it; the life of a teacher without students simply disappears.

Therefore, the Rav concluded, Rabbi Yehuda ben Bava did not sacrifice his life by giving his students semikhah – rather, he preserved his life.

Now this *vort* of the Rav seems to me to raise the classic question of how seriously one should take the halakhah found in aggadah – do the statements and actions of rabbinic protagonists in rabbinic narratives necessarily reflect normatively legitimate positions? So here – would the Rav have paskened halakhically that one may give up one's physical life to preserve one's intellectual legacy? Only one's Torah legacy? Even if one's legacy seems relatively trivial – would Todos of Rome have been permitted to die so as to perpetuate his understanding of the bravery of the frogs of the second Plague?

My sense is no – that here the Rav was not speaking in rigorous halakhic term at all. But this raises a perhaps more challenging question, which is whether the Rav would nonetheless have endorsed Rabbi Yehudah ben Bava's action even though it was not justified on objectifiable halakhic grounds, but only because it subjectively met the normative criterion of pikuach nefesh.

Now an additional point here is that Rabbi Yehuda ben Bava's Torah would have survived anyway, and the Talmud itself frames the issue in terms of the objective contribution he made.

Furthermore, real semikhah did not, in the end, survive - my *masoret* from various medieval historians is that this was because mechanisms were found to accomplish everything that made semikhah essential. Chief among these is the statement found often in the Talmud that "we serve as their agents", i.e. that the last people with semikhah authorized us to act perpetually in their stead.

So let us imagine the following scene:

Rabbi Yehudah ben Bava is standing in a mountain pass, poised to give semikhah to his students. Below, a squad of Roman archers begins moving into attack position. Rabbi Yehudah says to his students: As soon as I place my hands on your head, run!

They replied: "But what will happen to you, rebbe? Won't you be killed?"

He replied: "I will stand before you like a stone that no one can overturn. They may piece me with javelins like a sieve, but I will hold the pass until you escape!"

Rabbi Meir then spoke up: "Rebbe, your heroism is inspirational, but perhaps there is another way. Why not simply appoint us to be your agents for all purposes that would otherwise require semikhah?"

Rabbi Yehudah ben Bava stood openmouthed for a moment, then said: "Meir my most brilliant student, you are absolutely right".

So they walked down the hill together, right past the Romans.

PRINCIPLED COURAGE OR OBSTINACY?

ויקח אלעזר הכהן את מחתות הנחשת אשר הקריבו השרפים
וירקעום צפוי למזבח:
זכרון לבני ישראל
למען אשר לא יקרב איש זר אשר לא מזרע אהרן הוא להקטיר קטרת לפני יקוק
ולא יהיה כקרח וכעדתו
כאשר דבר יקוק ביד משה לו:

"ולא יהיה כקרח וכעדתו" can be read as a command –
"must not [act] in the manner of Korach and Korach's *eidah*",
or else as a description –
"will not [be punished] in the manner of Korach and Korach's *eidah*".

Reading it as a command raises the question – exactly what behavior must one not engage in?

To this there are two basic Rabbinic responses:

A) One must not challenge the hereditary priesthood
B) One must not "hold firmly to *machloket*".

...

In Meishiv Davar 2:9, Netziv further notes that the phrase is "like Korach and like his *eidah*", rather than "like Korach and his *eidah*", thus allowing the verse to account for the different fates and sins of Korach and his *eidah.* He therefore allows the verse to account for two imperatives – do not challenge the hereditary priesthood (like Korach's *eidah*) and generally do not seek sanctification which is not prescribed (like Korach), as this is almost certainly the result of ego rather than of genuine thirst for the Divine.

Now Chazal's second imperative is "Don't hold firmly to machloket", rather than "Do not demand excessive sanctity", so Netziv in Meishiv Davar does a better job of reclaiming derash as pshat than he does in Haamek Davar. But I think that his two readings unify in the sense that obstinacy in machloket is often the result – as he notes in Meishiv Davar – of a misplaced sense of a right to spiritual leadership. Of course, obstinacy in machloket, when the issue is who will be leader, generally requires two sides, especially when one does not have the option of appealing for a Divine ordeal to determine who is justified, and so this prohibition is often more useful as a self-check than as an objective

determinant. Morever, it is precisely the machloket that is for the Name of Heaven that endures, even though this is opposed to "the machloket of Korach and his *eidah*". Nonethless, asking participants in a leadership controversy to explain their cheshbon hanefesh on this issue can often be illuminating, and we should certainly ask this of ourselves whenever we find ourselves involved in such a machloket.

SEEING TORAH IN PROPORTION

Images on computer screens are actually comprised of pixels, tiny but discrete dots of light. This means that, absent infinite resolution, the image on the screen necessarily oversimplifies reality, as all colors must be presented in blocks the size of the pixels, and the amount of each color is a multiple of that same size.

Metaphorically, the same recognition illustrates Dr. Jeffrey Rosen's powerful argument for the right to privacy, and inversely, the halakhic prohibition against stating negative truths about another person. What any one person hears about another will always take on some significance – occupy at least one pixel in their mental image – even if in true proportion it would demand only half, or a thousandth, of a pixel.

Roughly the same principle covers the effect of statements about that halakhic prohibition. Every Torah statement we learn occupies at least one unit of memory, and if we know less than all of Torah, that statement will assume disproportionate significance.

In both the visual and intellectual realms, artists/teachers seek ways to overcome the limitations of form and audience. Brightness, dullness, context, and other devices can make blocks of color seem larger or smaller than they are objectively, and the same is true of ideas and values.

...

The thing is, we don't know all of Torah, and so our vision of Torah is of necessity pixellated. Rabbinic statements – especially nonhalakhic statements – are often not intended to describe the objective proportions of Torah, but rather to present Torah in a way that will balance the gaps in our knowledge and distortions of our spiritual vision.

The risk, of course, is that we will misinterpret those statements as objective truth, and correct for our known failings, as I might take ten minutes off my perennially fast alarm clock's time without realizing that my wife reset it the night before. Teachers of Torah therefore must know their students as well as their subjects, and students must know their teachers, and the purpose of study is to generate a dynamic equilibrium centering on truth.

ON SINGING THE MUSIC OF A SINNING SINGER

One of my favorite metaphors in learning is the "Archimedean point". Archimedes taught that given an infinitely long lever, he could move the world, so long as he and his fulcrum were outside the world. In philosophy, this is a metaphor for a position of true objectivity; but I prefer to use it to describe the immovable intellectual, moral, etc. positions from which a person evaluates everything they learn or experience. These are the givens of a *posek*'s world, and they teach you more about their vision of Halakhah than the contingent analysis they offer of any given text or issue.

In the attached and translated teshuvah, dated 22 Iyyar 5719, Rav Moshe Feinstein zt"l was asked whether it was permitted at weddings to sing the songs of a composer who had over time fallen into religiously objectionable habits. Here, to my mind, are the givens with which Rav Moshe approaches the issue:

a) There is no religious objection to using the secular intellectual discoveries of evil people, or to mentioning the discoverers by name when doing so (I hasten to add that this does not relate directly to the question of discoveries made by means of or in the course of highly unethical behavior)

b) We do not allow a person's eventual sins to wipe out all memory of their earlier virtues, nor do we assume that their eventual fall was implicit in all their earlier actions.

Now in addition to the given principles, a posek is likely to have in mind a set of primary texts that must be accounted for. Other texts may emerge, and be seemed significant or irrelevant, in the course of thought and discussion, but the analysis will likely be evaluated by how well it explains the initial set. Here I think the key texts are

1) Mishnah Avot 4:20 quotes a statement from Elisha ben Abuya, even though Talmud Chagigah tells us that he apostasized and was thereafter cited only as "Acher" = "Other".
2) A Torah Scroll written by an apostate must be burnt rather than used.

On the basis of those texts and givens Rav Moshe concludes that the imperative to "have the name of the wicked rot", and therefore not to cite the works of the wicked when they are recognizable, only applies to sacred matters, and even then only to works produced during a time when they were (already) wicked.

This leaves him with two undecided issues regarding the actual case:

A) Is a tune sung at weddings a "sacred matter"? Does the choice of lyrics matter?

B) What standard of "wickedness" generates a ban on publicizing sacred works?

Rav Mosheh tends to believe that wedding tunes are not sacred, regardless of lyrics, and that the standard of wickedness is quite high, comparable to the apostasy or heresy necessary to require burning a Torah scroll.

It must be noted that Rav Moshe very much avoids the question of whether tunes sung in shul are "sacred matters" for this Halakhic purpose. He also does not address the status of someone who commits serious interpersonal crimes, or the weight one should give to the possible presence of victims in the audience when one sings, whether at weddings or in shul. Nor does he address a situation in which singing the tunes as part of a general attempt to exalt the composer, such that even nonsacred contexts contribute to the composer's cachet in sacred contexts.

Finally, Rav Moshe distinguishes between the legal standard and the standard for the *ba'al nefesh,* the religiously sensitive individual. My sense is that the additional circumstances raised in the preceding paragraph are grounds for a baal nefesh to avoid singing the songs in public contexts, and that it would be best for communities not to exclude such baalei nefesh by making those tunes standard.

CAN/SHOULD WE BLESS PEOPLE FOR CHOOSING THE LESSER EVIL WHEN THE GOOD WAS AVAILABLE?

בראשית פרק מט פסוק ט

גור אריה יהודה מטרף בני עלית כרע רבץ כאריה וכלביא מי יקימנו:

In Bereshit 49:9, the start of the 'blessing' of Yehudah, the cantillation inserts a break between "miteref" and "beni alita", so that the translation must be "from teref/ my son you have arisen"[3]. However, just about every reader recalls that Yaakov's reaction to being shown Yosef's bloody *ketonet passim* was "*tarof taraf Yosef*", and is therefore tempted to read across the break, so that the translation becomes "from the teref of my son/you have arisen".

Rashbam resists this temptation mightily, and insults those who surrender to it as being ignorant of punctuation and cantillation.

והמפרשו במכירת יוסף לא ידע בשיטה של פסוק ולא בחילוק טעמים כלל:

Anyone who interprets this as a reference to the sale of Yosef knows nothing of the way of punctuation or of the cantillation breaks at all.

...

A second objection to seeing a reference to Yosef here is that there is no explicit Biblical evidence that Yaakov ever knew about the brother's treatment of him.

Rashi, however, even as he interprets "alita" as "arisen above suspicion", asserts that Yaakov knew full well that Yehudah had advised the sale. For Rashi, Yaakov was afraid that Yehudah had been in on the plot to kill Yosef, but now blessed him for having advised the brothers to sell him instead.

מטרף - ממה שחשדתיך (לעיל לז לג) בטרף טרף יוסף חיה רעה אכלתהו, וזהו יהודה שנמשל לאריה:

בני עלית - סלקת את עצמך, ואמרת (שם כו) מה בצע וגו'.

"Miteref" – from that which I suspected you of regarding "Surely Yosef is tarof taraf; an evil beast has consumed him", which referred to Yehudah, who is compared to a lion.

"beni alita" – you have removed yourself, when you said "what *betza (*=gain) is there if we kill our brother".

In Rashi's reading, Yaakov is not praising Yehudah for having repented of his actions in the sale, but rather for causing the sale – Yaakov , rather, repents for having suspected Yehudah of worse ... Perhaps we can say that Yaakov saw Yehudah's suggestion of the sale as a first step toward repentance.

[3] Ibn Ezra mentions but rejects the possibility of translating "from teref/my son you caused to be lifted", with "alita" transitive, i.e. Yehudah caused Yosef to be lifted out of the pit. Note also Seforno's remarkable claim that the term "beni" here is direct address to Yosef; in the midst of blessing Yehudah, Yaakov turns to Yosef and tells him not to bear a grudge, because he was not in fact killed by the brothers.

Regardless, Rashi's reading seems directly opposed to the position of Rabbi Meir on Sanhedrin 6b:

"ובוצע ברך נאץ ה'" –

רבי מאיר אומר: לא נאמר בוצע אלא כנגד יהודה, שנאמר "ויאמר יהודה אל אחיו מה בצע כי נהרג את אחינו" – וכל המברך את יהודה הרי זה מנאץ, ועל זה נאמר "ובצע ברך נאץ ה'"

"*uvotzeia beirakh* has disgraced Hashem" (Tehillim 10:3) –

Rabbi Meir says: The term *botzeia* refers to Yehudah, as Scripture says "Yehudah said to his brothers: What betza (=gain) is there if we kill our brother" –

And anyone who blesses Yehudah is a disgracer, and about this Scripture says "one who blesses a *botzeia* has disgraced Hashem".

In case anyone missed the point, Rashi comments:

"כנגד יהודה" - שהיה לו לומר: 'נחזירנו לאבינו' אחרי שהיו דבריו נשמעין לאחיו

"Referring to Yehudah" – because he should have said 'Let us return him to our father', as his brothers were heeding him.

Now Rashi on Chumash is then explicitly rejecting Rabbi Meir, as he has Yaakov **blessing** Yehudah **for saying** "*mah betza*"! This question is posed by Rabbi Chaim Paltiel, who cites R. Yehudah son of R. Natan as seeking to split the difference – Yehudah should be praised for saving Yosef from death, but nonetheless criticized for doing so on the ground that there was no gain in killing him.

Why does Rashi on Chumash reject Rabbi Meir, and so directly? I think that Rabbi Meir was well aware of the standard Rabbinic interpretation of Yaakov's *blessing*, and set out to oppose it, and Rashi maintained it in full ideological consciousness. Here's what they saw as the stakes.

Rabbi Meir's statement is cited by the Talmud as an apparent tangent in a discussion of *pesharah* = *betziah* = *splitting* = *compromise* as a mode of judicial practice. Perhaps, though, Rashi understood that it was not really a tangent – rather, for Rabbi Meir, Yehudah is a Biblical model of compromise. "You want to kill Yosef, but maybe that would be wrong – so let's sell him instead." This Rabbi Meir condemns forcefully – there should be no compromise with evil. And in every court case, by implication, strict justice should win as well.

It is hard for me to believe that Rashi thinks that Yehudah did the right thing by saying "Mah betza", rather than standing against his brothers' evil plan. But Rashi may think that it was the first step toward Yehudah's redemption. I think Rashi then goes one step farther, arguing that Yaakov could bless him for it even though it was wrong.

This last step is worthy of a major ideological battle – can/should we bless people for choosing the lesser evil when the good is available?

In practice, the question is usually slightly different – is it worth engaging with people, communities, or countries in the hope of getting them to choose the lesser evil, of achieving a "*mah betza*" moment, and the further hope that this moment will eventually lead to complete transformation, or is it better to simply identify them as evil and stand against them?

RELIGIOUS BOOT CAMP – Version 1

In the current issue of the Jewish Week, Yedidyah Gorsetman and Gary Rosenblatt report on both the profound admiration many of Rav Aharon Bina's alumni feel toward him, and the persistent allegations by some of his alumni that they experienced his behavior toward them as emotionally abusive. The Modern Orthodox community owes Mr. Gorsetman, Mr. Rosenblatt, and the Jewish Week tremendous gratitude for their courage in publishing this. While the article raises many issues of educational philosophy and judgment about which reasonable halakhic people may disagree, there can be no doubt that it conveys information that the public has a right and even obligation to know. How can anyone argue that educational institutions should not be accountable for their educational failures, or that parents should not know the risks involved in sending their children to specific institutions? There is no issue of lashon hora here – rather, the question is whether those of us, myself included, who knew these stories for years and didn't publish were in violation of halakhah, perhaps under "Do not stand idly by your neighbor's blood", perhaps under other rubrics.

The haggadah famously sees the Rabbis as seeing the Torah as addressing four sons, of whom the youngest "does not know how to ask". There is a rich interpretational history regarding the identities of the other three sons, and of which verse is associated with which son. Rashi to Shemot 13:5-8 claims that both the wicked and the "does not know how to ask" are addressed in the verse. The wicked son is addressed by the statement "for the sake of this G-d acted on my behalf in Egypt"- on my (righteous) behalf, and not on your (wicked) behalf. The "doesn't know how to ask" is implied rather than outright mentioned, as seems appropriate. 13:8 is not preceded by a question; the command "and you must tell this over to your son" appears without preamble, from which we conclude that the son is unable to ask.

The problem with this reading is that it ends up with the wicked and not-asking sons receiving the same answer. Rashi therefore concludes that the response to the not-asker is also implied rather than stated: "*vehagadta* lebinkha" means that you should open him up via *words of aggada* that attract the heart.

This is the rare comment of Rashi that seems to me obvious eisegesis, as I'm not convinced the Biblical "vehigadta" has an essential semantic relationship with the Rabbinic "aggada", and therefore Rashi here should be evaluated in terms of educational philosophy rather than as Biblical interpretation.

The claim here is that the best way to approach those who don't know how to ask is via aggada, which attracts the heart.

Now this does not seem to me a claim about how best to educate young children, but rather ignorant adults. In that sense it may seem trivial – of course the best way to reach the ignorant is to teach them something attractive. Note that Rashi in at least two other places warns against being too caught up in addictively pleasant Torah – on Berakhot 28b he understands the caution against higayon as referring to Tanakh study "that attracts", and on Shabbat 115a he explains that study of Ketuvin on Shabbat distracts laymen from the public halakhic lecture, which is better for them. So the purpose of aggada here is to open up the ignorant until they can ask questions, at which point one begins to teach them halakhah instead, such as the laws of the afikomen.

The initial educational goal, then, is to engage students' interest to the point that they have questions. When that point is reached, however, is the point to get them to ask more questions, or rather to give them answers? And is it clear that, once the students are opened up, that their questions will be good and wise, rather than wicked?

The response to the wicked son is direct and harsh, and yet I tend to assume, I think most of us would, that its purpose is to force him to ask questions of himself – whether he really wants to be the kind of person whom G-d would not redeem, or differently, whom his own parents would see as unworthy of redemption. When is this educational technique effective? And by wicked, do we refer to an overall evaluation of the person, or to any aspect of personality that is under the sway of the yetzer hora? Does Rav Moshe's radical claim that we are all tinokot shenishbu, infants raised in an alien culture, and therefore in a sense not fully responsible for at least some of our sins, mean that we cannot be truly wicked for these purposes?

RELIGIOUS BOOT CAMP – Version 2

The midrash famously describes the Torah as being given under threat, with a mountain literally hanging over Bnei Yisroel. I believe Rabbi David Silber has pointed out that this is a dramatic metaphor for the reality that the Jews are in the desert and incapable of surviving without Divine intervention.

The war with Amalek that concludes this week's Parashah is often seen as a step toward weaning the Jews away from that extreme dependence; G-d insists that Mosheh send Yehoshua to fight, rather than disposing of the Amalekites Himself, as He had done to the Egyptians.

But that reading is difficult to square with the great Mannah experiment, in which the Jews are consigned to absolute dependence for food throughout their desert sojourn. If independence is the goal, why didn't Hashem "teach them to fish"?

Now the term used for that experiment is אנסנו, from נסיון, test or experiment. It may be fruitful to note how starkly the intent here contrasts with the intent of the two most famous נסיונות in Tanakh, namely Akeidat Yitzchak and the whole story of Iyov. Those nisyonot were intended to determine whether it was possible for G-d to be loved/served entirely for His Own Sake, without any consideration of reward and punishment; this was accomplished by putting Avraham and Iyov into situations in which their inevitable future suffering, real or imagined or potential, was so great that no consideration of consequences could possibly affect them. Here, by contrast, care is taken to ensure that every choice about whether to obey Hashem is made under immediate substantial threat.

Each of these is an educational model of character building through stress – here, the stress is fear of starvation, whereas in Bereishis and Iyov, the stress is the possibility of meanglessness.

The War with Amalek is also education through stress, but here the stress is internal – will I decide properly?--as opposed to: will He decide I am not worth preserving? Or: will it turn out that He was never worth serving?

Which of these methods is successful, if any? Why was the mannah discontinued when we approached Israel, while the war with Amalek was made eternal for both Jewsand Hashem? Is the message of the Akeidah Avraham's willingness to proceed, or Hashem's unwillingness to? I trust the connections between these questions and the following will be fairly clear.

Last week I promised a fuller discussion of the educational tactics of Rabbi Aharon BInah, head of Yeshivat Netiv Aryeh, after a Jewish Week article reported on his many ardent alumni admirers as well as on a significant minority who accuse him of emotional abuse, and in one case of slapping as well. After numerous intense discussions with friends, students, and colleagues – many thanks for putting up with my persistence – here's what I'm currently, somewhat tentatively comfortable saying, and I look forward very much to strong responses.

1) There is no question that the Jewish Week acted properly in reporting on the accusations. In essence, no one denies that Rabbi Binah regularly and publicly insults individual students – their character, intelligence, physical appearance, and sexuality – and that some students experience this behavior as abuse, with concomitant psychological and spiritual damage. Potential students, and their tuition-paying parents, certainly have a right to know that this tactic is a normal and expected, although not inevitable, element of the experience at Netiv Aryeh, and that some students react to it very badly. For that matter, the information that at least some parents and children choose Netiv Aryeh despite, or even because, they are aware of this, is important for anyone seeking to understand the spiritual condition of our community, and therefore the information needs to be publicly available.
2) The Jewish Week did not have the resources to conduct the kind of sustained investigation that this information warrants. We need to know whether the tactics, and perhaps the mistakes and failures, are accelerating as Rabbi BInah ages; the true extent of the minority that reacts badly, and the consequences of that reaction; whether the allegations that the rich or meyuchasdike students are not treated in this way are true; whether physical boundaries are crossed; whether the students who adore Rabbi Bina and go into education use these tactics themselves, and for that matter whether they parent that way; whether the claims that many kids are saved from drug addiction and the like are literally true; and so on, if we are to properly react. Such an investigation should include sustained, qualitative interviews with selected alumni from both groups, and its report should include, and make public, sample video of the controversial Halakhah shiur, with the students' faces obscured. YU is the obvious candidate to investigate, and I think whether and how they do so will rightly have a significant impact on the public perception of that institution.
3) Prima facie, Rabbi Bina's tactics have viable educational precedents, both within and without Judaism. Military training – "Boot Camp" – uses the same tactic of "breaking someone down in

order to rebuild them", employing the same genre of insults. Many classical models of intense male mentorship relationships – think Karate Kid, or Resh Lakish and Rav Yochanan – take similar risks for similar aims And based on the deeply antagonistic description that the Yiddish novelist Chaim Grade's memoir-as-fiction, The Yeshiva, gives of the mussar yeshivah in Navaredok, these tactics were essentially theirs as well, and had the same negative effects on at least some students.

4) Now Navaredok was also strongly condemned for its tactics, and so far as I can tell, its methods did not survive in its successor institutions. Furthermore, American Modern Orthodox education has moved very much in the opposite direction, with public shaming no longer seen as an acceptable educational method even in a semikhah shiur – the Rav's shiur in the early years, for example, would likely be seen as ethically problematic nowadays – and with stress-relief seen as a major public mental health goal in high schools, rather than the deliberate imposition of stress as a character-building exercise.

   I myself have been in one shiur which used public shaming as a tactic, and one class which imposed stress as a training tactic – the shiur was the best intellectual experience of my life, and the class has had a positive lifelong impact despite causing serious trauma at the time. So I am ambivalent about the near-universality of the shift away from such methods.

   At the same time, I find it fascinating that parents who in any other context would share the social disapproval of such methods, or at least their relegation to the defined areas of military training and addict reclamation, voluntarily send their children to Netiv Aryeh, and the children go voluntarily. The revelation of the article to me was not that Rav Bina teaches that way – as the article point out, this was widely although not universally known – but that Netiv Aryeh is nonetheless the largest Shanah Alef program. Why is this so?

5) I think there is a broad sociological phenomenon that needs to be properly understood as background.

   In the Charedi world, as I understand and to some extent remember it, high school is the time for experimentation, not least because it involves time set aside for childish things, i.e. general education. The transition to Beit Midrash is expected to be accompanied by increased focus, responsibility, and accountability, not least because how one advances intellectually, and is perceived personally by one's teachers, will have a direct effect on future job, education, and marriage prospects.

In the Modern Orthodox world, by contrast, high school is a time of great seriousness and high stakes, with a very structured environment and the constant recognition that how one does will affect what college one gets into, and how much one will receive in scholarships, all of which matters a great deal. Beit Midrash – which is constructed as "the year in Israel", and "shannah bet", rather than as the beginning of a longterm, even lifeterm, commitment – is an opportunity to "find oneself" and experiment in a consequence-free environment, as nothing that happens to one in yeshiva, or that one does in yeshiva, has objective or inevitable academic or for that matter even social consequences.

Now this leads to Modern Orthodox "gap year" students behaving very immaturely and exhibiting behaviors that would be developmentally worrisome in the charedi world, and when set against that context, makes them seem shallow and unserious and at-risk. They look, in other words, like candidates for spiritual boot camp.

And perhaps they are. But it is also possible that they are just "acting out", and will naturally revert to a cultural norm, to being very much like their parents. In which case boot camp is necessary only if one sees their parents as unacceptable.

The year I spent at Gruss, a program called BMT still shared the premises. BMT's strategy, which also ended up with kids who were radically more serious at the end of the year than its start, was, as explained to me, simply to let the kids wear themselves out partying for the first few months, and as that slowly got boring, make sure that the kids found their way to the beit midrash and felt deeply cared for there. Some kids never had that epiphany, never found partying boring, and would gently or otherwise be eased out. But most eventually chose to learn seriously, to take religion seriously, etc. and I have no reason to believe that Netiv Aryeh is more successfully transformative for a higher percentage of the same kind of students than BMT was.

Adolescence may be a disease, but like many diseases, aggressive treatment may have little impact on outcomes, and the side effects are serious. Certainly one should not treat without fully informed consent, and there should be ongoing and comprehensive studies of effectiveness and results.

TAKING YITRO'S ADVICE

In a stimulating and powerful CMTL public conversation. Rabbi Yehuda Gilad noted that Mosheh's acceptance of Yitro's advice demonstrates that even those who know all of Torah have things to learn from the non-Jewish world.

I suggest that the narrative of Yitro is placed before Matan Torah to teach us two *prerequisites* for the proper acceptance of Torah. The first is the necessity of broadmindedness for the proper understanding of Torah. The second is the recognition that justice is at least as much a function of administration as of theory, and administration is about more than conformity.

Each of these rests on the recognition that for an entire nation to be "as one person with one heart" does not mean that it is homogeneous, but rather that it is complex, as is each individual, and organic unity involves the capacity to integrate difference into a whole. The heart is not our only organ.

BEIT DIN AND THE SECULAR COURTS

The opening sentence of Parashat Mishpatim

ואלה המשפטים אשר תשים לפניהם

*and these are the statutes that you must place before **them***

is understood by the Rabbis as requiring legal cases to be brought before a specific set of *them*, namely qualified Rabbinic judges who have been ordained in a direct line from Sinai, and consequently excluding two specific sets of *them*, namely Gentiles and unqualified Jews (הדיוטות).

The necessary line of ordination has long since ceased, and Halakhah has found various mechanisms for transferring many of their powers to ordinary Jewish courts. Nonetheless, the halakhic consensus has maintained the prohibition against suing fellow Jews in front of a Gentile court, even when those Gentiles are appointed by a legitimate government[4]. The prohibition does not extend to defending oneself against a suit brought by fellow Jews, and can be waived under a variety of circumstances, and nonhalakhic Jews have generally not resorted to rabbinic courts. The practically effective jurisdiction of rabbinic courts over the Jewish community in America has accordingly been very limited.

This decline in jurisdiction has led inevitably to a decline in available resources, at the same time as the resources necessary to properly judge many cases have increased dramatically. Government courts now resort regularly to hordes of experts aside from lawyers, and large financial cases require forensic accounting and other skills not widespread in the rabbinate; they also require tremendous numbers of hours of work by judges, clerks, court recorders and the like.

The practical effect of this is that most batei din make no effort to handle most genuinely difficult cases, and limit themselves to divorce, conversion, and the equivalent of small claims court. But there are circumstances where this is insufficient.

Suppose, for example, that a woman asks a beit din to assist her by ordering the husband to give her a bill of divorce, as their civil divorce has already been finalized. The husband counterclaims that he is perfectly willing to give the divorce once they settle the financial issues. However, he argues that she has a great deal of money in offshore accounts that was not disclosed to the cicvil divorce court, that

[4] Some future week I hope to trace the development of that consensus.

she accordingly owes him significant money, and that he is within his rights to deny her a get while that issue remains outstanding. What is the beit din to do, short of hiring a forensic accountant at exorbitant cost?

Or suppose that a beit din wished its associated kashrut agency to reject food produced by industrial producers with a record of illegally firing workers who seek to unionize. Or that it wishes to investigate a claim by a communal institution that a trustee has commingled funds. The beit din is unlikely to be able to verify the claims on its own. This is fundamentally the case with regard to almost any moral issue of communal importance.

How is a beit din to handle such matters? My suggestion is that it must rely on the factual determinations of governmental agencies, and specifically of the "secular courts". The basis for this suggestion is Mishnah Gittin 1:5:

כל השטרות העולים בערכאות של גוים, אף על פי שחותמיהם גוים, כשרים, חוץ מגיטי נשים ושחרורי עבדים

All documents that arise in the Gentile courts, even though the witnesses who sign them are Gentiles, are valid, except for writs of divorce and writs of manumission.

But how far does this rule go? Using the frame of the Mishnah, what distinguishes "all documents" from "writs of divorce and writs of manumission"?

Talmud Gittin 10b assumes that "all documents" includes both purchase and gift contracts. Purchase contracts it justifies on the grounds that they are mere evidence, while the transaction itself is effected by the transfer of money, but it has difficulty with gift contracts, where the document itself enacts the transaction. This is resolved in two ways – Shmuel invokes the principle "The law of the land is the law", while a second answer is that gift contracts are excluded as being within the same category as the excluded writs. Ritva there clarifies that the distinction is not with regard to the subject of the documents, but rather their purpose – thus documents that serve as *evidence*-of-gift are certainly valid. Bartenura to the Mishnah records the consensus distinction as follows:

ודוקא בשטרי הלואות ושטרי מקח וממכר שהעדים ראו בנתינת הממון. אבל שטרי הודאות וגיטי נשים, וכל דבר שהוא מעשה בד בערכאות שלהם, הכל פסול:

Specifically documents of loans and purchases and sales, where the witnesses saw the giving of the money, but documents of admission or writs of divorce, and everything that is an act-of-court (performative) in their courts, all these are invalid.

The question not explicitly addressed by these sources is the status of evidentiary documents more broadly, in nontransactional cases. Should a beit din accept as fact court documents that state the total of a person's assets, or that a person x failed to pay their employees minimum wage, or commingled funds, etc.?

To my mind, the dispositive current statement in this regard can be found in Rav Ovadiah Yosef's Responsa Yabia Omer 7:14, which addresses the longstanding question of whether a government death certificate is sufficient to allow the (putative) widow to remarry Jewishly:

והנה המהר"י קולון (שרש קכא) כתב,

דערכאות עדיפי מעכו"ם מסיח לפי תומו, ויש להתיר על פיהם אפי' בלא טעם דאשה דייקא ומינסבא, וגם בלא טעם דמשום עיגונא הקילו בה רבנן, משום דחזינן דאף היכא שצריך עדות גמורה כדי להוציא ממון מחזקתו, דבעינן שני עדים, סמכו על חזקה דלא מרעי נפשייהו, כדאשכחן (בגיטין י ב) גבי שטרות העולים בערכאות של גוים בשטרי מכר, דסמכינן עלייהו, אפי' בלא הטעם דדינא דמלכותא דינא. ואף על פי שאילו היה הערכאי משקר לא היה לו אלא מעט זלזול, אעפ"כ כיון שהוא דיין אמרינן שאינו משקר, כדי שלא לפגום כבודו, ואף לענין גט הוה סמכינן על חזקה זו, אי לאו משום דלאו בני כריתות נינהו, דלא שייכי בתורת גיטין וקידושין, כמ"ש רש"י גיטין (ט רע"ב), וכל שכן הכא דאי לאו דקושטא קאמר הוה מרע נפשיה וכו'. ע"ש.

ולכאורה יש להעיר לפי מ"ש התוס' גיטין (ט ב) ד"ה אף על פי,

שאף שעכו"ם פסול לעדות לכ"ע, וא"כ היה ראוי לפסול מן התורה כל שטרות העולים בערכאות של עכו"ם, כיון דלאו בני עדות נינהו, ואפילו שטרות העומדים לראיה בלבד, מ"מ תקנתא דרבנן היא היכא דקים לן בסהדותייהו שהיא אמת משום דלא מרעי נפשייהו. ע"ש.

וא"כ איכא למימר כי עבדי רבנן תקנתא היינו בממונא אבל באיסורא לא עבדי רבנן תקנתא, וכמ"ש בב"מ (כז רע"ב) לגבי סימנים,

ואפשר שהרגיש בזה מהריק"ו, ולכן הוצרך להוכיח עוד שאף לענין גט הוה סמכינן על החזקה דלא מרעי נפשייהו אם לא משום דלאו בני כריתות הוא. ולפ"ז גם באיסורין סמכינן על חזקה זו.

Mahari Kolon (#121) writes[5] *that*

> *courts are superior (evidentially) to Gentiles who speak "in their innocence"*[6]*, and one may permit a women to remarry even without the rationale that "a woman investigates before remarrying"*[7]*, and also without the rationale that "the Rabbis were lenient to prevent her from becoming chained (agunah)", because we see that even where we*

[5] Mahari Kolon's case and language deserve separate treatment; the citation here is somewhat condensed
[6] This is a halakhic term-of-art meaning that they speak without knowing the halakhic consequences of their statements. Talmud Yebamot 121b explicitly accepts such testimony regarding a husband's death.
[7] Which Talmud Yebamot 93-94 says is necessary to permit remarriage on the basis on one valid Jewish witness

(otherwise) require absolutely valid testimony to remove property from its presumptive owner, where we require two valid Jewish witnesses, we rely on the legal presumption that the gentile courts do not damage-themselves (by endorsing false testimony), as we find regarding "documents that arise in the Gentile courts" regarding contracts of sale, that we rely on them even without the rationale "the law of the land is the law". Even though the court-official would suffer only minor disgrace were he to lie, nonetheless, since he is a judge, we say that he does not lie, because he wishes not to damage his honor. We would rely on this presumption even for writs of divorce, were it not that such writs are invalid because "Gentiles are not capable of effecting divorce", as they are not "included within the sphere of halakhic divorce and marriage", as Rashi writes (Gittin 9b), all the more so here, where if it were not true the judge would be damaging-himself. (End citation).

At first glance one can pose a difficulty regarding this, on the basis of Tosafot, who write that even though a Gentile is a formally invalid witness according to all opinions, and therefore it would have been proper to invalidate under deoraita law all documents that arise under Gentile courts, since they are not formally capable of testifying, nonetheless accepting their testimony is a Rabbinic enactment wherever we take-it-as-given that their testimony is truthful since they will not damage-themselves,

so that one might suggest that the rabbis only enacted their acceptance of evidentiary documents arising in Gentile courts with regard to financial matters, but not with regard to ritual matters, as Tosafot write regarding identifying-marks-on-objects,

and it is possible that Mahari Kolon himself realized that one might pose this difficulty, and therefore found it necessary to demonstrate that we would rely on such documents even with regard to divorce, on the basis of the presumption that they would not damage-themselves, were it not for the problem that they are not "capable of effecting divorce".

According to this we rely on that presumption even with regard to ritual matters.

Thus it seems that Halakhah accepts all factual determinations by Gentile courts, at least ones that are not presumptively corrupt.

The remaining question[8] is how to deal with issues that are admixtures of fact and law, where the factual determination is not, or is not necessarily, a mere matter of testimony, but also of legal or

[8] I thank Rabbi Zalman Krems, Administrator of the KVH, for pushing me to clarify this point.

practical judgment. For example, a declaration of death may rely on a definition of death, or on the determination that a particular witness was credible, or on circumstances such as extended abandonment without notice. Similarly, a declaration that x owes money to y may rest on a legal position as to what constitutes a debt or obligation. How then can Halakhic courts rely on such determinations, especially where Halakhah has its own established evidentiary canons?

I suggest that the answer is that we separate the factual from the legal content, and that we presume the truth of the factual content absent a clear demonstration that it was reached by clearly insufficient means. In other words, we tend to trust their judgment and not only their honesty, and we presume that facts are actual rather than constructed.

This formulation is also important with regard to criminal law. There is a widespread misconception that one may not halakhically report Jewish criminals to the secular authorities unless they could be convicted in a halakhic court on the same evidence. The problem here is that formal Halakhic criminal law is not, as currently constructed, intended to actually order society, so that a practical halakhic court would have to enact what the Derashot HaRan famously calls "the king's justice" on the basis of reasonable but currently anhalakhic standards of evidence. The current halakhic *evidentiary* standard for reporting criminals, or for acting on the basis of a criminal conviction, is therefore reasonableness, with the presumption that the American court system behaves reasonably.

METAPHORS, SYMBOLS, AND EQUALITY

Let us distinguish between metaphors and symbols, as follows:

The metaphor (or simile) has only one meaning, already known to its formulator, and constitutes an attempt to convey that knowledge to someone else. Any divergence between what the author intends and the reader derives is a failure of communication. The metaphor has no intrinsic significance; it is not a source of meaning. Metaphors are nonetheless useful and powerful in that they enable us to efficiently and accurately convey experiences and ideas through analogy that cannot, or at least that we the authors cannot, be directly or concisely described. Thus to say that Julius Erving played basketball as if it were ballet, or (lehavdil), that the multiple panzer thrusts of Rabbeinu Tam's intellect shattered the old simplistic interpretations of the Talmud[9], rapidly and vividly brings the impact of their respective talents to life for readers.

Symbols, on the other hand, may have infinitely many meanings, most of which are left by the author for the reader to discover. A symbol is itself the known truth, whose implication for experience and intellect need to be discovered, and perhaps disputed. Thus for example perhaps the American flag, or lehavdil, the (not quite) Burning Bush.

A nafka mina (practical difference) of relating to something as symbol rather than metaphor is that the interpretation of symbols calls for us to find analogies in our own experience, and legitimates the discovery of new meanings without prejudicing the legitimacy of older interpretations.

The construction of the Tabernacle and its accoutrements were symbolic actions, and it would be a mistake to reduce them to metaphor, except, perhaps, in the sense that the Tabernacle is clearly a literal microcosm – a metaphor for everything – a universal metaphor - can be as capacious of meaning as the universe itself. At the same time, rigorous accuracy in terms of the phenomenon of the symbol is a prerequisite for interpretation – understanding the flag on the assumption that is has 15 rather than 13 stripes, or the Bush on the assumption that it referred to an ex-President, would be wholly illegitimate.

Nechama Leibowitz zt"l's Parshat Terumah sheet for 5722 draws attention to a detail of the Torah's account of the construction of the Tabernacle's construction. The verb used to command the construction varies between ועשית, first person singular, and ועשו, third person plural. She cites two

[9] See Dr. Hayyim Soloveitchik, "Three Themes in Sefer Hasidim", AJS Review

different treatments of one subset of those cases, that while the Shulchan, Menorah, and the subunits of the Aron are in first person singular, the Ark itself is in third person plural.

The first, Midrash Tanchuma (attached), states that "therefore The Holy Blessed One commanded to all Israel to construct it, so that no one of them would have the capacity to open his mouth toward his fellow and say "I donated heavily to the Ark, therefore I learn a lot, and I have a greater share in it than you, whereas you donated almost nothing, and therefore you have no share in Torah". This is followed by a series of metaphors drawing the moral that Torah is open to all, and culminates with Rabbi Shimon bar Yochai stating that the three ornamental edges – on the Aron, the Kaporet, and the Shulchan – represent the Three Crowns of Rulership, Priesthood, and Torah, and whereas David took the first, and Aharon the second, the Crown of Torah is highest of all and still open to all.

A similar point is made elsewhere, and cited by Rashi, about the three *terumot* mentioned in the opening two verse of the Parashah, with two identified as defined contributions and one undefined. The undefined one is for the overall construction of the Mishkan, which, we should note, is also commanded in the third person plural – ועשו לי מקדש. And yet this interpretation points up an apparent gap in the Tanchuma – everyone was commanded, but in fact not everyone gave the same amount, so why should those who gave more not be able to claim a greater share?

The second treatment Nechama Leibowitz cited, Or HaChayyim (attached), makes a very different point. "This is perhaps intended to hint that no existent in the world can do all the roots of Torah, and this is the proof for you: If he is a kohen, he cannot fulfill the giving of the 24 priestly gifts, or the redemption of the firstborn, etc."; if he is an Israelite, he cannot fulfill the positive commandments involved in sacrificing sacrifices and their laws, which involve numerous positive commandments; and so too the Levite. But in the generality of all Israel the generality of all the roots of Torah can be fulfilled."

אולי שרמז שאין גופה של תורה יכול להתקיים אלא בכללות כל ישראל,
ואין מציאות בעולם יכול עשות כל עקרי התורה,
וזה לך האות:
אם הוא כהן, הרי זה אינו מקיים נתינת כ"ד מתנות כהונה ופדיון בכור וכו';
ואם הוא ישראל, הרי אינו יכול לקיים מצות עשה שבהקרבת הקרבנות ודיניהם אשר רבו מצות עשה שבהם;
וכן לוי;
ובכללות כל ישראל יקיימו כללות עקרי התורה,
לזה אמר "ועשו" לשון רבים,

Or HaChayyim seems to fits better with the data than the Tanchuma, although I am puzzled as to why he makes his point about the Aron rather than about the Mishkan as a whole. Note also that the points are not really incompatible, as the Tanchuma relates to the **study** of Torah, and Or HaChayyim to its **practice.**

One other point needs to be made about Or HaChayyim. He is not saying "separate but equal" – equality is not his moral stake, but rather necessity. So long as one is needed, it does not matter how much more important someone else's work is – or to put it differently, necessity is sufficient equality, as we each have duties corresponding to our talents, and the moral stake is that all of each of us is equally needed.

This is a challenging perspective for Americans, and it raises a difficulty with symbols – since they are so undefined, so deliberately open to subjectivity, will we ever be willing to discover meanings in them that we disagree with? Can we be accountable to them?

I prefer to think yes, and at the same time, valorize the construction of new meanings that fully match the data and are fully consonant with our deepest intuitions.

COMMANDEDNESS

In memory of Matt Eisenfeld, murdered in a bus bombing in Yerushalayim on 5 Adar 5756

Does "commandedness" captures a mode of religious experience that is constituted by all or some other elements of our relationship with the Ribono Shel Olam, or rather is an experience separate and apart, entire unto itself?

...

I think that commandedness is its own category of religious experience or emotion. My evidence for this is, first of all, Biblical/halakhic; loving G-d and fearing/being in awe of G-d are either particular commandments, or else qualities that can be added to obedience – they are never offered as the ground of obedience. [10] The same is true regarding *avodah zarah* where worship "out of love or awe" is distinguished from "accepting it as a G-d"[11].

Last year, as part of an attempt at developing a pragmatic definition of "Orthodox", I argued that membership in a community of commandedness entailed willingness to submit to a communal judgment as to means so long as there was agreement as to ends. The broader definition was that commandedness involves a subordination of practical rather than moral or ethical judgment, or that "for Divine commands to be legitimate they must be justified by appeal to a standard we recognize independently".

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[10] See for example Devarim 10:12-13:

ועתה ישראל - מה ה' אלקיך שאל מעמך, כי אם
ליראה את יקוק אלקיך ללכת בכל דרכיו
ולאהבה אתו ולעבד את יקוק אלקיך בכל לבבך ובכל נפשך:
לשמר את מצות יקוק ואת חקתיו אשר אנכי מצוך היום לטוב לך:

[11] see especially in this regard Yad Ramah Sanhedrin 61b:

איתמר:
העובד ע"ג מאהבה ומיראה
מאהבתו האדם (שעובדה) [שעובדו] או מיראתו אותו.
דבר אחר
מאהבתו בה או מיראתו אותה שמא יזקנו השר שלה.
אביי אמר חייב בשוגג ואתידע ליה חטאת במזיד ואתרו ביה סקילה
רבא אמר פטור דהא לא קבלי' באלהו' עליה.

I don't think this is sufficient, however. Rather, I wish to expand and refine the definition by incorporating a perhaps creative reading Megillat Esther 4:13-14:

ויאמר מרדכי להשיב אל אסתר: "אל תדמי בנפשך להמלט בית המלך מכל היהודים, כי אם החרש תחרישי בעת הזאת, רוח והצלה יעמוד ליהודים ממקום אחר, ואת ובית אביך תאבדו! ומי יודע אם לעת כזאת הגעת למלכות?"

Mordekhai said, as a response to Esther: "Don't imagine yourself finding refuge in the palace from among all the Jews, rather if you play mute at this time, release and rescue will arise for the Jews from some other place, while you and your family will be lost! Who knows if it was for a time like this that you reached queenship?"

Mordekhai's appeal here is remarkably complex philosophically. He has argued previously that Esther must go to Achashversoh to plead for the Jews, presumably on consequentialist grounds, namely that the Jews will otherwise be killed. Here, however, he explicitly states that the killings will not happen regardless, so that from a consequentialist perspective, Esther would be acting only for the sake of her family! Why does he shift his ground, and what is his new ground?

Esther's response to Mordekhai's initial command, framed as a command to her messenger, can be understood as an argument that her chances of success are unlikely if she goes spontaneously, whereas if they simply wait, she is likely to be called to the king in any case. She does not suggest that she will disobey, and the Megillah has emphasized earlier that she acts in accordance with his *ma'amar* just as when he had formal authority over her. Rather, she offers him the opportunity to reconsider, as perhaps on reflection he will agree with her judgment as to means.

Mordekhai changes his ground because he does not, in fact, believe that she is statistically wrong as to which course of action is most likely to preserve the Jews. Rather, he thinks that for Esther, action is preferable to inaction, even if the odds are at least even that inactivity will be as effective.

Mordekhai's new argument is that it would be wrong for Esther to behave in a manner that leaves open the possibility that she alone will be saved. It would be a violation of her identity to remain passive, even if for a hypothetical alien with the same choices, passivity would be justified. Indeed, perhaps he is suggesting that if Esther waits, Achashverosh will, guided by Providence, end up calling someone else to the throne room who will intercede – perhaps, for example, the king will suddenly recall that Mordekhai was never rewarded for informing on Bigsan and Teresh, and offer him anything he desires as compensation.

To be obligated in this way, Esther does not need to love, fear, be in awe of, or want something from, the Jewish people. She needs to identify as Jewish.

Perhaps there is room for a definition of commandedness that arises out of self-identifying as a member of G-d's Nation, in the spirit of Rav Saadia Gaon's notion that accepting the Torah constituted us as a people.

SOME QUESTIONS ABOUT RAV KOOK AND ART

תלמוד בבלי מסכת ברכות דף נה עמוד א

אמר רבי שמואל בר נחמני אמר רבי יונתן:

בצלאל על שם חכמתו נקרא –

בשעה שאמר לו הקדוש ברוך הוא למשה 'לך אמור לו לבצלאל: "עשה לי משכן ארון וכלים"',

הלך משה והפך ואמר לו 'עשה ארון וכלים ומשכן'.

אמר לו: משה רבינו, מנהגו של עולם אדם בונה בית ואחר כך מכניס לתוכו כלים, ואתה אומר 'עשה לי ארון וכלים ומשכן'?! כלים שאני עושה, להיכן אכניסם?! שמא כך אמר לך הקדוש ברוך הוא: 'עשה משכן ארון וכלים!"

אמר לו: שמא בצל א-ל היית, וידעת.

Berakhot 55a

Said Rabbi Shmuel bar Nachmeni said Rabbi Yonatan:

Betzalel's name reflects his wisdom –

At the time that The Holy Blessed One said to Mosheh: 'Go, tell Betzalel "Make for me a Tabernacle, Ark, and utensils",

Mosheh went and flipped them, and said to him "Make an Ark and utensils and Tabernacle".

Betzalel said to him: Mosheh our Mentor, the way of the world is that a person builds a house and afterward brings utensils into it, and you are saying to me "Make for me an Ark and utensils and Tabernacle"!? The utensils that I make, where will I store them?! Perhaps The Holy Blessed One actually said to you: "Make a Tabernacle, Ark, and utensils!"

Mosheh said to him: Perhaps you were in the shadow of G-d , so that you knew.

This passage presents as if it is motivated by the play on words with Betzalel's name – "In the shadow of God" – but more plausibly it is an effort to explain the differing orders in the various presentations of the construction of Mishkan and accessories.

Let us leave aside, for now, the meaning of 'the shadow of G-d'; it suffices as is to explain how Betzalel got it right. But

a) Why did Mosheh get it wrong?

b) Why does Betzalel assume (apparently correctly) that "the way of the world" is a compelling guide for the construction of the sacred Tabernacle?

Rav A. Y. Kook in his **Ein Ayah** (available here; the entire Atid series there is highly worthwhile) that for the *chakham*, the default ordering is in accordance with the ways of *chakhmah* and *mussar,* whereas for the *metzayyer hativ'l ha'amiti*, the default ordering is in accordance with the *olam hametziut*. Roughly translated, the philosopher orders things ideally, whereas the artist orders things actually. Rav Kook goes on to say that the "entire *chokhmah* of the artist" is the exact match of his *tziyyur* with existence.

The radical move Rav Kook makes, which I'm not sure Plato countenances anywhere, is to allow the artist to correct the Sage. How does he accomplish this, when the Sage sees the true world (of the Forms?), and therefore should have unmatched clarity of vision? Rav Kook suggests that Divine commands related to art should follow the canons of the discipline of art, which he associates with fidelity to the real over the ideal, and which he implies is a discipline impenetrable to philosophy.
So in this case Mosheh wished the utensils to be made in order of holiness, whereas Betzalel suggested that the Tabernacle be made first so that the utensils would not be left exposed.

This passage of Rav Kook is often used as a resource for Jewish validation of art, but I wish here to raise a few issues with regard to that utilization.

1) It seems to me that Rav Kook here is working within a Platonic scheme, in which art is not at core a creative, but rather a reproductive, endeavor. Art's purpose is to show us things as they truly are, to physically represent form/*tziyyur.* This is not the way many contemporary artists self-conceive, and we need to think about whether we wish to bind Judaism to this understanding of art, or whether we can limit the scope of Rav Kook's definition to some but not all artists.

2) Rav Kook presents artistic and philosophic vision as innate natural tendencies, rather than as choices or achievements.

3) Rav Kook's construction of Mosheh's argument seems to me to takes sides in a midrashic dispute as to why human beings were created last – does this indicate that the world was created for humanity, or rather that humanity was created for the world? This of course may depend on whether you emphasize the first or second creation story (should humanity dominate or serve-and-preserve the earth), and also

rejects Rav Aharon Soloveitchik's argument that women must be holier than men, since they are created afterward (at least in the second creation story).

It seems to me possible that the Talmud's point here is that Betzalel is a craftsman rather than an artist, by which I mean – and I know those are loaded terms – that he understands objects in the context of their function

ANIMAL SACRIFICE

It is religiously challenging to experience an entire book of Chumash as a source of discomfort rather than of uplift.

Sefer VaYikra begins with an extensive and detailed manual for animal sacrifice. This has, so far as I can tell, always been a source of religious concern for Jews, as the prophets already contain numerous critiques of those who see sacrificial ritual as having direct or primary religious significance: "Obedience is better than sacrifice", "Why do I need your numerous sacrifices, says Hashem", etc.

With the Batei Mikdash destroyed, and sacrifice therefore halakhically forbidden (leaving aside the controversy over whether the Pesach sacrifice can be brought at the Mikdash site even absent a Mikdash) the concern shifted from the practical – is following VaYikra improving our souls? - to the theoretical – why would anyone think that killing animals could improve our souls? – and Rav Kook's suggestion, however seriously intended, that only vegetable sacrifice would be revived in the Third Temple has great contemporary appeal.

I am very fond of Rabbi Hertz's suggestion, taught to me by Rabbi Saul Berman, that Vayikra is intended to make the practice of priesthood transparent and accountable. In other religions, priests might be able to blackmail the people by threatening to subtly err ritually and therefore bring the wrath of the gods down, but in Judaism, the kohanim are more like contemporary baalei keriah, whose every vicarious religious action is subject to potentially humiliating public correction.

Rabbi Hertz's suggestion, and Rav Kook's, emerge from a religious sensibility to which the entire institution of animal sacrifice is seen as a concession to the cultural framework of the ancient Near East. This is the standard understanding of Maimonides' position in the Guide, although much ink has been spilled as to whether this position can be reconciled with his own devotion of an entire book of the Mishneh Torah to sacrifices.

This sensibility is appropriately controversial, both intrinsically – is it really okay to declare that significant chunks of Torah ritual are historically/sociologically contingent, and were always bediavad?; and on slippery-slope grounds – what if we find other elements of Halakhah uncongenial? It is not always easy to explain with perfect coherence why we celebrate the obsolescenc e of the laws regulating slavery while proclaiming the necessary eternity of laws regulating divorce.

I am always interested by the way that theological defensiveness, often expressed as polemical attacks on heresy, often requires taking positions more religiously radical, if one stops to think, than those being defended against. In the context of Judaism, think of how many defensive polemics require the rejection of long lists of traditional figures and works, and implausible and unprecedented rereadings of traditional texts? I was immediately struck by, and regularly return to, one of my teachers' willingness to throw Abravanel and Ibn Ezra out of the Tradition rather than tolerate the idea that Shavuot is not connected by the Torah itself to Matan Torah.

An interesting example of what we can call "radically creative reaction" is Shadal's reaction to the Guide's position on sacrifices. Shadal is implicitly scandalized by the Guide's claim that the sacrificial ritual was tolerated rather than endorsed, and centralized in the Mikdash so as to limit it, and perhaps put it on the path of eventual extinction. Here is my rough translation of excerpts of his response (with some parenthetical clarifications), and I trust that its radicalness will be self-evident.

"Sacrifice did not begin in commandedness, but rather in the space of human initiative, with human beings volunteering to give thanks to G-d for His graciousness to them, or to bring a gift before him so as to cause His anger to be forgotten, or to appease Him so that He would fulfill their wishes, because it would be implausible for a human being to behave toward his god in a manner different than he would behave with a flesh and blood king,

Now when they sought to bring a gift to G-d, they found no scheme other than to burn it in fire, as by burning it they would remove it from their sphere and from the sphere of other human beings, and from the sphere of the animals and beasts and birds, and also because while it was burnt its smoke rose up to the heavens, so that it appeared to them as if it rose up to G-d.

Now the thing that was burnt for the honor of G-d they called kodesh, etymologically from yekod esh, and from this the term kedushah eventually was lent to other matters. Now the Divine Torah, whose purpose is not to teach the people wisdom-and-knowledge (=philosophy), but rather to guide them on the paths of righteousness, did not nullify the ritual of sacrifice, not because (contra Guide) it was not (sociologically) able to do so, but rather because this practice was not an intrinsic evil, nor did it damage humans or their characters, but rather aided them, because if the Torah had informed the nation that G-d had no desire for sacrifices, the next day they would say "What desire has G-d of our becoming righteous, and what purpose in our perfecting our ways?" Seeing as one of the foundations of Torah is

the belief that G-d watches over the actions of human beings and loves the doers of good and hates the wicked, it was necessary for the Divinity not to be described as infinitely exalted in accordance with His true level, rather as-if-it-were possible to lower His exaltedness slightly and have him appear in human minds as if he were a great king who understood all their deeds and heard their cries and received their gifts, and this necessity was not only in that generation, but rather is equally needed in every generation. Had G-d, in place of sacrifices, commanded prayer and songs and Torah reading and listening to inspirational speeches, and not commanded regarding sacrifices, the greatness of G-d and His reverence would not have been engraved into the hearts of the masses, because it would have seemed to them that the gods of the nations, whose worshippers bring before them many sacrifices, were greater and more honored than our G-d, whose worship involved mere words. Because this is the characteristic of the masses in every generation, not merely the hoi-polloi, but rather most people have this characteristic: Whom do they honor? The one who honors himself and exalts himself, whereas one who is forbearing and does not seek greatness for himself, they do not see as significant. Now G-d has no need to be honored by flesh and blood, but for our own good He needed to bring His awe into our hearts so that we would not sin...

But all the community could bring their sacrifices in one place which G-d would pick and this was not, G-d forbid, so as to limit the bringing of sacrifices, as per Guide 3:32, but rather for the good of the nation and its success and to perfect character and preserve religion, because with one MIkdash for all the people, they would all gather to one place and their hearts would be bound up with fraternal bonds and they would always be one faction, rather than each tribe and clan forming its own nation, whereas if each individual built his own altar, each would have found it sufficient that G-d was appeased by him and accepted his sacrifices, and his heart would have given no worry to the rest of his nation ... "

RECOGNIZING THE EXTRAORDINARY

Over the last month I have been reading Freedom's Law, a collection of essays by the highly influential legal theorist Ronald Dworkin. Many of the directly legal essays were challenging and stimulating to my conception of Halakhah in general and with regard to specific areas, and I hope over the next year to produce a series of extended engagements with them. But this week I want to engage rather with the last essay in the book, a memorial essay about Dworkin's mentor, the wonderfully named Judge Learned Hand.

Dworkin's love and admiration for Hand as a judge and as a person are continually and powerfully expressed, but so, much more gently, is his conviction that several of Hand's important legal positions had morally disastrous practical implications. Here I wondered how this might reflect on my own ambivalence about quoting certain great Torah scholars. To what degree can we recognize greatness in people while accusing them of profound moral blindness? To what degree can we recognize talmidei chakhamim as great if their Torah positions or assumptions had morally disastrous moral or religious implications? If we quote their Torah, and build our own chiddushei Torah off theirs, are we lending credence to the positions and assumptions we see as illegitimate?

As it happened, the day before reading that last essay I had been browsing the bookshelves in the Regis Hotel and picked out the Divrei Yoel on Vayikra to read between aliyot. Divrei Yoel is a book by the late Rebbe of Satmar, Rabbi Yoel Teitelbaum, and there is no questioning his brilliance as a scholar and his remarkable achievement in rebuilding his community after the Shoah. It is also the case that he viewed the State of Israel as a creation of the kabbalistic "Other Side", and in other ways held positions that see many of the proudest accomplishments and deepest values of Modern Orthodoxy and Religious Zionism as demonic, and in general had a vision of the universe that gives power to the metaphysical forces of evil in a way that profoundly unsettles my perhaps too Maimonidean monotheistic antenna.

Now Divrei Yoel brought my attention to a set of interesting anomalies and insights in the Torah and commentaries to the opening of Parashat Shemini.

1) 9:2 instructs Aharon to "take for himself" sacrifices, whereas verse three instructs Bnei Yisroel simply to "take" sacrifices.

2) Targum Yonatan says that Aharon sacrificed a calf "so as to prevent a/the satan (accuser) from speaking lashon hora about him regarding the (golden) calf he made at Chorev; he similarly regards Bnei Yisroel as sacrificing a goat to forestall satanic slander, but describes their calf as brought only "because they worshipped the (golden) calf, without mention of any accuser.
3) A set of midrashim claim that Aharon delayed beginning his service until Mosheh pointedly told him that this was his destined place
4) A set of midrashim describe Aharon as having to overcome a vision of the altar as looking like an ox, and therefore reminding him of the Golden Calf.

To these I add that Rashi, as I best understand him, pointedly states that Aharon brought the calf as a public demonstration that Hashem had granted, or was granting, him atonement for the Calf.

Divrei Yoel suggests that the memory of the Calf, and therefore the sacrifice of the calves, played a different role for Aharon than for the rest of Bnei Yisroel – for Aharon, it was personal. The dark forces gather with more intensity at the moment a person approaches his destiny, and the yetzer hora uses its most subtle trick – convincing a person that he or she is unworthy of fulfilling that destiny. So Aharon is induced to see the altar as an ox, and he is overcome with humility and shame – but Mosheh understands what is happening, and makes Aharon understand that his humility here is a symptom, not a virtue.

The psychological insight here is profound and striking, and I admit to generally enjoying exhortations to avoid the vice of humility, even as I understand how profoundly dangerous they are. But there is of course a risk that my citing this insight will lead readers to study Divrei Yoel on your own, and then to being convinced by his arguments on other issues, and move toward opinions and worldviews that I would much prefer held only academic interest in our world. Perhaps the willingness to quote Divrei Yoel is itself an unfortunate expression of humility.

Nonetheless, I am spending this whole dvar Torah on Divrei Yoel, while there are other books of worthwhile Torah scholarship that I would go out of my way to avoid citing. Why? My suspicion is that Divrei Yoel tends to be recognizably alien to most of my readers, and therefore is easily filtered, and given that, I see significant value in keeping the intellectual world of each Torah community as broad as possible – I would hope for a time in which Satmars can do the same for Religious Zionist thinkers.

I think I would be much, much more open to citing anyone who cites my positions in return, critically but fairly, and ideally respectfully.

I think that there is a difference between citing posthumously and citing from life – the risk of granting inordinate authority is greater with the living. My sense is that failure of moral character, as opposed to of moral realization, become less significant after death, at least so long as a posthumous cult of personality has not developed.

And finally, there has to be some way of recognizing the extraordinary, which it is worth taking more risks to preserve, and Divrei Yoel certainly falls into that category.

MINHAG HAMAKOM IN A HALAKHICALLY PLURALIST SOCIETY

Igrot Moshe OC 1:159 famously

a) allows people with one custom as to the dates of *omer*-mourning to attend a wedding on a date permitted only according to a different custom

b) allows people to switch *minhag*im without notice from year to year, but not within a single year.

What underlies Rav Moshe's position? I hypothesized his argument as follows:

> Halakhah does not really have a strong concept of ancestral custom; the relevant axis for customs is geography. Someone who moves permanently from one place to another is obligated to adopt the customs of the new home, regardless of personal ancestral custom.
>
> In America, however, halakhic Jews have remained foreigners living together, rather than forming a new community. This presents a situation not (to my knowledge - ADK) directly addressed by Talmudic precedent – what if one moves permanently to a place that has no custom at all?
>
> Perhaps one nonetheless becomes a resident of the new place – namely, one becomes customless.
>
> Now this raises the question –why must a Jew resident in America, for example, keep any custom of omer-mourning at all? The answer is that we reconstruct a universal ur-custom to mourn for some period of *sefirat haomer*, which was put into practice differently in different locales. This ur-custom is binding on all Jews, who then have free choice as to which sub-version to practice.

After reading the *teshuvah* this week, however, I need to modify the above. Rav Moshe indeed argues (with some complexity irrelevant to this discussion) that the various *minhagim* are grounded in a common rationale. However, it appears that he does not base the permission to freely choose and change one's *minhag* on the absence of a standard *minhag* where one lives. Instead, he claims that in principle the choice was always free – that the mere fact of a standardized local practice has no per se halakhic force, so long as one can fulfill that practice's underlying theme by different means.

In my humble opinion, this is a tremendous *chiddush* – how should one determine the degree of specificity that defines a custom? But on the other hand, this is really a variant of the general problem of how and whether to change the practical requirement of a halakhah in order to better fulfill its rationale(s) in new circumstances.

Now I was careful above to note that Rav Moshe said that the choice was always free **in principle**, and similarly that the mere fact of a standardized local practice has no **per se** halakhic force. In practice, Rav Moshe identifies two reasons that generally require one to follow whatever local practice happens to be standard – the obligation to avoid controversy (*machloket*), and the prohibition of lo *titgodedu*.

Note that Rav Moshe sees these as distinct issues; I have written elsewhere that Rambam defines *lo titgodedu* as a prohibition against causing controversy, while Rashi defines it as a prohibition against accepting divergent practices without controversy. I don't know that Rav Moshe fully adopts my reading of Rashi, but he clearly dissents from Rambam.

Regardless, Rav Moshe concludes that neither *machloket* nor *lo titgodedu* applies to the case of divergent *omer*-mourning in Brooklyn, on the grounds that

a) *Machloket* occurs only when people are unaware of the existence of alternate customs, but in Brooklyn, everyone is aware of the range of options (as, indeed, is anyone who reads Shulchan Arukh), and
b) *lo titgodedu* applies only when the divergent practices represent substantive disagreement.

Rav Moshe reasons further that if the variant practices embody a halakhically unified *minhag*, there should be no bar to switching from one to the other, so long as in any given year one fulfills the requirements of the ur-*minhag* in some way. But what about attending a wedding permitted according to another's *omer*-mourning practice, but not one's own? Does this not undermine one's own custom? Here Rav Moshe introduces another creative wrinkle, arguing that wedding-attendance is separable from other *omer*-mourning customs such as haircutting, so that one can attend a wedding without violating one's underlying *minhag* (The details of his argument, and its extended engagement with Shut Chatam Sofer OC 142, are beyond this essay's ambit).

Rav Mosheh additionally makes the fascinating suggestion – it's not clear to me that how willing he is to rely on it halakhically – that *lo titgodedu* is violated only if no process of abstraction is required. In other words:

If two people in the same town act on the basis of opposing rabbinic instructions (let us assume the presence of all necessary boundary conditions, e.g. a universally acknowledged local beit din), they violate *Lo titgodedu* only if

שיהיה זה ניכר גם במעשה לאין יודעין הטעמים

"only if the contradiction would be evident to someone unaware of their rationales".

Therefore, since a visiting Martian would not see any contradiction in seeing someone unshaven attending a wedding, one may attend weddings scheduled according to alternate omer-mourning practices.

The intellectual firepower R. Mosheh brings to bear on this question may seem like overkill – as three or more independent and broad-reaching halakhic claims. But perhaps weddings on *sefirah* were a useful way of thinking about the American Orthodox situation, in which we remain a nation of immigrants several generations after the collective arrival of our various ancestral groups. How do we justify our failure to jump into the halakhic melting pot, our choice to remain instead a gorgeous mosaic? And can we achieve a unifying communal identity while modeling halakhic diversity?

One strategy Rav Mosheh's *teshuvah* potentially opens is the reconstruction of a baseline Halakhah, which we then give individuals freedom to implement in individually creative ways. But how creative, and how individual? Here's a thought question – what would Rav Mosheh say to someone who thought of, and wished to follow in practice, a previously unrecorded way of meeting all the specifications of the ur-*minhag* constructed by this teshuvah?

ORAL AND WRITTEN TORAH

ויקרא פרק יט:יד

לא תקלל חרש

ולפני עור לא תתן מכשל

ויראת מא-להיך

אני ה':

Vayikra 19:14

You must not curse a deaf person;

and in front of a blind person, you must not place a stumbling block;

and you must fear your G-d;

I am Hashem.

On first thought, the connection between cursing the deaf and tripping the blind seems obvious; each of them is particularly vulnerable to this type of assault.

But on second thought, at least one difference is evident; the blind person is actually harmed, whereas there is at least room to question whether a deaf person can be harmed by a curse he or she never hears.

And on third thought, Chazal rather interestingly interpret around the parallelism between the cases rather than exploiting it. They say that:

> "Do not curse the deaf" refers to an actual deaf person (although because Exodus 22:27 forbids cursing judges or princes, the law ends up forbidding cursing any living person who falls between these extremes of powerlessness and power);
>
> "And in front of a blind person, you must not place a stumbling block", however, is taken metaphorically, and it is understood to refer to giving bad business advice to the practically blind, or to facilitating the transgressions of the spiritually blind.

Later halakhic sources discuss whether physically tripping a physically blind person violates this prohibition, using "a verse does not leave its peshat" in an original Talmudic sense, as preserving the significance of the literal meaning of a metaphorically intended text.

In this sense, Ibn Ezra and Rashbam here, by insisting respectively that the blind and deaf are examples of the most vulnerable and most likely to be abused, are genuinely following a tradition of peshat.

Ramban coopts Ibn Ezra and Rashbam, as he often does, adding two small wrinkles of his own:
a) the deaf and the blind will never understand what happened to them
b) the powerful are often cursed in secret, and so in that sense are like the deaf.

Meshekh Chokhmah (appended) notes that Rashi Chullin 3a attributed the literalist position to the Cuthim. Meshekh Chokhmah nonetheless accedes to their position and says that *lifnei iver* refers *primarily* to physically tripping the physically blind. He nonetheless believes that the secondary, metaphorical, extensions are halakhically binding as well.

The underlying exegetical question is why Chazal choose to undo the parallelism. It should be understood that they had two options for avoiding this – leaving *lifnei iver* literal, in the manner of the Cutim, or extending *killelat cheresh* metaphorically.

Now within Rabbinic literature, parallelism and juxtaposition are often substantively insignificant or even misleading. This is because a primary organizing principle of oral culture is mnemonics, putting things together and phrasing them in ways that make them easier to memorize. Incongruence is as useful to memory as congruence – we remember patterns well, but also the breaks in a pattern. For example, remember what shoe a person wore on their right foot generally makes it effortless to recall that they wore a matching shoe on their left, but on the other hand, it would also be easy to remember the occasional anomalous person wearing black on their left foot and white on their right.

For example:
A beraita on Kiddushin 31 teaches that a child "must not stand in his father's place, and must not sit in his father's place".
Rashi explains that "standing in his place" refers to occupying a physical position with specific social or political meaning – "a place where his father stands amidst a council of elders with his colleagues for consultation". He makes no comment about "sitting in his place". It is possible that sitting in his place refers as well to a politically significant physical position, but it also possible that "sitting" should be understood simply and literally as occupying a favorite chair, and that Rashi sees any explanation as superfluous not because of his previous comment, but rather because the text requires no interpretation beyond translation.

Torah, however, is written, and therefore one might argue that parallelism and juxtaposition should be presumed to be substantively significant.

Our question is perhaps a subset of the question Dr. Moshe Bernstein challenged me with many years ago as to whether it is theologically acceptable to understand Torah as containing meaningless puns, or other literary devices which have no substantive significance. Noach (נח) finds חן in Hashem's eyes, whereas ער is רע – does the fact that each description inverts the letters of the descriptee's name tell us that each inverted their essential nature? Or does it simply enhance our experience of reading?

My suspicion is that Chazal understood Torah as having mnemonic purposes as well – that while it is formally forbidden to convert Written Torah into Oral, the Written Torah nonetheless functions in memory as well – it is written on the walls of our heart as well.

THE MORAL COST OF DAY SCHOOL TUITION

or:

[How] should the Jewish community pay for day schools?

There is a lot of handwringing these days about the rising cost of day school, and the question of whether those costs are sustainable. The responses so far have addressed this issue as purely budgetary – how can we raise more money, perhaps from government, and how can we spend less, perhaps through technology. I contend these responses miss the key point. The primary cost of day school tuition is moral, not financial, and the key to solving the financial crisis is to address the moral issue.

What do I mean by moral costs? Let us imagine that someone proposed a new Jewish practice that had the following implications:

a) Many parents take second jobs, or more than full-time jobs, that deprive them of almost all weekday contact with their children, and leave them too exhausted to make Shabbat meaningful.
b) Almost one half of households change status from self-supporting contributors to the community to charity recipients, with no prospect of changing that situation for many years.
c) Children who aspire to careers of direct service, such as teaching (especially Torah) or social work, or of intellectual or artistic creativity, are told that these are not sufficiently lucrative to sustain a committed Jewish lifestyle, and therefore are not options for committed Jews.
d) Families choose to have fewer children for purely economic reasons.

I think we would all consider the introduction of any practice with those implications to be stunningly irresponsible, and assume that any Jewish leader with a sense of the real lives of his or her community would move heaven and earth to find a way to prevent its introduction.

But you have already realized that these are the real-life implications of even current day school tuition, and at the same time, the Jewish community seems committed to making day school education a standard element of serious Jewish childrearing. How can we morally sustain a system with those implications?

Furthermore - parents on "financial aid" have no guarantee, often not even an idea, of how their tuition payments for the next year will be affected by rises in the official tuition; how the school will take

into account the loss of a job, birth of another child, breakdown of a car, expiration of a lease, gift from a parent, or extra income from a second job. This makes it impossible for them to make rational plans for the future, and leaves them in a situation of constant dependence on the decisions of others. It deprives them of their economic dignity.

Finally - the "financial aid" application generally requires families to state in humiliating detail all their expenses, knowing that a committee will be sitting in judgment – based on criteria unknown to them – on their priorities. A family that eats nothing but pasta all month so that they can go to a movie risks having their allocation cut because they spend money on entertainment: a family that uses an inheritance to visit Israel and never-seen relatives risks a tuition increase on the ground that they can afford intercontinental travel. The price of poverty is often loss of privacy – but that is an evil which we should strive to minimize. And we've set the poverty line at more than quintuple the median income!

These implications undermine the Jewish effectiveness of day schools directly as well. When our children lack Jewish passion, is that not partially a consequence of parental exhaustion? When our children are materialistic, is that not likely a consequence of feeling unjustifiably poor, and of being told that they can only take highly lucrative career paths? When our children show increased signs of being "at risk", is that not partially a consequence of lessened parental involvement? How are children supposed to internalize the core Jewish value of human dignity, and the emphasis in all Jewish sources on the spiritual value of financial independence, when their education compels them to be dependents?

One might feel that these arguments lead to the conclusion that we need to undo our commitment to broad-based day school education, which honestly is unprecedented in Jewish history, and would be inconceivable in a less wealthy community. But as a day school educator myself, I have a certain ambivalence about such a shift, and I believe that it is not necessary. We can solve the moral issues, and I believe that in doing so we will take a significant step toward addressing the financial issues as well.

A model with great potential has been set out by the Solomon Schechter School of Greater Boston. Here's one way it might work: Tuition is set as either a fixed percentage of income, say 15% with small adjustments for the number of children a family has in the school. Families with very high incomes would have the option of instead paying a set amount per student, even if that results in their paying a

much lower percentage of their income. Families unable to pay the 15% would apply for financial aid as in the past.[12]

This model has the following immediate moral advantages:

a) It makes the tuition-setting process transparent
b) It makes the tuition-setting process predicable
c) It removes many middle-class families from the ranks of those receiving "financial aid" and instead frames our tuition system as one that gives financial incentives to the rich.
d) It reconceptualizes day school education as a communal good paid for by taxation, rather than as an individual good paid for by purchasers.

These advantages, I contend, are necessary and sufficient to correct many of the moral deficiencies of the current system, and a significant step toward correcting the remainder.

[12] The Newton Schechter model is somewhat more complicated in that it also sets a maximum income level, adjusted for the number of children a family has in the school, above which one must pay the set amount rather than the percentage. It seems to me that this is an issue of detail rather than of principle, and so I simplified the model above in full awareness that nothing quite so simple would likely be implemented.
Similarly, I have not addressed here the plight under the current system of parents who have children in multiple day schools, although I think the new model will make that issue much more amenable to solution. For example, a family could pay the percentage of income any single school would charge for multiple children to a local Federation account, and the Federation would take responsibility for deciding how those funds should be divided among the relevant schools.
I have also not addressed here precisely which costs should be included under "tuition" – many schools charge mandatory extra fees for registration, afterschool, trips, busing, etc., and shield these from the financial aid process – in fact, the purpose of these fees sometimes seems to be to protect revenue from a process which the school itself mistrusts. My inclination is that schools should calculate the percentage they charge as inclusively as possible, so that families have a single fixed number to budget for, and to prevent stealth tuition increases.
Finally, the model I advocate does not take assets, liquid or otherwise into account, nor does it consider the financial capacities of grandparents etc. This is a deliberate choice, and utterly necessary from the privacy perspective, and the contrary policy also runs the moral hazard of discouraging prudent saving.
I have heard serious and legitimate concerns that this will enable people to "cheat on their tuition" by hiding their incomes, and there is much popular resentment driven by anecdotes about families that drive up in expensive cars even while asking for financial aid on the grounds of insufficient income. Investigation is necessary to determine the prevalence of such situations. But regardless, these anecdotes reflect the current system's failure to coherently account for how tuition payments should be correlated with standard of living. My suggestion is that under the proposed system such families would be seen as development opportunities rather than as deadbeats, and that a broad potential advantage of the proposed system is that it could transform what is currently an adversarial tuition system into a cooperative communal funding endeavor.

At the same time, I recognize that day schools legitimately will consider only models that are at least financially equivalent to the present model. I believe that this model meets that test, and very likely exceeds it. Here's why:

a) The percentage can be set at a point that is roughly equivalent to the payment that most financial aid recipients make now.
b) Families who would not consider day school under the current system, whether because of the uncertainty of financial aid, or because they find the financial aid process demeaning, will now enroll. They will know in advance exactly how their tuition will relate to shifts or stability of income, and they will not be required to submit any documentation beyond the first page of their tax return.
c) Families with many children will be more likely to send their children to day schools (and day-school-committed families may be larger over time).
d) Wealthier families will be more likely to donate significantly when they see their tuition payments as reflecting a discount rather than as subsidizing their upper middle-class peers.
e) Middle-class families may make voluntary donations when they see their payment as a fair tax rather than as an arbitrary measure, and when their assessed tuition is not automatically seen as representing the limit of what they can pay.
f) Families without children in the schools may be more willing to donate to the schools that are explicitly framed as communal, tax-supported institutions rather than as tuition-driven.
g) Administrators will have a much clearer sense of revenues, and the entire school community will be more accountable for designing the school so that it remains within the financial ambit of its constituency.
h) Dan Perla[13] of the AviChai Foundation argues cogently that setting school payments as a percentage of tuition during a recession, and a time when costs are rising faster than wages, is an excellent investment, as when times improve, schools who continue to collect a percentage will see their revenues rise significantly.
i) The fiction of a "financial aid budget" currently leads many schools to forego revenues that would be almost pure net profit. The notion that "financial aid' is something that schools give parents as a subsidy leads to the misapprehension that a school "cannot afford" to take more

[13]Dan tells me that this point was suggested by the economist Dr. Steven Laufer.

than X students who pay less than the full tuition. In reality, any student who pays a significant portion of gross family income contributes significantly more than the marginal cost of their education, and when schools turn down students late in the admissions cycle because "the financial aid budget is spent", they are depriving themselves of both revenue both immediate and for many years to come.

This new model of course requires elaboration and customization for specific environments. But I hope and believe it can redirect our community's conversation and efforts toward a model of day school financing that is both morally and financially sustainable.

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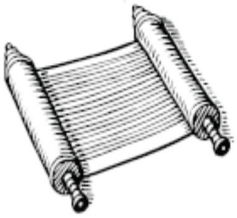

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