



# GEVURAH & TIF'ERET

AN ANTHOLOGY OF ESSAYS  
IN HONOR OF

RABBI MICHAEL AND CHANNAH BROYDE

*The Young Israel*  
TOCO HILLS

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10TH ANNIVERSARY CELEBRATION



**GEVURAH VE-TIF'ERET**

**An Anthology of Essays  
in Honor of  
Rabbi Michael and Channah Broyde**

On the Occasion of the  
Tenth Anniversary Celebration  
of the  
Young Israel of Toco Hills

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Dear friends,

The project of compiling an anthology of essays in honor of Rabbi Michael and Channah Broyde was a remarkable experience on multiple levels. The goal was to assemble a collection of essays written by some of the brightest minds in the Modern Orthodox community today. To embark upon such an endeavor in any scenario would be a noble challenge in and of itself, but to do on such short notice – we only came up with this idea six weeks ago – bordered on the absurd. Contacting these great scholars directly, respectfully inquiring as to their interest in participating, collecting the various pieces, and assembling them into this composite book – we were perhaps delusional about the prospect of success.

What you have before you is a symbol of honor and respect as much as it is one of scholarship and intellectualism. The written personal comments addressed to the Broydes from these contributors, some of which are integrated into their essays and others that preface the essays, are only a small taste of the sentiments of reverence for the Broydes that they expressed in our phone conversations. When first approached about this project, the responses by the scholars were overwhelmingly enthusiastic about participating, even on such short notice, in a project that would allow them to bestow honor upon the Broydes. It is, indeed, an honor to have the Broydes living in our midst.

We are furthered privileged by Dr. David Blumenthal's willingness to honor us and the Broydes with his expressive and articulate preface to the other scholars' essays. This is followed by three essays by Dr. Norman Lamm. Dr. Lamm, who served as President of Yeshiva University for almost 30 years, is recognized as the eminent scholar and spokesperson of the philosophy of 'Torah U'madda' and Modern Orthodoxy. His essays encapsulate the essence of this philosophy. This is followed by a true assortment of scholarly works, ultimately culminating in five essays written by Rabbi Broyde that define his and our philosophy. The connection between Dr. Lamm and Rabbi Broyde is evident not only in the philosophical notions they espouse in common, but in the obvious personal relationship that exists between them (see Dr. Lamm's opening personal comments).

The title of this essay anthology, *Gevurah ve-Tif'eret*, originates from a homiletical lesson taught by the late Rav Yosef Dov Soloveitchik, the Rav, zt"l. Every morning we recite two *berachot*. The first – *ozer yisrael be-gevurah* – speaks of God investing the Jews with strength. The following *berachah* – *oter yisrael be-tif'arah* – tells of God enveloping the Jews in beauty. The Rav pointed out that strength, power, influence alone do not bespeak of God's greatness. It is incumbent upon us to balance these traits with splendor, class, and glory in order to define God's majesty. As our synagogue celebrates the milestone of its 10<sup>th</sup> anniversary, and as we salute Rabbi Michael and Channah Broyde, we pray that we continue on our growth path in this spirit of *Gevurah ve-Tif'eret*.

It is our pleasure to present this collection of essays to the Broydes and to our wonderful community, in their honor and in our honor.

May you, Rabbi Michael and Channah—and may we all—move from strength to strength.

*Be-kavod,*

Michael Ausubel  
Jay Cinnamon

Co-editors



## Foreword

### TORAH U-MADDA` : A WAY OF LIFE

After a thorough examination of the arguments for the eternity of the world vs. those for its creation, Maimonides confronts a difficult question: What would we do if one could actually prove that the world is eternal? That is, what would we do with all the sacred texts of our tradition, beginning with *Beresbit* and including most of the literature of the Sages, if it turns out to be true that the world really was not created but has existed forever – a thought not unfamiliar to modern theorists who claim that the Big Bang was preceded by a previous contraction, which was preceded by a Big Bang, and so on?

Maimonides approaches this question with the Torah u-Madda` argument *par excellence* in his *Guide for the Perplexed*, 2:25 (emphasis added);

Know that our shunning of the affirmation of the eternity of the world is **not** due to a text figuring in the Torah according to which the world has been produced in time, for the texts indicating that the world was produced in time are not more numerous than those indicating that the deity is a body. Nor are the gates of figurative interpretation shut in our faces, or impossible of access to us, regarding the subject of the creation of the world in time, for we **could** interpret them as figurative, as we have done when denying His corporeality.

Maimonides argues here that, when he dealt with the Torah texts and sayings of the Sages on the topic of God's corporeality, he did not hesitate to reinterpret those texts; that is, to say that they are nothing but figurative language because God does not really have a body. Thus, expressions such as God's "strong hand and outstretched arm" do not mean what they say; they are figurative language, metaphors, for God's power. Similarly, Maimonides argues, we **could** interpret all those passages in the Torah and in rabbinic literature that refer to **creation** as figurative, as metaphors – if we had to; that is, if the eternity of the world were true science. He continues his argument as follows:

Perhaps this would even be much easier to do: we should be very well able to give a figurative interpretation of those [creation] texts and to affirm as true the eternity of the world, just as we have given a figurative interpretation of those other texts and have denied that He, may He be exalted, is a body.

In the end, Maimonides chose the theory of the creation of the world over that of the eternity of the world on two grounds: (1) The eternity of the world, as understood in his day, had not been actually proven, only hypothesized. And (2) the theory of the eternity of the world had a more sophisticated form in which it was argued that the world is totally and completely governed by law with no room for any deviation whatsoever, and that conclusion would have excluded the possibility of miracles, a possibility that Maimonides must leave open on other theological grounds.

Torah and Mada`a, thus, go hand in hand; they are integrated. There can be no compartmentalization of science and Torah, or of society and Torah. In fact, any piece of knowledge attained by humans – *hokhma* – must, by definition, be within *Torah*. Dinosaurs and evolution must fit into our view of creation. Artificial insemination and the technology for prolonging life must fit within the parameters of the halakha. Truth (Arabic, *haqiqa*; Hebrew, *emet*) is indivisible; indeed, God is *al-Haqiqa*, *ha-Emet*, The Truth. One may never fear knowledge; one must embrace it and, if necessary, interpret our sacred texts, as Maimonides did on the subject of God's incorporeality and as he was prepared to do on the subject of the creation of the world had the evidence warranted it.

Rabbi Michael Broyde's appearance in Atlanta over a decade ago brought this philosophy to Atlanta: science and Torah belong together, human knowledge can never contradict God's revelation to us. If there appears to be a contradiction, it is we who must study harder, it is we who must think more clearly.

I remember Rabbi Broyde's very first contacts with the Torah community here: standing with a circle of men around him, arguing over the meaning of talmudic and halakhic texts. I have read a good number of his halakhic papers in which he fearlessly takes on whatever science and law have to teach, and integrates that with halakhic principles. I recall studying with him and listening in amazement at the intellectual rigor and consistency of his thinking, whatever the topic. His sermons, too, have (mostly) been a model of Torah u-Mada`a, of the willingness to take on intellectually and ethically tough subjects and to confront them with rabbinic halakhic and theological norms.

In doing all this, Rabbi Broyde has challenged the intellectual and social conformism of large segments of contemporary Orthodoxy. In instituting the Prayer for the State of Israel and the Prayer for the United States Armed Forces, in creating the annual Yom

Ha-`Atzma`ut celebration, in wearing colored shirts and not-black suits, as well as in his halakhic rulings, Rabbi Broyde has forced those of us who are Orthodox to consider our values and to think clearly about them. This, too, is Torah u-Madda`, Torah and the study of human society.

It is our hope in publishing this volume of essays that we will honor Rabbi Michael Broyde, that we will celebrate the Young Israel of Toco Hills which he founded and has guided, but that we will also commit ourselves to the philosophy of Torah u-Madda` which demands intellectual forthrightness and courage.

David R. Blumenthal

On behalf of the organizing committee



**Some Comments on Centrist Orthodoxy**  
**Centrist Orthodoxy and Moderationism**  
**Some Thoughts on Leadership**

Rabbi Dr. Norman Lamm

It is a pleasure for me to submit these three pieces for the volume in honor of my highly respected and cherished colleague, Rabbi Michael Broyde. I have had the privilege of seeing him develop as a Talmid Hakham, a Posek, a Rav, and a wise and respected professor of Law. He is unquestionably a paragon of Torah Umadda, and I dedicate these submissions to him as a token of gratitude for the “nachas” he has given me over the course of the past several years.

– Norman Lamm

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Dr. Norman Lamm is Chancellor of Yeshiva University, having served as Yeshiva’s president for nearly 30 years. An eminent philosopher and scholar, he has written numerous books and essays on interpretation of Jewish philosophy and law, especially in relation to problems involving science, technology, and philosophy in the modern world. These three articles are reprinted with permission from Dr. Lamm’s *Seventy Faces: Articles of Faith*, Volume One (Ktav, 2002).





## Some Comments on Centrist Orthodoxy

Rabbi Dr. Norman Lamm

Carl Becker, the great American historian, once said: “It is important, every so often, to look at the things that go without saying to be sure that they are still going.” I would add the need for intellectual vigilance to this reminder for practical caution by paraphrasing his aphorism: “It is important, every so often, to look at what we are saying about the things that go without saying to make sure we know what we are talking about.”

In reflecting on some of the foundations of our *Weltanschauung*, I do not presume to be imparting new information. The task I have set for myself is to summarize and clarify, rather than to innovate. Dr. Johnson once said that it is important not only to instruct people but also to remind them. I shall take his sage advice for this discourse.

We seem to be suffering from a terminological identity crisis. We now call ourselves “Centrist Orthodoxy.” There was a time, not too long ago, when we referred to ourselves as “Modern Orthodox.” Others tell us that we should call ourselves simply “Orthodox,” without any qualifiers, and leave it to the other Orthodox groups to conjure up adjectives for themselves. I agree with the last view in principle, but shall defer to the advocates of “Centrist Orthodoxy” for two reasons: First, it is a waste of intellectual effort and precious time to argue about titles when there are so many truly significant issues that clamor for our attention. In no way should the choice of one adjective over the other be invested with any substantive significance or assumed to be a “signal” of ideological position.

We are what we are, and we should neither brag nor be apologetic about it. These days, we do more of the latter than the former, and I find that reprehensible. Let us be open and forthright about our convictions: They are *le'kbat'chilah*, to begin with, and not *bi'di'avad*, after the fact. We must not be intimidated by those who question our legitimacy for

whatever reason. Nevertheless—or maybe because of our ideological self-confidence—we must be ready to confront, firmly but respectfully, any challenges to our position.

It is in this spirit that I mention an argument that is often offered to refute our Centrist outlook: that, after all, we have introduced “changes,” and that such changes bespeak our lack of fealty to Torah and Halakhas. We are taunted by the old aphorism, *chadash assur min ba-torah*, that anything new, any change, constitutes an offense against Torah. (It is interesting how a homiletical *bon mot* by the immortal *Chatam Sofer* has been adopted as an Article of Faith. I wonder how many good Jews really believe that it is an ancient warning against any new ideas and not a halakhic proscription of certain types of grain at certain times of the year...)

Have we really introduced “changes?” Yes and No. No, not a single fundamental of Judaism has been disturbed by us. We adhere to the same *ikkarim*, we are loyal to the same Torah, we strive for the same study of Torah and observance of the *mitzvot* that our parents and grandparents before us cherished throughout the generations, from Sinai onward.

But yes, we have introduced innovations, certainly relative to the East European model which is our cherished touchstone, our intellectual and spiritual origin, and the source of our nostalgia. We are Orthodox Jews, most of us of East European descent, who have, however, undergone the modern experience—and survived it; who refuse to accept modernity uncritically, but equally so refuse to reject it unthinkingly; who have lived through the most fateful period of the history of our people and want to derive some invaluable lessons from this experience, truths that may have been latent heretofore. In this sense, we have indeed changed from the idealized, romanticized, and in many ways real picture of the *shtetl*, whether of “lomdisch” Lithuania or the Hasidic courts.

Do these changes delegitimize us as Orthodox Jews, as followers of Halakhah, as *benei Torah*? My answer is a full and unequivocal No.

The “changes” we have introduced into the theory and practice of Orthodox Judaism have resulted not in the diminution of Torah but in its expansion. Some changes are, indeed, for the good. And such positive and welcome changes were introduced at many a critical juncture in Jewish history.

These changes (actually changes in emphasis rather than substance), which we will describe and explain presently, were occasioned by the radically new life experiences of the

last several generations. They are genuine Torah responses to unprecedented challenges to our whole way of life and way of thinking. They include: modernity—its openness, its critical stance, its historicism; the democratic experience which, most recently, has raised the serious challenge of the new role of women in family and society; the growth of science and technology, and the scientific method applied to so many fields beyond the natural sciences; almost universal higher worldly education amongst Jews—which destroys the common assumption of bygone generations that an *am ha-aretz* in Torah is an unlettered ignoramus in general; the historically wrenching experience of the Holocaust; the miraculous rise of the State of Israel; and the reduction of observant and believing Jews to a small minority of the Jewish people—a condition unknown since the darkest periods of the Biblical era.

What are some of our contributions to Torah Judaism? Let us adumbrate several of the more characteristic foundations of our *Weltanschauung*, some of which may appear more innovative and some of which are “different” only because of the emphasis we place upon them relative to other ideas and ideals. They deal with the general areas of education, moderation, and the people of Israel.

The first is *Torah Umadda*, the “synthesis” of Torah and worldly knowledge. For the latter term, *Madda*, we can just as well substitute the Hirschian *Derekh Eretz*, though I prefer *Chokhmah* to both; it is the term used both in the Midrash and in the writings of Maimonides.\*

For us, the study of worldly wisdom is not a concession to economic necessity. It is *de jure*, not *de facto*. I have never understood how the excuse of permitting “college” for the sake of *parnasah* or earning a living can be advocated by religiously serious people. If all secular learning is regarded as dangerous spiritually and forbidden halakhically, what right does one have to tolerate it at all? Why not restrict careers for Orthodox Jews to the trades and small businesses? Is the difference in wages between a computer programmer and a shoe salesman large enough to dismiss the “halakhic” prohibition of the academic training necessary for the former? The Hasidic communities and part of the Mitnagdic yeshiva world, which indeed proscribe any and all contact with secular academic learning, have at least the virtue of consistency. One cannot say the same for the more moderate or modernist factions

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\*For more on the theme of *Torah Umadda*, see my book of the same name published in 1990.

of the “yeshiva world” which condone “college” for purposes of a livelihood (while insisting upon rather arbitrary and even bizarre distinctions amongst various courses and disciplines) at the same time that they criticize, usually intemperately, the Centrist Orthodox for their open attitude towards the world of culture.

For us, the study of worldly wisdom *enhances* Torah. It reveals not a lowering of the value of Torah in the hierarchy of values, but a symbiotic or synergistic view.

Critics of the *Torah Umadda* school have argued that our view is premised on a flawed appreciation of Torah, namely, that we do not subscribe to the wholeness and self-sufficiency of Torah. *Torah Umadda* implies, they aver, that Torah is not complete, that it is lacking; else, why the need for secular learning?

This critique is usually based upon the Mishnah in *Avot* (5:26) that *bafakb bah ve'bafakb bah de'kula bah*—delve into Torah intensively, and you will discover that it contains everything. Hence, the Tannaim believed that Torah is the repository of all wisdom, and therefore independent study of other systems of thought and culture is a denial of this authoritative comprehensiveness of Torah.

Truth to tell, this is indeed the interpretation of this particular Mishnah by the Gaon of Vilna in his Commentary: The Torah contains, in hidden as well as revealed form, the totality of knowledge. But does this really imply that there is no independent role for *Madda* or *Chokhmah*?

Not at all. First, the Gaon himself is quoted by one of his students, R. Baruch of Shklov, as saying that ignorance of other forms of wisdom results in a hundredfold ignorance of Torah: “for Torah and wisdom are bound together” (Introduction to *Sefer Euclidos*, 1781). The last clause itself belies the view that all wisdom, including worldly wisdom, is contained within the Torah. While it is true that the Gaon was extremely adept at demonstrating, through various complex and arcane means, that the many aspects of Torah interpenetrate each other so that, for instance, elements of the Oral Torah are discoverable in the text of Scripture, still we may not be correct in assuming that his interpretation of this Mishnah is anything more than its face value. In all probability it does *not* represent the essence of his encompassing view on the nature of Torah. Moreover, even if one insists upon ascribing to the Gaon such a radical view of Torah based upon this comment, he

clearly does maintain that the secular disciplines are necessary to unlock the vault of Torah in order to reveal the profane wisdom that lies latent within it.

Second, we find instances where the Sages clearly delineate Torah from Wisdom, *Chokhmah*. Thus, in Midrash Ekhah, 2, we read: “if you are told that the Gentiles possess wisdom, believe it; that they possess Torah, do not believe it.” What we have here is not a confrontation between sacred and secular wisdom, but an expression of their complementarity: Each is valuable, each has its particular sphere. “Torah” is our particularist corpus of sacred wisdom, confined to the people of Israel, while “Wisdom” is the universal heritage of all mankind in which Jews share equally even though it is not their own exclusive preserve.

Finally, the debate on the meaning of the Gaon’s words notwithstanding, his is not the only authoritative interpretation of the passage in the Mishnah. Meiri sees this passage as teaching that any problem within Torah itself is solvable without having recourse to sources outside of Torah. Torah, thus, is self-sufficient as sacred teaching; it makes no claims on being the sole repository of all wisdom, divine and human. This much more modest exegesis is certainly more palatable for us, living in an age of the explosion of knowledge and the incredible advances of science and technology. The view some ascribe to the Gaon, that there is no autonomous wisdom other than Torah, because it is all contained in Torah, would leave us profoundly perplexed. No amount of intellectual legerdemain or midrashic pyrotechnics can convince us that the Torah, somehow, possesses within itself the secrets of quantum mechanics and the synthesis of DNA and the mathematics that underlie the prediction of macroeconomic fluctuations and... and... No such problems arise if we adopt the simpler explanation of Meiri.

For those of us in the Centrist camp, *Torah Umadda* does not imply the coequality of the two poles. Torah remains the unchallenged and pre-eminent center of our lives, our community, our value system. But centrality is not the same as exclusivity. It does not imply the rejection of all other forms or sources of knowledge, such that non-sacred learning constitutes a transgression. It does not yield the astounding conclusion that ignorance of Wisdom becomes a virtue. I cannot reconcile myself, or my reading of the whole Torah tradition, with the idea that ignorance— any ignorance—should be raised to the level of a transcendental good and a source of ideological pride.

Time does not permit a more extensive analysis, based upon appropriate sources, of the relationship between *Torah* and *Madda* within the context of *Torah Umadda*. But this one note should be added: Granting that Wisdom has autonomous rights, it does not remain outside the purview in Torah as a corpus of texts or body of knowledge. Ultimately, as Rav Kook taught, both the sacred and the profane are profoundly interrelated; “the Holy of Holies is the source of both the holy and the profane.” The Author of the Book of Exodus, the repository of the beginnings of the halakhic portions of the Torah, is the self-same Author of the Book of Genesis, the teachings about God as the universal Creator, and hence the subject matter of all the non-halakhic disciplines. Truly, “both these and these are the words of the living God!” (This may provide an alternative answer to the famous question of Rashi at the beginning of Genesis, as to why the Torah begins with the story of the genesis of the world rather than with the first *mitzvah* as recorded in Exodus.)

The second important principle that distinguishes Centrist Orthodoxy is that of *moderation*. Of course, this should by no means be considered a “change” or “innovation”; moderation is, if anything, more mainstream than extremism. But in today’s environment, true moderation appears as an aberration or, worse, a manifestation of spinelessness, a lack of commitment. And that is precisely what moderation is not. It is the result neither of guile nor of indifference nor of prudence; it is a matter of sacred principle. Moderation must not be understood as the mindless application of an arithmetic average or mean to any and all problems. It is the expression of an earnest, sober, and intelligent assessment of each situation, bearing in mind two things: the need to consider (the realities of any particular situation as well as general abstract theories or principles; and the awareness of the complexities of life, the “stubborn and irreducible” facts of existence, as William James called them, which refuse to yield to simplistic or single-minded solutions. Moderation issues from a broad *Weltanschauung* or world view rather than from tunnel vision.

It was, as is well known, Maimonides who established moderation as a principle of Judaism when he elaborated his doctrine of “the middle way,” *derekh ha-benonit* or *derekh ha-emetzait*, as the Judaized version of the Aristotelian Golden Mean in his *Hilkehot De'ot* as well as in his earlier “Eight Chapters.” The mean is, for Rambam, the right way and the way of the virtuous (*ha-derekh ha-yesharah, derekh ha-tovim*). The mean is not absolute; Maimonides records two standard exceptions and describes certain general situations where the mean

does not apply. This alone demonstrates that the principle of moderation is not, as I previously mentioned, a “mindless application of arithmetic averages” to his philosophy of character.

Of course, Maimonides is speaking primarily of moral dispositions and individual personality, not of political or social conduct. Yet, there is good reason to assume that the broad outlines of his doctrine of moderation apply as well to the social and political spheres. First, there is no *prima facie* reason to assume that because Maimonides exemplifies his principle by references to personal or characterological dispositions, that this concept does not apply to collectivities, such as the polls or society or the nation, *mutatis mutandis*. Indeed, there is less justification for mass extremism than for individual imbalance. Second, his own historical record reveals a balanced approach to communal problems which, while often heroic, is not at all extremist. Special mention might be made of his conciliatory attitude towards the Karaites despite his judgment as to their halakhic status. But this is a subject which will take us far afield and must be left for another time.

Third, Maimonides refers to a specific verse which, upon further investigation, reveals significant insights. He identifies the Middle Way with the “way of the Lord,” citing Genesis 18:19—“For I have known him to the end that he may command his children and his household after him that they may keep the way of the Lord, to do righteousness and justice.” The Middle Way is the Divine Way, the Way of the Lord, and the assurance of a just and moral world (“to do righteousness and justice”). It is the essential legacy that one generation must aspire to bequeath to the next: “that he (Abraham) may command his children and his household after him that they may keep the way of the Lord...”

Now consider the context of this verse, which Maimonides sees as the source of the teaching of moderation. It appears just after the very beginning of the story of the evil of Sodom and Gomorrah. Verses 16, 17, and 18, just preceding the passages we have cited, tell of the angels looking upon Sodom as Abraham accompanies them on their way: “And the Lord said: Shall I hide from Abraham that which I am doing [to Sodom], seeing that Abraham shall surely become a great and mighty nation, and all the nations shall be blessed in him? For I have known him (or, preferably: I love him) to the end that he may command his children and his household after him that they may keep the way of the Lord...” God wants Abraham to exercise his quality of moderation, the Way of the Lord, on the Lord

Himself as it were, praying for the Lord to moderate the extreme decree of destruction against Sodom and Gomorrah. And Abraham almost succeeds: What follows is the immortal passage of the Lord informing Abraham of His intention to utterly destroy the two cities of wickedness, and Abraham pleading for their survival if they contain at least ten innocent people.

Surely, the “Way of the Lord” refers to more than personal temperance alone; the doctrine of moderation, which the term implies according to Maimonides, is set in the context of Abraham’s office of a blessing to all the peoples of the earth, and of his heroic defense of Sodom and Gomorrah—symbols of the very antithesis of all Abraham stands for. A more political or communal example of moderation and temperance, of tolerance and sensitivity, is hard to come by. Yet for Maimonides, this is the Way of the Lord. The Way of the Lord speaks, therefore, not only of personal attributes but of the widest and broadest scopes of human endeavor as well.

Our times are marked by a painful absence of moderation. Extremism is rampant, especially in our religious life. Of course, there are reasons—unhappily, too often they are very good reasons—for the new expressions of zealotry. There is so very much in contemporary life that is reprehensible and ugly, that it is hard to fault those who reject all of it with unconcealed and indiscriminate contempt. Moreover, extremism is psychologically more satisfying and intellectually easier to handle. It requires fewer fine distinctions, it imposes no burden of selection and evaluation, and substitutes passion for subtlety. Simplicity and extremism go hand in hand. Yet one must always bear in mind what Murray Nicholas Butler once said: The extremes are more logical and more consistent—but they are absurd.

It is this moral recoil from absurdity and the penchant for simplistic solutions and intellectual short-cuts, as well as the positive Jewish teaching of moderation as the “way of the Lord,” that must inform our public policy in Jewish matters today. The Way of the Lord that was imparted to Abraham at the eve of the great cataclysm of antiquity must remain the guiding principle for Jews of our era who have emerged from an incomparably greater and more evil catastrophe. Moderation, in our times, requires courage and the willingness to risk not only criticism but abuse.



Test the accuracy of this statement by an exercise of the imagination. Speculate on what the reactions would be to Abraham if he were to be alive today, in the 1980's, pleading for Sodom and Gomorrah. Placards would no doubt rise on every wall of Jerusalem: "*shomu shamayim al zot...*"; the scandal of a purportedly Orthodox leader daring to speak out on behalf of the wicked evildoers and defying the opinions of all the "Gedolim" of our times! Emergency meetings of rabbinic organizations in New York would be convened, resulting in a statement to the press that what could one expect of a man who had stooped to a dialogue with the King of Sodom himself. Rumors would fly that the dialogue was occasioned by self-interest—the concern for his nephew Lot. American-born Neturei Karta demonstrators in Israel would parade their signs before the foreign press and TV cameras: "WASTE SODOM ... NUKE GOMORRAH ... ABRAHAM DOESN'T SPEAK FOR RELIGIOUS JEWRY." Halakhic periodicals would carry editorials granting that Abraham was indeed a *talmid chakham*, but he has violated the principle of *emunat chakhamim* (assumed to be the warrant for a kind of intellectual authoritarianism) by ignoring the weight of rabbinic opinion that Sodom and Gomorrah, like Amalek, must be exterminated. Indeed, what can one expect other than pernicious results from one who is well known to have flirted with Zionism...? And beyond words and demonstrations, Abraham would be physically threatened by the Kach strongmen, shaking their fists and shouting accusations of treason at him. And so on and so on.

I cannot leave the subject of moderation without at least some reference to a matter which never fails to irritate me, and that is: bad manners. Some may dismiss this concern as mere etiquette and unworthy of serious consideration. But I beg to differ. The chronic nastiness that characterizes so much of our internal polemics in Jewish life is more than esthetically repugnant; it is both the cause and effect of extremism, insensitivity, and intolerance in our ranks. We savage each other mercilessly, thinking we are scoring points with "our side"—whichever side that is—and are unaware that we are winning naught but scorn from the "outside world." Our debates are measured in decibels, or numbers of media outlets reached, rather than by the ideas propounded and the cogency of our arguments. True, when one takes things seriously it is difficult to observe all the canons of propriety; tolerance comes easier to men of convenience than to men of conviction. But there is a world of difference between a *crie de coeur* that occasionally issues from genuine outrage and

the hoarse cry of coarseness for its own sake that infects our public discourse like a foul plague.

Let others do as they wish. We, of our camp, must know and do better. If our encounter with our dissenting fellow Jews of any persuasion is to be conducted out of love and concern rather than enmity and contempt, then moderation must mark the form and style as well as substance of our position.

That is our task as part of our affirmation of moderation as a guiding principle of Centrist Orthodoxy. Our halakhic decisions, whether favorable or unfavorable to the questioner, whether strict or liberal, must never be phrased in a manner designed to repel people and cause Torah to be lowered in their esteem. Unfortunately, that often happens—even in our own circles, especially when we try to outdo others in manifestations of our piety.

The third principle of Centrist Orthodoxy is the centrality of the people of Israel. *Ahavat Yisrael*, the love of Israel, and the high significance it attains in our lives is the only value that can in any way challenge the preeminence of Torah and its corollary, *ahavat ha-Torah*, the love of Torah.

The tension between these two values, Torah and Israel, has been dormant for centuries. Thus, in the High Middle Ages we find divergent approaches by R. Saadia Gaon and by R. Yehuda Halevi. The former asserts the undisputed primacy of Torah: It is that which fashioned Israel and which remains, therefore, axiologically central. Saadia avers: “our people Israel is a people only by virtue of its Torahs” (i.e., the Written and the Oral Torah; *Emunot ve-De'ot* 3:7). Halevi maintains the reverse position: “If not for the Children of Israel, there would be no Torah in the world” (*Kuzari* 2:56). Israel precedes Torah both chronologically and axiologically. Hints of the one position or the other may be found scattered through the literature, both before and after Saadia and Halevi. Perhaps the most explicit is that of *Tanna de-Vei Eliyahu*, which tells of an encounter between a scholar and an incompletely educated Jew. The scholar records the following conversation:

He said to me, “Rabbi, two things weigh upon my heart, and I love them both—Torah and Israel—but I do not know which comes first.” I said to him, “People usually say that Torah comes first, before all else, as it is said, ‘The Lord made me [Torah, wisdom] as the beginning of His way’ (Prov. 8:22); but I say that the holy Israel comes first, as it is said, ‘Israel is the Lord’s hallowed portion, the first fruits of His increase’ (Jer. 2:3).”

—S.E.R., *Ish Shalom* edition, chap. 15, p. 17

Now, these two opposing viewpoints have lived peacefully, side by side, for centuries, their conflict latent—until our own days when, as a result of the trauma of the Holocaust and the reduction of Orthodoxy to a decided minority, the problem assumes large, poignant, and possibly tragic proportions. The confrontation between the two, if allowed to get out of hand, can have the most cataclysmic effects on the future of the House of Israel as well as the State of Israel. History calls upon us to abandon tired formulas and ossified clichés and make a deliberate, conscious effort to develop policies which, even if choices between the two must be made, will lead us to embrace both and retain the maximum of each. We shall have to undertake a difficult analytic calculus: Which of the two leads to the other?—and give primacy to the preference which inexorably moves us on to the next love, so that in the end we lose neither. Ultimately, there can be no Torah without Israel and no Israel without Torah. In the language of the Zohar, *Yisrael ve'oraita ehad hu ...* Israel and Torah are one.

If indeed such a calculus has to be undertaken, then Orthodox Jews will have to rethink their policy. Heretofore, the attitude most prevalent has been that Torah takes precedence—witness the readiness of our fellow Orthodox Jews to turn exclusivist, to the extent that psychologically, though certainly not halakhically, many of our people no longer regard non-Orthodox Jews as part of *Kelal Yisrael*. But this choice of love of Torah over love of Israel is a dead end: Such a decision is a final one, for it cuts off the rest of the Jewish people permanently. Such love of Torah does not lead to love of Israel; most certainly not. The alternative, the precedence given to love of Israel over love of Torah, is more reasonable, for although we may rue the outrageous violations of Torah and Halakhah and their legitimation by non-Orthodox groups, a more open and tolerant attitude to our deviationist brethren *may* somehow lead to their rethinking their positions and returning to identification with Torah and its values; *ahavat Yisrael* may well lead to *ahavat ha-Torah*. A

posture of rejection, certainly one of triumphalist arrogance, will most certainly not prove attractive and fruitful.

Moreover, if there ever was a time that a hard choice had to be made to reject Jews, this is not the time to do so. In this post-Holocaust age, when we lost fully one third of our people, and when the combination of negative demography and rampant assimilation and out-marriage threaten our viability as a people, we must seek to hold on to Jews and not repel them. Love of Israel has so often been used as a slogan—and a political one, at that—that it dulls the senses and evokes no reaction. Yet, like clichés, slogans contain nuggets of truth and wisdom, and we ignore them at our own peril.

Included in the rubric of the centrality of the people of Israel as a fundamental distinguishing tenet of Centrist Orthodoxy is the high significance of the State of Israel. If I fail to elaborate on this principle it is not because of its lack of importance but, on the contrary, because it is self-evident. Whether or not we attribute Messianic dimensions to the State of Israel, and I personally do not subscribe to or recite the prayer of *reshit tzemichat ge'ulatenu*, its value to us and all of Jewish history is beyond dispute. Our love of Israel clearly embraces the State of Israel, without which the fate of the people of Israel would have been tragically sealed.

Such, in summary, are some of the major premises of Centrist Orthodoxy. They are not all, of course, but they are important and consequential.

The path we have chosen for ourselves is not an easy one. It requires of us to exercise our Torah responsibility at almost every step, facing new challenges with the courage of constant renewal. It means we must always assess each new situation as it arises and often perform delicate balancing acts as the tension between opposing goods confronts us. But we know that, with confidence in our ultimate convictions, we shall prevail. For our ultimate faith and our greatest love is—the love of God. The great Hasidic thinker, R. Zadok haKohen, taught us in his *Tzidkat ha-Tzaddik* (no. 197) that there are three primary loves—of God and Torah and Israel. The latter two he calls “revealed” loves, and the love of God—the “concealed” love, for even if the religious dimension seems absent, as long as there is genuine love of Torah or love of Israel, we may be sure that it is empowered and energized by the love of God, but that the latter is concealed, and often buried in the unconscious. It is this above all that is the source of our loves, our commitments, our confidences.

Rav Kook used to tell of his school days as a youngster in White Russia. The winters were fierce, the snows massive, the roads impenetrable. He and the others lived on a hill, and the school was at the bottom of that hill. He and his classmates would usually fail to negotiate the difficult downward trek, and appear in school bruised and tattered. At the same time, their teacher would arrive spotless, safe, and clean. When asked by his charges how he managed this feat, he replied: there is a stake fastened into the hill, and another here at school, and a rope connects them. Hold onto this life-line, and you will be safe: “if you are firmly anchored up above, you will not slip here below.”



## Centrist Orthodoxy and Moderationism

### *Definitions and Desiderata*

Rabbi Dr. Norman Lamm

Critics of the name “Centrist Orthodoxy” assume that it indicates that we locate ourselves mid-point between Orthodoxy and assimilationism and claim that territory as our religious home. That, of course, is nonsense; such an implication would effectively be tantamount to abandoning Torah Judaism in favor of some compromise of basic principles. Only slightly less absurd is the idea that Centrist Orthodoxy is the “center” between Satmar and the few intellectuals who presumably constitute the Orthodox Left. It is no compliment to our intelligence to imagine that in the name of Centrism we advocate walking about the religious terrain with a yard-stick, calipers, and a pocket calculator, measuring the exact distance between Neturei Karta and “Humanistic Judaism” in order to locate the exact middle or “center.” We are not, and do not aspire to be, ideological geographers or spiritual surveyors who search out the exact point between right and wrong, religious and non-religious, *mitzvah* and *aveirah*, and settle upon that center as our religious goal. Centrism may be wrong-headed, but it is not that spiritually simple-minded or religiously asinine.

Whatever one may think of the term “Centrist Orthodoxy” and its merits relative to “Modern Orthodoxy” or “Dati Orthodoxy” (a designation that has much to commend it) or no name at all, what it says is something vastly different from the infantile inference I have described.

I begin with these prolegomena about our identification not because I attribute any significance to it *per se*, but because the name does indeed indicate a definite point of view,

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and that is the question of moderation which I take to be so fundamental a characteristic of our *hasbka'afah* that we can rightly refer to it as “moderationism.”

Of course, one of the difficulties with this self-definition is that the crown is claimed by many pretenders. Most religious movements in our contemporary Jewish community consider themselves moderate and can point to rival positions on either side of them. But that is not the kind of moderation I have in mind. My concern at this occasion is not the practice of a moderate stance, but the theoretical background out of which such moderation issues; hence, my emphasis on moderationism and not only moderation as such. It is an ideological policy and not just our collective disposition.

In order to clarify what is meant by moderation and its relation to Centrism, it is worth sketching briefly some of the background of the “theory of the mean” (or center or middle) in Maimonides’ thought. (I shall here be elaborating upon [some of] what I began to say in an article in the Fall 1986 issue of *Tradition*; see the previous article.)

It was Maimonides who established moderation as a principle of Judaism when, in his *Mishneh Torah* (*Hil. De'ot*) as well as in his earlier “Eight Chapters,” he elaborated his doctrine of the mean or “the middle way” (*ha-derekh ha-emitza'it* or *ha-derekh ha-benonit*) as the Judaized version of the Aristotelian Golden Mean. The mean is, for Maimonides, the “right way” and the “way of the virtuous” (*ha-derekh ha-yesharah, derekh ha-tovim*) and, most significantly, “the way of the Lord” (*derekh Hashem*).

Every disposition or facet of character can be plotted along a line going from one extreme to another. Thus, to take an example from the way we deal with money: one can be greedy or, at the other extreme, extravagant and a squanderer. Some place in the center, in between parsimoniousness and exorbitance, is the intelligent and moderate way of handling money. Another example: concern for one’s own well-being. At one end is cowardice, at the other extreme is a foolish boldness that is unnecessarily dangerous, and in the middle is a moderate and sane form of courage.

Now, this doctrine of the mean, the basis of the theory of moderation, is open to attack on several grounds. First, there is objection to our particular use of this doctrine because Maimonides here writes of individual character, not of national or social policy—of personal dispositions, not religious outlooks and ideology. And second, regarding the theory itself, it appears to be highly artificial: a mathematical approach to life and character which



should, in truth, be more existential than arithmetic. Does moderationism mean that one must be bloodlessly “parve,” never getting angry, excited, revolted, indignant, no matter what the provocation? In truth, in its arithmetic form, the theory appears flat, emotionally inhibiting, passionless, and uninspiring.

Let us respond to these criticisms in order. (Regarding the first criticism, see my *Tradition* article, here reprinted as the previous article.)

We turn now to the second charge against moderationism. It is accused of being too artificial and arithmetic in directing us to the exact middle, mathematically equidistant from both extremes at the ends of the spectrum, and it is thus emotionally inhibiting and spiritually bloodless.

About thirty five years ago, my teacher and mentor, Rabbi Joseph B. Soloveitchik, [for whose recovery I devoutly pray,] addressed a convention of the Rabbinical Council of America in Detroit. Among other things, he said that we err in assuming that Maimonides is prescribing an arithmetic approach to *de'ot*— character traits or dispositions. Rather, Maimonides’ approach is far more subtle and dynamic: he favors the ability to go from one end to the other of the spectrum as necessity requires it, so that in sum and on the average we stay in the center, but not that we remain unalterably and unerringly glued to one mid-point.

I recall being enchanted by this interpretation, because I had long been troubled by the flatness of the apparently one-dimensional approach of Maimonides. But I could not at that time agree that this explanation by “the Rav” was indeed consonant with the expressed view of Maimonides. However, one learns never to dismiss an opinion of the Rav without a great deal of thought, and more than three decades of such thought have borne him out.

According to Maimonides, in man’s natural state, nature and nurture both combine to place him someplace off-center on each spectrum band of character. We are either too sparing or too spendthrift, too fearsome or too reckless. Nature does not incline us to moderation, because the probability that all the elements that go into our composition will lead us to the exact mid-point of character approaches zero. Rather, moving toward the center is an act of deliberate, conscious choice effected by the exercise of intelligence, “Therefore,” writes Maimonides, “our earliest Sages instructed us that a man ought always weigh his dispositions and measure them and direct them to the middle way” (*Hil. De'ot* 1:4).

The key to character for Maimonides is not the mean as such, but this weighing and measuring and directing, the conscious use of reason rather than passively following Nature blindly and supinely. In other words, the process of arriving at a determination of one's own life and character is more important than the results. It is the dynamic quality of rationally weighing and assessing and then, out of freedom, deciding and choosing—the profoundly human act of self-determination of one's own character, one's very self—that qualifies this activity as “the way of the Lord,” for we then imitate Him, who created the world out of freedom, in exercising the intellect with which He endowed us and thus directing our very destiny.

The mean itself is not absolute; thus, Maimonides records two standard exceptions and describes certain general situations where the mean does not apply. Moreover, there are different levels of virtue: The *chakham*, the merely wise person, aims for the exact mid-point, whereas the *chasid* or pious person, who aspires to supererogatory conduct, will incline to the more ego-denying extreme. This alone is enough to demonstrate that the principle of moderation is not a mindless application of arithmetic averages to the philosophy of character.

In this sense, the Rav's insight is completely correct; the Maimonidean outlook is dynamic, it encourages us to move from point to point as long as we do so with complete awareness of the options (for that is what is meant by the weighing and measuring of the extremes and all points in between) and as long as we are eventually and ultimately expressive of the position of the center, or moderation. Maimonidean centrism is, in this sense, different from the passive Aristotelian theory of the Golden Mean. For Maimonides, one must engage all possibilities—both extreme positions and all that comes between them—and out of this dialectic emerges a choice determined freely by the individual's will and intellect rather than one's congenital personality structure. (By “all options” I obviously do not intend to violate the demands of plausibility; I refer only to those positions which share the fundamental propositions and vision of the stand under discussion.) This interpretation is, at the very least, reasonable, for it demands the exercise of reason and intellect and prevents us from being enchained to emotion and impulse, subservient to external authority, or conforming to social pressure and the narrowness of one's particular upbringing.

Moreover, the “weighing and measuring” in the process of arriving at the—or a—mean necessitates the consideration of *all* available options, including both extremes, thus making sure that no relevant view is ignored and no valid value is overlooked. In this sense, paradoxically, dynamic moderation is more “extreme” than extremism because it must consider both extremes rather than only one.

Thus, if the first chapter of *Hil. De'ot* reveals Maimonides' indebtedness to the Aristotelian Golden Mean (despite the differences mentioned, and yet other significant deviations I have discussed at length in my “The Sage and the Saint in Maimonides' Writings,” in the *Samuel Belkin Memorial Volume*), his second chapter shows a bias in favor of the Platonic model of the ideal man as one who like a prince in control of his realm, has all his traits in balance, using each as needed and coordinating all synergistically. Hence Maimonides' recommendation of the physician of character who prescribes one extreme to neutralize a penchant for the other extreme and thus helps reestablish harmony or equipoise in the human soul.

Maimonides, as an eminent physician, naturally chose the Greek metaphor of the medical doctor to illustrate his view of the dynamics of the mean. It is a commonplace that biological systems, like ecosystems on a far larger scale, resist extremes and resort to equal and opposite forces to regain balance. (With equal justice, but resorting to a less picturesque simile, Maimonides could have used the biblical reference to astronomy to illustrate the peril of the extremes. Thus, exposure to the sun in moderation is a source of health: “the sun of righteousness shall arise, healing in its wings” [Mal. 3:20]—but in excess it is harmful: “the sun shall not smite thee by day” [Ps. 121:6]. But these verses would not have allowed for the lesson of utilizing one extreme to combat the excess of the other.) Here is the basis for a dynamic view of moderation.

History is replete with instances of rampant extremism to the everlasting detriment of the Jewish people. One need only mention the well known cruelty and narrowness of the Zealots during the period of the Second Commonwealth who, irate at those who did not share their political perspective, destroyed the food supplies of their fellow Jews at the time that the Romans, their common enemy, were besieging Jerusalem. This does not point to some genetic Jewish predisposition to extremism. It proves only that, for better or for worse (and usually the latter), we are no different from others and we are equally vulnerable to

seizures of fanaticism and other forms and varieties of extremist conduct even to the point of self-destruction.

It is ironic that Maimonides himself was the object of extremism on the historic polemic that broke out after his death. Especially deplorable was the extreme to which some anti-Maimonists went in arranging for the burning of the master's *Guide for the Perplexed* on the altar of a Dominican church. At the other end of the spectrum were those who were so enamored of Maimonides' philosophical teachings that they utterly neglected his role as the greatest Halakhist of his time and his immortal contributions to Halakhah, and acted as if all this was just a gesture to the ignorant masses.

Other historical examples of extremism and moderationism abound. The Hasidic-Mitnagdic polemic offers abundant illustrations, especially of extremism. The Hasidic defiance of the communal establishment and especially Rabbinic authority occasionally went beyond the bounds of proper religious discourse, and provoked a far more intense and even violent reaction: excommunication, hatred, violence. It was only the appearance of two distinguished personalities—R. Shneur Zalman of Ladi on the Hasidic side and R. Hayyim Volozhiner on the Mitnagdic—that stilled the controversy and allowed the debate to proceed in a civil fashion. Both were passionate spokesmen for their respective points of view, but both operated as moderates in the best sense of the word.\*

I purposely refrain from citing examples from current Jewish history for two reasons. First, there are so very many unfortunate instances of dreadful and unnecessary expressions of extremism that one hardly knows where to begin. And second, I do not want our attention to this theoretical analysis of moderationism to be distracted by what may be considered partisanship in many of the controversies that now divide our people. What this essay loses in the lack of concrete examples from the current scene will, I hope, be more than compensated for in inviting dispassionate reflection on the central theme. And that focus is the Jewish justification of a special kind of moderation that issues from the most reliable sources of the Jewish tradition understood in an appropriately sophisticated manner.

It is this dynamic, radical moderationism which, I believe, leads us to a more certain grasp of the truth of Torah than a narrowly focused insistence upon one view or value alone.

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\*For more on this, see my *Torah Lishmah: Torah for Torah's Sake in the Works of Rabbi Hayyim of Volozhin and His Contemporaries*, 1989.

In a rather quaint agadic disquisition on the Hebrew alphabet, the Talmud (*Shabbat* 104a) connects the letter *shin* with the word *shekker* falsehood, and the letter *tav* with the word *emet*, truth. The reason, the Talmud explains, is that *shekker mekarvan mileih, emet merachka mileih*: the letters of the word for falsehood, *shekker*, are close together—*sh-k-r* follow upon each other in the alphabet—whereas those for truth, *emet*, are spread apart: *aleph* is the first letter of the alphabet, *mem* the middle one, and *tav* the last letter. What the Talmud seems to be suggesting is that a tunnel view, focusing upon one issue to the exclusion of all others, leads to distortion, whereas a broader view, which is all-encompassing and which takes into account diverse opinions and factors, corrects for such distortion by providing perspective, thus ensuring *emet*, truth.

I submit that this moderationism not only has general relevance to Halakhah, but lies at the heart of the thought processes of every competent *posek* or halakhic decisor. A *posek* is not a computer in human form who accesses his halakhic data-base for the relevant and dominant halakhic opinions and offers them “as is” without considering minority views and without insight into the unique human situation of the one who posed the questions. A true *posek* in the classical sense gathers all his authorities—the extremes and all that come in between them—and relates them to the question or dilemma presented to him in all its general qualities and, as well, its existential singularities. An examination of the literature will generally yield a multiplicity of authoritative approaches, each of a different order of cogency (I have discussed this at length in an article I co-authored with Aaron Kirschenbaum for the very first issue of the *Cardozo Law Review*). He will not opt automatically to be either a *mekil* or a *machmir*, although he may have such tendencies either in general or in specific areas of the Halakha. His ultimate decision will be based upon close analysis of all relevant opinions in conjunction with the individual circumstances of the problem presented to him, and informed by the overarching goals of Torah and the values it seeks to implant in the community of Israel. He will not, except in the most communally harmless of questions, seek to abide by all opinions, by which is meant that the most stringent recorded opinion always prevails.

This “weighing and measuring” and consideration of all viewpoints before deciding, is the halakhic implementation of moderationism. It used to be the accepted hall-mark of a *posek* who was a *gadol*. Our hapless generation can no longer be so certain that its

contemporary *poskim* follow that Maimonidean ideal. But the truly great halakhic decisors of past generations were not at all reluctant to broaden their halakhic vistas and include those legal motifs which reckoned with human needs and sensitivities. An example from the Halakhah concerning Passover comes from the writings of R. Naftali Zvi Yehuda Berlin (known as the *Netziv*), Rosh Yeshiva of Volozhin, whose hundredth “yahrzeit” was recently observed. He is writing to his eminent, son, Rabbi Chaim Berlin, who was quite strict about eating the proper amount of *maror*, and for whom these “bitter herbs” was horseradish, with all its harsh spiciness. In a letter dated just 103 years ago, he reprimands his son, suggests that he substitute Romaine lettuce for the horseradish which is “like swords for the body,” especially after fasting on the eve of Passover, and is thus in violation of the verse, “its [Torah’s] ways are the ways of pleasantness” (*Meromei Ha-sodeh* to *Sanhedrin* 39a).

One of the most brilliant and underestimated rabbinic figures of the pre-World War II East European generation, Rabbi Joseph Engel, once said the following, in commenting on a well known Midrash. On the verse in Genesis that “And God saw that it was very good” (Gen. 1:31), the Midrash comments “*very good* implies death.” Rabbi Engel considers this rather astonishing interpretation as a general principle of Torah: all extremes, all “veryism,” is deadly! (See his *Otzerot Yosef, derush* 8, p. 45; he mentions two exceptions, both related to the term *me'od*—very: humility and gratitude.)

We have no apologies to offer in adopting the Maimonidean teaching of the Way of the Lord, the “middle way,” for our policy of moderation especially in our times, marked as they are by a painful absence of such moderation in all areas. Extremism is rampant, especially in our religious life. Of course, there are reasons—unhappily, they are too often very good reasons—for the new expressions of zealotry. There is so very much in contemporary life that is vulgar, reprehensible, and ugly, that it is hard to fault those who reject all of it with unconcealed and indiscriminate contempt.\*

If indeed we adopt this teaching of Maimonides as we have explained it, it means that we do not have an automatic response to each and every problem that we encounter. On the contrary, this approach obligates us to think and reflect and ponder before jumping into the fray. After deliberation, we may even decide to take what is, relative to the circumstances then prevailing, an *extreme* position—but it will not be an *extremist* position! If

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\*See the previous article, “Some Comments on Centrist Orthodoxy,” for further discussion of this point.

the process is followed, if the entire spectrum of those options which accord with our ultimate goal is considered and analyzed responsibly, if all factors and options are “weighed and measured,” the exact decision is less important than the way it was arrived at; then, any selection will be sane, balanced and, even if wrong, it will at least not be in contempt of the most elementary canons of objectivity and intellectual competence. And it will not necessarily be predetermined by some abstract mathematical formula. Most important, it will avoid the pitfall of fanaticism, by which I mean the espousal of one view to the total exclusion of any circumstances or considerations which may call for modification. Thus one can be a “radical” in any specific position yet a “moderate” overall—a “centrist” even if not in the exact center.

Perhaps this is what is suggested in the saying of our Sages in Avot (1:1), *bevu metunim ba-din*, “be moderate in judgment.” The term *din* or judgment may refer not only to a judicial trial but, with some homiletic license, also to *din* as rigor, harshness, or “extremism.” Even when one chooses an “extreme” opinion in any subject—he still must remain a moderate.

Hence, it is a major error to ascribe to moderationism spinelessness or indifference. True, in today’s environment, authentic moderation appears as an aberration or, worse, a manifestation of a lack of commitment. But that is precisely what moderation is not and must not be. It is the result neither of guile nor of indifference nor of prudence; it is a matter of sacred principle. Centrist or Dati Orthodoxy is not a “parve” form of Orthodoxy, although too many moderates do give that impression. It is not a case of ideological wimpishness. The deliberation and reflection and thought processes are all part of coming to a decision. Once the decision is made, however, it must be pursued whole-heartedly, never half-heartedly. As Napoleon told his generals who were contemplating the conquest of Austria: “If you’re going to take Vienna, take Vienna!” This whole-heartedness must, it is true, be expressed with civility and sensitivity and understanding, but always with full commitment and the readiness to suffer for the ideal.

The moderation here recommended is neither that of compromise nor that of winning the approval of the masses. It is that of intelligent, deliberate choosing based upon stubborn commitment.

It is this kind of moderationism which is implied in the term “Centrism”—the “middle way” or center which is the “Way of the Lord,” the dialectic of the extremes which

yields a dynamic moderation based upon the exercise of authentic freedom of choice and self-determination and the assumption of responsibility for the choices so made.

But without genuine self-sacrifice, all our talk and moaning and resolving is just so much excess rhetoric. We must add heat to all the light we strive for: enough heat to inspire as well as light to illumine. We need the gift of passion. Our problem is a pedagogical one: how do we educate our people to be reflective and yet passionate, civil and yet committed, enlightened and yet spirited? Such education requires example but also constant reminder in the form of discussion, persuasion, inculcation, reiteration.

The Zohar (III, 287b) tells the following concerning the death of the great Tanna and mysterious hero of Kabbalah, R. Simeon bar Yochai:

The day that R. Simeon was dying, as he was putting his affairs in order, the members (of the spiritual group of disciples) came to visit him... and the house was filled (with them)... R. Simeon raised his eyes and saw that the house was full. Whereupon he wept and said: once before, when I was very ill, R. Pinchas B. Yair stood before me... and he was surrounded by a flame before me which never ceased... and now I see that the flame has left—and the house is full...

The crowds are not impressive if there is no fire in their bones, no passion in their souls. Single individuals can prevail if they are enveloped in the flame of dedication, confidence, and commitment. Cold figures are no match for warm hearts whose flame endures. Numbers alone, without adequate commitment, are a cause for much weeping.

That is where we sin today. The chronic failing of any form of moderation is the lack of passion—a weakness that infects every area of our activity—from our observance of the mitzvot and our prayer and our study of Torah, the entire gamut of our personal religious experience, to our collective posture towards the rest of the Jewish world where we often tremble and quake when we should be proclaiming proudly where we stand and why.

The Way of the Lord that was imparted to Abraham on the eve of the great cataclysm of antiquity must remain the guiding principle for Jews of our era who have emerged from an incomparably greater and more evil catastrophe. Moderation, in our times, requires courage and the willingness to risk not only criticism but abuse. If we are willing to take on that challenge and that burden, we can yet make a major contribution to the unfolding history of Torah Judaism and to the welfare of our people in these volcanically unstable times.



I believe *ani maamin*, with perfect faith, in the marriage of moderation and passion, of fairness and fervor, of deliberation and dedication, of reasonableness and commitment, of a cool head and a warm heart.

The time has come for us, Centrist Orthodox or Dati or Modern Orthodox Jews, to cease being apologetic and defensive, shy and silent and apprehensive, about our “way.” It is the *derech ha-yesharim*, the “way” of those who march “straight” towards the goal of all Israel lovingly reaccepting the Torah, and re-establishing *shalom* amongst all Jews and, eventually, all the world.

This, indeed, is “the way of the Lord.”



## Some Thoughts on Leadership

Rabbi Dr. Norman Lamm

I often ask myself: What does it take to exercise leadership in the Orthodox community in the fading years of this terrible and tormented as well as fantastic and incredible century?

The question is important to us because we Orthodox Jews have a tendency to fight new battles with old weapons and to confront novel predicaments with antiquated strategies...

I will mention four items or ingredients of leadership, other than the obvious need to be totally committed to Torah and Halakha with all one's heart and soul.

\* \* \*

The first item relates to the heart of this conference, and my thesis is: *leadership of any community requires a number of people, not just one leader, no matter how brilliant or charismatic.* No Lone Rangers need apply for the positions of leadership in any organized community. I admire the contemporary equivalent of the heroic cowboy who defeats the Bad Men single-handedly and goes riding off into the sunset. But I have no confidence that such leadership can endure. True communal leadership requires a *team*, a *community* of leaders, in which one or two or three may be preeminent, but all must pull together.

I heard the following in the name of my teacher. Rabbi Joseph B. Soloveitchik, "the Rav," of blessed memory:

The Torah relates (Nu. 13) that God commanded Moses to send twelve men, each the prince of his tribe, to spy out the land of Canaan which He had promised to give to the Children of Israel. Two of them, Joshua and Caleb, came back with a positive report,

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Delivered at the Conference of the World Council of Orthodox Leadership in November 1997.

affirming the promise of God to Israel and asserting that the campaign would succeed. Ten of the princes, however, were thoroughly discouraging and, in defiance of the divine promise, maintained that any effort to conquer the Land would fail. This report caused untold grief for generations thereafter.

Remarkable: a whole nation witnessed so many obvious miracles—from the Ten Plagues to the splitting of the Red Sea, from the manna to the well of Miriam—and, despite all this, their faith in God was so thin, so fragile, that ten people out of a total population of probably more than 2,000,000 were able to sway them to doubt the divine promise. What demonic powers the ten must have possessed to cause such a tragic upheaval!

But, the Rav adds, there is one more place in the Torah where we find the possibility of ten people to change the destiny of so many others: the plea of Abraham to save the sin-city of Sodom if at least ten *tzaddikim* (righteous people) would be found therein. So, ten people can overwhelm a vast number and lead them to physical and spiritual perdition, and the same number can save an entire populous city from utter devastation.

To which I humbly add this explanation: Why ten? What properties does that specific number possess such that it can wield such enormous power both for good and for evil? The answer, I suggest, comes from the Halakha, where ten is considered the minimum number to constitute an *edah* (congregation) or *tzibbur* (community). If the ten are cohesive, if they are mutually dedicated to one overarching cause, they can overpower hundreds and thousands and even millions of individuals. A *community* of ten is almost omnipotent compared with far larger numbers of individuals who are unrelated and indifferent.

In the same way, leadership by people who are cemented together with the glue of common ideals and values, constitutes a community of leaders, and such an *edah* of leaders can be truly effective on behalf of our people.

How do we of the Modern Orthodox community fare when measured against this criterion?

Not too bad, but also not too good. We have a fair degree of cooperation (thus, this conference), less coordination, and too often an unhealthy degree of turf rivalry and back-biting and empire-building. We have too many Lone Rangers who may do much good, but far less than if we all worked together as befits a community of leaders. But even more prevalent and more disturbing is another phenomenon that plagues us: an ideological

fastidiousness, a spiritual squeamishness, such that the slightest ideological deviation or legitimate difference in halakhic or theological decision is considered anathema and the cause of deliberate alienation. This is an attitude which betrays a curious and paradoxical mixture of arrogant self-righteousness—and a shocking lack of self-confidence. Such leadership does more bad than good.

In order for us to succeed, we have to *deserve* to succeed—and that means to regard each other with respect and affection in a spirit of mutual dedication to the cause of Torah generally and Torah Umadda specifically. I hope that this will be one of the many salutary results of this conference. May we here initiate the beginnings of such an era of enlightened leadership for the entire Modern Orthodox community. And may it be a community of genuine friendship, one which avows that such friendship does not require agreement on every detail.

\* \* \*

The second ingredient is this: Our means must be as honorable as our ends.

In our opposition to the non-Orthodox movements or actions, we must be trenchant in our criticism—but always fair, *scrupulously* fair, and truthful. When I read some Orthodox publications, I marvel at the total lack of perspective. Not only are the non-Orthodox totally demonized—they are *always* wrong, their intentions *always* evil—but we too, of the Modern Orthodox camp, apparently have no redeeming qualities whatever. Such an attitude is not only dishonest, it is also counter-productive. Overstatement and overkill usually bring one's credibility into disrepute.

Last March or April, for instance, one small group of rabbis, armed with an overzealous PR person and a receptive and ignorant reporter in attendance, proclaimed that it was making a revolutionary announcement: a halakhic decision (*pesak din*) that Orthodox Judaism would henceforth not recognize the legitimacy of Reform or Conservative Judaism. Of course, this was an insensitive and sensationalist announcement. Mainstream Orthodoxy has never and does not now acknowledge Reform and Conservatism as *halakhically* legitimate.\*

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\*See my article, "Unity and Integrity," in *Moment* (June 1986), reproduced in *Seventy Faces: Articles of Faith* (Ktav, 2001), 150-59.

The results of this mini-blitz? First, it aggravated an already tense situation in intra-communal relations both here and in Israel and set tempers boiling unnecessarily. Second, it was promptly misinterpreted by the secular press as declaring Reform and Conservative Jews as non-Jewish—a totally false and misleading conclusion based upon an erroneous press report that is still haunting us and will continue to do so with a dogged persistence that defies all our denials and bedevils our attempts to attain *shalom bayit* in the community. All in all, it was a tragic introduction to a long and dreadful chapter of intra-religious strife, the likes of which I have not experienced in the 47 years I am in Jewish public life.

R. Yosef Dov Soloveitchik, the author of *Bet Halevi* is reputed to have said that the difference between “us” and “them” is that they pursue *shekker* (falsehood) with *emet* (truth), while we pursue *emet* with *shekker*...

Being honorable in our means as well as ends means to extend the courtesy of ethical and truthful conduct—*emet*—to those with whom we disagree, even to our ideological foes.

For instance: some months ago the Agudath Israel sponsored a *Siyum Hashbas*, a celebration of many thousands of Jews who Studied a folio of the Talmud per day for about seven and one half years, thus concluding the study of the entire Talmud. The gala historic event took place at Madison Square Garden. Although, unfortunately, there was no mention of Israel by any of the speakers, the event itself was enormously impressive. Immediately upon my return from the Garden, I wrote a letter to [the late] Rabbi Moshe Sherer, President of Agudath Israel, with whose policies I sometimes disagree, complimenting him and his staff on his remarkable *kiddush Hashem*, whereby some 26,000 people gathered in this one site—with thousands more elsewhere connected by television—and where the recitation of the *Shema* and the *Kaddish* made one feel he was in the *Bet Hamikdash* in Jerusalem on a Yom Tov. The utter silence during the *Shemoneh Esreh* was itself a thunderous approbation of Orthodoxy in general and especially of those who study Torah regularly.

So, we today send warm fraternal greetings to our fellow Orthodox Jews of Agudath Israel who are convening in New Jersey. We say to them *Yeyasher kochakhem* and *Chazak Uvarukh*; may your efforts in this direction continue to be successful!

By the same token, the Reform group—with whom our ideological differences are incomparably more profound than with the Haredim—should be encouraged to keep on intensifying their Jewish education for both young and adult.

I am deeply troubled by the truculence of the Reform and Conservative campaign against Orthodoxy, one which resembles a feeding frenzy against us rather than rational criticism—and it makes little difference whether that campaign is directed against Haredim or the Modern Orthodox. Are Orthodox Jews the only ones expected to be bound by the laws of civility and tolerance, the only ones to be reprimanded if they go to excesses in reproaching the others? Is pluralism a blessing to be bestowed only upon pluralists?

I am even more distressed by the enormous risk that the non-Orthodox groups have undertaken in holding their own communities hostage to Israel's acquiescence to their program. If, for whatever reason, Israel decides not to recognize Reform conversions, will Reform leadership be able to push the genie of Jewish anti-Israelism back into the bottle? And if their people lose contact with Israel, will there be enough in the Jewishness in their lives to keep them Jewish at all?

Moreover, *emet* requires us to say respectfully but bluntly that we cannot and will not acknowledge “patrilineal Jews” or other non-halakhically converted Jews as bona fide Jews, and no amount of political or financial pressure will make us yield on a matter of such principle. Our authority is the Talmud and the *Shulchan Arukh*, not the CJF or the GA or the UJA.

I also admit to being perplexed by the newest Reform suggestion: to observe the *Tikkun Leil Shavuot*, a rather minor tradition—announced at a dinner which was totally non-kosher... I am equally puzzled at their adoption of a Jewish version of Orwellian “newspeak,” such as appropriating the term “outreach” to mean not teaching Jews to come closer to Torah, but to bring non-Jewish spouses of out-marrying Jews into their temples. Why such instances of terminological hijacking as bestowing the title “Kollel,” which implies the highest level of Talmudic learning, on what is essentially an adult-ed institute? Terms such as “Kollel” and “yeshiva” and “Rosh Yeshiva” have clear connotations and to misuse them means to obfuscate, not to clarify.

But all this having been said, we must applaud Reform's genuine efforts to return to Jewish tradition in at least some manner, reversing the trend of recent years. *Emet*, truth,

demands that we congratulate them when they work for more Jewish education for their constituents, quantitatively and qualitatively. It is in the interest of all of us to see that most of us are informed Jews who are literate in Torah.

I reject the old policy, which no longer has any validity, that “better nothing than a Reform or Conservative Jew.” A *pintelle Yid* is certainly superior to none at all. We should encourage any group that attempts to teach more of our classical texts, and especially to build day schools for that purpose. The same concern for *emet* may well impel us later to criticize them for a lack of depth in their curriculum—but meanwhile, better something than nothing. And day schools, even the watered down Reform or secularist or Yiddishist version, are more of “something” than certain well meant but patently ineffective gimmicks now receiving such enthusiastic endorsement by certain sectors of our community. But that is a subject for another conversation.

Our goal, our aspiration, our Torah is *emet*, and it deserves that we pursue it with *emet*.

\* \* \*

The concern for *emet* leads me to the third of the four points I wish to raise. And that is, that *Truth demands that our inner life and outer life correspond with each other*, that we be—in the Talmudic phrase—*tokho ke'varo*, that there be no discrepancy and certainly no contradiction between what we are and what we strive to appear to be. In the words of the *Tanna de'Vei Eliyahu* which we recite every morning as the preface to our *Shacharit* prayer, “A person should always be God-fearing, both inwardly and outwardly, acknowledging the truth [publicly] and speaking the truth in his own heart.” True piety must be identical, both within and without. Truth must pervade both our inner thoughts and our public professions.

I mention this because the Orthodox community is more and more getting “hung up” on externals, on *chitzoniyut*, and less and less on *penimiyut* or inwardness, thus enlarging the gap between what we are and what we pretend to be. And it behooves us to be receptive to such criticism, no matter what its source.

I have no problem with people who feel that they have or want to be demonstrative in their “frumkeit.” If it makes them feel better to dress in a certain way, why should we deny them the pleasure? But pious clothing *must* be consistent with pious living and believing



and behavior. Unethical conduct is twice as reprehensible when done by one who wears a *kippah*, three times as bad as when done by one who insists specifically upon a black velvet *kippah*, four times more for one who wears his *tzitzit* out, five times more for davening with the *tallit* over the head, and so on. The more our externals proclaim our Jewishness, the greater the demands on us for the highest standards of moral excellence.

In looking at photographs of yeshiva men of pre-World War II Europe, I often notice that, except for Hasidic Jews, most of them wore the same clothing as *baalebatim* and not essentially different from any ordinary Jew. The Rav once told me the rationale for this policy: the heads of the yeshivot wanted their students not to appear too different from the run-of-the-mill Jew so as not to alienate him from Yiddishkeit. Why is it, then, that what was good enough for the illustrious yeshivot of Hevron and Mir and Slobodka is not good enough for our contemporary *yeshiva-leit*? Are we today really that much superior to the students of the great classical yeshivot?

But again I emphasize: I do not in any way want to criticize or discourage anyone from indulging himself in the appurtenances of “frumkeit.” But we should insist that that people who do this be aware of the responsibility they bear for avoiding any *chilul Hashem*, any desecration of the divine Name. The price is high indeed and should not be taken lightly.

I refer again to the story of the twelve spies sent by Moses to check out Canaan to see if it was ready to be conquered by the Israelites, as God had promised it would. Two of them—Joshua and Caleb—came back with an optimistic report, confirming the divine promise, and ten came back, negative, discouraging, and disbelieving the promise of the Almighty. The Torah tells us (Nu.14:6) that Joshua and Caleb, who spied out the land, tore their clothing. But why did they react in this particular manner, tearing their clothing? And why mention two of the twelve “of those who spied out the land,” something we already know?

The Kotzker Rebbe explains: The spies were princes of the tribes of Israel, distinguished individuals dressed, undoubtedly, in fur *shtraimlech* and handsome *bekishes* and white stockings, etc.—the full regalia of demonstratively *frum* people. Yet they inwardly had no faith in God’s word, they spoke ill of *Eretz Yisrael*, they created havoc amongst their people. So Joshua and Caleb said: in that case, who needs the pretentiously religious garb? And so they therefore ripped the ostentatious attire off the backs of the ten traitors, the ten

who were of “those who spied out the land.” The verse thus reads: Joshua and Caleb, *comma*, tore the clothing off those who spied out the land...

The two who were loyal, and the Kotzker in his day, were too devoted to *emet* to tolerate fashionable hypocrisy. If we are in any measure devoted to *emet*, we too should conduct ourselves in a manner not calculated to offend the way we really are inwardly. We need not object to special garments in style or color, but we must insist on consistency, on the equivalence of the inward and the outward.

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Fourth of the four requirements for Modern Orthodox leadership in our times is: *We must be as open to other Jews as the Halakha permits us*. That means we must abjure and reject an “all or nothing” approach if we want and expect other Jews to react positively to the overtures of Torah and the outreach by us Orthodox.

We in America cannot legislate Jewish observance of Halakha as they do in Israel—and there is legitimate reason to ask whether or not the time has come for Israel itself to desist from any new religious legislation. Therefore we must rely on voluntary action by others. This, in turn, means that we have to be attractive, that we must be “beautiful” Jews, *shayne Yidn*, in order to entice others to a life of Torah.

Recall the Sifre, cited in the Talmud, that the commandment “thou shalt love the Lord thy God,” which we recite as part of the *Shema*, implies and is fulfilled when we act in a manner that inspires others to love God. Our conduct must be so exemplary that others will attribute our high moral quality to the God we believe in and the Torah we study. So, if we want to win Jews over to Yiddishkeit, we need not water down Halakha, but we also need not and should not overwhelm them with every last detail, especially *chumrot* or strictures for which they are neither psychologically nor spiritually ready and which can prove counterproductive to our efforts to bring them “under the wings of the Shechina.” Both formal education and outreach require a gradual approach. What we ought to do, and what is most successful and honorable, is attract them to Torah by demonstrating the rectitude and probity of observant Jews. We must become too ethically attractive to resist.

It is helpful to recall that if the “all or nothing” approach were turned on *us*, we would all fail and end up with a great deal of “nothing.” Simply, none of us is perfect, no

one “has it all.” Koheleth (7:20) put it directly: There is no righteous person in the world who does good and never sins. No human being is perfect. We should therefore not demand perfection of others...

I believe that because of this and a number of other highly cogent reasons, we should support vigorously the efforts by Finance Minister Yaakov Neeman and his commission to solve the current conversion conundrum that so complicates our lives in Israel and here. What they will recommend will in all likelihood not be a perfect solution, for I doubt if one exists; but I trust it will be the best available—even if it is only a temporary cure. The Jewish people throughout the world need a breathing space after all this dreadful confrontation that has confounded us and caused us so much pain and disruption and fratricidal bickering.

There is a philosophical principle as well as pragmatic justification for the approach I have been advocating. The acknowledgment that we do not and cannot attain the whole truth all at once, that we have to settle at least temporarily for less than the ideal we would prefer, is a matter of recognizing the truth about truth itself.

What I mean by that last phrase, “the truth about truth,” is this: Consider the following well-known Midrash:

R. Simon said: When the Holy One was about to create the first man [Adam], the ministering angels were divided into separate groups, some saying man should not be created and some saying he should... [The angel known as] *Hessed* (Lovingkindness) said: Let him be created, for he does acts of kindness. [The angel known as] *Emet* (Truth) said he should not be created, for he is full of falsehood. [The angel known as] *Tzeddek* (Justice, Charity) said he should be created, for he is charitable, whereas [the angel known as] *Shalom* [Peace] said he should not be created for he is always contentious. What did the Holy One do? He took Truth and cast it to the earth, as it is written, “and You cast truth to the earth” (Daniel 8). Whereupon the ministering angels said to the Holy One: Master of All the Worlds! Why do you embarrass Your very own strategy (i.e., Truth is one of the Names of God, and hence very much His own attribute)? Do raise up Truth from the earth! Therefore is it written, “Truth grows from the earth.”

—*Beresbit Rabbah*, 8

Question: If the idea was to break the tie, why did God cast away Truth; why did He not choose Peace, which also voted against the creation of man?

I suggest the following answer: Truth, the naked truth, which is (as Saadia Gaon called it) the “bitter truth,” is intimidating, even terrifying. It makes absolute demands upon us, usually far more than our human limitations will allow. Looking full face into a

psychological and spiritual mirror can be a horrendous experience. Uncompromising and merciless, the *emet* that comes from Heaven in its full and unadulterated state is such that man cannot survive his encounter with it. Yes, we can ultimately attain truth—but only partially, and only over a long period of gradual exposure to it.

Hence: “and You cast truth to the earth” and “Truth grows from the earth.” God cast the truth to the earth and had it grow and develop from the soil—because the *emet* that makes life moral and ennobles our journey on earth is one which grows organically, which develops like a plant which begins as a seed, then a sapling, then a small tree, then a stately one...and so allows us to accommodate ourselves to it gradually. A truth which originally comes from Heaven but does so via the earth is far more effective and palatable and useable than a truth which comes down ready-made and full-blown straight from Heaven.

In the world of politics (in the best sense of the word!), the whole truth must always be in our minds and hearts as a permanent and beckoning goal, but we cannot seek to impose it on others all at once. In this context, “*compromise*” is *not a dirty word* as long as we remember the ideal in all its wholeness at all times. Compromise is a practical device that allows us to plant a seed of *emet* and nurture it for later development, without clashing head on with others who have different perceptions. It articulates with *shalom* instead of opposing it. It is respectful of the natural limitations of the human creature. It makes it possible for us to connect somehow with truth without diminishing its ultimate integrity. It is what allows the Almighty Himself to decide, “let man be created,” that humans are *worthy* of creation!

This “truth about truth” will instill in us a sense of patience and tolerance that is sorely lacking in our Jewish community.

That is why the efforts of the Neeman Commission to find a workable and honorable compromise appeal to me even though the formula they will devise may be less than perfect and less than we might have wanted. It represents an earthly rather than a heavenly truth.

That same attitude must inform our approach to the non-Orthodox community, especially to those who are still clinging to the margins of Jewish experience, who have strayed, but still long for some connection to Judaism. We must do all in our power to befriend and not distance them, to include rather than exclude them.

Let me illustrate this principle by invoking a *teshuvah* by the immortal Ashkenazi *posek* R. Israel Isserlein of 15th century Germany (*Terumat Ha-desben* II, 93).

The Talmud (*Men.* 30b) requires a Torah scroll to be written with respect for the margins—what in this computer age would be called “justified” columns. Thus, if the scribe has before him a five-letter word and has place on the line for only two letters, he must not write out the whole word on the same line, thus leaving three letters “off the margin.” What if the scribe erred and did indeed write the last letters off the margin? R. Isserlein decides that, on the basis of a close reading of the Talmud text, the prohibition is only *le'kebat'chilah*, *ab initio*, but if the act was already done, *bi-di'avad*, the scroll is kosher and may be used for ritual purposes. And what if there are before us two *sifrei Torah*, one fully kosher and the other a scroll in which the scribe erred but which we accepted *bi-di'avad*, once it was done—may or should we prefer the scroll that is completely valid over the one that contains the “off the margin” writing? Here our author rules that to discriminate against the latter scroll would effectively constitute a disqualification of that scroll, and that would be tantamount to declaring it invalid even *bi-di'avad*. Hence, no discrimination is permitted against an “off the margin” Torah scroll.

Now, what holds true for a *sefer Torah* must hold true for a Jewish *neshamah*, namely, that even if he or she is off the margins, even if a Jew is not totally within the sacred pages of the Torah, the Halakha holds that he is nevertheless one of us *bi-di'avad*, and therefore it behooves us to treat him with love and respect and tenderness and not to be *pogem*—disqualify—him or hurt or insult his dignity in any way.

Not imposing the whole truth of Torah all at once, compromising for the sake of *shalom* of *kelal Yisrael*, embracing Jews who hover on the margins unprepared as yet to come into the whole framework of observance but still wanting to be someplace on the parchment of Torah—is the only way to remain loyal to both the Almighty and to *kelal Yisrael*. It is our sacred task to remember both, to forget neither, to reconcile the one with the other.

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Most of the dilemmas we face as Modern Orthodox Jews in this critical and confusing period of our history revolve about the conflict between our halakhic commitment and our loyalty to *kelal Yisrael*, our love of Torah and our love of Israel. It is a painful predicament,

probably not unprecedented (it was explicitly addressed in the *Tanna de'Vei Eliyahu*; see below, chapter 11) but surely a perplexity most characteristic of our times. It is also an ennobling and elevating one, because ultimately, as the Zohar teaches, *Yisrael ve'oraita chad hu*, Israel and Torah are one, so the love of the one includes the other. But on a practical plane, there is indeed a clash of loyalties.

How shall we deal with it? By a *stubborn denial of elementary logic!* By insisting that inconsistency though there be, we will yield on neither, that—as Koheleth (ch. 6) said—it is best to hold on to the one and the other, for a God-fearing person will remain true to both. There is no perfect solution—life in general is resistant to “perfect solutions”—but it is the best available.

Allow me to illustrate my point via a remarkable scene my wife and I witnessed when we were in Prague only a few weeks ago. We visited the famous synagogues of that ancient city and Jewish community. We wept in the Pinkus Shul where the walls—every inch of them—were covered by the names of the 80,000 Prague Jewish deportees, most of whom perished in various concentration camps. We were enormously inspired in the Alt-Neu shul—at 700 years old, the synagogue in longest continuous use in the world, the shul of the Maharal and R. Ezekiel Landau, author of *Noda Bi'Yehudah*. But nothing could compare to a shul only recently discovered in Terezin, which the Germans called Theresienstadt, a town some 45 minutes north of Prague in an apartment which now stands at the site of the Grand Fortress, which housed the unfortunate Jews of Prague in inhumanly overcrowded barracks from where they were either deported or worked to death and slept in stacks we all recognize from the horrendous photos of Auschwitz and Bergen-Belsen and other death camps. Here was a tiny room, claustrophobia-inspiring, dark and dank, a chamber of about 9 x 9 feet that had been used for over 50 years to store potatoes—since before the Nazis invaded until a few months ago when it was discovered. Here the interned Jews clandestinely gathered amongst the potatoes for prayer, and those who labored as painters stole paint and brushes to decorate their shul in which they davened, risking their lives and skirting torture. Secretly, they painted words on the bare walls: *Da lifnei mi ata omed* (“Know before Whom you stand,” the standard phrase from the Talmud used in synagogues) on the East wall, towards which they prayed, and on the two others—similar appropriate quotes. But most moving of all was the third, the West wall, on which was inscribed the legend, taken from

the *tachanun* prayer, *U-ve'khol zot shimkha lo shakbachnu, na al tishkachenu* “Despite all, O God, we have not forgotten You. Please—do not forget us.”

Despite all the blood spilt here, despite the ubiquitous stench, despite the murder of loved ones, despite the gallows and the shooting walls staring us in the face day and night, despite the torture chambers and the incredible cruelty of the Nazi overlords, despite the barking dogs and snarling soldiers, despite the sadism and the indignities visited upon us with abandon—*despite all this, we have not forgotten You. Now, we beg You—do not forget us and do not forsake us in this Hell-hole!*

No wonder the Rabbi of Prague told us he considers this the holiest shul in the Czech Republic—and maybe the world.

This is a heart-rending plea that we and God not forget each other. The mutual bond between God and Israel, formalized in the covenant of the Torah, means an oath never to forget each other.

And that holds doubly true for us. We must forget neither the Almighty and His Torah, nor His Jews—wherever they are and no matter what their condition. We must love each unconditionally, even if the two loves sometimes seem to conflict with each other.

We must remain loyal to the Holy One, never forgetting our obligations and our gratitude to Him; and never, never must we forget, not even for a moment, our *ahavat Yisrael*, our love of Israel, our deep love and commitment to *every* Jew and to *all* Jews, all *Kelal Yisrael*.

Only then will we be morally justified in asking of Him, “Please—do not forget us.”





# The Appeal Process in the Jewish Legal System

Rabbi Dr. J. David Bleich

*Said the Holy One, blessed be He: "Know you that I sit with you and if you wrest judgment [it is] Me that you wrest."*

MIDRASH SHOHAR TOV, PSALM 82

*A person had a lawsuit. He came to the judge and was exonerated. The person who was exonerated departed and said, "There is no one in the world who compares to that judge." After a time he had [another] lawsuit. He came to [the judge] and was found liable. He departed and said, "There is no judge who is a greater fool than he!" They said to him, "Was [the judge] splendid yesterday and today a fool?" Therefore Scripture admonishes, "Do not curse the court" (Exodus 22:27).*

SHEMOT RABBAH 31:8

## I.

Establishment of a judiciary is rooted in the biblical command "Judges and court officers shall you appoint to yourself in all your gates" (Deuteronomy 16:18). The Jewish judicial system reflected the prescriptions of Jewish law and was comprised of tribunals composed of three judges that heard cases involving monetary disputes, courts consisting of twenty-three judges that were charged with judging persons accused of infractions punishable by death or stripes and a Great Sanhedrin comprised of seventy-one members that sat within

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the Temple precincts. Although the Great Sanhedrin enjoyed original jurisdiction with regard to certain particular matters, its most critical function was to resolve questions of law that were in doubt or the subject of dispute. Questions of that nature could be certified and brought before the Great Sanhedrin during the course of proceedings before a lower court or could be made the subject of a hearing entirely independent from any proceeding before a court of original jurisdiction.

Other than an interlocutory appeal of such nature to the Great Sanhedrin there is no explicit provision for appeal to a higher court on the basis of allegation of judicial error with regard to either matters of fact or of law. Although no formal provision for an appeals process is recorded in the various codes of Jewish law, a duly constituted rabbinical court of appeals does exist in the present-day State of Israel. The impetus for the establishment of a Supreme Rabbinical Court of Appeals in the State of Israel can be traced to two sources, one historical and the other political.

With the rise of Zionism and promulgation of the Balfour Declaration the *Ha-Mishpat ha-Ivri* Society was established in Moscow. Its stated agenda was to develop a corpus of law based upon Jewish law sources for integration into the legal system of a future secular Jewish state. In 1909-10 a judicial body known as *Mishpat ha-Shalom ha-Ivri* was established in Jaffa. The celebrated writer S.Y. Agnon served as the first secretary of that body. Later, tribunals were established in other cities in Palestine as well. Those tribunals had no official standing under either the Ottoman or British governments but functioned as arbitration panels.<sup>1</sup> Those bodies were composed of persons who, in general, lacked legal or rabbinic training and did not consider themselves bound by any particular system of law. Judgments were rendered on the basis of generally conceived “principles of justice, equity, ethics and public good.”<sup>2</sup> Nevertheless, beginning in 1918, regulations were promulgated with regard to matters of procedure, evidence and the like. Lay arbitration is certainly not unprecedented in Jewish law.<sup>3</sup> However, the judicial system instituted by the *Mishpat ha-Shalom ha-Ivri* was innovative in its institution of a formal appellate forum.

There can be little doubt that, despite the limited scope and underutilization of the judicial system established by the *Mishpat ha-Shalom ha-Ivri*, the very establishment of a court of appeals within a system purporting to align itself with principles of Jewish law served to create or to reinforce a desire for an appellate system and to generate an aura of ideological

acceptance. However, the proximate cause of the institution of a rabbinical court of appeals was governmental pressure in conjunction with the establishment of the Chief Rabbinate under the aegis of the Mandatory authority. On 15 Shevat 5681, in his opening address at the very first meeting of the committee appointed to convene a representative assembly for the purpose of electing a Chief Rabbinate, Mr. Norman Bentwich, Secretary of Justice in the Mandatory government and chairman of the meeting, emphasized that “one of the most important matters” to be addressed by the electoral body was the establishment of a rabbinical court of appeals.<sup>4</sup> At the time, the Mandatory authority was considering granting *Batei Din* autonomous jurisdiction with regard to matters of personal status upon the establishment of a Chief Rabbinate. Mr. Bentwich made it very clear that the British government “strongly insists upon the need for creation of an institution for appeals as a condition for enhancement of the jurisdiction of Jewish *Batei Din*.”<sup>5</sup>

That proposal met with immediate opposition. At a subsequent meeting held on 17 Shevat a document prepared by the “Office of the Rabbinate of Jaffa” was presented. The final paragraph of that document states, “There is no place for an appellate *Bet Din* according to the laws of the Torah. . . .”<sup>6</sup>

The meeting of the assembly charged with naming electors to designate the members of the proposed Chief Rabbinical Council met in Jerusalem on 14-16 Shevat 5721. The opening address was delivered by the British High Commissioner, Sir Herbert Samuel. In his charge, he exhorted the assemblage to consider the proposal of the preliminary committee for the establishment of a rabbinic court of appeals. He explicitly stated, “It is proposed that from among the [Chief Rabbinate] Council of eight there be formed a supreme religious court to which it will be possible to bring an appeal from any *Bet Din* in *Erez Yisra’el*. I support this proposal. . . .”<sup>7</sup> That proposal was reiterated by Mr. Bentwich in declaring that the Chief Rabbinate Council “would also be the officially recognized *Bet Din* of Jerusalem” and “if the proposal finds favor in your eyes, [the Chief Rabbinate Council] will establish a *Bet Din* for appeals. . . .”<sup>8</sup> Subsequently, a number of resolutions were presented for consideration by that assembly, including a resolution establishing a “*Bet Din* of appeals to be composed of six members of the Rabbinate Council under the chairmanship of one of its presidents,”<sup>9</sup> i.e., the Chief Rabbis would alternate as presidents of the court.<sup>10</sup> Although, at the assembly, both Sir Herbert Samuel and Norman Bentwich spoke of establishment of an

appellate court as a “proposal,” a certain Joseph Penigel, described as the secretary of the Office of the Rabbinat, asserted that the Mandatory authorities insisted upon establishment of such a body as “a necessary condition for enhancing the authority of the *Batei Din* and for granting legal effect to their decisions.”<sup>11</sup> Apparently, that assembly did not formally act upon the resolution for the establishment of a rabbinic court of appeals.<sup>12</sup> Nevertheless, such a court was established by the Chief Rabbinat Council within a matter of months of its election.

The question of whether or not there exists a halakhic basis for a rabbinic court of appeals notwithstanding,<sup>13</sup> it is clear, as a matter of historical fact, that such judicial bodies did exist both during the medieval period and in modern times as well.<sup>14</sup> Whether the right to appeal is grounded in statutory law or was established in some jurisdictions on the basis of local communal *takkanot* or in response to governmental edicts is an entirely different matter.

There is some support for the position that Scripture itself provides for a system of appeals. The sixteenth century Italian exegete, R. Ovadiah Sforno, in his commentary on the Bible, presents an analysis of Exodus 18:21 indicating that the purpose of designating “rulers of thousands, rulers of hundreds, rulers of fifties and rulers of tens” was to establish a multi-layered system of appeals. According to Sforno’s analysis, the “rulers of tens” had original jurisdiction. Successive appeals could be taken to higher levels and, ultimately, if the litigant remained unsatisfied, to Moses himself. Although, in terms of biblical exegesis, Sforno’s analysis is not at all far-fetched, even if accepted, it does not establish a right of appeal as a matter of Halakhah. The officials appointed by Moses with jurisdiction over ten, fifty, one hundred and one thousand persons did not occupy offices designed to be preserved in perpetuity. Apparently, the appointments, and the particular offices themselves, were designed only to ease Moses’ burden and, accordingly, were limited to the period of wandering in the wilderness. Hence, granted that these officials served as appellate judges, the right to lodge appeals before them may have been temporary in nature and limited to the generation of the wilderness.

The earliest record of the existence of an appellate court appears to be that found among the enactments promulgated by a synod of Castilian communities convened in 1432. These enactments provided that any litigant had the right to appeal to the *Rab de la Corte*, i.e.,

the Chief Rabbi appointed by the King. The costs of the appeal were to be borne by the appellant if the latter did not prevail and he was required to take measures to assure that prompt payment of those expenses would be forthcoming. The appellant was also required to affirm that the appeal was based on belief in the justice of his cause rather than designed to serve as a means of evasion or procrastination.<sup>15</sup>

At roughly the same time, at least some communities of Aragon appointed judges to hear appeals. R. Isaac ben Sheshet refers by name to certain appellate Judges, known as “*dayyanei ha-silukin*” who sat in Calatayud,<sup>16</sup> Hueska,<sup>17</sup> and Saragossa.<sup>18</sup> Simchah Assaf, a prominent Jewish law historian, asserts that it is unlikely that such an institution should have arisen during the period of decline of Iberian Jewry.<sup>19</sup> Consequently, he assumes that the written record reflects a practice of much older vintage.

Establishment of a formal system of appeals in Italy is found in an enactment promulgated by R. Moshe Zacutto in 1676 and accepted by an overwhelming majority of delegates to a synod of Italian Jewry. That ordinance provided that, unless the right to appeal was waived by the litigants at the time of submission of their dispute to the *Bet Din*, they were entitled to appeal to the “*Ba’alei Yeshivah*”<sup>20</sup> within eight days after issuance of a decision. The procedure does not seem to have provided for relitigation or presentation of additional allegations of fact or law by the litigants but provided that the “*Ba’alei Yeshivah*” summon the *dayyanim* who issued the ruling for an explanation of the grounds upon which it was based.<sup>21</sup>

Procedures governing appeals in the communities of Moravia are recorded by R. Menachem Mendel Krochmal, author of *Teshuvot Zemah Zedek*, in his *Takkanot ha-Medinah*, nos. 213-218. Appeals were permitted only in cases involving a value of ten “gold coins” or more and had to be lodged within forty-eight hours of issuance of the *Bet Din’s* decision. If he did not prevail, the appellant was held liable for losses and expenses sustained as a result of the appeal.

In some Polish communities a person found liable by the *Bet Din* was permitted to demand that the *Bet Din* be enlarged and a new hearing be scheduled. This practice was decreed by *Ateret Zevi*, *Hoshen Mishpat*, no. 87.<sup>22</sup> Appellate procedures are also known to have existed in White Russia (Reisin). The protocols of the community of Petroviski of 1777 include a regulation promulgated with regard to appeals taken from decisions of the local *Bet*

*Din*.<sup>23</sup> Appeals were permitted only with regard to decisions involving a sum of twenty-five rubles or more and only “in accordance with the ordinances of the land.” Assaf notes with regret that there are no cognate sources that provide information with regard to the ordinances governing such appeals or with regard to the identity and composition of the appeals court.<sup>24</sup>

In more recent times, an appellate court was established in Bulgaria in 1900. With the establishment of the office of Chief Rabbi, provision was also made for the appointment of “two or more judges” who together with the Chief Rabbi would constitute a “*Bet Din ha-Gadol*” which would hear appeals of decisions issued by local *Batei Din*.<sup>25</sup> In a letter addressed to R. Chaim Hirschensohn,<sup>26</sup> R. Ya’akov Meir, who served first as *Hakham Bashi* and later as the first Sephardic Chief Rabbi of Palestine, reported that “there always were appellate courts in all the cities of Turkey” and at the same time asserted in a somewhat contradictory manner that a displeased litigant presented his appeal in writing to the chief rabbi of the city who forwarded the appellant’s petition together with the decision of the local *Bet Din* to Constantinople “and there there was a *Bet Din ha-Gadol* that investigated the decision and was empowered [either] to set aside the decision and issue another judgment or to confirm the judgment.”<sup>27</sup> Rabbi Meir further reported that, when he served as Chief Rabbi of Salonika, he sought and received permission from the *Bet Din* in Constantinople to establish an appeals court in his own jurisdiction.<sup>28</sup> Rabbi Meir further claimed that there also existed an appeals process in Jerusalem and in many other Oriental communities.<sup>29</sup> Assaf relates that, when he expressed astonishment at the absence of any reference to such procedures in the responsa of Sephardic scholars. Rabbi Meir replied that instances of appeal were quite rare because of the distance and expense involved and that many people were unaware of the possibility of appeal.<sup>30</sup>

## II.

Although, as earlier indicated, appellate courts as such were unknown in talmudic times and the relevant talmudic discussions neither speak of a formal appeals process nor spell out conditions upon which appeals are allowed, the Gemara does present an elaborate discussion of provisions for setting aside judgments on grounds of judicial error. The Mishnah, *Sanbedrin* 32a, declares that a decision of a *Bet Din* can be set aside on grounds of judicial

error and the *Bet Din* must then issue a new decision. The Gemara, *Sanhedrin* 33a, cites an apparently contradictory statement found in the Mishnah, *Bekhorot* 28b, declaring that an erroneous judgment must be allowed to stand but that the judge is liable for any financial loss suffered as a result of his error and yet a further statement indicating that a qualified judge is granted immunity while the judgment is not disturbed. In the ensuing discussion various Amora'im resolve the contradiction by distinguishing situations in which the decision is reversed from situations in which the judgment is allowed to stand while the members of the *Bet Din* are either held liable for judicial malpractice or granted judicial immunity.<sup>31</sup> According to Rashi's analysis of that discussion,<sup>32</sup> Rav Nachman declares that a decision of a *Bet Din* can be set aside by a *Bet Din* "greater in wisdom and number." It is evident that, in offering alternative resolutions of the contradiction, some of Rav Nachman's colleagues did not accept the notion of an appeal to a court "greater in wisdom and number" and considered only the possibility of a rehearing by the court of original jurisdiction with the result that a new verdict might be obtained only when the first *Bet Din* became convinced of its error. According to the analysis of that discussion advanced by *Yad Ramah* and Me'iri, *ad locum*, as well as by other authorities who interpret Rav Nachman's statement in an entirely different manner, there are no grounds for assuming that even Rav Nachman permits an appeal to a *Bet Din* "greater in wisdom and number."<sup>33</sup> Moreover, numerous authorities, including Rif, *Milhamot ha-Shem* and Me'iri in their respective commentaries *ad locum*, regard Rav Nachman's position as having been rejected in the ensuing discussions and his opinion is not cited by either Rambam or *Shulhan Arukh*.<sup>34</sup>

The Gemara, in one of the proffered resolutions of the contradiction that serves as the basis of the entire discussion, distinguishes between error in "black letter law" (*ta'ut be-devar mishnah*) and error in "judgment" (*ta'ut be-shikul ha-da'at*) defined as a judgment based upon reliance upon a minority or rejected opinion.<sup>35</sup> According to Rashi's analysis, both Rav Yosef, who presents an alternative resolution of the apparent contradiction between the Mishnah in *Sanhedrin* and the Mishnah in *Bekhorot*, and Rav Nachman recognize the ostensive cogency of a litigant's refusal to accept the judge's acknowledgment that a decision in his favor is based upon error on the plea that it is entirely possible that it is the reconsidered decision that is in error and that the original finding was entirely correct. It may well be argued that such a plea is cogent not only with regard to an alleged error of "judgment," but

also with regard to putative errors of “black letter law.” Rav Yosef maintains that only an “expert” judge can force a reconsidered view upon an unwilling litigant; Rav Nachman asserts that only the opinion of a more erudite authority should prevail.<sup>36</sup> Nevertheless, *Tosafot* indicates that the discussion is limited to errors of “judgment” but that all concede that errors of “black letter law” may be reversed. *Tosafot*, however, does not spell out criteria of competence to reverse an already announced decision nor does *Tosafot* state whether admission of error on the part of the judge who issued the decision is necessary.

As codified by Rambam, *Hilkehot Sanhedrin* 6:6-9, it is only a plaintiff who, if he has some credible evidence, may demand that the defendant appear for a hearing before the Great Sanhedrin; a defendant does not enjoy that prerogative. Nevertheless, Rambam, *Hilkehot Sanhedrin* 6:6, rules that either litigant is entitled to demand a written decision setting forth the findings of the local court. The clear implication is that either the plaintiff or the defendant will then be entitled to lodge an appeal with the Great Sanhedrin based upon the written record. Rambam makes no reference to any mechanism for appeal other than to the Great Sanhedrin. It would therefore appear that when there is no possibility of appeal to the Great Sanhedrin, e.g., in a historical epoch in which that judicial body does not exist, there is no basis for a demand for a written decision upon which an appeal may be based. Nevertheless, Rema, *Hoshen Mishpat* 14:4, rules explicitly that, even in our day, the litigants are entitled to such a document.<sup>37</sup> Indeed, Rema indicates that such a document may be demanded only for an appearance before “a greater court.”<sup>38</sup> It is thus evident that Rema recognized a right of appeal to “a greater court”<sup>39</sup> although he provides no guidance with regard to how a determination of the relative scholarly ranking of different courts is to be made or with regard to who is empowered to make such a determination.<sup>40</sup>

There are, however, a number of earlier sources that clearly indicate that Jewish law does not recognize a right of appeal. *Teshuvot ha-Rosh*, *klal* 85, no. 5, cited by *Bet Yosef*, *Hoshen Mishpat*, chapter 12, declares, “. . . subsequent to the decision of the judges that has already been rendered with regard to the orphan . . . the judgment that has been rendered with regard to the orphan stands. Why have you asked for another decision with regard to a case that has already been adjudicated? ‘A *Bet Din* does not scrutinize [the actions] of another *Bet Din*’ (*Baba Batra* 138b). Therefore . . . it is incorrect (*lo yitakhen*) to write another decision with regard to a case that has already been adjudicated by great and eminent men.”<sup>41</sup> *Sema*,



*Hosben Mishpat* 19:2, and *Shakh*, *Hosben Mishpat* 19:3, cite *Teshuvot ha-Rosh* as establishing the principle that a decision of a *Bet Din* cannot be overturned by another *Bet Din*.

Rema's position is particularly problematic. As has been noted, in *Hosben Mishpat* 14:4 Rema rules that a litigant is entitled to a written verdict while in his commentary on *Tur Shulhan Arukh*, *Darkei Mosheh*, *Hosben Mishpat* 25:6, he records the view of *Teshuvot ha-Rosh* indicating that a second *Bet Din* cannot retry a case in which a decision has already been issued by a previous *Bet Din*. The latter position is also espoused by Rema in *Darkei Mosheh*, *Hosben Mishpat* 20:2, in the citation of a similar ruling in the name of another work authored by Rosh, *Sefer Haze'eb ha-Tenufah*.<sup>42</sup>

R. Ovadiah Hedaya, *Teshuvot Yaskil Avdi*, IV, *Hosben Mishpat*, no. 2, distinguishes between a situation in which a *Bet Din* has issued a written decision that includes reasons and sources and a situation in which the reasons underlying a decision have not been committed to writing. When a record of the considerations leading to a decision is not available, declares *Yaskil Avdi*, the principle "a *Bet Din* does not scrutinize the actions of another *Bet Din*" is applied. However, when reasons and arguments are spelled out, the decision may be overturned. At first glance it appears paradoxical that the decisions of a *Bet Din* should be sacrosanct when issued autocratically with no attempt at justification but subject to reversal when a detailed explanation is provided. Nevertheless, *Yaskil Avdi* cogently reasons that when grounds for a verdict are spelled out and are found to be patently wrong it is obvious that the decision must be set aside, whereas when no reasons are given it is improper for a second *Bet Din* to reverse the decision because the second *Bet Din* cannot state definitively that error has been committed.<sup>43</sup>

It is, however, quite clear that the considerations upon which a decision is based are not routinely provided even in situations in which a written verdict is issued. R. Joseph Karo, *Teshuvot Avkat Rokhel*, no. 17, declares that explication of reasons and explanations is unnecessary.<sup>44</sup> Similarly, Rema, *Hosben Mishpat* 14:4, rules that the document must recite only the claims and the final ruling but need not indicate the *Bet Din*'s reasoning and justification because, as explained by *Sema*, *Hosben Mishpat* 14:26, if the decision is correct, any other court will reach the same decision since "there is [but] one Torah for all of us." *Sema*, *Hosben Mishpat* 14:25, indicates that, if requested, the *Bet Din* must nevertheless make oral disclosure of its reasoning. However, if *Yaskil Avdi* is correct in his assumption that a judgment can be

overturned only if the written decision incorporates reasons and explanations, it stands to reason that litigants should be entitled to a written decision containing such information as a matter of right. Rambam, *Hilkhot Sanhedrin* 6:6, states explicitly that litigants may demand a written verdict because they are entitled to say to the *Bet Din*, “Perhaps you have erred.” Clearly, a demand for a written verdict is in contemplation of a reversal by another *Bet Din* and it is the right to such a reversal that justifies the demand. Consequently, a decision that cannot be used as the basis for an appeal is of no value to a litigant. Accordingly, if *Yaskil Avdi* is correct in his contention, the same consideration that compels issuance of a written decision should compel issuance of a reasoned decision.

R. Shimon ben Zemah Duran, *Tashbaꝛ*, III, no. 165, declares that a decision of a *Bet Din* can be reversed only if the original *Bet Din* acknowledges its error. Accordingly, if the members of the first *Bet Din* are not alive, the possibility of reversal does not exist.<sup>45</sup>

### III.

Rabbinic scholars who deny that Jewish law recognizes a right of appeal adduce the dictum recorded in *Baba Batra* 138b, “a *Bet Din* does not scrutinize the actions of another *Bet Din*,” as the touchstone of their position.<sup>46</sup> That principle is adduced by Rambam in two separate contexts. In *Hilkhot Edut* 6:4 Rambam writes:

[If] a *Bet Din* has written “We were assembled as a tribunal and this instrument was authenticated before us” [the instrument] is authenticated even though [the *Bet Din*] has not made explicit in which of the five manners it has been authenticated for one does not say that a *Bet Din* may have erred. But it has been the practice of all *Betei Din* that we have observed and of whom we have heard to write the manner in which [the instrument] has been authenticated before them.

With regard to the particular matter of authentication of instruments, Rambam clearly rules that, as a matter of normative law, details need not be spelled out; explication would be purposeless because the action of the *Bet Din* in authenticating the instrument is not subject to review by any other body. Nevertheless, it has become an established practice to indicate the mode of authentication employed, presumably as a means of assuring confidence in the competence of the *Bet Din* and its fidelity to established rules of procedure.

In *Hilkhot Edut* 6:5, Rambam codifies the general rule:

A *Bet Din* never examines [the actions] of another *Bet Din*. Rather, it assumes them to be proficient and not susceptible to error. Witnesses, however, are examined.

Rambam's language is somewhat ambiguous. It is unclear whether Rambam is simply stating that a *Bet Din* is entitled to give full faith and credit to the actions of another *Bet Din* on the presumption that all *Batei Din* are competent but, should a *Bet Din* choose to conduct its own independent investigation, it is entitled to do so, or whether Rambam's statement constitutes a declaration that the second *Bet Din* must rely upon the determination of the first *Bet Din* and is precluded from conducting its own inquiry. Rephrased, the issue is whether there is no provision for an appeal for a rehearing before a second *Bet Din* as a matter of right but that an appeal for a rehearing may nevertheless be granted at the discretion of the second *Bet Din* or whether an appeal is entirely precluded. If the principle "a *Bet Din* does not scrutinize the actions of another *Bet Din*" does indeed serve to establish that such scrutiny is prohibited, the prohibition is presumably based upon a concern that the scrutiny itself, regardless of the outcome, would tarnish the prestige and standing of the first *Bet Din* (*z'iltuta de-bei dina*).

The principle "a *Bet Din* does not scrutinize the actions of another *Bet Din*" is formulated by the Gemara, *Baba Batra* 138b, in its analysis of a rule pertaining to the issuance of a certificate of *halizah* and the like:

Rava said, "*Halizah* may not be performed unless the [*Bet Din*] knows [the widow and her brother-in-law]. Consequently, [the witnesses] may write a certificate of *halizah* . . . even though they do not know [the parties].

That principle is enunciated in response to a query with regard to whether the prohibition against performing *halizah* unless the parties are known and recognized by the *Bet Din* was instituted to protect against an "erring court," i.e., lest a second court permit the woman to remarry without determining that *halizah* was indeed performed by the proper parties. In posing this question, the Gemara assumes that every *Bet Din* is obligated to conduct its own investigation into the identity of the parties and that the restriction placed upon the *Bet Din* performing the *halizah* is a precautionary measure designed to protect against an "erring court" that does not properly discharge its duties by undertaking such an investigation. To this query the Gemara responds, "No, a *Bet Din* does not scrutinize the actions of another *Bet Din*."<sup>7</sup>

Rashbam, commenting on the concluding statement of the Gemara, observes:

Therefore, they ordained that *halizah* not be performed unless the identity of the parties is known for, if you say that *halizah* may be performed even if the identity of

the parties is not known, there would certainly be reason to be concerned lest a *Bet Din* act in error in permitting her remarriage without examination [i.e.], a second *Bet Din* might err in thinking that the first *Bet Din* properly identified the [parties] when they performed *halizah* since a second *Bet Din* does not examine the actions of the first *Bet Din*.

Rashbam's comments serve only to establish that a *Bet Din* may extend full faith and credit to the actions of another *Bet Din* and hence it was necessary to promulgate an ordinance forbidding *halizah* by unidentified parties. In effect, the Sages had to choose either to permit unidentified parties to perform *halizah* and consequently to require subsequent substantiation of the relationship between the parties by a second *Bet Din* before permitting the widow to remarry or to prohibit *halizah* without prior identification by the *Bet Din* before which *halizah* is performed and thereby create a presumption of validity that might be relied upon by any subsequent *Bet Din*. In order to facilitate remarriage, the Sages ordained that the investigation be conducted by the first *Bet Din*. It is evident that in order to establish such a policy it was necessary to require an investigation by the *Bet Din* performing the *halizah* but that it would not have been necessary to *forbid* a subsequent investigation by a *Bet Din* that felt prompted to confirm the validity of the prior *halizah*.<sup>48</sup>

Nevertheless, as has been cited earlier, *Sema*, *Hosben Mishpat* 19:2, declares that when a defendant has been exonerated, a second *Bet Din* is forbidden to hear the complaint of a plaintiff. The source of that position is the Mishnah, *Rosh ha-Shanah* 25a:

It occurred that two [witnesses] came and said, "We saw [the moon] in the morning in the east and in the evening in the west." R. Yohanan ben Nuri said, "They are false witnesses." When they came to Yavneh, Rabban Gamaliel accepted them. Also, two [witnesses] came and said, "We saw [the moon] in its proper time but on the following night it was not seen" and Rabban Gamaliel accepted them. R. Dosa ben Horkanos said, "They are false witnesses. How can people testify that a woman has given birth when the next day her abdomen is between her teeth?" R. Joshua said to him, "I accept your words." Rabban Gamaliel said to him, "I decree that you come to me with your staff and your money on the day on which *Yom Kippur* falls according to your reckoning." R. Akiva went and found [R. Joshua] in distress. [R. Akiva] said to him, "I can derive that everything Rabban Gamaliel has done is valid as it says, 'These are the appointed seasons of the Lord, holy convocations which you shall proclaim in their appointed seasons' (Leviticus 23:4), i.e., whether [they are proclaimed] at their proper times or other than at their proper time, I have no appointed seasons other than these." [R. Joshua] came to R. Dosa ben Horkanos. [R. Dosa ben Horkanos] said to him, "If we examine [the decisions of] the *Bet Din* of Rabban Gamaliel we must examine the decisions of every single *Bet Din* that has existed from the time of Moses until the present."

Both R. Akiva and R. Dosa ben Horkanos recognized the possibility of error on the part of Rabban Gamaliel. R. Akiva cited Scripture in support of the principle that, with regard to sanctification of the New Moon, even an erroneous decree of the *Bet Din* is endowed with validity. That principle, however, is limited to matters pertaining to the calendric system. R. Dosa ben Horkanos, on the other hand, justified Rabban Gamaliel's citation on the basis of a broad, universal principle establishing that the announced decision of a *Bet Din* is not subject to further scrutiny.

The problem, however, is why should an erroneous decision not be rescinded? Indeed, as evidenced by the Mishnah, *Sanhedrin* 32a, there does exist a contrary rule establishing that a decision based upon a patent error of law is to be set aside. The principle announced by R. Dosa ben Horkanos contradicts the rule established by the Mishnah, *Sanhedrin* 32a, unless each of these ostensibly conflicting principles is of limited application. If so, the question that must be resolved is when is a decision of a *Bet Din* final even though it is in error and when is it to be set aside?

Rabbenu Nissim, *Avodah Zarah* 7a, cites a statement of Ra'avad dealing, not with a matter requiring adjudication by a *Bet Din*, but with a non-adversarial matter involving a determination of religious law. Ra'avad declares that upon issuance of a negative ruling by a rabbinic decisor with regard to a foodstuff of questionable *kashrut* or the like "[the decisor]<sup>49</sup> has rendered it an object of prohibition and it cannot subsequently be rendered permissible, and even if a second decisor declares it to be permitted it is not permitted."<sup>50</sup> Ra'avad declares this to be the case even if the second decisor is acknowledged to be a more erudite scholar than the first. In effect, Ra'avad declares the ruling of a competent decisor to be *res judicata* and not subject to review.<sup>51</sup> However, Ra'avad's position is limited to situations involving a legitimate matter of doubt or requiring adjudication between conflicting opinions or precedents. Ra'avad concedes that the decision must be overruled when it is based upon a patent error of law.

Ra'avad's view reflects an extreme application of the principle enunciated by R. Dosa ben Horkanos. In his dictum, R. Dosa ben Horkanos establishes the principle that a decision in a matter requiring a *Bet Din*, once issued, acquires standing and validity even if it is in error, at least until such time as it is reversed. Accordingly, the principle "a *Bet Din* does not scrutinize the actions of another *Bet Din*" may be understood as meaning simply that the

second *Bet Din* is lacking in standing and authority to initiate such review with the result that the first decision remains in effect and, even if erroneous, is, as a matter of law, entirely valid.

But why is a *Bet Din* not empowered to review the action of another *Bet Din*? R. Dosa ben Horkanos declares that, if such review were to be undertaken, consistency would require examination of the actions of every *Bet Din* going back to the time of Moses. The Mishnah does not say that such review is precluded or prohibited. The phraseology of the Mishnah indicates only that such review is unnecessary and superfluous. That principle, however, entails postulation of a logically antecedent principle to the effect that a decision, once issued, acquires validity at least until such time as it is set aside. Only when reviewed and overturned is the previous decision nullified retroactively.<sup>52</sup>

The conditions for review become apparent from the previously cited discussion of the Gemara, *Baba Batra* 130b:

Rava said to R. Papa and to R. Huna the son of R. Joshua, “If a judgment of mine comes before you and you see a refutation, do not tear it up until you come before me. If I have a reason I will tell it to you; if not, I will reverse myself. After my death, do not tear it up but neither should you derive [any matter of law] from it. Do not tear it up since, had I been there, perhaps I would have told you the reason. Do not derive [any matter of law] from it because a judge has nothing other than what his eyes behold.”<sup>53</sup>

Clearly, this discussion envisions a review of an earlier announced decision. How did this situation differ from cases to which the general principle that a *Bet Din* does not review the decision of another *Bet Din* is applied? Undoubtedly, the answer is in the words “and you see a refutation,” i.e., the general principle “a *Bet Din* does not scrutinize the actions of another *Bet Din*” serves to extend full faith and credit to the decisions of a qualified *Bet Din* on the basis of a presumption of competence and freedom from error. That principle is, in turn, but a derivative of the more general principle, “*lo mabazakiman rei’uta*,” i.e., matters are presumed to be in good order unless there is reason to suspect otherwise.<sup>54</sup> That presumption is, however, rebuttable. Accordingly, when an irregularity is perceived, the decision becomes subject to review. Nevertheless, an erroneous decision, unless and until it is reversed, remains valid in the sense that a person who accepts funds on the basis of such a decision is, even in the eyes of Heaven, not guilty of theft or extortion.

Thus, the principle “a *Bet Din* does not scrutinize the actions of another *Bet Din*” must be qualified with the caveat “unless there is reason to suspect error or irregularity.”

Accordingly, a litigant cannot simply petition for a rehearing in the vague hope that he will prevail in a different forum. However, a litigant who advances a claim of identifiable judicial error is entitled to be heard even by a second *Bet Din* because he has identified a *rei'uta*, i.e., he has advanced a specific and cogent allegation of error, and thereby rebutted the presumption that the existing decision is error-free.

It is precisely this distinction that is formulated by *Teshuvot Hatam Sofer*, VI, no. 50. The matter brought to the attention of *Hatam Sofer* involved a ruling of a communal rabbi recorded in the protocols of the community. The ruling stated that the oath of a certain individual was not to be accepted because he had been found guilty of a grave transgression. Subsequently, the rabbi died and another rabbinic figure, apparently the religious authority of another city, sought to set aside the disqualification or to reinvestigate its basis. In a short responsum, *Hatam Sofer* cites the Mishnah in *Rosh ha-Shanah* as establishing that a decision of a rabbinic court constitutes *res judicata* and points to the apparent contradiction of that principle inherent in the discussion recorded in *Baba Batra* 130b. *Hatam Sofer* resolves the contradiction by noting that the narrative recorded in *Baba Batra* refers to a decision incorporating an ostensive error. When error is apparent “a judge can act only in accordance with what his eyes behold.” However, in the case brought to the attention of *Hatam Sofer* there existed only a memorandum of the ruling of the rabbinic authority without any indication of either the factual allegations or the halakhic considerations upon which it was based. *Hatam Sofer* stresses that, were error to be discovered, the deceased rabbi’s ruling might indeed be set aside but that, in the absence of a record of the testimony or the halakhic provisions relied upon, the decision must be accepted at face value and is not subject to challenge.

*Hatam Sofer* notes that this principle is further reflected in the Mishnah, *Makkot* 7a, that declares, “Wherever two [witnesses] arise and declare, ‘We testify that so-and-so was found guilty in such-and-such a court and that X and Y were the witnesses,’ the [condemned] is to be executed.” It is evident, declares *Hatam Sofer*, that testimony establishing that sentence has been pronounced results without further ado in the carrying out of the sentence of the *Bet Din* and, in the absence of specific evidence to the contrary, there is no basis to withhold imposition of punishment because of fear of either substantive or procedural error.

Similarly, R. Zevi Hirsch Kalisher, *Moznayim le-Mishpat, Hoshen Mishpat* 19:2, asserts that a second *Bet Din* may hear a previously adjudicated dispute, but only if the *Bet Din* has found an error of law in the written decision of the first *Bet Din*.

This analysis is entirely consistent with a further statement of *Teshuvot ha-Rosh* in his previously cited responsum (*kelal* 85, no. 5) to the effect that a second *Bet Din* may examine any ambiguity present in an already issued decision of an earlier *Bet Din* and the matter need not necessarily be referred back to the *Bet Din* of original jurisdiction because clarification of ambiguity represents a novel and as yet undecided issue. But the review must focus upon clarification of the ambiguity rather than upon adjudication of the issue *de nouveau*. In effect, the new proceedings are designed solely to clarify the intent of the earlier *Bet Din*.

Noteworthy is the fact that *Teshuvot ha-Rosh's* citation of the dictum “a *Bet Din* does not scrutinize the actions of another *Bet Din*” occurs in the context of a discussion of a petition for a rehearing of the selfsame arguments presented to the *Bet Din* rather than in reference to an appeal on the basis of allegation of a particular error. This is apparent from Rosh’s rhetorical query “Why have you asked for another decision with regard to a case that has already been adjudicated?” Thus, according to this analysis, Jewish law parallels other systems of law in providing for an appeal upon allegation of specific error but not simply for a rehearing of the original arguments and evidence before a different judicial body. It does, however, differ from other systems in permitting an appeal before any properly constituted tribunal rather than in formally providing for separate judicial bodies charged with the specific function of hearing appeals.

The distinction between a rehearing and an appeal is often obfuscated in discussions of the role of formal rabbinic courts of appeal that have appeared in recent times. The “appeals” permitted by the *Mishpat ha-Shalom* simply afforded a disgruntled litigant an opportunity for a rehearing. As earlier indicated, the quasi-judicial panels established by the *Mishpat ha-Shalom* did not apply a clearly defined corpus of law and hence their judgments are readily classified as arbitration awards. In Jewish law, as in other systems of law, arbitration decisions are generally not subject to appeal. Decisions of arbitrators cannot be appealed because they are inconsistent with provisions of law for the obvious reason that arbitrators are not bound to rule in accordance with the letter of the law. The procedures of the *Mishpat ha-Shalom* were innovative not only in establishing a formal appeals panel but in instituting a



system of appeal with regard to decisions of arbitrators. Consistent with halakhic norms, the Chief Rabbinate, in instituting a Supreme Rabbinic Court of Appeals, provided for appeal only upon allegation of error and did not at all provide for a right of appeal when, in their original submission, the parties agree to *pesharah* or arbitration.

Recognition of a distinction between a rehearing and an appeal, despite occasional proclivity on the part of rabbinic writers for use of imprecise nomenclature, yields a clearer understanding of the comments of R. David Pakiano, *Hoshen ha-Efod*, *Hoshen Mishpat*, no. 42. *Hoshen ha-Efod* reports that, with the institution of the office of crown rabbi in Bulgaria in 1900, a number of communal ordinances were promulgated including a provision for the appointment of “two or three” judges who together with the crown rabbi would constitute a “*Bet Din ha-Gadol*.” Thereupon, any litigant who was dissatisfied with the decision of a local *Bet Din* was permitted to relitigate before the “*Bet Din ha-Gadol*.” This procedure, *Hoshen ha-Efod* informs us, “is called ‘appeal’ in common parlance.” The issue addressed by *Hoshen ha-Efod* involved a defendant who lost a case before the local court and demanded a hearing before the “*Bet Din ha-Gadol*.” The plaintiff who had prevailed before that tribunal argued that, since he had already appeared before a properly constituted court and his adversary had no new complaints or additional evidence, he should not be compelled to expend additional time and energy relitigating the case.

*Hoshen ha-Efod* responds that, in terms of the applicable rules of law, the demurring litigant is correct. Nevertheless, there are ample sources demonstrating that such matters may be varied on the basis of *takkanah* or communal legislation. Accordingly, since, in Bulgaria, communal ordinances made provision for such a procedure, the plaintiff may be compelled to relitigate his complaint. *Hoshen ha-Efod* adds that no objection can be made on the basis of inherent disrespect to members of the first tribunal, reasoning that, since all persons “know that this is a city ordinance there is no demeaning of the first *Bet Din* and from the beginning they entered with this awareness.” Despite his use of the term “appeal” the procedure described by *Hoshen ha-Efod* is actually a rehearing. Accordingly, *Hoshen ha-Efod* should not be understood as asserting that appeals can be entertained only on the basis of *takkanah*. The issue of an appeal on the basis of allegation of judicial error is not at all addressed by that authority. His position with regard to the issue he does address, i.e., relitigation of the issues already resolved by an earlier court, is unexceptionable.

#### IV.

The authority of the Supreme Rabbinical Court of Appeals to sit as a court of appeals in accordance with the provisions of Jewish law was challenged in a number of proceedings before that body.<sup>55</sup> Although a court of appeals was instituted immediately upon establishment of the Chief Rabbinate Council, apparently its powers and procedures were not formally set forth by the Chief Rabbinate Council until the publication of its *Takkanot ha-Diyyun be-Batei ha-Din ha-Rabbanijim* in 5703.<sup>56</sup> In a matter brought before the Supreme Rabbinical Court in 5702, the appellee apparently argued that the Court's authority was derived from, and therefore circumscribed by, the Rabbinical Courts Act. Accordingly, it was argued, the appellate power of the Supreme Rabbinical Court must be regarded as limited to appeals in cases heard by the rabbinical district courts on the basis of the authority vested in such judicial bodies by the law of the civil government. However, it was argued, in actions in which the parties were not bound to the jurisdiction of that body by virtue of the provisions of civil law but had recourse to rabbinic courts of their own volition, no appeal can be allowed. The argument seems to have been that the appellate powers of the Supreme Rabbinical Court are entirely a matter of civil law, without basis in Halakhah, and hence do not extend, even as a matter of civil law, to matters over which the law does not grant judicial authority to the rabbinical courts.<sup>57</sup> The Court rejected this argument, declaring:

We have already made known many times that the *takkanah* [establishing] a *Bet Din* for appeals has been accepted without any reservation. Such was the practice introduced by our predecessors and we are not permitted to change [the practice] since all who appear for adjudication appear on that basis. This argument was presented before the [civil] court in Haifa and rejected; therefore we are obliged to accept all appeals even as a point of [civil] law.<sup>58</sup>

The Supreme Rabbinical Court herein advances two separate grounds for its appellate jurisdiction: 1) powers derived from *takkanah*, i.e., rabbinic legislation promulgated by the Chief Rabbinical Council<sup>59</sup>—a body that in the early years of its existence did not hesitate to assert legislative power as the designated rabbinical authority of the yishuv,<sup>60</sup> and 2) voluntary acceptance of its appellate authority by the parties to the litigation. In formulating the latter argument, the Supreme Rabbinical Court presumably reasons that such acceptance is implied by the appearance of the parties since the right of appeal is commonly known to be acknowledged by the rabbinic courts. That argument is, however, subject to challenge, or at least would have been subject to challenge in the first such appeal brought

before the Supreme Rabbinical Court, on the grounds that a right of appeal in matters not governed by the Rabbinical Courts Act had as yet not been established. The weakness inherent in any argument based upon voluntary acceptance of such procedures by the litigants is that, at the time of their original submission to the authority of the *Bet Din*, either party might disavow any such acceptance and thereby deny his adversary the right of appeal.

In a subsequent decision handed down in 5734 the Supreme Rabbinical Court formulated the argument somewhat differently:

In every decision there are two principles upon which the *Bet Din* for Appeals nullifies the decision of the district *Bet Din*: First, on the strength of the *Takkanot ha-Diyyun* and with that knowledge the parties litigate, [*viz.*,] that if there is an erroneous judgment the *Bet Din* of Appeals will examine the problem anew. . . . Secondly, since such was established by the *Takkanot ha-Diyyun*, it may be said that the [district] *Bet Din* ruled *ab initio* with that intention [i.e., that its judgment be given effect only if there is] no appeal to the Supreme Rabbinical Court.<sup>61</sup>

In this decision, the two grounds set forth in the 5702 decision are folded into a single argument in which the legislative authority relied upon is the explicit provisions of the *Takkanot ha-Diyyun* of 5703 rather than the earlier amorphous legislative action implied by the *ad hoc* establishment of the appellate court in 1921.<sup>62</sup> Implied acceptance of the authority of the appellate court, posited as an independent argument in 5702, is here incorporated in the first argument. The second argument advanced in the 5734 decision focuses upon the intent of the lower court rather than upon the intent of the litigants and, in effect, declares that, in light of the established right of appeal, all decisions of district *Batei Din* are conditional in nature.<sup>63</sup> The Supreme Rabbinic Court is herein relying upon an unstated premise, *viz.*, that a *Bet Din* is halakhically empowered to issue a binding, conditional judgment of this nature, i.e., to issue a judgment that becomes final only upon acceptance by both parties as evidenced by failure to lodge an appeal within the prescribed time.

In a short and succinct published decision handed down on 9 Tevet 5705, the Supreme Rabbinical Court rejected a motion to dismiss an appeal on the grounds that, absent an explicit agreement at the time of submission to the authority of the trial court, there exists no right of appeal in Jewish law and declared:

The *Bet Din ha-Gadol* finds that it does have the authority to judge this appeal since the matter of appeals has been accepted as a *takkanah* of the Sages,<sup>64</sup> whose binding effect is like the law of our holy Torah and all who enter into litigation enter with the intention [to accept an appeal].<sup>65</sup>

On the basis of the foregoing analysis, it may be argued that the appellate power of the Supreme Rabbinical Court is firmly grounded in Halakhah. §135 of the *Takkanot ha-Diyyun* of 5753 provides that appeals may be heard upon allegations of: 1) halakhic error; 2) egregious error (*ta'ut ha-nir'et la-'ayin*) in judgment or in the establishment of facts; or 3) procedural defects having an effect on the results of the litigation.<sup>66</sup> Procedural defects having a decisive effect upon the judgment of the *Bet Din* are indeed errors of Halakhah warranting reversal of the decision. Similarly, *Teshuvot Rivash*, no. 498 and *Shakh, Hoshen Mishpat* 25:9, rule that factual errors are to be equated with errors of law. Assuming that the phrase “error of judgment” (*ta'ut be-shikul ha-da'at*) is used in the sense of its talmudic meaning, i.e., in the sense of error of judgment in choosing between conflicting authority or precedent, that, too, may be tantamount to an error of law. *Tashbaz*, II, no. 272, rules that a ruling issued in reliance upon an opinion that is in conflict with the established judicial determination in a given locale is to be treated as an error with regard to a matter of law. That ruling, however, is disputed by *Shakh, Hoshen Mishpat* 25:10; *Urim ve-Tumim, Urim* 25:11; and *Netivot ha-Mishpat, Hiddushim* 25:11.

Thus, at least insofar as an appeal based upon an allegation of specific halakhic or factual error is concerned, the right of appeal would appear to be well-grounded in Halakhah and reliance upon *takkanah* or presumed acquiescence of the parties would be unnecessary. *Takkanah*, however, remains operative in another sense. When an error of law is alleged, the litigant is entitled to seek out any *Bet Din* of his choice in order to nullify the original decision. The *Takkanot ha-Diyyun* provide that appeals can be brought only before the Supreme Rabbinical Court. In effect, the establishment of a formal appeals court constitutes a *takkanah* depriving other courts of the right to hear the appeal.

It must also be noted that the earlier presented analysis does not reflect the position of all authorities. As cited earlier, *Tashbaz*, III, no. 165, maintains that the *Bet Din* having original jurisdiction must acknowledge its error in order to vacate the judgment. *Tashbaz* adduces the principle “a *Bet Din* does not scrutinize the actions of another *Bet Din*” in ruling that a decision of a *Bet Din* can be reversed on grounds of error only if the first *Bet Din* still exists and can be prevailed upon to concede its error. Similarly, Mahari Katz, cited in *Shitah Mekubetzet, Baba Kamma* 12a, indicates that it was for this reason that, as recorded by the Gemara, *Ketubot* 50b, Rav Nachman admonished the judges of Nehardea to reverse

themselves.”<sup>67</sup> According to these authorities, reversal of a decision can be compelled only on the basis of *takkanah*. On the other hand, Rif and *Ba'al ha-Ma'or*, *Sanhedrin* 33a, Rosh, *Sanhedrin* 4:6 and *Yad Ramah*, *Sanhedrin* 33a, maintain that a scholar who is greater in wisdom and stature may overturn a judgment on grounds of judicial error with regard to a matter of law even if the judge who issued the original verdict does not acknowledge his error. *Hazon Ish*, *Sanhedrin* 16:17, understands the position of *Tosafot*, *Ketubot* 50b, to be that a person appointed by the Exilarch as a judge over the entire country or province and to whom other judges are subservient enjoys that power. In the State of Israel, such status is certainly enjoyed by the Supreme Rabbinical Court.

### Notes

1. For an account of the mode of operation of those tribunals see C. Daikan, *Toldot Mishpat ha-Shalom ha-Ivri* (Tel Aviv, 5724). See also Mordecai ben Hillel ha-Kohen, “Le-Toldot Mishpat ha-Shalom ha-Ivri,” *Mishpat ha-Ivri: She'elotav le-Halakhab u-le-Ma'aseh* (Tel Aviv, 5685). For a critique of the ideological principles upon which those tribunals were based see J. Yonowitz, introduction to Simchah Assaf, *Ha-Onshim Abarei Hatimat ha-Talmud* (Jerusalem, 5683), pp. 5-6 and Simchah Assaf, *Batei Din ve-Sidreihem Aharei Hatimat ha-Talmud* (Jerusalem, 5788), pp. 6-9.
2. Cf., the language incorporated in the Foundations of Law Act adopted by the State of Israel in 1980. That act provides that, in the absence of legislation or precedent, legal issues must be resolved “in light of the principles of freedom, justice, equity and peace of the heritage of Israel.” The influence of the framework governing the *Mishpat ha-Shalom ha-Ivri* seems readily apparent and, *mutatis mutandis*, is subject to the same critique.
3. See Rema, *Hosben Mishpat* 8:1, and Louis Finkelstein, *Jewish Self-Government in the Middle Ages* (New York, 1924), pp. 356-359.
4. See *Ha-Tor*, vol. 1, no. 18 (3 Adar 1, 5681), p. 14.
5. *Loc. cit.*
6. *Ibid.*, p. 15.
7. *Ha-Tor*, vol. 1, no. 21-22 (24 Adar I, 5681), p. 3.
8. *Ibid.*, p. 4.
9. *Ibid.*, p. 5.
10. *Ibid.*, p. 15.
11. *Ibid.*, p. 14.
12. *Ibid.*, p. 24. See also R. Chaim Hirschensohn, *Malki ba-Kodesh*, I (St. Louis, 5679), 17, who states that “the nations will not agree under any circumstances” to recognize the authority of *Batei Din* in Palestine other than upon establishment of a court of appeals.
13. The modern-day discussions of a possible role for an appellate court focus upon establishment of such a body to hear appeals in matters of jurisprudence and family law. Indeed, insofar as statutory law is concerned, with the lapse in succession in the ordination of judges originating with Moses, *Batei Din* are no longer competent to impose penal sanctions. Nevertheless, during the medieval period, not only were such penalties imposed by Jewish courts, but frequently the right of judicial autonomy even in criminal matters was granted by the civil authorities. Simchah Assaf, *Batei ha-Din ve-Sidreihem*, p. 77, note 1, reports that in 1284 two Jews residing in Saragossa were convicted of murdering a relative and sentenced to excommunication and exile. Thereupon, the convicted criminals appealed the verdict to Pedro III of Aragon. The complainants argued that appeals were not recognized in Jewish law. Pedro, in turn, referred the matter to the head of the rabbinical court of Aragon for resolution of that issue and directed him to conduct a new hearing should he find that Jewish law provides for such a procedure. Assaf further reports that we do not have a record of the resolution of that case.

In actuality, while such information would be highly intriguing, resolution of the issue in that case would have little bearing upon the subject of this discussion. Authority for imposition of criminal sanctions in our day is the product of the extra-statutory *ad hoc* power of a *Bet Din* to preserve law and order. Accordingly, it would not be surprising to find that emergency measures are not subject to appeal, while decisions issued on the basis of the due process of ordinary

- judicial procedure are subject to appeal. On the other hand, it is possible, albeit unlikely, that local ordinances may have established a system of appeal limited to criminal matters precisely because the authority to impose such penalties is extra-statutory.
14. See Assaf, *Batei Din ve-Sidreihem*, pp. 74-85; Louis Finkelstein, *Jewish Self-Government in the Middle Ages*, pp. 359-360; Fritz Baer, *Die Juden in christlichen Spanien*, I (Berlin, 1936), 286; and Abraham A. Neuman, *The Jews of Spain* (Philadelphia, 1944), p. 118 and cf. p. 145.
  15. Assaf, *Batei Din ve-Sidreihem*, p. 75.
  16. *Teshuvot Rivash*, nos. 227 and 381.
  17. *Ibid.*, nos. 393 and 494.
  18. *Ibid.*, nos. 506 and 388. The appellate judge is mentioned by name in the former responsum and in the latter responsum the place of residence of that individual is given as Saragossa. See Assaf, *Batei Din ve-Sidreihem*, p. 76.
  19. Assaf, *Batei Din ve-Sidreihem*, p. 77.
  20. See *Teshuvot Shemesh Zedakah, Hoshen Mishpat*, nos. 9, 13, 14, 19 and 24.
  21. See Assaf, *Batei Din ve-Sidreihem*, pp. 78 and 133.
  22. See *ibid.*, pp. 84-85.
  23. Assaf, *ibid.*, p. 83, includes the appeals process of the *V'a'ad ha-Medinah* of Lithuania in his enumeration of courts of appeal. It must however be noted that the recorded protocols of the *V'a'ad ha-Medinah* refer solely to disputes regarding appointments to communal offices and fines imposed by the community. The reference is clearly to communal matters and involves matters of local ordinances and has no relationship to appeals regarding matters of ordinary financial litigation.
  24. *Loc. cit.*
  25. *Ibid.*, p. 85 and p. 140. See also *Teshuvot Hoshen ba-Efod, Hoshen Mishpat*, no.42.
  26. Published in R. Chaim Hirschensohn, *Malki ba-Kodesh*, IV (St. Louis, 5679-5682), 13-15. See also Assaf, *Batei Din ve-Sidreihem*, p. 77.
  27. *Malki ba-Kodesh*. IV, 14.
  28. *Loc. cit.*
  29. *Loc. cit.*
  30. *Batei Din ve-Sidreihem*, p. 78, note 1.
  31. For a survey of the applicable principles see *Encyclopedia Talmudit*, XX, 495-539. The normative *halakhot* are codified in *Shulhan Arukh, Hoshen Mishpat*, chap. 25.
  32. See also sources cited in *Encyclopedia Talmudit*, vol. XX, p. 502, note 78.
  33. See also sources cited in *Encyclopedia Talmudit*, *ibid.*, note 79. A related incident recorded in *Ketubot* 50b involving another statement by R. Nachman is also the subject of controversy in this regard; see *Tosafot, Ketubot* 50b and *Shitah Mekubetzet, Baba Kamma* 12a, as well as sources cited in *Encyclopedia Talmudit*, *ibid.*, notes 78 and 79.
  34. See *Encyclopedia Talmudit*, vol. XX, p. 513, note 213. Cf., R. Chaim Hirschensohn, *Malki ba-Kodesh*, II, 110, who writes, “. . . we do not need a clearer source for a supreme court of appeals than the words of Rav Nachman.” Opponents of the concept of a court of appeals presumably recognized that a rejected opinion cannot serve as a “clear source” for any halakhic principle.
  35. For further elucidation of this dichotomy see *Encyclopedia Talmudit*, XX, 498-501.
  36. For a discussion of various conflicting interpretations of the disagreement between Rav Yosef and Rav Nachman, or the absence thereof, see *Encyclopedia Talmudit*, XX, 506-509.
  37. Rema adds that a litigant is entitled to such a document only if the court compels appearance, but not if the parties voluntarily accept the jurisdiction of the *Bet Din*. Voluntary acceptance of the jurisdiction of the *Bet Din* is thus tantamount to acceptance of its final authority and renunciation of the right of appeal. *Teshuvot Noda bi-Yehudah, Mahadura Tinyana, Hoshen Mishpat*, no. 1, rules that in any situation in which the litigants are summoned to appear before the *Bet Din* their appearance is not to be regarded as voluntary acceptance of the authority of the *Bet Din*. Cf., however, R. Joseph Saul Nathanson, *Teshuvot Sho'el u-Meshiv, Mahadura Tinyana*, II, no. 84 and *Mahadura Revi'a'ah*. III, no.101.
  38. Rema indicates that the litigant is entitled to a written statement only of the claim and the decision itself, but not of the reasoning upon which it is based. In a parallel provision based on an incident described by the Gemara, *Baba Mezi'a* 69a, *Shulhan Arukh, Hoshen Mishpat* 14:4, rules that when a judge perceives that he is suspected of bias in favor of the prevailing party he should inform the losing party of the “reason” upon which the decision was based. In such a situation, and only in such a situation, does *Shulhan Arukh* state that it is necessary to disclose the “reason.” Moreover, as explicitly noted by Rema, such situations require only an oral disclosure rather than a written decision. Cf., however, *Teshuvot Havot Ya'ir, hashmatot*, cited in *Pithei Teshuvah, Hoshen Mishpat* 14:10.  
For a detailed treatment of the obligation to issue a reasoned decision or the absence thereof see Eliav Shochetman, “Hovat ha-Hanmakah ba-Mishpat ha-Ivri,” *Shenaton ha-Mishpat ha-Ivri*, VI-VII (5739-5740), 319-397. See also R. Ovadiah Hedaya, *Teshuvot Yaskil Andei*, II, *Hoshen Mishpat*, no. 2, sec. 8.
  39. See R. Moses Feinstein, *Iggerot Mosheh, Hoshen Mishpat*, I, no. 76, who indicates that “in our day” there is no *Bet Din* that can be considered “a greater court.”
  40. *Arukh ba-Shulhan, Hoshen Mishpat* 14:8, states that, although such a document may be requested by a litigant for submission to another *Bet Din*, “it appears to me” that the judges must write that they grant permission for review of

their decision and that in the absence of such permission no other court may review their decision. That view, however, does not seem to be shared by any other authority.

41. Cf., *infra*, note 46.
42. See *Hazeh ba-Tenufab*, no. 40. *Hazeh ba-Tenufab* has been published as an appendix to R. Chaim Joseph David Azulai's *Teshuvot Hayyim Sha'al*, vol. II.
43. See also R. Ben-Zion Uziel, *Mishpetei Uz'el, Mahadura Tinyana, Hosben Mishpat*, no. 1, sec. 15. A similar position is advanced by Rabbi Y. ibn Zur, *Mishpat u-Zedekah be-Ya'akov*, II (Alexandria, 5663), no. 48. Cf., *Teshuvot Yaskil Ardi*, III, *Even ha-Ezer*. no. 2, *anaf* 1, secs. 4-6.
44. See *supra*, note 38. See, however, *Orah Mishpat, Hoshen Mishpat* 14:4, who cites a comment of *Shelab, Parashat Mishpatim*, reporting that the latter had received a tradition from his father to the effect that even if there is no indication that he is suspected of a miscarriage of justice, the *dayyan* should disclose the reasons upon which his judgment is predicated in order to assuage and calm the mind of the losing party.
45. See *infra*, note 49, as well as the accompanying text quoting *Baba Batra* 130b. The phrase "If I have a reason," strongly suggests that the written judgment stated nothing more than the award and did not include the reasoning upon which it was based. Despite the finding of error by other competent authorities, Rava insisted that the decision cannot be nullified unless he concedes error and hence there can be no possibility of reversal after his demise. At the same time, the phrase "a judge has nothing other than what his eyes behold" suggests that, if the decision has as yet not been executed or if any further action by a *Bet Din* is contemplated, a *Bet Din* that finds the decision to be in error is not obliged to enforce the judgment. The thrust of Rava's declaration is that, unless a *Bet Din* acknowledges and agrees that its decision may be vacated, other courts can take no action and hence must allow the situation to remain as presented without disturbing it in any way.
46. See, however, the responsum of R. David ibn Zimra, published in *Avkat Rokhel*, no. 21, as well as in *Teshuvot Mabit*, II, as an addendum to no. 172, in which that authority asserts that this principle was operative only in days of yore but "now that [judges] are not so proficient in law, we therefore scrutinize the actions of a *Bet Din*." This is also the opinion of R. Chaim Pelaggi, *Teshuvot Semikhab le-Hayyim*, no. 9. See also, *idem*, *Teshuvot Hikekei Lev*, II, no. 17. That view is rejected by *Urim ve-Tumim, Urim* I, 19:3.
47. In the accompanying discussion, the Gemara states that witnesses may commit a certain matter to writing because "we do not suspect that a *Bet Din* will err" in acting upon the writing without additional testimony. The Gemara permits witnesses to a deathbed statement to record that the patient asserted on his deathbed that a certain person owed him a debt. The purpose of committing the assertion to writing is to preserve the information so that the heirs may press a claim. The claim, however, is unsubstantiated since the witnesses have no substantive evidence that serves to support the allegation. Nevertheless, the Gemara states that they may record the declaration made in their presence since the *Bet Din* will not err with regard to its nature and assume that the document is evidence of the veracity of the claim. Clearly, that statement simply reflects a presumption of judicial competence and permits individuals to comport themselves in accordance with that general presumption but does not at all establish that specific allegations of error cannot be entertained.
48. R. Ovadiah Yosef, *Yabi'a Omer*, II, *Hoshen Mishpat*, no. 2, sec. 8, understands the principle "a *Bet Din* does not scrutinize the actions of another *Bet Din*" as negating a requirement for such scrutiny but not as forbidding discretionary scrutiny. The earlier cited statement of *Teshuvot ha-Rosh* and *Sema* he understands as serving to prohibit a rehearing of arguments by a second *Bet Din* but not as precluding examination of the decision for possible error.
49. Cf., however, *Encyclopedia Talmudit*, vol. VIII, p. 507, note 304. The author of that note infers from the comments of *Teshuvot Radbaz*, I, no. 362, and *Teshuvot Rivash*, no. 379, that they understood that it is the petitioner who, in accepting the decision of the rabbinic scholar, has rendered the item an object of prohibition.
50. For further citations of Ra'avad's view see *Encyclopedia Talmudit*, vol. VIII, p. 507, note 301. Ra'avad's position is in accordance with that of both Ramban and Rashba. Rabbenu Nissim, however, maintains that the talmudic rule is based upon considerations of "the dignity of the first [decisor]" and a fear lest "the Torah appear as two *Torot*." Consequently, Rabbenu Nissim opines that the earlier decision may be rescinded with the acquiescence of the first authority.
51. For a discussion of whether this principle applies even in situations in which the first decisor has issued a permissive ruling see *Teshuvot Radbaz*, I, no. 362; *Teshuvot Rivash*, no. 379; and *Sedei Hemed, Kelalim, Ma'arekhet ha-Het*, sec. 77.
52. This analysis will serve to reinforce the difficulty in explaining why a blessing is not pronounced by the *Bet Din* upon issuing a judgment. Despite the fact that the Gemara, *Ketubot* 106a, indicates that issuance of a judgment constitutes the fulfillment of the commandment "With justice shall you judge your fellow" (Deuteronomy 1:16), there is no source indicating that the members of the *Bet Din* must pronounce a blessing before announcing their decision. *Teshuvot ha-Rashba*, no. 18, states that the Sages did not ordain that a blessing be pronounced upon issuance of a decision by a *Bet Din* because of a fear that the litigants might not accept the decision. See also *Bi'ur ha-Gra, Orah Hayyim* 8:1. *Teshuvot Hatam Sofer, Orah Hayyim*, no. 54, maintains that the normative rule is that, contrary to the position of the Palestinian Talmud, a blessing may be pronounced only upon completion of the *mizvah* and such completion, he maintains, does not occur until judgment is actually executed.

On the basis of the foregoing it might be argued that, if an erroneous decision is effective and valid, it should follow that issuance of the decision itself constitutes fulfillment of the commandment whether or not it is actually implemented by the litigants.

- For an analysis of the difficulties inherent in this position as well as for an alternative thesis explaining why blessings were not ordained prior to performance of certain *mizvot* see R. Baruch ha-Levi Epstein, *Tosefet Berakhab*, Deuteronomy 1:16.
53. Rashbam, in his commentary to *Baba Batra* 131a, indicates that the reversible error contemplated by R. Papa was one of judgment rather than the result of ignorance of a point of law. This is evident from Rashbam's use of the phrase "for also with regard to a matter dependent upon reasoning a judge knows only that which his heart shows him." *Nimukei Yosef*, however, understands the error in question to be an error with regard to a clearly established point of law rather than an error in judgment, because, according to his opinion, a matter calling for the exercise of judgment not only cannot be reversed by another *Bet Din* but even the *Bet Din* that issued the decision is not empowered to rescind an already issued decision simply because it has changed its mind. In this, *Nimukei Yosef*, in effect, equates a decision predicated upon exercise of judgment with the rule applying to arbitration. A decision based upon arbitration rather than law, once issued, cannot be reversed or modified even by the original tribunal other than, of course, with the consent of both parties. It is for that reason that litigants cannot demand that the *Bet Din* reveal the considerations upon which an arbitration award is based. See *Kovez ha-Poskim*, I (New York, 5729), 295, s.v. *Be-Matteh Shimon*. Rashbam would apparently disagree with that point and maintain that, at least until judgment is executed, the original *Bet Din* retains jurisdiction and may reverse or amend its decision with regard to a matter of judgment no less so than with regard to a matter of law.
  54. See, for example, *Beizab* 34a.
  55. See also the comments of R. Israel Schepansky, *Ha-Takkanot be-Yisra'el* (Jerusalem, 5753), IV, 218, who writes concerning the establishment of a *Bei Din* for appeals that "it is difficult to find a source or reason for it in the works of the decisors."
  56. The *Takkanot ha-Diyyun*, although not published until 5703, were apparently promulgated by the Chief Rabbinate Council on 2 Elul 5701 and became effective as of the beginning of 5702. See Shochetman, "Hovat ha-Hanmakah," p. 369.
  57. Despite the fact that this argument was rejected in the decision of 5702, in a subsequent unpublished decision issued in 5716 the Supreme Rabbinical Court ruled that it had no authority to hear appeals in "non-adversarial" matters, i.e., in determining issues of Jewish religious law since such matters are not within the ambit of authority granted to the *Bet Din* by virtue of the civil law. The issue before the court involved the conversion of a minor child by its Jewish father in face of the announced opposition of its non-Jewish mother. The district court declared that it was not acting by virtue of the powers vested in a *Bet Din* to adjudicate disputes but was simply announcing a matter of religious law. The Supreme Rabbinical Court ruled that such matters are not subject to appeal. See Eliav Shochetman, *Seder ha-Din (Civil Practice in Jewish Law)* (Jerusalem, 5748), p. 450.
  58. Unpublished decision, docket number 1/46/701, bearing the signatures of the members of the court including the Chief Rabbi, R. Isaac ha-Levi Herzog, cited by Shochetman, *Seder ha-Din*, p. 449.
  59. In another unpublished decision. Rabbi Herzog describes the power of the Supreme Rabbinical Court of Appeals as grounded in communal legislation (*takkanot ha-kahal*). See Shochetman, *Seder ha-Din*, p. 450, note 32.
  60. For a list of *takkanot* promulgated by the Chief Rabbinate Council see Menahem Elon, *Ha-Mishpat ha-Ivri* (Jerusalem, 5738), I, 667-676. See also Yitzchak Kister, *Torah she-be'al Peb*, XII (5730), 49-57.
  61. *Piskei Din shel Batei ha-Din ha-Rabbaniyim*, X, 180.
  62. In another unpublished decision dated 5708, the Supreme Rabbinic Court, of which Rabbi Herzog was still a member, refused to hear an appeal from a decision of the *Edab ha-Haredit* on the grounds that the *Takkanot ha-Diyyun* of 5703 apply only to cases heard by the *Batei Din* established by the State, although it is by no means obvious that such was the case. See Shochetman, p. 449, note 31. No reference is made in that decision to an earlier *takkanah* of the Chief Rabbinate Council although, arguably, that *takkanah* might also be regarded as limited in scope. The matter is of course further complicated by the fact that the *Edab ha-Haredit* does not acknowledge the authority of the Chief Rabbinate.
  63. The difficulty presented by the second argument lies in the source of the appellate court's authority to issue a new verdict subsequent to hearing the appeal. If it is contended that the filing of an appeal has the effect, not simply of staying the decision of the trial court, but of rendering it entirely nugatory, it follows that the judgment of the appellate court does not serve to confirm or to rescind the judgment of the trial court but becomes the sole judicial decision in the case. The authority of the appellate court might then be regarded as predicated upon the original acceptance of the established judicial process on the part of the litigants in their original appearance, including the authority of the appellate court to issue its own decision. Alternatively, the appeals court might, in effect, constitute itself as a communally designated court of original jurisdiction that is empowered to compel litigants to submit to its jurisdiction. This explanation does not, however, serve to resolve the problem since a court of original jurisdiction is forbidden to issue a decision without hearing the parties and examining witnesses who must personally appear before them. Accordingly, it is more likely that, in formulating this argument, the Supreme Rabbinical Court intended to assert that, in cases of appeal, the original judgment of the district *Batei Din* is rendered conditional subject to confirmation by the appellate court. That contention, however, serves to provide a basis only for confirmation or reversal by the appellate court, but not for modification of a judgment or reversal in part and confirmation in part. Such judgments are properly to be regarded as decisions of the appellate court rather than as decisions of the trial court. Hence the cogency of this argument in establishing the authority of the Supreme Rabbinical Court to act in such a manner remains unclear.



64. For a discussion of the halakhic scope of the authority of the Chief Rabbinate see R. Saul Israeli, *Shanah be-Shanah*, 5724, pp. 175-186, and I. Englard, *Ha-Praklit*, XXII (5726), 68-79. See also *Piskei Din Rabbaniyim*, X, 14 and Shochetman, "Hovat ha-Hanmakah, p. 370, note 168.
65. *Osef Piskei Din*, ed. Z. Warhaftig (Jerusalem, 5710), p. 71.
66. Identical language appears in §122 of the *Takkanot ha-Diyyun* of 5720. The original *Takkanot ha-Diyyun* of 5703 is silent with regards to grounds for appeal.
67. See also *Hazon Ish*, *Sanhedrin* 16:10.



## Artificial Insemination and Surrogate Motherhood through the Prism of Jewish Law

Rabbi Kenneth Brander

Dear Michael,

Mazal Tov to you and Channah on this well deserved honor. You have such a strong quality that strikes me of both scholarship and menschlekeit.

May you continue to be a source of inspiration to all of us, and may your commitment to both the heart and mind of the Jewish people continue to grow from strength to strength. You and your Aishet Chayil, Channah, should have many more years of life and happiness together with you only know nachas from your family and from your community.

B'yedidut

Kenny Brander

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### Abstract

Scientific breakthroughs are giving hope to many who once only dreamed of having a family, while simultaneously creating a host of dilemmas for *halakha* (Jewish law) to decide. The particular focus of our discussion will be the establishment of parenthood in two particular contexts.

What establishes a male as the father of a child? Is it the act of sexual intercourse, which in many modalities is nonexistent, or the contribution of the sperm that fertilizes the egg? What if a male's sperm fertilizes the egg only after the man has passed on? Does Judaism consider the deceased donor to be the father? A more complicated matter is the issue of maternal status. This issue arises, in particular, with a surrogate mother where the egg donor and the host are different women. Who is the mother of the child? The woman who genetically contributes or the one who nurtures the embryo through the gestational period? This affects various issues, not limited to, the definition of the child's family, issues of Jewish identity, and the identification of prohibited incestuous relationships.

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## I Introduction

This paper will present a brief overview of the *halakhic* (Jewish legal) issues concerning certain medical breakthroughs relating to artificial insemination and surrogate motherhood. These issues include the halakhic permissibility to undergo treatments such as in vitro fertilization, and the accepting of a donor egg or donor sperm. With such treatments available, it is important to clearly define the paternity or maternity of the child.

Such definitions help us to understand the child's relationship to the father's estate; his status as a Kohen, Levi, or Yisrael; which relationships are considered halakhically incestuous; as well as for which parents the child is obligated to observe the laws of mourning.

Halakha is prepared to handle such issues, as it has the requisite parameters to deal with this new medical technology. As Rabbi Joseph B. Soloveitchik states: "There is no phenomenon, event, creature for which prioristic halakha does not have an idealistic standard of judgment."<sup>1</sup>

To discuss these issues so briefly allows just for the ideas to be introduced. Reviewing the sources mentioned and researching the additional ones footnoted in the article provide the possibility to delve into greater detail on the halakhic perspectives regarding the issues discussed.

## II. The Use of Medical Procedures to Aid in Issues of Infertility

The *Midrash* (hermeneutic commentary on the Torah) gives us the following insight into circumcision.

A philosopher asked Rabbi Hoshaya: "If circumcision is so precious, why was it not given to Adam...?" Rabbi Hoshaya said to the philosopher: "I cannot send you away empty-handed; the real reason [for circumcision] is this: whatever was created in the first six days requires further preparation, e.g., mustard seed needs sweetening, *turmos* [a type of legume] need sweetening, wheat needs grinding, and man, too, needs *tikkun* (completion)." (Genesis Rabba 11:6)

This midrash highlights the need to recognize that G-d did not create us perfect; the perfection of the body, soul, and mind is in our hands. Science is one avenue available to us for trying to achieve this perfection. Therefore IVF, IUI, and sperm and egg donation should be viewed in this context. Giving the opportunity for new hope to couples who have difficulty having children is a G-dly gift packaged within the framework of science.

A similar idea is found in the Talmud:

The following question was put forth by Turnus Rufus to Rabbi Akiva: “If your G-d loves the poor, why does He not support them?”

He [Rabbi Akiva] replied, “So that we may be saved through them from the punishment of Gehenna.”

“On the contrary,” said the other [Turnus Rufus], “it is this which condemns you to Gehenna. I will demonstrate by a parable. Suppose an earthly king was angry with his servant, put him in prison, and ordered that he should be given no food or drink, and a man went and gave him food and drink. If the king heard, would he not be angry with him? And you [Jewish people] are called servants, as it is written, ‘For to me the children of Israel are servants’ (Leviticus 25:55).”

Rabbi Akiva responded: “I will illustrate by another parable. Suppose an earthly king was angry with his son, and put him in prison and ordered that no food or drink should be given to him, and someone went and gave him food and drink. If the king heard of it, would he not send him a present? And we are called ‘sons,’ as it is written, ‘Sons are you to the Lord your G-d’ [Deuteronomy 14:1].” (Talmud *Bava Batra* 10a)

The Talmud is pointing out a fundamental difference between Rabbi Akiva’s and Turnus Rufus’s gestalt on life. Turnus Rufus suggests we take a providential view of the poor man’s fate. Humankind has no right to interfere with what has been ordained by G-d. In contrast, Rabbi Akiva suggests that we must play an active roll in changing the fate of those challenged. When possible, we should be involved in *imitatio Dei* and act upon the suffering confronting us. Just as G-d has the power to heal and end suffering, when we have the capacity, we are obligated to do the same. One is forbidden to take a providential view on life to suggest that any person’s suffering is G-d’s will and thus ordained. In the case of infertility, we are to recognize the opportunities given to us by science, and as agents of G-d, use these opportunities to realize our dreams for overcoming the tragedy of infertility.

It is interesting that the Rabbi Menahem Ha’Meiri (1249-1306) mentions the importance of scientific breakthroughs and the ability to take advantage of technology. The Meiri states:

[What is the difference between witchcraft, which the Torah forbids one to benefit from, and science, which the Torah welcomes?] Any advances achieved through natural science are not to be considered magic, which is prohibited. There will come a time when science will know how to create human beings without the natural intimate act. This has been explained in the books of science and is not an impossibility. It is permitted to be involved in such procedures for they are considered within the order of nature and not in the category of [forbidden] magic. This is similar to the statement that anything achieved through the science of medicine is not considered *darkei emori* [idoltrous practices]. (on Talmud *Sanhedrin* 67b)

While a married couple having difficulty conceiving may use the gifts of science, it is important to recognize the risks. Halakha responds to those risks by not demanding that couples engage in infertility treatments in order to have children. If a couple wishes to forego these difficult procedures, halakha understands and supports such a decision. This is evident from a *Tosafot* in *Pesahim*.<sup>2</sup> *Tosafot* suggests that a male who needs to undergo medical procedures in order to become circumcised is not mandated to do so—even though without the procedure the individual will be unable to participate in several *mitsvot* (Torah commandments) including the eating of the Paschal lamb).

### III. Definition of Paternity

And he [Mordekhai] brought up Hadassa, that is, Esther, his uncle's daughter; for she had neither father nor mother, and the young lady was beautiful and of good presence; and, when her father and her mother died, Mordekhai adopted her as a daughter (The Book of Esther 2:7).

The Talmud is perplexed by the repetition of the fact that Esther was an orphan:

For she had neither father nor mother. [And the verse continues] and when her father and mother died. Why these last words? Rabbi Aha said: When her mother became pregnant with her, her father died; when she was born, her mother died. (Talmud *Megilla* 13a)

The Talmud explains that Esther was orphaned immediately in her life; her father died immediately after her conception, not birth. Here we begin to see the definition of paternity being established with the act of conception.

This idea is further developed by the following talmudic dialogue:

Ben Zoma was [further] asked: May a High Priest marry a virgin who has become pregnant? Do we [in such a case] take into consideration Samuel's statement, for Samuel said, I can have repeated sexual connections without [causing] bleeding [the breaking of the hymen]; or is perhaps the case of Samuel rare? He [Ben Zoma] replied: the case of Samuel is rare, but we do consider [the possibility] that she may have conceived in a bath [becoming pregnant without any form of intimacy]. (Talmud *Hagiga* 15a)

The Talmud does not consider pregnancy without intimacy as a violation of the requirement for the High Priests to marry only a virgin. Therefore, in the case above when pregnancy was not produced from an act of intimacy, the High Priest is permitted to remain married to the pregnant virgin woman. Here the Talmud recognizes the possibility of pregnancy without direct contact between the male, the sperm donor, and the female, the

carrier of the fetus. The Midrash<sup>3</sup> elaborates on this talmudic idea, suggesting that Ben Sira was considered the son of Jeremiah even though his mother never experienced an act of intimacy with Jeremiah. According to the midrash, Ben Sira was conceived with the sperm of Jeremiah, collected from a bath and deposited into Ben Sira's mother. This midrash highlights the same idea found in our discussion with Esther—that paternity is predicated on the male who donates the sperm to fertilize the egg. In the commentary of Rabbi Shmuel Feivush on the *Shulhan Arukh*, the *Beit Shmuel* (*Even Ha'Ezer* I:10) concurs with the fact that the sperm donor is the father of the child even without the act of intimacy. This approach is supported in many responsa including that of Rabbi Shimon ben Tsemah Duran, the *Tasbbets* (III:263). Based on this halakhic literature, many of our modern adjudicators including Rabbi Qvadya Yosef,<sup>4</sup> Rabbi Yitshak Weiss,<sup>5</sup> Rabbi Zalman Nehemya Goldberg,<sup>6</sup> Rabbi Moshe Hershler,<sup>7</sup> and Rabbi Avigdor Neventsals<sup>8</sup> comment that any male involved in IUI or IVF<sup>9</sup> is deemed to be the father of the child conceived and has fulfilled the commandment “to be fruitful and multiply.”<sup>10</sup>

Other authorities disagree and state that the commandment “to be fruitful and multiply” is not fulfilled when procreation is not preformed in its natural fashion.<sup>11</sup>

Based on this understanding of the definition of paternity, there is an overriding concern shared by the adjudicators<sup>12</sup> for the need of protocols in infertility clinics to guarantee strict standards of supervision for donated sperm so that a couple receives only the sperm donated from the husband.

Since paternity is determined by the sperm donor, Rabbi Moshe Feinstein<sup>13</sup> suggests that when the husband is impotent and the couple needs donated sperm, the sperm originate from a Gentile. This obviates several problems that may come about regarding the inability to identify an anonymous Jewish sperm donor as the father.

#### *Summary of Definition of Paternity*

Paternity is defined by the sperm donor. The male donor is considered the father of the child. This determines the child's status as a Jew: as a Kohen, Levi, or Yisrael. It determines for which people the child is required to observe the laws of mourning. It defines which relatives the child is forbidden to marry; and it is instrumental in deciding issues of inheritance.

#### IV. Defining Maternity

In defining maternity there are four options to consider:

*Option One* defines maternity by the genetic donor. The woman who provides the egg to be fertilized is the mother. Even when her egg is placed in another woman's womb, the child born is maternally connected to the egg donor, not the female who nurtures the fetus.

*Option Two* suggests that of primary importance is not the egg donor, but rather the woman who carries and nurtures the fetus. Maternity is defined by the woman who nurtures and allows the fetus to develop, not the female who has donated the baby's genetic makeup.

*Option Three* advocates that both the egg donor and the host have a maternal relationship with the child.

*Option Four* maintains the child is motherless.

There are adjudicators who support each option<sup>14</sup> and have found supportive statements from the Talmud and responsa literature. The majority approach<sup>15</sup> on this issue defines maternity by the nurturing female, not the egg donor. This position is predicated on several talmudic passages. We shall discuss a few.

The Talmud in *Yevamot* discusses the status of twin brothers who are converted. If the twins are converted after birth, then there is no longer any halakhic relationship between them. This is based on the talmudic statement, "A convert is considered like a newborn child"<sup>16</sup>

Therefore, all previous familial relationships of the converted twins are wiped away. The Talmud continues, that twins converted *in utero* are no longer considered related for any issues dependent on paternity. As previously explained, paternity is established at conception. Therefore, when the conversion occurs after conception, the established paternal relationship is dissolved including all halakhic responsibilities and benefits that come with that relationship.

However, the Talmud insists that a conversion performed on a pregnant woman does not compromise the Judaic legal relationship between the mother and her unborn child(ren).

The conclusion drawn from this passage of Talmud is that unlike the paternal relationship which is established at conception, the maternal relationship is defined through



the nurturing of the fetus in the womb and the act of childbirth. Therefore in the case cited by the Talmud the halakhic maternal relationship is not compromised by a conversion performed on the pregnant women and her fetal twins.

Rabbi Aharon Soloveichik suggests that the definition of maternity can be understood based on the Talmud in *Yevamot* (69b), which states that during the first forty days of conception the fertilized egg is considered *maya b'alma*—a corpus of water. The fertilized egg is not viewed as an entity of any material substance prior to forty days. Since the egg donor's relationship with the fetus ends prior to the fortieth day, it is a relationship established when the matter was considered inconsequential. Therefore, we cannot ascribe any type of relationship between the egg donor and the fetus. "The donor egg is to be viewed as no more than a synthetic material made in Japan, therefore, a child born from a Jewish mother with an implanted egg donated from a Gentile requires no conversion even ... according to the strictest interpretation of the law," states Rabbi Aharon Soloveichik.<sup>17</sup> This once again confirms the notion that maternity is defined by the women who carries and gives birth to the child—not the donor of the egg.

Rabbi Shaul Yisraeli, in a letter to Rabbi Menahem Burstein,<sup>18</sup> supports this definition of maternity being connected with the mother who nurtures and gives birth to the fetus and not the one who donates the egg. Surprisingly,<sup>19</sup> he uses an *agadic* (hermeneutic) passage to advocate this approach. The Targum Yonatan Ben Uziel<sup>20</sup> (Genesis 30:21) suggests that our matriarch Rachel was pregnant with Dina while Leah was pregnant with Joseph. Recognizing that thus Rachel's contribution to the formation of the tribes of Israel would be, at most, one male child, Leah prayed to G-d that her male fetus Joseph be miraculously switched with Rachel's female fetus Dina. This would enable Rachel to contribute two male sons to the tribes of Israel. G-d listened to Leah's plea, and thus Rachel gave birth to Joseph; and Leah, to Dina. We see that Joseph's maternity is not attributed to the egg donor, Leah, rather to the host mother, Rachel, who nurtures and gives birth to him.

## V. Conclusion

If we are to be the guarantors of the Torah, we are compelled to examine every phenomenon that occurs in our lives through its prism. It is through such activity that the eternity of our covenantal relationship with G-d is guaranteed. The issue discussed reflects this challenge, and at

the same time, demonstrates an example of the sensitivity and responsibility of halakha to all frontiers of human experience.

### Notes

1. *Ish Ha'Halakha*, (Jerusalem: Talpiot Press, 1944), p. 665.
2. Talmud *Pesahim* 28b, s.v. *arel*.
3. *Otsar Midrashim* (New York: Eisenstein, 1915), s.v. *kativ*, p. 35.
4. *Yabia Omer*, vol. 2, *Even Ha'Ezer*, no.1 and vol. 8, *Even Ha'Ezer*, no. 21.
5. *Minhat Yitshak*, vol. 1, no. 50.
6. *Tehumin*, vol. 5.
7. *Torah Sh'Baal Peh*, vol. 25, pp. 124-129.
8. *ASSIA*, vol. 5, (Jerusalem: Makhon Schlesinger), pp. 92-93.
9. Rabbi Eliezer Waldenberg (*ibid.*, pp. 84-92) suggests that in the case of IUI in which there is some remnant of the natural process (sperm is inserted into the woman to fertilize an egg released into the fallopian tube) that the sperm donor is considered the father and that the mitsva of "be fruitful and multiply" has been achieved. However, in IVF in which no natural element of fertility remains (an egg is removed from the woman and fertilized in a laboratory setting), paternity and maternity are undefined and the mitsva of "be fruitful and multiply" is not achieved. Therefore, Rabbi Waldenberg does not sanction IVF.
10. Maimonides. *Sefer Ha'Mitsvot*, positive commandment 212.
11. Dr. Avraham Steinberg, ed. *Encyclopedia of Jewish Medical Ethics* (Jerusalem: 1988), vol. 1, p. 153.
12. This concern is documented in several places, including the responsa noted in references 4, 5, and 6.
13. *Igrot Moshe*, *Even Ha'Ezer*, vol. 1, no. 71.
14. Rabbi Shlomo Goren in *Hazofeh*, vol. 14 (1984); Rabbi Avraham Kalev in *Tehumin*, vol. 5; and Rabbi Yaakov Ariel in *Tehumin*, vol. 16, p. 177, suggest that the egg donor is the mother; Prof. Abraham Abraham (*Nishmat Avraham*, vol. 4, p. 186) states in a conversation with him that Rabbi Shlomo Zalman Auerbach was unsure which woman was the mother of the child, yet leaned toward the opinion that the host was the mother (although the baby would require conversion when the egg donor is not Jewish). However, in an article that appeared later, Rabbi Yaakov Ariel (*B'Ohalab Shel Torah*, chap. 70, p. 355) states that Rabbi Shlomo Zalman Auerbach changed his mind and felt that the egg donor is the mother of the baby. Rabbi Waldenberg is of the opinion that this child has no mother (*Tsits Eliezer*, vol. 15, no. 45). The opinion that both the egg donor and the host are considered the mother is discussed by Prof. Zev Lev in *Emek Halakha*, vol. 2. For further elaboration on the differing opinions see *Encyclopedia of Jewish Medical Ethics*, vol. 2, pp. 124-141.
15. In addition to those mentioned later in this article the list includes: Rabbi Elyashiv, quoted by Prof. Abraham Abraham in *Nishmat Avraham*, vol. 4, p. 184; and Rabbi Zalman Nehemya Goldberg, *Tehumin*, vol. 5 (who yet requires conversion of the baby when the egg donor is a Gentile, in order not to exclude those opinions that suggest the egg donor is the mother).
16. *Yevamot* 22a, 48b, 62a; *Shulhan Arukh*, *Yoreh Deah* 269:10 and *Hoshen Mishpat* 32:10.
17. Rabbi Aharon Soloveichik quoted in an article by Dr. Halperin in *Torah Sh'Baal Peh*, vol. 33, p. 113.
18. Dean of the Pugh Institute in Jerusalem, a halakhic think tank dealing with issues of infertility and Jewish law.
19. Agadic texts are not normally used to determine halakha; see Jerusalem Talmud, *Peab* 2:4 and *Hagiga* 1:8; *Nodeh B'Yebuda Tanina*, *Yoreh Deah*, no. 161.
20. Also found in the *Maharsba*, *Nidda* 31a.

## Intuition and Halacha

### *Geirus: A Case Study*

Rabbi Nasanayl Braun

A school of thought exists which believes that decisions rendered in Jewish Law follow some sort of mathematical formula and that the intuition and judgment of the Posek play no role in the decision making process.

The purpose of this article is to argue that not only does intuition play a role; it is often a critical factor in the Halachik equation.

One could identify three different types of intuition in an Halachik context.

1. Intuition – The ability to intuit the answer to a particular question without referring to the sources.
2. Intuition – a Posek’s worldview or inherent beliefs.<sup>1</sup>
3. Intuition – a judgment, or a human assessment of a situation and an understanding of how the decision rendered might impact the lives of those receiving it.

*By way of tribute to Rabbi Michael and Channah Brojde* I will begin by describing the first type of intuition mentioned above, one that is often discussed in the context of psak Halacha (Decisions rendered in Jewish Law). A Posek will at times be able to intuit what the answer to a particular query is without referring to the sources or will be able to intuit the answer to a question when the sources relating to that question are somewhat unclear or simply don’t exist. That ability stems from a persons mastery of the halachik literature and his deep

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connection to it. He has developed an understanding of how the Halacha works, its processes and evolution and is in a certain sense at one with the Halacha. He has internalized that knowledge and with it can intuit or anticipate what the Halacha will be in a given situation.

Although that is not the type of intuition that I wish to address in this article, it is the type of intuition that Rabbi Broyde possesses. I am constantly amazed at his mastery of the halachik material and his deep connection to it, and his understanding not only of the Halacha itself but how the system works. The entire Jewish community and I personally have benefited tremendously from Rabbi Broyde's mastery and willingness to share of his time and expertise.

As it is within the Halachik framework that my friendship with Rabbi Broyde has developed I have to chosen to write on a halachick topic, specifically the interplay between Halacha and human intuition, the third type mentioned above. Human intuition defined as the ability to evaluate a particular set of circumstances and attempt to determine how a specific halachick ruling is going to affect those receiving that decision. What role and how much weight is given to the Posek's ability to assess the human element of the question, to the mindset of the questioner, and the impact will the decision have on this person in the future?

I believe that there is room for this type of intuition in Halacha and that this is in fact a quality that is imperative for a Posek to have to successfully serve the Jewish People.

To be clear and unequivocal, I am not arguing that the human factor and our consideration of it can override Halacha, simply that at times it plays a role in helping arrive at the correct halachick decision.

It should go without saying that in many cases the Halacha is clear and despite our concern for the human component and our sense of what the ramifications of that decision will be, the Halacha does not change.<sup>2</sup>

Nevertheless, there are many instances and circumstances where a Posek's ability to judge the emotional aspect of the question will affect the ruling issued.

One of the areas of psak where intuition's role is prominent and has significant impact relates to the question of when to rely on a halachick position that is less than optimal, (in halachick terminology—a *bedieved*.)

Very often one of the major factors considered before granting a leniency and/or falling back to the *bedieved* position is the human factor<sup>3</sup>. What effect will the decision have on the person/people involved? How much embarrassment will it cause? How painful will it be? Will the person take your advice or ignore it? Answering any of those critical questions requires a certain amount of intuition – or an ability to accurately gauge the mindset of other human beings.

There is one area of Halacha where intuition is not only a factor when deciding which halachick path to take, but seems to be critical factor in determining whether to apply the Halacha or not.

That area is *Geirus* or conversion! Every decision seems to hinge upon and require the decisor's value judgments.

### **Optimal Conversion**

The Talmud in Yevamot (47a-47b) details the process for a potential convert:

Our Rabbis taught: If at the present time a man desires to become a proselyte, he is to be addressed as follows: 'What reason have you for desiring to become a proselyte; do you not know that Israel at the present time are persecuted and oppressed, despised, harassed and overcome by afflictions?' If he replies, 'I know and yet am unworthy', he is accepted forthwith, and is given instruction in some of the minor and some of the major commandments. He is informed of the sin [of the neglect of the commandments of] Gleanings, the Forgotten Sheaf, the Corner and the Poor Man's Tithe. He is also told of the punishment for the transgression of the commandments. Furthermore, he is addressed thus: 'Be it known to you that before you came to this condition, if you had eaten suet you would not have been punishable with kareth, if you had profaned the Sabbath you would not have been punishable with stoning; but now were you to eat suet you would be punished with kareth; were you to profane the Sabbath you would be punished with stoning'. And as he is informed of the punishment for the transgression of the commandments, so is he informed of the reward granted for their fulfillment. He is told, 'Be it known to you that the world to come was made only for the righteous, and that Israel at the present time are unable to bear either too much prosperity. or too much suffering'. He is not, however, to be persuaded or dissuaded too much. If he accepted, he is circumcised forthwith... arrangements are made for his immediate ablution, when two learned men must stand by his side and acquaint him with some of the minor commandments and with some of the major ones. When he comes up after his ablution he is deemed to be an Israelite in all respects.

Note the following:

1. Whether or not we convert the person depends heavily upon the answers that he gives, not the actions that he takes. Can we be certain that he is telling us the truth? How do we make that determination?
2. A person who comes to convert is taught a sampling of the mitzvot, a few of the light ones and a few of the heavy ones.<sup>4</sup> What happens when he encounters the rest of the Mitzvot? What if they are too burdensome or demand too much? How can we be sure that the person is sincere and will remain committed?
3. Absent from the Gemara is any discussion with the convert about his faith, his belief in God, his belief that the Torah was given at Sinai, and his belief in the world to come.<sup>5</sup> How do we know that he has the correct beliefs? Even if we were to ask him how would we know if he was telling us the truth?

The answer to all of those questions is: We rely on our intuition, on what our gut tells us about this particular person. There are no objective criteria, no way for us to be certain; rather to apply the Halacha we must rely on our intuition.

### **The Requirement of *Kabbalat Hamitzvot***

In the aforementioned Gemara it simply states “and if he accepted then we proceed with the circumcision” but does not tell us exactly what needs to be accepted. That acceptance, according to the Rishonim and Acharonim, is a full acceptance of the Mitzvot, a Convert must commit to keeping each and every Halacha, even though he is only aware of a few of them<sup>6</sup>.

The Talmud in Bechorot 30b writes:

ת"ר: ... עובד כוכבים שבא לקבל דברי תורה חוץ מדבר אחד - אין מקבלין אותו, ר' יוסי בר' יהודה אומר: אפי' דקדוק אחד מדברי סופרים

A gentile who comes to convert but will accept the Torah except for one item, one Halacha, we do not accept them. Rabbi Yossi B'Rab Yehuda adds, even if that item is one Rabbinic Law<sup>7</sup>.

It is clear that without Kabbalat Hamitzvot, without an acceptance of the entire Torah, the conversion is not valid!

We require a full and complete commitment to Halacha, and have only their word to rely on. How do we know that the commitment is sincere, that they are telling the truth? It is exceedingly difficult! We make an assessment, an evaluation based on our intuition.

Consider the following question posed to Rav Moshe Feinstein in his Iggros Moshe Y.D. 157:

בגר שאין סהדי שלא קבל מצות אף שאמר בפיו שמקבל.  
 במה שנסתפק כתר"ה אם גר שלא קבל עליו מצות אם נחשב גר, פשוט וברור שאינו גר  
 כלל אף בדיעבד... ואף אם אמר בפיו שמקבל מצות אם אנן סהדי שאינו מקבל עליו באמת  
 אינו כלום.

With regard to a convert who verbally committed to accepting all of the Mitzvoth yet is clear to everyone that he did not mean it.

It is clear that without an acceptance of Mitzvoth there can be no conversion...  
 And even if he verbally accepted the mitzvoth, if we are convinced that he did not mean it, it is as if he said nothing. (i.e. he is not a convert)

This is a question with very serious ramifications. A person says one thing but his actions seem to indicate something else. If the person in question was a woman and had children, the children's status as Jew or gentile would depend upon our assessment of their mother's intention at the time of her conversion. If the person in question was a man and he married a Jewish woman and ran away, is she an agunah? If we consider the man a Jew then that woman is an agunah, possibly bound eternally because this man has left Judaism forever and likely will never consent to delivering a Get. How do we make this decision? What are the halachik tools at our disposal? This is not a Halacha that can be researched, the answer will not be found in the books of our vast halachick literature. Yet it is a question that needs to be answered. It cries out for a resolution. When all is said and done, it is literally a judgment call; the Posek needs to assess a person's mindset at one particular moment. If at the moment of conversion the person was sincere and later regretted the decision and left torah and Mitzvoth, that person is a Jew. If that person was never sincere then he was never Jewish.

### **Conversion for Marriage**

Unfortunately, there are many Jews who begin relationships with non-Jews and at some point during the relationship, for one of a number of reasons, the gentile partner decides that he or she is interested in conversion. Deciding whether and how to proceed in these cases is unbelievably complicated and difficult.

The Gemara in Yevamot 24b discusses just that case:

MISHNAH. If a man is suspected of [intercourse] with a slave who was later emancipated, or with a heathen who subsequently became a proselyte, lo, he must not marry her. if, however, he did marry her they need not be parted...

GEMARA. This implies that she may become a proper proselyte. But against this a contradiction is raised. Both a man who became a proselyte for the sake of a woman

and a woman who became a proselyte for the sake of a man, and, similarly, a man who became a proselyte for the sake of a royal board, or for the sake of joining Solomon's servants, are no proper proselytes. These are the words of R. Nehemiah, for R. Nehemiah used to say: Neither lion-proselytes, nor dream-proselytes nor the proselytes of Mordecai and Esther are proper proselytes unless they become converted at the present time. How can it be said, 'at the present time'-Say 'as at the present time!' -Surely concerning this it was stated that R. Isaac b. Samuel b. Martha said in the name of Rab: The Halacha is in accordance with the opinion of him who maintained that they were all proper proselytes.

Two items emerge from that Gemara:

1. There is a halachick prohibition for a Jew who is rumored to have had a relationship with a non-Jew, to be together with that non-Jew post conversion.
2. There is a machloket in the Gemara about the effects of a conversion for the sake of a purpose other than a pure love of Judaism, (marriage, power, or wealth).

The Shulchan Aruch Y.D. 268/12 codifies this Gemara and warns that when a person comes to convert (כשיבא הגר להתגייר) we have to investigate their motivation for coming to convert; If the person coming forward is man perhaps he is interested in a Jewish woman or conversely if a woman comes to convert perhaps she is interested in a Jewish man. Apparently, if you do find that this is the case you should not proceed. The Shulchan Aruch continues however, that if you did not check and the person was converted, (אם לא בדקו) (אחריו) that conversion is valid but we are concerned about the conversion until they "check out" as righteous (חוששים לו עד שתתברר צדקתו). If they do check out and are now sincere then they are considered Jews even though their initial attraction was not to the religion itself.

There are many poskim who simply refuse to convert people in these types of situations. Those who are willing do so on the following basis:

1. The Halachik concern regarding marriage post conversion is outweighed by the concern for the spiritual future of the Jewish partner and the fear of apostasy if denied access to his beloved<sup>8</sup>.
2. We assume that although the initial motives were not pure and sincere, the person converting did eventually come to embrace the religion and accept the Mitzvoth in their entirety.<sup>9</sup>

If trying to gauge a person's mindset and commitment in the best of circumstances is difficult, doing it in this complicated a situation is nearly impossible. We need to try and figure out:



- a. How will it affect the Jewish partner if we don't allow the conversion?
- b. What type of spiritual affect will it have on the Jewish partner if we do allow the conversion?
- c. How committed will the Jewish partner be post conversion and what affect will that have on the ability of the convert to adhere to Torah and Mitzvoth?
- d. At the end of the day, why is this person converting? Because they love a Jewish person, to appease a relative of that Jewish person or have they actually come to appreciate Judaism and would like to join the Jewish people?
- e. If we perform the conversion, will this person actually live a life of Torah and Mitzvoth?<sup>10</sup>

How do we answer these questions? How do we determine if we should convert this person? As the SHACH (Rabbi Shabtai Ben Meir Hacoheh), the great 17<sup>th</sup> century halachist writes in his commentary to the Shulchan Aruch (Y.D. 268/23) (הכל לפי ראות עיני הב"ד), it is left to the judge's intuition! For the last 200 years nearly every responsa written on the subject contains that phrase – it is left to the discretion of the judges. There are no objective criteria that can be used to figure this out. It is the Posek's judgment and intuition that will decide the case.

It is exactly for this reason that Rabbi Moshe Feinstein zt"l was opposed to allowing conversions in these types of situations. He writes in Igros Moshe, Y.D. 1/159:

אך בכלל עיקר הגרות לא נוחה דעתי מזה ואני נמנע מזה לא רק מצד הדין שאין מקבלין לכתחלה בשביל אישות אלא גם מטעם שהוא כמעט ברור כאנן סהדי שלא מקבלת המצות ורק בפיה אומרת שמקבלת... אך מ"מ אולי גיורת זו תקבל המצות ולכן איני אומר בזה כלום לכתר"ה כי יש הרבה רבנים בנוא יארק מקבלין גרים כאלו וממילא אין לי לומר בזה איסורין אבל אני אין דעתי נוחה... וכתר"ה יעשה כפי הבנתו ודעתו וכפי הדוחק

With regard to this type of Geirus, I am not pleased by it and I refrain from participating in these matters, not only because *a priori* we don't accept people converting for marriage, but also because it is almost certain that they say the right things but do not mean them and are not really accepting the Mitzvoth... Nevertheless maybe they are sincere and this is a valid conversion. Therefore I say nothing in the matter for there are many Rabbis who do perform conversions in these situations, and thus I will not prohibit it, but I am not of consent... And you the questioner should do as you understand and see fit to do according to the situation at hand.

From this and his other responsa on the topic it appears that it is not the strict halachik concern that most bothers Rav Moshe, rather it is the subjective nature of the decision that bothers him – the need to rely on our intuition to determine that this is a sincere individual.

It is specifically that question, and what Rav Moshe perceives to be the facts on the ground, that are most troubling.

From the above it seems clear that every situation, every question in the world of Geirus seems to require the intuition of the Dayan or judge for the process to move forward.

Admittedly *Geirus* is an extreme area of Halacha where so much depends upon the judgments, assessments and evaluation of the Posek. In most other areas of Halacha the role of that intuition might be less pronounced but it still does play a role, arguably an important one at that.

A successful Posek needs to have both a mastery of the Halacha, as well as a clear understanding of the context in which the Psak is given, and the affect that his Psak will have on its recipients. He must have a keen awareness of the human element and component of each question, must be sensitive to the needs of people involved, and must appropriately use all of the above as mitigating factors when rendering halachick decisions.

### Notes

1. There is much debate regarding whether or not a Posek should allow his worldview to affect his Psak. It is a fascination and important question but not one that I wish to address in this article.
2. Take the following two examples, one seemingly trivial and the other life altering. 1. A person mistakenly purchases non-kosher meat, prepares it for Shabbat and only realizes it on Shabbat afternoon. Despite the embarrassment that person suffers, the meat cannot be served. 2. An agunah, a woman whose husband refuses to grant her a Jewish Divorce document, cannot remarry. We appreciate the human aspect of the tragedy but cannot change the Halacha due to it.
3. Again from the mundane to the life altering: 1. If you accidentally violated a torah prohibition while preparing food on Shabbat, the Shulchan Aruch O.C. 318/1 codifies the position that the food is prohibited for everyone until Shabbat is over, while the Vilna Gaon, the GRA, codifies the position that the food is permissible for everyone immediately. The Mishna Berura 318/7 writes that in a time of great need one can rely on the Gra and allow the food immediately. What is considered a “great need”? How embarrassed will the host be? It is here that intuition comes into play. 2. A couple seeks permission to use various methods of birth control. How much stress do you believe that this couple can handle? How do you judge the impact that having a child will have on their relationship, or on their lives? Hopefully with a clear knowledge of the Halacha, with sensitivity, care and good intuition.
4. Rabbi Akiva Eiger in his Responsa –Mahadura Kama # 41 writes that the prohibition of teaching Torah to gentiles is in force even in the case of a potential convert. He concludes, amazingly, that we are prohibited from teaching a gentile Torah until after they convert. It seems exceedingly difficult to judge a persons sincerity for something that they cannot be educated about, yet that is what Rabbi Akiva Eiger seems to require from the 3 judges!
5. Maimonides in the Yad, Isurei Biah 14/2 writes *ומודיעין אותם עיקרי הדת שהוא ייחוד השם ואיסור עכו"ם, מאריכין בדבר הזה* “We teach them the fundamentals of our faith and expand upon them and then teach them some of the commandments but don’t expand upon them”. Menachem Kellner, in “Dogma in Medieval Jewish Thought: From Maimonides to Abravanel,” notes that this represents a shift in focus from Talmudic times to the times of the Rambam.

6. There is a discussion in the Rishonim to Shabbat 68 and Yevamot 47 regarding a case where there was an acceptance of the mitzvot without an awareness of any of the mitzvot. It appears that according to many of the Rishonim, although it is preferred (*lechatchila*) to have knowledge of some of the mitzvot, it is not essential (required *bedieved*).
7. The parameters and specific details regarding what constitutes the “one item” is a subject of many responsa. See: Responsa Bnei Banim 2/36 where Rabbi Henkin distinguishes between “I cannot overcome my desire for this item” and “I might be hard pressed to keep that Halacha; Igros Moshe Y.D. 3/106 where Rav Moshe discusses whether or not “I will not dress modestly” would constitute that one item.
8. Maimonides in his responsa #211 is asked about a man, in the late 12<sup>th</sup> century, who had purchased a beautiful maidservant and was living with her. He shared a courtyard with his stepmother and her three little daughters. After a financial dispute between the man and his brothers, they came to court and claimed that their brother had converted this woman and is now living with her. Of the questions addressed to the Rambam was “must he remove this woman from the house?” To that responds the Rambam – He does not have to throw her out, rather we should enable him to marry her and continue to live with her. The specific halachick concern is overridden (by a Takanat Hashavim), in order to help this individual return to Judaism.
9. The seminal Responsa on the topic and first to allow a conversion in this type of case was written by Rabbi Shlomo Kluger in his responsa Tuv Taam Veda’at #230 is asked about a young man, in the late 18<sup>th</sup> century from the land of Tzarfat and Ashkenaz who went to war and fell in love with a gentile woman whom he subsequently brought home. The questioner wants to know how to proceed: must she send her home or can she be converted and stay. Rabbi Kluger allows her conversion and goes to great length to prove that this will actually be considered “for heaven’s sake” and not for “the sake of a man”.
10. In 1941, Rabbi Yitzchak Isaac Halevy Herzog, Responsa Heichal Yitzchak (E.H. 1/20) noted that in the times of chazal were they to convert such a person, they would have no choice but to conform to an observant lifestyle because everyone in the town or shtetl was observant. If you didn’t adhere to the religious norm you were an outcast. In our times, however, that is no longer a valid assumption. There is no social or communal pressure to lead an observant lifestyle. And therefore he writes, (הוכיך אני בגירות כזו בימינו) “I laugh at this type of conversion in our times.”



## Scientific Progress and Halakhic Change

Shmuel Kadosh

One of the thirteen principles of faith recited by Jews daily is אני מאמין באמונה שלמה שזאת – I believe with complete faith that this Torah will not be changed, and that we will not receive another Torah from G-d. The Torah we have is eternal and will never change. This theme also manifests itself in halakha. As a general rule, we assume that halakha does not change. Halakha is not merely a law system that made sense 3,000 years ago at Sinai. It is an eternal system that is vibrant and alive in the modern day. We expect halakha to function for us as it did for ancestors.

Some halakhic decisions are based strictly upon Scriptural exegesis. Yet others are based upon Chazal's knowledge of the science of their time. The accepted view today is that both the natural and behavioral sciences are in slow but constant change. It follows that halakhic decisions based on the scientific knowledge of Talmudic times may be no more valid than the scientific foundation on which they are based. This seemingly logical conclusion may shake the cornerstone of halakhic stability.

### The Scientific Knowledge of Chazal

From where did Chazal get their scientific knowledge? Was it received as a tradition from Moshe? Did they come to scientific conclusions through their own observation and experimentation? Perhaps they learned about science from their secular neighbors? All three of these paradigms can be found in the Talmud.

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*Chazal as Scientists*

The Talmud<sup>1</sup> says that Rav spent 18 months as a shepherd in order to examine which blemishes in an animal are temporary and which are permanent. In a similar vein, the Talmud<sup>2</sup> recounts that when the students of Rabbi Yishmael wanted to find out how many bones a person has they went and counted the bones of a local prostitute who was burnt by the government. These are clear examples of Chazal observing the world and arriving at scientific knowledge on the basis of their observations.

*Chazal Receiving Knowledge from Outside Sources*

“It happened that a cow had its womb removed [which could potentially prohibit it]. It came before the Sages in Yavneh and they permitted it because Tordus the physician testified that not one cow or one swine was sent out from Alexandria in Egypt of which the womb was not removed.”<sup>3</sup> Here we find Chazal relying on an outside source for scientific knowledge that impacts the halakha. Indeed we even find cases where Chazal say that secular science is more correct than their own. Elsewhere the Talmud<sup>4</sup> relates a debate over the position of the sun. The Jewish sages posited that during the day the sun is below the heavens, while at night it is above it. The gentile sages said that during the day the sun is below the heavens, while at night it is below ground<sup>5</sup>. The Talmud concludes with Rebi admitting that “their words seem more correct than ours.”

A subcategory of this are instances where Chazal do not explicitly quote an outside source, but their knowledge is consistent with the outside source, and it is reasonable to assume that Chazal received their knowledge from the outside source. The Mishnah<sup>6</sup> describes a mouse which is half animal and half dirt, and rules that if you touch the dirt half you are *tabor*, but if you touch the animal half you are *tameh*. This creature is very similar to one described by Pliny the Elder, in his “History of Nature.” Pliny writes that “a man may find in the mud young Mice half made, proceeding from the generative virtue of water and earth together: having one part of their body living already, but the rest as yet misshapen, and no better than the very earth.”<sup>7</sup> It is quite likely that Chazal based their belief in such a creature on Pliny.

*Chazal Receiving Scientific Knowledge as a Tradition*

The Talmud discusses a list of diseases and injuries to an animal which would cause it to die within 12 months. These diseases or injuries give the animal a status of *treifa*.<sup>8</sup> The Talmud records that the list of *treifot* were received as a tradition from Sinai.

The Rambam did not believe that Chazal had the most precise knowledge of science. He says:

“You must, however, not expect that everything our Sages say respecting astronomical matters should agree with observation, for the sciences were not fully developed in those days: and their statements were not based on the authority of the Prophets, but on the knowledge which they either themselves possessed or derived from contemporary men of science. But I will not on that account denounce what they say correctly in accordance with real fact, as untrue or accidentally true. On the contrary, whenever the words of a person can be interpreted in such a manner that they agree with fully established facts, it is the duty of every educated and honest man to do so.”<sup>9</sup>

**Halakha and Science**

It is generally accepted that halakha, even the part legislated by the Sanhedrin is immutable. Scientific knowledge, upon which some of the halakhot are based, does change. What happens to the halakha when the scientific facts which underlie them change? Do we change the halakha in order to conform with the new scientific knowledge?

While there are dozens of cases where Chazal and current science differ, I do not intend to offer a comprehensive survey of all the cases. Instead, I wish to focus on two areas which have elicited much reaction in the medieval and modern literature; the issues of saving lives on Shabbat, and *treifot*.

**פיקוח נפש בשבת**

Chazal understand the verse "וּחַי בָּהֶם" (Vayikra 18:5) to mean that the purpose of mitzvot is to perpetuate life and not to end it. Therefore if the performance of a specific mitzvah will endanger the life of its observer, the mitzvah should not be performed. From here we derive the halakhic axiom of פיקוח נפש דוחה כל התורה. To save a life, the mitzvot of the Torah can be ignored. This axiom introduces an individual's decision making into the halakhic process. Who is to decide when a person is in a life-threatening situation? Does the decision lie with the doctor or the *posek*? A certain disease was life-threatening in the time of

Chazal, and necessitated the abrogation of halakha. Today however, the disease is not life threatening. Do we consider Chazal's knowledge of the disease erroneous, and thus the halakha which it is based upon also erroneous? Or perhaps the nature of disease has changed. In the time of Chazal, the disease was life-threatening. However in the modern day, the disease is no longer life-threatening,<sup>10</sup> and therefore, we do not violate the halakha for it.

A more complex question is: When do we consider life to have begun, so we can disregard the mitzvot in order to insure its survival? The Talmud<sup>11</sup> says that a child born during the seventh or ninth months of pregnancy has the potential to live. A child born during the eighth month of pregnancy is considered stillborn. For a child born during the seventh or ninth months, we would apply the principle of "פיקוח נפש דוחה כל התורה." For a child born during the eighth month, we would not apply this principle. We consider the child born in the eighth month to be מוקצה on שבת. The consensus of modern medicine is that a baby born during the eighth month of pregnancy can survive. Indeed, with our modern understanding of the development of a fetus, we know that a child born during the eighth month has a greater chance of surviving than a baby born in the seventh month. Do we still follow the halakha of Chazal, even though the science which it is based on is clearly no longer correct?

The *Rashbash*<sup>12</sup> states unequivocally, that a baby born in the eighth month is a viable fetus (ולד גמור).<sup>13</sup> In his time many began to question the law in the Talmud, as it was a common occurrence for eighth-month babies to survive. If we were to accept the law of the Talmud at face value, "We would not have a son or daughter of Israel which would be considered a viable fetus!"<sup>14</sup> Indeed, in many instances, Chazal's statements do not match scientific reality. The *Rashbash*, realizing the problem his position causes from a legal perspective (i.e., How can the integrity of the Halakha be maintained if it changes with every new issue of the New England Journal of Medicine?), divides up all the scientific assumptions made in Halakha into two categories: Those that were received as a tradition from Moshe at Sinai (הלכה למשה מסיני), and those that Chazal made on their own. The halachot that are based on *psukim*, or ones received as a tradition do not change, even if their science is proved wrong. However, *the science of Chazal is only based on their understanding of reality (אומדנה)*, and if the science changes, so does the halakha. When the science of Chazal seems wrong, we must figure out what halakhic principle Chazal were working with and apply it to



the new science! *Tosafot*<sup>15</sup> addressing the same issue adopts a more conservative stance towards the issue. *Tosafot* says that since we are no longer experts in ascertaining when women become pregnant, all fetuses have the status of one who was possibly born in the seventh month (ספק בן ז'), and we violate Shabbat to save them.

### טריפות

The Torah prohibits one from eating an animal which is a *treifa*. The Talmud defines a *treifa* as any animal that would die of its wounds or a disease in a relatively short period of time.<sup>16</sup> The Mishnah lists 18 types of conditions which cause the animal to die within a year, rendering it a *treifa*. The list of these conditions are considered *הלכה למשה מסיני* (Laws given to Moses at Sinai). As early as the *Rambam's* time, the *Rishonim* noticed a discrepancy between their knowledge of animal physiology and that of the Talmud. Some of the diseases listed in the Talmud did not guarantee the animal's death within twelve months while other fatal diseases were discovered. The *Rambam* writes<sup>17</sup> that changes in science have no effect on the Laws of *Treifa* of animals, either to add or subtract from the list of potential flaws. The inability to change the *halakha* stems from the *pasuke*, *ועל המושפט אשר ירווך ועל המשפט אשר יאמר* "על פי התורה אשר ירווך ועל המשפט אשר יאמר" (Leviticus 24:15).<sup>18</sup> This *pasuke* teaches that the halakhic decisions of Chazal are binding and cannot be changed. Even if the science of the *Talmud* is incorrect, the *חתימת התלמוד*<sup>19</sup> prevents us from changing any of the *halakhot*. Despite this general rule, the *Rambam* does add one category of *treifa*, the animal who has an extra upper jawbone.<sup>20</sup>

The *Rashba*<sup>21</sup> adopts a skeptical stance towards those who claim that there are *treifot* listed in the Talmud which could live. According to the *Rashba*,<sup>22</sup> one who makes such a claim is "casting aspersions upon the words of the Sages." Even if one claims to have seen the animal with his own eyes, he is either lying or ignorant of the precise conditions that cause a *treifa*. Even if a thousand people were to testify that this animal was not a *treifa*, we would sooner disregard their testimony than "change one dot from that which has been agreed to by the holy Sages of Israel who are prophets the sons of prophets who heard everything from Moshe at Sinai."<sup>23</sup>

The *Rivash*<sup>24</sup> in a lengthy Responsum expands upon the approach of the *Rashba*. He writes:

The master knows that we cannot decide Torah law through the opinions of the scientists and doctors. For if we believe their words, it would mean that the Torah is not from heaven, God forbid! They [the doctors] arrive at conclusions through faulty experimentation. If we were to rely upon doctors to adjudicate the laws of *Treifot*, they would take bribes from the butchers! The *Rambam*, who changed the laws of *treifot* a little erred greatly... even though the *Rambam* is a great scientist and doctor and an expert in surgery it is not by the mouth of science and medicine that we live! We shall rely on our Sages, even if they tell us that right is left. For the Sages received the Truth and the explanations to the *mitzvot* in a constant chain from Moshe Rabbeinu. We shall not trust these Greek and Arab scientists for they only speak from what appears logical to them and through experimentation<sup>25</sup>.

*Rivash* begins by attacking those who rely on the scientists to understand the Torah. Relying on the secular scientist's knowledge is a denial of *תורה מין השמים*. The Greek and Arab scientists lack a valid *mesorah*. All their knowledge is based on experimentation, which could be faulty.

Although both the *Rambam* and *Rivash* prohibit changing the halakha on the basis of science, it is for fundamentally different reasons. The *Rambam* was concerned with the legal process. After a certain point the law is sealed, and there is nothing to do about it. The *Rivash* is bothered by a much greater problem. The laws of *treifot* are a *הלכה למשה מסיני*. The claim that the science of these laws is wrong raises troubling questions about the nature of the *mesorah*, and of Moshe's prophecy. How could information that Moshe received from G-d, even scientific knowledge, be wrong? Therefore *Rivash* was forced to vilify the scientists. The *Rambam* was not bothered by this. According to the *Rambam*, the scientists could very well be correct. However, after the law has been codified, the halakha does not change<sup>26</sup>.

The modern era has seen tremendous advances in science and medicine. The advent of the scientific method coupled with the industrial revolution has caused science to progress exponentially. Diseases that ravaged nations were eradicated. The average life span has almost doubled. These scientific advances brought with them a host of difficult questions in the arena of science and halakha. What makes this topic so interesting is that it forced many authorities to write outside of their usual arena. *Poskim* who felt most comfortable within the four cubits of halakha were forced to grapple with the theological implications of halakhic change and Chazal being wrong. Theologians had to comment on

issues that have practical ramifications. Each of these groups of authorities had to deal with two separate questions:

- (1) Why is our science different than that of Chazal's?
- (2) Does that difference in science cause a change in the law?

### **Rav Waldenberg<sup>27</sup>**

Rabbi Eliezer Waldenberg adopts a skeptical stance towards scientific discoveries which contradict the Talmud.<sup>28</sup> Rabbi Waldenberg discusses the halakhic validity of denying paternity on the basis of blood types. He begins by quoting the well known passage in the Talmud which says:

ת"ר שלשה שותפין יש באדם הקב"ה ואביו ואמו, אביו מזריע הלובן שממנו עצמות  
וגידים... אמו מזרעת אודם, שממנו עור ובשר. וכו'<sup>29</sup>

Our Rabbis taught: There are three partners in the creation of man; G-d, his father, and his mother. His father creates the white, from which comes the bones and sinews... His mother creates the red, from which comes the skin and bones...

The Talmud states that the "red" comes from the mother. The commentators conclude that included within this red is the blood. Since all the blood comes from the mother, only maternity can be established from blood typing. Rabbi Waldenberg continues:

Any scientific test is worthless in contrast to the trusted traditions of Chazal, who said everything with divine inspiration... It seems that the scientific tests for assigning paternity can only be considered speculative in nature. For we see in many instances that that which science establishes as certain today, contradicts that which is established as certain yesterday according to the developments and revelations which occur daily. The opinion of the leading Halakhists are well known, that we are not to rely upon or establish halakha on the assumptions of the doctors.

Using a little scientific deduction of his own, Rabbi Waldenberg says that it is a well-known fact that people receive blood transfusions for a variety of reasons and the blood type surely must change when receiving transfusions.

At first glance, the opinion of Rabbi Waldenberg seems extraordinary. With a few strokes of the pen, he dismisses all the achievements of Western science. Three hundred years of progress are dismissed. There is only one valid frame of reference, namely the Torah. Shlomo Sternberg, in a penetrating piece of sociological analysis, explains the roots of such an attitude. According to Sternberg,

Science as a whole is a belief system... No one individual can understand all the arguments from their first principle, or reproduce the basic experiments which

constitute the scientific evidence for even the most fundamental and universally accepted tenets... The scientist is completely dependant on the principles established by previous scientists... The man in the street has no more direct experience with bacteria, quarks, or buckyballs than he has with demons, the evil eye, or astrology. *To choose one system over the other is ultimately an act of faith for most people.* For someone reared entirely in the Yeshiva world, the Talmud, and its commentators are represent the ultimate authority. Hence, when there is a direct challenge to the veracity of statements of Chazal, especially when these statements have direct halakhic consequences, it is easy to understand how one may choose to deny the scientists' claims.<sup>30</sup>

Without a high school science education, modern science seems like witchcraft.<sup>31</sup>

### Rav Dessler<sup>32</sup>

Rabbi Eliahu Dessler in a letter<sup>33</sup> addressing many controversial issues in Chazal, raises the issue of science & halakha. According to Rav Dessler, the halakha does not change, **לחומרא** or **לקולא**. This is because the halakha has an “eternal existence, independent of any scientific assumptions.” Chazal received the halakhot as part of an ancient tradition. They were not given the reasons behind these halakhot, just the law itself. When Chazal gives scientific explanations for the halakhot, it was their own speculation as to the reasons for these laws. In their scientific speculation, Chazal could be wrong. Indeed, when Chazal gave scientific reasons which are no longer valid, it is our duty to find new scientific explanations, “to establish the law upon its proper foundations.”

Rav Dessler answers the two questions posed at the beginning of this section, by positing two separate tracks: One of eternal halakha, and one of scientific explanations given for the halakha. According to Rav Dessler, the scientific explanations that Chazal give are speculative in nature and have no impact on the halakha. On the surface, Rav Dessler's answer is very appealing. You do not need to dismiss all of Western science, nor do you need to change halakha. Each exists in its own happy independent world.

Rav Dessler's position is both unprovable and unattackable. Nowhere does the Talmud imply that the scientific explanation is not the reason behind the halakha. To the contrary! In a number of cases, R' Dessler's understanding will lead to a forced reading of the Talmud. When the Talmud lists all the *treifot*, it says that they are considered *treifot* because they will not live out the year. According to Rav Dessler, a cow with a punctured brain membrane or fractured rib is *treif*, not because it will die soon, but for an entirely

different reason which the Talmud does not mention. The fact that most of these animals will die in a year with these diseases is a total coincidence. There are many cases where the link between the scientific explanation and the halakha is so strong that it is difficult to assert that the scientific explanations are not the reason for the law.

### Chazon Ish<sup>34</sup>

The Chazon Ish<sup>35</sup> develops a three pronged approach to solve the issue of conflicts between science and halakha: 1. Many of the laws given at Sinai were given only in their general form. It was the job of Chazal to crystallize the halakhot into their final form. This applies even to Biblical laws. 2. There was a sealing of the Talmud by Ravina and Rav Ashi. After this point the halakhot cannot be changed, even if the scientific knowledge on which they are based is incorrect. 3. At the time of creation, G-d created cures for all the possible diseases. The cures were not all discovered at once. Every generation discovers and forgets some of the cures. The history of the world is divided up into three parts, each consisting of 2,000 years. One period of תוהו, one period of תורה, and the final period of ימות המשיח. The halakha is based on the cures known during the "two thousand" years of Torah. The reason why our science is different is different than that of Chazal is because of a change in nature (נשתנה הטבע).

### נשתנה הטבע

What are the boundaries of נשתנה הטבע? Is it to be used every time there is a discrepancy between our science and Chazal's? When a *posek* uses נשתנה הטבע in a halakhic argument, is it a scientific argument of a halakhic one? Are we obligated to believe that an actual physical evolution occurred? If we don't believe that actual physical change happened, are we allowed to rely on the halakhic decision based on such a change occurring? Does a *posek* need scientific evidence that evolution occurred, or is a discrepancy enough? Is נשתנה הטבע really a polite way of saying that Chazal were wrong?

The usage of the idea "נשתנה הטבע" to explain discrepancies in nature is not unique. Many *Rishonim* make use of it in halakhic and aggadic contexts. The *Ramban* comments that the long life spans of the people described in the first twelve chapters of Bereishit were the

norm in those days, as they were closer to the perfect creation (i.e. Adam, who was created by G-d).<sup>36</sup> After the flood, the nature of the world changed, and the life-spans began to steadily decrease until the Patriarchs.<sup>37</sup> The Mishnah in <sup>38</sup> בכורוה discusses one who purchased an animal from a gentile, and is unsure if the animal has ever given birth (and hence is unsure if the first animal born is a בכור). If you purchase a one-year-old goat or a three-year-old cow the animal born subsequent to the purchase goes to the Cohen. The implication of the Mishnah is that a goat of one year, or a three-year-old cow are incapable of giving birth. *Tosafot*<sup>39</sup> notes that two-year-old cows giving birth is a common occurrence. To resolve this discrepancy, *Tosafot* proposes נשתנה הטבע.

Among the *poskim*, נשתנה הטבע is used in a very inexact manner. Any time there is a discrepancy between the science of Chazal and modern science, the *poskim* apply the principle of נשתנה הטבע.<sup>40</sup> To properly analyze נשתנה הטבע, we need to break it up into a few subcategories.

- (1) Advances in Science and Medicine: In these cases, there is no physical difference between Chazal's scientific understanding and our own. Rather, advances in science have rendered diseases that were once fatal as treatable. The fact that penicillin was discovered does not indicate a "change in nature", so much as a change in knowledge of our understanding, of nature. It is not נשתנה הטבע, but נשתנה ידיעת הטבע. Had they known about penicillin in the time of Chazal, it would have worked fine too. The case of the eight-month baby may be classified as such a case. In such cases, why does the *Chazon Ish* still insist on using the argument of נשתנה הטבע. Wouldn't it be easier just to say that science has progressed a little?
- (2) Anatomical and Physiological Change: Sometimes the discrepancy between our science and Chazal's is in terms of an actual anatomical or physiological change. An example of this is the cow that in Talmudic times only gave birth at age three, and now gives birth at age two. Another example is statement of the Talmud<sup>41</sup> that there are two separate ducts in the male organ, one for urine and one for semen. Modern science says there is only one. This category (of physical change) can be further divided into two subcategories:
  - (a) Changes that can be attributed to changes in diet, climate, geography, and slight genetic change. *Tosafot* wondered about cows that used to give birth at three which now give birth at two. This change may have been brought about by a change in diet. The extra-large eggs today are larger than those of one hundred years ago. Physical change can be caused by change in societal mores. Many studies have documented that girls are reaching puberty earlier because of the over-sexualized social climate in America.<sup>42</sup>

- (b) Perhaps the hardest case to deal with are the ones where the simple observable human anatomy differs. Many *poskim* say that the discrepancy in ducts of the male organ can be explained with *נשתנה הטבע*<sup>43</sup>. Positing such a massive evolution over so brief a time is extremely difficult. In these cases, the claim of *נשתנה הטבע* may maintain the integrity of halakha, but it violates the integrity of the natural world!

There is an irony involved in adopting *נשתנה הטבע* as a halakhic theory. Belief in *נשתנה הטבע* implies a belief in evolution. Indeed, if we were to count every instance of difference between Chazal's science and ours as a case of evolution, we would have a theory of evolution one hundred times more radical than Darwin! There is a danger in using *נשתנה הטבע* as a halakhic principle. Once we are willing to say that the natural sciences change, what is to stop one from positing that the social sciences change too? If the anatomical makeup of man and animals can change, surely "permanent ontological principles rooted in the very depth of the human personality,"<sup>44</sup> can change too!

The *Chazon Ish's* position on *נשתנה הטבע* stems from his strongly held beliefs on the nature of progress and our relationship with earlier generations. In *ספר אמונה ובטחון*<sup>45</sup> the *Chazon Ish* discusses the discrepancy between the knowledge of the earlier generations and our knowledge. On the one hand, the Talmud says "If the earlier generations were like the sons of angels, then we are people. If the earlier generations were people, then we are like donkeys."<sup>46</sup> The earlier generation's knowledge of Torah was as vast as the palace gates, while our Torah knowledge is barely as wide as the hole of a needle. On the other hand, we make fun of the earlier generation's primitive technology. The early generations ran around wearing sheep skin, fighting wars with swords and arrows. We have the telegraph, the telephone, and the radio. When we go to war, it is in airplanes, and we drop bombs that can kill thousands in one shot. Isn't progress great? The early generations used their wisdom for Torah whilst we use it for mundane matters. Do not think that the ancients were that ignorant of science. Modern science still has not figured out how the pyramids were built. In a letter,<sup>47</sup> the *Chazon Ish* expands upon this unique outlook. He says "One of the principles of faith is that everything that is said in the Talmud, be it Mishnah, halakha, or aggada was revealed with prophetic powers. We recoil as if we heard heresy when we hear any doubt impugned in the words of Chazal be it in halakha or aggada."<sup>48</sup> Anyone who disagrees with Chazal in *any matter* is a heretic! In sum, the *Chazon Ish* is deeply skeptical of progress. The

ancients were not so primitive and we are not so advanced. Hegel is wrong. Since Chazal's science is true, and our science is true, only נִשְׁתַּנֵּה הַטְּבַע can explain the discrepancy.

### Rav Herzog<sup>49</sup>

In a letter to a community rabbi<sup>50</sup> Rabbi Yitzchak Herzog addresses the issue of denying paternity on the basis of blood tests. He begins by saying that he is ashamed and embarrassed by the opinions of the rabbis who give no validity to denying paternity through this method. How can any responsible *posek* question the validity of blood typing after the near unanimous consensus in the scientific community that it works? Rav Herzog then comments on the scientific knowledge of Chazal. He writes:

Chazal never claimed that this halakha [of the red coming from the mother] is a halakha li'moshe mi'sinai... It is impossible for this to be a tradition, being that today we know as clearly as the noonday sun that such a thing does not exist. The sages accepted this as truth and built halakhot on this premise, since Aristotle said it, and it was accepted as truth among all the scientists. How great is the difference between their medical science and ours. The entire world is interconnected! It is as if we are one big city<sup>51</sup> in comparison to the conditions prevalent in ancient times... *It is tragic that while science conquers worlds, and uncovers the deepest secrets, even if it may err at times, when scientific matters infringe upon our holy Torah, we bury our heads in the sand like an ostrich.*

In this letter, Rav Herzog establishes the paradigm of limited halakhic change based on scientific progress. Chazal were only aware of the science of their day, and therefore it is necessary to factor any advances in science when formulating a halakhic decision.

### Conclusion

The conflict between science and halakha has forced many of the greatest Jewish minds to “choose sides” when they fundamentally do not want to. It is hard to dismiss all of modern science, as even the most sequestered individual in Bnei Brak benefits from its discoveries on a daily basis. On the other hand, admitting that the halakha can change is not an option. The Wissenschaft of the Haskala caused most Orthodox leaders to retreat. Attitudes towards halakhic change that were acceptable in previous generations could no longer be countenanced. Yet it is dangerous to disassociate halakha from its scientific underpinnings. Doing so would undermine the intuitive logic of halakha. Stuck between unattractive options on all sides, different Torah sages chose a variety of paths to resolve the conflict between the eternal halakha and changing science.



### Summary: 20th Century Opinions on Scientific Change and הלכה

|                         | Why is there a difference between the science of חז"ל and our science?                              | What happens to the הלכה?  |
|-------------------------|---|--|
| <b>Rav Dessler</b>      | חז"ל only knew the primitive science of their day.  | The הלכה doesn't change because the הלכה isn't based on the science.               |
| <b>Rabbi Waldenberg</b> | חז"ל's science is correct and modern science is incorrect.  | The הלכה does not change.  |
| <b>Chazon Ish</b>       | Both חז"ל and modern science are correct. The discrepancy comes about because of a change in nature | Most of the time the הלכה does not change, because of חתימת התלמוד.                |
| <b>Rav Herzog</b>       | חז"ל's knowledge of science came from secular sources. Therefore, it was often incorrect.           | There is room for a limited updating of the הלכה, when there is scientific change. |

### Notes

1. סנהדרין ה:.
2. ברכות מה:.
3. מעשה בפרה שניטלה האם שלה. . ובה לפני חכמים ביבנה והתירוה שאמר תורדוס הרופא אין פרה וחזירה יוצאת מאלכסנדריא של מצרים אלא אם כן חותכים האם שלה (סנהדרין לג.)
4. פסחים צד:.
5. Interestingly enough, both of these views presuppose a belief that the earth is flat, a scientific notion that we reject today.
6. חולין ככו:.
7. Book 9, Chapter 58.
8. חולין מב:.
9. מורה נבוכים ג:יד – Trans. M. Friedlander.
10. This change can be understood as an actual chemical and/or biological change or as scientific progress which has discovered a new cure.
11. שבת קלה:.
12. Rabbi Solomon b. Simon Duran, 1400-1467, Algiers.
13. שו"ת רשב"ש ש' ס' תקיג.
14. לא הנחת לאברהם אבינו בן ולא בת שיצא מכלל נפל אלא מעט מהרבה.
15. שבת קלה: ד"ה "בן שמונה הוא כאבן ואסור לטלטלו".
16. רמב"ם הל' מאכלות אסורות ד:ו-ט.
17. רמב"ם הל' שחיטה י"ב.
18. דברים יז:יא. You shall act in accordance with the instruction given to you and the rulings handed down to you; you may not deviate from the verdict that they announce to you, either to the right or the left.
19. See Bava Metzia 86a, רב אשי ורבינא סוף הוראה, After the death of Ravina and Rav Ashi (the main editors of the Talmud Bavli) no substantive halakhic changes were made in the Talmud.
20. רמב"ם שם ח:כג.
21. Rabbi Shlomo ben Aderet, 1235-1310, Spain.
22. שו"ת רשב"א חלק א' ס' צה.
23. For further analysis of רשב"א's position, see R' David Horowitz, "רשב"א's Attitude Towards Science and its Limits," *Torab U-Madda Journal* 3. See pp. 66-68, where he deals with the issue of טריפות.
24. Rabbi Isaac b. Sheshet Perfet, 1326-1408, Spain & Algiers.

25. שו"ת ריב"ש ס' תמו. Translation is my own.
26. Shlomo Sternberg, in "Review of מאור למסכת חולין ולמסכת בכורות by I.M. Levinger" *Bekbol Derakhekha Daehu* 4 (Winter 1997) suggests that "with the revolution in biology brought about by the discovery of the circulation of blood, and consequential overthrow of Galenism, the whole system changed. I believe the רמב"ם would accept current medical knowledge rather than that of the Talmud" (p. 95). I do not think Sternberg is correct in his estimation of the רמב"ם. As I mentioned, it seems as if the רמב"ם is concerned with an issue of codification, and *not of science*.
27. I discuss Rabbi Waldenberg not because he is considered a seminal Jewish thinker of the 20<sup>th</sup> Century. He is not. He is, however, a respected פוסק, and his view is characteristic of the far right of Jewish opinion.
28. שו"ת ציץ אליעזר חלק יג ס' קד
29. נדה לא.
30. Sternberg, op cit., pp. 86-87.
31. Ironically, after taking a semester of college physics, I am better able to relate to the anti-science mentality. It required a significant amount of faith to believe that the entire world is made up of little bouncing balls (atoms) which are mostly just waves of energy (electrons). Medieval physics seemed much more inviting.
32. Rabbi Eliyahu Dessler, 1891-1954 Russia & England.
33. מכתב מאליהו חלק ד עמודים 355-6
34. Rabbi Avraham Yeshayahu Karelitz, 1878-1953, Israel.
35. חזון איש, יורה דעה סימנים ה, קנה
36. בראשית ה:ד
37. For a scientific explanation of this phenomenon utilizing the latest advances in genetics see Nathan Aviezer, "The Extreme Longevity of Early Generations in Genesis" *Bekbol Derakhekha Daehu* 7.
38. בכורות יט:
39. עבודה זרה כד: ד"ה "פרה וחמור בת שלש שנים ודאי לכוהן"
40. To get a good sense of this phenomena, see the encyclopedia entry "השתנות הטבעים" in אנציקלופדיה הלכתית רפואית
41. יבמות עה:.
42. See [http://www.time.com/time/classroom/psych/unit2\\_article6.html](http://www.time.com/time/classroom/psych/unit2_article6.html) .
43. חזון איש אבן העזר ס' יז
44. This is a quote from a speech that Rabbi Soloveitchik gave at the Rabbinical Conference of America convention in 1975. It was said in response to the suggestion that some of the הלכות in the תלמוד were the result of women's social status in בבל, and should thus change in the modern day.
45. פרק ה
46. אם ראשונים בני מלאכים או בני אנשים ואם ראשונים בני אנשים או כחמורים - שבת קיב:
47. אגרות חזון איש א:טו
48. משרשי האמונה שכל הנאמר בגמ' בין משנה, בין הלכה, בין באגדה, הם דברים שנתגלה לנו ע"י כוח נבאוי... גרתעים אנחנו לשמוע הטלת ספק בדברי חז"ל, בין בהלכה, בין אגדה כשמועה של גידוף
49. Rabbi Isaac Herzog, 1888-1959. Israel
50. This letter can be found in the article "קביעת אבהות ע"י סוגי הדם" in אסיא#5 (the book, not the journal), pp. 196-197.
51. Compare this to the attitude of the Chazon Ish in Chapter 5 of *Emunah U'bittachon* who compares the increased interconnectedness of the world to the Tower of Babel.

# The St. Louis Eruv: Social Realities and Early American Orthodox Judaism

Rabbi Adam Mintz

## Definition of Eruv

According to Jewish Biblical law, one of the 39 prohibited activities on the Sabbath is *hotza'a*, literally carrying any objects in a public domain. The Talmud relates that King Solomon established the laws of *eruv* (lit. mixing) which would allow the residents of a courtyard to join together thereby creating a private domain in which carrying objects on the Sabbath would be permissible. The *eruv* is established by enclosing the courtyard and by symbolically sharing a portion of food among all of the residents, thus creating an area legally defined as a private domain.<sup>1</sup>

The need for the construction of an *eruv* is a relatively recent phenomenon. For thousands of years cities were built surrounded by protective walls. This type of enclosure created an area defined by Jewish law as a private domain. In the early modern period, when most cities were no longer surrounded by walls, the construction of the *eruv* became more complex. In the last decade of the seventeenth century, Rabbi Zevi Ashkenazi, a leading German halakhist, considered the possibility that the canals surrounding The Hague or even the cliffs surrounding the British Isles might constitute an *eruv*. While he rejected the latter possibility, he accepted the notion that canals would form the necessary enclosure and constitute an *eruv*.

In the nineteenth and early twentieth centuries *eruvim* were constructed in Jerusalem, Paris, Warsaw, Frankfurt am Main and in many of the small towns and villages in Western,

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Central and Eastern Europe. In 1896, the first *eruv* in North America was established in St. Louis, Missouri, and today many North American communities are surrounded by *eruvim*.<sup>2</sup>

This paper will explore the history of the St. Louis *eruv* and examine how this episode provides a glimpse into the social and religious life of the nascent American Jewish community of the late nineteenth century.

### **Background**

The first synagogue in St. Louis, the United Hebrew Congregation, was established in 1841. At the time only fifty Jews lived in St. Louis; they were all of German or Bohemian descent. While the Jewish community grew slowly during the second half of the nineteenth century, it remained to a large degree populated by Jews of German ancestry. From 1880-1920 the makeup of the population shifted markedly as some fifty thousand Russian Jews immigrated to St. Louis, fleeing persecution in Russia. New synagogues were opened, a YMHA was built and the St. Louis Alliance School taught over 500 immigrants a week in an intensive night-school program.<sup>3</sup>

Among the Eastern European rabbis who moved to St. Louis during this period was Rabbi Zekhariah Rosenfeld. Born in 1847 in Volynia, Southern Poland, Rabbi Rosenfeld first served as a rabbi in Baltimore. He came to St. Louis in 1895 and was appointed as the rabbi of Sheerith S'fard Congregation where he remained until his death in 1915. Rabbi Rosenfeld was a well-respected scholar and quickly became involved in the needs of the community leading the efforts to build St. Louis' first *mikvah* (ritual bath). He is remembered primarily, however, for his initiative in creating an *eruv* in St. Louis. The exact date of the establishment of the *eruv* is unclear but is described in great length in a volume entitled *Tikvat Zekhariah* written by Rabbi Rosenfeld in 1896.<sup>4</sup>

At the time the Jewish community was centered in an area that is today the downtown business district. In his book, Rabbi Rosenfeld described the boundaries of the *eruv* as follows:

On the east side, the *eruv* is created by the Mississippi River.

On the south side, it is created by the Des Peres River.

On the north side, it is also created by the Mississippi River. Closer to the city, however, railroads run along elevated tracks. An embankment, that is longer and steeper than the others, covers the pipelines that bring water into the city.

On the west side there is a deep artificial trench that runs south from its northern corner where it meets the Mississippi River. In that vicinity there are also walls that consist of fences surrounding Jewish and non-Jewish cemeteries in that area. In addition, the telegraph lines begin on a hill to the north and continue right up to the walls of the Des Peres River on the south, creating an unbroken barrier.<sup>5</sup>

Rabbi Shalom Elchanan Jaffe, another Orthodox rabbi in St. Louis, opposed the establishment of this *eruv*. Born near Vilna in 1858, he had studied at the famous Volozhin Yeshiva. He came to the United States in 1889 to visit relatives and soon after accepted a rabbinical position in St. Louis. He served as the rabbi of a branch of Sheerith S'fard for five years and then moved to New York where he assumed a rabbinical position.<sup>6</sup> He wrote a lengthy volume entitled *Shoel ke-Inyan* in which he disputed the legal justification for the existence of the St. Louis *eruv*. He argued that each of the boundaries suggested by Rabbi Rosenfeld was legally problematic and did not constitute an acceptable *eruv* boundary. He claimed that it was forbidden to carry on the Sabbath in St. Louis.<sup>7</sup>

## Ramifications

### *Relations with Civil Authorities*

In the last quarter of the twentieth century, numerous communities in North America have built *eruvim*. The standard procedure involves receiving permission from the local civil authorities to construct a legally acceptable “wall”. This enclosure generally consists of a combination of telephone poles and string and poles that surround the Jewish community. The ability to receive permission to build such a construct varied with each community but more often than not, some form of permission was given and an *eruv* was built.

When creating the St. Louis *eruv*, Rabbi Rosenfeld chose to define its borders using natural and pre-existing borders. According to Rabbi Jaffe, each of these boundaries raised serious legal questions. Yet, Rabbi Rosenfeld had no other option. The small Jewish community of St. Louis did not consider itself in a position to ask the civil authorities for permission to build a religious structure in the city.

This insecurity on the part of the Jewish community was expressed in another aspect of the *eruv*. According to the Talmud, the creation of an *eruv* requires the enclosure of an area and the sharing of food between the inhabitants. This, however, only applies if all the inhabitants of the enclosed area are Jews. If, however, non-Jews live in the area, the

enclosure must be rented from the non-Jews who live there. While this rental is symbolic and may be achieved with a single dollar, the procedure must be undertaken for an *eruv* to be valid.

When creating an *eruv* in a large urban area, the enclosed area must be rented from someone who is empowered to control this area, namely someone who is authorized to enter the houses and to open and close the streets at his will. Generally speaking, this person is the mayor or the borough president. Today, most *eruvim* are rented directly from the mayor or one of his assistants. In his volume, *Tikvat Zekhariah*, Rabbi Rosenfeld argued that the Jewish area of St. Louis could be rented from a police officer since he had the right to enter people's homes and also to close the streets at will. While Rabbi Rosenfeld quoted legal precedent for this view, it would be fair to surmise that he had no other choice but to arrive at this conclusion.<sup>8</sup> The Jews did not feel confident approaching the mayor for a religious favor whose rationale would be difficult to explain. Therefore, their only option was to approach a local policeman, with whom Rabbi Rosenfeld may even have been acquainted, for a personal favor.

The position of the St. Louis Jewish community vis-à-vis the local authorities and their reluctance to disrupt the existing relationship is not surprising given their small numbers and the insecure place of American Jews at the end of the nineteenth century. At the same time, it is fascinating to witness how this relationship expressed itself in the legal and practical considerations of building an *eruv*.

### *Orthodox Judaism in St. Louis*

The debate between Rabbi Rosenfeld and Rabbi Jaffe can be understood on several different levels:

1. It must be understood and analyzed based on the legal principles that are presented by each rabbi. Their disagreement is delineated as a complex legal debate concerning the validity of creating an *eruv* under the conditions suggested by Rabbi Rosenfeld. Each rabbi quoted extensive source material and precedent for his position. However, given the fact that there are precedents for both views, it would appear that there were other underlying factors that influenced this debate.
2. The fact that Rabbi Rosenfeld and Rabbi Jaffe are rabbis of two branches of the same synagogue, located several blocks from one another, cannot be discounted. It is often difficult to evaluate the role that rabbinic politics plays in a disagreement such as this one, but it may have been significant given the insular nature of the Jewish

community.<sup>9</sup> In addition, it should be noted that Rabbi Jaffe left St. Louis for a position in New York soon after this debate. While it is possible that he moved to New York for a more prestigious and lucrative position, the role that this debate played in his decision to relocate requires further exploration. Rabbi Rosenfeld, on the other hand, served in St. Louis for the rest of his life and his death in 1915 was featured in a front-page article in the St. Louis Post-Dispatch.<sup>10</sup> It may have been that this debate was viewed by Rabbi Jaffe as one between a more learned yet less popular rabbi (Rabbi Jaffe) and a less learned yet more popular rabbi (Rabbi Rosenfeld). Losing this battle may have led Rabbi Jaffe to move to New York where his scholarship would be more fully appreciated.

3. The fundamental dispute between Rabbi Rosenfeld and Rabbi Jaffe may lie not in the legal source material rather in the manner in which they approached the young but developing Orthodox Jewish community in St. Louis. In the introduction to his volume, Rabbi Rosenfeld wrote: “I arrived in this nation and I witnessed even many of the religious Jews carrying on the Sabbath. A religious Jew is not embarrassed to carry his *tallit* in public and to wear it in the synagogue. I said to myself, what should I do for the sake of my people to remove this terrible sin. If I raise my voice like the shofar to decry the severity of the prohibition, I know that my words will not make an impact because people have already become used to carrying on Shabbat. In addition, the preachers in this country have already set the standard of raising their voices, stomping their feet, clapping their hands and to shake every limb in the body to criticize the actions of the people. Yet they have been unsuccessful and their words have been ignored. If I get upset and embarrass the sinner, I will have nothing to my credit other than my anger.... I therefore decided to return to the words of the law and to look for a way in which the Jewish tradition would allow for carrying on Shabbat.... When I was appointed rabbi in St. Louis, I continued my search and I found a correct and acceptable way to permit carrying on Shabbat.”<sup>11</sup>

Rabbi Jaffe explained his rationale in the first chapter of his volume: “Recently a rabbi has come to St. Louis and has permitted carrying on the Sabbath with made-up arguments that have no basis at all. Worse than that, he has built an entire structure on these arguments, one that permits carrying on Shabbat in all American cities. Furthermore, violators are rampant in this generation and those in America hang on to his coat and argue that ‘the power of permissibility is stronger’.... The Sabbath is thereby violated even by those who consider themselves religious and the essence of the Sabbath will be forgotten. Therefore, I have gone out today to share my pain in public and to make my suggestions before my teachers.”<sup>12</sup>

These two introductions highlight two different approaches to the same problem. Rabbi Jaffe believed that the fact that Jews were carrying on the Sabbath was no excuse for leniencies within the traditional system. These people, he argued, must be encouraged to accept the strict interpretation of the law. Rabbi Rosenfeld, on the other hand, may have agreed with Rabbi Jaffe in principle but believed that this approach is impractical. He argued

that those rabbis who had preached to these “sinners” demanding they change their ways had been unsuccessful. He therefore argued that if the people will not change, the rabbi must find room within the law for an interpretation that will not deem these people to be “sinners.”

These views reflect two different approaches to the religious issues that confronted American Jewry at the end of the nineteenth century. The Jews living in the communities supervised by these two rabbis in St. Louis had emigrated from Russia. Many of them had left their religious observance behind them in their quest to begin a new life in America. How were the rabbis to deal with an ostensibly religious community that was violating a basic tenet of traditional Judaism? Rabbi Jaffe argued that the law has maintained the Jewish people for two millennia and the law cannot be modified or stretched for the sake of the sinners. According to Rabbi Jaffe, the people had to learn to accommodate themselves to the law. Rabbi Rosenfeld, on the other hand, believed that Jews in America would not accommodate themselves to the law. Rather, over time they would be lost to the Jewish religion. Therefore, he argued that it was the responsibility of the rabbis to find a way for the law to accommodate the people without violating the basic principles and rules of traditional Judaism.

The issues raised during the creation of the St. Louis *eruv* and the ensuing controversies were not resolved in the St. Louis Jewish community of the late nineteenth century. Yet, this *eruv* represented a significant step in the ability of the Orthodox Jewish community to confront and to accommodate the challenges of the New World. This first North American *eruv* was instituted to allow Jews to mix with one another. Ironically, it also forced the Jewish community to mix with the society that now surrounded it.

### Notes

1. The most thorough treatment of the laws of the *eruv* can be found in Yosef Gavriel Bechhofer, *The Contemporary Eruv: Eruvin in Modern Metropolitan Areas* (New York, 1988).
2. A survey of the history of community *eruvim* can also be found in Bechhofer, 27-30. However, there are some inaccuracies in this part of his presentation.
3. Walter Ehrlich, *Zion in the Valley: The Jewish Community of St. Louis* (Columbia, Missouri, 1997).
4. There is very little biographical material about Rabbi Rosenfeld. All information presented here was from conversations with members of his family.
5. Zechariah Rosenfeld, *Tikvat Zechariah* (Chicago, n.d.), 42-6.



6. A short biographical essay on Rabbi Jaffe can be found in Moshe D. Sherman, *Orthodox Judaism in America: A Biographical Dictionary and Sourcebook* (Westport, Ct, 1996), 108-9.
7. Sholom Elchanan Jaffe, *Shoel ke-Inyan* (Jerusalem, 1995).
8. Rosenfeld, 39-40.
9. For some insight into the synagogue structure and rabbinic politics of the period in St. Louis, see Averam B. Bender, "History of the Beth Hamedrosh Hagadol Congregation of St. Louis, 1879-1969," *Missouri Historical Society Bulletin* 17 (1970): 64-89.
10. *St. Louis Post-Dispatch*, September 10, 1915, p.1.
11. Rosenfeld, III-VI.
12. Jaffe, 1.



## The Pre-Nuptial Agreement Teshuvot

### *Files from the Beth Din of America*

Rabbi Yona Reiss

During the calendar year 1997-1998, Rabbi Michael Broyde took a leave of absence from his position at Emory University School of Law to serve as the Director of the Beth Din of America in New York. During that same period, I was on a leave of absence from my law firm in New York City and had the privilege to serve as an assistant and apprentice to Rabbi Broyde at the Beth Din. When Rabbi Broyde returned to his position in Atlanta at the conclusion of the year, I was appointed Director of the Beth Din, a position which I have held since that time.

One of our key projects during this period was to promote the use of the Beth Din pre-nuptial agreement in order to prevent *Agunah* situations. Although its utilization was growing, the prenuptial agreement was still viewed as a work-in-progress, and efforts were being made to refine and perfect the agreement. The prenuptial agreement consisted of two distinct forms: the “Husband’s Assumption of Obligation” (whereby a husband undertook to support his wife for a certain specified sum of money each day following their separation until they would no longer be married according to Jewish law) and a separate arbitration agreement (providing the Beth Din the ability to enforce this provision and to arbitrate certain other disputes between the couple in the event of divorce, including any dispute regarding a *Get*). Because each document supplemented the other, certain issues would arise

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in the event that parties executed one document but not the other. One of the key innovations in recent years has been the integration of the two forms into one cohesive document. There have also been certain linguistic and stylistic changes that have made the prenuptial agreement easier to use and to enforce.

During our year together at the Beth Din, Rabbi Broyde and I paid close attention to the feedback that we received concerning the agreement from different segments of the community. The Beth Din regularly fielded queries from rabbis regarding *halakhic* issues relating to the agreement, from lawyers regarding legal issues relating to the agreement, and from prospective couples regarding practical issues concerning the agreement's meaning and implementation. These queries enabled us to identify areas of concern and provided us with the opportunity to re-examine the legal and *halakhic* underpinnings of the document.

We responded to virtually every communication either through telephone conversations, e-mails or written *teshuvot*. In tribute to the occasion of honoring the accomplishments of Rabbi Michael Broyde, I am submitting the following sample *teshuva* that I authored during the aforementioned year when I was privileged to work with Rabbi Broyde in the Beth Din office. Rabbi Broyde had received a question concerning two particular provisions of the pre-nuptial agreement, and asked me to render a response on behalf of the Beth Din.

The writer had posed the following questions:

- (a) The arbitration agreement at that time included a provision that stated, in relevant part: "at any time, should there be a division of opinion among the members of the Bet Din, the decision of a majority of the members of the Bet Din shall be the decision of the Bet Din. Should any of the members of the Bet Din remain in doubt as to the proper decision, resign, withdraw, or refuse or become unable to perform duties, the remaining members shall render a decision. Their decision shall be that of the Bet Din for the purposes of this agreement." [It should be noted that this provision was subsequently removed from the standard agreement based on practical considerations.] The writer of the query asked why this provision was not in violation of the rule articulated in *Shulchan Arukh*

*Choshen Mishpat* 18:1 that judgment cannot be rendered by the remaining members of the panel should one judge be unable to render judgment;

- (b) The prenuptial agreement is drafted to be executed by the prospective spouses and then notarized. The writer wondered whether a Bet Din could rely on the attestation of a notary public to verify signatures under Jewish law.

The following was my response:

יום א' לראש חדש אדר תשנ"ח

לכבוד [רב חשוב אחד] עמו"ש:

קבלנו את מכתבך מעש"ק, פ' ויחי תשנ"ח, בענין התנאים והשטרות שעושים קודם החתונה, ורב מתתיהו ברויד בקש ממני לערוך תשובה על השאלות וההערות החשובות שלך.

בנוגע להסכם שאם אחד מן הבית דין לא פסק, שהדין יתקיים בהנשואים, למרות שבשולחן ערוך חושן משפט סימן י"ח, איתא דבב"ד של ג' כששני דיינים מחייבים או מזכים ואחד אומר איני יודע, שיוסיפו עוד דיינים, ובסעיף ד' איתא דשלשה שישבו בדין ונסתלק אחד מהם, אין השנים הנשואים יכולים לגמור את הדין (ובפרט אם לא החליטו עדיין איך לפסוק), בטח שכל זה כשלא קיבלו הבעלי דין בפירוש את פסק הדיינים הנשואים אפי' באופן זה, אבל כשקיבלו עליהם הבעלי דין בפירוש את פסק הדיינים הנשואים, כמו בנידון שלנו, ודאי דמהני ועיין בענין זה בש"ע ח"מ סימן ג', סעיף ז' דהבעלי דין יכולים לקבל אפי' ב"ד פחות משלשה לכתחלה, ובחידושי רבי עקיבא איגר על סימן י"ח דאם התנו הבעלי דין בפירוש דילכו אחר הרוב אם אמר אחד מהדיינים איני יודע היה מהני, ונראה דאין לחלק בנידון דידן כשהבעלי דין מקבלים על עצמם בפירוש בשטר בירורין שלהם שמסכימים ליזיל בתר רוב הדיינים בין אם הנשואים מסתלקים או אומרים איני יודע דגם כן מהני וכמו דפסקינן בכל מקום דכל תנאי שבממון קיים, וכן מוכח משו"ת אגרות משה ח"מ חלק א', סימן מז בסוף, בנידון דרץ אחד מהדיינים ממושב ב"ד כשלא אמרו השנים האחרים כדעתו, דכתב "ובעובדא דידן שבשטר בירורין שעשו ע"פ ערכאות מפורש שסומכין על פסק תרי מגו תלתא הוא כהתנו שיעשו כן ולכו"ע רשאין השנים לגמור" ודו"ק.

ובנוגע להערה השניה שלך דלכאורה נוטארי פאבליק לא מספיק כדי לקיים שטרות, עיין בש"ע ח"מ סימן מ"ו, סעיף ד ברמ"א שציטט התרומת הדשן שמאחר שנהגו שהרב התופס ישיבה מקיים ביחודי מנהג כזה מבטל הלכה, ולפי הש"ך שם בדברים כאלו הולכים אחר המנהג ואפ' נגד הדין, ולא רק בחתימות עדים אלא גם בנוגע לחתימת בעל דבר כמו שמפרש הש"ך בס"ק י' בנוגע למנהג לקיים חתימת יד הלוחה שלא בפניו, ואז נראה שבמדינתנו ששטרות חשובות כמו שטרי קנין של קרקע מתקיימים על ידי נוטארי פאבליק לחוד, בדרך כלל יש מנהג לפי דעת הבעלי דבר שיתקיים השטר שלהם לפי דרך הסוחרים של המדינה לסמוך על הנוטארי פאבליק, ומטעם זה אין צורך לדרוש יותר כדי לקיים השטרות אלא אם כן יש חשש באיזה מקרה שהאנשים האלו לא נוהגים במשא ומתן שלהם כפי המנהג הסוחרים של המדינה, ונראה דאין זה במציאות ומטעם זה לבדו יש לסמוך על הנוטארי

פאבליק לחוד ברוב המקרים. אבל גם כן נוסף לזה נראה דלא גרע השטר עם הנוטארי פאבליק משטר העשוי בערכאות דכשר לגבי שטר ראייה כדאיתא בסימן ס"ח, ועיין בנתיבות בחידושים בסעיף ד' שם דענין שטר העשוי בערכאות הוי דהשופט הערכי מקיים השטר, וכידוע הנוטארי פאבליק מקבל כחו מהערכאות ונראה דהוי כשופט ערכאות לענין זה ואז השטר כשר גם כן מטעם דהוי שטר העשוי בערכאות דכשר מטעם דינא דמלכותא דינא.

וגם חשוב להעיר דכל החשש הוי רק כשאחד מבעלי דין מערער על השטר וטוען שחתימתו או חתימתה מזויף, דאם לא כן אפילו בלי קיום על החתימות לא גרע ממלוה על פה ועיין מזה בחושן משפט סימן ס"ט פרטי הדינים לגבי כתב יד בעל הדבר כשמקוים או אינו מקוים.

ועוד עיין בנוסח השטר הסכם לפני הנישואין דדורש גם כן חתימת ב' עדים, ועיין בשלחן ערוך (חושן משפט) סימן מ"ו סעיף ז' בענין זה דאחד מן הדרכים לקיים שטר הוי דיבואו עדים ויעידו שזה כתב ידם של אלו, ולפי הרמ"א יכול עדות זו להיות בתוך הכתב, ואז במקום שאפשר יהיה ליתר שאת אם על כל חתימת בעל דבר יהיו שני עדים כשרים חתומים על השטר להעיד גם על השטר וגם על חתימות הבעלי דבר, אבל מכל מקום נראה פשוט דיש לסמוך על הנוטארי פאבליק לחוד מטעמים שבארנו לעיל. ומכיון שהשטר כשר עם הנוטארי פאבליק, אין נראה לנו להטריח אחר ב"ד של ג' כהצעתך.

בכבוד התורה,

יונה ריס

סגן מנהל

It should be added that from a secular law perspective, there is often a requirement for notarization in order to ensure that a secular court would enforce the pre-nuptial agreements. There is also more that could be added to the *halakhic* subject matter, such as a discussion of the parameters of הודאת בעל דין כמאה עדים דמי. Those caveats aside, I believe that the letter is a good example of a policy set forth by Rabbi Broyde during his tenure at the Beth Din – to respond to all halakhic queries, especially as they related to the Beth Din's policies and procedures, with serious consideration and attention. I was a fortunate beneficiary of his tutelage.

I have benefited tremendously from Rabbi Broyde's mentorship and friendship and consider him to be a key partner in the continued success of the Beth Din of America. My wife and I extend our Mazal Tov wishes to Rabbi Broyde, Channah Broyde and the entire Broyde family on the occasion of their being honored by the Atlanta community.

## Memories of a Giant

Rabbi Kenneth Brander

Twice a day, once in the morning and once in the evening, we are mandated to recite the *kri'at Shema*, a prayer which encapsulates the responsibilities of the covenantal relationship between ourselves and God.

*Mi-she-yakir bein techelet le-lavan.* The morning *Shema* may be recited when one is able to discern between the blue of *techelet* and white. The morning existentially represents the times in life which are bountiful, when the challenges facing the Jew arise not from pogroms or persecution, but, rather, from power and wealth. The mandate to recite the *Shema* in the morning reminds us that despite the glitz of Madison Avenue, the environment of acceptance and material affluence, our lifestyle must be driven by the norms and mores, which resonate throughout the Torah.

The *Shema* is then recited again at night. In the face of the difficulties and darkness of our personal and communal existence, the *Shema* symbolizes the unwavering commitment of the Jew to Torah.

In addition to the three biblical passages of the Shema, there is one phrase which is not found throughout the Torah, *Baruch shem kevod malchuto l'olam vaed*, Blessed is the name of God, His kingdom reigns forever. The Talmud in *Pesachim* explains that the addition of this phrase to the *kriyat Shema* prayer reenacts a dialogue between Yaakov and his sons. Yaakov was troubled on his deathbed. His father, Yitzchak, and grandfather, Avraham,

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each had a child who defied the covenantal relationship. Yaakov was afraid that, perhaps like his father and grandfather, one or more of his children were not truly committed to the ideals of monotheism. Immediately, the children of Yaakov turned to him and recited the verse: *Shema Yisrael*, listen our father *Yisrael* (Yaakov), we are all committed to the ideals you taught us, the ideals which celebrate the lives of Avraham and Yitzchak. *Ado-no-y Elokeinu Ado-no-y Echad*, the Lord is amongst us, and He is one with us. With relief and joy, Yaakov turned to his children, the tribes of Israel, and stated, *Baruch shem kevod malchuto l'olam vaed*.

If the purpose of adding this additional passage is to emphasize the dialogue between Yaakov and his sons, Rabbi Soloveitchik asked, why is it condensed into a monologue? Let there be an exchange between the chazan and the congregation, one reenacting the character of Yaakov and the other assuming the role of his children, the twelve tribes. Why is this prize dialogue reenacted as a monologue? The Rav explains that there is an important purpose for the exchange to be transformed into a monologue. The Shema asks every Jew to play two critical roles to guarantee the future of Judaism.

First is the role of Yaakov's children articulated in the biblical phrase stated to their father, *Shema Yisrael*. We must recommit ourselves to become students of the tradition, children of the *mesorah*. We are introduced to the *mesorah* through a plethora of experiences, *musar avicha* and *torat imecha*. The sounds, sights, and smells that waft through the home every Erev Shabbat and Yom Tov; the informal dialogues and formal instruction from our parents and teachers, are all components in the curriculum that makes us students of the *mesorah*. As students of the *mesorah*, we must carry ourselves in a fashion consistent with its ideals. In the process, we affirm, like the children of Yaakov, not as much to God but to past generations, *shema Yisrael*, our effort as students of the *mesorah* guarantees the immortality of generations past.

However, after making the commitment to be students of the *mesorah*, we are also asked to assume a second role on the covenantal stage, that of Yaakov, the teacher of the *mesorah*. To truly guarantee the future of Judaism, we must share its message with others. We, acting as teachers of the *mesorah*, utter the words *Baruch shem kevod*, for teaching guarantees the eternity of Judaism. Thus the dialogue is experienced as a monologue for it is our responsibility to play both roles on the stage of Jewish continuity.



No family, since the time of Rashi, has had so many great Torah scholars as the Soloveitchik family. It is a family that redefined the style and approach to Talmud study. The Rav was a product of that environment. He was a true student of the *mesorah* learning from his father, Rav Moshe, and mother, Pesia Feinstein, as well as his revered grandfather, Rav Hayyim. His life celebrated the statement of Yaakov's sons, that of *Shema Yisrael*. As with Yaakov's sons, the Rav's brilliance allowed him to internalize the rich traditions of his family. However, the greatness and the legacy of the Rav are not limited to his responsibility as a student of the *mesorah*. He lived the character of Yaakov, and was the quintessential teacher of our generation. As Rav Moshe Feinstein was fond of saying, the Rav was the *melamed* of our time. The Rav was at home in any *sugya* in *shas*, in any issue of Halakhah, or any idea in philosophy. He used his knowledge to teach us the full spectrum of Torah, and every *shiur* introduced us to another color in the tapestry of Torah. His clarity, charisma, excitement, and intellectual integrity made the daily *shiur* exciting and a gathering place for all different types of people. Young *semichab* students and veteran *rashei yeshiva* hung on to every word. Talmudic scholars came from every yeshiva in the world to sit in the room with the master. His philosophy of Judaism may have often been articulated with verbiage found in Kant, Hegel, Kierkegaard, or Cohen but it was predicated on the ideals of the Rambam and Ramban and the traditions of his family. There is no community in the world, which has not been touched by the Rav, his students, or his writings.

I do not have the capacity or ability to expound on the Rav's greatness in learning. However there are a few observations which I would like to share. First, when the Rav presented an argument between various schools of thought in the Talmud or among *Rishonim*, you felt as if the personalities being discussed were present in the room. It was in the Rav's *shiur* that many of us felt that we met Rashi, Rabbenu Tam, Rav Alfasi and the Ramban. It was there that we became closely acquainted with the personality, language and demeanor of the Rav's good friend, the Rambam. Second, a cornerstone of the *shiur* was a demand for intellectual integrity. In *shiur*, the analysis of any concept was an expedition for the truth. What counted in any *shiur* discussion was not the age of the student, or the amount of years a student had spent in *shiur* or the student's family name. What counted was the truth. There were times in which a thesis of a veteran scholar was dismissed and the suggestion of the youngest adopted with respect. I will never forget the time that the

Rav responded to several questions at the end of a two and a half hour *shiur*, of which the bulk was spent on the presentation of a specific idea. Each question was answered by the Rav in a very clear and precise way. Yet when the *shiur* was over the Rav asked me to call over one of the boys, who had asked a certain question. The Rav told him “you were right and I was wrong. Tomorrow we will restudy the topic based on the question you raised.”

The Rav loved teaching. I remember one time when we were informed that for the Rav’s health, the *shiur* had to be limited to two hours. The Rav agreed to this and so on the first day of this medically imposed limit, I drew signs to be placed on his *Gemara* to indicate how much time he had left. Since I sat next to the Rav in *shiur*, I simply slid the paper on his *gemara* after an hour, another one after an hour and a half and a third after two hours. The first day it worked like a charm. Everybody in *shiur* was surprised. The next day the situation was quite different. After presenting the two hour sign the Rav continued to teach. I found myself in quite a quandary. How does a twenty-year-old deal with the fact that the *gadol ha-dor* is not following the medically prescribed time limit? All eyes in *shiur* were on me and how this dilemma would unfold. After an additional forty-five minutes, I stood and announced that *shiur* was over. The Rav turn to me for a moment and then to the *shiur* and said, “Even the Satan does not have as good of an assistant as I do.” The boys laughed and class was over. After *shiur*, I was silent on the walk back to the apartment in Morgenstern Hall. Once in the apartment and after eating a very quiet lunch together, the Rav asked what was wrong? I explained to him that I was not acting on my own accord, just following instructions and that, personally, I would have enjoyed listening to the *shiur* longer. The Rav responded that in the mornings before the *shiur* he was often in pain, in the afternoons after *shiur* he was often in pain but when delivering *shiur* he was pain free. How correct he was. During the years that I was a *shamash* of the Rav the mornings were often difficult and after *shiur* was again difficult, but during *shiur* the Rav was vibrant, enthused and pain free. He would often enter *shiur* with blurred sight yet he would read the *Gemara*, Rambam and Rashi as if his sight was unimpaired. The next day in *shiur*, I was not going to remind the Rav when to stop. However, an hour and a half into the *shiur* the Rav turned to me and asked me how much more time he had left.

The Rav had a reputation of being tough in *shiur*. The demands he made on his *talmidim* were due to his love for them and his commitment to be the best possible *melamed*.

However, outside of *shiur* his demeanor was welcoming, gentle and one of concern. I remember the many times that a person left the Rav's apartment comforted, either because the Rav had a solution to his problem or simply because he had listened so intently. Additionally, when the Rav heard a problem that a fellow human being had, whether it was Menachem Begin or a simple Jew sent by his/her rabbi, the Rav was so empathetic that he experienced the pain felt by the other so much that the pain and anguish of the visiting person was visible on his frail face and body. It would now be harder for him to walk, to sleep or to eat. It was like reliving the story of Moshe and the battle of *Amalek*. The Torah informs us that Moshe sat on rocks when Aharon and Chur propped up his hands enabling the Bnei Yisrael to triumph in their first war. Immediately, Rashi asks, why was Moshe sitting on rocks? Were there not pillows available for him to sit on, allowing this elderly leader some comfort? Rashi explains that since the Jewish people were in pain, Moshe was in pain and refused any creature comforts, preferring to sit on a pile of rocks. That was the Rav! He truly felt the pain of others, happy when he could halakhically solve their dilemma, pained when he could not, sleepless when he needed to marshal his halakhic arsenal to help another human being.

I will never forget the camaraderie the Rav shared with Rav Moshe Feinstein, Rav Ruderman and the Lubavitcher Rebbe. Every time a new *sefer* came out from Chabad, the Rebbe would send two *shlichim* to the apartment. Many, if not all, were inscribed with a lovely note from the Rebbe. Rav Moshe, Rav Ruderman, and the Rav would call each other before every *chag*. I always remember the various times that the Rav, before a *chag*, would ask me to call Rav Moshe's home so that they could extend wishes to each other. On Ta'anit Esther 1986, when Rav Moshe was *niftar* the Rav was not feeling very well. His family was concerned and asked that he not be informed of the *petirah* of his friend. We obliged. The next morning, *The New York Times* normally delivered to the apartment was somehow "not received". The radio, in the apartment, from which the Rav listened to the news "was broken." We thought we had done a great job of shielding the Rav from the news of the *petirah*, thus avoiding any additional compromise to his frail health.

During that time I rarely spent the afternoons in the Rav's apartment since I was learning in Kollel. However, the week prior to Pesach, as the Rav was leaving to the airport, he requested that I be called out of the *bet midrash* to drive him there. I

immediately obliged. As I was driving down the Grand Central Parkway to the Eastern airline shuttle, the Rav asked me why I did not inform him that Rav Moshe had passed away. My response was one of silence and disbelief. After several tense moments, I explained that this was done at the request of his family, out of concern for his health. I then turned to him and asked how did he find out? His response was the following: “Every *chag* either I call Rav Moshe or he calls me. This Pesach it was his turn to call me. There can only be one reason why he did not call...”

I would like to conclude with an idea communicated by Rav Ahron Soloveichik about his brother. When the *beit ha-mikdash* was burning, the *pirchei kebunah* went to the rooftop and surrendered its keys by throwing them up to Heaven. Rav Ahron explained that this was not an act of greatness but one of cowardice. Even when the *beit ha-mikdash* was burning, no one had the right to surrender. It was that surrender which doomed the Jewish people to a long and difficult *galut*. Over the past fifty years, many have had the *zechut* of being the students of the Rav. For us, as a community, he defined our mission and our public posture. His passing is not a time to surrender or abandon his calling but to recommit ourselves to be both students and teachers of his tradition. We recommit ourselves to embrace a Torah not shaped by modernity but a modernity shaped by Torah.

May *Hakadosh Baruch Hu* strengthen us and give us the capacity to move from being students of the *mesorah*, students of Moreinu ve-Rabbenu ha-Rav Yosef Dov Halevi Solovietchik, to teachers of his *mesorah*.

*Yehi Zichro Baruch.*

## The *Mo`adim* of *Parashat Emor*

Rabbi Dr. Michael S. Berger

Our arrival in Atlanta over ten years ago coincided almost exactly with the opening of the Young Israel of Toco Hills. We had no idea then how deeply this community would become our spiritual home, and Rabbi Broyde a mentor, colleague and friend. By teaching and by example, the Broydes have inspired many people locally and around the world. Following their example, I add this article to the volume of Torah being published in their honor with the hope that it inspires others in the same way the Broydes have touched us.

– Michael Berger

Sometime in midsummer, as our plans for Rosh Hashanah, Yom Kippur, and Sukkot begin to crystallize, we inevitably inquire “When are the holidays this year?” Given our presence in a society which, for the most part, follows the secular calendar, the answer we often receive, or even offer ourselves, to this query is that the holidays will be either “late” or “early” (are they ever on time?), leading to decisions about work, school, or even the feasibility of going away for *yom tov*. The point of these remarks is that we naturally tend to view these three holidays, which are clustered together in the short span of three and a half weeks, as a single unit – “the holidays.”

Temporal proximity is not, however, the only means of classifying the holidays in Halakhah. Were we living in the times of the *Beit ha-Mikdash*, we might very well see Sukkot as grouped more naturally with the other *regalim* – Pesach and Shavu`ot – which all require *`aliyah le-regel*, a pilgrimage to Yerushalayim, as well as a variety of sacrifices and other obligations, be they *korban pesach* with *matzah* and *marror* (bitter herbs), *bikurim* (first fruits) on

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Shavu`ot, or the *arba`ah minim* (four species) on Sukkot. No such demands are made of the individual Jew on Rosh Hashanah and Yom Kippur; everything he or she must do can be done at home, whether it is hearing a *shofar-blast* or fasting for twenty-five hours. From this perspective, Sukkot shares almost nothing with its two predecessors in Tishrei; its more logical comrades are Pesach and Shavu`ot, as the Torah itself classifies them (*Devarim* 16:16):

Three times a year – on the Feast of *Matzot*, on the Feast of Weeks, and on the Feast of Tabernacles – all your males must appear before Hashem your God in the place that He will choose, and [they] should not appear before Hashem empty-handed.

Given this more natural grouping, why do we continue to refer to the Tishrei holidays as one unit? I think that it is not merely a calendrical convenience which underlies this designation, but a fundamental understanding of the nature of Sukkot, or, more aptly, the *dual* nature of the Feast of Tabernacles, partaking of both triads – the *shalosh regalim* (the three pilgrimages) as well as the *yamim nora'im* (the Days of Awe). To explain this more fully, we must explore how the holidays unfold in the Torah, primarily in the books of *Shemot* and *Vayikra*.

### **The Three Pilgrimages: Pesach, Shavu`ot, and Sukkot**

The first holiday to appear in the Chumash is, of course, Pesach. Even while still in Egypt (*Shemot* ch. 12), Hashem commanded the people to offer the paschal sacrifice, eaten with *matzah* and *marror*, on the fourteenth of Nissan. Moshe is informed that a seven-day festival commemorating the exodus from Egypt will always be observed on this date, requiring the people to dispose of all leaven from their homes and to eat only *matzot*, or unleavened bread. As they leave, Hashem provides Moshe with further details on how to properly prepare and offer the *korban pesach* and who may partake of it in future generations (12:43-49). This feast is to have the added dimension of every father relating the story of the miraculous salvation of the people from their bondage in Egypt. Pesach is thus an *historical* holiday, in the sense that it was instituted *ab initio* to commemorate an historical event.

This is not how we meet the other two pilgrimages, at least initially. The following passages are taken from chapter 23 of *Shemot*, which Moshe receives while up on the mountain immediately after the revelation of the Decalogue:

14 Offer a sacrifice to Me three times each year.  
15 Keep the Festival of *Matzot*. Eat *matzot* for seven days, as I commanded you, during the prescribed time in the month of standing grain, since this is when you left Egypt. Do not appear before Me empty-handed.

16 [Also keep] the Reaping Festival, [through] the firstfruits of your produce which you planted in the field, and the Harvest Festival at the end of the year, when you gather your produce from the field.

17 Three times each year, every male among you must appear before God, the Master.

In this relatively brief treatment of the three festivals, Shavu`ot and Sukkot are designated by their generic names: חג הקציר (*chag ha-katzir* – the Reaping Festival) and חג האסיף (*chag ha-asif* – the Harvest or Ingathering Festival). In other words, in contrast to Pesach's historical origins, these two holidays represent traditional agricultural holidays, of the sort we find in most agrarian societies. At the two endpoints of the summer season – the earliest reaping in late spring and the preservation and storing away for the winter in the fall – God's providence must be acknowledged. Notice, also, the absence of any mitzvot for these two pilgrimages; one would naturally bring choice seasonal offerings from the harvest to thank God for the bounty, an act already intuited by Cain and Abel (see *Beishit* 4:3-4). In contrast, Pesach, as the holiday of God's miraculous redemption of the Jewish people from Egypt, requires special laws.

Thus, the three pilgrimages are, in reality, divided into two groups: the historical one (Pesach), which is treated in verse 15, and the agricultural ones (*chag ha-katzir* and *chag ha-asif*), which are mentioned together in verse 16. All three, however, require appearing before God, for all three are human recognition of divine providence, whether naturally in the realm of agriculture, or supernaturally in the domain of history.

This relatively brief treatment of the holidays is repeated almost verbatim in the renewed covenant shortly after the sin of the golden calf. After God reveals the thirteen attributes by which He will conduct his relationship with the people (*Shemot* 34:6-7), the three festivals are mentioned again.

18 Keep the Festival of *Matzot*. Eat *matzot* for seven days, as I commanded you, during the prescribed time in the month of standing grain, since this is when you left Egypt.

19 The firstborn initiating every womb is Mine. Among all your livestock, you must separate out all the males of the firstborn cattle and sheep.

20 The firstborn of a donkey must be redeemed with a sheep, and if it is not redeemed, you must decapitate it. You must [also] redeem every firstborn among your sons. Do not appear before Me empty-handed.

21 You may work during the six weekdays, but on Saturday, you must stop working, ceasing from all plowing and reaping.

22 Keep the Festival of Shavu`ot [through] the firstfruits of your wheat harvest. Also keep the Harvest Festival soon after the year changes.

23 Three times each year, every male among you must appear before God the Master, Lord of Israel.

We notice several important differences from the original version in chapter 23:

- a) there is no introductory (“Three festivals a year will you celebrate for Me”);
- b) verses 19-20 regarding firstborn offerings are now linked to Pesach, whereas previously they stood independently and considerably prior (22:28-29);
- c) the prohibition against work on Shabbat, referred to in 23:12 *before* the portion of the festivals, is mentioned now between the historical and the agricultural holidays (verse 21);
- d) *Chag ha-keatzi*r is now referred to as *chag shavu`ot* – “the festival of weeks” (verse 22), and it is more precisely defined as the wheat harvest;
- e) the closing verse – “three times a year...” (verse 23) – parallels the closing verse of 23:17, yet adds the last two words “*elokei yisrael*,” “the Lord of Israel.”

These few differences, which are primarily *additions* to the earlier version (b, c, and e), should not mask the fact that for the most part, the two accounts are quite similar.

Obviously, this modified version is deliberate; but the reason for the changes is not so obvious. While the Torah does not explicate the cause for this revision, the chronology of events recorded in *Sefer Shemot* suggests one. The major episode, of course, which separates the two accounts is the sin of the golden calf. Less than seven weeks after hearing the second commandment received at Mount Sinai, the people, led by Aharon, fashioned an idol and worshipped it, violating the second commandment. Moshe secured their forgiveness through lengthy negotiations, re-establishing the covenant on the assumption that while the people are admittedly “stiff-necked” (33:3; 34:9), God will nevertheless be more patient and slow to anger (34:6-7). The earlier presentation of the festivals stood as a unit in its affirmation of God’s sovereignty; the males of the people would have to pay homage to *ha-Adon Hashem*, “God the Master.” God could therefore insist on the three pilgrimages which would be celebrated “for Me.”

However, after the sin, that unity was shattered. Essentially, we have not here three integrated holidays, but merely three occasions on which Jewish men will appear before God. No verse introduces the festivals for they simply do not constitute a cohesive unit. Rather, we have the historical holiday of Pesach, to which is now attached the commandment to offer one’s firstborn to God. This is not an unreasonable link; the very basis for the law is the plague of killing the firstborn of Egypt on the night before the great



exodus. Nevertheless, in ch. 23, the holiday and the laws regarding the firstborn were separated; now they are joined by their common origin.

The agricultural holidays are introduced by the sabbath; on the seventh day, one acknowledges God's kingship by abstaining from work in the fields, even during the critical seasons of plowing and reaping, when every day's labor counts. An extension of this admission of our dependence on God is the two festivals of harvest and ingathering. In a post-golden calf world, where the people showed their readiness to worship their own handiwork, these agricultural holidays are more appropriately linked to Shabbat than to Pesach, since the people must re-affirm and deepen their commitment to the one God.

Although this new account of the festivals disrupts their previous unity, the three holidays are preserved within a new framework: the renewed **ברית** (*berit* – covenant) of ch. 34. The first covenant was predicated on those aspects of God which reflected His *middat ha-din* – the rule of judgment, whereby God exacted swift and appropriate accountability from the Jewish people.<sup>1</sup> Now, however, given the nation's stiff-necked nature, God is forced to base His relationship with the Jewish people on His *middat ha-rahamim*, the divine attributes of patience, mercy, and slowness to anger. In the covenant of the Second Tablets, God commits Himself to an ongoing relationship with the Jewish people, whether or not the people actually behave as God insists. This is the nature of the second *berit*, underscored in the God the males must visit three times a year: not merely *ha-Adon Hashem*, the Master and Sovereign of the universe (23:17), but *ha-Adon Hashem Elokei Yisrael*, the Master who is also the Lord of Israel, no matter how they act (34:23). The kingship element is no longer exclusive; it is now tempered by a long-suffering quality, characteristic of a relationship of commitment.

It is precisely the nature of this new relationship which accounts for the different presentation of the holidays. For acknowledging God's providence is *not* an intuitive reaction for the people. They require assistance to come to this most basic awareness. Therefore, the offering of one's human and animal firstborn – a frequently profound expression of sacrifice – helps deepen the sense of indebtedness to God for saving us during the plague of the firstborn in Egypt. This law is linked to the observance of Pesach, when we collectively commemorate the miraculous exodus. The agricultural holidays, almost counter intuitive in their admission of our dependence on God even as we toil daily in the fields, are

aided by the observance of Shabbat, when God's ultimate sovereignty over the universe is affirmed. These other mitzvot are interspersed among the holidays not to interrupt them; their internal unity has been shattered by the sin of idolatry. Rather, with the original kingship element of these pilgrimages now tempered by the covenantal relationship of the people with God, these three festivals, together with their respective "preparatory" laws, provide three occasions on which Jewish males may reflect on their genuine reliance – historically and agriculturally – on God.

### **Yom Kippur: Purifying the *Mishkan* and Ourselves**

Chapter 16 of *Sefer Vayikra* is certainly the main treatment of what both the High Priest and the people are to do on *Yom Kippur*, the Day of Atonement. One of the most lasting effects of the sin of the calf, and of God's subsequent forgiveness,<sup>2</sup> is the need to set aside one day a year to repair our relationship with God – whether through ritual purification of God's Tabernacle or through personal fasting. The Torah institutes into the Jewish calendar a day on which the aggregate sins of the people and the impurity that sinfulness imparts on the *mishkan* may be expunged.

However, we rarely notice that the need to purify the *mishkan* once a year is already mentioned in the last verse of *Parashat Tetzaveh*, a full chapter *before* the people begin to react to Moshe's absence and set into motion the sequence of events which tragically leads to worshipping a golden idol. When the Torah describes the construction of the incense altar and its daily function at the very end of *Parashat Tetzaveh* (*Shemot* 30:1-10), the section ends with directions for an annual purification (v. 10):

Once each year Aharon shall make atonement on the horns [of this altar]. For all generations, he shall make atonement with the blood of the atonement sacrifice once each year. [This altar] shall be a holy of holies to God.

The expression "once each year" (אֶחָד בַּשָּׁנָה – *abat ba-shanah*) is repeated twice in the verse; apparently, there is an atonement sacrifice brought once a year, and its blood is used to make atonement on the golden incense altar as well. No date is given for this ceremony, other than it must be done annually. Nor is it described as part of a larger, more elaborate ceremony; only one sacrifice is mentioned, with its blood going on the altar's comers to "make atonement" on them.

After this extremely brief comment, two major events occur in the life of the people: the national transgression of the golden calf, and the individual sin of Nadav and Avihu, which resulted in their death (*Vayikra* 10:1-2). We discussed earlier the impact the collective sin had on the three festivals. Nadav and Avihu's sin, to be sure, is never stated precisely; when referring to it in retrospect, the Torah at times focuses on the uncommanded fire they brought,<sup>3</sup> and at other times, their coming near unto God without permission is portrayed as central.<sup>4</sup> In any event, the instructions regarding Yom Kippur are introduced with a verse whose focus is clearly the spatial trespassing of Aharon's sons (v. 1):

God spoke to Moshe right after the death of Aharon's two sons, who came near before God and died.

Coming near is not, in itself, a capital crime; it is the fact that it was not preceded by the proper sacrifices, offered in the proper way (vv. 2-3):

God said to Moshe: Speak to your brother Aharon, and let him not enter the sanctuary that is beyond the partition concealing the Ark, so that he may not die, since I appear over the Ark cover in a cloud. With the following [ceremony] may Aharon enter the sanctuary, with a young bull for a sin offering and a ram for a burnt offering...

This is not the place to enter into all the elaborate details of the day's ceremony; each element, from the incense cloud brought into the inner sanctuary to the sprinkling of the bloods in various spots around the *mishkan*, is quite literally dripping with significance. Nevertheless, we may make some general observations. From the end of the chapter, it is clear that two separate functions have merged: the atonement of the Tabernacle from the impurities which may have attached themselves over the year, and the atonement of the *kohanim* and the people from their sins (16:33):

[The High Priest] shall be the one to make atonement in the holy [inner] sanctuary, in the Communion Tent, and on the altar; he shall also make atonement for the priests and for the entire people of the community.

The aim of purifying the altar is not new; as noted earlier, we encountered it first at the end of *Parashat Tetzaveh*. However, it is now united with a new, post-golden calf purpose: to purify the people from their sins. The chapter closes with reference to this novel aspect of the day, introduced only after the people's experience proved that there was indeed atonement after transgression (v. 34):

[All this] shall be for you as a law for all time, so that the Israelites will gain atonement for their sins once each year.

The expression “once each year” (*abat ba-shanah*) explicitly links this function with the more narrow one of atoning for the altar mentioned in *Shemot* ch. 30, which employed the expression twice.

Returning to our original context of holidays, Yom Kippur is truly of a different sort. It is certainly not agricultural, as are the Festivals of Harvest and Ingathering. Nor is it strictly historical, in the way Pesach is: no particular event is explicitly commemorated on the tenth of Tishrei, although as we mentioned, *Chazal* and many subsequent commentators saw this date as the day Moshe received the second set of tablets, indicating that full atonement had been achieved. It is a unique holiday, literally offering the Jewish people the annual opportunity to cleanse themselves of their sins in the way our forefathers had done that first year in the wilderness. Rather than celebrating a particular *historical event*, it focuses on the *nature of our relationship with God*, on the renewed covenant based on patience and forgiveness. Our ability to stand, year after year, before God and assert that we are His people is possible only because God had agreed to give priority to His *middat ha-rabamim* over His *middat ha-din*. To take advantage of the opportunity is the challenge of the day, but Yom Kippur’s essence, undiminished if even every Jew fails to truly repent, is the offer of forgiveness, extended only because we are His nation.

### **The Fifth Holiday of *Emor* (*Vayikra* 23)**

By the time we arrive at the central and most complete treatment of the festivals in *Sefer Vayikra*, we are already familiar with most of them: the three pilgrimages, and Yom Kippur. Only one holiday is newly introduced in chapter 23: the first day of Tishrei, which came to be known as Rosh Hashanah.

God spoke to Moshe, telling him to speak to the Israelites and say: The first day of the seventh month shall be a day of solemn rest for you (*y'hiyeh lakhem shabbaton*), a remembrance of a *shofar*-blast, a holy convocation. Do not do any service work, and you will bring a fire-offering to God. (23:23-25)

No agricultural or historical connection is mentioned explicitly. We know of no event in the Torah which occurred on this day which this new holiday may commemorate. Nevertheless, without introduction, it suddenly appears in the full array of Jewish holidays.

Two textual clues suggest that we must see the first of Tishrei as connected to Yom Kippur. The first is somewhat technical: this brief portion is set off from the presentation of Yom

Kippur which follows by only a small break (*parashah setumah*, lit. “a closed portion”) In other words, as compared to some of the other, more significant divisions in the text (*parashah petuchah*), these two – the first and tenth of Tishrei – are presented as more closely linked than with any other holiday.

However, it is the second clue – a literary echo of a particular word – which necessarily connects these two holidays. In ch. 16, where the ceremonies of Yom Kippur are described in detail, the Day of Atonement is referred to by a unique designation: it is to be a *shabbat shabbaton* – a Sabbath of Sabbaths, a day of total rest (v. 31). When we reach the fuller treatment of the holidays in chapter 23, neither Pesach nor Shavuot is designated as a *shabbaton* – but the first of Tishrei (v. 24), as well as the tenth (v. 32), are.

These connections strongly suggest that already in the Torah, the first day of Tishrei is portrayed as a partner, or more appropriately, as a prelude, to Yom Kippur. In the previous section, we noted the origin of Yom Kippur, and its uniqueness as a holiday. But it is precisely that uniqueness which demands some preparation.

If we inspect the *shalosh regalim*, the three pilgrimages, we understand why they have no need for serious preparation. Pesach, as a holiday commemorating a historical event, virtually evokes its own emotion.<sup>5</sup> While the Torah imposes several commandments on us to remember and even re-experience the Exodus, it is the remembering itself, the anniversary of the event, which ineluctably elicits profound feelings of gratitude to Hashem for freeing us from the bondage of Egypt.<sup>6</sup> As regards the agricultural festivals, the religious feelings attendant to *chag ha-katzir* and *chag ha-asif* find their origin in the very performance of the agricultural acts mentioned by name, many of which have been going on for some time. The harvest or ingathering of bountiful crops over several weeks creates the situation, and perhaps even the need, to acknowledge God’s providence in our material fate.

Yom Kippur, in contrast, does not enjoy the benefit of either natural seasonal activity nor historical commemoration. As a day designated for renewing our relationship with Hashem, it requires more time and preparation, even a nurturing. Moreover, what Yom Kippur offers – the chance to repent and be granted atonement – is not always met enthusiastically; self-reflection and contrition are not human reflexes, nor can they always be turned on or off at will. Therefore, the Torah itself sensed the need for a pre-Yom Kippur

holiday, one which would help prepare the Jew for *teshuvah* and coax him on the path of authentic return. The notion of *aseret yemei teshuvah* is, on this reading, already in the Torah.

But what sort of holiday could achieve this? What sort of act or acts, performed a few days before the awesome and solemn Day of Atonement, could elicit genuine contrition? Rosh Hashanah is described merely as *zikbron teru`ah* – “a remembrance of a *shofar*-blast.” For the people, the only *shofar*-blast in their collective memory was almost a year before, when God descended onto Mount Sinai, amid thunder, lightning, and the sound of the *shofar*. As the trumpet heralds the arrival of the king, the ever-increasing sound of the *shofar* signaled the approach of the Master of the Universe to the top of Mount Sinai. The people, gripped with terror, retreated in fear from the base of the mountain, and asked Moshe to inform them of God’s word. Moshe, reluctant to act as intermediary, tried to allay the people’s fears and encouraged them to continue to listen to God directly (*Shemot* 20:17):

Do not be afraid. God only came to refine you, and so that His fear will be on your faces, so that you will not sin.

While God’s proximity to the people had multiple functions, Moshe focused on the prophylactic aspect of the Divine Presence: if the people have a palpable sense of God, they will naturally avoid sin. It may not be the ideal form of observance, but if we are concerned with training ourselves to observe the laws and avoid transgressions, the physical experience of God’s presence is a desirable state of affairs, in spite of the terror it instills in us.

This is what *zikbron teru`ah* is meant to elicit: the memory of the spectacular and overwhelming revelation of God to the Jewish people.<sup>7</sup> If the people are to begin their annual trek away from sin, recalling the arrival of God in the world and the immediacy of His Presence could provide the most fitting motivation.<sup>8</sup> This recollection is not a guarantee that each individual will repent, yet it serves its primary purpose: to prepare Jews collectively for the Day of Atonement, preventing them from standing before God on that solemn day bereft of any serious effort to dispel their sinfulness and begin a life of greater *shemirat hamitzvot*. The *shabbaton* of Rosh Hashanah readies us for the *shabbat shabbaton* of Yom Kippur.

### ***Chag Ha-asif* Transformed**

If Yom Kippur requires a prelude to assist in the difficult introspective process, it no less demands that there be some actual consequences for all its effort. Were Yom Kippur to

come and go without some lasting effect, it would render the entire *teshuvah* of the day suspect. The tenth of Tishrei naturally has an impact on the holiday which follows so immediately on its heels: *chag ha-asif*. Just as the Day of Atonement created the holiday of Rosh Hashanah before it, it similarly transformed the holiday of Sukkot after it.

The Torah's presentation of Sukkot in *Parashat Emor* is a well-known conundrum. It first describes Sukkot as an eight day festival (v. 33-36), then seemingly "ends" the unit on holidays with the concluding line "These are God's special times which you must keep as sacred holidays..." (v. 37-38), a clear echo of the opening verse. However, almost as an afterthought, the chapter then concludes with five verses detailing the laws of Sukkot: sitting in the sukkah for seven days, and bringing the four species (*lulav*, *etrog*, *hadass*, and *aravah*) with which to rejoice before God. No commentator is able to ignore this textual paradox. Once again, it is the literary clues of the Torah itself which offer an answer. Aside from the newly introduced laws of Sukkot which comprise that final section, two other facts of the text distinguish this latter treatment of the holiday:

- 1) Similar to Rosh Hashanah, the first and eighth days of this holiday are called *shabbaton* (v. 39), a designation not found in the earlier discussion of Sukkot (v. 33-36); and
- 2) the word which begins this five-verse unit is *akb*, the same word which introduced the tenth of Tishrei (Yom Kippur) earlier in the chapter (v. 27).

Thus, the Torah uses these key words to signal that this holiday is integrally related to the Day of Atonement. However, unlike Rosh Hashanah, which was *created* to serve the needs of Yom Kippur, Sukkot already existed: it was the *chag ha-asif* of *Sefer Shemot*. The effects of Yom Kippur are seen not in the invention of another holiday, but in the *transformation* of the existing Ingathering Festival already in the calendar. Sukkot, in a word, partakes of two dimensions: it remains in its original nexus of the three pilgrimages, with its agricultural moorings, yet it now has the added dimension of being part of the Tishrei holidays which revolve around their central axis of Yom Kippur and the attempt to repair our relationship with God.

This is why the Torah "closed" the discussion of the holidays after only mentioning the eight day festival of Sukkot. By employing that literary ending (v. 37-38), the original aspect of the holiday is preserved; with no particular laws, it is a festival simply by virtue of its being at the time of the ingathering. This is likely the significance of calling it the festival

of booths (*sukkot*): as farmers prepared the harvest for storage, whether it was turning grain into flour at the mill or olives into oil at the press, it was customary to live in small booths in the fields, both to remain close to the work, and to have a place to rest and eat in the middle of the day's labor. In this original context, the booth connects to the agricultural character of the holiday. This appellation does not, however, necessarily imply a commandment to sit in these booths; just as the names *chag ha-katzir* or *chag ha-asif* do not require that one perform such activities on the holiday itself, so too does *chag ha-sukkot* not necessarily imply sitting in a sukkah.

However, after the *akb*, after Yom Kippur has its effect, a new dimension is added to this holiday of storing. First, every Jew, already on his pilgrimage, is asked to bring four species to the Temple and rejoice before God (v. 40). These species, particularly the willows and myrtle branches, must be cut just prior to their use, if they are to survive the journey. In other words, it is not sufficient to prepare for this commandment during the week between Rosh Hashanah and Yom Kippur, when the feelings of repentance are fresh and intense. The true gauge of Yom Kippur's value is what one does after the tenth of Tishrei, how one acts *after* the atonement has presumably been granted.

Furthermore, the booth itself is converted from a mere agricultural accouterment to a commemoration of the divine providence the Jewish people enjoyed continually in the wilderness. Whereas earlier the name *chag sukkot* did not necessarily translate into an actual imperative to sit in a sukkah during the festival, now the commandment is clear (v. 42-43):

For seven days you will dwell in *sukkot*; everyone included in Israel will dwell in sukkot, so that future generations will know that I had the Israelites live in *sukkot* when I brought them out of Egypt.

The booths of the field have now been transformed into an integral aspect of the holiday: *sukkot* are not merely a convenient designation for the holiday, but have become an actual seven-day dwelling place for all Jews. This “reification” of *chag ha-sukkot* from a mere title to a real activity is meant to require all Jews to re-live the life in the wilderness, when the people were radically dependent on God. In this respect, the original context of Sukkot – acknowledging the divine providence in the annual harvest – is not supplanted but intensified and deepened; to pay homage to God for the agricultural yield, a physical pilgrimage is insufficient. That acknowledgment must be embodied in living a life of real dependence, if only for seven days.<sup>9</sup>



There is another, even more symbolic aspect to this actualization of the term *sukkot*. Accepting the traditional dating of the events surrounding the sin of the golden calf, that first year Moshe came down with the second tablets on the tenth of Tishrei. From that point forward, the people busied themselves with fashioning and building the *mishkan*, the tabernacle in which God's *shekbinah* would dwell. As is well known, the *mishkan* was an *obel*, a kind of portable tent, composed of firm sides and a removable top which could be easily assembled and disassembled. To show the authenticity of their *teshuvah*, the people built not a golden idol, but, if you will, a booth for God.

Every year, to re-capitulate and re-experience that first Yom Kippur, each Jew must show his commitment by building a temporary dwelling: not for God, but for himself. Just as the Jews of that fateful first year in the wilderness expressed their contrition by devoting themselves to the task of building a dwelling place for God, so too must all Jews henceforth build a dwelling which shows that their *teshuvah* is genuine. Only once were the Jews asked to build a tabernacle for the divine; from now on, a human tabernacle, a *sukkah*, can be built to show the people's willingness to live under the aegis of God, relying on His providence and dependent on His benevolence.

### Conclusion

Sukkot, as we have shown, truly sits at the intersection of two groupings. On the one hand, *chag ha-asif* fits naturally within the triad of pilgrimages, rejoicing before God for the bounty He has bestowed on the land and its yield. However, Sukkot is to be understood as well within the more unique nexus of the Tishrei holidays, which have Yom Kippur as their central axis. As a clear manifestation of an atonement process which began on Rosh Hashanah and reached its crescendo on the tenth of Tishrei, Sukkot is an agricultural holiday transformed. Offering God a percentage of the produce of one's fields is not enough; it must be more specifically the four species. Coming to God's house is not enough on the pilgrimage; one must now build a temporary dwelling which accentuates the radical nature of one's dependence on the Creator and Sustainer. If Yom Kippur indeed transformed us, then it also must transform a relatively nondescript agricultural festival into a holiday of indescribable joy: the joy which results from the recognition that we constantly live under God's guiding providence.

### Notes

1. Thus, the Decalogue records God as being “a jealous God” (20:5), one who will not allow one who takes His name in vain to go unpunished” (20:7). The laws of *Parashat Mishpatim* echo this severity, such as the punishment for oppressing the disadvantaged (22:21-23):  
Do not mistreat a widow or an orphan. If you mistreat them, and they cry out to Me, I will hear their cry. I will [then] display My anger and kill you by the sword, so that your wives will be widows, and your children, orphans.  
God’s compassion for the unfortunate translates into a swift, measure-for-measure punishment against the oppressors.
2. Thus, Rashi (on *Shemot* 34:29) quotes the midrash that Moshe received the second Tablets and finally achieved forgiveness for the sin of the golden calf on the tenth of Tishrei, the date of the (future) Day of Atonement.
3. *Bemidbar* 3:4, 26:61.
4. *Vayikra* 16:1.
5. Although here, too, one may reasonably argue that the *arba`ab parshiyot*—*Shekalim*, *Zakbor*, *Parah*, and *Ha-bodesh*—were instituted by Chazal to prepare us spiritually and religiously for Pesach.
6. This posture of gratitude is expressed most clearly in the fact the *korban pesach*, the paschal sacrifice, is technically within the sacrificial category of *shalmei todab*, thanksgiving offerings (*Vayikra* 7:11-15).
7. The appropriation of the revelation at Sinai to be a preparatory aid for Yom Kippur may explain why the Torah itself never mentions a formal commemoration of that event. It is Chazal who make the connection between Shavuot and *mattan Torah* (see *Shabbat* 86a-87a). Of course, the fact that this spectacular revelation did not prevent the sin of idolatry barely seven weeks later may have contributed to the Torah’s decision not to commemorate it explicitly.
8. The theme of *malkhuyot* (kingship), so dominant in the Rosh Hashanah liturgy, is thus a natural extension of *shofarot* (*shofar*-blasts). This connection is certainly explicit in the eschatology of the Later Prophets (e.g. *Malakbi*).
9. I heard from Rabbi J. J. Schacter, in a discussion of *Kinot* on Tisha B’Av, that Rabbi Joseph B. Soloveitchik ז”ל understood the notion of “joy” as an intellectual cognizance of this *hashgacha peratit*. Thus, when the gemara in *Berakhot* (60b) searches for the significance of the mishnah’s claim “to bless [God] for the good as well as for the bad,” Rava answers that one “should accept the bad with joy.” The Rav ז”ל understood this not as an emotional prescription, but as an intellectual awareness that just as the good in our lives is not random, we must be prepared to accept that the misfortunes in our lives are similarly directed from above. Similarly, the Torah’s directive to rejoice on the holidays, and on Sukkot in particular (*Devarim* 16:14-15), is not a command of one’s emotions, but a prescription for correct intellectual belief.

## Shabbat on Tuesday

Rabbi Yosef Kanefsky

To our friends, the Broydes:

Tonight your shul is celebrating their incredible good fortune of having you as their leaders, visionaries and guides. They are expressing their appreciation of your integrity as human beings and as Jews, your knowledge in a wide variety of disciplines, and your wisdom in giving good counsel. These are the same qualities that we, your friends and admirers in the rabbinic community, have come to cherish in you both. May God bless your family and your community with years of strength, happiness and peace, (and bless you, Michael, with the desire to occasionally remove your tie.)

Yosef

Sure, Shabbat is a terrific thing. To borrow the Talmud's image, it is the special gift that God gave us from His treasure vault. Shabbat gives us time with family and with community. It enables us to carve out time to refresh, to study, to pick up where we last left off in our never-ending search for God and for meaning. I think it's safe to say that our never-say-rest generation is in a position to derive more benefit from Shabbat than has any other in human history. Yet it often strikes me that there's something missing in the way we observe Shabbat. There is often a failure to see the Shabbat forest for its trees.

Let me pose the following questions: If the Jew observes Shabbat and the world doesn't know it, has the Jew observed Shabbat? If the world is unaffected and unchanged by our Shabbat, have we really accomplished God's purpose in having commanded us to observe it? If the answer to these questions is "no" (and I think it is), then there is another vital and exciting dimension of Shabbat that we need to explore.

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It's a dimension that we'll call "observing Shabbat on Tuesday". We'll begin by supporting the premise that Shabbat was designed by God to have impact beyond the Children of Israel, and beyond the 24 hours of Saturday. This is done through reminding ourselves of what the core religious experience of Shabbat actually is. As the Torah teaches us repeatedly, the core experience of observing Shabbat is that of mimicking the Divine work schedule. "Six days you shall work, and the seventh is Shabbat unto God. On it you shall do no work, for in six days God created the heavens and earth, and on the seventh He rested."

And toward what end do we replicate, over and over again, this seven-day framework pattern within which God created the universe? It is toward the end of recognizing, ever more deeply with each successive repetition of the cycle, that we are employees in the Divine workshop; employees who have been charged with preserving and enhancing our heavenly employer's project. It is thus on Tuesdays and Thursdays and Sundays that the impact of our Shabbat observance must be felt.

Let's take an example. On Shabbat we do not write. We do not write because we are resting from our creative labor as God rested from His. But the ultimate objective of our refraining from writing on the seventh day is our realization as to how we should write on the other days. Through the consciousness aroused on Shabbat, we come to understand that when we do write, we are obliged to do so in a way that would meet God's exacting standards. We write only the truth and do not obfuscate. We write only well of others, giving them the benefit of the doubt whenever possible. Our writing is free of offensive language and insensitive references. We recognize that we are writing on God's letterhead.

On Shabbat we do not disturb the natural environment. We do not pluck a blade of grass, nor even kill an insect. We leave the earth and its resources alone, for the day is a sweeping expression of our breaking from human industrial activity. Again, though, the objective is not ultimately fulfilled on Saturday. It is fulfilled on Tuesday, when we interact with the natural world that God created and commanded us to subdue. It is fulfilled when we balance our God-given license to bend our environment to do our will, and our God-inspired sense of responsibility to the humans who will inhabit this world after us. In the end, this is the meaningful manifestation of Shabbat observance.

This same approach can be taken to virtually every aspect of technical Shabbat observance. Shabbat is our reminder that God is the project supervisor over all the work we do. Our primary consideration in deciding what we do and how we do it is whether this is the way God wants it done. Shabbat is a terrific thing. So what are you doing next Tuesday?



## God's Attributes and the Covenant at Mount Sinai

Rabbi Menachem Leibtag

No matter how one explains the story of *chet ha-egel* [the sin of the Golden Calf], we encounter a problem.

If we understand (as the *psukim* seem to imply) that *Bnei Yisrael* truly believed that it was this 'golden calf' (and not God) who took them out of Egypt – then it is simply hard to fathom how an entire nation would reach such a senseless conclusion!

But if we claim (as many commentators do) that Aharon had good intentions, for he only intended for the *egel* to be a physical representation of God (who took them out of Egypt) – then why is God so angered to the point that he wants to destroy the entire nation!

In the following *shiur*, we look for the 'middle road' as we attempt to find a 'logical' explanation for the events as they unfold, based on our understanding of the overall theme of *Sefer Shmot*.

### Introduction

According to the popular Midrash, quoted by Rashi (see 32:1 '*ba-shešb*'), *Bnei Yisrael's* miscalculation of Moshe's return by one day led to the entire calamity of *chet ha'egel*. However, when one examines the details of this story (as other commentators do), a very different picture emerges that provides a more 'logical' explanation for the people's request.

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Let's examine the events as they unfold in *Parshat Ki-tisa* in light of (and as a continuation of) the events that transpired at the end of *Parshat Mishpatim* (see 24:12-18).

To do so, we must begin our study by quoting the Torah's description of Moshe's original ascent to *Har Sinai* for forty days, noting how Moshe never provided the people with an exact date of his expected return:

And God told Moshe, come up to Me on the mountain... then Moshe ascended God's Mountain. To the elders he said: "**Wait here** for us, **until we return** to you. Behold, Aharon and Chur are with you, should there be any problems, go to them..." (see 24:12-14).

Carefully note how Moshe had informed the elders that he was leaving "until he returns," without specifying a date! Even though several *psukim* later *Chumash* tells us (i.e., the reader) that Moshe remained on the mountain for forty days (see 24:18), according to '*psbat*,' the people have no idea how long Moshe would be gone for.

*[And most likely, neither did Moshe or Aharon. It is important to note that Rashi's interpretation carries a very deep message re: the nature of patience and sin, but it is not necessarily the simple psbat of these psukim.]*

### **A Logical Conclusion**

Considering this was not the first time that Moshe had ascended *Har Sinai* to speak to God (see 19:3,20; 24:1,2); and in each previous ascent Moshe had never been gone for more than a day or two – *Bnei Yisrael* have ample reason to assume that this time he would not be gone much longer. After all, how long could it possibly take to receive the "*luchot*, Torah, & *mitzva*" (see 24:12): a few days, a few weeks?

Days pass; weeks pass; yet Moshe does not return! Add to this the fact that the last time that *Bnei Yisrael* saw Moshe, he had entered a cloud-covered mountain consumed in fire (see 24:17-18), hence – the people's conclusion that Moshe was 'gone' was quite logical. After all, how much longer can they wait for?

Assuming that Moshe is not returning, *Bnei Yisrael* must do something – but what are their options? To remain stranded in the desert? Of course not! They have waited for Moshe long enough. To return to Egypt? *chas ve-shalom* (of course not!). That would certainly be against God's wishes; and why should they return to slavery! To continue their journey to *Eretz Canaan*? Why not! After all, was this not the purpose of *Yetziat Mitzraim* –



to inherit the Promised Land (see 3:8,17 6:8)? Furthermore, that is precisely what God had promised them numerous times, and most recently in *Shmot* 23:20?

This background helps us understand why *Bnei Yisrael* approached Aharon, whom Moshe had left in charge (see 24:13-15) and why their opening complaint focused on their desire for new leadership – to replace Moshe. Let's take a careful look now at the Torah's description of this event:

When the people saw that Moshe was **so delayed** in coming down from the mountain, the people gathered on **Aharon** and said to him: Come make us an **elohim** that will **lead us** [towards the Promised Land] **because** Moshe, who took us out of the land of Egypt [and promised to take us to *Eretz Canaan*], we do not know what has happened to him (32:1).

As your review this *pasuk*, note the phrase “*elohim asher yelchu lefaneinu.*” In other words, note how the people do not request a new god, but rather an **elohim** [some-one /or thing] that that will ‘walk in front,’ i.e. that will **lead** them [to the Promised Land].

To understand how ‘logical’ this request was, we need only conduct a quick comparison between this *pasuk* and God's earlier promise (in *Parshat Mishpatim*) that He would send a “**mal'ach**” to lead them and help them conquer the Land:

Behold, I am sending a **mal'ach – lefanecha** [before you] – to guard you and **bring you to the place** that I have made ready...  
(see 23:20 / Note the Hebrew word ‘**lefanecha**’?)

And two psukim later, God continues this promise:

*ki yelech mal'achi lefanecha* – For My angel will **go before you**, and bring you to the Land... (23:23)  
[Note again – **lefanecha**, and the word **yelech**.]

Recall as well that this was the last promise that they had heard before Moshe ascended Har Sinai. When *Bnei Yisrael* first heard this promise, they most probably assumed that this **mal'ach** would be none other than Moshe himself. [Note how the **mal'ach** must be someone who commands them, leads them, while God's Name is in his midst (see 23:21-22, compare 19:9).]

Now that Moshe is presumed dead, the people simply demand that Aharon provide them with a replacement for (or possibly a **symbol** of) this **mal'ach**, in order that they can **continue** their journey to the Promised Land. Note once again:

Come make us an **elokim** – *asher yelchu lefaneinu!* (32:1) [Again, note *yelchu* & *lefaneinu*]

In fact, from a simple reading of the text, it appears as though Aharon actually agrees to this request:

And Aharon said to them: Take off your gold...and bring them to me... He took it from them and cast in a mold and made it into a molten calf... (32:2-4).

If our interpretation thus far is correct, then the people's statement (upon seeing this Golden Calf): "This is your god O' Israel – who brought you out of the land of Egypt" (32:4), does not need to imply that this Golden Calf actually took them out of Egypt. [After all, they had already stated in 32:1 that Moshe had taken them out of Egypt!] Rather, the people are simply stating their own perception – that this **egel** (which Aharon had just made) represents the God who had taken them out of Egypt and will hopefully now act as His **mal'ach** who will lead them on their journey to *Eretz Canaan*.

In other words, in Bnei Yisrael's eyes, the **egel** is not a **replacement** for God, rather a **representation** of His Presence!

[See a similar explanation by Rav Yehuda HaLevi in *Sefer HaKuzari* I.77! See also Ibn Ezra & Ramban on *Shmot* 32:1]

This would also explain Aharon's ensuing actions: To assure that the **egel** is properly understood as a **representation** of God, Aharon calls for a celebration:

And Aharon saw, and he built a **mizbeiach** in front of it, and Aharon called out and said: A celebration **for God** [note: *be-shem havaya*] tomorrow (32:5).

Furthermore, this "celebration" parallels the almost identical ceremony that took place at *Har Sinai* forty days earlier – when *Bnei Yisrael* declared "*na'aseh ve-nishma*." To verify this, we'll compare the Torah's description of these two ceremonies:

- In *Parshat Mishpatim* – after Moshe sets up 12 monuments:  
...and they **woke up early** in the morning, and they **built** a **mizbeiach** at the foot of the mountain and twelve monuments for the twelve tribes of Israel... and they offered **olot** and sacrificed **shlamim** (24:4-5).
- In *Parshat Ki-tisa* – after Aharon forges the **egel**:  
...and they **woke up early** in the morning [after Aharon had **built** a **mizbeiach** in front of it /32:5], and they offered **olot** and sacrificed **shlamim**... (32:6).

Note the obvious parallels: waking up in the morning, building a *mizbeiach* in front of a 'symbol' (representing their relationship with God), offering *olot & shlamim*, and "eating and drinking" (compare 24:11 with 32:6).

Furthermore, recall how that ceremony included Moshe's reading of the "*divrei Hashem*" – which most likely included the laws of *Parshat Mishpatim* – including God's promise to send a *mal'ach* to lead them (see 23:20-23. Hence, not only are these two events parallel, they both relate to *Bnei Yisrael's* acceptance of a *mal'ach* that will lead them to the land [*“asher yelchu lefaneinu”*]!

Finally, note how **both** ceremonies include a *mizbeiach* that is erected in **front** of a **symbol** representing God:

- In *Parshat Mishpatim*, the symbol is the twelve monuments, possibly representing God's fulfillment of *brit avot*.
- In *Parshat Ki-tisa*, the symbol is the *egel*, representing the *mal'ach* (which God had promised) that will lead them.

[Note, that this parallel actually continues in the *mishkan* itself! In front of the *mizbeiach* upon which *Bnei Yisrael* offer *olot & shlamim*, we find the *aron & keruvim* – that serve as symbol of God's covenant with *Bnei Yisrael* at *Har Sinai*. Later, this very *aron* leads *Bnei Yisrael* through the desert towards the land (see *Bamidbar* 10:33) as well as in battle (see *Bamidbar* 10:35 & *Yehoshua* 6:6-10). This can also explain why the Torah refers to this calf as an "*egel masecha*" (see 32:4) – implying a 'face covering,' hiding the true face, but leaving a representation of what man can perceive.]

### Why 'Davka' an Egel?

Even though our interpretation thus far has shown how the *egel* can be understood as a symbol of God's Presence, we have yet to explain why specifically an *egel* is chosen as that representation. *Chizkuni* offers an ingenious explanation, based on yet another parallel to *Ma'amad Har Sinai*.

Recall that at the conclusion of the ceremony at *Har Sinai* (24:1-11), **Aharon**, Nadav, Avihu, and the seventy elders are permitted to 'see' God:

And they saw *Elokei Yisrael* and – "*tachat raglav*" – under His feet was like a shining sapphire... (24:10)

Obviously, God does not have 'feet'! However, this description reflects a certain spiritual level. Moshe, for example, achieved the highest level – "*panim be-panim*" – face to

face. In contrast, the seventy elders perceived “*tachat raglav*” -(God’s feet), reflecting a lower spiritual level.

[This may relate to the people’s request for a more distanced relationship, where Moshe served as their intermediary (see 20:15-18 and *Devarim* 5:20-26).]

Although it is very difficult for us to comprehend the description of God in such physical terms, *Chizkuni* (on 32:4) notes that we find a very similar description of the *Shchina* in *Sefer Yechezkel*:

And their feet were straight, and the bottom of their **feet** were similar to the feet of an **egel**... (*Yechezkel* 1:7).

[See also the textual parallel of “*even sapir*” / compare *Yechezkel* 1:26 with *Shmot* 24:10.]  
[Alternately, one could suggest that an **egel** was chosen to represent the **parim** which were offered on *Har Sinai* during the ceremony when God informed them about the **mal’ach** (see 24:5/ note that an *egel* is a baby ‘*par*’).]

So if the people’s original request was indeed “legitimate,” and Aharon’s “solution” a sincere attempt to make a representation of God – why does God become so angered? Why does He threaten to destroy the entire nation?

To answer this question, we must once again return to our parallel with *Parshat Mishpatim*.

### ***A Contrasting Parallel***

Despite the many parallels noted above, we find **one** additional phrase that is unique to the story of *chet ha-egel*, and creates (what we refer to as) a contrasting parallel. Note the final phrase of each narrative:

- At *Har Sinai* (in *Parshat Mishpatim*):  
...and they beheld God and they **ate** and **drank** (24:11).
- At *chet ha-egel* (in *Parshat Ki-tisa*):  
they sat to **eat** and **drink** and they rose **letzachek** (32:6).  
[We call this a “contrasting parallel.”]

It is not by chance that many commentators find in this word the key to understanding *Bnei Yisrael*’s sin.

Even though the simple translation of ‘*letzachek*’ is laughing or frivolous behavior, Rashi raises the possibility that it may refer to licentiousness (or even murder / see Rashi

32:7 and *Breishit* 39:17). Certainly, *Chazal* understand this phrase to imply more than just “dancing.” To Aharon’s dismay, what began as a quiet ceremony turned into a “wild party.” The celebration simply seems to have gotten out of hand. [Soon we will explain why.]

To support this understanding of *letzachek*, let’s “jump ahead” to the Torah’s account of Moshe’s descent from *Har Sinai* (when he breaks the *luchot*), noting what Moshe and Yehoshua hear from the mountain.

First of all, note Yehoshua’s initial reaction to the “loud noise” that he hears:

And Yehoshua heard the sound of the people – *be-rei’o* – screaming loudly, and said to Moshe: there are sounds of **war** in the camp. But Moshe answered – these are not the sounds of triumphant, nor are they the groans of the defeated, they are simply sounds [of wildness/ frivolity] that I hear (32:17-18).

[Note *Targum Unkelus* of “*kol anot*” in 32:18 – *kol de-mechaychin*, compare with *Tirgum* of *letzachek* in 32:6 of *le-chaycha*, clearly connecting the loud noises to the loud laughing of “*va-yakumu letzachek*”!

Note also the word *be-rei’o* – from shorash *‘lehariya* – to make a sound like a *tru’a*, but the spelling is *r.a.a.h.* reflecting its negative context like the word *‘ra’a* = bad or evil! Compare also with 32:22!

The noise from this “wild party” was so loud that it sounded to Yehoshua like a war was going on!

Note as well what provoked Moshe to actually break the tablets: “And he saw the *egel* and the **dancing** circles and became enraged” [*va-yar et ha-egel u-mecholot...*] (32:19).

Moshe was upset no less by the “wild dancing” than by the *egel* itself! [See commentary of *Seforno* on this *pasuk*.]

With this in mind, let’s return now to study the Torah’s account of God’s anger with *chet ha-egel*, as recorded earlier in chapter 32.

First of all, as you review 32:5-7, note how God only becomes angry (and tells Moshe to go down) on the day **after** Aharon made the *egel*! Now if Bnei *Yisrael*’s primary sin was making the *egel*, God should have told Moshe to go down on that very same day. The fact that God only tells him to go down on the **next** day, and only after we are told that – “*va-yakumu letzachek*” – supports our interpretation that this phrase describes the primary sin of *chet ha-egel*.

### ***Back to Old Habits***

What led to this calamity? What was this noise and “wild party” all about? Even though it is based on ‘circumstantial evidence,’ one could suggest the following explanation:

Even though the celebration around the *egel* initiated by Aharon began with good intentions (see 32:5 – “*chag l-Hashem*”), for some reason, *Bnei Yisrael*’s behavior at this party quickly became wild and out of control. Apparently, once the drinking, dancing, and music began, the nation impulsively reverted back to their old ways, regressing back to their Egyptian culture. [Even though this may not sound very logical, as most of us are aware, it is unfortunately human nature.]

To understand why, let’s return to our discussion of *Bnei Yisrael*’s spiritual level in Egypt, based on *Yechezkel* chapter 20, and as discussed in length in our *shiurim* on *parshat V’a’era* and *Beshalach*:

Before the exodus, *Bnei Yisrael* were so immersed in Egyptian culture that God found it necessary to demand that they ‘change their ways’ in order to prepare for their redemption (see *Yechezkel* 20:5-9). Even though they did not heed this plea, God took them out of Egypt in the hope that the miracles of *Yetziat Mitzrayim*, and their experiences on the way to *Har Sinai* would create a ‘change of heart’ (see TSC *shiur* on *Parshat Beshalach*). When they arrived at *Har Sinai*, *Bnei Yisrael*’s proclamation of *na’aseh ve-nishma* (see 19:3-8 & 24:7) showed God that they were finally ready to become God’s special nation.

### ***The Last Straw***

Unfortunately, the events at *chet ha-egel* forced God to change this perception. *Bnei Yisrael*’s inexcusable behavior at this celebration reflected the sad fact that despite His numerous miracles, deep down, nothing had really changed. God became more than angered; He became utterly disappointed. All of God’s efforts to ‘train’ His nation (since *Yetziat Mitzrayim*) seemed to have been in vain.

In summary, we have suggested that there were **two** stages in *Bnei Yisrael*’s sin at *chet ha-egel*.

- The first – making a physical representation of God – even though this was improper, it was understandable.
- The second – the frivolous behavior after the eating and drinking at the conclusion

of the ceremony – was inexcusable.

We will now show how these two stages are reflected in God's 'double statement' to Moshe (32:7-10) in the aftermath of this sin:

(1) 32:7-8 / God's first statement:

And **God spoke to Moshe**: Hurry down, for your people have acted basely [*“ki shibhet amcha”*]...they have turned astray from the way that I commanded them [see 20:20!] – they made an *egel masecha* [a representation of Me]...

(2) 32:9-10 / God's second statement:

And **God spoke to Moshe**: I see this nation, behold it is an *‘am keshev oref’* [ a **stiff necked people**]. Now, allow Me, and I will kindle My anger against them and I will destroy them and I will **make you** a great nation [instead].

[Note, that *“va-yomer Hashem el Moshe”* is repeated **twice**, even though Moshe does not speak in between.]

God's first statement describes the act that began with good intentions but was nonetheless forbidden [see *Shmot* 20:20 – *“lo ta'asun iti elobei kesef...”*]. Although this sin requires rebuke and forgiveness (see 32:30), it was not severe enough to warrant the destruction of the entire Nation.

God's second statement is in reaction to *“va-yakumu letzachek,”* i.e. their frivolous behavior. Because of this regression to Egyptian culture, God concludes that they are indeed a “stiff-necked people” – **unable to change their ways**. Therefore, God concludes that He must destroy *Bnei Yisrael*, choosing Moshe to become His special nation instead.

Similarly, these two stages are found in the conversation between Moshe and Aharon in the aftermath of this event:

And Moshe said to Aharon: What did this people do to you that **caused** you to bring upon them such a terrible sin?  
...Aharon answered: You know this people – *“ki ve-ra hu”* – their ways are evil (32:21-22).

One could suggest that Aharon's conclusion is based on his previous experiences with *Bnei Yisrael*. It is clear, however, that Moshe understands that Aharon had no intention that this situation would get out of hand. After all, Aharon himself is not punished. In fact, he later becomes the *Kohen Gadol* [High Priest].

Once Aharon had explained to Moshe what transpired (32:22-24) in the **first** stage, Moshe already understood what happened in the **second** stage:

And Moshe “saw” the people – “*ki paru'a hu*” – that they became wild (out of control), for Aharon had caused them to become wild [to the point of] their demise, ***be-kameihem*** – when they **got up** [to dance/ possibly reflecting “*va-yakumu letzacheke*”! [see 32:25].

Finally, the **two** levels that we later find in *Bnei Yisrael's* actual punishment may also reflect these two stages. First, the three thousand ‘instigators’ who incited this licentious behavior (stage 2) are killed. For that rebellious group, there is no room for forgiveness (32:26-29). However, on the second day, Moshe approaches God to beg forgiveness for the rest of the nation (see 32:30-32). Even though they had sinned, Moshe hopes to secure them a pardon – because their actions began with good intentions (stage 1).

Ultimately, Moshe will receive this pardon – but it won’t be very simple.

### **Delayed Punishment or Forgiveness**

Even though God had originally agreed to *Moshe Rabeinu's* first request not to totally destroy His nation (see “*va-yechal Moshe...va-yinachem Hashem al ha-ra'a...*” / 32:11-14), his next request for forgiveness in 32:31-32 clearly indicates that the execution of the 3000 ‘instigators’ did not absolve the rest of the nation.

To our surprise, Moshe’s second *tefilla* (in 32:30-32) does not achieve forgiveness! To prove this point, take a careful look at God’s response to Moshe’s second *tefilla*:

And God told Moshe: He who has sinned to Me shall be punished. Now go **lead** the people to [the place] that I said [i.e. to *Eretz Canaan*], behold My angel will accompany you, and on the day that I will punish you, I will punish you (32:34).

Note that God instructs Moshe to lead *Bnei Yisrael* to the Promised Land, thus fulfilling *brit avot* (as Moshe demanded in 32:13), but He still plans to later punish them for *chet ha-egel*, at the time that He finds fit. Note however, that even though *brit avot* will be fulfilled, *brit Sinai* remains ‘broken’! To prove this, note how chapter 33 explains what God told Moshe in 32:34:

And God said to Moshe – Set out from here, you and the people that you have brought out of Egypt to the Land that I swore to Avraham, Yitzchak, and Yaakov (*brit avot*)...but **I will not go in your midst** for you are a stiff-necked people, lest I destroy you on the journey (see 33:1-3).

In contrast to God’s original promise at *Matan Torah* that He will send a ***mal'ach*** with **His name** in their midst [“*shmi be-kirbo*” / see 23:20-23], now He emphatically states



that He will no longer be with them – “*ki lo a'aleh be-kirbecha*” (33:3). Due to *chet ha-egel*, *Bnei Yisrael* are no longer worthy of the special relationship of *brit Sinai*.

This ‘downgrade’ is reflected in God’s next commandment that *Bnei Yisrael* must remove “their jewelry” that they received on Har Sinai, undoubtedly the symbol of the high level they reached at *matan Torah* (see 33:5-6). Furthermore, Moshe must now move his own tent **away** from the camp, in order that God can remain in contact with Moshe (see 33:7).

### Where Do We Go From Here?

A very strange predicament has arisen (that often goes unnoticed). Even though *Bnei Yisrael* will not be destroyed (thanks to *brit avot*), God instructs Moshe to continue on to *Eretz Canaan* **without** *brit Sinai*. [Imagine, a Jewish State without ‘*kedusha*,’ several thousand years before Theodore Herzl!]

As unthinkable as this sounds, God’s decision is very logical. Considering His conclusion that *Bnei Yisrael* are an “*am keshe oref*” – a stiff-necked people (see 32:9, 33:5), and hence will not change their ways, there appears to be no other solution. After all, should He keep His *Shchina* in their midst, *Bnei Yisrael* would not be able to survive.

Fortunately for *Am Yisrael*, *Moshe Rabeinu* is not willing to accept God’s decision. As we will see, his next argument will set the stage for the declaration of God’s *midot ha-rachamim*:

And Moshe beseeched God: “Look, you have instructed me to lead this people... but recognize that this nation is **Your** people!”

God answered: “I will lead [only] you.”

But Moshe insisted: “*Im ein panecha bolchim al ta'alenu mi-zeh* – Unless **Your presence will go with us**, do not make us leave this place. For how should it be known that Your people have gained Your favor unless You **go with us**...” (33:12-16)

[These *psukim* are quite difficult to translate, I recommend that you read the entire section inside.]

Note how Moshe demands that God keep His Presence [*Shchina*] with them, threatening a ‘sit down strike’ should God refuse. Most powerful is Moshe’s demand that God recognize that they are His people – “*u-re'eh ki amcha ha-goy ha-zeh*” (see 33:13). God [*kiinyachol*] now faces a most difficult predicament.

- On the one hand, He cannot allow His *Shchina* to return – for according to the terms

of **brit Sinai** – this “*am ksheb oref*” could not survive His anger, and would eventually be killed.

- On the other hand, He cannot leave them in the desert (as Moshe now threatens), for **brit avot** must be fulfilled!
- But, He cannot take them to the land, for Moshe is not willing to lead them **unless** He returns His **Shchina**.

Something has to budge! But what will it be?

It is precisely here, in the resolution of this dilemma, where God’s 13 **midot ha-rachamim** enter into the picture.

### A New Covenant

Let’s take a look now at God’s response to Moshe’s request. Note that here is first time in *Chumash* where God introduces the concept of divine mercy:

And God said to Moshe, “I will also do this thing that you request... [to return His **Shchina**” / Moshe then asked that God show His Glory -] then God answered: “I will pass all my goodness before you, and I will proclaim **My name** before you, and **I will pardon** he whom I will pardon and **I will have mercy** on he to whom I give mercy (ve-chanoti et asher achon, ve-richamti et asher arachem)...” (33:17-22).

In contrast to His original threat of immediate punishment should they sin (if God is in there midst), now God agrees to allow *Bnei Yisrael* a “second chance” (should they sin). This divine promise sets the stage for the forging of a **new** covenant through which **brit Sinai** can be re-established, for it allows the *Shchina* to return without the necessity of immediate severe punishment.

Therefore, God instructs Moshe to ascend *Har Sinai* one more time, in a manner quite parallel to his first ascent to *Har Sinai* [but with significant minor differences], to receive the **second luchot** (see 34:1-5 and its parallel in 19:20-24).

As we should expect, the laws should and do remain the same. However, their **terms** must now be amended with God’s attributes of mercy. Hence, when Moshe now ascends *Har Sinai*, it is not necessary for God to repeat the **dibrot** themselves, for they remain the same. Instead, God will descend to proclaim an amendment to how He will act in this relationship – i.e. His attributes of mercy.

As God had promised in 33:19 (review that *pasuk* before continuing), a new covenant, reflecting this enhanced relationship, is now forged:

And God came down in a cloud ... and passed before him and proclaimed: *Hashem, Hashem Kel rachum ve-chanun, erech apayim ve-rav chesed ve-emet, notzer chesed la-alafim* (34:5-8).

### The Contrast between the Attributes

With this background, we can now better appreciate the words that God chose to describe His new *midot*. To do so, we must first quickly review God's *midot* as described at *Ma'amad Har Sinai* in *Parshat Yitro*.

Recall that the *dibrot* included not only laws, but also describe **how** God will reward (or punish) those who obey (or disobey) His commandments. Let's review these 'original' attributes by noting them (in **bold**) as we quote the Commandments:

I am the Lord your God...  
 You shall have no other gods besides Me...  
 Do not bow down to them or worship them, for I the Lord am a ***Kel kana*** – a **zealous** God  
***poked avon avot al banim*** – remembering the sin of parents upon their children...for those who reject Me [***le-son'ai***], but  
***oseh chesed*** – showing kindness...for those who love me and follow my laws – [***le-ohavai u-leshomrei mitzvotai***] (see 20:2-6).

Note how the second Commandment includes three divine attributes:

- 1) ***Kel kana*** – a zealous God
- 2) ***poked avon avot al banim*** – ***le-son'ai***  
harsh punishment for those who reject God
- 3) ***oseh chesed la-alafim*** – ***le-ohavai***  
Kindness & reward for those who follow God.

Similarly, in the third Commandment, we find yet another *midah* [divine attribute]:

Do not say in vain the **name** of God – ***ki lo yenakeh Hashem*** – for God will **not** forgive he who says His Name in vain (20:7).

Let's add this fourth attribute to the above list:

- 4) ***lo yenakeh Hashem*** – He will not forgive

How should we consider these four attributes? At first glance, most of them seem to be quite harsh!

Even the *mida* of ***oseh chesed*** – Divine kindness, does not necessarily imply **mercy**. Carefully note in 20:6 that God promises this kindness **only** for those who **follow**

Him, and hence not for any others. Most definitely, all four of these attributes are quite the opposite of mercy, they are **midot ha-din** – attributes of exacting retribution.

Although these **midot** have their ‘down side,’ for they threaten immediate punishment for those who transgress (*le-son'ai*), they also have their ‘up side,’ for they assure immediate reward for those who obey (*le-ohavai*). In other words, these **midot** describe a very intense relationship, quite similar to [and not by chance] to God’s relationship with man in *Gan Eden* (see *Breishit* 2:16-17).

### **More Midot Ha-Din**

Yet another example of this intense relationship, and another attribute as well, is found at the conclusion of the unit of laws in *Parshat Mishpatim*. Recall that immediately after the Ten Commandments, Moshe was summoned to *Har Sinai* to receive a special set of commandment to relay to *Bnei Yisrael* (see *Shmot* 20:15-19). At the conclusion of those laws, God makes the following promise:

Behold, I am sending an angel before you to guard you on the way and help bring you into the Promised Land. Be **careful** of him and **obey** him, Do not defy him – **for he shall not pardon your sins -ki lo yisa le-fish'achem**, since My Name is with him...

[On the other hand...]

...should you obey Him and do all that I say – **I will help you defeat your enemies...** (see *Shmot* 23:20-24).

Once again, we find that God will exact punishment should *Bnei Yisrael* not follow His *mitzvot* and reward (i.e. assistance in conquering the Land) should they obey Him.

Finally, after *chet ha-egel*, we find that God intends to act precisely according to these attributes of **midat ha-din**:

And God told Moshe, go down from the mountain for your people has sinned... they made a golden image...and now allow Me, and **I will kindle My anger** against them that I may destroy them -**ve-yichar api bahem...** (see *Shmot* 32:7-10).

Here we find yet another divine attribute – **charon af Hashem** – God’s instant anger.

Let’s summarize these six attributes that we have found thus far. Later, this list will be very helpful when we compare these **midot** to God’s **midot** in the second *luchot*.

- 1) **Kel kana**
- 2) **poked avon... le-son'ai**
- 3) **oseh chesed...le-ohavai**

- 4) *lo yenakeh*
- 5) *lo yisa le-fish'achem...*
- 6) *charon af*

We will now show how these six examples of **midat ha-din** relate directly to the **new** attributes that God now declares. Note the obvious – and rather amazing – parallel that emerges:

| <u>First Luchot</u>                              | <u>Second Luchot</u>                                     |
|--|--|
| 1) <i>Kel kana</i>                               | <i>Kel rachum ve-chanun</i>                              |
| 2) <i>poked avon...le-son'ai</i>                 | <i>poked avon avot al banim...</i>                       |
| 3) <i>oseh chesed la-alafim<br/>...le-ohavai</i> | <i>rav chesed ve-emet<br/>notzer chesed la-alafim...</i> |
| 4) <i>lo yenakeh</i>                             | <i>ve-nakeh, lo yenakeh</i>                              |
| 5) <i>lo yisa lefish'echem</i>                   | <i>nosei avon ve-fesha...</i>                            |
| 6) <i>charon af</i>                              | <i>erech apayim</i>                                      |

### From *Din* to *Rachamim*

Each attribute from the original covenant switches from **midat ha-din** to **midat ha-rachamim**. [To appreciate this parallel, it is important to follow these *psukim* in the original Hebrew.]

Let's take now a closer look:

- A. **Hashem *Kel rachum ve-chanun* ↔ (1) *Hashem Kel kana***  
*rachum ve-chanun* based on 33:19 (see above)  
a **merciful** God in contrast to a **zealous** God
  
- B. ***Erech apayim* ↔ (6) *charon af***  
**slow** to anger in contrast to **instant** anger
  
- C. ***Rav chesed ve-emet* ↔ (3) *oseh chesed...le-ohavai***  
**abounding** kindness for all, potentially even for the wicked [This may allow the possibility of “*rasha ve-tov lo*”]  
in contrast to **exacting** kindness, and hence, limited exclusively to those who obey Him.  
[Note that the *midah* of *emet* is now required, for this abounding kindness for all must be complemented by the attribute of truth to assure ultimate justice.]

D. *Notzer chesed la-alafim* ↔ (3) *oseh chesed...le-ohavai*

He **stores** His kindness, so that even if it is not rewarded immediately, it is stored to be given at a later time.

[This may allow the possibility of “*tzadik ve-ra lo*”]  
in contrast to **immediate** kindness and reward for those who follow Him.

E. *Nosei avon ve-fesha...* ↔ (5) *lo yisa le-fish'achem...*

**forgiving** sin in contrast to **not forgiving** sin.

F. *Ve-nakeh, lo yenakeh* ↔ (4) *lo yenakeh*

**sometimes** He will forgive, sometimes He may not.

[See Rashi, forgives those who perform teshuva.]  
in contrast to **never** forgiving.

G. *Poked avon avot al banim...* ↔ (2) *poked avon le-son'ai*

He **withholds** punishment for up to four generations  
[in anticipation of *teshuva* / see Rashi]

in contrast to **extending** punishment for up to four generations.

[Even though these two phrases are almost identical, their context forces us to interpret each *pasuk* differently. In the first *luchot*, all four generations are punished, in the second *luchot*, God may **hold back** punishment for four generations, allowing a chance for *teshuva*. See Rashi.]

These striking parallels demonstrate that each of the “13 *midot*” lies in direct contrast to the *midot* of the original covenant at *Har Sinai*.

This background can help us appreciate Moshe’s immediate reaction to God’s proclamation of these *midot*:

And Moshe hastened to bow down and said: “If I have indeed gained favor in Your eyes – **let Hashem go in our midst** – ‘ki’ = *even though* they are an ***am ksheh oref*** – a stiff necked people, and you shall pardon our sin...” (34:8-9)

God’s proclamation that He will now act in a less strict manner enables Moshe to request that God now return His *Shchina* to the people *even though* they are an *am ksheh oref*. Note how this request stands in direct contrast to God’s original threat that “he will not go up with them for they are a stiff necked people, less He smite them on their journey...” (see 33:3/ compare with 34:9)!

These Divine attributes of mercy now allow the *Shchina* to dwell within *Yisrael* even though they may not be worthy.

From a certain perspective, this entire sequence is quite understandable. For, on the one hand, to be worthy of God's presence, man must behave perfectly. However, man is still human. Although he may strive to perfection, he may often error or at times even sin. How then can man ever come close to God? Hence, to allow mortal man the potential to continue a relationship with God, a new set of rules is necessary – one that includes *midot ha-rachamim*.

The original terms of *brit Sinai*, although ideal, are not practical. In this manner, *midot ha-rachamim* allow *brit Sinai* to become achievable. These *midot ha-rachamim* reflect God's kindness that allows man to approach Him and develop a closer relationship without the necessity of immediate punishment for any transgression.

### ***Selichot***

This explanation adds extra meaning to our comprehension and appreciation of our recitation of the *Selichot*. Reciting the 13 *midot* comprises more than just a mystical formula. It is a constant reminder of the *conditions* of the covenant of the *second luchos*. God's attributes of mercy, as we have shown, *do not guarantee* automatic forgiveness, rather, they *enable the possibility* of forgiveness. As the *pasuk* stated, God will forgive only he whom He chooses (“*et asher achon...ve-et asher arachem*” / 33:19). To be worthy of that mercy, the individual must prove his sincerity to God, while accepting upon himself not to repeat his bad ways.





## Menschliness before Godliness

Rabbi Dr. Haskel Lookstein

It is a privilege to be asked to submit a piece of homiletical writing in honor of Rabbi Michael and Channah Broyde. I happen to enjoy listening to other rabbis speak and while I can't judge the quality of my own sermons, I think I am something of a maven on the sermons and shiurim of others. I consider Rabbi Broyde's oral and written presentations to be on the highest level. I am consistently fascinated, informed, and inspired by them. May he continue to enlighten us all for many happy, healthy, and productive years to come.

The sainted Boyaner Rebbe used to make a distinction between two experiences at this season of the year: *t'shuvah* and *cheshbon ha-nefesh*. The first represents repentance for specific sins while the second is a general, spiritual stock-taking unrelated to specific wrong-doing. It is the second on which I would like to focus this Rosh Hashanah.

In taking stock of ourselves, where can we improve? If we could choose an area in which we might be able to do better this year than last, what would that area be?

You would be surprised at my choice of area for this year. It isn't *Shabbat* – although I would hope to be more of a *shomer Shabbat* this year. It isn't *kashrut* – although I could try to be more careful in that area. It isn't prayer – although I will certainly strive for greater *kavanah* in my prayers. It isn't even Torah study – although I must do more of that.

This year, however, I would like to try to become more of a *mensch* – a more moral person religiously. That, too, is a Jewish priority.

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## Two Parts to Judaism

In general, Judaism is divided into moral norms and laws of holiness. There is the realm of religious ethics, covering such things as respect for human life, property, dignity, needs and the like. Then there is the realm of *kedusha*, covering such things as *kashrut*, *Shabbat*, prayer, sexual legislation, *tsitsit*, *sha'atnez* and many other laws.

There is no intention here to denigrate the *mitzvot* of *kedusha* in favor of the *mitzvot* of morality. Both categories are divine; both are equally binding; and both are essential for the full religious Jew.

But, from both the philosophic and pedagogic points of view, one ought to come to morality before one comes to holiness. Or, to put it another way; one cannot be a *tsaddik* without being a *mensch* first.

The psalmist understood this well.

“O’ Lord, who is worthy to dwell in Thy tent? Who may ascend Thy holy mountain? He who walks simply before Thee, who does righteousness and who speaks truth in his heart.” (Psalms, 15) The psalmist understood that these human, moral attributes are the essential qualities of the religious personality. *Menschliness* comes before Godliness.

Now, this is so obvious as to be almost superfluous – almost, but not really. The author of *Mesilat Yesharim* – Rabbi Moshe Chaim Luzzato – once cautioned that the obvious needs to be repeated most often, since, because it is obvious, it is often overlooked.

## Religious “Specialists”

O, how much we have overlooked the obvious in *menschliness* before holiness.

There are so many people in our religiously resurgent Jewish world who insist on *glatt kosher* but not necessarily *glatt yosher* who demand perfectly smooth lungs in an animal but not perfectly straight behavior in people. There are so many who are scrupulous about what goes *into* their mouth but careless about what comes *out* of their mouth. There are yeshiva boys who would never dream of chewing gum because of a possibility of a *treife* stabilizer in the gum but who had no compunctions last June about selling Regents examinations to newspaper reporters disguised as students. The Ministry of Religions in Israel, which certifies the *kashrut* of *tephillin*, *mezuzot*, restaurants, synagogues and the rabbis of the country, is now under investigation for taking huge amounts of graft and for engaging in simple thievery.

And the biggest tax evasion case in the history of Israel is now being prosecuted in B'nai B'rak, involving the most meticulously religious people.

What is wrong with our priorities? Do we not understand the psalmist's simple, rhetorical question? "Who may ascend the mountain of the Lord? And who may stand in His holy place? One who has clean hands and a pure heart, who has not set his desire upon vanity nor sworn deviously."

If we do not have clean hands how can we come into *shul*? If our mouth spews forth hate, gossip, nasty comments about people and filthy language, how can that same mouth say *Sh'ma Yisrael*? If we do not love people, how can we love God Who created them?

### Religious Priorities

This set of priorities is so fundamental that the great Rabbi Isaac Luria, before he began to *daven* each morning, would say:

"I am now preparing myself to fulfill the *mitzvah* of 'love thy neighbor as thyself.'"

He understood that *menschliness* must precede Godliness.

So did that great religious and ethical genius, Rabbi Israel Salanter. He once saw a man run into *shul* just in time to "catch a *kedushah*." In his zeal not to miss this holy prayer, the man inadvertently stepped on the toes of a fellow worshipper.

After *kedushah*, Rabbi Israel took the man aside and said: "Do you expect to achieve *kedushah* – holiness – at the expense of the pain of your fellow man?"

On another occasion Rabbi Israel had *yahrzeit* for his father and he was entitled to *daven* before the *Amud*. Another man, however, had *yahrzeit* for a daughter and was very anxious for the *Amud*. I can just imagine the analysis and debate that would go on in *shul* over such a crisis. Not with Rabbi Israel. He gave up the *Amud* to the other man. And when asked, "Is this *kibbud av* for your father?" he answered: "The greatest honor I can pay my father is to make his memory the instrument for the happiness of another Jew."

Rabbi Israel understood that *menschliness* precedes Godliness.

But, of course, Rabbi Israel gained this understanding from the Talmud, which affirms this system of priorities in a Tanaitic passage familiar to many:

These are the *mitzvot* for which a person earns a reward in this world and the principle remains for the world to come: love for parents, acts of kindness, coming to the house of study morning and night, visiting the sick, escorting the deceased, concentration in prayer, bringing *shalom* between people; and the study of Torah outweighs them all.

These are the religious priorities upon which we should concentrate this year as we engage in our *chesbon ha-nefesh*, our spiritual accounting.

### **A Matter of Pedagogy**

But how can we establish this priority system in our own lives? How can we reverse the normal emphasis on holiness to the neglect of *menschliness*? The place to start is by reversing our normal pedagogy.

We have been following a pedagogy that puts holiness first and *menschliness* second. Isn't that the way we teach children and adults? We start with prayer and *Shabbat*. Then we go to *kasbrut*. Then to sexual ordinances. Only *after that* do we come to morality. By this time the student has either tuned out or gained the erroneous message that religion and life are two separate spheres.

We should be *starting with* – and *emphasizing* – concern for others, help for the needy, visiting the sick, honoring the aged, respecting parents and teachers, avoiding gossip, being honest – all as religious principles.

Of course, this is much harder to do. If I teach *shofar* or *lulav* from this pulpit some will like it and others will sleep through it. But if I start talking about honesty and cheating and business ethics and I give examples, many people will get upset. Do you know how I know that? Because I tried it. I remember as a young rabbi expounding on the sin of tax evasion and absorbing severe criticism afterward. “That’s not a subject for discussion,” I was told; “It touches too many people too directly.” I quickly learned the lesson. It’s much safer to come out four square in favor of *Sh'ma Yisrael* and *Ein Kelobeinu*. But then we have to expect our kids to sell Regents exams and our ministry of religions to be accused of taking graft.

### **Pedagogic Precedents**

This pedagogic principle of putting ethics first before holiness has ample precedent.

The formal code of laws in the Torah begins with *Mishpatim* – civil law. Only after that does the Torah discuss ritual. The traditional way of starting the study of Talmud is not with *B'rakhot* (blessings) but with *Nezikin* – torts (two people are holding on to a garment; this one claims to have found it and this claims to have found it...) The Prophets preached and taught morality, integrity and humanity for the most part. Only occasionally did they discuss ritual matters.

And one suspects that this new pedagogic order might work very well. If we teach religious morality well, there is a strong likelihood that the student will accept the ritual teaching also. Or, to put it another way, if we get a youngster to avoid cheating on exams because of religious commitment, there is a good chance that the same youngster will *daven* regularly too. Similarly, if we can teach honesty in business effectively, our index of Shabbat and kashrut observance might rise too.

We must, therefore, teach ourselves first to be religiously ethical. Then we may find it easier to become holy. Initially, we must endeavor to become more human. Then we shall find it easier to be more like God.

### **A Story**

A certain 18th century *tzaddik*, by the name of Reb Eliezer, was known as an exceptionally hospitable person. Like Abraham, he searched for guests to bring to his home. In heaven, they noticed his righteousness and Satan challenged God to test him. It was decided to send Elijah to administer the test.

So Elijah, disguised as a mendicant, with staff in hand and pack on his back, knocked at the front door of Reb Eliezer on a *Shabbat* afternoon. When Reb Eliezer opened the door the poor man exclaimed, “Good *Shabbos*.”

Hold that scene! Can you imagine for a moment that same scene in Williamsburg? In Boro Park? In Meah She'arim? In B'nai B'rak? Elijah would be finished. He may have survived the chariot of fire but he would never have escaped the hail of stones and abuse that would have been heaped upon him in our day – even here at KJ. Can you imagine him walking in with a staff and a pack on *Shabbat* – and without a tie! Pity Elijah!

Well, what happened with Reb Eliezer? The *tzaddik* never flinched. He did not reprimand the beggar for violating the Shabbat with staff and pack. Rather, he immediately

invited him to a *seudah shlishit*. After Shabbat he had him at his *melavah malkah*. On Sunday morning, after serving him a sumptuous breakfast, he sent him on his way with a generous gift of money.

When Elijah saw this display of kindness, religious ethics and morality which transcended the *tzaddik's* concern even with the desecration of the *Shabbat*, Elijah revealed himself to Reb Eliezer and said: "Because you survived this trial and you did not embarrass a poor guest, you will have a son who some day will bring light to all Israel."

The blessing was fulfilled; for this Reb Eliezer was to become the father of the Ba'al Shem Tov.

### **A Confession**

Do you want to know a secret? Since I'm not a Hassid – except on my paternal grandmother's side – I'm not sure I fully believe this story. But, you see, that's not really important; because the Ba'al Shem Tov *did* believe it. And that belief speaks volumes about the Ba'al Shem Tov's priorities for Jewish life, priorities which we would do well to adopt for ourselves to make this year a blessed one for our own community and for all Israel.

## **The Silence of Rayna Batya**

### ***Torah, Suffering, and Rabbi Barukh Epstein's "Wisdom of Women"***

Rabbi Dr. Don Seeman

For you have not spoken of Me the thing that is true, as My servant Job has. . . .  
—Job 42:7

This is the story of Rayna Batya, a woman who lived at the heart of the Lithuanian yeshiva world during the latter part of the last century, and who suffered for her love of Torah. More precisely, it is the story of her extended conversations with a young man named Barukh, her nephew, about women and the life of learning which was typically denied them.<sup>1</sup> These were difficult conversations which defined a painful friendship. Rayna Batya and Barukh confronted not only the possible limits of tradition, but of their ability to understand and respond to one another. Their debates about the legitimacy of women's religious learning raised halakhic and intellectual issues which continue to echo through the contemporary Jewish world. But the core of the story I want to tell here is about Barukh and Rayna Batya's determination to go on talking as long as they both were able to do so. They struggled to maintain real human engagement despite essential disagreement and incommensurate religious experience.

There is also something else here, though, which is more difficult to capture. Ultimately, Rayna Batya understood her suffering to have its source in the Torah, and this lent an element of desperation to her relationship with Barukh as well as with God. It led her towards a deepening silence which haunts this story and disturbs its readers. That silence

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may have something to teach us about honesty and faith, but it will also lead us towards an appreciation of one woman's difficult life. This essay may be read as a reflection on Barukh's own account of his many conversations with Rayna Batya, and on their abrupt termination. His published Hebrew memoirs, *Mekor Barukh*, contain a chapter called "Wisdom of Women" which is devoted just to her.<sup>2</sup> It is only in Barukh's words, finally, that a disappearing image of Rayna Batya is left to us:

Such was her way, to sit always near the winter oven that was in the kitchen (even during the summer) with all sorts of books spread before her on the table: Bible, *Mishnayot*, *'En-Ya'akov*, various *midrashim*, *Menorat ha-Ma'or*, *Kav ha-Yashar*, *Zemah David*, *Shevet Yehudah*, and many other books of this nature, as well as volumes of *Aggadab*.<sup>3</sup> All of her focus and concentration . . . [was] in the books—her hand hardly moved from them! But of all that concerned the maintenance of the household, she knew little, almost nothing . . . (pp. 1949-1950).

From Barukh's first words about her, it is clear that she was a remarkable and problematic figure.

Both she and Barukh were born close to what has become a mythological heartland of contemporary Jewish consciousness. Her father was the famed Rabbi Isaac, "Reb Izele" of Volozhin, who headed the yeshiva which had been founded there by his father, Rav Hayyim, premier student of the Gaon of Vilna. It was R. Hayyim who elaborated the doctrine of *Torah lishmah*, elevating the study of Torah "for its own sake" to new heights of theological and organizational dominance in the life of the Jewish community. Because the Torah is rooted in a realm that precedes divine emanation, taught Rav Hayyim, rigorous and passionate engagement with it on an intellectual level is a unique path for cleaving directly to God.<sup>4</sup>

Despite this, Volozhin became a magnet not only for talented young Talmudists, but also for students who yearned towards "Haskalah" and had heard that in Volozhin it was possible openly or secretly to pursue broader horizons.<sup>5</sup> Students were as diverse in temperament as R. Abraham Isaac Kook, future Chief Rabbi of the Jewish settlement in Palestine, R. Moshe Mordecai Epstein, later head of the yeshiva in Slabodka, and Hayyim Nahman Bialik, future poet-laureate of Israel. The latter broke with yeshiva life, but later wrote: "Is it here, the potter's workshop of the nation's soul?"<sup>6</sup> Volozhin was an institution whose loyalists and rebels alike helped to define an important period of intellectual transition in the Jewish community, and whose influence on the topography of Jewish imagination



continues to make itself felt. When R. Izele died in 1849, responsibility for the yeshiva was assumed by his two sons-in-law, the younger of whom (Rabbi Naphtali Zevi Yehudah Berlin—“Neziv”), had married Rayna Batya when he was just 13.<sup>7</sup>

Barukh’s lineage was also distinguished. His father, Rabbi Yehiel Mikhel Epstein of Nevogradok (1829-1908), had studied under Rayna Batya’s father starting in 1842, and later wrote the well known halakhic code *ʿArukh ha-Shulhan*. In addition, Rabbi Berlin was Barukh’s maternal uncle, making Rayna Batya an aunt by marriage. Barukh Epstein never occupied an official rabbinical post, but wrote a number of books while working as an accountant and bank manager, the best known of which is his *Torah Temimah*, a commentary on rabbinic passages relating to the biblical text. His conversations with Rayna Batya took place while he was still a young student at the Volozhin yeshiva.<sup>8</sup>

In contrast to the many men who surrounded her, Rayna Batya left no written works and headed no institution. Barukh introduces her in his memoirs by way of describing the difficult material conditions of her husband’s life: “[My uncle’s] table was set with poverty except on Sabbaths and Festivals, when he would invite . . . guests from among the yeshiva scholars.” Rabbi Berlin’s stipend was a meager 13 rubles a week, laments Barukh, and his poverty was compounded by Rayna Batya’s inattention to household affairs. He describes her as “pious and wise, modest and wonderfully learned, like one of the whole men [הגברים והשלמים];” she was sincerely concerned for her husband’s health and welfare, but was simply incapable of managing a household. Barukh portrays Rabbi Berlin as suffering his wife’s ineptitude without complaint (even when it meant going without meals, for instance), but remarks that Rayna Batya herself was “weak and had loose nerves, to the point where she could barely maintain her bodily well being while she lived” (p. 1949).

It must have been painful for Rayna Batya to know that people considered her a failure in the very sphere which for many Jewish women was a realm of relative power, religious satisfaction and communal approbation. Women were the efficient and sometimes heroic caretakers of the family.<sup>9</sup> But Rayna Batya was insistent that the real source of her grief lay in separation from Torah:

More than once I heard her complain and bemoan, in sorrow and pain, with unpleasant countenance and a bitter soul, the pain of the bitter fate and narrow portion of women in this life, because the fulfillment of positive, time-bound commandments had been deprived them, such as *tephillin*, *zizit*, *sukkah* and *lulav*, and

many others. From hidden recesses would break forth . . . accusation and spiritual jealousy against men who have been given everything. As she put it, “men have received 248 positive commandments, while oppressed and disgraced women were only given three!” (p. 1950).

Inevitably, her conversations with Barukh were dominated by this theme:

Even more than this was she disturbed and pained by the desecration of women’s honor, and by their lowly position, inasmuch as it was forbidden to teach them Torah. Once she said to me that if Eve (which is to say women) had been cursed with ten curses, then this curse, the prohibition of learning Torah, was equivalent to them all, and yet added to them. There was no end to pain (*ibid.*).<sup>10</sup>

As a granddaughter of R. Hayyim of Volozhin who had done so much to establish the axiomatic priority of Torah study, is it possible that Rayna Batya simply could not tolerate women’s restriction to what would have been considered secondary forms of service?<sup>11</sup> It is difficult to determine how unusual her sentiments may have been, but Barukh’s decision to candidly record them was unprecedented for a devoted Talmudist.

At first he was defensive. His insensitivity to the depth of his aunt’s wound engendered a clumsy attempt at apologetics which he would later regret (pp. 1950-52):

Once, when she was speaking with emotion on this subject, I said to her, “But aunt, you women are murmuring against us men regarding this prohibition for nothing, because you yourselves brought it about and are responsible. . . . The Sages said (at the end of the second chapter of *Avot de-Rabi Natan*) that the Torah should be taught only to one who is humble. They observed however (*Yerushalmi Shabbat*, chapter 6) that women are arrogant (שִׁחְצִנִיּוֹת). . . . Thus, it is because of their own moral qualities that it is forbidden to teach them. Whose fault is it if not their own! So why are you crying?”

Rayna Batya was taken aback at first, but her eventual response was one of calibrated rage:

My aunt was angered by these words, and also trembled slightly. I remember that she had not yet collected her thoughts to respond, but in order to avoid remaining without an answer . . . she attacked me indirectly: “And what is this? Have you already completed the whole Talmud Bavli that now you bring your proofs from the Talmud Yerushalmi?” (*Ibid.*)

Barukh had no choice but to admit his guilt. It was he, the male scholar, who had shown himself arrogant by claiming to cite a passage from the Jerusalem Talmud, while he was actually citing it from a secondary source.<sup>12</sup> Rayna Batya went on, however, to launch an even more devastating attack:

She said, “Meanwhile, bring me the book, *Avot de-Rabi Natan*.” I went and brought it—and fell into her net! For there . . . it was written: “The House of Shammai say, ‘a person should only teach those who are wise and humble and rich.’ The House of Hillel say, ‘Teach all people, for there were many sinners in Israel who were brought close to Torah, and from them came those who were righteous, pious and fit.’”

When she had read these words, she turned towards me with a wrathful voice and said, “How crooked are your ways! Or perhaps you wanted to lead me astray, when you based your words on the opinion of the House of Shammai, while every child who studies Talmud . . . knows that when the Houses of Hillel and Shammai argue, the Halakhah follows the House of Hillel.<sup>13</sup> Here the School of Hillel permits teaching everyone!”

I had to tell her honestly that it was not my fault. I had not seen [this passage] in its original source . . . but in a book . . . which only had cited the opinion of Shammai. . . .

While her heart was light with this victory . . . she saw that I was distraught, so she appeased me with the words: “It is permitted you, it is forgiven you.<sup>14</sup> An omission like this [of the House of Hillel’s normative ruling] is nothing new for students or writers of books. . . . But be careful about such things in the future!” (*Ibid.*)

It isn’t the voice of Rayna Batya alone that makes these chapters of *Mekor Barukh* unique, but the window they provide on a world of debate and engagement. Barukh Epstein allows us to trace the course of his defeats and victories over his aunt, and is willing to portray her sense of constriction and anger, even her biting humor at his expense. Such defeats are never final, and Barukh never really concedes to his aunt the ideological legitimation she craves. But he does allow her the dignity of honest representation.

Not all modern readers have been so unflinching. An English version of selections from *Mekor Barukh*, which was published for an Orthodox audience as *My Uncle the Netziv*, systematically omits or tampers with Rayna Batya’s expressions of frustration, outrage and despair. Her entire difficult exchange with Barukh over women’s learning, cited above, is misleadingly condensed as follows:

More than once she succeeded in giving me instruction in my own learning habits. Once, trying to score points in a debate with her for instance, I brought down a proof in the name of the Yerushalmi without mentioning that it was actually from the Ran’s commentary on Mesechta Shabbos; I hadn’t actually seen the Yerushalmi in the original. “What’s this?” she retorted immediately. “Have you already completed the entire Talmud Bavli that you bring proofs from the Yerushalmi?”<sup>15</sup>

Rayna Batya’s initial, halting critique of Barukh’s unattributed citation (he himself calls it a preliminary and indirect attack) is depicted as the whole substance of their conversation. What’s more, by substituting a false context for the exchange (as if she was merely “trying to score points in a debate” rather than exploding with rage at a perceived slight to women’s honor), this revisionist history seeks not only to simplify, but to flatten and neutralize. A classic “dispute for the sake of heaven,” with its powerful emotional cadences, is here transformed into placid and trivializing banter.<sup>16</sup>

Certainly, Rayna Batya's learning attracts the censor's attention – reference to her study of *Mishnah* and *Aggadah* has been deleted from *My Uncle the Netziv*.<sup>17</sup> But this is not the real issue, and most references to her learning have been preserved intact. Of greater concern, apparently, is the emotional and moral tone of Rayna Batya's recrimination. Dissonance, pain and the stubborn intractability of personal experience are relentlessly rooted out of the text. They are just too disruptive to the seamless narrative of happy continuity which has become a central feature of popular "*hasbkafah*".<sup>18</sup> Anomalous halakhic or historical facts, like Rayna Batya's learning, can apparently be assimilated to that story. Her anger and pain cannot. Nevertheless, her position as wife and daughter of sages (and the written account of her life by Barukh) make it difficult to excise her cleanly from canonical memory. The only alternative is to rewrite her in more acceptable terms.

Despite her frustration, Rayna Batya's response to Barukh at this juncture was still grounded in classic texts and traditional discourse. She attempted to maintain an honest stance towards her own pain without compromising the transcendent demands of Torah as she understood them. Rayna Batya thus remained committed to speaking within the categories of normative Halakhah, and was optimistic about her ability to extract from them the resources and authority with which she would make room for herself within a halakhic world. This kind of bold struggle with authoritative texts is a characteristically Jewish mode of religious life. As Barukh himself later wrote in his commentary to *Pirkei Avot*, "Even though permission has been granted you to wrestle in Torah with those who are greater than you, such combat must be conducted . . . in humility and submission and modesty."<sup>19</sup> Rayna Batya's struggle, in these terms, must have been quite daunting. It led her far afield because the most influential and well known texts (as well as dominant norms of communal practice) all seemed to mediate against her desire to sanction women's learning.

Although it does not figure prominently in their discussions, one would assume that Barukh was familiar with Maimonides' twelfth century ruling, which had come to be treated as the normative basis for subsequent discussion and refinement in halakhic literature:

A woman who has studied Torah—she has her reward. But it is not like the reward granted to a man, since she was not so commanded [to study].<sup>20</sup> A person who performs an act which he has not been commanded to perform does not receive an equivalent reward to that of a person who has been commanded and subsequently performs, but rather less.

Moreover, even though she has her reward, the Sages have commanded that a man should not teach his daughter Torah, since the intellects of most women are not inclined towards being educated; rather, they turn the words of Torah into words of vanity, due to the paucity of their intellects. The Sages said: “Whomever teaches his daughter Torah is as if he taught her *tiflut* (foolishness).”<sup>21</sup> To what may this principle be applied? To the Oral Torah. But as for the Written Torah, although he should not teach her in the first case, if he has done so, it is not as if he has taught her *tiflut*.<sup>22</sup>

Despite his harsh tone, the complexity (perhaps ambivalence) of Maimonides’ formulation was mirrored on a social and halakhic level throughout the generations.<sup>23</sup> Women’s learning in Ashkenaz, for example, was circumscribed but not unheard of.<sup>24</sup>

The premier halakhic authority of Ashkenazi Jewry in the sixteenth century, Rabbi Moshe Isserles, had already qualified the nearly verbatim reliance on Maimonides by later codifiers. He insisted, in line with some earlier authorities, and perhaps in accord with communal practice in Central Europe, that women *were*, in fact, obligated to study those laws which were relevant to them.<sup>25</sup> Other scholars detected in the words of Maimonides himself an opening towards contextualism. If the limitations on women’s Torah study indeed stemmed from a fear that women would distort material because of their insufficient devotion to intellectual development, it also stood to reason that exceptions to that rule would arise. Women who demonstrated self motivation to study ought not be hindered in their quest.<sup>26</sup>

It is difficult to say how much legal or cultural authority such qualifications held for people in Rayna Batya’s surroundings. Barukh never cites them even when they would seem to offer an excellent chance for avoiding unpleasant confrontations with his aunt. The principle of formal education for women (excepting Talmud) had already been accepted by the German Neo-Orthodox movement of R. Samson Raphael Hirsch, but was widely resisted in Eastern Europe.<sup>27</sup> Implicitly, Barukh adopts the highly restrictive reading which would later be advocated in his father’s published work:

Our Master Rama [Rabbi Moses Isserles] has written that [despite the prohibition on Talmud study, a woman] is nevertheless obligated to study those laws which are applicable to a woman. But we have never been accustomed to teach them from books, nor have we heard of such a custom. Instead, every woman teaches the traditional laws to her daughter and her daughter-in-law. The laws relevant to women have also recently been published in the vernacular [Yiddish], where [women] can read them. Our women are very careful, however, to inquire about any questionable matter, and do not rely on their own [halakhic] opinion even for the smallest of things.<sup>28</sup>

In this legal and social context it is clear that Rayna Batya's stand, while not without some precedent, was a radical one. Nevertheless, it is important to note that Barukh never impugns her piety or openly suggests that her personal study was illegitimate. Nor is there evidence that her husband, Rabbi Berlin, did so. In a different context, Rabbi Berlin once wrote that even bizarre and self-endangering behavior (normally forbidden by Halakhah) could be excused if it was rooted in the intoxicating love of Torah study which sometimes overpowers scholars.<sup>29</sup> Rayna Batya, like other learned women before her, was treated as an exceptional and perhaps eccentric personality, not subject to usual norms.<sup>30</sup> Discontented by this state of affairs, she continued to claim that women *as a group* had been deprived, and that this could not have been the Torah's intention.

The degree of Rayna Batya's radicalism is a slippery question, and I ask it here not as an intellectual historian, but as an anthropologist, an ethnographer of suppressed memory.<sup>31</sup> In order to sketch the contours of a moment in human and Jewish experience which has nearly been forgotten, we need to set Rayna Batya within her social and cultural frame of reference. But that is not enough. In order to confront her honestly as a person, we must also be careful to avoid reducing the choices and experiences that defined her life into neat cultural stereotypes about "traditional Jewish women" or "traditional Jewish society." The anthropological frame of reference is useful precisely because cultural context can help us better to understand what would have been at stake for Rayna Batya as an individual when she made the claims she made; when she chose to speak, for instance, or to enter into silence. Without that frame of reference, it is too easy to criticize her from a safe distance. Depending on the readers' point of view, Rayna Batya was either too radical or not radical enough; her attacks went too far or were not sufficiently thorough and systematic.

The fact is that Rayna Batya lacks a coherent and systematic ideology, but responds to perceived insults and problems as she meets them. Her pattern at every turn is to attempt a rescue of the tradition (and of herself?) by bringing to bear new texts or new readings of old ones. She never develops a full blown critique of gender relations in Jewish society, but offers bounded and often insightful responses to localized problems. She was neither an apologist nor a revolutionary, but an individual in pain who sought relief in small victories of learning and debate—"I will speak, that I may find relief" (Job 32:20).

It is perhaps impossible to know whether Rayna Batya also engaged in these debates with older, more learned and more powerful men than Barukh, such as her husband. If she did not, it would explain some of the passion and frustration that characterize many of her exchanges with her young nephew. Her relationship with him may have been a unique outlet for concerns which could not easily be expressed elsewhere, and his sometime inability or unwillingness to listen more empathetically to her complaints would have been especially exasperating. The specter of a middle aged woman regularly reduced to anger and tears by the arguments of a just teen-age *yeshiva babur* is certainly suggestive. Barukh, for his part, often seems to be aware of the important place he held in Rayna Batya's life, and sometimes tried to encourage or comfort her.

On one occasion, he went to some lengths in composing for her a list of learned women drawn from Jewish history (pp. 1954-60). In a previous conversation, Rayna Batya had named several such women, beginning predictably with Bruria of the Talmud, whose sharp tongue silenced Sages (see *Erwin* 53b). Barukh went on to list nineteen others, including the daughters of Elisha ben Abuya, who once defeated Rabbi Yehudah ha-Nasi in argument (see *Y. Hagigah* 92:1), and Rashi's daughter, who is said to have sealed responsa in her father's name during his illness. Less well known personalities included "the woman Rudel, daughter-in-law of Mahari Isserlein, who bent over the Torah like one of the men," and Maharshal's grandmother Miriam, who "held a yeshiva for several years," where she taught Halakhah to gifted male students from behind a curtain.<sup>32</sup>

Significantly, Barukh observed that women in previous generations had been more deeply involved in the printing and dissemination of holy books than they were in his time, and that this had required a high level of learning which was apparently no longer widespread. Somewhat surprisingly, he also invoked Emma Lazarus, "a descendant of the Spanish exiles" for her English poetry (especially "By the Waters of Babylon") and Dona Gracia Aguilar, "from a family of Portuguese conversos," who was honored in 1847 by the Jewish women of London as "the first woman to publish popular literature in defense of Judaism." Barukh concludes the discussion by mentioning his personal correspondence with "the Rabbanit from Shklov, Zertal, daughter of Rabbi Joshua Halevi Ish Horowitz . . . who is wise and distinguished in Torah and the sciences like one of the whole men." Overall, his suggestion was that Rayna Batya ought not feel like quite such an anomaly:

I remember that I completed my words to my aunt on this subject in the following way: “Yet why must we search to mention the names of individual learned women, when the Torah itself testifies to the wisdom of women’s hearts, when it says ‘Every woman, wise of heart’ [Ex. 35:25]! And the Sages have said, ‘the daughters of Zelophahad [Num. 27] were learned.’” From this teaching, my aunt’s spirit was content.

Barukh tells us only in a candid footnote (p. 1958) that he thought to spare Rayna Batya the pain of mentioning R. Eliezer’s harsh talmudic elaboration of the verse “Every woman, wise of heart” which caustically circumscribes the “wisdom of women” to skill with a spindle (*Yoma* 66b).

Barukh’s evident desire to please his aunt, however, did not usually extend to his debates with her, where he proved unyielding. Nor was Rayna Batya herself above a certain degree of playful instigation. When Barukh came upon her studying a sixteenth century responsum which had been written to “a certain learned woman” by R. Shmuel Archivolti of Italy, she triumphantly commanded him to read it, Barukh was convinced that Rayna Batya had lain in wait for him with this passage at her fingertips. In the words of R. Archivolti:

As for the saying of our Sages, that anyone who teaches his daughter Torah is as if he taught her vanity (*Sotah* 21b), perhaps this refers to one who teaches her in her childhood, while it is yet unclear whether her actions are pure, and whether her works will be upright. But as for those women whose hearts draw them to the labor, the labor of God, [and who] from their own free will choose the good because it is good – they will ascend the Lord’s mountain! They will dwell in His holy place, for they are exemplary women, and the sages of their generation should glorify them, magnify them, set them in order, strengthen their hands and encourage their limbs: “Do and succeed, and from heaven will you be aided” (p. 1962).<sup>33</sup>

Rayna Batya goaded Barukh to disagree, perhaps sensing from her momentary vantage point on “the Lord’s mountain” that she enjoyed the upper hand:

When I had finished reading, she said to me, “In my opinion, each and every one of these words should be encased with a casing of gold like precious stones or pearls, and the whole book in a silver band. *What do you say about them?*” [emphasis added].

Trying to extricate himself from an uncomfortable predicament, Barukh responded in measured tones. The words of the Italian rabbi were indeed beautiful, he said, and worthy of consideration. But they ultimately lacked legal authority; they constituted an isolated opinion, or perhaps an advisory statement rather than a true ruling. In any case, R. Shmuel himself had revealed a certain ambivalence when he said: “. . . *perhaps* this refers to one who teaches her in her childhood.” Such conjecture lacked the force to alleviate explicit talmudic injunctions as they had been understood by major legal authorities.



Despite his hedging and circumspection, Barukh's position was clear, and it predictably aroused his aunt's wrath:

These words of mine were like a spark in a barrel of gunpowder. With an outraged spirit, riotous in bitterness, she said to me: "This is what the author meant who said 'one man in a thousand have I found' [Ecclesiastes 7:28], and you are mean-spirited like all the men!" After speaking to me these words she hid her face from me and cast her eyes into one of the books on the table. I departed like one accursed and reprimanded.

In retrospect, Barukh was not merely stung by her accusation, but sincerely sorry about his role in provoking such outbursts:

When I had grown older and remembered these things, I was greatly pained. Even now, as I bring to memory this whole incident and arrange it in a book, my soul is bitter within me because of this weakness, that I spoke without prior thought. . . . Why did I not make use of our Sages' advice: "Always judge your words before they leave your mouth"? . . . Why did I need this trouble, to sorrow the sensitive heart and soul of a wise and ill woman, and to bring upon myself her feelings of anger, her outraged countenance, her troubled heart. . . . Why did I not adopt the maxim, "silence is beautiful," so that she, in largess of spirit and with a good heart, could have thought that my silence indicated agreement, and there could have been peace between us? (p. 1963).

Rayna Batya's words spilled over from anguish, forcing Barukh to reconsider. He did not revise his reading of the Halakhah, but he did regret the insensitivity which had allowed him to hurt his aunt in ways the Halakhah did not demand. Barukh's tone in these accounts sometimes seems condescending. But while he is confident regarding the superiority of his knowledge and training, he does not dismiss his aunt's claims out of hand. Indeed, he cited her sixteenth century responsum years later, in his own published commentary.<sup>34</sup> He did not mention Rayna Batya as the source of the citation, and ultimately dismissed R. Shmuel's argument. But by bringing him respectfully into halakhic discourse, Barukh made his opinion available to readers who would not otherwise have been likely to come into contact with it, and paid indirect tribute to the impact of Rayna Batya's words.

By drawing strength for a battle over women's learning in nineteenth century Lithuania from a responsum written in the very different milieu of sixteenth century Italy (a *Talmud Torah* for girls may have been established in Rome as early as 1475),<sup>35</sup> Rayna Batya shows how halakhic literature itself sometimes forces Jews to wrestle with models of thought and practice very different from those widespread in their own communities. The very existence of alternate models, preserved in halakhic literature, is a potential resource for change. Barukh responds to this potential by reading the text in a way as closely congruent

with his own local reality and halakhic tradition as possible. But the original text's subjunctivizing power—its ability to make new ways of looking at things available to people—is never completely effaced. It would typically be available only to the literate and the learned who have the tools to utilize it or, more often, to blunt its radical suggestiveness. Rayna Batya was able to recognize the potential of R. Shmuel's argument for her own community, but lacked the confidence or the training to defend her reading in a compelling way. She resented Barukh's attempt to neutralize it, and accused him of personal malice.

Rayna Batya's refusal to speak to Barukh in the immediate aftermath of this incident was the beginning of a gradually deepening period of silence between them. Barukh tried hard to regain her favor. One day she broke the silence with a joyous announcement, as Barukh recounts:

It was after the Fast of Gedaliah that she invited me to the evening meal . . . as was her custom with me after all of the fasts. In the course of our conversation after the meal, she told me joyfully that there really had been those among the Sages of the Talmud who participated in women's pain and in their humiliation at being deprived of the joy of Torah study. Nor was it just that they gave permission for women to study, but that they made it an obligation upon their fathers to teach them. This is the opinion of Ben Azzai (*Sotah* 20a), who said, "A man is obligated to teach his daughter Torah" (p. 1964).

Barukh remembered his previous interactions with Rayna Batya and refrained from arguing with her. But he later told a friend what was by his own account a thoughtless joke: Ben Azzai, the talmudic authority cited by Rayna Batya, is also known as the only rabbi of the Talmud who consistently refused to marry (*Yevamot* 63b). Obviously, quipped Barukh, Ben Azzai must have known that a woman who studied could never keep a proper home (p. 1965)!

It was perhaps to be expected that Barukh's friend would repeat this joke to Rayna Batya, for whom it could only have sounded like a mean-spirited attack on her own apparent shortcomings as a wife. The silence between them deepened, although Barukh was for some time unaware of the reason:

It was on the eve of Yom Kippur, after the morning meal, when I was visiting my uncle's table, that she called me to the table at which she was always sitting . . . and said to me with some emotion: "Your luck would have it that today is the Eve of Yom Kippur, a day on which it is an obligation and a *mizvah* for each person to forgive the oppression and sin which lies between a person and his fellow, and because you are dear to me, I forgive you completely for the things which you said." I was dumbfounded and said, "But my aunt, what happened?" She answered me, "Go ask your friend from Riga, and he will tell you." . . . I asked my friend . . . and

he admitted it, laughing. But for me, the laughter was pain of heart and sorrow of soul. . . . Added to my pain was the realization that my friend appeared to me cruel . . . for I came to him with a soul in pain, and he showed me a countenance of laughter. . . . I felt as if he had spread salt on my wounds, and held it against him in my heart for a long time thereafter (pp. 1965-66).

Once again Rayna Batya had turned the tables on Barukh, showing him what it was like to be misunderstood and abandoned by those from whom he might have expected sensitive support. Only this time the victory did little to comfort Rayna Batya, and left Barukh in despair. These are no abstract arguments, the kind of cold ideological struggles that mark so much of our own public discourse. These are meetings between people who sin and forgive and care and learn.

*My Uncle the Netziv* does not hesitate to render Barukh's list of learned women as well as Rayna Batya's citation from R. Shmuel in support of female scholars. But it deletes all hint of argument or discord: "We spent many hours together," declares Barukh in *My Uncle the Netziv* (p.158), "discussing these extraordinary women in light of *Chazal's* words discouraging a father from teaching Torah to his daughter. . . ." Needless to say, the episode of Barukh's cruel joke does not appear. Rayna Batya's continuous challenges are translated only as general and decontextualized comments. Often they are not even attributed to her, but to anonymous outsiders. In *Mekor Barukh*, Rayna Batya angrily complains that women have been "deprived" of the observance of time-bound, positive commandments (p. 1950). In *My Uncle the Netziv*, by contrast, she and Barukh agree that nothing could be further from the truth:

On other occasions we investigated the reason why the Torah exempts women from many time-bound *mitzvos*. After much research on the topic I came up with what I felt was a clear and simple solution to the false charge that the Torah "discriminates" against women . . . (p. 158).

The overall effect of this bowdlerized version is to smooth over Barukh and Rayna Batya's rough edges. Both of them agree, in *My Uncle the Netziv*, that no cause for question could possibly exist. Women's Torah study is perfectly acceptable within reasonable, well defined limits, which makes Torah as we understand it into an unambiguous blueprint for human happiness. In this unchanging and best of all possible worlds, Rayna Batya's halting and sometimes angry silences are overwhelming precisely because they cannot be mentioned or brought to mind.

It is important to point out that the primary objection which can be raised to *My Uncle the Netziv* and the genre it represents does not spring from the value of historical accuracy or qualms about misrepresenting writers and *talmidei hakhamim* from previous generations, Such concerns are genuine, but may miss the point. As R. Shimon Schwab has written with characteristic directness:

What ethical purpose is served by preserving a realistic historical picture? Nothing but the satisfaction of curiosity. We should tell ourselves and our children the good memories of the good people, their unshakable faith, their staunch defense of tradition, their life of truth, their impeccable honesty, their boundless charity and their great reverence for Torah and Torah sages. What is gained by pointing out their inadequacies and their contradictions? We want to be inspired by their example and learn from their experience. . . .

Rather than write the history of its forebears, every generation has to put a veil over the human failings of its elders and glorify all the rest which is great and beautiful. That means we have to do without a real history book. We can do without. We do not need realism, we need *inspiration* from our forefathers in order to pass it on to posterity.<sup>36</sup>

Although it might fairly be asked what it means to derive inspiration from “experiences” and “examples” which admittedly *never happened* in the way they are reported, I want to focus on a different issue. The case of Rayna Batya shows precisely how the accurate portrayal of “good people’s contradictions,” in R. Schwab’s words, can serve an ethical purpose. In reminding us that the past was less tidy than we sometimes would like to imagine, it encourages us to be somewhat more forgiving of contradiction and complexity, of individuals who do not fit our easy typologies, right here in the present.<sup>37</sup> Such sensitivity will not always impact the ruling of practical Halakhah,<sup>38</sup> but after Rayna Batya, it is simply harder to say of women who demand greater access to learning or other *mitzvot* that they are anomalies or renegades, or that they willfully refuse to be happy “the way their grandmothers were.”<sup>39</sup>

In fact, not all of their grandmothers were happy, and Rayna Batya’s intense personal struggle with silence (and with Barukh) was an apt expression for women’s already contested place in Jewish social life. Different patterns of speech and silence were important parts of what it had meant to be a man or a woman in the still largely traditional Jewish communities of Eastern Europe. “Beautiful” Jewish men, *shayner yidn*, were permitted or even expected to be loud, fiercely argumentative and stubborn, but only in study. In the market place or at home it was the voices of women and, to a lesser degree, of unlearned men, that one expected to hear.<sup>40</sup>

Testimonies on shtetl life collected in the early 1950's by anthropologists Mark Zborowski and Elizabeth Herzog in New York, under the guidance of Ruth Benedict and Margaret Mead, illustrate in a myriad of subtle ways the many-textured interplay of speech and silence in expressing what it meant to be a woman or a man, high class or low, "beautiful" or "coarse," among Eastern European Jews. Sensitivity to words and their absence was well developed. Describing the aesthetics of market-life, Zborowski and Herzog write:

When the buyer or seller is a woman, which is often the case, the procedure is more verbal and much more vivacious. The acquisition of a Sabbath fish may take on all the suspense of a pitched battle, with onlookers cheering and participants thoroughly enjoying the mutual barrage of insults and exhortations. Points are scored through technique and finesse, and the process of bargaining has as much interest and zest as the final result.<sup>41</sup>

Buying a fish is made to sound a good deal like Talmud study in this passage and, indeed, one of Zborowski and Herzog's most interesting conclusions is that men and women, the worlds of yeshiva and marketplace, were governed by a common set of aesthetic and ethical values: "In keeping with his own conceptions of contradictory reality, the man of the shtetl is known both for volubility and for laconic, allusive speech. Both pictures are true, and both are characteristic of the yeshiva as well as the marketplace."<sup>42</sup> Because men and women ultimately shared so much, and because gender distinctions were largely contextual rather than categorical, argue Zborowski and Herzog, it was inevitable that boundaries would sometimes be crossed. "Study is for men, but some women do acquire a considerable amount of learning. . . . There was even a Hassidic woman who became a religious leader and acquired followers. It is typical of the culture both that this could happen and that when it did there was no way to deal with her."<sup>43</sup>

These words apply to Rayna Batya as well, although Volozhin was no shtetl and Rayna Batya was not the Hasidic Rebbe Hannah Rachel, who was eventually convinced by some of her male counterparts to relinquish her position of leadership, marry (twice in succession), and then relocate to the Holy Land.<sup>44</sup> Rayna Batya had never claimed any special status for herself: in Volozhin, learning was more highly valued than charismatic authority. But she confounded expectations by remaining silent where women were most often to be heard, and by her claim that women ought to be heard where they had more often been silent. Barukh frames her conflict intellectually rather than politically, as if convincing him

alone would have satisfied her. Her personal tragedy was that she did not convince him, but gradually withdrew into silence for longer periods after each aggrievement. Words began to lose their power to comfort and reconnect. Her struggle, and the form it took, begin to provide us with a human picture of the basic and unresolved tensions which defined Jewish religious life in nineteenth century Eastern Europe: “*it was typical of the culture both that this could happen and that when it did, there was no way to deal with her.*”

The breaking point seems to have taken Barukh by surprise. While waiting to continue his conversations with Rayna Batya (it was about three months since the incident of his offensive joke), he thought to formulate a coherent apologetic which would finally satisfy her. He amassed sources from biblical and rabbinic literature to show that the study of Torah had to be understood on the model of warfare, from which women were naturally exempt:

This association [of study with warfare] can be explained not only by the fact that when scholars occupy themselves with Torah they are like combatants struggling amongst themselves to clarify the law, its logic and reason, but also because the establishment of Torah requires a person to stand fast in warfare against himself and his own flesh. [He must] accept upon himself that which troubles the body and wearies the soul, as the Sages said: “The Torah will only be established for a person who kills himself over it” [*Berakhot* 63b], which means one who weakens and wearies his body for the sake of perseverance and depth of study. They also said [*Erubin* 22a]: “The Torah is only established for one who makes himself cruel towards his own children and family [by long hours of absence while studying, or by economic hardship]” (p. 1969).

While prepared to admit of individual exceptions, it is obvious to Barukh that this prescription would not be appropriate for most women, whose natural role it is to raise the families from which scholars must sometimes stand aloof. “What’s more,” Barukh asks, “what would happen if husband and wife were both to devote themselves to study in this way: what would become of their house and children? In this way the building-up of the world and its existence would be reduced to complete desolation . . . with no one to pay heed!”

For the first time, Barukh manages in this passage to articulate a full blown cosmology. The ideal male scholar is characterized by a defeated, ethereal body, and by his partial release from family responsibilities.<sup>45</sup> For Barukh, this kind of asceticism is not an independent value, but is linked directly to intellectual attainment in Torah. For women, by contrast, physical robustness and attentiveness to family are basic elements of “*binyan ha-*

*’olam*,” the building up of the world, which is portrayed here as a religious activity for women whose value is complementary to that of Torah study for men. In this symmetrical and morally imbued cosmos, Rayna Batya’s complaints, her bodily illness, and the havoc she wrought upon her household are all emblematic of a world in which women and men have upset the order of creation. Driven by his dialogue with Rayna Batya, Barukh developed an increasingly confident master narrative, whose final effect (although he may not fully have realized it at the time) was to render senseless the eruption of women’s indignation.<sup>46</sup>

Barukh continues in this vein over several pages, analyzing a variety of texts and legal issues in great detail. He also devotes some energy to proving that none of his conclusions entail the denigration of women, whose dignity he believed to be conveyed by classical Jewish sources. For Barukh, ultimately, one has a sense that this was still a kind of bargaining over fish; that the intellectual consistency, finesse and excitement of debate were more important to him than practical outcome, over which a young yeshiva student such as he had little control. He underestimated the extent to which he and his aunt were no longer having the same conversation. For Rayna Batya, disappointed and desperate, the stereotypic detachment of Lithuanian yeshiva learning was simply no longer possible. She resisted Barukh’s elegant cosmology which would have turned her expressions of pain into bitter self-indictments, but could offer no clear alternative. Instead, the more Barukh spoke, the further she retreated from words. Her final move to silence was chilling and irrevocable:

When I had expounded these words before my aunt, she reflected a great deal, and seemed to consider all the things which I had said. . . . After many thoughts and deep ones, she said to me: “What can be done? Yes, yes, thus it is. ‘Turn to the right, turn to the left’; in the end it is for us oppressed and disgraced women to bend our heads beneath our evil fortune. Righteous are You, God, for all that has been decreed concerning us. ‘Your Torah is certainly true’ [a paraphrase of Psalms 119:42], and ‘Your laws are a deep abyss’ [Psalms 36:7]; ‘There is no speech nor are there words’ [Psalms 19:41. ‘Blessed are You who created me according to Your will.’”<sup>47</sup> Afterward, she turned to me and said, “Just as everything has an end and limit, so let there come an end and limit to this painful matter.” From that time on, she never spoke on this subject again (p. 1976).

Rayna Batya’s final words do not represent the culmination of her previous conversations with Barukh but their catastrophic limit. Until this moment, they had each invoked scholars’ words, cited precedent, and offered reasoned critique. In effect, they had been speaking to one other through Torah, sharing in its words and silences. God is an implicit presence in these conversations but is rarely mentioned—“the Torah,” after all, “is not in heaven.” It is

only at the boundary of words' credibility, where human responsiveness falters or fails, that Rayna Batya turns to address "the One who spoke and the world came into being."

It is for the sake of these words and this silence that I return again and again, with a profound sense of identification and dis-ease, to consider Rayna Batya. Above all, it is her unwillingness to compromise. Neither tradition nor personal experience can be relinquished, or twisted beyond recognition to reinforce the other's claim. Torah is true for Rayna Batya, yet her honest experience is that women are "oppressed and disgraced." This disjuncture leads her to embrace a silence which eschews the premature resolution of her conflict, and prevents her from moving decisively towards either submission or rebellion. Read in this way, her silence is like the "*teiku*" which punctuates interminable talmudic debate. It leaves in its wake an unresolved tension replete with messianic intimation.<sup>48</sup> Minimally, Rayna Batya's story is a rebuke to those who would deny the anguish that love for Torah can cause, or the devotion it can engender.

Nevertheless, I would like to take this reading one tentative step further. I want to suggest that silence is also part of an identifiable trope in Jewish religious writing, to which Rayna Batya's silence can be related. Like her arguments, Rayna Batya's silences too have a social context and a human form which invite interpretation. And, like her arguments (perhaps even more than her arguments), silence too has been deleted from the modern retelling of her story. Locating Rayna Batya's move to silence in a nuanced cultural and religious context will enhance our appreciation of her as a deeply religious personality, who struggled in Torah even after she had withdrawn from speaking about Torah. It will give us a clearer notion of what may have been "at stake" for her in the aftermath of her conversations with Barukh, and it may also help us to think about what is at stake for us in retelling her story.<sup>49</sup>

Actually, neither Rayna Batya's silence nor modern readers' discomfort with it is surprising. In relationships with one another or with God, Jews have long maintained that argument can be an expression of intense sociability and mutual concern. Silence, on the other hand, has come to represent anger, withdrawal, or even a threat of violence.<sup>50</sup> Barukh himself was far more disturbed by his aunt's periodic refusals to speak than by any of her sharp retorts, and in this he was far from idiosyncratic. The Jews who saw Jerusalem in ruins knew that their devastation and sense of abandonment could only be expressed in a daring



wordplay which transformed “Who is like You among the mighty, O Lord (מי כמכה באלים)!” (Ex. 15: 11), to “Who is like You among the dumb (אלמים)!” “For He hears the curses and blasphemies of that wicked man [the Roman general Titus] and remains silent” (*Gittin* 56b).<sup>51</sup> In sociology, as in theology, silence is the voice of broken relationships.

But God’s withdrawal from relationship has not always been viewed as a hostile act. Divine silence is sometimes portrayed as the suppression of destructive forces which accompany overwhelming anger or grief, and the promise that their devastating power will one day break forth in a more controlled way to transform the world. The Rebbe of Piaseczno, R. Kalonymos Shapira, writes:

. . . And this is why the world stands in its place and is not destroyed, despite the pain and the voice (*kol*, i.e., scream) of The Holy One, Blessed be He, for the people of God, who are suffering, and for His house, which has been razed. . . .

Since His pain, as it were, is without limit and greater than the world, it cannot enter the world, and the world is not shaken because of it. Therefore [the angel] said [to God]: “I will weep, and you shall not weep.” That is to say . . . the angel sought to bring [God’s] weeping into the world, so that [God] would no longer have any reason to weep. This is because once it was heard in the world, the voice of [God’s] weeping, the world would hear it and explode. A small spark of His sorrow, as it were, would need only to enter the world for all of His enemies to be burned away.

At the [Red] Sea, The Holy One, Blessed be He, (silenced the angels by saying): “The works of My hands [the Egyptians] are drowning in the sea, and yet you offer Me songs of praise?” But now, when Israel itself is drowning in blood, shall the world continue to exist! “I will weep and You shall not weep [pleads the angel], for You will have no more reason to weep [once the spark of Your sorrow has destroyed the world]. . . .”

But . . . because the time of redemption had not yet come. . . , [God] answered [the angel], and said, “I will enter a place where [even] you do not have the ability to follow, and there alone I will weep. . . .”<sup>52</sup>

This passage, rich in biblical and midrashic allusion, is difficult to translate. Its author speaks to us from the Warsaw ghetto in 1942, but draws on an ancient literary theme, which is that the zeal of the angels for absolute truth and emotional catharsis must be suppressed on behalf of the world’s continued existence.<sup>53</sup> When the angel calls for God’s direct and immediate intervention against overwhelming evil, God refuses. His anger and grief are so “immense,” to use the language of R. Shapira, that their expression would burst the world asunder. Instead, God opts, as it were, for emotional restraint, marked by silence. “The world continues to exist only for the sake of those who restrain their mouths in a quarrel”

(*Hullin* 89a).<sup>54</sup> Silence is not a repudiation of justifiable anger or grief, but a recognition that their unrestrained expression would sweep away creation.

It is important to understand that for R. Shapira, these are not merely descriptions of God's relationship to the world, but prescriptions for human enactment as well.<sup>55</sup> He writes about the necessity for the Jews in Warsaw to suppress and master their unbearable grief, lest it destroy them spiritually and psychologically. Moreover, he promises them that human mastery of grief will be mirrored by God.<sup>56</sup> The kabbalistic underpinnings of this argument need not detain us here, but the fact is that for God and human beings alike, according to R. Shapira, silence represents a necessary reigning in of dangerous emotion.<sup>57</sup>

This understanding of silence is deeply rooted in Jewish tradition, and also carries important gender associations. A Hasidic writer contemporary with Rayna Batya compared the silent God to a strong and angry man.<sup>58</sup> Whereas lesser men vent their anger instantly, silence marks the truly powerful man, whose rage is held back until the moment comes for decisive and unstoppable vengeance.<sup>59</sup> Despite constant provocation by the nations of the world, God has not yet allowed His fury to sweep them away, and it is this restraint which earns him the title "*gibbor takif*."<sup>60</sup> This and other Jewish religious texts relate silence to themes of manhood, restraint, and future redemptive violence.<sup>61</sup>

Less often cited is a powerful variation on this motif, however, which associates silence with explicitly female imagery. Returning to the verse "Who is like You among the mighty, O Lord!" we find a passage from the *Mekhilta* which reads:

"Who is like You among the dumb?" This means that He hears the humiliation of His children and is silent. As it is written: "I have long held My peace, I have been still and restrained, I will scream like a birthing woman, I will gasp and pant together" [Isa. 42:14]. That is to say, "Until now I have been silent, but from this point on I will scream" (*Mekhilta* to Exodus 15:11).

In the extended passage from Isaiah, one part of which is quoted by this midrash, childbirth and warfare are parallel metaphors for God's alternating withdrawal and redemptive activity, silence and speech. Like the silence of divine grief and that of manly anger, this silence is figured as a preliminary ingathering of explosive emotional powers, or the temporary suppression of a truth whose premature expression would prove destructive.

But the birthing imagery of the *Mekhilta* also portrays clearly what is elsewhere only implicit: that both contraction and outpouring are necessary moments in a single creative-redemptive movement. God is silent, but that silence constitutes a mounting pressure which

can only be released by the great cry which follows. Silence is therefore not an end point, but a dialectical ground from which birth, activity, and expression all arise. Can this not provide us an additional basis for coming to terms with Rayna Batya's decision, at a certain moment, to withdraw? Is it not possible that she felt a need to bury her anger and grief deep within, because she had not yet found a way to express them without risking the destruction of her religious and moral world?

It would be easy to treat Rayna Batya's silence as nothing more than a final, brutalizing defeat. Contemporary social theory certainly encourages critical analysis of the ways in which her questions and protests were gradually squelched into muteness, as outlined in the first part of this essay.<sup>62</sup> But that kind of analysis alone, it seems to me, would caricature Rayna Batya almost as much as the escapist and hagiographic images of her in works like *My Uncle the Netziv* do. Angry and hurt, but also devoted and unsure how to proceed, Rayna Batya framed her withdrawal as an articulate gesture of faith, which requires some work on our part to unravel. This means that there are human and religious dimensions to her story which cannot be reduced to relations of power on the one hand, or to simple piety on the other. I have allowed myself a certain latitude in these final pages because I want to express the open ended nature of her struggle, which remained a deeply religious one, and whose outcome remained uncertain. It is important to show that there existed for traditional Jews a range of meanings for silence which transcended both defeat and assent.

Grounded in broad cultural and religious categories, silence resonates through Jewish texts as a vessel for contradictory truths and explosive emotional experience. It makes room for honesty in a world where absolute truth cannot yet find a place. And because God and human beings both have recourse to silence, it provides a mutual, deeply meaningful frame of reference. Barukh refers to Rayna Batya's hurt silences on at least two occasions by the biblical term *hester panim* ("hidden face") which is normally deployed only in reference to the silent, withdrawn, God.<sup>63</sup> Whether intended or not, the very possibility of such an association in this context adds religious and cultural resonance to Rayna Batya's decision to stop talking.

Rayna Batya died around 1876, close to the age of 60, and probably within a year of the events described in this essay. Given time, it may be that she would have found the

words to resume her conversations with Barukh as she had done on previous occasions, or even to win some of her many disputes with him. In that case, her withdrawal would have come to seem more like a necessary gestation than like a tear in the fabric of meaning. We will never know. What we do know is that arguments on behalf of women's learning like the ones Rayna Batya offered only gained practical momentum in subsequent decades.

Puah Radowski, a woman who had broken with her family's hasidic tradition, established the first middle school for Jewish girls in Warsaw during the closing years of the nineteenth century.<sup>64</sup> In 1917, the first Bais Yaakov school for Orthodox girls was opened in Krakow by Sarah Schenirer, who had actively sought and gained the approval of leading rabbinic authorities.<sup>65</sup> It is interesting that both Puah Radowski and Sarah Schenirer were concerned that lack of religious education for girls had begun to encourage their assimilation out of the Jewish community. In Sarah Schenirer's case, especially, this concern played a major role in marshaling public support for her effort.<sup>66</sup> Rayna Batya's failure to mount such an effort herself may be a sign of the intensely personal nature of her struggle, and perhaps also of the fact that Eastern European Jewish communities in the 1870's had not yet felt themselves shaken to the core by rapid social change.

It would soon come. In 1892, the yeshiva in Volozhin was forcibly closed. Rabbi Berlin (by then remarried to Barukh's young sister<sup>67</sup>) had refused to cooperate with an assimilatory policy of the Russian government which would have expanded the place of secular studies and Russian language in the yeshiva's curriculum at the expense of Talmud. Rabbi Berlin himself died a year later, and many say that he died of a broken heart.<sup>68</sup> He had once written: "All that a man has yearned for in love of the corporeal world, he would give up on behalf of his love for his own life, which takes precedence over all else. Not so the love of Torah, which is 'terrible as death' [Song of Songs 8:6]. That is to say, he would also give his life for it."<sup>69</sup> These were years in which the future of the whole Jewish community was being contested, and people on all sides understood that the shape of religious learning would be a decisive factor. Rayna Batya's life and that of her husband were both situated in the difficult and often problematic transformation of Eastern European Jewish life which accompanied modernity. Both were ultimately disappointed in their efforts to hold Torah at the center of life, although for different reasons and in different ways.

As for Barukh, he went on to make a career in banking, to marry, and to write learned commentaries. *Mekor Barukh* was composed in Pinsk during the bitter German occupation of World War I. In light of his weakened physical and emotional state (his wife had recently died and his business failed), Barukh sought to occupy himself with a literary project which would not be too taxing. At the same time, he sought to engage his readers in an exercise of painful nostalgia: “It is fitting and proper” he writes, “to give the children of our afflicted era a true picture of our parents’ lives in the previous generation, so that we may appreciate what we have lost” (p. 2).

*Mekor Barukh* was in fact written as a self-conscious aid to communal mourning, informed by all of the powerful and often conflicting emotions which mourning can evoke. If Rayna Batya’s depiction is both intimate and unsettling, this is in part because its context in a self-described memorial book was meant to evoke both loss and appreciation, distance and proximity:

I am full of hope and faith that every man, from every province and city, from every party . . . philosophy, and inclination . . . will find in this book names and subjects, events . . . both pleasant and painful, comforting and disturbing . . . which will arouse him to old memories as well. Many will find in this book words, events, reflections and stories that relate to their ancestors or families, and will read their names within, so that this book will serve them as a lasting memorial (p. 13).

Barukh was not afraid of disturbing memories. In fact, he cultivated them as part of his debt to the past. Perhaps that is why voices which did not agree with his own and silences he did not succeed in sharing were each given their due in his book. Barukh understood that memory can be at least as important an asset as inspiration, and that Torah should be large enough to encompass life’s many contradictions—including the wounds that are sometimes suffered by those who love it. It is only because of his honesty that we have an opportunity to encounter Rayna Batya in some limited way today. She had something to say, in her accusations and her silence, which we may still need to hear. If only we can find it within ourselves to be quiet for a moment and listen.

## Notes

A number of readers have commented on various drafts of this essay. I am especially grateful to Sam Cooper, David Debow, Yocheved Debow, Rebecca Kobrin, Timothy Lytton, Matthew Morgenstern, Lisa Primus, David Rosen, Shaindy Rudoff, Rachel Sabath and Jacob J. Schacter for their wisdom and inspiration. I am solely responsible for the contents.

1. As will become clear in the course of this essay, Rayna Batya's perception was that she and other women had been unfairly excluded from Torah study. It is to her experience that this essay is dedicated.

It should also be pointed out that my reference to Rabbi Epstein as "Barukh" throughout the text of this essay implies no lack of respect for the scholar or his work. For one thing, Rabbi Epstein was a young man of between thirteen and fifteen during the time of the events which I describe, which would make honorific titles somewhat anachronistic. More significantly, I have attempted to reproduce the tone of intimacy which marks his relationship with Rayna Batya as narrated in *Mekor Barukh*, where he is not referred to as rabbi. In the context of this essay, finally, I believe that use of the title "rabbi" would automatically grant R. Epstein a level of authority which, as a woman, is necessarily denied to Rayna Batya. It would mean, in essence, that the outcome of their argument would be determined before it even begins.

2. "The Wisdom of Women" is chapter 46 of Rabbi Barukh Epstein's published memoirs and is devoted to the life and learning of his aunt Rayna Batya. See R. Barukh Epstein, *Mekor Barukh* (Vilna, 1928), 1948-77. The actual conversations recorded in *Mekor Barukh* were probably held mostly in Yiddish.
3. The content of this reading list is instructive. *Mishnah* is basic to *Torah she-be'al peh*, the "Oral Torah," which is usually held to be the subject of whatever restrictions on study may apply to women. It is probably for this reason that it is deleted from Rayna Batya's reading list in a recently published English translation of *Mekor Barukh* (see below, n. 15). The Talmud, however, which has always been the real stronghold of male learning and prestige, seems not to have appeared on Rayna Batya's study table. On at least one occasion, she lamented to Barukh her lack of a talmudic education (p. 1954). Of the books she did study, *En Ya'akov* (by R. Jacob ben Solomon Ibn Habib of sixteenth century Salonika) is a popular compendium of non-legal material from the Talmud which was often available in Yiddish and was read by women as well as men. *Menorat ha-Ma'or* (by R. Isaac Aboab of fourteenth century Spain) and *Kav ha-Yashar* (by R. Zevi Hirsch Koidonover of eighteenth century Poland) are ethical and inspirational works directed to a wide, not necessarily learned or male, audience. *Zemah David* (by R. David Gans of sixteenth century Prague) is a Hebrew chronicle of world history from the time of Creation to the sixteenth century, written by a student both of the mystic Rabbi Judah Loew of Prague (Maharal) as well as the astronomer, Tycho Brahe. Finally, *Shevet Yehudah* (composed in the 1520's by the Spanish exile Solomon Ibn Verga) is a series of meditations on Jewish history and political life, written in the form of fictional dialogues involving a Spanish Jewish refugee who was forcibly baptized in 1497.

Books like these may not all have been standard fare in Lithuanian yeshivot, but they were well within the sphere of appropriate reading material for pious Jews at varying levels of literacy and scholarship. Rayna Batya obviously read Hebrew, which is often taken to be a marker of specifically male literacy among Eastern European Jews. In sum, she is portrayed as a woman who stretched the boundaries of communal norms, but had by no means broken them. See Chava Weissler, "The Religion of Traditional Ashkenazic Women: Some Methodological Issues," *AJS Review* 12 (1987): 73-94; Shaul Stampfer, "Gender Differentiation and Education of the Jewish Woman in Nineteenth-Century Eastern Europe," *Polln* 7 (1992): 63-87. For methodological clarification on the study of Jewish women's literacy, see Chava Weissler, "For Women and for Men Who Are Like Women: The Construction of Gender in Yiddish Devotional Literature," *Journal of Feminist Studies in Religion* 5:2 (1989): 7-24.

4. See R. Hayyim of Volozhin, *Nefesh ha-Hayyim*, Part 4, chapter 10 (Bnei Brak, 1989). See also Norman Lamm, *Torah Lishmah: Torah for Torah's Sake in the Works of Rabbi Hayyim of Volozhin and his Contemporaries* (Hoboken, 1989), 102-37.
5. Jacob J. Schacter, "Haskalah, Secular Studies and The Close of the Yeshiva in Volozhin in 1892," *The Torah u-Madda Journal* 2 (1990): 76-133, especially pp. 89-95.
6. H. N. Bialik. "Ha-Matmid," *Minbar Shirei H. N. Bialik 'im Sheva Harza'ot me'et Pinhas Sadeh* (Jerusalem, 1985), 22. Cf. N. Lamm, 138, n. 26.
7. Their first child, Hayyim Berlin, was born in 1832, when young Naphtali was only 15. It is unlikely that Rayna Batya was any older, although exact dates for her birth and death are unavailable. It is interesting that Rabbi Berlin later spoke out in opposition to the practice of child marriage in the Jewish community. See David Biale, "Childhood, Marriage, and the Family in the Eastern European Jewish Enlightenment," in *The Jewish Family: Myth and Reality*, ed. Steven M. Cohen and Paula Hymen (New York, 1986), 53.
8. R. Barukh Epstein was born in 1862. He writes that he came to Volozhin around the time of his bar-mitzvah (p. 1704). S. Stampfer, 75, supposes that the events recorded in "Wisdom of Women" took place around 1875.
9. See, for instance, Mark Zborowski and Elizabeth Herzog, *Life is With People: The Culture of the Shtetl* (New York, 1952). In her work with contemporary Middle Eastern Jewish women, anthropologist Susan Starr Sered has shown how some women experience diffuse holiness and religious satisfaction in their daily lives through family oriented tasks and rituals which are far removed from the men's world of text oriented piety. Nevertheless, these women do tend to cherish whatever gains in literacy they have made in recent years. See Susan Starr Sered, "Food and Holiness: Cooking as a Sacred Act Among Middle-Eastern Jewish Women," *Anthropological Quarterly* 61:3 (1988): 129-39; *idem*, *Women as Ritual Experts: The Religious Lives of Elderly Jewish Women in Jerusalem* (New York, 1992).

10. While a few of the central halakhic sources pertaining to women's Torah study are presented in the course of this essay, I have avoided complex halakhic analysis or discussion of contemporary halakhic opinions as there is already a broad literature on this subject in English. For my purposes, it is sufficient to point out that Rayna Batya acknowledged the existence of a broad, but not unequivocal prohibition on advanced Torah study for women, and that she continually sought to undermine that prohibition through recourse to Jewish texts themselves.
11. Susan Starr Sered, "Food and Holiness," 130, writes: "Working exclusively with women, I began to discover a religious world in which sacrality is concentrated in and radiates out from the kitchen (rather than the synagogue), in which literacy is not seen as a universal value but as a male prerogative, and in which the most profane activities become sacred simply because of the manner in which they are carried out." The similarity between Sered's depiction of semi-literate women's spirituality and the hasidic immanentism which R. Hayyim fought is striking. R. Hayyim's doctrine of *Torah lishmah*, rooted in a particular understanding of divine emanation, maintained that direct access to God was available *only* through the study of Torah and not (as many Hasidic authors had maintained) through other activities which could be undertaken for the sake of heaven (N. Lamm, *Torah Lishmah*, 116, n. 85; 146, nn. 50 and 52). Women's collective exclusion from "study of Torah for its own sake" may be considered especially severe given R. Hayyim's doctrine, but the practical and experiential implications for women in mitnagdic circles have not, to my knowledge, been explored.
- The hasidic side of the equation has received slightly more attention. S. A. Horodecky argued in 1923 that the "emotional Judaism" of Hasidism was inherently more egalitarian than its "intellectual Judaism" counterpart. This claim has been vigorously contested by Ada Rapoport-Albert, "On Women in Hasidism, S.A. Harodecky and the Maid of Ludmir Tradition," *Jewish History: Essays in Honor of Chimen Abramsky*, ed. Ada Rapoport-Albert and Steven J. Zipperstein (London, 1988), 495-525. For a partial counter argument, however, see Nehemia Polen, "Miriam's Dance: Radical Egalitarianism in Hasidic Thought," *Modern Judaism* 12 (1992): 1-21. In any case, characterizations like "emotional Judaism" oversimplify the religious lives of Hasidim and Mitnagdim alike. "Immanentism" might be a more heuristic category for comparison, but it should be noted that both Hasidim and Mitnagdim tended to divest local communities of religious authenticity in favor of highly centralized, cosmopolitan and overwhelmingly male institutions like the yeshiva and the rebbes' court. These social institutions may have been more important in defining gendered experience than were rarefied theological debates between the two groups.
12. Barukh tells us in this passage that Rayna Batya lectured him about the importance of correct attribution of sources by citing an ethical treatise written by her own grandfather. Not only did she thereby demonstrate her own care with citations, but also underlined her superior *yibus*—Barukh was, after all, merely the son of her father's student. There are nuanced literary, family, and personal references in each of these exchanges which deserve attention for the richness of context they provide.
13. *Erwin* 13b. Rayna Batya's invocation of this principle against Barukh was especially pointed. According to the talmudic passage, a heavenly voice once punctuated a dispute by proclaiming that the Schools of Hillel and Shammai both represented the "words of the Living God." Nevertheless, it was established that the Halakhah should follow the School of Hillel because its members were known to be more humble than their colleagues. Barukh's implicit reliance on the School of Shammai could only suggest, therefore, that it was he, a man, and not Rayna Batya, who was both arrogant and ignorant.
14. These words are taken from the ceremonial absolution of improper vows, usually recited before Rosh Hashanah or Yom Kippur.
15. Moshe Dombey, *My Uncle the Netziv* (New York, 1988), 156-57.
16. While presented by the publisher as an "edited translation" of *Mekor Barukh*, *My Uncle the Netziv* actually represents a new and altogether different genre. *Mekor Barukh* is a haunting personal memoir of life in a beloved but rapidly changing world. It was written during the German occupation of Pinsk during World War I, partly as an aid to collective mourning (see below). Like all memory, it is partial and evocative rather than critical. But it includes the harsh memories of pain and loss that accompanied Barukh Epstein on his long journey. *My Uncle the Netziv*, by contrast, is a didactic and triumphal work, self-consciously dedicated to the acculturation of readers in an intense religious enclave. It custom-fits memory to the perceived needs of a present day community, and literally creates the role models who are then claimed to embody that community's values. See Haym Soloveitchik, "Rupture and Reconstruction: The Transformation of Contemporary Orthodoxy," *Tradition* 28:4 (1994): 64-130, especially pp. 84-85, nn. 62 and 63.
- Despite its overall hagiographic tone, however, most chapters of *My Uncle the Netziv* are less heavily censored than "Wisdom of Women," the chapter devoted to Rayna Batya. This fact only sharpens a central question: are a woman's pain and outrage so uniquely troubling to the editors of this book that they must be suppressed, and, if so, why? Other sensitive and potentially embarrassing topics, such as Rabbi Berlin's familiarity with Maskilim and their literature or his son Meir's future leadership of the Mizrachi Movement (albeit softened in translation by deletion of the word "Zionist") are preserved in *My Uncle the Netziv*. Is it possible that a struggle over gender relations today fills the ideological space which was once filled by the struggle over Zionism or secular learning as boundary markers between different groups within the Orthodox community?
17. As Jacob J. Schacter, "Haskalah, Secular Studies," 113, n. 5, has already pointed out, Rabbi Dombey's translation omits reference to Rayna Batya's study of *Mishnah* and *Aggadab* (see above, n. 3). However, even this highly edited version was insufficiently doctored to suit its intended readers. The Lakewood Cheder distributed copies of the book to financial contributors, but later recalled it for alleged inaccuracies, probably relating to the acknowledgment that some secular

- studies had been permitted at the yeshiva under pressure from the Russian government (*ibid.*). J. Schacter has correctly noted the pressures which led to the censoring of *My Uncle the Netziv*, but given its portrayal of Rayna Batya, I believe that a closer look at the translation itself is also in order. It was emphatically *not* because of the many inaccuracies relating to her portrayal that the book was recalled.
18. This is not a critique of *My Uncle the Netziv* as such, but of a whole climate of opinion in the contemporary Orthodox community which that type of account both represents and helps to reproduce. This climate of opinion includes the denial of a place to lived experience in the understanding and elaboration of Jewish tradition. Whatever cannot be found in particular kinds of authoritative texts simply does not exist (see H. Soloveitchik, *op. cit.*). In our case, the pain associated for some people with a life of Torah (where it is other than the voluntary self-sacrifice valorized by tradition) can hardly be acknowledged. In practical terms, this attitude is associated with a narrowing of legitimate halakhic and theological debate within Orthodoxy, often justified by fallacious references to an idealized past in which cultural conflict (such as that with respect to women's Torah learning) simply did not exist. The irony of *My Uncle the Netziv*, of course, is that the view of history it presents can be discredited by reference to the very text of which it purports to be a translation. For a related critique, see B. Barry Levy, "Artsroll: an Overview," *Approaches to Modern Judaism*, ed. M.L. Raphael (Chicago, 1983), 111-62.
  19. See his commentary to *Avot* 1:4, published together with his commentary on the prayer book under the title *Barukh She-Amar*.
  20. That is to say, commanded by the Torah itself. The biblical statement (Deuteronomy 11:19): "and you shall teach them unto your sons [or children]" was understood as an exemption of women from mandatory Torah study. Authorities are agreed, however, that no prohibition on women's study is derived from the biblical text itself. See *Kiddushin* 29b; *Mishneh Torah*, Hil. Talmud Torah 1:13; *Tur, Yoreh De'ah* 246; *Shulhan `Arukh, ibid.*
  21. The Mishnah (*Sotah* 20a) reads: "Ben Azzai says that a man is obligated to teach his daughter Torah. . . . R. Eliezer says that a man who teaches his daughter Torah is as if he has taught her *tiflut*." Maimonides, takes *tiflut* to mean "foolishness" or "vanity," associated with women's lack of seriousness with regard to study, whereas Rashi (*Sotah* 21b) comes closer to identifying it with using knowledge of the law to circumvent the law itself: "Through [her study of Torah] she will learn guile, and do things secretly." It is interesting that although the commentators disagree as to whether *tiflut* ought to be associated with insufficient learning (Maimonides) or with excessive learning (Rashi), they are agreed that it indicates the subversive potential which limited education puts in women's hands.
  22. *Mishneh Torah*, Hil. Talmud Torah 1:13.
  23. The complexity of Maimonides' formulation is apparent in a number of ways. First of all, in the passage from Hil. Talmud Torah cited above, each assertion is hedged with exceptions and seeming contradictions. Women have a reward for studying, Maimonides tells us, but not like that of a man. If there is reward for study, that implies that it is a meritorious act, but the Sages have in fact prohibited it. It would be difficult to find another passage in which Maimonides juxtaposes such seeming contradictions so forcefully. He even accentuates this feature by opening his remarks with a statement about the reward for study which has no apparent practical relevance, calling attention to the unusual nature of the prohibition on women's study, which amounts to prohibition of a meritorious act. Maimonides' reference to "most" (but presumably not all) women's intellectual capacities in this context has also been noted (see below).  
In addition, despite the seemingly clear practical directive embedded in this passage, statements made elsewhere seem to contradict it. In Hil. Yesodei ha-Torah 4:13, Maimonides explicitly indicates his belief that women do, in principle, have the intellectual capacity to master Talmud (i.e., "the arguments of Abbaye and Rabba"), In another passage (Hil. Teshuvah 10:5), he advocates a program of gradual and guided study for "women, children and other uncultivated people (עמי הארץ)," implying that the lack of intellectual development he attributes to the class of "uncultivated people" as a whole, including women, is contingent on their relative lack of appropriate education. This is not the place to attempt a careful reconstruction of Maimonides' ruling on women's Torah study, but it should be clear that his position was far more nuanced than has often been recognized. See Warren Zev Harvey, "The Obligation of Talmud on Women According to Maimonides," *Tradition* 19:2 (1981): 122-30.
  24. Chava Weissler, "For Women and for Men Who Are Like Women," 2, reminds us not to assume uncritically that Jewish women in Eastern Europe were as ignorant or unlearned as they are sometimes portrayed. Ignorance in matters of Torah was part of the cultural definition of womanhood. Among other things, argues Weissler, this allowed women to be used as "icons" for the representation of unlearned men. One nineteenth century Yiddish author, for instance, writes that his book is intended for an audience of women and "men who are like women"—that is, unlearned men. Women are appropriated here as signifiers of illiteracy (Hebrew illiteracy in particular), against which men's competence can be measured. But this does not mean that women themselves were uniformly illiterate. See Naomi G. Cohen, "Women and the Study of Talmud," *Tradition* 24 :1 (1988): 28-37.
  25. See R. Isserles' gloss on *Shulhan `Arukh, Yoreh De'ah* 246:6.
  26. See the gloss of fifteenth century R. Joshua Falk, *Prishah*, to *Tur, Yoreh De'ah* 246. Note 15 of the *Prishah* reads:  
"Since the intellects of most women are not inclined [towards being educated], etc." But if she taught herself, we see that she is no longer to be identified with "most women" and therefore [Maimonides] wrote . . . that she has her reward. This refers to a case in which she studied Torah properly, and did not turn it into "words of vanity." Her father is not permitted to teach her because perhaps she will turn the Torah into words of vanity, for he does not know what is in her heart.



R. Falk here rules that women who clearly are inclined towards education (as manifest in their desire and ability to teach themselves) are not subject to the prohibition of Torah study, so long as they do not turn words of Torah into “words of vanity.” The prohibition of fathers teaching their daughters, in addition, may be referring to a first case scenario, before daughters have visibly demonstrated their commitment to learning. On the other hand, if this prohibition is read as referring even to women who already have demonstrated such commitment, it becomes difficult to understand how R. Falk can maintain that fathers do not know what is in their hearts. Cf. Avraham Weiss, *Women at Prayer: A Halakhic Analysis of Women's Prayer Groups* (Hoboken, 1990), 58, n.2. In any case, it is worth mentioning that Rabbi Falk's wife Bella was herself renowned for piety and learning, which included participation in scholarly discussions with men who visited her home, and sometimes led her to intervene in matters of practical Halakhah concerning her family. Her son Joseph writes about her at length in his introduction to *Prishah*, printed at the beginning of *Tur, Yoreh De'ah*.

After the prayer service she did not put her mind to any vain thing, but went “from strength to strength” (Psalms 84:8), occupying herself with the weekly Torah portion and the commentary of Rashi as well as other commentators. It was well known to every student of my father and teacher of blessed memory . . . that whenever they discussed words of Torah at the table she would gird up her loins like a man for the give and take of the discussion. Sometimes she would offer an original interpretation that was sweeter than honey, “her lips dripping honey” (Song of Songs 4:11). Especially when it came to the laws of women and the regulations of *niddah* she was an expert almost like those who are qualified to instruct the public (בעלי הוראה), . . . In this way she was always giving her mind and heart over to the understanding of Torah, and after occupying herself with prayer and study, she would occupy herself with acts of kindness. . . .

I am grateful to Rabbi Chaim Brovender for bringing this source to my attention.

27. See Deborah R. Weissman, “Education of Jewish Women,” *Encyclopedia Judaica Yearbook* (1986-1987), 29-36.
28. R. Yehiel Mikhel Epstein, *ʿArukh ha-Shulhan, Yoreh De'ah* 246:19. Simcha Fishbane has recently argued that Rabbi Epstein took care to avoid negative assertions about women and their religious observance in his legal writings. This fact is striking, he claims, because some of Rabbi Epstein's contemporaries, like Rabbi Israel Meir Kagan (author of the *Mishnah Berurah*), did include negative characterizations of women's religious observance and intellectual capacity in their work, which were sometimes used to explain or justify particular halakhic rulings. By attributing Rabbi Epstein's positive attitude towards women to the influence of Haskalah and personal biography alone, however, Fishbane takes insufficient notice of the multi-vocality which has characterized Jewish textual tradition on these subjects for centuries (even the few sources I have already cited in this essay will attest to this). More problematic still, Fishbane's comparison of R. Epstein and R. Kagan breaks down on the issue of women's Torah study. It was the supposedly more negative Rabbi Kagan, after all, who lent his authority to the controversial opening of secondary schools for religious girls in Eastern Europe (see below). Rabbi Epstein, meanwhile, opposed textual education for women. See Simcha Fishbane, “In Any Case There are no Sinful Thoughts” – The Role and Status of Women in Jewish Law as Expressed in the *Arukh Hashulhan*,” *Judaism* 42:4 (1993): 492-503.
- The paradox dissolves if we dispense with Fishbane's methodological assertion that halakhic leniency such as Rabbi Epstein's can be directly correlated with “endorsement of the new social reality in Eastern Europe.” As Haym Soloveitchik (pp. 106-7, nn. 6 and 7; 110-11, n. 20) has argued, R. Epstein was above all a defender of local traditions, even when they diverged from authoritative textual sources. In a relatively secure, traditional community, argues Soloveitchik, practice was learned mimetically and justified by reference to widely accepted communal norms. This is why Rabbi Epstein could respond positively to women's traditional practices, but remain hostile towards an innovation like formal schooling. His discussion of women's learning is certainly couched in these terms. R. Kagan, by contrast, understood himself for a variety of reasons to be battling the large scale breakdown of traditional communities. He demanded that practice be justified by reference to authoritative textual sources which were for him the only reliable authenticators of tradition. His legitimation of the Bais Yaakov schools for girls in the early part of this century is actually framed as a response to the inroads of modernity and assimilation. Girls must learn at school, from books, what they could no longer count on learning at home. The attitudes of these *poskim* towards formal women's education, therefore, seems to have had more to do with differing concerns over assimilation and religious continuity than with divergent views on women per se.
29. R. Naftali Zevi Yehudah Berlin, “Kidmat ha-ʿEmek” 3:4, in *Derashot ha-Neẓiv* (Jerusalem, 1993), 50-51. It was actually Rayna Batya who castigated Rabbi Berlin during their first years of marriage for his lackluster performance as a scholar; both she and her father were apparently convinced that he would never amount to much, and she was jealous of her older sister, married to the illustrious R. Eliezer Fried. Rabbi Berlin eventually did prove his merit, and later advised men who felt disrespected by their wives to redouble their efforts at Torah study (*Mekor Barukh*, pp. 1685-90).
30. To understand the cultural importance of such exceptional cases, it is worth comparing Barukh's attitude towards traditional restrictions in study for women with those concerning a parallel prohibition on teaching Torah to non-Jews. In the chapter preceding “Wisdom of Women,” entitled “Torah Among Gentiles” (pp. 1928-45), Barukh argues that such restrictions applied only to the morally corrupt pagans of talmudic times, effectively nullifying their contemporary relevance. He recounts without criticism the Russian education minister Ubarov's request to learn Talmud from Max Lilienthal, who eagerly obliged. Despite his reputation for intelligence and learning, however, Ubarov was unsuccessful in grasping even the fundamentals of Talmud. At the time, Barukh concluded that most non-Jews (like most Jewish women) just didn't have a head for Talmud. But he cites many other examples of sincere desire to learn on the part of

non-Jewish men who were more successful. In particular, he speaks with deep affection about Professors Paul Kokobstov and John Troytski of Petersburg, whose Jewish learning helped them defuse an incipient blood libel. Barukh sent Professor Kokobstov a copy of his *Torah Temimah* in gratitude, which the latter proudly displayed at the university.

The juxtaposition of “Torah Among Gentiles” with “Wisdom of Women” in *Mekor Barukh* is significant. Together, these two chapters portray a tension deeply embedded in Jewish life. On the one hand, the study of Torah is a legitimizing and privileged activity of Jewish manhood, which helps to define Jewish men by differentiating them from non-Jews and Jewish women alike. At the same time, however, Torah study is a transcendent value of unparalleled importance, which should be open to everyone. The tension between these two principles is never fully resolved in the rabbinic sources cited in *Mekor Barukh*. Exceptional non-Jews, like exceptional women, can be embraced precisely because they are the exceptions which prove the rule. Barukh is amazed by both learned non-Jews and learned Jewish women, whom he compares favorably with Jewish men. Barukh once said of Rayna Batya that she was “like one of the whole men” (p.1949). Encounters with non-Jews and Jewish women who study Talmud (as well as with Jewish men who don’t) were important episodes in Barukh Epstein’s adolescent odyssey, helping him to formulate a conception of ideal Jewish manhood.

31. My methodology in this essay is heavily indebted to the work of Arthur Kleinman and Joan Kleinman, “Suffering and its Professional Transformation: Toward an Ethnography of Interpersonal Experience,” *Culture, Medicine and Psychiatry* 5:3 (1991): 275-301. Kleinman and Kleinman maintain that anthropological representation of human suffering needs to include at least two discernible foci. The first is portrayal of the social-cultural context which informs lived experience, and which always helps to circumscribe the choices that are available to people in any given time and place. Simultaneously, however, anthropology must avoid reductionist models which fail to portray the meanings of despair, transformation, or resistance as they are experienced by individual people. Portrayal of the socio-cultural context alone, while ignoring the singularity of individual lives, would both impoverish anthropological theory and dehumanize the people about whom we write. As a partial solution, Kleinman and Kleinman urge us to portray “what is at stake” for people in particular cultural and moral worlds. Following their lead, I have sought to retell Rayna Batya’s story here with an ethnographer’s respect for both individual complexity and cultural groundedness. As much as possible, I want to understand what was religiously and socially “at stake” for Rayna Batya in these conversations.
32. R. Israel ben Petahiah Isserlein lived in Germany, 1390-1460. “Maharshal,” or R. Solomon ben Jehiel Luria, lived in Poland from about 1510 to 1574.
33. See R. Shmuel Archivolti, *Ma`ayan Ganim* (Venice, 1553). R. Shmuel (1515-1611) was head of a rabbinical court and yeshiva in Padua.
34. See his *Torah Temimah* to Deuteronomy 11:19, # 48.
35. The Jewish community of Renaissance Italy has been identified by some as the first to provide systematic formal education for girls. See D. Weissman, 31.
36. R. Shimon Schwab, *Selected Writings* (Lakewood, 1988), 233-34, first cited by J. Schacter, “Haskalah, Secular Studies,” 111. This passage is remarkable for its frank formulation of the notion that suppression of history is an ethical responsibility for religious Jews—a notion which often finds far less forthright expression than that of Rabbi Schwab. Consider the way such a principle has been applied to *Mekor Barukh*. R. Barukh Epstein apparently did believe that whatever “human failings” are recorded in his book ought to be passed on to posterity, and perhaps even thought that they would be useful to his reader’s moral education or sense of connection to the past. Moreover, much of the material censored out of “Wisdom of Women” in translation had not even been represented by its author as blameworthy. So, while claiming to show respect for previous generations by “putting a veil over their human failings,” we have actually registered our belief that they were far less capable of moral discernment than we are. Not only their lives, but their writings, need to be carefully edited in light of our own desire for “inspiration” of a specific kind.  
This is an area, incidentally, in which Haym Soloveitchik’s powerful social account of contemporary orthodoxy (“Rupture and Reconstruction,” *op. cit.*) requires further elaboration. In addition to the ongoing transition from “mimetic” to “text-based” Jewish tradition which he describes, we need to understand how particular textual and interpretive canons are constituted as authentic in the first place. Certain books, and even certain passages within otherwise canonical books, are overlooked, declared unfit, or reinterpreted in light of contemporary needs. Analysis of people’s relation to “textual tradition” needs to be coupled with an awareness of how contemporary communities and their elites contribute to the ongoing formulation of such traditions. Books like *My Uncle the Netziv* are important case studies of this process in action.
37. For more on the ethical importance of history as distinct from memory, see Jacques Le Goff, *History and Memory*, trans. Steven Randall and Elizabeth Claman (New York, 1992); Yosef Hayim Yerushalmi, *Zakhor: Jewish History and Jewish Memory* (New York, 1989).
38. Women’s learning is actually a good example of considerable change in halakhic sensibilities throughout the Orthodox community over the course of a generation or two. See the “Symposium on Women and Jewish Education,” *Tradition* 28:3 (1994): 2-38. But it is also a case where clear communal need and popular pressure for change coincided with a rabbinic prohibition whose boundaries and meaning had been contested even in the earliest rabbinic sources. My point is that even where halakhic change seems impossible or undesirable, increased sensitivity to people who are disadvantaged by halakhic norms serves an ethical purpose which ought to be taken seriously.

- A refreshingly forthright account of contemporary halakhic and social trends with respect to women is Joel B. Wolowelsky, "Modern Orthodoxy and Women's Changing Self Perception," *Tradition* 22:2 (1986): 65-81. For a sensitive exposition of the problematic inherent to calls for halakhic change, see Tamar Ross, "Can the Demand for Change in the Status of Women be Halakhically Legitimated?" *Judaism* 42:4 (1993): 478-91. My one caveat to Ross' argument is that, as an anthropologist, I must distance myself from her hope that anthropology will provide an explanatory framework which can soothe many women's felt need for halakhic change. While anthropology can play a useful role in the formulation of *ta'amei mizvot*, it is most powerful when building outward from everyday experience, exploring the way people understand or experience the world, rather than convincing them to experience it otherwise. In any case, the weight of thought in cultural anthropology today certainly supports a view of gender formations as being culturally contingent. See Michelle Zimbalist Rosaldo, "The Use and Abuse of Anthropology: Reflections on Feminism and Cross-Cultural Understanding," *Signs: Journal of Women, Culture and Society* 5:3 (1980): 389-417.
39. "Our grandmothers were all happy" is a claim which is frequently heard in discussions and arguments about women's learning in the contemporary Orthodox community. In fact, this is less of a historical claim than a rhetorical device, used to marginalize those contemporary Jews who find current arrangements troubling or painful. Denying historical depth to the dissatisfaction of some Jews is one way of denying the relevance or legitimacy of their dissatisfaction. This is the tenor, for instance, of R. Schwab's comments concerning "some unbalanced women who formed their own minyan, established a women's kollel, and, רהמנא ליצלן, refer to the רבש"ע as 'She.' At the present time, we can forget about them. If there are a few women who want to wear ציצית let them do so. This so-called movement is nothing but a passing 'Narishkeit' which will eventually fade away." See his *Selected Writings*, 302. The assumption that problems with accepted Halakhah are fed only by "passing 'Narishkeit'" rather than long standing frustration frees the Orthodox community from any need to seriously grapple with them.
40. M. Zborowski and E. Herzog, *Life is With People*, 139. In accord with an anthropological methodology which was current in their day, Zborowski and Herzog draw a composite and somewhat idealized picture of shtetl life rather than a detailed portrayal of any particular community. Much is lost in such an approach, but these generalized images nevertheless provide an effective background to the intensely individualistic story of a woman like Rayna Batya. See the new introduction to *Life is With People* which was written for the 1995 edition by Barbara Kirshenblatt-Gimblet. Also, see Dan Miron, "The Literary Image of the Shtetl," *Jewish Social Studies* 1:3 (1995): 1-43; Jonathan Boyarin, *Storm From Paradise: The Politics of Jewish Memory* (Minneapolis, 1992), 61.
41. M. Zborowski and E. Herzog, 65.
42. *Ibid.*, 123. Anthropologist Tamar El-Or's work with contemporary women in the Ger Hasidic community shows that this distinction of spheres (yeshiva and marketplace) can remain relevant even in the context of formal women's education. She found that even where discussing the same halakhic issues as those which men discussed, women self-consciously avoided abstract argument (*tochen*) while emphasizing issues of applied relevance (*tachlis*). However, whereas El-Or claims that these women sometimes imitated or "parodied" men by applying Talmud-style dialectics to discussions of domestic life with other women, Zborowski and Herzog emphasize the basic commonality of men's and women's approaches to problem solving, grounded in similar aesthetic conventions. I prefer their way of stating the issue because I believe that women's practice in the Haredi world ought not be viewed as a reflection or derivation of men's. While coming to terms with Rayna Batya, we must also go further in comprehending the spiritual dignity of women who do not choose to force the boundaries of tradition in the way she did. See Tamar El-Or, "Are They Like Their Grandmothers? A Paradox of Literacy in the Life of Ultra orthodox Jewish Women," *Anthropology and Education Quarterly* 24:1 (1993): 61-81.
43. M. Zborowski and E. Herzog, 139. There have actually been several such women, although it is not at all clear that their claim to followers was based upon acumen in learning (see below).
44. A. Rapoport-Albert, "On Women in Hasidism," 508, argues that the "Maid of Ludmir" tradition which grew up around stories about Hannah Rachel actually demonstrates the deep resistance and fear which greeted a woman's temporarily successful bid for leadership in the Hasidic world. She writes: "Since no model was available in Judaism for an asexual spirituality oblivious of sexual boundaries, the Maid was forced to renounce her identity as a woman, only to embrace a false identity as a man . . . As a 'false male' she could only be regarded as an aberration of nature and a social deviation." N. Polen, "Miriam's Dance" (above, n. 11), has rightly questioned the unremittingly dark tone of this reading, although he too admits that Hannah Rachel was not the model of widespread Hasidic egalitarianism as which she is sometimes portrayed.

What has not previously been noted is the extent to which the "the Maid of Ludmir" tradition fits a recognizable pattern in the history of religions. Hannah Rachel was known as a pious and learned girl. In her youth, she found it difficult to accept the strictures of her engagement to a certain young man, and began to withdraw from society. When her mother died, she went into almost total isolation. Then, during one of her frequent visits to the cemetery, she mysteriously fell unconscious, suffered a prolonged illness, and finally recovered, boasting of a "new and elevated soul." She broke off the engagement, became an ascetic, and began to teach and to perform miracles. This life story precisely fits the model of possession and affliction cults which have been analyzed by I.M. Lewis in his *Ecstatic Religion: A Study of Shamanism and Spirit Possession* (New York, 1989). Lewis argues that spirit possession can often be understood as a strategy of resistance to local forms of power on the part of subordinate or marginal groups within society (such as women), allowing them to attain relatively powerful and socially recognized positions. A nuanced anthropological

- model such as Lewis' would allow us to escape the simplistic choice between egalitarianism or oppression as models for understanding the lives of Jewish women like Hanna Rachel.
45. This is also very much the picture suggested by M. Zborowski and E. Herzog, 81, 357-60.
  46. Anthropologist Veena Das has argued that men tend to construct orderly moral narratives which shift blame for tragedy onto the sufferers themselves, whereas women (and perhaps members of other relatively powerless groups) are more likely to emphasize the unfair and uncontrollable flow of events. See Veena Das, "Moral Orientations to Suffering: Legitimation, Power and Healing," in *Health and Social Change in International Perspective*, eds. Arthur Kleinman, N. Ware and L.C. Chen (Massachusetts, 1993).
  47. This is from a morning blessing traditionally recited by women. Men, by contrast, say, "Blessed are You . . . who has not created me a woman." Rayna Batya's deployment of that phrase here is both pious and deeply ironic. In previous conversations with Barukh (p. 1961), she had complained furiously that even boors and idiots, who would not have dared to cross the threshold of her kitchen without permission, were able to bless God each morning for having created them superior to her. Barukh tries to refute this charge, but admits to his readers that his arguments were only meant to make Rayna Batya feel better.  
For an earlier debate on what this blessing seems to suggest about the relative worth of men and women, see the commentary on *Shulban `Arukh* by R. David ben Samuel Halevi – "Taz" (Poland, 1586-1667), *Turei Zahav, Orab Hayyim* 46:4. R. David expressed concern lest the blessing be construed as a devaluation of women, which would amount to a blasphemous critique of God's creation. Along lines reminiscent of the well known medieval "principle of plenitude" (see John Hick, *Evil and the God of Love* (San Francisco, 1966), 70-75), he argues that a multiplicity of different beings are each necessary to the overall perfection of Creation, and attempts to interpret the language of the morning blessings in this positive vein. Conceptually, R. David's approach is based on a rejection of the notion that people who have more *mizvot* to perform are ultimately more valuable, which is the explanatory principle invoked by some other writers. The halakhic ramification of R. David's approach is that the standard order of morning blessings recited by men (in reference to gentiles, slaves, and women) is without legal significance.
  48. When there seems no way to decide an argument, the Talmud sometimes punctuates the debate with "teiku" (תִּיקוּ), an Aramaic word which literally means "let it (i.e., the unresolved argument) stand." An early Jewish folk etymology, however, understood "teiku" as an acronym for the Hebrew phrase "Tishbi (Elijah) will come to resolve questions and problems." See the final Mishnah of tractate *`Eduyot*.
  49. My use of Jewish theological and religious texts in the pages that follow is similar to Kleinman and Kleinman's use of classical Chinese religious and philosophical texts to provide a deeper context for their ethnography of contemporary Chinese. Kleinman and Kleinman, 286-92, suggest that relating ethnographic accounts of individual experience to the analysis of formative cultural documents such as these is one of the strategics available to writers who wish to ground their subjects in a cultural context without thereby reducing them to stereotyped representations of their society. It is a strategy for depicting the contours of culture which help to define "what is at stake" for people and social groups. Also, see Arthur Kleinman, "How Bodies Remember: Social Memory and Bodily Experience of Criticism, Resistance, and Delegitimation Following China's Cultural Revolution," *New Literary History* 25:3 (1994): 707-23.
  50. For accounts of the places held by argument and silence in Jewish society, see M. Zborowski and E. Herzog, 149; Deborah Schiffrin, "Jewish Argument as Sociability," *Language in Society* 13:3 (1984): 311-35; Barbara Myerhoff, *Number our Days: A Triumph of Continuity and Culture Among Jewish Old People in an Urban Ghetto* (New York, 1978). Concerning the religious sphere, see Anton Laytner, *Arguing With God* (Northvale, 1990). A famous rabbinic statement which bridges the gap between sociology and theology is *Avot* 5:20: "Every dispute between scholars which is for the sake of Heaven will in the end be established [i.e., bear fruit]; every dispute which is not for the sake of Heaven will not be established." Also, see Andre Neher, *The Exile of the Word: From the Silence of the Bible to the Silence of Auschwitz*, trans. David Maisel (Philadelphia, 1981).
  51. See the commentary of Hizkuni, who subsumes this *derashab* into his reading of the verse itself.
  52. R. Kalonymus Kalamish Shapira of Piaseczno, *Esh Kodesh* (Jerusalem, 1960), 160, from the *derashab* on *Parashat Mishpatim*, written in the winter of 1942.
  53. The angel's demand for absolute justice and the threatened relapse into chaos of the created world are familiar aggadic themes. In the liturgy for Yom Kippur, the angels who witness the martyrdom of scholars at the hands of Rome demand bitterly of God, "Is this the Torah and this its reward?" To which a heavenly voice replies: "Silence! If I hear one more voice I will turn the world back into water!" R. Shapira understood these passages as predictions of what would happen if God were aroused to express the full burden of His grief. See Nehemia Polen, *The Holy Fire: The Teachings of Rabbi Kalonymus Kalman Shapira, the Rebbe of the Warsaw Ghetto* (Northvale, 1994), 119, nn. 31 and 32; *idem*, "Divine Weeping: Rabbi Kalonymos Shapiro's Theology of Catastrophe in the Warsaw Ghetto," *Modern Judaism* 7:3 (1987): 253-69; Michael Fishbane, "'The Holy One Sits and Roars': Mythopoesis and the Midrashic Imagination," *Journal of Jewish Thought and Philosophy* 1 (1991): 1-21.
  54. See Rashi, *ad loc.*; also M. Zborowski and E. Herzog, 149.
  55. Anthropopathism, with its emphasis on the interconnectedness of divine and human emotional life, was an important characteristic of kabbalistic theology, especially well developed among Hasidim. Mystical techniques, practiced by Hasidim and Mittnaggdim alike, included some which focused on the arousal of human emotions in a way that would stimulate an equivalent emotional response from above. See Moshe Idel, *Kabbalah: New Perspectives* (New Haven, 1988), 75-88, 198-99. The widespread importance of anthropopathism supports my suggestion in this essay that theological

- writings which touch on the emotional life of God, as it were, can also help to illuminate the cultural construction of human emotion among Eastern European Jews such as Rayna Batya.
56. R. Kalonymos Shapira, 169, from the *derashah* on *Parshat Zakhor*, written in the winter of 1942.
  57. The notion that extreme anger or grief is dangerous to human beings, as well as to the cosmos as a whole, is not unique to Jewish culture. Different societies, however, have found different ways of dealing with this problem, which are expressed in their systems of healing, religion, and forms of communal organization. See Uni Wikan, *Managing Turbulent Hearts: A Balinese Formula for Living* (Chicago, 1990); *idem*, "Bereavement and Loss in Two Muslim Communities: Egypt and Bali Compared," *Social Science Medicine* 27:5 (1988): 451-60.
  58. R. Mordecai Yosef Leiner of Izbica, quoted by his grandson, R. Gershon Hanokh Henikh, in *Sod Yesbarim: Purim u-Pesah* (Brooklyn, 1992), 30, 80.
  59. For a provocative analysis of these dynamics on the anthropological level, see Michael Herzfeld, *The Poetics of Manhood: Contest and Identity in a Cretan Mountain Village* (Princeton, 1985). Herzfeld shows that well deployed silence can play an important part in competition over local power and prestige, where important men use silence performatively to underscore their secure position. Silence helps a man gain honor for "being good at being a man"—that is, for embodying and performing the values associated with manhood. That this human dynamic is widespread makes it an especially powerful metaphor when taken up in relation to God by R. Mordecai Yosef Leiner.
  60. Above, n. 58.
  61. Self restraint is a defining feature of powerful manhood in the Mishnah, *Avot* 4:1: "Who is a *gibbor*? He who conquers his own passionate will." (See also R. Barukh Epstein's commentary to *Avot*, *op. cit.*, 145.) The Mishnah thus transforms *gibbor*, a biblical term for prowess in combat which is always associated with men, into a term for manly self mastery. In effect, the combat is turned inward. Elsewhere in rabbinic writings, God is called *gibbor* ("man of power" or "warrior") precisely in relation to His total self-restraint in the face of Israel's suffering (see the Talmud's reading of Deuteronomy 10:17 in *Yoma* 69a; also see *Torah Temimah*, *ad loc.*).  
 Recurrent associations between silence, the ability to be considered a *gibbor*, and redemptive violence have also been explored at length by R. Isaac Hutner in the eighth *derashah* of "Kuntres Ve-Zot Hanukkah," *Pabad Yizhak* (New York, 1985), 66-67. R. Hutner expands on the sources cited above to explain why God is called *gibbor* in relation to His silence, arguing that silence is a form of redemptive activity related to, but "deeper" than, explicit miracles:  
 Just as there are degrees of profundity in speech, so there are degrees of profundity in silence. . . . Just as there are degrees of profundity to the divine aspect of "Who is like you among the mighty?," so there are degrees of profundity to the divine aspect of "Who is like you among the dumb?" Just as, by way of example, the violence (אלמות) of the parting of the Red Sea is more profound than the violence of crossing Wadi Arnon, so too when we come to discuss the degrees of dumbness (אלימות), we must realize that even the silence of "He sees Gentiles dancing in His sanctuary and is silent" is not the most profound silence of all. . . .  
 The most "profound silence," R. Hutner goes on to explain, is the dispersion of the Jewish people, and subsequently of Torah, which has progressed to such an extent that today "it is impossible to find a clear ruling or a clear teaching in one place" (*Shabbat* 138b-139a). The desolation implied by the Torah's dispersion, however, is also a necessary stage in the process of redemption. Human speech and silence, respectively, are set up by R. Hutner in this *derashah* to parallel divine violence and muteness as alternate typologies for the expression of God's power. Human silence is a part of speech on a deeper level, just as God's muteness is a part of redemptive activity on a deeper level. This is why the silent God is referred to as *gibbor* by the Men of the Great Assembly, who led the Jewish people after prophecy had ceased. For us, the important point is that silence is associated both with destruction and with redemptive power—and therefore with the designation *gibbor*. See also R. Hutner's eleventh *derashah* in the same volume.
  62. Chava Weissler's recent work on women's Yiddish language prayers (*tkhines*) is an example of this kind of analysis conducted with great sensitivity and sophistication. Investigating the work of *tkhine* writer Leah Horowitz (born 1710), Weissler shows how the learning and anger she expressed were deleted from subsequent printings of her *Tkhine Imohes*, and suggests that, given social and cultural realities among Eastern European Jews, certain claims (even when articulated by extraordinary individuals like Leah Horowitz) simply could not be heard. Weissler's adaptation of anthropologist Hermann Rebel's "blocked speech" analysis is powerful because it offers an explanation of the real limits to revolt or challenge which were faced by women like Leah Horowitz or Rayna Batya. By offering a reading which emphasizes Rayna Batya's opportunities for transcendence and meaningful choice making, my hope is that this essay will stand in creative tension with Weissler's approach. Of course, Rayna Batya's case is also special because it is the only record which has been preserved of a woman's daily interactions with her male interlocutor over a period of several months. See Chava Weissler, "Women's Studies and Women's Prayers: Reconstructing the Religious History of Ashkenazic Women," *Jewish Social Studies* 1:2 (1995): 28-47; Hermann Rebel, "Cultural Hegemony and Class Experience: A Critical Reading of Recent Ethnological-Historical Approaches (Parts One and Two)," *American Ethnologist* 16: 1 and 2 (1989): 117-36, 350-65.
  63. *Mekor Barukh*, 1963, 1966. On *hester panim*, see Deuteronomy 31:17 and the sources relating to this theme collected by David Birnbaum, *God and Evil: A Jewish Perspective* (Hoboken, 1989), 124-38.
  64. See Paula E. Hyman, *Gender and Assimilation in Modern Jewish History: The Roles and Representation of Women* (Seattle, 1995), 161-62.
  65. The most important of these was R. Israel Meir Kagan, "the Hafez Hayyim" (died 1933), who argued that a new school system was needed which would teach Bible and "ethical writings" in a systematic manner (See D. Weissman, 33). Only

such an education, he argued, could insure religious and social continuity in an age of unprecedented upheavals and dislocations for European Jews.

66. This is still an important argument offered on behalf of expanding women's educational opportunities in sectors of the Orthodox community. The late Lubavitcher Rebbe, for example, argued that religious education for girls should be extended to Talmud study because girls today are receiving relatively broad general educations which are likely to include some knowledge about Talmud anyway, and it is better for them to study Talmud in a way that will enhance their religious convictions. See the printed conversation between the Admor from Lubavitch and the Admor from Belz published in *Kfar Habad*, 5 Nisan 1981. I am grateful to Professor Menahem Friedman at Bar-Ilan University for providing me with this citation. For the views of several other contemporary halakhic authorities along lines which are similar, see Elyakim G. Ellinson, *Bein Ishah li-Yozrab* (Jerusalem, 1984), 159-62.

Of course, this approach makes religious education for women into an essentially reactionary process—a defensive compromise with modernity rather than a value in its own right. Israeli anthropologist Tamar El-Or has gone further, claiming, on the basis of research she conducted among Ger Hasidim, that the Bais Yaakov school system today functions paradoxically to “educate for ignorance,” as illustrated by the following words of a high school principal: “If we succeed in instilling in our girl students that the purpose of their studies is to aspire to emulate our matriarchs, who did not study, then we have succeeded in educating our daughters.” The implication, as El-Or attempts to demonstrate in her work, is that women are educated into an acceptance of relative ignorance and social subordination. See Tamar El-Or, *Educated and Ignorant: Ultraorthodox Jewish Women and their World* (London, 1994), 66; also, see *idem*, “Are They Like Their Grandmothers?” (*op. cit.*). For a different view of the potential of the Bais Yaakov model, see Deborah Weissman, “Bais Yaakov: A Historical Model for Jewish Feminists,” *The Jewish Woman: New Perspectives*, ed. Elizabeth Koltun (New York, 1976), 139-48.

67. The match was actually arranged by Barukh, after his father had expressed some opposition due to Rabbi Berlin's advanced age. Comparing his sister to Rayna Batya, Barukh quoted approvingly from the Talmud (*Sotah* 2a and Rashi, *ad loc.*): “A man's first wife may be chosen for him by Heaven, but his second wife is in accord with his merit” (p. 1980). Batya Mirl is described as embodying the very qualities which Rayna Batya had lacked. She is healthy and efficient, and lovingly cared for Rabbi Berlin until his death.
68. For a more complete account of the closing and of Rabbi Berlin's efforts to avoid it, see J. Schacter, “Haskalah, Secular Studies,” 104-10.
69. R. Berlin, “Kidmat Ha-`Emek,” 50.

## Redemption and the Power of Man

Rabbi Meir Soloveichik

A venerable Jewish anecdote describes a man hired by his *shtetl* to sit at the outskirts of town and alert his brethren should he see the messiah coming. When asked why he had accepted such a monotonous form of employment, the watchman would invariably reply: “The pay’s not so good, but it’s a lifetime job.” Indeed, waiting for the redeemer of Israel *is* considered a lifetime job for the Jews. According to the Talmud, Jews are obligated not only to believe in the messiah, but to yearn for his arrival. Thus the list of credos recited daily by many traditional Jews concludes: “I believe with perfect faith in the advent of the messiah, and though he may tarry, I will await his arrival every day.”

This expectation of a tarrying messiah has always been uniquely Jewish. The Protestant theologian Harvey Cox, who is married to a Jew, marveled at this theological point in a book he wrote describing his experience of the Jewish rituals. In a chapter devoted to his reflections on the Passover seder, Cox describes the tradition of opening the door for Elijah, who, according to the prophet Malachi, will precede the messiah to herald the coming redemption. “If no one is there,” Cox notes, “none of the dinner guests seem too upset. From a Jewish perspective, the wait has already been a long one. There are smiles and jokes, maybe in part because the adults have already consumed the seder’s requisite four cups of wine. But the light touch cannot fully obscure my recognition that here we come to a great divide.”<sup>1</sup> For Jews and Christians famously disagree as to the identity of the messiah. Christians argue that Israel’s messianic expectations were realized with the birth, life, and death of Jesus of Nazareth; moreover, Christian doctrine asserts that Jesus was divine, God incarnate, and the second person of the divine Trinity. Jews not only argue that the messiah

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has not yet appeared, but also disagree vehemently with the concept of incarnation. Jewish tradition has always insisted that the messiah will be a human, rather than divine, redeemer, who will restore the Davidic dynasty and defend Israel from its enemies.

All too many Christians and Jews, however, assume that this is the only essential difference between Jewish and Christian eschatology. Cox reflects that “as a child in Sunday school, I was taught that the main difference—sometimes it was put as the only difference—between Jews and Christians was that ‘they believe the messiah is yet to come.’ I do not recall that this was ever said in a deprecating way. It was just a difference... but nothing more than that.”<sup>22</sup> Not surprisingly, many texts focus only on this theological distinction in describing the disagreement between Judaism and Christianity. For example, the catechism of the Catholic Church, in its one discussion of post-biblical Judaism, reads as follows: “And when one considers the future, God’s People of the Old Covenant and the new People of God tend toward similar goals: Expectation of the coming (or the return) of the messiah. But one awaits the return of the messiah who died and rose from the dead and is recognized as Lord and Son of God; the other awaits the coming of a messiah, whose features remain hidden till the end of time; and the latter waiting is accompanied by the drama of not knowing or of misunderstanding Christ Jesus.”<sup>23</sup> Similarly, Reinhold Niebuhr, in his book *Pious and Secular America*, notes that Jews and Christians disagree as to whether the messiah has already arrived, and adds that the issue is only one “of emphasis, but there is no radical contrast.”<sup>24</sup>

It is true that the question of the messiah’s arrival is one that will divide Jews and Christians until the end of days. Yet there is a more profound divide in the way Jews and Christians conceive the idea of the messiah. This distinction relates not to whether he has already come, but rather to what part humanity plays in bringing about the messianic redemption, a distinction that reveals very different approaches to the moral capacities of mankind. For Christians, redemption is essentially an act of divine grace, the salvation of a humanity that is incapable of saving itself. For Jews, however, the reverse is true: Redemption depends entirely on the repentance of man, who is responsible for his own fate. As such, the difference in the respective religions’ approach to the messiah is, in truth, a difference in the understanding of man’s own moral capacity, and of the nature of good and evil itself.



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## II.

The Jewish approach to the messiah takes its cues from the Hebrew Bible. The book of Deuteronomy, for example, in describing the suffering that will befall Israel in the future, appears to assert that the Jewish people will be saved from such a fate only if it turns wholeheartedly to God:

And it shall come to pass, when all these things have come upon you, the blessing and the curse, which I have put before you, and you shall have a turn of heart while still among all the nations... And you shall return to the Eternal your God and shall obey him... Then the Eternal your God will turn your captivity, and have compassion upon you, and gather you from among the all nations, whither the Eternal your God has scattered you.<sup>5</sup>

The passage implies that redemption cannot take place without repentance; the messiah will not come unless we are deserving of his arrival. Maimonides, the most influential of medieval Jewish philosophers, interprets the passage in its most literal sense, asserting in his Laws of Repentance that “Israel will be redeemed only if it repents.”<sup>6</sup> Whether the messiah comes, Maimonides seems to be saying, is up to us; whether he redeems us depends on whether we become worthy of redemption. Yet Maimonides’ assertion, which is based on talmudic precedent,<sup>7</sup> begs the following question: What if we never repent, and therefore never become worthy of redemption? If the messiah’s coming depends on our own worthiness, how can traditional Jews be so certain—indeed, why are we obligated to believe—that he will eventually come? This question was posed by one of the leading Jewish philosophers of the last century, Rabbi Joseph B. Soloveitchik, in a lecture on the subject of repentance:

If one accepts Maimonides’ opinion . . . that the coming of the messiah is dependent upon repentance, and that if it does not take place then there will be no redemption; how is it possible to declare, “I believe with complete faith in the advent of the messiah and though he may tarry I will await his coming every day”? It is possible that he will tarry indefinitely if Israel does not repent; what sense is there in awaiting his coming daily?<sup>8</sup>

Rabbi Soloveitchik’s answer is startling: Because the messiah will come only when Israel is worthy of his coming, the belief in the certainty of redemption is of necessity a belief that Israel will prove itself worthy of the messiah. Maimonides himself stresses that “The Tora has already assured us that Israel will finally repent at the end of its exile and immediately be redeemed.”<sup>9</sup> Thus, writes Rabbi Soloveitchik, the portion of the Jewish credo that expresses belief in the coming of the messiah is “based upon faith in *keneset yisrael* [the congregation of

Israel]. It is not an easy faith.”<sup>10</sup> Faith in the messiah is faith in ourselves, in our ability to bring the messiah by becoming worthy of his arrival.

This idea, that human beings may become worthy of the messiah, and, further, that the messiah will continue to tarry until humanity is deserving of redemption, does not exist in Christian scripture. As set out in the New Testament, the messianic redemption of the world was made necessary by the disobedience of Adam and Eve, an “original sin” that infected all of humanity. Because of the fall of man, Paul argued in the book of Romans, “all have sinned and fall short of the glory of God,”<sup>11</sup> and are therefore incapable of earning redemption. Salvation, Paul writes, depends not on “human will or exertion, but on God who shows mercy.”<sup>12</sup> Human beings after Adam’s sin are incapable of full repentance or true goodness, and require the grace provided by the crucified messiah if they are to be redeemed. Only through Jesus, the son of God who became man in order to save humanity, is mankind saved from the perdition that it deserves: “For God so loved the world that he gave his only Son, that whoever believes in him should not perish but have eternal life.”<sup>13</sup> Jesus saves humanity by taking Adam’s sin upon himself: “For just as one man’s trespass led to condemnation for all, so one man’s act of righteousness leads to justification and life for all.”<sup>14</sup>

Although Catholics and Protestants have long debated the nature and meaning of salvation, the doctrine of redemption through Jesus-of a messiah who saves humanity because it cannot save itself-unites all traditional Christians. A joint statement issued in 1998 by Evangelicals and Catholics Together, a group that includes some of America’s most influential Catholic and Evangelical theologians, articulates this shared theological belief:

God created us to manifest his glory and to give us eternal life in fellowship with himself, but our disobedience intervened and brought us under condemnation. As members of the fallen human race, we come into the world estranged from God and in a state of rebellion. This original sin is compounded by our personal acts of sinfulness. The catastrophic consequences of sin are such that we are powerless to restore the ruptured bonds of union with God. Only in the light of what God has done to restore our fellowship with him do we see the full enormity of our loss. The gravity of our plight and the greatness of God’s love are brought home to us by the life, suffering, death, and resurrection of Jesus Christ . . . . The restoration of communion with God is absolutely dependent upon Jesus Christ, true God and true man, for he is “the one mediator between God and men,”<sup>15</sup> and “there is no other name under heaven given among men by which we must be saved.”<sup>16</sup>

The difference between the Jewish and Christian approaches to the messiah can now be clearly discerned. Jews contend, as Rabbi Soloveitchik put it, that belief in the messiah by definition means belief in our ability to become worthy of the messiah. Christians, on the other hand, argue that belief in the messiah by definition means belief in our *inability* to become worthy of the messiah, in our needing the messiah to take our sins upon himself. For Christians, the coming of the messiah makes repentance possible; for Jews, repentance makes the messiah possible. Yale's Evangelical theologian Miroslav Volf, asked by several American scholars of Jewish studies to reflect on the theological differences between Judaism and Christianity, responded by describing the contrast in the following fashion:

It is quite correct to say, with Abraham Heschel, that repentance is my response to God who is in search for me. But Christians claim more, significantly more . . . . God has gone to such lengths as to be able to tell me: "The sins that weigh you down have already been 'taken away!'"<sup>17</sup>

Repentance, Volf argues, is made possible only because God has taken our sins upon himself. C.S. Lewis, in his *Mere Christianity*, describes the Christian approach to man's moral capacity even more starkly, arguing that his ability to be good is predicated entirely upon Jesus:

Even the best Christian that ever lived is not acting on his own steam—he is only nourishing or protecting a life he could never have acquired by his own efforts . . . . That is why the Christian is in a different position from other people who are trying to be good. They hope, by being good, to please God . . . . But the Christian thinks any good he does comes from the Christ-life inside him. He does not think God will love us because we are good, but that God will make us good because he loves us.<sup>18</sup>

The debate over whether Jesus was the messiah is therefore also an argument about the inherent ability of man. For Christians, repentance is impossible if the messiah has not yet come; for Jews, the messiah cannot come if repentance has not yet occurred. Christians proclaim the coming of Christ by citing Christian scripture: "He saved us, not because of deeds done by us in righteousness, but in virtue of his own mercy."<sup>19</sup> Jews, often under pain of persecution, continued to insist that the messiah had yet to come, because it was up to us to bring him: "Israel will be redeemed only if it repents."

### III.

These two approaches to redemption—and the differing attitudes toward human potential that they represent—are manifest most strikingly in the manner through which the two

traditions depict the messianic lineage. The prophets-Isaiah most explicitly-describe the future redeemer of Israel as a descendant of the Davidic dynasty. At first blush, this seems the obvious choice. David, whom the Almighty affectionately calls “my servant,” was Israel’s greatest king and mightiest warrior. Yet a brief study of David’s lineage reveals an ancestry rife with sin, scandal, and sexual impropriety. This is evident already with Judah, David’s tribal forebear. The patriarch Jacob chose Judah as the forefather of the Israelite monarchy, a designation that passed to Peretz, Judah’s heir. Yet Peretz seems blemished; he was not conceived in the sanctity of wedlock, nor apparently with the purest of intentions. Tamar, widow of Judah’s first two sons and desperate for a child, engaged in deception in order to bring Judah to her bed:

She put off her widow’s garments, put on a veil, wrapped herself up, and set down at the entrance to Enaim . . . . When Judah saw her, he thought her to be a prostitute, for she had covered her face. He went over to her at the roadside, and said, “Come, let me come in to you,” for he did not know that she was his daughter-in-law . . . . So he . . . went in to her, and she conceived by him.<sup>20</sup>

Thus did the ancestor of the messiah come into the world a son of sin and deception. With a final swipe at the messiah’s lineage, the Bible confirms our sense of the impropriety of Judah’s relations with his former daughter-in-law, noting that “he did not lie with her again.”<sup>21</sup>

Yet another scandal can be found in the story of David’s most famous female ancestor: Ruth, wife of Boaz, a Moabite who converted to the Israelite faith. Moab’s lineage was more questionable than even that of Peretz, tracing its biblical origins to a relationship that was not merely promiscuous, but incestuous: That of Lot and his daughter. Moab, moreover, is described in the book of Numbers as a dangerous enemy of Israel whose women enticed Israelite men to engage in idolatry, bringing plague and destruction in their wake.<sup>22</sup> The fact that Moabite blood flowed through David’s veins-that Israel’s enemy is the ancestor of its greatest defender, and that an idolatrous child of incest fathered Israel’s messianic family-is shocking, and counterintuitive.

Even after David is designated the king of Israel and the ancestor of the messiah, his own choice of heir is counterintuitive. Of David’s children, the future of the dynasty rests not with the progeny of Michal, daughter of King Saul, but rather with Solomon, son of Bathsheba, whose relationship with David is tainted by sexual sin:

It happened, late one afternoon, when David rose from his couch and was walking about on the roof of the king's house, that he saw from the roof a woman bathing; the woman was very beautiful. David sent someone to inquire about the woman. It was reported, "This is Bathsheba daughter of Eliam, the wife of Uriah the Hittite." So David sent messengers to get her, and she came to him, and he lay with her . . . . But what David had done displeased the Eternal.<sup>23</sup>

Once again, one of the messiah's ancestors is enveloped in scandal. The book of Kings records that Israel's elites challenged the accession of Solomon to the throne, supporting Adoniah, David's eldest living son.<sup>24</sup> The reluctance of these Israelites to embrace Solomon's kingship was, perhaps, predicated on his lineage; it troubled them that a man of questionable background should rule God's chosen nation. Yet they failed to understand that the rulers and redeemers of Israel were to be born not of purity, but of depravity.

The Christian tradition took this Jewish conception of the messianic heritage and turned it on its head. With the birth of Jesus, no longer will the lineage of the messiah be tainted by sin; indeed, the holiness of the Christian savior is assured by the purity of his creation:

In the sixth month the angel Gabriel was sent by God to a town in Galilee called Nazareth, to a virgin engaged to a man whose name was Joseph, of the house of David. The virgin's name was Mary . . . . The angel said to her, "Do not be afraid, Mary, for you have found favor with God. And now, you will conceive in your womb and bear a son, and you will name him Jesus. He will be great, and will be called the Son of the Most High, and the Lord God will give to him the throne of his ancestor David . . . . Mary said to the angel, "How can this be, since I am a virgin?" The angel said to her, "The Holy Spirit will come upon you, and the power of the Most High will overshadow you; therefore the child to be born will be holy; he will be called Son of God."<sup>25</sup>

It is precisely the lack of lust in Jesus' origin—a virgin birth and an Almighty father—that guarantees Jesus' status as savior. Yet Jesus is believed to be the son not only of God, but of Mary as well; in fact, the New Testament claims Mary as Jesus' biological link to the Davidic dynasty. But was that dynasty not produced through the various scandals enumerated above? Is not, then, the Christian messiah maternally linked to a scandalous and sinful past? The Catholic Church need not address this issue, for it asserts the doctrine of "immaculate conception," according to which the mother of Jesus was unlike her ancestors: She was untainted by Adam's fall, and therefore not in need of the salvation that her son would offer humanity. Mary, Pius IX declared in 1854, "in the first instance of her conception, by a singular privilege and grace granted by God, in view of the merits of Jesus Christ, the Savior of the human race, was preserved exempt from all stain of original sin."<sup>26</sup> Because of the

sanctity of the savior, his mother is Eve personified: Woman as she was before the Fall, and unlike her sinful ancestors in every way-without urges, without desires, tempted by nothing but the opportunity to serve God.

Here, then, lies the remarkable contrast in the way each faith depicts its messiah. According to Christianity, the messiah was born of a virgin, conceived without the slightest sense of sexual desire. Moreover, not only the messiah himself but also his mother was born untainted. For Jews, however, the messiah descends from a history of scandalous affairs, each more perverse than the next. On his family tree, one will find kings, warriors, and poets-but also bastards, prostitutes, and sworn enemies of Israel. Nor did the rabbinic sages shy away from the salaciousness of the messianic narrative; on the contrary, they embraced it. Where will you find the son of Jesse? asks the midrash. "He is in Sodom."<sup>27</sup> The midrash goes so far as to tell of *other* scandals not explicitly enumerated in the Bible, suggesting at one point that Bathsheba was raped by David, and that David himself was also conceived under dubious circumstances.<sup>28</sup>

This disparity in the account of the messianic lineage is a reflection of how each religion sees the connection between repentance and redemption. Christians believe in a messiah whose righteousness made up for the wickedness of all others, and whose own perfection redeemed the imperfections of humanity. Such a messiah was born, lived, and died in purity, thereby redeeming an impure world that could not redeem itself. Jews, on the other hand, believe that the messiah exists not to save the world from damnation, but rather to inspire the world to earn its *own* redemption. "Fortunate is a generation," remarks the Talmud, "whose leaders must atone for their sins."<sup>29</sup> This does not mean, the Talmud assures us, that we should desire wicked leaders, but that only a generation whose leaders overcame their own flaws can genuinely inspire their subjects to act likewise. Thus, in designating David as the ancestor of the messiah, the Jewish tradition teaches that the messiah can rise above his family history and even his own sinfulness-and so can every man. While Paul saw humanity as forever cursed by the sins of its ancestor Adam, the messiah of Hebrew scripture symbolizes the ability of man to defy his own past, and to bring about his own redemption.

#### IV.

If Christians and Jews differ on the nature of the messianic figure and on the capacity of man to redeem himself, this difference has broad implications for the way man may bring himself closer to God, even in the absence of the messianic redemption. And indeed, these two approaches-of man who needs to be saved versus man who saves himself-find powerful expression in the respective attitudes of Christianity and Judaism towards repentance.

The Christian approach to repentance owes its origins in large part to the parable of “The Pharisee and the Publican,” which appears in the book of Luke:

Two men went up to the temple to pray, one a Pharisee and the other a tax collector. The Pharisee, standing by himself, was praying thus, “God, I thank you that I am not like other people: Thieves, rogues, adulterers, or even like this tax collector. I fast twice a week; I give a tenth of all my income.” But the tax collector, standing far off, would not even look up to heaven, but was beating his breast and saying, “God, be merciful to me, a sinner!” I tell you, this man went down to his home justified rather than the other; for all who exalt themselves will be humbled, but all who humble themselves will be exalted.<sup>30</sup>

In a sermon on the above parable, Martin Luther urged the emulation of the publican and the adoption of the following attitude:

I am indeed a sinner, but still God is gracious to me; I am God’s enemy, but he is now my friend; I should justly be condemned, yet I know that he does not desire to condemn me, but to save me as an heir of heaven. This is his will, which he has had preached to me, and commanded me to believe for the sake of his dear Son, whom he has given for me.<sup>31</sup>

How ought we approach God in repentance? What should our orientation be when we beg forgiveness from the Almighty? Jesus’ answer is that we come before God not merely as men who have sinned and now wish to repent, but rather as sinners, whose sins reveal something ontologically awry, a metaphysical flaw in ourselves, that we cannot repair on our own.

In contrast, the paradigmatic penitent in Hebrew scripture, David, consistently strikes a different posture than does the publican. David never asks God’s mercy as an inveterate sinner, but rather as one who has sinned:

Nathan said to David . . . “Why have you despised the word of the Eternal, to do what is evil in his sight? You have struck down Uriah the Hittite with the sword, and have taken his wife to be your wife, and have killed him with the sword of the Ammonites . . .” And David said to Nathan, “I have sinned against the Eternal.”<sup>32</sup>

We find a similar response from David after he takes a census of his subjects, in apparent violation of the biblical law. The book of Samuel reports that “David was stricken

to the heart because he had numbered the people. David said to the Eternal, ‘I have sinned greatly in what I have done. But now, O Eternal, I pray you, take away the guilt of your servant; for I have done very foolishly.’<sup>33</sup> Once again, David’s focus is not on a fundamental flaw in his soul, but rather on the actions that he has committed, and for which he seeks to repent.

Likewise, a distinction can be discerned in the way that Christians and Jews pray for repentance. In its opening section on “Prayer,” the catechism of the Catholic Church draws on the story of the publican:

The prayer of the Church, nourished by the Word of God and the celebration of the liturgy, teaches us to pray to the Lord Jesus. Even though her prayer is addressed above all to the Father, it includes in all the liturgical traditions forms of prayer addressed to Christ . . . . The most usual formulation, transmitted by the spiritual writers of the Sinai, Syria, and Mount Athos, is the invocation, “Lord Jesus Christ, Son of God, have mercy on us sinners”. . . . By it the heart is opened to human wretchedness and the Savior’s mercy.<sup>34</sup>

Jewish liturgy, too, makes manifold references to our sins; the *vidui*, the lengthy list of wrongs that we have committed, is an essential part of the prayer services on Yom Kippur, and, for many Jews, throughout the rest of the year as well. Yet the focus is always on the specific actions that we have committed: At no point does the liturgy describe our sins as indicative of a deeper, sinful human state, of a wretchedness inherent in the human condition. Indeed, the first prayer said each morning by traditional Jews begins as follows:

My God, the soul you placed within me is pure. You created it, you fashioned it, you breathed it into me, you safeguard it within me, and eventually you will take it from me, and restore it to me in time to come. As long as the soul is within me, I am grateful to you, Eternal my God and the God of my forefathers, Master of all works, Eternal of all souls. Blessed are you, Eternal, who restores souls to dead bodies.

Note the grammatical tense: Jews do not say merely that the soul God gave man *was* pure, on that day long ago when the Almighty blew into Adam’s nostrils the “spirit of life.” Rather, the soul given to each man *today* is pure. In other words, the Jews reciting this prayer begin their day by stressing that man does not come into the world “estranged from God and in a state of rebellion.” On the contrary, the midrash stresses, in what could be interpreted as a pithy response to the publican, “If you should say that the evil impulse is not in your power to prevent, I [God] have declared to you in scripture, ‘Unto you is its desire, but you may rule over it.’”<sup>35</sup>



It is this confidence in our abilities, the rabbis argued, and not a focus on our abject sinfulness, that is the first necessary step toward repentance. For instance, in the *amida*-the central element of the Jewish liturgy, recited in silence three times a day-confession is not the first act of the worshipper. Traditional Jewish prayer begins with praise of God, and then turns to requests of the Divine. This is the first request:

You graciously endow man with wisdom and teach insight to a mortal. Endow us graciously from yourself with wisdom, insight, and discernment. Blessed are you, Eternal, gracious giver of wisdom.

Only then, after affirming man's God-endowed capacity for wisdom and insight, does the Jew turn to confession and repentance:

Bring us back, our Father, to your Tora, and bring us near, our King, to your service, and influence us to return in perfect repentance before you. Blessed are you, Eternal, who desires repentance. Forgive us, our Father, for we have erred; pardon us, our King, for we have willfully sinned; for you pardon and forgive. Blessed are you, Eternal, the gracious One who pardons abundantly.

This is immediately followed by a plea for redemption:

Behold our affliction, take up our grievance, and redeem us speedily for your name's sake, for you are a powerful Redeemer. Blessed are you, Eternal, Redeemer of Israel.

The order of the blessings is theologically instructive. The first step toward repentance, Judaism argues, is realization of the awesome abilities with which man has been endowed. Only from within this confident perspective is it appropriate to speak of overcoming our flaws and repenting our sins. Only then, after man has established his moral and intellectual stature and repented for his sins, is God asked to act as the "Redeemer of Israel." The path to God's presence, and ultimately to redemption, is thus founded on the dignity of man rather than on his wretchedness.

Jewish liturgy almost never speaks about an irreparably flawed and wretched humanity. The one apparent exception occurs in the *ne'ila* service, the climactic end to the Yom Kippur prayers, when man's penitence reaches its most intense, desperate expression:

What are we? What is our life? What is our goodness? What is our virtue? What our help? What our strength? What our might? What can we say to you, Eternal our God and God of our fathers? Indeed, all heroes are as nothing in your sight, the men of renown as though they never existed, the wise as though they lacked knowledge, the intelligent as though they lacked insight; for most of their actions are worthless, the days of their lives are like nothing in your presence: "So that man has no preeminence above a beast; for all is fleeting."<sup>36</sup>

Man can be beastlike; he has been so in the past and will be so again in the future. When he does not use his God-given capacity in a moral manner, man is truly insignificant, no matter how revered among other men he may be. But then, in the same breath, the prayer switches tones, and concludes as follows:

[Nevertheless,] you have chosen man at the very inception, and you have recognized him as worthy of standing before you.

Despite the depths to which humanity is capable of sinking, Judaism maintains the belief that in spite of the sin of Adam and all those who followed him, man is still worthy of standing before God. Even as man has fallen, he can rise again of his own accord.

We have in the publican, writes Luther, “a beautiful example of true Christian repentance and faith, and an excellent masterpiece of high spiritual wisdom or theology, of which the Pharisee and those like him have never received a taste or smell.”<sup>37</sup> Luther was right to the extent that Jews have never followed the publican’s example; we ask for God’s forgiveness by telling him that we can earn his friendship, rather than by asserting that we deserve his enmity. The publican’s approach to repentance focuses on human wretchedness, Judaism’s on human worthiness.

## V.

Thus far we have addressed the gulf separating the Jewish and Christian approaches to redemption, messiah, and repentance. Yet there is a sense in which these differences all indicate a deeper divide, one that colors the way each religion relates to the world in which we live. This divide concerns the meaning of history itself.

Paul’s doctrine of original sin is a picture of a world gone awry, reflected in humanity’s inability to live righteously. The nineteenth century’s most famous Catholic convert, John Cardinal Newman, reflected that a brief look at the world should convince any theist of the truth of Paul’s doctrine:

If I looked into a mirror, and did not see my face, I should have the sort of feeling which actually comes upon me, when I look into this living busy world, and see no reflection of its Creator . . . . [To consider] the tokens so faint and broken of a superintending design, the blind evolution of what turns out to be great powers or truths, the progress of things, as if from unreasoning elements, not towards final causes, the greatness and littleness of man, his far-reaching aims, his short duration, the curtain hung over his futurity, the disappointments of life, the defeat of good, the success of evil, physical pain, mental anguish, the prevalence and intensity of sin, the pervading idolatries, the corruptions, the dreary hopeless irreligion, that

condition of the whole race, so fearfully yet exactly described in the Apostle's words, "having no hope and without God in the world"-all this is a vision to dizzy and appall; and inflicts upon the mind the sense of a profound mystery, which is absolutely beyond human solution. What shall be said to this heart-piercing, reason-bewildering fact? I can only answer, that either there is no Creator, or this living society of men is in a true sense discarded from his presence.<sup>38</sup>

Here Newman is presenting us not merely with a defense of the idea of original sin, but also with a theodicy, an approach to evil's existence in this world. The wretchedness of man, Newman argues, and evil's reign on this earth allow us only one of two approaches: Either God does not exist, or something has gone terribly wrong with humanity. Those who affirm the existence of God must also admit that a wrench has been lodged in the machinery that is man, fettering his conscience and his ability to do good. According to Newman, this wrench can be removed only by Jesus' death on the cross.

In Maimonides' *Laws of Kings*, by contrast, we find a thoroughly different theodicy. In reflecting upon the crimes committed by Christians and Muslims and upon the terrible and unfair suffering of the Jews, Maimonides presents us with a vision of a sinful world that is nonetheless able to become worthy of redemption:

All the prophets affirmed that the messiah would redeem Israel, save them, gather their dispersed, and confirm the commandments. But he [Jesus] caused Israel to be destroyed by the sword, their remnant to be dispersed and humiliated. He was instrumental in changing the Tora and causing the world to err and serve another beside God. But it is beyond the human mind to fathom the designs of the Creator; for our ways are not his ways, neither are our thoughts his thoughts. All these matters relating to Jesus of Nazareth and the Ishmaelite [Muhammad] who came after him only served to clear the way for King Messiah, to prepare the whole world to worship God with one accord, as it is written, "For then will I turn to the peoples a pure language, that they all call upon the name of the Eternal to serve him with one consent."<sup>39</sup> Thus, the messianic hope, the Tora, and the commandments have become widely known-discussed even in the far isles and among many peoples, uncircumcised of heart and flesh. They are discussing these matters and the commandments of the Tora.<sup>40</sup>

This passage makes several striking points. First, Maimonides is convinced that theological error, as well as virulent anti-Semitism, is alive and well among the adherents of Christianity. Yet he does not look out at this world and pronounce, as did Newman, that he sees "no reflection of its Creator." Even as Maimonides argues that Christianity unfairly distorted Judaism in an idolatrous way, and even as he reflects upon the Christian persecution from which so many Jews suffered, he depicts a humanity that can improve and

learn from God's teaching. Ultimately, in Maimonides' view, man is capable of making himself worthy of the messianic era.

Moreover, Maimonides here expands on the connection between the messianic redemption and the worthiness of those who will be redeemed. In *Laws of Repentance*, we were informed of the prophets' promise that the Jews would repent. Now, however, Maimonides takes up a more universal theme: The preparation for the messiah involves not only Israel, but also the influence of Jewish teaching on humanity. This may not require that all mankind become righteous in the period prior to the end of days. Nevertheless, Maimonides' vision insists not only that the redemption of Israel is dependent on the repentance of the Jews, but also that humanity, at least partially, will first have to become worthy. In the messianic era, the world will finally, of its own accord, learn to worship God with "one consent," with no salvational messiah taking its sins upon himself.

This, then, is the theological essence of Judaism: A belief that man has been blessed with the ability to become deserving of redemption, an ability that man's sinfulness does not foreclose. Reflecting on this contrast between Maimonides and the New Testament, Haifa University philosophy professor Menachem Kellner noted that Paul, "because of his revolutionary, un-Jewish view of human nature as necessarily falling short of the glory of God, was led to ask the wrong question. The question that Jews must ask is: What must we do in order to make the world messiah-worthy?"<sup>41</sup> For Christians, the messiah arrived because man could not conquer his own lust. Judaism, in contrast, has always insisted that the redeemer will not arrive until man has learned to rule himself-and that man has the ability to do so.

## VI.

In light of the foregoing, one may anticipate the following objection: Does not so positive an attitude toward mankind's abilities lead inevitably to hubris, to the belief that man can achieve greatness without God's assistance at all? Has not the modern era been plagued by worldviews such as communism and fascism, ideologies that were based precisely on the belief in man's ability to recreate the world anew? This question was posed by Reinhold Niebuhr, one of the twentieth century's most influential American theologians, and one of the most eloquent defenders of the concept of original sin:

The utopian illusions and sentimental aberrations of modern liberal culture are really all derived from the basic error of negating the fact of original sin. This error . . . continually betrays modern men to equate the goodness of men with the virtue of their various schemes for social justice and international peace. When these schemes fail of realization or are realized only after tragic conflicts, modern men either turn from utopianism to disillusionment and despair, or they seek to place the onus of their failure upon some particular social group, . . . [which is why] both modern liberalism and modern Marxism are always facing the alternatives of moral futility or moral fanaticism. Liberalism in its pure form [that is, pacifism] usually succumbs to the peril of futility. It will not act against evil until it is able to find a vantage point of guiltlessness from which to operate. This means that it cannot act at all. Sometimes it imagines that this inaction is the guiltlessness for which it has been seeking. A minority of liberals and most of the Marxists solve the problem by assuming that they have found a position of guiltlessness in action. Thereby they are betrayed into the error of fanaticism.<sup>42</sup>

There is, Niebuhr argues, a danger in denying original sin, and in taking a positive attitude toward humanity's redemptive potential. In other words, the Jewish approach to man can be misused. "I have read enough," writes columnist John Derbyshire, "to know what a stupendous debt our civilization owes to the Jews. At the same time, there are aspects of distinctly Jewish ways of thinking that I dislike very much. The world-perfecting idealism, for example, that is rooted in the most fundamental premises of Judaism, has, it seems to me, done great harm in the modern age."<sup>43</sup>

The point is a powerful one, and it therefore bears mentioning that Judaism never asserted that man is inherently good. In fact, God's observation in Genesis that "the inclination of man's heart is evil from his youth" has never been lost upon Jewish thinkers.<sup>44</sup> Moreover, unlike Christianity, Judaism never understood Adam as being inherently good before what Christians term the Fall. Rather, human beings were created with the ability to determine their own fate, an ability undiminished by the events in Eden. The Jewish theologian Eliezer Berkovits puts it rightly:

Judaism disagrees with the Christian interpretation of human nature. Man is, of course, not good, but he is capable of goodness. He is a responsible creature . . . . From the Jewish point of view, Christianity has not discovered an idea of God which is superior to the one taught by Judaism; rather, it has adopted a radically pessimistic evaluation of human nature as compared with the critical optimism of Judaism concerning all creation.<sup>45</sup>

It is true that Judaism is fundamentally optimistic regarding humanity's moral capacity, and that it rejects Christianity's thoroughly negative assessment of it. But this is, as Berkovits points out, a "critical optimism": Man must have pride in what he can accomplish, but also humility regarding what he must learn in order to do so.

It is for this reason that Judaism has always stressed the importance of law as the medium through which man may improve himself. The Tora represents, on the one hand, the idea that man is beholden to a divinely decreed morality; he cannot seek to redeem the world in whatever fashion he sees fit. On the other hand, the very idea that man is obligated to a complex of laws such as the Tora is itself indicative of God's faith in man's potential. Berkovits writes:

The law is a sign of God's confidence in man. Man *can* follow it and the responsibility is his . . . . If, as a result of original sin, man's nature is corrupt, if he can do no good by his own strength, then of course the rigor of a code of "Thou Shalt" is meaningless. If, however-as Judaism teaches-man has been equipped by the love of God with the potential for continuous moral and spiritual increase, then the law expresses the idea that God does consider and regard man.<sup>46</sup>

Judaism stresses man's inherent capacity, but emphasizes that if he is ever to flourish, he must first pay fealty to a transcendent moral order. Indeed, the very sentence that epitomizes the Jewish approach to redemption—"Israel will be redeemed only if it repents"—reflects both our faith in man and our awareness of the need for man to repent. Before redemption becomes a possibility, man must adhere to a rigorous moral standard. Judaism thus rejects both original sin and utopianism. To those who argue that man cannot save himself from sin, Judaism says stoutly: "Israel will be redeemed only if it repents." And to those who maintain that man can achieve a redemptive end through any means that he sees fit, Judaism responds stubbornly: "Israel will be redeemed only if it repents."

## VII.

We have delineated Jews' and Christians' differing approaches to redemption, and how these approaches reflect two unique views of humanity. Yet it is not impertinent to ask: Why is this contrast so important? Why is it necessary to highlight the differences between these two faiths? Some would advise instead that in an age of nihilism and secularism, Jews and Christians ought to focus on what they have in common, rather than on what divides them. Jews and Christians certainly share a commitment to something that so many others today deny: The idea that there is a purpose to history, and that we are participants in a history endowed with meaning. As Richard John Neuhaus has put it: "For both Christians and Jews, past and present participate in what Paul calls 'the fullness of time' . . . . Jews disagree with Jews and Christians disagree with Christians over the eschatological scenarios and

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apocalyptic details by which ‘the fullness of time’ will be achieved, but all are agreed that history is not, in the words of the cynic, just one damn thing after another; history will be fulfilled in the Kingdom of God.”<sup>47</sup>

The answer is that although the two faiths look at history through a religious lens, it must be stressed that the Jewish and Christian perspectives on man’s role in the unfolding of history could not be more different. This difference has, in fact, prevailed since the emergence of Christianity from Judaism two thousand years ago. As the era of the Second Temple drew to a close, Jews began to grapple with the seeming failure of the prophets to predict the future. After all, the Bible had assured Israel of the advent of a kingdom of God here on earth, in which all of mankind would serve God “with one consent.” Yet humanity had not turned to worship the Almighty; evil was rampant on earth, which for Jews was epitomized by Roman rule over the Holy Land. One Jew, a former Pharisee named Paul, proposed a solution: Humanity had not turned to God on its own because it *could not*; Israel did not earn redemption because it was not able to do so on its own. Redemption was not something that humanity earned; rather, it required that God take the sins of his servants upon himself.

While most Jews rejected Paul’s theology, it is all too often assumed that they did so solely because they rejected Jesus as the messiah. Such a view ignores the far more profound disagreement between the two faiths, a disagreement which persists to this day. The Jews rejected the Pauline view not merely because it conflicted with their view of the messiah—indeed, Jewish history is filled with disputes over proposed messiahs, disputes that did not necessarily bring about the kind of rupture that separated Jews from Christians. Rather, the Jews rejected Christianity because Pauline theology contradicted everything they believed about the relationship between God and man, and about man’s role in history. Evil, according to the Jews, could not be blamed on a cosmic flaw or original sin, for that would deny man’s moral capacity. The messiah had yet to arrive, Judaism insisted, because man had yet to become worthy of his arrival.

Over several centuries, Paul’s perspective triumphed throughout the civilized world. Meanwhile, the Jews went into exile, reviled by much of humanity as a scourge. Yet despite centuries of persecution, despite witnessing the evil that humanity can commit, Jews never lost faith in the possibility that man would choose the good, and thereby earn redemption. If

anyone over the centuries should have adopted Paul's picture of inherent evil and a belief in original sin, it should have been the Jews; yet their faith in man never waned. The story of Jewish history over the last thousand years is, to no small extent, the story of concentration camp prisoners who, as a part of the Yom Kippur prayers, declared that man is "worthy of standing before God"; of Jewish scholars, persecuted by Gentiles, who nonetheless looked for signs that humanity was improving; and of Jews in the ghettos of Europe who, with faith in themselves and in humanity, sat at their seder on Passover night, and waited expectantly for a knock on their door.

### Notes

1. Harvey Cox, *Common Prayers: Faith, Family, and a Christian's Journey Through the Jewish Year* (Boston: Houghton Mifflin, 2001), p. 124.
2. Cox, *Common Prayers*, p. 125.
3. *Catechism of the Catholic Church*, paragraph 840.
4. Reinhold Niebuhr, *Pious and Secular America* (New York: Scribner's, 1958), p. 101.
5. Deuteronomy 30:1-3.
6. Maimonides, *Mishneh Tora*, Laws of Repentance 7:5.
7. It is often assumed that this issue-whether the Jewish people must deserve redemption in order to be redeemed-is a subject of great debate among the rabbis of the Mishna. Yet a study of the relevant passage reveals this not to be the case. The passage appears in Sanhedrin 97b:  
Rav said: All predestined dates [for redemption] have passed, and the matter [now] depends only on repentance and good deeds. But Samuel maintained: it is sufficient for a mourner to keep his [period of] mourning. This matter is disputed by Tannaim: R. Eliezer said: If Israel repents, they will be redeemed; if not, they will not be redeemed. R. Joshua said to him: If they do not repent, will they not be redeemed? Rather, the Holy One, blessed be he, will set up a king over them, whose decrees shall be as cruel as Haman's, whereby Israel shall engage in repentance, and he will thus bring them back to the right path.  
In other words, both mishnaic opinions, as well as both talmudic opinions, assume that the redemption will not take place before repentance occurs; the debate focuses merely on whether there is a guaranteed date by which the Jews, because of historical circumstance, will be motivated to repent, or if, in Rav's words, "all predestined dates [for redemption] have passed."
8. Pinchas H. Peli, *On Repentance: The Thought and Oral Discourses of Rabbi Joseph B. Soloveitchik* (Jerusalem: Orot, 1980), pp. 134-135.
9. Maimonides, *Mishneh Tora*, Laws of Repentance 7:5.
10. Peli, *On Repentance*, pp. 135-136.
11. Romans 3:23.
12. Romans 9:16.
13. John 3:16.
14. Romans 5:18.
15. I Timothy 2:5.
16. Acts 4:12; "The Gift of Salvation," *First Things* (January 1998), pp. 20-23.
17. Miroslav Volf, "The Lamb of God and the Sin of the World," in Tikva Frymer-Kensky, et al., eds., *Christianity in Jewish Terms* (Oxford: Westview, 2000), pp. 317-318.
18. C.S. Lewis, *Mere Christianity* (New York: Macmillan, 1952), p. 64.
19. Titus 3:5.
20. Genesis 38:14-18.
21. Genesis 38:26. It is noteworthy that throughout the book of Genesis, it is Joseph, and not Judah, who seems most suited for leadership. He was, after all, the regent of Egypt, the man who saved the world from certain starvation, and who paved the way for the Exodus. Moreover, unlike Judah, Joseph is a paradigm of sexual restraint, resisting the



- charms of Potifar's wife. According to the Talmud, Joseph was saved from sin by his desire to honor his father. Yet it is Judah, and not Joseph, from whom, as Jacob himself declares, "the scepter shall not pass." Genesis 49:10. Joseph was destined to lead in Egypt, but not in Israel. For a man who is pious, perfect, and pure is one whom we may very much admire, but who can by no means inspire those who are not like him. Only one who is flawed, one who is like the subjects he was chosen to rule, can inspire those he leads to overcome their own flaws. Throughout the medieval period, the Jews spoke of a second messiah, a messianic descendant of Joseph who would attempt to redeem Israel and die trying. For Christians, the death of one perfect, pious man is sufficient to provide redemption for all, but Jews insisted that the death of a "messiah of Joseph" would not redeem Israel; rather, it was a son of Judah that would lead Israel-but only after Israel itself repents, and the world is made worthy of the messianic kingdom.
22. "When Israel was staying at Shittim, the people began to have relations with the women of Moab. These invited the people to the sacrifices of their gods, and the people ate and bowed down to their gods. Thus Israel tied itself to the Baal of Peor, and the Eternal's anger was kindled against Israel . . . Those that died by the plague were twenty-four thousand . . ." Numbers 25:1-3, 9.
  23. II Samuel 11:2-4, 27.
  24. See I Kings 1.
  25. Luke 1:26-35, emphasis added.
  26. Frederick G. Holweck, "Immaculate Conception," *The Catholic Encyclopedia*, [www.newadvent.org/cathen/07674d.htm](http://www.newadvent.org/cathen/07674d.htm).
  27. Genesis Rabba 41:4.
  28. For this they found support in a verse in Psalms bearing David's name, declaring that "Behold, I was brought forth in iniquity, and in sin did my mother conceive me." Psalms 51:7.
  29. Horayot 10b.
  30. Luke 18:10-14.
  31. Martin Luther, *The Sermons of Martin Luther* (Grand Rapids, Mich.: Baker Books, 1983), vol. iv, p. 366.
  32. II Samuel 12:7-13.
  33. II Samuel 24:17.
  34. *Catechism*, paragraphs 2665-2667.
  35. Genesis Rabba 22:6.
  36. Ecclesiastes 3:19.
  37. Luther, *Sermons*, p. 366.
  38. Edward T. Oakes, "Original Sin: A Disputation," *First Things* (November 1998), pp. 16-24.
  39. Zephaniah 3:9.
  40. Maimonides, *Mishneh Torah*, Laws of Kings 11:4.
  41. Menachem Kellner, "How Ought a Jew View Christian Beliefs About Redemption?" in Frymer-Kensky, *Christianity in Jewish Terms*, p. 275.
  42. Oakes, "Original Sin," pp. 16-24.
  43. John Derbyshire, "The Jews and I," *National Review Online*, [www.nationalreview.com/derbyshire/derbyshire041001.shtml](http://www.nationalreview.com/derbyshire/derbyshire041001.shtml).
  44. Genesis 8:21.
  45. Eliezer Berkovits, "Law and Morality in Jewish Tradition," in Eliezer Berkovits, *Essential Essays on Judaism*, ed. David Hazony (Jerusalem: Shalem, 2002), pp. 350-351.
  46. Eliezer Berkovits, *Judaism: Fossil or ferment?* (New York: Philosophical Library, 1956), p. 61.
  47. Richard John Neuhaus, "The Idea of Moral Progress," *First Things* (August 1999), pp. 21-27.



## Purim: The Holiday of Giving

Rabbi Mordechai Willig

### I.

The Rambam (הלכות מגילה פרק ב הלכה יז) rules that it is better to increase the amount of money spent on *matanos l'evyonim* than to add to the lavishness of one's *seudah* and *mishloach manos*. The reason is that there is no greater and more splendid *simchah* than to gladden the hearts of the poor and downtrodden. Moreover, one who gladdens the unfortunate is compared to Hashem, who revives the spirit of the lowly and the heart of the depressed.

Physical pleasure is necessarily limited. The human body can tolerate only a small amount of meat and wine. Therefore, in order to maximize the *mitzvah* of *simchah* on Purim, the added dimension of helping others was included. Sharing with peers, *mishloach manos*, establishes a joyful spirit of camaraderie. Giving to those who are needy and cannot reciprocate, *matanos l'evyonim*, creates an even higher level of *simchah*.

Spiritual pleasure on the other hand knows no limits. The soul cannot be satiated (Koheles 6:7). Indeed, even negative insatiable drives are corruptions of the unending desire to serve Hashem. One who loves money can never be fully satisfied with the money he has (ibid 5:9). The Midrash interprets this to mean that one who loves *mitzvos* is never content with those he has performed. Why did ה"ל feel compelled to explain the verse this way when the simple meaning is so clearly true? The *ba'alei mussar* explain that Man's never-ending quest for money is inexplicable. It must, therefore, be a perversion of the inborn, unfulfillable love for *mitzvos*.

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What is the source of this unquenchable thirst for spiritual accomplishment? The Rambam provides the answer. Hashem revives the spirit of the needy. The human soul is a part of the divine above. Therefore, the human soul, as a part of the infinite, has infinite capacity for fulfillment in the divine enterprise of helping others.

The *mitzvah* to be happy on Purim is best fulfilled by assisting others and ideally by supporting the needy. As such *mishloach manos* is an integral part of the *mitzvah* of eating and drinking on Purim. *Matanos l'evyonim*, which more closely resembles Hashem's acts of kindness to the downtrodden who cannot reciprocate, is the greatest and most splendid *simchah* for the person who is able to help.

The rabbinic commandment of how to fulfill the obligation of Purim is patterned after the Torah's requirement to rejoice on the *Shalosh Regalim* together with servants, orphans, widows, and others who need financial or social assistance (Devarim 16:11). Indeed, the Rambam (הלכות יום טוב פרק ו הלכה יח) describes the joy of one who does not help the poor and the embittered yet himself enjoys a festive meal as merely the joy of the stomach. The happiness of *mitzvos* must include gladdening the hearts of the depressed.

## II.

The difference between the two interpersonal *mitzvos* of Purim can be traced to their very inception. The original observance of Purim in the scattered cities included only *mishloach manos* (Esther 9:19). Only the subsequent enactment of Mordechai, which included walled cities as well, added *matanos l'evyonim* (ibid 20-21).

Moreinu Harav Yosef Dov Soloveitchik זצ"ל explained this distinction based upon the Ramban's analysis of the historical development of Purim recorded in the Megillah. When Haman threatened the Jews, those who lived in walled cities were in considerably less danger than the rest of then-brethren. Therefore, following their deliverance, the walled city-dwellers celebrated at the time of the miraculous event (ibid 18), but not in subsequent years on its anniversary. Only those who were in an immediate danger observed the 14<sup>th</sup> of Adar as a recurring holiday (ibid 19).

Later, when Mordechai and his *beis din* instituted Purim as an official day of joy, they realized that all Jews ought to celebrate. No Jew could rightly say, "Haman would not have attacked us anyway," for Haman was the enemy of all the Jews (ibid 24).

In most of the world Purim is observed on the 14<sup>th</sup> of Adar. In ancient walled cities it is celebrated on the 15th. The Ramban asks, why did the Rabbis, who are always concerned about uniformity in religious observance, institute a *mitzvah* with a built in dichotomy?

The Ramban answers that we celebrate two days to commemorate the original enactment of Purim. However, to emphasize that the Jews in more vulnerable areas experienced a greater miracle, and that they were the ones who observed Purim first, Mordechai saw fit to establish one day for them and a subsequent day for inhabitants of walled cities. And so a dual date for Purim emerged for all generations.

Rav Soloveitchik זצ"ל added that this very difference underlines the delay in the observance of *matanos l'evyonim*. Originally, when only the Jews outside walled cities celebrated Purim, the lesson of the common destiny of all Jews was not fully appreciated. Therefore, only the *mitzvah* of *mishloach manos*, representing closeness with one's peers, was observed. Mordechai's enactment included the walled cities to emphasize the unity of the Jewish people. To do so, he added not only to a different date, but also the *mitzvah* of *matanos l'evyonim*. Helping the disadvantaged reinforces the notion that all Jews are united and must care for one another.

### III.

The importance of Jewish unity on Purim can explain an enigmatic statement attributed to the אריז"ל. Yom Kippur is called יום כפורים, which the אריז"ל reads as יום כ-פורים – a day like Purim. Since Yom Kippur is a much holier day than Purim, why is Yom Kippur compared to Purim?

The *ba'alei mussar* suggest that the statement of the אריז"ל refers to the interpersonal dimension of these two days. On Yom Kippur, we must seek unity. Forgiveness is contingent on upon appeasing a fellow Jew (יומא דף פה:). The day is described as one which does not contain hatred, jealousy, or competition (Musaf). The fast must involve sinners, just as the *ketores* included a foul-smelling spice *chelbena* (כריתות דף ו:). The very name צום, fast, is related to צמה, a braid which symbolizes the unity of different strands within the Jewish community (Rav Soloveitchik). Purim also stresses togetherness. Haman's statement that the Jews were spread out and divided (ibid 3:8) reflected our disunity. Esther's exhortation to gather all the Jews of Shushan (ibid 4:16) teaches that Jews must unite, especially in times of crisis.

The *mitzvos* of the day reflect the same theme. The Megillah should be read in a large assemblage (Mishnah Brurah Orach Chaim 689 note 16). *Mishloach manos* and, especially, *matanos l'evyonim* reinforce the need for Jews to assist their friends and, especially, the disadvantaged.

The אר"י maintains that the unity of Yom Kippur exists in an unnatural state. In the absence of work and physical pleasure, Jewish unity is more readily achieved. As such it is hardly a precedent for the rest of the year.

In this sense, Purim is greater than Yom Kippur. Work is permitted and eating and drinking are mandatory. Unity under such circumstances is a greater accomplishment and a better example for other days as well.

Purim and Yom Kippur share another common factor. They are both days of *kabbalas haTorah*. The second *luchos* were given on Yom Kippur (Rashi, Shmos 34:29). And the second, compelling acceptance of the Torah took place during the story of Purim (שבת דף פח:).

This is no coincidence. The Torah can be given only when there is Jewish unity. At the original *kabbalas haTorah* on Shavuot, the singular form (יחיד) is used in reference to *Am Yisrael* (Shmos 19:2). Rashi explains: as one person with one heart. This prerequisite for receiving the Torah was recreated on Yom Kippur and during the story of Purim with similar results.

#### IV.

Jewish unity cannot possibly be realized without authentic Torah leadership, which requires humility and concern for others. Moshe Rabbeinu was our greatest leader and the humblest of men. He gave us the Torah on Shavuot and Yom Kippur. On Purim, the Torah was reaccepted under the leadership of Mordechai.

Although his humility is not stated openly in the Megillah, an insight can be gleaned from the cantillation (טעמי המקרא) of the Megillah. Two *psukim* – 3:12 and 8:9 recount the calling of the scribes to write the king's orders in nearly identical terms. In the first, Haman's commands were written; in the second, Mordechai's.

The emphasis, as denoted by the highest and longest cantillation, known as the *pazer*, is remarkably different. In Chapter 3, the *pazer* is on the word "Haman". In Chapter 8, Mordechai's name is read with the least significant note (*munach*), and the emphasis of *pazer* is reserved for the word "Yehudim," the Jews. This is the fundamental difference between the two types of leaders. Generally, leaders are largely concerned about their own welfare, as was Haman and the Megillah

drops us a hint of this by stressing his name as he would have. Authentic Torah leaders, such as Mordechai, however, are devoted to the Jewish people in general, and the people who follow them in particular. Their own needs are downplayed and muted similar to the note on Mordechai's name, and the needs of the Jew are emphasized.





**Five Essays  
on  
Issues of Ideology and Identity**

by Rabbi Michael J. Broyde

**A Letter to a Friend about Modern Orthodoxy**

**Prayer for the State of Israel:  
Why Do We Say It and What Does It Mean?**

**The Parameters of the *Mechitza*  
in the Young Israel of Toco Hills:  
A Review of the Relevant Issues**

**A Statement on the Peace Process in Israel**

**“He Leaves and Cries; They Leave and Cry”:  
Schisms and Hatred in Judaism and How to Prevent Them  
Yom Kippur *as a Time for Unity and Community***



## A Letter to a Friend about Modern Orthodoxy

Rabbi Michael J. Broyde

*Candid discussions of ideology and religious values within Orthodoxy should always be appreciated; ideologies other than one's own – when grounded in Torah and mitzvot – must always be treated with respect, even if one does not personally agree with them.*

Dear Yehuda י"ג:

You asked me to write a little about my own *hashkafa* (world view) and the *hashkafa* of our synagogue. It is presumptuous of me to write at all on these matters, and certainly I do not speak for the synagogue institutionally. Nonetheless, I will try to outline the distinctive features of my own *hashkafa* and ideology (as well as, perhaps, that of some other members of the synagogue) which I perceive as part of a normative halachic philosophy adhered to by many Orthodox Jews in America, and one that is particularly common among students of the Rav, Rabbi Joseph B. Soloveitchik זצ"ל, the *Rosh Yeshiva* at Yeshiva University for nearly fifty years. I will focus on three central values: the State of Israel, interaction with secular society, and the role of rabbinic authority. As with all simplifications of the complex, I have left out many valuable nuances in ideology that can sometimes have a significant impact on *hashkafic*, *halachic* and social reality. More study of these issues is always of value.

Before discussing those things that divide Orthodox Judaism, one must remember that – notwithstanding the differences in the Orthodox communities throughout the United States in terms of *hashkafa* and *halacha* – much unites us. We share a commitment to detailed *shemirat hamitzvot*, daily Torah learning, *gemilut chasadim* (acts of kindness), as well as many other central Torah values. Those issues which divide us – serious as they are – are not as great as that which unites us. Hatred for our co-religionists (*sinat chinam*) should have no place in our hearts, even as we grow to understand that there are philosophical differences among observant Jews.

**FIRST, I AM A RELIGIOUS ZIONIST**, and a member of the religious Zionist movement called in Israel *Mizrachi*. I believe that the establishment of the State of Israel (*hakamat medinat*

*yisrael*) is of profound religious significance to Jews, and that the State of Israel is different in type and magnitude from other nation-states in the Almighty's eyes, even ones, like the United States, which show Jews unparalleled kindness. I accept that the establishment of the State of Israel – imperfect as it is – could be the beginning of our redemption, and is an event filled with religious significance, that should be noted accordingly. Furthermore, I think that Jews in Israel and in America – particularly religious Jews – should involve themselves in activities of the State of Israel, as the Divine favors Jews being involved in Israel.<sup>1</sup> This approach is exemplified in the writings of Rabbi Yitzchak Isaac Herzog, the Chief Rabbi of Israel at the time of its independence in 5708/1948, who states:

As an introduction, at the minimum we must thank the Creator of the world and His direction over the Jewish people for the prophetic return of Jews to Israel. This matter should not appear insignificant in your eyes when the Divine Providence is visible to us in these miraculous and historical days that we are part of.<sup>2</sup>

**THE SECOND ISSUE** is the relationship between the secular world and Torah, which has two distinct components; one is theoretical and the other is practical. First, I adhere to a philosophy which maintains that there is much of value in the secular world and that it is proper for one to seek out those intellectual pursuits in the secular world that are of worth and to incorporate those consistent with Torah into one's life. From the profound scientific contributions of Einstein to the musical compositions of Mozart and the literary accomplishments of Shakespeare, *halacha* and *hashkafa* allows – and in my opinion encourages – one to examine the advances of society to determine if they are compatible with Torah; those that are accordant and also worthwhile should be incorporated into the Torah community.<sup>3</sup> There is only one truth in the world, and its source is the Almighty; the Torah scholar, the physicist, the musician, and the writer should all be seeking the same truth, and Jews should

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<sup>1</sup>Furthermore, many religious Zionists maintain that there is a religious imperative to fight for the State of Israel in its army, and it is improper for large numbers of individuals to avoid service to one's country, particularly through the use of exemptions to those who are in yeshiva solely to avoid military service.

<sup>2</sup>Letter from Rabbi Yitzchak Isaac Herzog, 19 Av 5708, printed in his work, *Techuka Leyisrael Al-pe Torah* 3:3. This approach to the State of Israel can be found in the words of many rabbinic scholars of the previous generations besides Rabbi Herzog, including both Rabbis Kook, Rabbi Benzion Uziel, Rabbi Yechiel Ya'akov Weinberg, Rabbi Joseph Dov Soloveitchik, Rabbi Ovadiah Yosef, Rabbi Shaul Yisraeli and many others.

<sup>3</sup>This can be found in the Talmudic maxim (Megillah 9b) that "The best of the house of *Yefet* [secular culture] should reside in the house of *Shem* [Judaism]."

examine all serious secular scholarship to determine whether truth has been found. Rambam states this simply:

Accept truth from whomever says it.<sup>4</sup>

MORE PRACTICALLY, I believe that a Torah-based society is incomplete if it is not predicated on the necessity of productive and economically rewarding work by nearly all of its members. It is a manifestation of the ideal for Orthodox Jews to work for a living, and to regularly learn Torah on a part-time basis in a manner consistent with earning a living. While this should seem almost obvious, we live in a time in which many perceive the ideal to be Orthodox Jews learning Torah in a cloistered yeshiva supported by others. I disagree with this insular approach; while there is a place in our Orthodox society for a small number of gifted married adults who learn Torah full-time while others work for a living to support these scholars, the overwhelmingly large percentage of adult, observant Jews should work for a living in a profession or trade. A college or graduate education is typically a *sine-qua-non* for earning a successful livelihood in this country. Thus, I believe that receiving an advanced secular education and involving oneself in the secular community to earn a living – in companionship with ongoing significant Torah study – are both vitally important so as to produce a full, complete and self-supporting Torah community, and a necessary means for allowing the Lord to be fully part of our lives.<sup>5</sup> Full-time study of Torah by mature scholars who are supporting themselves through charity should be a rarity, and in cases where individuals seek such alms to support their own Torah study, these scholars should return the community's largess through teaching adults or children or by other forms of communal service. Indeed, being paid to teach is as dignified a livelihood as a scholar could imagine and it allows one to fulfill one's own financial obligations to the communal organizations that serve such persons or their families. While it is true that other Jewish law scholars do not so harshly condemn those who learn

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<sup>4</sup>Introduction of Rambam to *Avot* in his *Commentary on the Mishnah*. The additional words “even from the least significant of people” is found in the version quoted in Rabbi Jacob Emden, *She'elot Ya'avetz* 1:5. In Rambam's *Moreh Nevuchim* one can find numerous examples of secular ideas incorporated into Torah, which the Rambam felt were true, and thus are part of Torah. Such an approach can be found in the writings of rabbinic giants of our generation including Rabbi Azriel Hildesheimer, Rabbi David Tzvi Hoffman, Rabbi Yechiel Ya'akov Weinberg, Rabbi Joseph Dov Soloveitchik and others.

<sup>5</sup>See the Talmudic incident recounted in *Berachot* 35b.

Torah and support themselves through charity as the Rambam does – indeed, some do not condemn it at all – the words of the Rambam are worthy of understanding. Rambam writes:

Anyone who contemplates that maybe he should study Torah [as a lifetime profession] and not work, but rather be supported by charity, has desecrated the name of the Lord, embarrassed Torah, extinguished the light of religion, caused evil to himself, and excluded himself from the world to come.<sup>6</sup>

**THE FINAL ISSUE** concerns the proper place for, and the power of, rabbinic authority. In my opinion, Torah scholars derive their authority from their knowledge of *balacha* and *hashkafa*, their respect for and from others (*derech eretz*), and their ability to grasp the problems that they seek to answer. The gap between the authority of the rabbi and the lay person is a function of the knowledge and ability of the two, and not the mere fact that one is a rabbi and the other is not. I believe that a rabbi or *posek* earns respect and deference to his authority by demonstrating a comprehension of Torah, its values, and the reality of the world to which Torah is to be applied. These skills allow one (rabbi or lay) to insightfully navigate the complex world we inhabit in a way that our Creator favors; those without these navigational skills should seek the association of one who has them. However, the Latin maxim *quandoque bonus dormitat Homerus*<sup>7</sup> remains true and even the best of Torah scholars or rabbis can make mistakes; there is no obligation to follow their rulings when they are in error. Indeed, it is prohibited to do so – although one must always be meticulously polite when one indicates disagreement with a scholar. This is precisely what the Jerusalem Talmud means when it states:

Is it possible that if the Sages tell you about right that it is left or about left that it is right that you should listen to them? Torah says “to the right or to the left” meaning that one should follow the Sages instruction only if they tell you about right that it is right and about left that it is left.<sup>8</sup>

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<sup>6</sup>Rambam, *Talmud Torah* 3:10. The importance of a secular education and work is expressed, albeit with different nuances and emphasis, in Israel through the slogan “Torah and work” (*torah ve’avodah*), at Yeshiva University as “Torah and secular studies” (*torah u’maddah*), by the German Jewish community as “Torah with human dignity” (*torah em derech eretz*) and by others as “Torah and wisdom” (*torah u’bachma*). See also Rama, *Yoreh Deah* 246:21 and commentaries *ad locum* which note that because of the dire exigencies of the times, some are permitted to support themselves exclusively through Torah, although it is not the ideal. Such an approach is accepted as normative by Rabbi Moshe Feinstein in *Iggrot Moshe*, in many different *teshuvot*.

<sup>7</sup>Literally “sometimes even Homer nods,” means that even brilliant people sometimes err – and yet remain extraordinary individuals worthy of praise.

<sup>8</sup>*Yerushalmi Horiyot* 1:1; See also Shach, *Yoreh Deah* 242:31; Ran commenting on *Avodah Zarah* 7a *s.v. banishal lachacham*, Hagaot Maymoniut, *Talmud Torah* 5:1-2; and Rosh Meluncil, *Hilchot Talmud Torah* 28. This approach is a rejection of some rabbis’ conception of *da’as torah*, which assigns to rabbis a sense of rabbinic infallibility that creates an appearance that rabbinic pronouncements are nearly a manifestation of the Divine. This approach can

**AS WITH ALL** disputes for the sake of torah, one must realize that *eilu ve'eilu divrei Elokim chaim* – many are the ways of Torah, and truth comes in many forms, all of which are manifestations of the Divine. I make no claim that these three approaches I have outlined are beyond dispute. Indeed, one can find eminent rabbis – far more learned than I – who disagree with all three approaches I explain. Even within the Orthodox community from which I originate, one will find some who disagree with the details of my explanation, or perhaps even with one of the categories themselves. Nonetheless, these are the three significant issues concerning which I have noticed that the traditions I inherited from my *rabba'im*, teachers and family – the Torah community which nourished me – differ from the traditions of some others.

In these troubled times in Israel and here, I can only end this letter with a universally Jewish prayer: May we merit a speedy and full salvation by the One Who saves His people.

כל טוב ובברכת התורה

Rabbi Michael Broyde

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be found in Sifri, *Mishpatim* 154 which states: “To the right or to the left: even if the Sages tell you that the right hand is the left and the left hand is the right, obey them” which is quoted by Rashi on Deuteronomy 17:11, Ramban in the introduction to his *Hasagot Lesefer Hamitzvot* and in his commentary on Deuteronomy 17:11 and Chinuch, *Mitzvah* 492.





## ISSUES OF IDEOLOGY AND IDENTITY

## Prayer for the State of Israel: Why Do We Say It and What Does It Mean?

Rabbi Michael J. Broyde

*Candid discussions of ideology and religious values within Orthodoxy should always be appreciated; ideologies other than one's own – when grounded in Torah and mitzvot – must always be treated with reverence and respect, even if one does not personally agree with them.*

**THE CLASSICAL PRAYER** for the State of Israel, which our Young Israel recites, was written by Rav Yitzchak Isaac Herzog זצ"ל, the Ashkenazic Chief Rabbi of Israel and one of the premier halachic decisors of that era, in 5708/1948 at the time of Israel's Independence.<sup>1</sup>

The prayer states:

Our Father in heaven, Protector and Redeemer of Israel, bless the State of Israel, the beginning of our redemption. Shield it beneath the wings of your love and spread Your canopy of peace upon it; send Your light and truth to its leaders, generals and advisors, and direct them with Your wise counsel. Strengthen the hand of the defenders of our holy land; grant them salvation; and crown them with the crown of victory. Bring peace to the land and permanent joy to its inhabitants. Remember our fellows Jews in the whole house of Israel throughout the diaspora. Speedily bring them to Zion, Your city, and Jerusalem, Your dwelling place, as it is written in the Torah of Moshe Your servant, "Even if you are dispersed in the farthest parts of the world, from there the Lord, your God, will gather you, from there He will take you. And the Lord, your God will bring you into the land which your fathers possessed and you shall possess it; and He will make you more prosperous and more numerous than your fathers." Unite our hearts to love and respect Your Name and obey the words of Your Torah. Send us the descendant of David your righteous messiah to redeem those awaiting salvation. Enlighten with Your glory all the inhabitants of the world and let all who breathe proclaim: The Lord, God of Israel, is King, and He rules over all. Amen.

אֲבִינוּ שְׁבַשְׁמִים, צוּר יִשְׂרָאֵל וְגוֹאֲלוֹ, בְּרַךְ אֶת מְדִינַת יִשְׂרָאֵל, רֵאשִׁית צְמִיחַת גְּאוּלְתָּנוּ. הִגֵּן עָלֶיךָ בְּאַבְרַת חֶסֶדְךָ, וּפְרוֹס עָלֶיךָ סֶכֶת שְׁלוֹמְךָ; וְשַׁלַּח אֹרֶךְ נְאֻמָּתְךָ לְרֵאשִׁיָּה, שְׂרָיָה, וְיִוְעֲצֶיךָ וְתַקְנֶם בְּעֶצֶה טוֹבָה מִלְּפָנֶיךָ. חֲזַק אֶת יְדֵי מְגִינֵי אֶרֶץ קְדֻשָּׁנוּ וְהִנְחִילֵם אֶל-לְקִינוּ יְשׁוּעָה וְנִצְחוּת נִצְחוֹן תַּעֲטֹרֵם; וְנִתְּתָ שְׁלוֹם בְּאַרְצְךָ וְשִׁמְחַת עוֹלָם לְיוֹשְׁבֵיהָ. וְאֵת אֲחֵינוּ כָּל בֵּית יִשְׂרָאֵל פְּקֹד-נָא בְּכָל אֲרָצוֹת פְּזוּרֵיהֶם, וְתוֹלִיכֶם מִהֲרָה קוֹמְמִיּוֹת לְצִיּוֹן עִירְךָ וְלִירוּשָׁלַיִם מִשְׁפַּן שְׁמֶךָ, כִּפְתוּב בְּתוֹרַת מֹשֶׁה עֲבָדְךָ: "אִם יִהְיֶה נִדְחָךְ בְּקִצֵּה הַשָּׁמַיִם מִשָּׁם יִקְבְּצֶךָ יי אֶל-לְקִיךָ וּמִשָּׁם יִקְחֶךָ, וְהִבִּיאֶךָ אֶל הָאָרֶץ אֲשֶׁר יִרְשׁוּ אֲבוֹתֶיךָ וִירְשֶׁתָּהּ, וְהִיטִבְךָ וְהִרְבֶּךָ מְאֹדִיךָ." וְיַחַד לְבַבְנוּ לְאַהֲבָה וְלִירְאָה אֶת שְׁמֶךָ וְלִשְׁמֹר אֶת כָּל דְּבָרֵי תוֹרָתְךָ וְשַׁלַּח לָנוּ בֶּן דָּוִד מְשִׁיחַ צְדִיקְךָ לְפָדוֹת מַחְכֵי קִץ יְשׁוּעָתֶיךָ. הוֹפֵעַ בְּהַדָּר גְּאוּן עוֹזֵךְ עַל כָּל יוֹשְׁבֵי תֵבֵל אֶרְצֶךָ, וַיֹּאמֶר כָּל אֲשֶׁר נִשְׁמָה בְּאֶפֶס: יי אֶל-לְקִי יִשְׂרָאֵל מְלִיךְ וּמְלִכּוֹתוֹ בְּכָל מְשָׁלָה. אָמֵן, סְלָה.

<sup>1</sup>For an article on the origins of the prayer for the State of Israel, see Gilad Strauss, "The Sources for the Prayer for the State of Israel," *Shma'atin* 28(104-105) at pages 83-88 and Shmuel Schneider, "Who Wrote the Prayer for the State of Israel," *Hadoar* 4/30/99.

The most common custom is to recite this prayer sometime after the *haftorah*, and before the Torah is returned to the *aron kodesh* (ark) and that is our custom also. Other communities recite it before *adon olam*. Many communities (including our own) have the practice of standing during the prayer.

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**THE PRAYER FOR** the State of Israel serves four functions, each important, and yet distinct from the others.

First, the prayer reflects our innermost feelings about the need to pray for the well-being and security of all of our institutions in general, and the State of Israel in particular. We recognize that the State of Israel remains besieged by its enemies and is continuously forced to defend itself militarily, and we beseech the Almighty to insure that Israel remains secure. Like the custom for Jews to pray for the welfare of the society in which they live and its government, we similarly pray that the State of Israel remains strong and successful.<sup>2</sup>

Secondly, the Prayer for the State of Israel reflects our belief and our hope that the State of Israel is the beginning of our redemption. Indeed, as noted by Rav Yitzchak Isaac Leibes זצ"ל (*Beit Avi* 5:69) the term "ראשית צמיחת גאולתינו" ("the beginning of our redemption") reflects not our certainty that such must be true, but our hopes and prayers that such *could* be true. As the Gerer Rebbe noted at the time of Israel's war for independence, it is the nature of the Jewish people to be redeemed little by little.

Third, the Prayer for the State of Israel allows the Torah-observant community to address the proper relationship between those Jews still residing in the diaspora, and those living in the land of Israel. The prayer recognizes that our Maker's blessings are needed also for Jews living in exile, and that we await our redemption and our return to Israel.

Finally, we say the Prayer for the State of Israel as a way of thanking the Almighty for the good He has given to us by the establishment of the State of Israel. We recognize that we live in a privileged time, when the Jewish people are sovereign over the land of Israel for the first time since the destruction of the *beit hamikdash* more than 1900 years ago. Prayer to the

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<sup>2</sup>Another common custom is to recite a *mesheberach* for the soldiers in the Israeli Defense Force. Some synagogues, including the Young Israel, say this prayer during Torah reading; others recite it immediately after the Prayer for the State, and some British synagogues incorporate it into the Prayer for the State.

Lord, as thanksgiving for what we have and what He has given us, is one of the ways we show appreciation. The founding and continued existence of the State of Israel is an event of unparalleled significance in the last 2,000 years of Jewish history, and if we do not thank the Almighty for that which He gives us, our prophets teach us that we risk having Him take those things away.

These four factors alone seem sufficient to justify reciting the Prayer for the State of Israel, and this is the custom throughout vast segments of the Orthodox community in the United States.<sup>3</sup>

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**WHY, HOWEVER, SHOULD** this particular Prayer for the State of Israel be said? Maybe some other prayer would be more appropriate? Indeed, those who have participated in services in British synagogues recognize that the Prayer for the State of Israel commonly recited in England, and written by the late Chief Rabbi of England, Rabbi Israel Brodie, is significantly different from the prayer commonly recited in the United States (and Israel). The British Prayer for the State of Israel reads as follows:

May He who blessed our fathers, Abraham, Isaac and Jacob, bless the State of Israel, its leaders and advisors in the land which He swore unto our fathers to give us. Put into their hearts the love and fear to uphold it with justice and righteousness, to serve You in truth and sincerity. May we be worthy in our days to witness the fulfillment of the words of Your servants, the prophets: For out of Zion shall go forth Torah, and the word of the Lord from Jerusalem. Grant peace in Your holy land and everlasting happiness unto all its inhabitants, so that Jacob shall again have peace and tranquility with no one to make him afraid. Spread the canopy of peace on all dwellers of the earth. May this be your will and let us say Amen.

מי שברך אבותינו אברהם יצחק ויעקב הוא  
יברך את מדינת ישראל ראשיה ויועציה על  
האדמה אשר נשבע יי אלוֹקינו לתת לנו. תן  
בלבם אהבתך ויראתך לסעדה במשפט וצדקה  
ונזכה בימינו לדברי עבדיך הנביאים כי מציון  
תצא תורה ודבר יי מירושלים.  
שים שלום בארץ ושמחת עולם על כל יושביה,  
ושב יעקב ושקט ושאנן ואין מחריד. ופרוש  
סכת שלומיך על כל יושבי תבל ארצך וכן יהי  
רצון ונאמר אמן.

<sup>3</sup>Some have objected to a prayer for the State of Israel by advancing the thesis that the text of the siddur is closed and that the classical siddur should not be modified in any way. This objection seems completely unpersuasive. From the *av harachamim* prayer written 600 years ago to commemorate the Crusades, to the *lecha dodi* hymn written 400 years ago to introduce Shabbat services, to the *gott vun avroham* prayer written 200 years ago to be recited at the end of Shabbat and continuing with the modern *kinot* commemorating the Holocaust written in the last decades, we see that there are certain places in the *siddur* where it is completely appropriate to insert prayers reflecting the unique spiritual needs of the times. In Shabbat morning services, one of the places where insertions may be made is before the return of the Torah to the *aron kodesh*, where a number of prayers written in the last 1,000 years can be found and where the prayer for the State of Israel is commonly said.

Others have suggested that the common Prayer for the State of Israel (written by Rav Herzog and quoted above) should not be used, because the words “ראשית צמיחת גאולתינו” (“the beginning of our redemption”) can be understood as a call for messianic Zionism or is intended as a prophecy, and thus either the entire prayer or just this phrase should not be said by those who do not believe that Israel *must* be the beginning of our redemption. Rabbi Norman Lamm שליט”א has stated that he favors using the British version of the prayer in many contexts because, “it is less ideologically demanding; it makes not assumptions about the Messianic nature of the State of Israel. Thus, even those who are hesitant about committing themselves to clear knowledge of our position in God’s redemptive process can join in thanksgiving for his benevolence in reestablishing our national dignity.”<sup>4</sup>

Those who accept this criticism and remain troubled by this phrase, but who still desire to pray for the State of Israel with the prayer written by Rav Herzog, have a simple solution. Any perceived ambiguity can easily be clarified by the addition of the Hebrew word “שתהיה”, so that the phrase “ראשית צמיחת גאולתינו”, now reads “*that it should be* the beginning of our redemption.” A number of synagogues have incorporated this change, elegantly eliminating this issue.<sup>5</sup> Other versions of the prayer for the State of Israel have been written by various halachic authorities, each with its own unique religious tone and linguistic style. For example, for a time the Aramaic phrase “אתחלתא דגאולה” (“the beginning of our redemption”) was used instead of “ראשית צמיחת גאולתינו”, as that was the phrase used in the 5709/1949 electoral platform of the joint religious parties in reference to the State of Israel, which was co-signed by many halachic luminaries, including Rav Yitzchak Isaac Herzog זצ”ל, Rav Shlomo Zalman Auerbach זצ”ל, Rav Yechezkal Sarna זצ”ל, Rav Zalman Sorotzkin זצ”ל, Rav Tzvi Pesach Frank זצ”ל and others. The full text issued in that pronouncement,<sup>6</sup> which many later said as a prayer, was:

<sup>4</sup>See the “Supplement for the Days of Remembrance and Thanksgiving” [prayers for *Yom Hasboah*, *Yom Ha’atzmaut*, and *Yom Yerushalayim*] (The Jewish Center, 1973), page 6. (Rabbi Norman Lamm was the editor of this work.)

<sup>5</sup>Along the same lines, I clearly remember hearing Rav David Lifshitz זצ”ל, the late Suvalker Rav and a *rosh yeshiva* at Yeshiva University, singing the Israeli national anthem, *Hatikva*, with the phrase “להיות עם דתי בארצנו” (“to be a religious people in our land”) substituted for the more common phrase “להיות עם חפשי בארצנו” (“to be a free people in our land”). Others have confirmed that they, too, were taught *Hatikva* with this phrase.

<sup>6</sup>Reproduced in Rabbi Menachem Kasher, *Hatekufah Hagedolah*, pages 374-378. A much less religious Zionist document, albeit politically Zionist, was signed by a number of Chasidic leaders, which is reproduced on pages

Praise to the Lord as we have been privileged, with His overwhelming mercy, that we have seen the initial flowers of the beginnings of redemption with the establishment of the State of Israel.

נודה לה' על שזכינו ברוב רחמיו לראות את הנצנים הראשונים של האתחלתא דגאולה עם הקמתה של מדינת ישראל.

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**WHICHEVER PARTICULAR PRAYER** one recites, one must see that the establishment of the State of Israel in the land of Israel has led to an unparalleled revival of Torah observance and learning in a broad variety of yeshivot, academies and schools; this would not have been the case absent Jewish sovereignty in the Jewish land, and we must thank the One who allowed this. By 1945, the great Torah institutions of Europe and the vast majority of European Jewry had been tragically destroyed, and it is the (re)establishment of Torah institutions in Israel that has been our comfort and revival in the face of the nightmares which took place during World War II in Europe. Mourning our losses and thanking the Almighty for His blessings are both indelible parts of the Torah's plan.

Thus, each of the many different Prayers for the State of Israel has its own linguistic and theological virtue. Like much of the practice relating to prayer, people should recite whichever prayer they are accustomed to saying, and whichever prayer reflects their world view (*hashkafa*) and ideology, as well as the ideology of their teachers, *raba'im* and families, regarding how to express the belief that the return of Jewish sovereignty to the land of the Jewish people is of religious significance and a manifestation of the Divine.

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**THIS POINT RETURNS** us to *hashkafa* (world view). Just as the selection of a particular prayer reflects a certain religious insight, so too the decision not to recite any prayer at all for the State of Israel is a *hashkafic* choice – a choice of mind set and orientation in Torah life that throws light on how one views modern events and the reestablishment of Jewish sovereignty in Israel. The Young Israel of Toco Hills prides itself on being a synagogue that adheres to the Religious Zionist tradition, and thus views the establishment of the State of Israel in 5708/1948 as a historically positive development as well as a manifestation of the Divine. Within that mind

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378-379 of this work.

set, one can discuss how exactly – with which precise prayer – one should thank the Divine for the State of Israel. All of the various permutations of how to pray for the State are legitimate.

However, we must acknowledge that one can never “prove” with any absolute certainty that the State of Israel is a manifestation of the Divine worthy of a specific prayer. There are many deeply observant Jews – following the practice of well known halachic authorities – who do not agree with our understanding of the religious significance of the re-establishment of the State of Israel in 5708/1948. Indeed, large numbers of *chasidim* adhering to the philosophical position of the late Satmar Rebbe, Rabbi Yoel Teitelbaum זצ"ל, maintain that the State of Israel must be the “devil’s work”, and not a positive development in Jewish history. Less stridently, but with equal clarity, others reject the validity of the Religious Zionist ideal, and deny that the establishment of the State of Israel is of any great religious significance at all – it is merely politically beneficial to the Jewish people. As Rabbi Avi Shafran, the editor of Agudath Israel’s paper *Coalition*, put it, “The Jewish State, of course, never really was one at all, at least not in the deepest understanding of the word, ‘Jewish.’”<sup>7</sup> Those who accept either of these two approaches do not say any prayer for the welfare of the state. In their view, the State of Israel does not merit a specific prayer of any type.

The Religious Zionist tradition vigorously disagrees with both of these approaches and accepts the approach of many Torah giants of the previous decades, who maintain that the establishment of the State of Israel is a manifestation of the Divine and of tremendous religious significance. As Rav Joseph B. Soloveitchik stated:

Logically speaking, all religious Jews ought to belong to the Religious Zionist movement . . . . I call upon all my students, wherever they are, to join the Religious Zionist movement and influence the members of their communities to do likewise . . . . But for the Religious Zionist movement, religious Jews would not have been involved in building up the land, something that would have been a blot in the annals of religious Jewry which all the sermons and *pilpulim* in the world could not have erased.”<sup>8</sup>

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**THERE ARE A** variety of possible prayers that one can say to thank our Creator for permitting the return of Jewish sovereignty to Israel and each of these prayers is a valid

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<sup>7</sup>Agudath Israel, *Coalition*, March 1996.

<sup>8</sup>Rabbi Joseph B. Soloveitchik, *The Rav Speaks: Five Addresses on Israel, History and the Jewish People* (Tal Orot Institute, 1982), pages 191,193-206. The word “*mizrachit*” was used to denote Religious Zionism.

expression of Religious Zionism. The Young Israel has chosen the one written by Rav Yitzchak Isaac Herzog זצ"ל, the first Chief Rabbi of the State of Israel in 5708/1948, and this is the most common choice among synagogues in the United States that say a prayer for the State of Israel.





## The Parameters of the *Mechitza* in the Young Israel of Toco Hills: A Review of the Relevant Issues

Rabbi Michael J. Broyde

*The letter was originally written to Rabbi Larry Meltzer א"צ, then-President of the Young Israel, concerning the parameters of the mechitza to be built in the new sanctuary of the Young Israel.*

Dear Rabbi Meltzer א"צ:

**BEFORE WE DISCUSS** the specifics of the *mechitza* at the Young Israel, a word about the general dimension of *mechitzot* is needed. There are three basic approaches to the height of *mechitzot*.

- (1) Rabbi Joseph B. Soloveitchik maintained that the proper height for a *mechitza* is 10 *tefachim* (hand-breadths), approximately 40-45 inches. This is based on the general rule found in all of Torah that a barrier of 10 hand-breadths constitutes a legal barrier for all matters of Jewish law.
- (2) Rabbi Moshe Feinstein maintained that the proper height for a *mechitza* is 18 *tefachim* (hand-breaths), approximately 60 inches. This is based on his understanding that a *mechitza* in a synagogue is designed to serve as a physical barrier between men and women.
- (3) Rabbi Joel Teitelbaum maintained that the proper height for a *mechitza* is such that the men could not see the women, and the exact height depended on the design of the synagogue. This is based on his understanding that a *mechitza* in a synagogue is designed to serve as a visual barrier between men and women.

The normative custom in most parts of America is to follow the ruling of Rabbi Feinstein on this matter, and such is the rule in the Young Israel of Toco Hills. Indeed, this is one of the few issues where the National Council of Young Israel's *Va'ad Harabanim* established a standard to which we must adhere.<sup>1</sup>

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<sup>1</sup>For more on these three approaches, see Baruch Litvin, *The Sanctity of the Synagogue* (Ktav, 3rd rev. and expanded ed. 1987), *She'alot Uteshuvot Benai Banim* 1:1 and *Tabarat Yom Tov* 6:28-60.

\* \* \*

**THE FACT THAT** the *mechitza* must be five feet high does not determine, however, the material out of which it shall be made. Even according to the approach of Rabbi Feinstein, there is considerable precedent for the top of the *mechitza* being transparent or translucent.

Rabbi Feinstein writes:

שו"ת אגרות משה חלק או"ח א סימן מג:  
בדבר המחיצה שעשה חלק ממנה מזכוכית בערך שליש מלמעלה, הנה יפה כתב כתר"ה  
שמדין המחיצה ליכא חסרון. אבל מצד אחר שאולי ילכו בלבושי פריצות שנראה בשן  
 כמו שהן רגילות ללכת בעוה"ר הרבה נשים במדינתנו וא"כ יהיה אסור להתפלל  
 כשפניהן לצד עזרת הנשים להתפלל ולומר דברי תורה, אם לא שתראו להזהיר שיהיו  
 מלובשות בצניעות כשבאות לביהכ"נ וגם לידע שיקיימו האזהרה.

In the matter of the *mechitza* where a portion of it is made from glass, approximately the top third, the questioner is correct that such is not problematic as a *mechitza*, as a *mechitza*. However, there is another problem with such a *mechitza*. Perhaps women will come to synagogue immodestly dressed, as is common in public in our era; if that is the case, it would be prohibited to pray or study while looking directly at the women. Thus one should beseech the women to come to synagogue dressed properly, and they should listen.

While it is true that in this same *teshuva* Rav Moshe voices concerns about how women dress and related modesty issues, I feel that such concerns are not generally relevant in our shul. Women rarely, if ever, come with exposed shoulders or thighs. Rav Moshe's concerns are mitigated further by the fact that, given our [current] *mechitzot's* design, women's legs are not visible from across it (the *mechitza* is 60% solid wood). Rav Moshe writes, in that same *teshuva*, that:

לכן אם רוצים דוקא בזכוכית יראה כתר"ה להזהיר שיבואו לביהכ"נ מלובשות בצניעות.  
 ואם יארע לפעמים שתבוא אחת מלובשת שלא כראוי ולא יהיה באפשרי למחות בידה  
 יצטרכו להזהר מלהתפלל ולומר ד"ת לצד הוא. . .

If the community desires a glass *mechitza*, one must clearly tell people that they must come to synagogue properly dressed. If it occasionally happens that some women come to synagogue improperly dressed, and one cannot stop that, one must be careful not to pray looking at her.

Such is our case. At Young Israel, immodestly dressed women are the exception, and not the rule.

\* \* \*

I DO NOT find any of his other *teshuvot* to be relevant to this issue. While elsewhere Rav Moshe states that glass *mehitzot* are problematic, he clearly limits that objection to situations where the glass is a window that opens and closes. Thus, he states:

שו"ת אגרות משה חלק או"ח ד סימן כט:  
הנה בדבר המחיצה אשר רק חמשים אינצ'ס גובהה ולמעלה עוד י"ג אינצ'ס הם חלונות  
חלונות פתוחות ברוחב י"ג אינצ'ס, ודאי אין זה מן הנכון להתפלל שם אלא מוכרחין  
לעשות יריעה פרוסה על כל השטח. . . .

In the matter of a *mehitza* of 50 inches, with an additional 13 inches of **glass windows that are left open**, it is certainly not proper to pray there; rather one should insert a curtain over the windows.

Our glass does not open. Conceptually, Rabbi Feinstein's limitation on windows that open revolves around the problematic fact that when the window is open, it is as if, according to halacha, the pane of glass is missing.

Indeed, Rav Moshe's approval of all-glass *mehitzot* is repeated in nearly the same formulation in a teshuva written many years after the first one:

שו"ת אגרות משה חלק או"ח ג סימן כג:  
והנה לבד ענין המחיצה שזהו דבר המחוייב אפילו נשים צנועות ביותר, יש ענין מחיצה  
בשביל איסור הסתכלות ממש במקומות שצריך שיהיו מכוסות שהן בדין ערוה בזמננו  
שבעוה"ר הולכות כמה נשים בפריצות. . . . אך בשביל זה אם הוא ביהכ"נ שאין מניחים  
לנשים מגולות הזרועות וכדומה ליכנס לביהכ"נ רשאים מדינא לעשות אף מחיצה  
מזכוכית וכדכתבתי בסימן מ"ג עיי"ש.

Independent of the matter of the *mehitza*, which is obligatory even when women dress completely properly, the *mehitza* also serves the purpose of preventing men from seeing women dressed improperly, which is prohibited for men during prayer. . . . **However, because of this concern alone, if one is in a synagogue where women do not come in to synagogue with their shoulders showing, or the like, Jewish law permits one to make a *mehitza* out of glass.**

We, in the Young Israel, are exactly in the situation that Rav Moshe discusses in bold type. Women in the Young Israel do not come to shul with their shoulders or thighs exposed.<sup>2</sup> Even fully uncovered hair by married women is rare (and Rav Moshe accepts the leniency of

<sup>2</sup>The same analysis is proper for the teshuva found in מב"א סימן ח"א א סימן מב, which states that: מה שרוצים לצרף יריעה מעשה רשת אם נראות בזה זרועות המגולות אינו כלום אבל אם היא יריעה כזו שנראות באופן שאין להכיר המקומות שהן מגולות נחשב כסוי כיון שלא נראה גלוי הבשר רק נראות כצל בעלמא.

Rav Moshe is concerned in this *teshuva* not with the problem of *mehitza*, but of modesty during tefila. Simply put, I do not think that such women come to our shul with any consistency.

(Let me add another point: even when these women do come to our shul, they dress in the normal fashion of our society, and not any *less* modestly than the social norm; thus the Aruch Hashulchan that Rav Moshe accepts as correct would rule that *me'ikar badin*, according to the technical halacha, one may daven in front of them too, as there is not erotic thoughts when that is the way many "normal" people dress. (נראה לי כן).)

the Aruch Hashulchan (OC 75:6) that such conduct is not a problem in a shul for daveners). Particularly since the bottom 2/3 of our *mechitza* is solid, so that legs are not normally visible, I do not think that seeing women dressed improperly is a real problem at our shul.

\* \* \*

**THUS, THE PARAMETERS** for the mechitza in the Young Israel of Toco Hills are as follows:

- (1) The *mechitza* must be five feet tall;
- (2) Glass *mechitzot* for the top 40% of the *mechitza*, though transparent, are halachically permissible;
- (3) Proposition (1) does not mean that such is mandatory *al pe din*, merely that it is *mutar*. The synagogue, as a religious community, must decide what material should form the top of the *mechitza*.

As a matter of halacha, it is permissible for the shul to have a glass *mechitza*. However, this should not be understood as directing that such a *mechitza* must be installed. Many other options are permissible as well, and I am sure that the right decision will be reached the Ritual Committee and the Board of the Young Israel.<sup>3</sup>

\* \* \*

**LET ME ADD** two final thoughts. Halacha requires that men and women sit separately, with a physical barrier in place meeting the above conditions. Notwithstanding that fact, it is proper that the synagogue be designed, and a *mechitza* constructed, so that women can see and hear everything that occurs in the sanctuary, which must create the sense that the women in the women's section are part of the community of people who have come to pray. A synagogue must be a place that is designed consistent with halacha and which feels equally welcoming to men and women. This obligation of inclusion should affect every component of how we design the synagogue. In particular, the place where the *chazan* stands and where

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<sup>3</sup>I agree that it would be best to follow Rav Moshe's advice and purchase one-way glass that allows the women to see. Rav Moshe states:

ושמעתי כי יש זכוכית שרק מצד אחד יכולין לראות וטוב לעשות בזכוכית כזו שהנשים יוכלו לראות והאנשים לא יוכלו לראות.

I have heard that there is one-way glass, and it is good to make a *mechitza* out of this, as the women can see services and the men cannot see the women.

Torah reading occurs must be as visible from every area of the women's section as it is from the men's section.<sup>4</sup>

The ideal construct for a *mehitza* is that: (1) The women feel fully a part of the community, and can see the *chazan* completely; (2) The men can completely see the *chazan*; (3) The men and the women cannot see each other.

By our seeking this ideal, our Maker smiles on us.

כל טוב ובברכת תורה,  
Rabbi Michael Broyde

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<sup>4</sup>Indeed, it can be demonstrated as halachically proper to set up the sanctuary so that the places where Torah reading occurs and the *chazan* leads prayer are neither in the men's section nor the women's section, but in a neutral area in between.



## A Statement on the Peace Process in Israel

Rabbi Michael J. Broyde

**I believe American Jews should support the views of the elected government of Israel, whatever its policy might be.** We Jews in America ought to not publicly voice our views, one way or another, on the peace process and Israel's relations with its neighbors. The stakes are too high for Israel to let those of us in America, who neither fight nor die in Israel's wars, to take a view on whether, for instance, peace with Syria is a prudent idea from a military or political perspective. We should instead support the government in power, whether it be Sharon, Peres, Netanyahu or Barak.\*

Thus, I would not distribute material in English directed at politically undermining the government of Israel or its policies concerning the peace talks. Israelis are entitled to take any view that they wish on this process – they live in the land and fight in its battles. I respect their right to have an opinion. Sadly enough, I do not live in Israel (and I cry every day that it is so); for whatever reason and whatever my rationale, I do not live in the land God gave us and I thus feel ineligible to comment on security matters.

God willing, one day I will move to Israel, and then I will feel free to voice my opinion. Until one lives with the consequences, it is better not to voice an opinion.

Particularly in these difficult times, people need to speak publicly only with the greatest of care.

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\*This is even more so given the indisputable fact that both Prime Ministers Barak and Sharon, in each of their elections, won a majority of both the Jewish vote and the Israeli vote in the election, and that the parliamentary majority governing Israel constitutes a majority of all Israeli and all Jewish voters.





**“He Leaves and Cries; They Leave and Cry”:  
Schisms and Hatred in Judaism and How to Prevent Them  
*Yom Kippur as a Time for Unity and Community***

Rabbi Michael J. Broyde

**THE MISHNAH IN** Yoma (1:5), the tractate dealing with the Temple worship on Yom Kippur (the Day of Atonement), recounts a very enigmatic event. The Mishnah lists the following as one of the ceremonies that must be performed in the course of the sacrificial order of the day:

מסרוהו זקני בית דין לזקני כהונה והעלוהו לעליית בית אבטינס והשביעוהו ונפטרו והלכו להם ואמרו לו אישי כהן גדול אנו שלוחי בית דין ואתה שלוחנו ושליח בית דין משביעין אנו עליך במי ששכן שמו בבית הזה שלא תשנה דבר מכל מה שאמרנו לך הוא פורש ובוכה והן פורשין ובוכין.

The elders in the Jewish Court went to the High Priest (*kohen gadol*), and they took him to the house of Avtinus and they made him take an oath; upon finishing, they left. What did they say? “Our Leader, High Priest: We are the agents of the Court, and you are our agent, and the agent of the Courts. Swear to us, in the name of God who resides in this Temple, that you will not deviate one bit from the authorized Temple ritual.” He leaves and cries, and they leave and cry.

The Talmud tells us that this ritual was established because the Sadducees (a group of Jews who had a different understanding of the Temple rituals on Yom Kippur than the Rabbis) were sometimes in control of the Temple rites, and they would instruct the High Priest to perform a slightly different sacrificial rite. Thus, the Rabbis made the High Priest swear that he would not deviate from the ritual mandated by the Rabbis.

Surprisingly, Rambam codifies that not only must the High Priest swear this oath, but that he must cry. Crying is part of the ritual. Why must everyone cry?

**INDEED, UPON REFLECTION**, one concludes that this whole swearing ceremony makes little sense. If the times were such that the priests (*kohanim*) were generally Sadducees, and the current High Priest (*kohen gadol*) was actually a Sadducee himself, he certainly would not

swear this oath; instead, he would have performed the ritual exactly as the Sadducees understood Jewish law to demand. So too, if he were a High Priest who followed the Rabbis (a Pharisee, as they were called, and from whom Orthodox Judaism intellectually descends), there is no reason to fear that he would deviate from the standard ritual. He really does not need to swear, and he certainly does not need to cry.

Simply put, there were two options: Either the High Priest was a Sadducee, and then he would not swear, or he was a Pharisee, and he would gladly swear, and he need not cry. Why then did everyone cry? Indeed, why does Rambam mandate that one *must* cry?

**THE ANSWER CAN** be found in a story that explains the origins of this ritual, and has some relevance to our lives. The dispute between the Sadducees and the Pharisees concerned the location where the incense sacrifice had to be brought. One group said that it was to be brought in the Holy of Holies (*kodesh hakodashim*), while the other insisted it be brought immediately outside the Holy of Holies. The denomination to which the *Kohen Gadol* belonged in any given year determined where the sacrifice was placed. Every year the denominations fought, and every time a new High Priest needed to be appointed, tensions rose dramatically. Each side grew to hate the other: Jew hated Jew – and all because of *Yom Kippur!* A sad situation, indeed.

One year, the story recounts, the Sadducees proposed a compromise. Appoint two high priests, and let each perform the ritual according to his own rite, one after the other. The Pharisees, after a great deal of introspection and examination of the halacha, determined that this proposed compromise was unacceptable, as improper ritual was actually prohibited in the Temple area; they preferred losing control to sanctioning sin. Thus, the Rabbis refused this compromise, albeit with tears in their eyes, aware that more hatred between Jews might result, something they wished to avoid. However, they didn't know what else to do, as halacha mandated that one reject this compromise, and not sanction sin for the sake of peace.

A horrible backlash occurred after the compromise was rejected – a reaction neither expected nor desired by either the Sadducees or the Pharisees. The community which the Rabbis led misunderstood the rejection of the Sadducees' offer, thinking the Rabbis spurned the proposal because “nothing of value could ever come from the Sadducees.” The Sadducee community, too, misunderstood this rejection, and thought that “the Pharisees do not value

peace.” This misunderstanding of the motives of the Rabbis and the Sadducees – by members of their own communities and outsiders – increased the hatred between the denominations, and led to many more years of mockery, rivalry, and lack of cooperation, all to the detriment of Judaism, and all of which could have been avoided, if the motives and needs of each side had been understood properly.

**A COMPROMISE WAS** attempted, but it failed because one side could not reconcile it consistent with its principles. That is part of the life of honorable people seeking to work out their differences. Instead of trying again to find a compromise that both sides could live with – even if this meant searching continuously and without abatement – each side denounced the motives of the other, and no compromise was ever found. The environment had been too poisoned by hatred. And eventually our Temple was destroyed by God because of this hatred.

This is the reason the Rabbis and the High Priest cried then, and we continue to cry to this day. The Rabbis decreed that the High Priest and those who go to speak to him cry, so as to remember that misunderstanding each others' motives leads to the creation of hatred, which serves as the obstacle to a principled peace.

The need to live in peace with one's fellow Jews – even with those who do not live a life consistent with halacha, and even more so with those who do, but of a slightly different flavor – is an urgent religious duty, and we must continuously work at insuring that principled peace, and not extreme enmity, are the bywords; while we must not sacrifice our halachic principles, we must actively seek out compromises that bring peace. Otherwise, the State of Israel, and a united Jerusalem, shall surely cease. The nation that cannot stand together cannot endure and will soon be torn apart.

**THERE ARE A** host of complex issues dividing Judaism and Jews in our era. From the conversion crisis in Israel to inter-denominational (and intra-denomination) cooperation in America, many issues remain unresolved and are slowly eating away at the foundations of our common home, and at the collective ability of Judaism to survive and thrive. Many recent compromises have been proposed to each of these problems, and these “solutions” seem not to have been accepted as the “proper” ones. So be it; compromise has to leave each side in a reasonable circumstance, and if these “solutions” are not the right ones, we should not accept them. However, we must continue to search for realistic compromises that will work.

We state repeatedly during the services on the *Yamim Noraim* that the Jewish people have been diminished because we have no *beit hamikdash*; our ability to repent and to have our repentance accepted by God is reduced by the lack of a central location where all Jews pray. Let me suggest that we lack a central location where all Jews can pray together because we have proven unable to genuinely live each with the other, peacefully coexisting, while aware of each other's flaws and limitations.

**GENERAL THOUGHTS ABOUT** the need to strive for principled communal unity are nice, but accomplish little. Each of us, I am sure, asks him- or herself the question "should I work towards this goal, or leave this task to others, who are greater?" This concern is addressed by the Talmud in *Gittin* 56a, when describing the process that led up to the destruction of the *beit hamikdash*. The Talmud notes that Rabbi Zecharya ben Avkalus had a rationale for permitting sacrifices to be brought that were otherwise not permitted, if bringing them prevented the destruction of the *beit hamikdash* (as it would have, at that time). However, Rabbi Zecharya was hesitant to actually act upon his reasoning and subsequently the *beit hamikdash* was destroyed. Rabbi Yochanan opines that because of the humility of Rabbi Zecharya the *beit hamikdash* was destroyed. Commenting on this, Rabbi Tzvi Hirsch Chajes (*Maharatz Chayot*, *Gittin* 56a) states:

We see from this that the Rabbis thought that the manner of Rabbi Zecharya was not proper, as he felt that such sacrifices could be brought [and he should have so stated]. . . However, because of his great modesty, he did not have the strength to act according to his views *halacha lema'aseh* [and save the Jewish people]; rather, he was afraid that other rabbis would accuse him of permitting activity prohibited by halacha, and he did not think of himself as a great enough sage to permit people to act according to his understanding of the halacha. He thought that these types of decisions were left only to the wisest of the generation ("גדולי הדור") [when in fact, he should have acted].

Why is it fair to criticize Rabbi Zecharya? The answer is that when Jewish survival is at stake, every one has to act.

May we be privileged to search – with all our strength, and in a manner consistent with our religious and halachic principles – for compromises that reduce the unneeded hatred between Jews. It is my hope and blessing that one day we will not have to cry anymore because Jews hate each other. That is something worth praying for during this High Holiday season. As the Haftorah for Yom Kippur tells us, God looks to see what we are doing to make the

world a better place, and judges us based on that. Striving for unity is surely a worthwhile activity.

**AND MAYBE ONE** day we will not have to cry anymore.

