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GAMLIEL SHMALO

Orthodox Approaches to Biblical Slavery

Recent popular and aggressively anti-religious books have highlighted the Bible's sanctioning of slavery as evidence of the Bible's immorality.[1] One striking example can be found in a best selling and deliberately provocative book by journalist, author, and political commentator Christopher Hitchens, who argues that the ethics of the Bible lead the sensitive modern thinker not so much to atheism as to "anti-theism:"

> By this I mean the view that we ought to be glad that none of the religious myths has any truth to it, or in it. The Bible may, indeed does, contain a warrant for trafficking in humans, for ethnic cleansing, for slavery, for bride-price, and for indiscriminate massacre, but we are not bound by any of it because it was put together by crude, uncultured human mammals.[2]

Given the enormous outrage and repulsion that the modern Western world feels toward slavery, arguments like Hitchens' find fertile ground.

Not all readers of the Bible have been moved to throw down an atheist gauntlet in the manner of Hitchens. Recent progressive theologians point to biblical slavery, along with animal sacrifice and the prohibition against homosexuality, as a moral anachronism that the Western world has outgrown. Unlike atheist critics, these progressive theologians are unwilling to reject their biblical traditions outright; in fact, they claim to take much inspiration and guidance from these traditions. Nevertheless, they find so many gaps between their modern moral sensitivities and the particular commandments and institutions of the Bible that their divergence from

1. For a particularly caustic criticism, see Morton Smith, "On Slavery: Biblical Teaching v. Modern Morality," in *Biblical v. Secular Ethics: The Conflict*, ed. R. Joseph Hoffman and Gerald A. Larue (Buffalo, 1988), 69-78 See also Richard Dawkins, *The God Delusion* (New York, 2008), 300.

2. Christopher Hitchens, *God Is Not Great: How Religion Poisons Everything* (New York, 2007), 102.

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those institutions appears systemic. For example, in an article supporting the concept of single-sex marriage, Reform rabbi Devon Lerner points to biblical slavery as a basis for concluding that "Our world is very different from the world of the biblical times, and so all of our religious practices and interpretations of the Bible have necessarily changed and evolved through the centuries."[3]

Orthodox Judaism has its share of morally sensitive thinkers, and they also have had to deal with the Western outrage over biblical slavery; naturally, in order to remain Orthodox, they have not been moved, as Hitchens was, to reject the Bible as primitively mammalian. They are therefore left with the task of resolving the conflict between the modern moral outcry against slavery and the Bible's obvious sanction of the institution. Among Orthodox Jewish thinkers of the modern period, several creative—and sometimes mutually exclusive—approaches to this contradiction have emerged. Some have reinterpreted the biblical system in order to render it less offensive; others have questioned the moral superiority of the anti-slavery position; still others see biblical slavery as one of a few ephemeral accommodations to particular historical circumstances that the Western world has thankfully outgrown. This paper will examine these Orthodox approaches.

The case of slavery serves as a paradigm, as it helps us generate diverse approaches to a wide range of apparent ethical conflicts between Judaism and Western morality. It also traces the boundaries of acceptable theological resolutions within contemporary Orthodox Jewish thought. The three basic models for dealing with potentially noxious biblical systems and laws—limiting via reinterpretation, moral and social justification, and historical qualification—are found both in their pure forms and as alloys in this context, and they shed as much light, and perhaps more, on the general approach of the contemporary Orthodox commentator as they do on the institution of slavery itself.[4] As we shall see, in cases such as this, in which tradition so vividly seems to clash with modern thinking, even conservative rabbinic figures will feel compelled to subject tradition to large scale re-evaluation and re-interpretation.

3. Devon Lerner, "Why We Support Same-Sex Marriage: A Response From Over 450 Clergy," *New England Law Review* 38:3 (2003–2004): 528. See also Jack Rogers, *Jesus, the Bible, and Homosexuality: Explode the Myths, Heal the Church* (Louisville, KT, 2006), 18–34.

4. Such reevaluation of Jewish law on ethical grounds, including the laws of slavery, certainly took place in earlier periods of Jewish history as well. A possible example of this can be found in Maimonides' closing remarks to *Hilkhot Avadim*, cited in note 11 below.

The Biblical Systems of Slavery

The Bible allows for several different systems of slavery, some more moderate than others—one applies to the Hebrew manservant (Ex. 21:2-6, Lev. 25:39-43), another to the Hebrew maidservant before the age of majority (Ex. 21:8-11),[5] and the third to gentiles of either sex (Lev. 25: 44—46).[6] In order to highlight the three basic models for resolving the conflict we are presently studying, I will focus only on the biblical system of slavery most grating to the modern sensibility. A model that successfully disarms the offense in the most "unjust" system will easily disarm the relatively modest "injustices" of the more moderate systems. Although a study of the various systems of slavery as they are presented in the Bible itself would be interesting, we will take the talmudic categorization of these systems as a given, since all the Orthodox thinkers whom we will discuss accepted the talmudic understanding as the authoritative meaning of the Bible.[7]

From the modern, egalitarian perspective, the gentile slave is at a remarkable disadvantage. To be sure, even he benefits from significant rights that temper his obviously unfortunate state. These rights include, most notably, the right not to be killed, and given the history of slavery, this is a right that must not be taken for granted. According to Jewish law, the murder of any slave is a capital crime,[8] and a slave is freed should his master inflict a severe and permanent bodily injury.[9] Even the spiritual rights of the gentile slave are protected to a degree; for example, a slave residing in the Land of Israel may not be taken to the Diaspora against his will, and if he is sold to a master in the Diaspora, he must be released.[10] Maimonides concludes his Laws of Slaves with an appeal to masters to treat their gentile slaves mercifully, in accordance with "the attributes of saintliness and the ways of wisdom."[11]

Nevertheless, despite his many rights, of all types of slaves, only the gentile slave is a slave for life. Children born to him are slaves as well, unless he succeeds in purchasing his freedom or is set free upon having

5. See Maimonides, *Mishneh Torah, Hilkhot Avadim*, chap. 4.
6. This paper will refer to gentile slaves in the masculine for purposes of convenience only.
7. Throughout this paper, we similarly largely ignore the precise legal differences between the various Sages of the Talmud, Maimonides, and later codifiers such as R. Yosef Karo in his *Shulḥan Arukh*, as these differences have little bearing (with some noteworthy exceptions) on later thinkers' specific approaches to the general morality of slavery as a normative institution.
8. Maimonides, *Hilkhot Roẓeaḥ u-Shemirat Nefesh* 2:10.
9. Maimonides, *Hilkhot Avadim*, chap. 5.
10. See ibid., chap. 8 for detailed laws protecting the slave's spiritual rights.
11. Ibid., 9:8.

suffered a severe and permanent bodily injury. The Hebrew slave, on the other hand, goes free after six years if he was sold by a court; his term of service could be longer if he sold himself into bondage or agrees to extend his term at the end of the six years imposed by the court, but in all cases, he goes free at the Jubilee year.[12] The Hebrew maidservant goes free automatically upon reaching the age of majority.[13]

The Hebrew slaves' temporary status, together with the fact that they must be treated with great dignity by law, somewhat attenuates the moral difficulty of the institution.[14] Rather than harsh slavery, they could be likened to indentured servitude—a desperate and passing solution to the hunger of poverty or a reforming expiation following an act of theft. Maimonides notes that a Jew is sold into slavery against his will only after a theft which he is unable to repay; he may sell himself only if he is reduced to such poverty that "he has nothing left, not even a garment."[15] Similarly, a Jewish girl is sold by a father unable to care for her needs.

In summary, although the modern moralist may have many reservations about any of the Bible's systems of slavery, he will clearly find the system of gentile slaves-for-life the most offensive. For Orthodox thinkers, this system presents the greatest challenge. We turn now to examine the ways in which they responded to this challenge.

Approach I—Limiting Via Reinterpretation

R. Hirsch

R. Samson Raphael Hirsch (1808–1888), the founder of German Jewry's *Torah im derekh ereẓ* movement, moderates the conflict by reinterpreting the institution of biblical slavery. He limits its scope and emphasizes how—in this limited scope—it was of practical benefit to any individual slave.

In R. Hirsch's Germany, Jews were debating emancipation of a different kind—the emancipation of the Jews—and R. Hirsch was a cautious supporter. As a young rabbi in Oldenburg in the 1830's, R. Hirsch dedicated a chapter to the subject of Jewish emancipation in his first published book, *The Nineteen Letters of Ben Uziel*, a bold defense of Jewish tradition. The reasons R. Hirsch gives there for supporting Jewish emancipation

12. Ibid., 2:2-3.
13. Ibid., 4:4-5.
14. As noted above, Maimonides encourages the merciful treatment of gentile slaves as well, but this is considered behavior that is *middat ḥasidut* (way of the pious) and is not legally binding, as is the dignified treatment of a Hebrew slave.
15. *Hilkhot Avadim* 1:1.

could easily apply to the emancipation of slaves as well:

> I rejoice when I perceive that in this concession of emancipation, regard for the inborn rights of men to live as equals among equals, and the principle that whosoever bears the seal of a child of God, unto whom belongs the earth, shall be willingly acknowledged by all as brother. . . .[16]

Later in this chapter, R. Hirsch expresses some reservations about the emancipation of the Jews, since it might lead to greater assimilation, but this was a consideration unique to the Jewish condition in exile. Implicit in these particularistic reservations is the appreciation that the emancipation of other groups is an unqualified blessing.

R. Hirsch more explicitly addressed the institution of biblical slavery several decades later in his commentary to the Pentateuch, which was published over the course of a decade (1867–1878). In several passages, he makes clear his discomfort with the biblical institution of slavery by emphasizing its limits, noting in his comments to Exodus 12:44 that nowhere does the Bible permit a Jew to enslave a free man; one may only purchase a person who has already been enslaved by others. In circumstances in which not only the concept of slavery exists, but actual slaves exist, the best thing a Jew can do is to buy them and care for them according to the relatively merciful laws of the Torah.

It is telling that R. Hirsch chooses to discuss biblical slavery in the context of the slave sharing in communal worship, in this case the Passover offering, which is itself a symbol of Jewish liberation. R. Hirsch emphasizes this irony and uses it to distinguish biblical slavery from its contemporary forms.

> The consideration of certain circumstances is necessary, correctly to understand the fact that the Torah presupposes and allows the possession and purchase of slaves from abroad to a nation itself just released from slavery. No Jew could make any other human being into a slave. He could only acquire by purchase people who, by then universally accepted international law, were already slaves. But this transference into the property of a Jew was the one and only salvation for anybody who, according to the prevailing laws of the nations, was stamped as a slave. The terribly sad experiences of even the last century (Union, Jamaica 1865) teach us how completely unprotected and liable to the most inhuman treatment was the slave who in accordance with the national law was not emancipated, and even when emancipated, wherever he was, looked upon as still belonging to the slave class, or as a freed slave.[17]

16. R. Samson Raphael Hirsch, *The Nineteen Letters of Ben Uziel*, trans. B. Drachman (New York, 1899), 165-66.
17. R. S.R. Hirsch, *Commentary on the Torah*, trans. I. Levy (London, 1966), Ex. 12:44.

From this passage, it is clear that R. Hirsch sees biblical slavery as a practical improvement and not as an ideal. He argues that the purchase of a slave by a Jew would improve the lot of the slave, since slaves, wherever and whenever they existed and until his day, had no rights except in the house of a Jew. Even when emancipated, the freed slaves were often treated with the same exploitation and cruelty that they received in their master's house. By becoming the property of the Jew, the slave became, to a great degree, a member of the Jewish people, with rights, religious obligations approximating those of his master, and a sense of community to the point that he was allowed to eat of the communal Passover sacrifice. The slaves of Jews were protected by law, and as R. Hirsch points out elsewhere in the same spirit, even the mental suffering of slaves is seen by God, who protects them and comforts them.[18]

R. Uziel

The first Sephardic Chief Rabbi of the State of Israel, R. Ben Zion Meir Hai Uziel (1880-1953), later adopted this same approach to slavery. R. Uziel explicitly writes his defense of biblical slavery in response to "those who mock the Torah of Israel, which permits the ownership of the Canaanite slave's body."

> [B]ut were those mockers to think carefully, they would understand that this acquisition was not permitted other than regarding those who were already sold to their brothers under the same conditions. And even so, it was not permitted to exploit their bodies. Rather, even if one should damage a major human limb, this slave goes free, even for a tooth or an eye. . . . From here you see that the acquisition of a Canaanite slave that the Torah permits is for the good of the slave himself, to save him from his Canaanite brothers so that he should not be enslaved cruelly and physically exploited to the point of death.[19]

Both R. Hirsch and R. Uziel contrast the relatively merciful slavery of the Bible with the cruel slavery of the ancient world, a theme that is expressed repeatedly in popular Orthodox literature.

R. Hertz

Another example of this approach contrasting biblical slavery with other forms of slavery appears in R. Joseph H. Hertz's commentary on the Pentateuch. R. Hertz (1872–1946) was the Chief Rabbi of the British Empire from 1913 until his passing, and his commentary was ubiquitous

18. See ibid., Gen. 11:12.
19. R. Ben-Zion Meir Hai Uziel, *Mikhmannei Uziel* (Tel Aviv, 1939), 263.

in English-speaking congregations for some fifty years following its publication in 1936. In his comments to Leviticus 25:46, R. Hertz details how the "system of slavery which is tolerated by the Torah was fundamentally different from the cruel systems of the ancient world." The Bible never permitted the chaining, maiming, branding, and crucifixion of slaves that were permitted in Greece and Rome: "A Fugitive Slave Law, such as existed in America, with the tracking of runaway slaves by blood hounds, would have been unthinkable to the Israelite of old." Here, R. Hertz gives powerful expression to the historical premise that forms the foundation of R. Hirsch and R. Uziel's argument: the system of slavery tolerated by the Bible was relatively merciful and represented a vast improvement not only over ancient forms of slavery, but even when compared to the nineteenth century American iteration.

But for R. Hirsch and R. Uziel, an argument like that of R. Hertz did not go far enough. They were not satisfied with asserting that the Bible was only *relatively* merciful, tolerating a less offensive form of a basically unjust institution. As they led Judaism in the milieu of, respectively, modern Western Europe and the new Jewish State, they consistently attempted to show the Bible's *absolute* morality—and therefore pertinence—in all times. In this case, they did so by imposing a qualification: Jews, they argued, were permitted to improve only the lot of the already enslaved by modifying the conditions of their enslavement. When qualified in this way, the purchase—but not the creation—of a slave could be viewed as something of a redemption and salvation. As we will see, other Orthodox thinkers are satisfied with the more modest argument that the Bible was merciful only in a relative manner.

Even if we accept the historical premises that underlie this approach, it remains difficult for several reasons, on both the universal and particular levels. One ethical problem that can be raised is that the Jewish purchase of slaves, even if good for any particular slave, would seem to encourage the enslavement of people in general. Both R. Hirsch and R. Uziel would agree that Jewish law forbids the purchase of stolen goods because such a purchase creates a market for stolen goods and thereby encourages theft.[20] One could plausibly argue that the purchase of slaves would similarly seem to encourage enslavement by creating a market for them. In response, R. Hirsch and R. Uziel might counter that we should care more about the actual and acute suffering of the already enslaved—who suffer in a way that stolen goods do not[21]—than the hypothetical effects on the slave market.

20. *Shulḥan Arukh, Ḥoshen Mishpat* 358:1

21. This imperfection in the analogy between the slave and the stolen object was pointed out by David Berger in a personal communication.

A greater problem, however, is that the legal premise of their argument—that Jews may not themselves create gentile slaves—seems to be inaccurate according to Jewish law. For example, a gentile, monotheistic resident of Israel, a "*ger toshav*," may sell himself to a Jew and become a permanent slave.[22] In fact, according to the code of Maimonides, a Jew who "seizes" a gentile child or finds a gentile baby can choose at his discretion to immerse him as a gentile resident, as a slave, or as a free Jew.[23] In addition, a Jewish slave owner is allowed to breed gentile slaves by ordering his Jewish slave to impregnate a female gentile slave mate.[24]

The strength of these questions seems to cast some doubt on the validity of this approach to biblical slavery. At the same time, the Chief Rabbi of Israel and the undisputed leader of Orthodox German Jewry were certainly aware of these laws. The degree to which they struggled to explain biblical slavery in a way that would conform to modern ethical sensibilities only highlights the importance of those sensibilities in their eyes. Although unquestionably Orthodox in outlook, they seemed to have little compunction about explaining a biblical law in a way that modestly can be termed "creative."[25] One can only wonder if they would also rule based on their premises, were these laws to become practically relevant.

Approach II—Moral and Social Justification

Neẓiv

A very different approach is found in the Bible commentary of R. Hirsch's Eastern European contemporary, R. Naftali Ẓevi Yehudah Berlin (1816–1893), head of the famous Volozhin Yeshiva. In his work of biblical exegesis *Haʿamek Davar,* R. Berlin (commonly referred to by his acronym

22. Maimonides, *Hilkhot Avadim* 9:1. See also *Shulḥan Arukh, Yoreh Deʿah* 267:9.

23. *Hilkhot Avadim* 8:20. R. Hirsch may have chosen to ignore this decision of Maimonides because it does not seem to have a source in the Babylonian Talmud. See *Or Sameaḥ* ad loc., who finds the source for this law in the Jerusalem Talmud, *Yevamot*, chapter 8.

24. Maimonides, *Hilkhot Avadim* 3:3.

25. In the case of reinterpretation of morally ambiguous narratives, such as the massacre of Shekhem in Gen. 34 or Jephtah's sacrifice of his daughter in Judges 11, the modern reader walks on well-trodden ground. After all, these are not normative laws, but stories. They have always provoked sensitive readers, and much of classic biblical exegesis is devoted to understanding their ambiguous moral, political, and spiritual dynamics. In the end, the protagonists are either exonerated or found at fault, but they are usually judged based on the religious values of the commentator, which are themselves products of his tradition and are left largely unquestioned. In the case of allegedly immoral laws, however, the stakes are higher.

as "Neẓiv") accepts slavery as being in the moral and religious interest of the pagan. While R. Hirsch and R. Uziel reinterpret the laws of slavery and then show how purchase by a Jew is to the existing slave's benefit, Neẓiv justifies the entire institution of slavery by appealing to the religious benefit *any* gentile would derive from joining the nation of Israel, even in the limited and restrictive role as a slave.

The Bible (Lev. 25:44–45) states that slaves may be taken from both the pagan nations and the resident alien population:

> And as for the male and female slaves whom you may have—it is from the nations that are around you that you shall buy male and female slaves.
>
> Moreover, you may buy them from the children of the strangers who sojourn among you and from their families that are with you, whom they have begotten in your land; and they will be your possession.

In his commentary on these verses, Neẓiv notes that there is a positive biblical commandment to take slaves from the neighboring pagan nations ("from among them there was established a commandment") in order to, as he puts it, "remove them from their idolatry."[26] In contrast, the *ger toshav* achieved his status by committing to abandon idolatry. Although he need not keep other ritual laws and is not considered a full convert to Judaism, there is no general obligation ("there is no commandment at all") to convert gentiles to Judaism, and therefore there can be no positive commandment to enslave the sojourner.

Still, the verses do give explicit permission to enslave even the monotheist sojourner, and Neẓiv does not seem to be have been troubled by this. Perhaps he would argue that although the religious development entailed by transforming a sojourner into slave is too small to make such enslavement a positive commandment, there is nevertheless still significant improvement. The Canaanite slave is, after all, obligated in Jewish law and ritual to a high degree, in a way similar to the obligations of any free Jewish woman, and that improvement would make the enslavement an overall positive development even for a *ger toshav*.

Sometimes, Neẓiv claims, slavery is the only way to help a vulgar person find positive religious expression in his life. For example, when discussing the curse of Ḥam, the son of Noah, Neẓiv writes that slavery fits the nature of Ḥam and his descendants. His comments are a response to the fact that although Noah cursed only Ḥam with slavery, many descendants of Shem and Japheth have also been enslaved, while at the same time many of descendants of Ḥam remain free.

26. R. Naftali Ẓevi Yehudah Berlin, *Ha-ʿamek Davar*, commentary to Lev. 25:45.

> Rather the curse was that one who arrives at the state of slavery would be fit for this, insofar as he is from the seed of slaves from birth, and from the womb, and from conception. This is not the case of Shem and Japheth. His seed is not fit for this, and even when he is a slave, his inner spirit longs to be free. Consequently, it is inconvenient to use him, and through some effort he will be made free. . . .[27]

The modern moralist accepts personal autonomy and liberty as sacrosanct. In the conception of Neẓiv, however, the imposition of moral standards and monotheism is far more important, since only through moral practice and monotheist belief can any person fulfill his purpose on earth and return his soul to its divine source. Morality and monotheism accepted autonomously may be the ideal, but for a corrupt Ḥam and his descendants—both figurative and literal—a regulated and merciful system of slavery is a clear second best. One who views slavery only as a social institution may certainly find it terrible, and a Bible that supports it immoral; but Neẓiv, who sees slavery as a vehicle through which the pagan may participate to some degree in the covenant and commandments of Israel, justifies the sacrifice of personal liberty as worthwhile.[28]

Interestingly, in discussing the curse of Ḥam, R. Hirsch takes a position that on its surface closely approaches that of Neẓiv. He points out that Noah does not say that Canaan, the son of Ḥam, "will be a slave of Shem" as a prophetic description; rather, Noah prays, "*may* Canaan be a slave of Shem." According to R. Hirsch, only through domination by the spiritual Shem can the sensual Canaan find a path to worshiping God, "to fulfilling his divine purpose."[29] From this comment, one might easily understand that R. Hirsch believes in a form of racist elitism, but this would be inaccurate. True, the children of Shem have inherited their patriarch's spiritual and moral disposition, while the children of Ḥam have inherited antinomian sensuality; nevertheless, R. Hirsch clearly describes Ḥam's servitude as a historical vehicle for Ḥam's spiritual reform and ultimate freedom: "From Shem will man learn to make his home a dwelling for the divine presence, and the divine presence will return to dwell among men."[30]

In R. Hirsch's conception, the ultimate subjugation of Canaan to Shem is not economic, material, or political; it is an inner acceptance of Shem's

27. Ibid., commentary to Gen. 9:25.
28. For a related discussion of the value of religious coercion in the thought of the Neẓiv, see Gil Perl, "'No Two Minds are Alike': Tolerance and Pluralism in the Work of Neẓiv," *The Torah u-Madda Journal* 12 (2004): 74-98. Neẓiv's justification of slavery seems to indicate an even greater acceptance of religious coercion than even Perl has demonstrated.
29. R. Hirsch, commentary to Gen. 9:27.
30. Ibid.

values, of the yoke of self-restraint for the sake of heaven. Compared to R. Hirsch, Neẓiv's emphasis is more practical and prosaic, dealing less with sweeping historical development and more with the moral and theological merits of actual slavery for actual individual slaves. According to Neẓiv, Noah's curse remains eternally valid, and slavery thus remains the best hope for the morally challenged Canaan.

R. Kook

R. Abraham Yiẓḥak Ha-Kohen Kook (1865–1935) was a close student of Neẓiv, and like his teacher, he unapologetically accepts slavery as just when controlled by the divine laws of the Bible and when practiced within the context of a merciful and moral society.[31] R. Kook's acceptance of slavery is based on the premise that human beings are naturally and inevitably unequal—not in moral terms, as in the conception of Neẓiv, but rather in physical and economic terms. R. Kook argues that in order to prevent the strong from exploiting the weak, employers should be given an economic interest in the welfare of their workers, and this is best achieved when the latter are treated as property.

R. Kook cites the contemporary predicament of coal miners who, as free laborers, worked (and often still work) under horrible and sometimes tragic conditions. Were the mine owners to have an economic property interest in each individual worker, R. Kook argues, the owners would surely care for them better. When slavery is regulated by the laws of the Torah (which R. Kook understands to include not just the Bible but the oral tradition as well), the institution of slavery may, in fact, be the most merciful mode of life for such workers. Only when slave owners are cruel does the institution become monstrous; under such circumstances, it is better that there should be no slaves at all.

R. Kook is of the opinion that the laws of slavery are a noble, if not ideal, solution to a less than perfect economy. The ideal solution presumably would be merciful labor laws fulfilled by merciful people. Jewish law, however, recognizes that in reality, people will act in a way that is exploitative, and the Bible deals with this sad reality by prescribing slavery as one solution. As previously noted, however, in a world where people take cruel advantage, it is better to do away with that institution entirely.

R. Kook's approach to slavery echoes his approach towards other Jewish laws—they are directed at people who are basically righteous, but who still have the human failings of a pre-messianic age. For R.

31. R. Avraham Yiẓḥak Ha-Kohen Kook, *Iggerot ha-Rayah* (Jerusalem, 1985), vol. 1, 92-101 (letter #89).

Kook, the institution of slavery is an accommodation to historical reality, not just to the reality of slavery in the ancient world, but to the reality of any age before the advent of the messiah. On the one hand, in a messianic world, the laws of slavery would be unnecessary—similar to what R. Kook writes about the strictly modest separation between the sexes prescribed by the Jewish tradition.[32] In a perfected world, not only will slavery of humans be proscribed, but even the human domination of beasts—described by R. Kook as "ugly slavery"—will pass from the earth as humans return to the vegetarian state of Adam.[33] On the other hand, in an overly corrupt world, the laws of slavery that should protect the worker from exploitation are themselves abused and used to exploit the worker to a monstrous degree and must therefore be abandoned.[34]

R. Kook writes that the Jewish People's exilic state is a sign and a result of this moral corruption. In practice, therefore, he would have little sympathy for contemporary slavery. His practical renunciation of slavery on these grounds, despite the theoretical utility of the institution, recalls his discussion of Israel's abandonment of political activity while in exile.[35] According to R. Kook, political activity is necessary in order to effect change on a communal level; nevertheless, in its exile, Israel abandoned the political arena, as political activity in the hands of the corrupt can only be destructive both to the self and to the polis.

Today, more than half a century after the New Deal, in an era in which labor laws and social safety nets are ubiquitous if not always generous, one might question to what degree R. Kook's defense of biblical slavery is ingenuous. R. Kook, however, wrote his opinion about slavery in 1904, at a time when the exploitation of the proletariat was acute and driving much of the world toward economic and political revolution. We may honestly wonder how he might have amended his opinion after witnessing the reforms that developed in this social ferment and which are today

32. R. Avraham Yiẓḥak Ha-Kohen Kook, *Mussar Avikha u-Middot ha-Rayah* (Jerusalem, 1985), 90.

33. R. Avraham Yiẓḥak Ha-Kohen Kook, "*Afikim ba-Negev,*" *Ha-Peles* 3 (1903): 657.

34. See Michael Nehorai, "Halakhah, Metahalakhah, and the Redemption of Israel: Reflections on the Rabbinic Rulings of Rav Kook," in *Rabbi Abraham Isaac Kook and Jewish Spirituality*, ed. Lawrence Kaplan and David Shatz (New York, 1995), 137. Nehorai notes that for R. Kook, Jewish law finds its ultimate expression in the ideal state, and leads the Jewish People toward that ideal. This ideal state is also messianic, but it remains populated by people who are less than perfect. Clearly, there are different epochs that are termed "messianic": (1) the return of the people to its land; (2) the ultimate redemption.

35. R. Avraham Yiẓḥak Ha-Kohen Kook, *Orot* (Jerusalem, 1949), 14.

accepted as standard practice in modern countries, but it is difficult to suggest that R. Kook did not sincerely present what he felt was a genuine and ancient solution to a perennial social and economic problem.

R. Dessler

R. Eliyahu Eliezer Dessler (1892–1953) served as the spiritual and educational supervisor ("*Mashgiaḥ Ruḥani*") of the Ponevezh Yeshiva in Israel. Many of R. Dessler's teachings—which draw from the *Mussar* movement, the Ḥasidic movement, and the Lithuanian yeshivah tradition—have been collected in the five volume *Mikhtav me-Eliyahu*, which is widely read in contemporary Orthodox circles. He referred to the matter of slavery in a short address to the yeshivah in the fall of 1950; his approach to slavery seems to borrow elements from both Neẓiv and R. Kook.

Like Neẓiv, R. Dessler notes that the source of slavery is rooted in the biblical Ḥam's moral corruption. Noah's reaction to Ḥam's act of violence, according to R. Dessler, indicates that the institution of slavery was intended to enable a "small" person to perfect himself by becoming a "vessel for a great" person.[36] Nevertheless, like R. Kook, R. Dessler disavows the practical utility of slavery in his contemporary world. He explains that over the course of history, the originally constructive relationship between slave and master changed for the worse, so that the relationship became defined less by moral superiority and more by inequalities of power in which the weak became the slaves of the strong. The powerful tried to justify their exploitation by taking on the external trappings of moral superiority—gentility and superficial manners—but these gestures were empty and often hypocritical.[37] Ultimately, the slaves threw off their yokes to become the dominant cultural force themselves, sadly lacking not only moral excellence but even shallow manners.

R. Dessler's explanation traces a history of ethical degeneration, from true moral leadership to exploitation supported by superficial and hypocritical moralizing and from empty exploitation to bald immorality. Without question, the world should be freed from the grip of hypocritical masters, moralizers, and imperialists, but in practice, we have found ourselves in an even worse state.

While R. Hirsch views emancipation as a step along the road of social progress, R. Dessler sees it as just the opposite. This description of slavery parallels his general perspective on historical degeneration, *yeridat*

36. R. Eliyahu Eliezer Dessler, *Mikhtav me-Eliyahu* (Jerusalem, 1987), 4:247.
37. It is worth noting that R. Dessler was educated in Eastern Europe and spent the 1930's and most of the 1940's serving in the English rabbinate.

ha-dorot,[38] a perspective grounded in classical rabbinic literature[39] which defines, to some degree, more right-wing Orthodoxy.[40] Modern man rages against slavery because he knows it only in its corrupted and cruel form. Were we to witness this institution as the Bible intended for it to be practiced, for the physical (R. Kook) or moral/spiritual (R. Dessler or Neẓiv) benefit of the slave, even modern man would agree that this is a useful institution.

Approach III—Historical Accommodation

R. Nahum Rabinovitch

The several approaches we have summarized above were articulated by rabbinic thinkers who have become accepted in the Orthodox world as leading luminaries of past generations. Nevertheless, not all contemporary rabbis have found their approaches satisfying. Several have continued to grapple with the ethics of biblical slavery, both in writing and in the classroom, and it remains to be seen whether their contributions will be widely accepted.

One major current theme is that slavery, even in its biblical form, is indeed unjust. Above, we saw that R. Hertz refers to the Bible's *toleration* of slavery when regulated by merciful laws. This is essentially an admission that slavery is not in the best interest of the slave—even having saved him from a worse slavery at the hands of a cruel master (R. Hirsch and R. Uziel), having saved him from idolatry (Neẓiv and R. Dessler), and having

38. See *Mikhtav me-Eliyahu* (Jerusalem, 1997), 5:273-74.

39. See, for example, *Sotah* 9:12-15; *Berakhot* 20a, 35b; *Eruvin* 53a; *Shabbat* 112b; *Bava Batra* 58a; Menachem Kellner, *Maimonides on the "Decline of the Generations" and the Nature of Rabbinic Authority* (Albany, NY, 1996).

40. See Eliezer Schweid, *Bein Ḥurban li-Yeshu'ah: Teguvot al Hagut Ḥaredit la-Sho'ah bi-Zemannah* (Tel Aviv, 1994), 9. Among the Modern Orthodox, the concept of the "decline of the generations" is more nuanced and less categorical; R. Norman Lamm has written that "the idea is a mood, not a doctrine." Although generally accepting the moral and spiritual superiority of previous generations, R. Lamm is much more willing to recognize historical progress: "Not only is there a place for *ḥiddush*, but intellectual, scientific, halakhic, and philosophic creativity are positive goods, part of the unending search for truth, a search that—as we have seen—is characteristic of the striving for holiness." See Norman Lamm, *Torah Umadda* (New York, 1990), 86-103. Although here, R. Kook seems to have sided with the more conservative conception of the "decline of the generations," as usual, his general outlook was hardly unequivocal. See David Shatz, "Rav Kook and Modern Orthodoxy: The Ambiguities of 'Openness'" in *Engaging Modernity: Rabbinic Leaders and the Challenge of the Twentieth Century*, ed. Moshe Sokol (New York, 1997) 107-110; Yehudah Mirsky, *An Intellectual and Spiritual Biography of Rabbi Avraham Yitzhaq Ha-Cohen Kook from 1865 to 1904* (Doctoral dissertation, Harvard University, 2007), 325-46.

saved him from being fodder for the coal mines (R. Kook). Despite the admitted injustice, however, the Bible tolerated regulated slavery.

R. Hertz did not explain the reason for this tolerance, but contemporary Orthodox thinkers have developed this theme, arguing that the laws of slavery are not an ideal; rather, they fall into the category of laws that were given, in the words of the Talmud, "to appease the evil inclination."[41] Accepting the concept of historical progress, R. Nahum Eliezer Rabinovitch, the Rosh Yeshivah of Yeshivat Birkat Mosheh in Israel, argues that the laws of biblical slavery were a practical accommodation and a minimum standard for the developing cultural circumstances described by the Bible, in which slavery remained a norm. As with the laws of polygamy, divorce, and war, here too the Bible speaks to circumstances that are real, not necessarily ideal.[42] R. Rabinovich bases his historical contextualization of certain commandments on the following passage from Maimonides' *Guide of the Perplexed*:

> Many things in our Law are due to something similar to this very governance on the part of Him who governs, may He be glorified and exalted. For a sudden transition from one opposite to another is impossible. And therefore man, according to his nature, is not capable of abandoning suddenly all to which he was accustomed. . . . Just as God perplexed them in anticipation of what their bodies were naturally incapable of bearing—turning them away from the high road toward which they had been going, toward another road so that the first intention should be achieved—so did He in anticipation of what the soul is naturally incapable of receiving, prescribe the laws that we have mentioned so that the first intention should be achieved, namely, the apprehension of Him, may He be exalted, and the rejection of idolatry.[43]

R. Rabinovich points out that there is no positive obligation to buy

41. See *Kiddushin* 21b. David Berger reports that R. Ahron Soloveichik (1917–2001) "described slavery as a concession to human frailty, analogous to the *eshet yefat to'ar*"; see Berger, "Jews, Gentiles, and the Modern Egalitarian Ethos: Some Tentative Thoughts," in *Formulating Responses in an Egalitarian Age*, ed. Marc Stern (Lanham, MA, 2005), 89. R. Benjamin Blech used the phrase "appease the evil inclination" in the context of slavery in a lecture at Yeshiva University in February, 2006. He included in this category the laws of polygamy, divorce, monarchy, and—the most classic of this category—*yefat to'ar*, the laws of "the beautiful captive" (Deut. 21:10-14). The lecture is available at http://www.yutorah.org/showShiur.cfm/713955/Rabbi_Benjamin_Blech/Oh_my_G-d:_The_Torah_sanctions_slavery!?

42. R. Nahum Eliezer Rabinovich, *Darkah shel Torah—Perakim be-Maḥashevet ha-Halakhah u-ba-Aktualiyyah* (Jerusalem, 1999), 11-19. This essay has been printed in English as "The Way of Torah" in *The Edah Journal* 3:1 (Tevet, 5763).

43. Maimonides, *Guide of the Perplexed*, trans. Shlomo Pines (Chicago, 1963), 3:32 (vol. II, 527).

a slave, because the ownership of another person is a violation of the essential equality of all humanity. Nevertheless, in giving the Torah to Israel, God recognized that this young nation was living in a world in which slavery was a normative institution. For reasons both social and economic, the Jews would have been unable, at that point in history, to give up the institution of slavery completely. The Bible therefore chose to regulate and improve the existing institution until the time came when humanity would grow out of it.[44] Like animal sacrifice, slavery was permitted as an accommodation; but unlike animal sacrifice—and in applying Maimonides' principle to slavery, this seems to be R. Rabinovich's subtle innovation—slavery could ultimately vanish completely, since there is no positive obligation to own slaves, as there is to offer sacrifices.[45]

Whereas R. Dessler and other Orthodox Jewish thinkers see history as a process of ethical decline, R. Rabinovich, like R. Hirsch, takes ethical progress for granted. R. Rabinovitch's approach is echoed and amplified by R. Norman Lamm, who catalogues several biblical laws, including slavery, that were passively suspended when they were regarded as "counterproductive" in a moral climate of "heightened sensitivity."[46] This claim was recently re-articulated by the current Chief Rabbi of Great Britain, R. Jonathan Sacks:

> In miracles, God changes nature but never human nature. Were He to do so, the entire project of the Torah—the free worship of free human beings—would have been rendered null and void… God wanted mankind to abolish slavery but by their own choice, and that takes time. Ancient economies were dependent on slavery… Slavery as such was not abolished in Britain and America until the nineteenth century, and in America not without a civil war. The challenge to which Torah legislation was an answer is: how can one create a social structure in which, of their own accord, people will eventually come to see slavery as wrong and freely choose to abandon it?[47]

44. According to R. Blech, n.41 above, "God waited for Lincoln to free the slaves."
45. This innovation is not at all self-evident. Nothing in *Guide of the Perplexed* 3:32 indicates that Maimonides allowed for laws to be changed, even if they were originally given as accommodations. Nevertheless, Maimonides does present a model of progress, and since there is no positive obligation to own slaves, abolition of slavery could justifiably and legally give expression to that conception of progress. I thank David Shatz for pointing out the innovation here.
46. Norman Lamm, "Amalek and the Seven Nations: A Case of Law vs. Morality," in *War and Peace in the Jewish Tradition*, ed. Lawrence Schiffman and Joel B. Wolowelsky (New York, 2007), 207-8, 227.
47. See http://www.chiefrabbi.org/thoughts/behar5767.html, based on Jonathan Sacks, *Dignity of Difference: How to Avoid the Clash of Civilizations* (New York, 2003), 69-70.

R. Rabinovitch addresses two related difficulties with this approach. First, if the institution of slavery is only an unfortunate and temporary accommodation, we would imagine that emancipation would be encouraged for gentile slaves at all times, just as it is required for Hebrew slaves every Jubilee. In fact, the opposite is true, as Leviticus (25: 39, 43-46) seems to encourage the purchase of gentile slaves:

> If any of your brothers become impoverished and sell themselves to you, do not work him as you would a slave. . . . Do not rule over him ruthlessly; but fear your God. And your male and female slaves—from among the foreigners who live among you may you purchase male or female slaves. Also from the children of the resident foreigners who live among you may you take, and from their family that is with you, to whom they gave birth in your land; they shall be for you as an inheritance. And you shall pass them on to your children after you as a permanent inheritance, and with them should you work; but with your brothers the children of Israel—a man and his brother—do not rule over his ruthlessly.

R. Rabinovich responds that by actively encouraging the enslavement of gentiles, the Bible was weaning Israel away from the enslavement of Jews; in the future, however, even the enslavement of gentiles would be discouraged. In a world where slavery was considered economically necessary, the Jews were directed to take neighboring pagans instead of their monotheist brothers.[48] This at once limited slavery, gave the slaves rights, educated the pagans, and slowly led to a transformation of thought. From a perception that slavery was necessary, it became viewed as a necessary evil; later it became viewed as simply evil.

A second difficulty for R. Rabinovich's approach is that it seems to contradict the talmudic law that forbids freeing a gentile slave.[49] Again, if all people would be emancipated in an ideal world, we would expect Jewish law to encourage the emancipation of any particular slave at any time, but in fact, the opposite is the case.

In response, R. Rabinovich recognizes the paradoxical nature of these laws, and explains that once the gentile entered—to a limited degree—the people of Israel, he could not simply be given his freedom:

> Once a slave had tasted of God's commandments, it would be unreasonable

48. The idea that gentile slavery is a limited accommodation to economic necessity finds support in *Sifra, Behar* 6:3 to Lev. 25:44: "Perhaps you shall say, since the Torah has forbidden us all these [permanent Jewish slaves], with what shall we work? The verse says, 'And your male and female slaves [from among the foreigners who live among you]'."
49. This is the opinion of R. Akiva in *Sotah* 3a; R. Yishmael permits freeing a gentile slave. Maimonides accepts the opinion of R. Akiva in *Hilkhot Avadim* 9:6.

> for him to return to idolatry. And so it was forbidden for his master to sell him to a gentile, and even more so to restore him to full gentile status.

If, on the other hand, he were to be set free as a full Jew, he would have converted to Judaism without any volition on his part. R. Rabinovich argues that the prohibition against freeing slaves derives mostly from concern that Israel should not be making masses of, in effect, forced converts.[50]

Finally, R. Rabinovich argues that the prohibition against freeing slaves should not be overemphasized. The Talmud and later codes note many instances in which slaves could and should be freed. For example, a slave could be freed in order to facilitate the enhanced performance of any commandment, even one of only rabbinic authority; the Talmud reports that R. Eleazer once freed a slave in order to be able to pray with a *minyan* (*Berakhot* 47b and *Gittin* 38b). This precedent was accepted as law by Maimonides[51] and R. Yosef Karo[52] in their codes. In effect, that which seems categorically prohibited in the Bible was accepted as relatively banal in the time of the Talmud.

Apparently, it was so common for the Jews of the Tannaitic period to free their slaves that Jews were even persecuted for this very reason by the Romans. The Talmud reports that R. Eleazar ben Parta was brought before the Roman authorities and accused of freeing his slaves. When he denied this, one of his former slaves rose to testify against him (*Avodah Zarah* 17b). The Talmud does not elaborate on the basis for the Romans' displeasure with R. Eleazar, leading Rashi to suggest an explanation. He comments that the Romans decreed against the freeing of slaves because it was understood to be a Jewish custom ("*dat Yehudit*"), and this, apparently, was one of the many decrees enacted to break the uniquely Jewish spirit.

R. Shlomo Goren (1917-1994), as Chief Rabbi of the Israel Defense Forces (he would later become the Chief Rabbi of Israel), celebrated this story and the history it symbolizes in an article written for the army magazine *Machanaim*.[53] The Romans identified the Jews with emancipation, and ever since, R. Goren claims, Jews have continually been at

50. One might add that the difficulty of getting rid of a slave (given the law that the slave owner may sell the slave only to another Jew, which was not always easy in times of economic difficulty) actually discourages the purchase in the first place. See Maimonides, *Hilkhot Avadim*, ch. 8.
51. *Hilkhot Avadim* 9:6.
52. *Shulḥan Arukh, Yoreh De'ah* 267:79.
53. *Machanaim* 32 (1957): 12.

the forefront of the emancipation movement. The degree to which this claim is historically accurate is beyond the scope of this article.[54] For our purposes, R. Goren's spirited embrace of the values of emancipation, and the ease with which he marginalizes the normative institution of biblical slavery, including the apparent prohibition on freeing slaves, testifies to this Orthodox rabbi's unambiguous acceptance of certain modern egalitarian values, as well as his comfort in reinterpreting biblical values and laws in light of modern ethical conceptions.

Conclusion

The moral outrage that modern thinkers share against slavery has elicited widely different responses to the moral status of biblical slavery. Not only are there differences between the religious and the anti-religious, but there are differences even within the ranks of Orthodox Jewry. This subject highlights various Orthodox perspectives on history: some Orthodox thinkers lament the loss of a potentially valuable social instrument due to the moral decline of society throughout history, while others point to emancipation as a sign of moral progress. Even more centrally, our examination of the topic shows the varying degrees to which Orthodox thinkers acknowledge the moral values of their contemporary society and the different models with which they confront those values. Some are more apologetic, limiting biblical slavery so that it conforms to modern conceptions. Others assert that the Bible contains moral accommodations that society has transcended.

Interestingly, even conservative thinkers—who justify slavery by pointing to the social, economic, moral, and spiritual benefits it gives to the weak and the vulgar—may have been moved by modern conceptions to justify slavery in accordance with those conceptions. Accepting that only a direct benefit to the slave himself could be an acceptable justification for enslavement, almost all would agree that the practical application of this once normative institution would be unthinkable today. Of course, the most conservative rabbis might argue that their approaches are informed only by unchanging biblical values, that their views have

54. The responsa literature is, in fact, replete with questions regarding the freeing of slaves, to the point that the practice seems to have been quite commonplace. Slaves in Jewish homes were treated with considerable compassion and often affection, and they were often set free to become active members of the Jewish community. See Simcha Assaf, "*Avadim u-Sekhar Avadim Eẓel ha-Yehudim bi-Yemei ha-Beinayim*," in *Be-Ohalei Ya'akov* (Jerusalem, 1943), 223-56.

always been the Jewish view,[55] and that they have not been influenced by modern notions of egalitarianism. These claims would have to be tested by a comparative study of the talmudic and medieval rabbinic literature on this subject—a study that would be of great value, but which is beyond the scope of this paper.

55. Indeed, among the great medieval Jewish thinkers, slavery for life was justified based on the religious needs of the Jewish master, a position that I have not found among the modern commentators. See, for example, *Sefer ha-Ḥinnukh,* commandment 347, "To work a Canaanite slave forever."

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A Halakhic-Philosophic Account of Justified Self-Defense

What is the rationale within Jewish law for the permission to act, and particularly to kill, in self-defense? What are the parameters of this permission? A fair amount of relevant material exists in traditional halakhic sources,[1] but the exact scope of the law and its philosophical justification are far from clear. This issue has been dealt with in several scholarly articles, most prominently by Aharon Enker and Dov Frimer in a book chapter titled "The Boundary Between Necessity and Self-Defense in *Mishpat Ivri*."[2]

This paper works with the general thrust of the Enker-Frimer essay and the halakhic sources they cite as support, but it both expands one of the approaches they present and diverges from their account of that approach at certain points. Apart from examining Jewish legal materials to introduce possible new halakhic ramifications of the thesis, I will engage secular philosophical and legal literature that presents justifications for

1. The relevant halakhic sources will be treated below.

2. Enker, *Hekhreaḥ ve-Ẓorekh be-Dinei Onashim* (Ramat Gan, 1977), 212-34; this chapter was co-authored. Frimer later published an article titled "The Right of Self-Defense and *Abortion*," in *Rambam as Codifier of Jewish Law*, ed. Nahum Rakover (Jerusalem, 1987), 195-216. See also Eliahu Ben-Zimra's dissertation, *Ẓorekh ve-Hekhreaḥ be-Dinei Onashim ba-Mishpat ha-Ivri: Perek be-Dinei Onashim* (Hebrew University, 1975); Marilyn Finkelman, "Self-Defense and Defense of Others in Jewish Law: The Rodef Defense," *Wayne Law Review* 33 (1986): 1257-87; George Fletcher, "Proportionality and the Psychotic Aggressor: A Vignette in Comparative Criminal Theory," *Israel Law Review* 8 (1973): 367-90; Itamar Warhaftig, "Haganah Aẓmit ba-Aveirot Reẓaḥ ve-Ḥabbalah: le-Mahuto shel Din 'Rodef'," *Sinai* 81 (1977): 48-78; Noam Zohar, "Killing a Rodef," *S'vara* 1 (1990): 55-58, and idem, "Collective War and Individualistic Ethics: Against the Conscription of 'Self-Defense,'" *Political Theory* 21 (1993): 606-22.

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self-defense and utilize that literature to delineate more extensively which cases do and do not qualify as justified self-defense.[3] I do not claim that my approach is free of difficulty, and I will raise and respond to certain complications, primarily in footnotes. But insofar as some sources suggest the perspective I will advance, and, furthermore, given its intuitive appeal, it is worth seeking to understand what lies behind the position and what its ramifications could be.

I will note at the outset that the approach of this article is jurisprudential rather than historical. In other words, I am trying to construct a Jewish legal-philosophical perspective on self-defense, rather than discern any particular trend or position in historical context.

I.

Why killing in self-defense is justified ranks among the more complicated questions in the philosophy of law, yet it is often taken for granted.[4] Whereas one might generally be wary of actions taken that detrimentally affect others, especially those committed for the purpose of personal gain, it appears overridingly intuitive that one may kill in defense of one's own life. What distinction justifies this divergence from our usual moral thinking? The answer to this question, which is by no means clear, will determine to what range of cases this justification of self-defense can be applied.

Indeed, the principle that most precisely justifies self-defense would be difficult enough to determine on its own, but the complications are compounded when we take into account the array of different cases in which this question rears its head. There is the classic case of a murderer lucidly and with full intention attempting to carry out his dastardly deed, but also cases in which innocent people are thrust into scenarios in which they are threatening a fellow innocent's life. At times, furthermore, the "attacker" is not fully within his capacities; or, the "threat" may be passive, such as a large man who is stuck and blocking the exit from a cave rapidly filling with water. May the others in the group kill him to save themselves?[5] Should we say that each of these circumstances yields a similar moral conclusion? The clarity with which the attacked party

3. This article will not enter the related and equally complex issue of killing the few to save the many (including cases where the few themselves will die in either case), sometimes referred to as the subfield of "trolleyology." For analysis of this topic in Jewish law, see Enker, 195-210, and Michael J. Harris, "Consequentialism, Deontologism, and the Case of Sheva Ben Bikhri," *Torah u-Madda Journal* 15 (2008-2009): 68-94.

4. See David Rodin, *War and Self-Defense* (New York, 2003), 2.

5. The Case of the Cave was first formulated by Philippa Foot in her "The Problem of Abortion and the Doctrine of the Double Effect," *Oxford Review* 5 (1967): 5-15.

sees the situation can also range from absolute certainty that he is being attacked to a case of uncertainty to a mere suspicion that his life may be targeted; does that distinction make a difference? Finally, can an act of killing in self-defense be equated to a third party's intervention in an attack by one person on another, or are there different standards for these two types of scenarios?[6]

Numerous and varying approaches have been offered in response to the fundamental question of justifying self-defense and attendant questions about the scope of that justification.[7] Some approach this issue from a consequentialist perspective, arguing that, given a situation in which A is pursuing B to kill him, the result of B in turn killing A is superior to one in which A allows B to kill him.[8] There are several variations to this approach,[9] but all fall prey to a common pitfall: a system that judges the value of the actors' relative deaths can be complicated and logically yield results that are intuitively immoral. What if the pursuer is an essential asset to society, working to solve world hunger—would his survival trump that of the attacked party, and does that override his victim's self-defense? Or what about the case of an innocent aggressor—is it clear that killing such a person would be beneficial?[10]

6. A question related to the one I discuss concerns the possible justification of killing innocent bystanders as collateral damage when undertaken as part of a self-defensive maneuver. This issue has spawned a significant literature. See Thomas Aquinas, *Summa Theologiae* (1266-73 in 1975 Lefebure edition), II-II qu 64, art 7, and Suzanne Uniacke, "The Doctrine of Double Effect," *The Thomist* 48,2 (1984): 188-218, for examples of treatment of the material. See also J. David Bleich, "Nuclear War Through the Prism of Jewish Law," in *Confronting Omnicide: Jewish Reflections of Weapons of Mass Destruction*, ed. Daniel Landes (Northvale, 1991), 209-23, and Richard Weiss, "Pain Management at the End of Life and Principle of Double Effect: A Jewish Perspective," *Cancer Investigation* 25, 4 (2007): 274-77, for Jewish approaches to the doctrine of double effect.

7. In compiling the survey of approaches in the forthcoming paragraphs, I have been aided by the presentation of Fiona Leverick, *Killing in Self-Defence* (New York, 2006), esp. chapter 3.

8. See, for example, Phillip Montague, "Self-Defense and Choosing Between Lives," *Philosophical Studies* 40 (1981): 207-19, Paul Robinson, *Criminal Law Defenses* (St. Paul, 1984), §131(a), and Laurence Alexander, "Justification and Innocent Aggressors," *Wayne Law Review* 33 (1987): 1177-89.

9. The primary distinction to be made here is between act consequentialism, where the results of a particular situation are weighed, and rule consequentialism, where the results of a legal system incorporating such a law are placed under scrutiny. See Richard Brandt, "Conscience (Rule) Utilitarianism and the Criminal Law," *Law and Philosophy* 14 (1995): 65-89 for the latter approach. On different forms of utilitarianism, including rule utilitarianism, see David Lyons, *Forms and Limits of Utilitarianism* (Oxford, 1965).

10. Some of these objections have been considered by David Wasserman, "Justifying Self-Defense," *Philosophy and Public Affairs* 16 (1987): 356-78. Mine is an incomplete summary of the consequentialist approach to self-defense, but it will have to suffice for the purposes of this article.

Another school focuses on the perspective of rights, rather than utility, in responding to the challenge of justifying killing in self-defense.[11] This understanding sees a basic, fundamental right of each human to his life, whether stemming from a religious or secular source.[12] Thus, the attacked party may kill his attacker because the former has a right to life.[13] Of course, this approach still must explain how the right to life of the *attacker* has been compromised, such that the attacked party is justified in killing him. The primary response to this challenge is to assert that the attacker, by dint of his actions, or at least the position in which he finds himself, has forfeited his right to life and therefore may be killed.[14] A problem that this approach encounters is that it is forced to choose between two unsavory approaches—it must either claim that passive threats, such as a person slipping and falling off a roof onto a bystander, may not be killed in self-defense,[15] or argue that somehow the "action" of falling off of one's roof causes the "threat" to forfeit its right to life. Most people's intuitions probably disagree with the former option, while the latter appears to restate the moral dilemma rather than explain or resolve it. Furthermore, supporters of this approach are forced to say that third parties would be equally morally justified in killing the falling man, a position exceedingly difficult to sustain, if not outright untenable. Another problem with this approach is that, following the forfeiture of the attacker's life, it is a complicated task to determine at what point killing the attacker is no longer justified (including scenarios in which the attacker is incapacitated).[16] We will return to the rights-based approach, as well as some of its ramifications, at a later point in this article.

A third approach justifies killing in defense of one's life based on personal partiality. In other words, in many cases where one is under attack, the justification for killing the attacker is based not on the superiority of one projected result over the other or on one side acting within a right to life his opponent fails to possess, but on the simple fact that, in cases in which there is no argument from justice to prefer one life over another, an

11. Jeff McMahan, "Self-Defense and the Problem of the Innocent Attacker," *Ethics* 104 (1994): 252-90, refers to this position as the "Orthodox View," 257 ff.
12. See A. J. Ashworth, "Self-Defence and the Right to Life," *Cambridge Law Journal* (1975): 282-307.
13. See Suzanne Uniacke, *Permissible Killing: The Self-Defense Justification of Homicide* (Cambridge, 1994), and Rodin's *War and Self-Defense*, which are representative of this approach.
14. For this approach, see Rodin, *War and Self-Defense*, 79, Thomson's *Rights, Restitution and Risk* (Cambridge, MA, 1986), 36, and *Permissible Killing*, 213.
15. See Tziporah Kasachkoff, "Killing in Self-Defence," *Law and Philosophy* 17, 5 (1998): 509-31 who uses this entailment to argue against the reasonableness of the rights approach.
16. See ibid.

actor is justified in preferring his own life over that of the other party. (If, in this case, there is no moral reason to favor one person over the other, each is justified in acting to preserve his own life.) This understanding is helpful in justifying lethal force to save one's life in the more murky cases of innocent or passive aggressors. Jeff McMahan has formulated the basic thesis of this approach as follows:

> People are entitled, at least with regard to certain types of choice, to give priority to their own interests and values over those of other people. Virtually all of us accept some view of this sort. We do not believe that we are always morally required to give the interests of all other people the same weight that we give our own.[17]

This approach is very powerful in justifying killing in self-defense in some of the more complicated situations, but it too raises questions. This argument could be used to justify A's killing B in order to take B's kidney and save A's life—the "kidney recipient" knows that only one of the two people will live, and chooses his own life over the eventual "kidney donor."[18] This *reductio ad absurdum* may be sufficient to undermine this approach, and it could, at the very least, demote this approach from one that provides a justification to one that provides an excusing condition, with no justificatory basis at all.[19] We will return to this understanding later in the paper, as well.

In sum, we have three philosophical approaches to justifying killing in self-defense: utility, right to life, and personal partiality. All, we have seen, are problematic.

There is a further question, alluded to earlier. In the philosophical literature on self-defense, many writers downplay any distinction between cases of killing in self-defense and cases of a third party's intervention to kill an attacker. One such thinker is Judith Jarvis Thomson, who, in her seminal article "Self-Defense,"[20] lumps these two categories together. She writes:

> Self- and other-defense are not exactly two sides of one coin, but they are nevertheless close to it. . . . Considerations of autonomy apart, however, I think it very plausible to suppose that the permissibility of X's killing Y in self-defense goes hand in hand with the permissibility of Z's killing Y in defense of X, and that both phenomena have a common source. [21]

17. "Self-Defense and the Problem of the Innocent Attacker," 268.
18. See Kasachkoff, "Killing in Self-Defense," 526. Later I will discuss one way of avoiding this problem.
19. Indeed, Leverick (52) argues that this argument is best presented as an excuse rather than as a justification.
20. Judith Jarvis Thomson, *Philosophy and Public Affairs* 20 (1991): 283-310. This principle plays an important role in her oft-reprinted article, "A Defense of Abortion," *Philosophy and Public Affairs* 1, 1 (Fall 1971): 47-66.
21. Thomson, "Self-Defense," 306.

This essay will argue that, at least from one halakhic perspective, self- and other-defense (to use Thomson's language) are distinct in their bases and therefore differ in their application. The sections that follow will turn to an analysis of the *sugyot* of *rodef* (the "pursuer") and *ba ba-maḥteret* (the "tunneler"). Upon analysis, these talmudic discussions will yield an approach to justified killing in self-defense that utilizes aspects of both the rights and the personal partiality approaches to mount a formidable presentation of the Jewish view on these matters.

II.

The Babylonian Talmud's discussion in the eighth chapter of Tractate *Sanhedrin* holds some very pertinent material for the topic of self-defense. In fact, two distinct pericopae (*sugyot*) appearing on adjacent folio pages relate to defending against an attacker. *Sanhedrin* 72a presents the case of the *ba ba-maḥteret*, whom the homeowner is justified in killing (Ex. 22:1-3), and *Sanhedrin* 73a discusses the case of the *rodef*, who may be killed by any onlooker. I will present each in turn, with an eye toward their account(s) of justified self-defense.

The discussion on 72a:

משנה: הבא במחתרת נידון על שם סופו. היה בא במחתרת ושבר את החבית, אם יש לו דמים חייב, אם אין לו דמים פטור.

גמרא: אמר רבא: מאי טעמא דמחתרת? חזקה אין אדם מעמיד עצמו על ממונו. והאי מימר אמר: אי אזילנא קאי לאפאי ולא שביק לי, ואי קאי לאפאי קטלינא ליה. התורה אמרה: אם בא להורגך השכם להורגו.

Mishnah: A burglar who enters a house by tunneling (*ha-ba ba-maḥteret*) is judged on account of his ultimate end. If a burglar was entering a house by tunneling and broke a barrel, then if his [the burglar's] blood is accountable, he is liable for the damage. But if his [the burglar's] blood is not accountable, he is exempt.

Gemara: Rava said: What is the reason for the [license to kill the] tunneler? There is a presumption that a person does not hold himself back from defending his property, and the burglar will surely tell himself, "If I go [and enter], he [the homeowner] will confront me and not allow me [to rob him], and if he confronts me I will kill him." And the Torah says: "If one is coming to kill you, arise first and kill him (*im ba lehorgekha hashkem lehorgo*)."[22]

The Talmud explains the *mishnah*'s rule that one who tunnels into a house may be killed. The explanation invokes a psychological analysis of the tunneler who breaks into an inhabited house. The robber-to-be

22. This and other talmudic translations in the article are adapted, with some variation, from Artscroll's Schottenstein translation.

knows that this homeowner will likely protect his property and face the robber, and the robber is willing to kill him in that scenario. Given this reality, we apply the rule of *im ba lehorgekha hashkem lehorgo*—if one is coming to kill you, arise first and kill him.[23]

Before fully analyzing this principle, let us set it in opposition to that which emerges from the discussion on 73a:

משנה: ואלו הן שמצילין אותן בנפשן: הרודף אחר חבירו להרגו, ואחר הזכר, ואחר הנערה המאורסה. אבל הרודף אחר בהמה, והמחלל את השבת, ועובד עבודה זרה אין מצילין אותן בנפשן.[24]

גמרא: תנו רבנן: מניין לרודף אחר חבירו להרגו שניתן להצילו בנפשו—תלמוד לומר "לא תעמד על דם רעך". והא להכי הוא דאתאי? האי מיבעי ליה לכדתניא: מניין לרואה את חבירו שהוא טובע בנהר, או חיה גוררתו, או לסטין באין עליו, שהוא חייב להצילו —תלמוד לומר לא תעמד על דם רעך. אין הכי נמי. ואלא ניתן להצילו בנפשו מנלן? אתיא בקל וחומר מנערה המאורסה, מה נערה המאורסה, שלא בא אלא לפוגמה אמרה תורה ניתן להצילה בנפשו, רודף אחר חבירו להרגו על אחת כמה וכמה. וכי עונשין מן הדין? דבי רבי תנא: הקישא הוא, כי כאשר יקום איש על רעהו ורצחו נפש, וכי מה למדנו מרוצח? מעתה ,הרי זה בא ללמד נמצא למד, מקיש לנערה המאורסה: מה הנערה המאורסה ניתן להצילה בנפשו אף רוצח ניתן להצילו בנפשו. ונערה מאורסה גופה מנלן—כדתנא דבי רבי ישמעאל. דתנא דבי רבי ישמעאל: "ואין מושיע לה", הא יש מושיע לה בכל דבר שיכול להושיע.

Mishnah: These are those whom we save with [at the cost of] their lives: One who pursues his fellow to kill him (*ha-rodef aḥar ḥavero lehorgo*), or a male [to sodomize him], or a betrothed *na'arah* [to violate her]. But one who pursues a beast [for bestiality], or one who is desecrating the Sabbath, or engaging in idol worship, we may not save them with [at the cost of] their lives.

Gemara: The Rabbis taught: "From where do we know that, if someone pursues his fellow to kill him, that he should be saved at the cost of his life? Scripture teaches: "Do not stand [idly] by the blood of your fellow (Lev. 19:16)." But does the verse really come to teach this? We need this verse to teach that which was taught in a Baraita: "From where do we know that if one sees his fellow drowning in a river, or a wild beast ravaging or bandits coming upon him, that he is obligated to save him? Scripture teaches: 'Do not

23. It is true that the Talmud (*Sanhedrin* 72b) says that there are cases of tunnelers that fall under the category of *rodef*, but the category of *ba ba-maḥteret* itself is a distinct one that applies even if the criteria of *rodef* are not met. This may be inferred from the *gemara* in *Sanhedrin* 72b, which learns from the verse *yimmaẓei ha-gannav* that this law may be applied in any place (which could be read as limited to the attacked party's *gag*, *ḥaẓer*, and *karpef* [roof, courtyard, and yard]). See n. 41 below. In other words, I argue that there are two independent justifications, though some cases fall under both, in which case either justification may be invoked to justify the self-defensive action taken.

24. Admittedly, the minority positions of R. Simeon and R. Eliezer ben Simeon argue that a would-be idol worshiper and Sabbath desecrator, respectively, also are killed before carrying out their deed. However, we are focusing on the positions that are accepted by Jewish law, while these two positions are rejected.

> stand [idly] by the blood of your fellow." Indeed it is so. But from where do we derive that he should be saved at the cost of his [the attacker's] life? It may be derived through an *a fortiori* argument from [the case of] the betrothed *naʿarah*. If in the case of a betrothed *naʿarah*, whose pursuer comes only to blemish her, the Torah states that she should be saved at the cost of his life, when one pursues his fellow in order to kill him, how much more so! But can we derive a punishment on the basis of a logical inference? A Baraita of the academy of Rabbi taught: "It is derived from a Scriptural analogy: 'For like a man who rises up against his fellow and murders him, [so is this thing, the rape of a betrothed *naʿarah*]' (Deut. 22:26). Just as a betrothed *naʿarah* should be saved from rape at the cost of his life, so, too, a murderer should be saved at the cost of his life." And from where do we know this very law about the betrothed *naʿarah*? As the Baraita of the academy of R. Yishmael taught, for a Baraita of the academy of R. Yishmael taught: "But she had no rescuer'(Deut. 22: 27)" The implication is that, if there was someone to rescue her, he could rescue her in whatever way possible."

The *mishnah* lists *rodef* as one of several categories where we "save them with their lives," by killing an attempted murderer or rapist;[25] in other words, third parties (as well as the attacked parties, clearly) may kill the attempted violator. The Talmud offers two potential sources to justify killing a pursuing murderer—the verse "do not stand idly by your friend's blood"[26] and an *a fortiori* argument from the provision of killing one who is raping a betrothed maiden—but rejects them as being technically hermeneutically unsound. It then settles on a *hekkesh*—an analogy, drawn by the Torah itself (Deut. 22:26) between the case of the murderer and one chasing the engaged maiden. The justification for killing the (attempted) rapist stems from the verse "and there is no one to save her,"[27] implying that a potential savior may use whatever means necessary to rescue her. The law is thus extended from a case of attempted rape to a case of attempted murder. It appears, based on the range of cases to which this extends in the *mishnah*, that the justification for killing the pursuer is that killing will save the attacked party from some outside threat.

If there is a difference between the two principles of *ba bamaḥteret* and *rodef*, what might that difference be? For Enker and

25. It is not clear if this ruling would apply to a consensual sexual liaison as well. This may depend on the analysis below.
26. Lev. 19:16. This appears to indicate that such saving is a requirement rather than an option. See Tosafot, *Sanhedrin* 73a, s.v. *af* and Rambam, *Hilkhot Roẓeaḥ* 1:14, who conclude thus.
27. Deut. 22:27.

Frimer, as well as several others who have written on this topic, the key to understanding the second rule (*rodef*) can be found by closely interrogating the phrase *maẓẓlin otan be-nafshan*, that "we save them" with [the taking of] their lives."[28] On a simple, grammatical reading, these two terms (*otan* and *be-nafshan*) refer to the same person, namely the attacker.[29] If so, killing the attacker is done to assist him (by averting him from sin), and thus it does not entail the usual moral guilt (and certainly not the punishment) of murder, in a scenario where the attacker attempts to sin. If this is the case, however, why do we limit this "vigilante justice" to cases in which there is a (human) victim? Why shouldn't idolatry and violation of Shabbat justify a similar reaction? Presumably, a certain sense of urgency enters the calculation when a potential victim stands before us. In such cases, and in such cases only, we take preemptive action, killing, and thereby saving, the attacker. If so, the "them" whom we save refers, in some sense, to both the attacker and the victim (a conclusion which is buttressed by the great ambiguity of the *mishnah*'s formulation). Frimer and Enker conclude, based on this reading, that "it is permitted to kill the pursuer when, in his pursuit, he is carrying out a severe sin whose punishment is death, *and* his being killed will save the pursued party from his plot."[30] They view these two factors as relating to the categories of "saving the attacked party" (*haẓẓalat ha-nirdaf*) and "punishment" (*onesh*). However, it appears to me that the reading of this source squares best with a different approach to self-defense, one based on rights and forfeiture.[31] In other words, the justification for killing the attacker in cases in which one unrightfully mortally attacks another is based on defending the right to life of the attacked party against the attacker, who has forfeited his own right to

28. See R. Shalom Carmy, "He'arot be-Nogea le-Haẓẓalat ha-Rodef mi-Ma'aseh ha-Aveirah," in *Zikhron ha-Rav*, ed. Jeremy Wieder and Avraham Shmidman (New York, 1994), 156-59, where he makes a similar argument, also entering into the question of the textual variants. Noam Zohar, "Killing a Rodef," 55-58, and Finkelman, 1267, offer a similar analysis.

29. See Rashi, s.v. *le-haẓẓilo*, who explains similarly, against Tosafot ad. loc., who argue that the person being saved is the victim.

30. Enker, 217 (my translation and my italics).

31. See above, section I. Enker and Frimer (215-18), as well as Frimer, "The Right of Self-Defense and Abortion," 203, present an argument, based on Rambam, *Guide of the Perplexed* 3:40, that the *rodef* may be killed only in cases in which the attacker has intent to commit his act. This supports an application of the concept of punishment *per se*, more than the claim we are presenting, that attempting to commit acts (i.e., certain *ma'asei averah*) leads to a forfeiture of one's life, regardless of culpability.

life. Given the relative rights and lack thereof of, respectively, the attacked and attacker, this act of killing is objectively morally justified, in the sense that it is clearly justified (at the very least) for any person to commit this killing.[32] (Note that this comparison between rights- and forfeiture-based justifications for self-defense in Judaism does not exactly correspond to its counterpart in secular philosophical literature. In Jewish law, the *rodef* forfeits his life by committing certain acts that are generally punishable [albeit only such acts that infringe upon another's basic rights], and in this case condemn him to death,[33] while in secular law and philosophy the justification is based on the immorality of the act itself. This discrepancy serves Jewish law well in justifying killing to prevent rape, which is very difficult to justify on a rights-and-forfeiture-based account [especially given that rape often does not entail the death penalty].)[34]

Later in their essay, Enker and Frimer analyze and provide a rationale supporting an additional justification for self-defense found in some authorities.[35] The relevant sources argue that the attacked party is justified in killing his attacker *even in cases where there is no justification for uninvolved parties to come to his aid*. (I will analyze some of these sources in more detail below.) This is seen not as an argument made on objective grounds, but as a *special allowance* accorded to the attacked party to act in the interests of self-preservation. For Enker and Frimer, though this alternate track, if allowed, would apply in a broad range of cases, including those of

32. One might compare this to the objective justification one has to kill an animal, also without a robust right to life, in order to save a person.

33. This does not mean that only regarding sins deserving the death penalty may the category of *rodef* be invoked; this is not the case. There is no one-to-one correlation between the punishment generally deserved by a sinner and the death he receives when he is pursuing a *nirdaf*, but it is still the case that the impetus for punishment stems from his sin (as well as from an interest in protecting the pursued party) and the fact that it is generally punished harshly (and here it may be punished in a modified form) rather than from the immorality of the act itself, detached from any legal system.

34. Cf. Leverick, 143, who notes that, despite the intuitive justness of this act of self-defense, it is difficult to square with the philosophical categories of self-defense generally used.

35. The primary sources are Ran, *Sanhedrin* 82a; R. David, *Sanhedrin* 82a; Meiri, *Beit ha-Beḥirah* 73b; Neẓiv, *Meromei Sadeh*. *Sanhedrin* 73a, R. Yiẓḥak Ze'ev Soloveichik, *Griz al ha-Rambam*, Roẓeaḥ 1:13. Some of these sources formulate the position but do not endorse it.

passive threats and innocent attackers,[36] its application within those scenarios would be limited. For one thing, it applies only to the attacked party. Additionally, they explain that, on this approach, the threatening party himself may be justified in fighting back against his self-preserving fellow.[37]

Enker and Frimer explicate this view within the words of the relevant medieval and modern authorities. We can, however, ground it in the talmudic material in *Sanhedrin*. More precisely, if one finds a rationale for regarding self-defense and *rodef* as distinct explanations, several facets of the talmudic texts appear in a new light and could be cited to augment this line of reasoning.[38] For one, the principle of *ba ba-maḥteret* speaks specifically to the one under attack (the homeowner), and not to any observer, and it grants the homeowner the legal ability to utilize lethal force in defense of his life, while the *rodef* case speaks specifically to a third party (though it clearly would also extend to the attacked party). *Ba ba-maḥteret* is not a charge to defend oneself based on ethical principles or the objective nature of the scenario; rather, it is the (independent) right of the individual to defend himself: *im ba lehorgekha hashkem lehorgo*—if one is coming to kill you, arise first and kill him. In fact, Ran and R. David,[39] whom Enker and Frimer cite,[40] quote this very phrase, which notably appears in the Talmud in the context of *maḥteret* rather than *rodef*, and possibly view the phrase as suggesting a principle independent from that of *rodef*. Finally, reading this second category of self-defense as based on the category of

36. They include in this category small children, who lack intention. As explained below, I consider these cases to fall under *rodef*.

37. Enker and Frimer, 229-34.

38. One alternative answer to the question of redundancy that we will not pursue is provided by R. Shaul Yisraeli ("Pe'ulot Ẓeva'iyyot le-Haganat ha-Medinah," *Amud ha-Yemini*, pp. 142-199, esp. part 3). For him, the case of the *rodef* informs us that, in order to save the life of a hunted party, one may kill a pursuer. Distinct from that, the case of *ba ba-maḥteret* teaches that one who goes to mortally attack his neighbor has forfeited his right to life and should, by right, be killed. In other words, the former source justifies the killing as a necessary step of defense, while the latter sanctions it as a punitive measure, detached from questions of necessity. Interestingly, this imputes more blame to the tunneler in the *ba ba-maḥteret* case and less to the pursuer in the *rodef* one, while the opposite distinction is suggested in this article.

39. *Sanhedrin* 82a, in the context of Zimri's permission to kill Pineḥas. As they presumably would not sanction third parties to kill Pineḥas, this usage demonstrates that they saw the phrase as denoting a similar principle.

40. Enker and Frimer, 229.

maḥteret explains the apparent redundancy of the two passages on the topic.[41]

41. One might challenge the existence of a separate category teaching a rule of *im ba lehorgekha hashkem lehorgo*, and claim instead that there is only one principle of *rodef*, applied to *ba ba-maḥteret* as well. The primary support for this would be the Talmud's learning from the word *ve-hukkah* that anyone may kill the tunneler, as he is considered a *rodef* (BT *Sanhedrin* 72b). However, I find this explanation problematic, as it does not explain the major differences between the two cases, and it appears that at least Ran and R. David read the two cases as distinct from one another. Given this, I would understand the discussion there as pertaining only to a case in which the tunneler is a clear *rodef*. In cases in which there is no clear attack, or in cases of passive threats, there would be no *rodef* and hence third parties would not be justified in killing the threat (if we were to follow only the laws of *rodef* and not introduce a separate category).

This reading also allows for broader application of the rule of *im ba lehorgekha* than the *Minḥat Ḥinnukh* allows for; he argues (296:5) that the fact that a verse is used to extend to third parties means that this law is true only for Jews and not non-Jews. (See R. J. D. Bleich, who accepts this argument in *Contemporary Halakhic Problems* vol. II [Hoboken, NJ, 1983], 161-62.) Given the reading that has the word *ve-hukkah* apply to a marginal factor alone, the basic principle of *ba ba-maḥteret* could indeed apply to non-Jews as well.

One also might argue that if the tunneler is exempt from making restitution for breaking items on his way out (a possibility raised in *Sanhedrin* 72a and disputed in *rishonim*), we see that the tunneler forfeits his right to life. However, here again I would respond that the forfeiture and ensuing exemption for damages takes place only in scenarios in which there is clear danger and in which the *rodef* category is triggered. However, when no such clear danger takes place and the homeowner is acting out of personal partiality, the owner would not be exempt from liability for barrels broken, since it would not truly be a situation of "*ein lo damim*."

It is also possible to adduce talmudic texts that might appear to group *ba ba-maḥteret* with *rodef* more generally (as was noted by an anonymous referee). *Berakhot* 62b uses the phrase *ba lehorgekha hashkem lehorgo* (usually associated with *ba ba-maḥteret*) as well as *rodef* in the context of David catching Shaul in the cave and not killing him. However, the usage of both terms, the way they are interpreted by this paper, is accurate: Shaul could be killed on either *rodef* or *maḥteret* categories. Furthermore, it is not at all clear that this aggadic story should be read halakhically; note that the cave here is one inhabited by Shaul, not David. Ironically, David is the literal *ba ba-maḥteret*, though Shaul is the one pursuing David. Given this, the usage of *ba lehorgekha hashkem lehorgo* is applied primarily if not exclusively for its powerful ironic literary value, not its precise halakhic application.

Yoma 85a-b uses *ba lehorgekha haskhem lehorgo* in an attempt at a *kol va-ḥomer* teaching that it is permitted to violate Shabbat to save a life. Though one might think that this source is applicable only if we view the principle of *im ba lehorgekha hashkem lehorgo* as based on justice, this would not be the case. Indeed, the right of the attacked party to defend his or her life is based on the value of his or her life, in the same way that violating Shabbat to save a life is based on the value of the life of the person in danger. Of course, a person may have a right (as this paper argues) to weigh his life more heavily than that of his fellow, but the principle still establishes that one can go to great lengths to save a life. In fact, I believe that the reason a case of self-defense is used rather than third party intervention against a *rodef* is that the proof is stronger this way. If we want to establish that even Shabbat can be violated in order to save a life, it is a greater *kal va-*

Enker and Frimer view this category as based on *kol de-allim gevar*,[42] a scenario in which neither party is more justified than the other, and the law throws up its hands and allows the two sides to do as they may.[43] I see this case as more of a license or right, and believe it to be an independent principle authorizing the use of force (up to and including lethal force) within, rather than outside of, the law, in serving the interest of self-preservation in the face of a threat,[44] similar to the concept of personal partiality discussed above.[45] This does not mean that no cases

ḥomer to establish this from a case in which what is permitted is killing someone who has *not* sacrificed his or her right to life rather than one who has (such as a *rodef*). The former can more readily be described as "spilling blood, which defiles the land and causes the Divine presence to leave Israel" (the Talmud's phrase) than the latter.

There are several possibilities that the Gemara in *Sanhedrin* 72b advances wherein *maḥteret* is compared to either *rodef* or others who have clear guilt. This includes the possibility that he cannot be killed on Shabbat (the same way the courts do not execute on Shabbat), the potential carrying over from *rodef* of the possibility that the *ba ba-maḥteret* can be killed using any method, and a connection between *maḥteret* and *rodef* for the purposes of establishing that *rodef*, like the *ba ba-maḥteret*, must be warned in order to be killed (for the latter, the tunnel itself is considered the warning). In response, I note that the first two are *hava amina*s that were rejected by the *gemara*, and the third is an alternative argument (*i ba'it eima*) where the competing alternative has a wildly unlikely assumption about the case (*ukimta*). The fact that the *Amora'im* are so reluctant to actually connect these two cases (not to mention the fact that they were seen as two distinct cases that needed to be connected in the first place) further underscores the distinction between them first provided by their presentation in separate *mishnayyot*. In addition, even the opinion that demonstrates a requirement to warn a *rodef* based on *ba ba-maḥteret* need not assume the two categories are the same; the argument could be one of *a fortiori*: if even a *ba ba-maḥteret*, whose killing is justified based on personal partiality rather than justice (see below), needs a warning, all the more so a *rodef*, whose killing is justified on the basis of justice, requires a warning.

In sum, I maintain that various texts which *prima facie* subsume self-defense under *rodef* are in truth compatible with viewing self-defense as a separate category.

42. Enker and Frimer, 233-34.

43. This is admittedly a simplified understanding of *kol de-allim gevar*, but it seems to reflect the sense in which Enker and Frimer use the expression.

44. Responsa *Afikei Yam* (R. Yiẓḥak Ḥaver) 2:40, offers this reading and claims that the question of *rodef* is asked only with regard to third parties, since it is obvious for one defending himself.

45. This understanding of the second form of self-defense as a right fits very well with the language of R. Yiẓḥak Ze'ev ha-Levi Soloveichik (*Griz al ha-Rambam*, *Roẓeaḥ* 1:13), whom Enker and Frimer cite (p. 232) but do not analyze in detail. He writes (translation mine):

> אין זה משום דלגבי הנרדף אשתני דינו של הרודף מלגבי כל אדם, דלא מצינו חילוקא בחיובא דרודף בין נרדף לכל אדם. אלא דהוא דין בפני עצמו על הנרדף שמותר להרגו משום דהבא להרגך השכם להרגו והוא כעין היתרה לנרדף, אך אין זה חלות דין בגופו של רודף שיחול ביה דין חיובא לנרדף, ובגופו של רודף ליכא חילוקא בין אחר לנרדף.
>
> This is not because, relative to the pursued party, the status of the pursuer is different than it is toward other people (in terms of killing the pursuer being

of apparent *ba ba-maḥteret* end up rising to a level of *rodef*; in fact, we encountered such a case on *Sanhedrin* 72b. And yet, on a fundamental level, the two principles can be regarded as distinct.[46] The extent of the self-defense justification, furthermore, is not boundless. Obviously we cannot derive from this source that one can kill innocent bystanders to preserve one's own life.[47] (This distinction may be easier to establish and justify if we adopt the license approach than the *kol de-allim* one.[48]) This is not a *carte blanche* for a philosophy of egoism, but a justification limited to particular types of scenarios. Later in this article, we will delineate the parameters in which the principle allowing the preservation of one's life at the expense of another may be invoked.

How exactly should we categorize this halakhic justification for one to defend his life in the face of an attack? As was implied in the description of philosophical approaches earlier in this paper, philosophers who write on self-defense tend to view personal partiality as distinct from a justification based on rights.[49] I believe it possible to argue that an approach justifying self-defense based on personal partiality is, at least within Jewish law, itself

allowed), as we do not find a distinction in the guilt of the pursuer between the pursued party and any other person. Rather, this is an independent law regarding the pursued party, that he is allowed to kill him (the pursuer), because 'one who comes to kill you, arise first and kill him.' And it is like an allowance for the pursued party, but this is not a change of status in the body of the pursuer that would effectuate a ruling of guilt (and therefore absence of guilt for one who kills him) from the perspective of the pursued party, as in the body of the pursuer there is no distinction between an other (third party) and the pursued party.

Note here his language of *ke-ein heteira*, a sort of license, and the fact that it is not based on forfeiture at all (as a subjective forfeiture would be untenable) but is an overriding right (of the trump variety; see n. 52 below). Griz prefers another approach in explaining the Rambam (based on the moral guilt of the pursuer), but he does not provide any insurmountable reasons to reject the priority-of-self position cited here. See also *Iggerot Mosheh, Even ha-Ezer* 1:39.

46. One might argue that it is hard to sustain an understanding that the justified killing of the *ba ba-maḥteret* is based on personal partiality rather than justice since the tunneler must be warned. This argument would work but for the fact that the actual existence of a warning in the *maḥteret* case is far from clear, as above (n. 41). *Sanhedrin* 72b says that *maḥtarto zo hi hatra'ato*, the tunnel (itself) is his warning. In other words, (and see Rashi *ad. loc.*,) the very form of a case where someone ends up threatening his fellow's life is sufficient to justify his killing with no further warning. The result of this very line in the *gemara*, in Rashi's interpretation, is not legislating a need for warning in the case of *maḥteret* but rather obviating such a need.

47. Note the rules for applying *mai ḥazit* ("How do you know whose blood is redder") and the case of the two people in the desert, discussed below (section VII).

48. I thank my friend Jake Friedman for noting this.

49. See, e.g., Leverick, 50-53, who sees personal partiality as an independent explanation or as possibly based on a form of consequentialism.

a right, conferred by God, that allows a threatened person to use lethal measures against the person threatening his life, even if that person's right to life is not forfeited.[50] Admittedly this is a right of the sort that does not correspond to a correlative obligation,[51] but it follows Ronald Dworkin's categorization of rights as "trump cards"[52] that require no correlative obligation on another, and the language *im ba lehorgekha hashkem lehorgo* definitely sounds like it is the conferral of a right upon the attacked party.[53] Viewing this version of personal partiality as a "Divine right of attacked parties" will assist the argument below.

III.

If there are two distinct principles of self-defense at play—a right, for both the attacked party and third parties, to kill the attacker, who has forfeited his own right to life, and a right, for the attacked party alone, to act in his self-defense, even without establishing such forfeiture—there may be significant distinctions between the scopes of these principles. What *nafka mina*s (legal differences) can we point to between these principles that reflect their distinct justifications? Three different types of cases, one discussed by Enker and Frimer and two I would like to introduce, can broaden the scope of this discussion.[54]

50. The assumption that the attacker has not forfeited his right to life will hold in cases such as that of doubt, an innocent attacker, or a passive threat, to be discussed later. Of course, if the attacker qualifies as a full *rodef*, and the justification then works on the plane of justice through that category, all attendant ramifications apply.

51. See, e.g. Judith Jarvis Thomson, *The Realm of Rights*, (Cambridge, 1992), 77, who argues for this understanding of rights.

52. See Ronald Dworkin, "Rights as Trumps," in *Theories of Rights*, ed. Jeremy Waldron (USA, 1984), 53, and his expanded version of the presentation in his *Taking Rights Seriously* (Cambridge, 1977). See also the discussion of this issue in chapter 1 of Rodin's *War and Self-Defense*.

53. Some have contended that Judaism does not have a concept of rights, while others argue to the contrary. See Milton Konvitz (ed.), *Judaism and Human Rights* (New York, 1972), Lenn Goodman, *Judaism, Human Rights, and Human Values*, (Oxford, 1998), and Michael J. Broyde and John Witte (eds.), *Human Rights in Judaism: Cultural, Religious, and Political Perspectives* (Northvale, 1998), which discuss the issue. For our purposes, as David Shatz pointed out, it appears that the analysis could also be reframed without the "rights talk." For example, the right to one's life can be framed as that person's counterpart's prohibition to take his life, and the forfeiture thereof can be seen as the undoing (*hafkaʿah*) of that prohibition. The right to kill a fellow person who is a threat to one's life can be reframed as a license (*hetter*). That being said, it is definitely convenient to use the rights talk, and use thereof allows for a sharper discussion that can more easily be put in dialogue with the philosophical literature on the topic.

54. There is an additional distinction between *rodef* and self-defense, namely that pro-

One difference between the two categories regards the degree of certainty of the existence of a threat that is required before one may proceed with lethal action. The paradigmatic case of the tunneler is by definition based on a decision made in a dark underground excavation into one's home, a scenario in which certainty is rarely achievable. The Talmud (*Sanhedrin* 72a) states:

אם ברור לך כשמש שיש לו שלום עמך—אל תהרגהו, ואם לאו—הרגהו.[55]

If it is as clear to you as the sun that he is at peace with you, do not kill him; if not [and you are unsure], kill him.

Only if it is clear as day that the tunneler is no threat need the homeowner desist. Implicit in this statement is that the homeowner may kill the intruder even if it is not fully clear at the time that the intruder plans to kill him.[56] A parallel *gemara* in *Yoma* 85a regarding *ba ba-maḥteret* is similar but sharper in its formulation:

R. Yishmael responded and said: "If the robber is found in a tunnel." And if in this case [of *maḥteret*], it is doubtful whether the burglar enters for the purposes of money or for the purposes of killing (*safek al mamon ba safek al nefashot ba*). . . .

R. Yishmael views the case of *ba ba-maḥteret* as one of doubt as to whether one's life is in danger, and still killing the intruder is allowed.[57]

tecting someone who is pursued out of a sense of justice, is mandatory (see n. 23), while the self-preservation approach gleaned from *ba ba-maḥteret* is not (see Tosafot, *Sanhedrin* 73a, s.v. *af*). I will not delve into this distinction beyond noting it.

55. The opposite statement is also made, that one must make sure the intruder wants to kill him, but the Talmud (*Sanhedrin* 72b, according to most commentators) explains that that scenario applies only to the case of an intruding father, and that all other scenarios provide the allowance to kill from a situation of doubt.

56. See Rashi, *Sanhedrin* 72a, s.v. *hakhi garsinan*, who explains the *gemara* this way. The following folio has a formulation somewhat at odds with this one. In rejecting several of the proofs, it argues that we have only shown cases of definite threats to someone's life (*vaddai*) and not those of doubt (*safek*). The best way, in my view, to reconcile this line with both *Yoma* 85a and *Sanhedrin* 72a is to say that this rejection of the proof is operating at a very high standard, as the *gemara* attempts to discern the best of six proposed arguments. Thus, though *maḥteret* may be a case of *safek*, the fact that it is *arguably* a case of *vaddai* is sufficient for the *gemara* to prefer another proof (specifically Shmuel's argument from *va-ḥai bahem*.)

57. Of course, it is also possible to understand the law of *ba ba-maḥteret* as defining these cases as ones in which a threat exists, despite a lack of clear evidence to that effect. However, I believe the term *safek* and the alternative of *barur ka-shemesh*, as explained by Rashi in the note above, indicate that the scenario is still treated as one of doubt, and yet it is within the rights of the possibly attacked party to act within that scenario. Furthermore, even for those (like Rambam, *Hilkhot Geneivah* 9:9) who see *maḥteret* as providing a *ḥazakah* that the (presumed) attacker is threatening the life of the (presumed)

No such formulation appears regarding the case of the pursuer. One would presume that the level of certainty needed is as high as it would be in most matters of Halakhah;[58] one must be fairly certain that one is dealing with a situation of a *rodef* before that justification of self-defense can be invoked. (Of course, in the absence of clarity the *ba ba-maḥteret* category may still be invoked, at least by the attacked party, but its extent may be narrower in scope.) This distinction is explained very well if the above understanding of *ba ba-maḥteret* as personal partiality and *rodef* as a justice-based killing is adopted. In order to assert the desired forfeiture of rights by the attacker, one would need a relatively high standard of certainty in order to ensure that he was killing a truly deserving party. If an observer lacks sufficient evidence to properly understand the situation, how could he possibly invoke justice to kill a possible attacker?[59] Shouldn't he have to weigh the detrimental effect of mistakenly killing a non-threat (for the consequentialist) or the unjustified infringement of his right to life of the misidentified non-agressor (for the right-based thinker)? However, if we consider the situation of *ba ba-maḥteret* as one of personal partiality, then the attacked party has a right to favor his own life over that of his fellow in certain circumstances—and this right to self-defense need not depend upon a particular degree of certainty. As long as the person reasonably feels that he may be under

attacked party, it is necessary to ask why this *ḥazakah* has been put in place by the Torah. Either way, it appears likely that a distinction between the classic *ba ba-maḥteret* and *rodef* case exists regarding the degree of certainty required. (Even Rambam, who says that, due to this *ḥazakah*, the *maḥteret* attacker is considered "*ke-rodef*," need not be saying that the standards for killing in the former case are the same as those for killing in the latter case. He may be saying only that the presumed attacker may be killed—this, even if the likelihood of him actually being an attacker is lower than it would need to be to qualify as a *rodef*. This understanding would see *ke-rodef* as connoting only an inexact parallel to *rodef*.)

58. To be sure, the degree of certainty one needs to act in halakhic matters in general is itself not fully clear, but let us assume it falls somewhere between majority and a "supermajority," where there is no competing significant minority (*mi'ut ha-nikkar*), which is generally assumed in literature of the *aḥaronim* to fall somewhere around 90% and up. R. Yiẓḥak Shor (*Koaḥ Shor* 1:20) says that if there is doubt as to whether the potentially offending party is a *rodef*, he cannot be killed on the grounds of *rodef*. R. Moshe Feinstein (*Ḥoshen Mishpat* 2:69) has a standard of *karov le-vaddai*, which would fit with the earlier discussion. *Minḥat Ḥinnukh* (296) does not accept this distinction, and argues that, even in cases of third party intervention, the potentially offending party may be killed despite doubts as to his status as a *rodef*. It is hard to understand *rodef* as based on principles of justice within this last approach.

59. It is alternatively possible that this distinction is between different scenarios, of defending one's own turf versus the open terrain, but we favor a fundamental distinction between self-defense and third-party intervention.

attack, the Torah affords him the right of acting to preserve his life, as the principle of *im ba lehorgekha hashkem lehorgo* states (within limitations to be discussed below). Since this self-preservation approach aims for a lower standard—favoring the attacked over the supposed attacker not based on concerns of justice but on a subjective right to defend one's life—it applies in a broader range of cases, including those of uncertainty. However, it is limited to the constraints of *ba ba-maḥteret* and may be applied only by the attacked party himself.

IV.

We may also point to the following, second distinction between the two justifications of self-defense—those based on *ba ba-maḥteret* and *rodef*, respectively. What is the law in a case where one can disable the attacker by injuring his limb instead of by taking his life—must the intervening party choose to target the limb? Rambam appears to make inconsistent statements concerning this question. In the case of the *rodef*, he says (*Hil. Roẓeaḥ* 1:13):

> Anyone who can save [the attacked party] with [by taking] a limb of his limbs and did not make an effort to do so, but saved [the attacked party] with [by taking] the life of the pursuer, killing him, this is a murderer and he is deserving of death, though the court does not kill him.

If one can save the pursued party by injuring the *rodef* instead of killing him, one must do so.[60] If instead he kills the *rodef*, then the intervening party himself deserves the death penalty in some theoretical sense, though it is not carried out in practice. On the other hand, in the case of *ba ba-maḥteret*, Rambam writes that the tunneler can be killed in any manner.[61] The fact that Rambam does not mention the distinction between injuring a limb and killing the person implies that there is no need to attempt to injure or disarm the tunneler as a first priority. Thus, there appears to be a discrepancy between the two cases in terms of this issue.[62]

60. *Sanhedrin* 57.

61. *Hilkhot Geneivah* 9:7.

62. See *Mishneh la-Melekh, Ḥovel u-Mazzik* 8:10, who argues that the requirement to injure the attacker rather than kill him does not apply to the person under attack:

> דהא דאמר ואם יכולין להציל באחד מאבריו של רודף שאין הורגין אותו שדין זה לא נאמר אלא באיש אחד הבא להציל אבל הנרדף אינו מדקדק בזה.
>
> The fact that it says [if] they can save with one of the limbs of the pursuer that they may not kill him—this ruling is only said in a case where a[n unrelated] person is coming to save [the pursued party]; but the pursued party [himself] need not be careful about this.

This apparent contradiction might further be explained based on the discrepancy between *ba ba-maḥteret* (or self-preservation) as justified by personal partiality, and *rodef* (or third party intervention) as justified based on rights and the forfeiture thereof. Following the rights approach, the attacker forfeits his right to life only insofar as it is necessary for the saving of the attacked party. Were this not the case, it would be justified to kill an attacker who tripped, fell, and is no longer a risk—something intuition, as well as the implication of *Sanhedrin* 73a, would clearly militate against. Thus, as Leverick puts it,

> Two conditions must be satisfied before forfeiture takes place: the aggressor must pose an unjust immediate threat to the life of the victim . . . and there must be no other way in which the threat can be avoided.[63]

This is all true for the case of *rodef*, where one must ascertain that the pursuer has vacated his right to life. However, for a personal partiality approach, where the focus is on the attacked individual rather than on the attacker, once the attacked party qualifies as being within a situation of mortal danger, he is entitled to exercise his right to kill the attacker. In the homeowner's exercising this very basic and fundamental human right, we do not weigh upon him the constricting need to consider what the status of the pursuer may be; these extra considerations would themselves impinge upon his right to self-preservation.[64] One defending his own life has no obligation to take extra measures and ensure that the intruder on his property is definitely a threat, and he is similarly not required to take actions to minimize the damage to his attacker. He acts

See the discussion on the matter in *Griz al ha-Rambam*, *Roẓeaḥ* 1:13, which adduces a prooftext from Rambam's discussion of the *go'el ha-dam*'s permission to kill the unintentional killer in *Roẓeaḥ* 5:10, and the discussion in R. Eliezer Waldenberg, *Ziẓ Eliezer*, 4:24. The fact that Rambam includes in *Geneivah* 9:7 the permission "*la-kol*," for anyone, including a third party, to kill the intruder presents a problem for this explanation. However, it may be, as suggested by *Shevut Ya'akov* 2:187, that he is speaking only about those who are in the house and are threatened by the intruder, and the use of "*la-kol*" is merely intended to extend the permission to kill beyond the homeowner. With regard to those not within the invaded house, one would invoke Rambam's ruling in *Roẓeaḥ* 1:13 and expect measures to be taken to protect the life of the intruder, if possible. Whether or not one sees this proof as viable, the *Mishneh la-Melekh*'s position stands as an important view.

63. *Killing in Self-Defense*, 66.

64. One might argue that, in cases of *yakhol le-haẓẓil*, the self-preservation right should not hold up. However, the principle seems to be triggered at an early stage: once one finds himself in a situation of *im ba lehorgekha*, he may do anything to avert the threat. It is also possible that part of the reason we do not require *yakhol le-haẓẓil* for the attacked part is that it is unrealistic to expect a person under threat to calculate the precise degree of force necessary and act accordingly.

from a position of (justified and sanctioned) self-interest, not a selfless, objective standpoint of justice.

V.

Let us analyze a third and especially intriguing distinction between third party intervention and self-defense, one raised by some commentators. Can an aggressor, once counterattacks are leveled against him, possibly be justified in responding to them with force, even lethal force, of his own? Thomson dismisses this possibility out of hand, saying that, while the basis of self-defense is that every person has a right not to be killed, an aggressor has forfeited this right, and therefore this is not a valid argument but a "bad joke," in her opinion.[65] Furthermore, certain philosophers hold that, in any scenario in which one party is justified in killing another, it is impossible for the other side to be justified in fighting back.[66] While this logic may be compelling to some, Jewish sources present a more complicated picture in which this argument may not hold.

This alternate approach, which begins with an argument advanced by *Dina de-Ḥayyei* (R. Ḥayyim ben Yisrael Benvenisti)[67] and is further developed by Enker and Frimer, stems from a distinction made in *Sanhedrin* 82a. In the *gemara*'s analysis of the story of Pineḥas, who zealously killed Zimri for having relations with a Midianite, it avers that, "*nehpakh Zimri va-harago le-Pineḥas, ein neherag alav, she-harei rodef hu*—had Zimri turned around and killed Pineḥas, he would not have been executed for that, as he (Pineḥas) was a pursuer."[68] The explanation given for this in *Yad Ramah* (R. Meir Abulafia, ad loc.) is that Pineḥas was not obligated to kill Zimri, though he had license to do so, given Zimri's transgression.[69] Therefore, though Pineḥas was justified in killing Zimri, the latter still

65. "Self-Defense," 304.

66. See Leverick, 60-1. This correlates with the approach, cited above in n. 51, that rights must correspond with obligations, and, thus, a right to kill an attacker must correlate to his obligation not to resist being killed.

67. *Dina de-Ḥayyei*, *Asin* 77.

68. Enker and Frimer, 228-233. It is not clear from the Talmud whether this act would have been justified or merely excused. I believe that it is fair to read this as saying either that Zimri would be a killer but would not be prosecuted due to the extenuating circumstances (*anus*) or that he is morally justified in defending his own life in this circumstance. We will work with the former option, which is *prima facie* more reasonable.

69. Ran, ad. loc., may even go a step further and say that there *was* a *miẓvah* to kill Zimri, but Zimri could still have killed Pineḥas, though Ran does distinguish this case from most others as being based on vengeance (*nekamah*) rather than some pressing need that does exist in other scenarios (such as that of *rodef*).

would have been exculpated had he fought back. It is hard to sustain this line of argument if Zimri had, in fact, forfeited his right to life by committing the sin,[70] but if Zimri had not forfeited his right to life, in what way was Pineḥas justified in killing him? *Dina de-Ḥayyei* considers the possibility of carrying this paradigm over to the classic case of *rodef*, asking whether, if A attacks B and C steps in and tries to kill A, A would be justified in killing C. He argues that the situations are not comparable, for two reasons:

> a.) Pineḥas was acting as a zealot (*kanna'in poge'in bo*), taking actions that would not have enjoyed the court's stamp of approval, while a *nirdaf*'s actions are sanctioned by the Talmud.
>
> b.) In a case of *rodef*, the life of the attacker is forfeited, so he would have no basis to kill the attacker, while here Zimri's life was not forfeited.

It follows from this explanation that there are different levels of license provided to one who undertakes vigilante action:

> 1. A scenario in which the vigilante is justified (or at least licensed to act) on the basis of justice, related to his target's forfeiture of his right to life. (We can compare this vigilante to an executioner, who, by any moral system, [hopefully] does not carry the guilt of his rightfully convicted targets, and against whom no rightly convicted targets can morally act.) In such cases, the vigilante's target is not justified in responding.
>
> 2. A scenario in which the vigilante is licensed to act based on his outrage, or for some other reason, but that license is not based on an assessment of what constitutes justice in the circumstances. In these cases, which are classified as *halakhah ve-ein morin ken*, the law dictates that the act may be undertaken but nonetheless this ruling is not promulgated to the public. One has a license to act based on personal response,[71] but one is not entitled to amnesty against the attacked party.[72]

70. Note that, although we discussed previously the fact that one who has relations with a betrothed maiden does forfeit his life, having relations with a non-Jew falls under a different category and does not entail forfeiture of life, though it does legitimate vigilante action.

71. See Enker and Frimer, 227, who formulate this slightly differently. They see this act as an extra-legal, political act, which is nevertheless justified.

72. See Shai Wozner's article, "Conduct Rules and Decision Rules in Jewish Law," in *Jewish Law Annual* 19 (2011), 165-79, where he argues that *halakhah ve-ein morin kein* refers to a rule that is justified conduct but is not promulgated as a decision. This dovetails

Mishneh la-Melekh on *Hilkhot Roẓeaḥ* 1:15 raises a similar possibility to that of *Dina de-Ḥayyei* with regard to an unintentional killer. The *go'el ha-dam* (blood avenger), a relative of the victim, is licensed to kill the one who unintentionally shed blood,[73] but what would happen if the unintentional murderer were to turn around and kill the blood avenger? *Mishneh la-Melekh* is of two minds on this issue.[74] This again shows that there can be a case in which someone is justified in killing a specific person, but if the person whose death is sanctioned kills his endorsed pursuer, he cannot be prosecuted for it. The position that would exempt the retaliating unintentional killer supports the second category propounded above: the avenger may act, despite the unintentional killer's right to life not being forfeited, out of a personal position of avenging his relative.

Pursuant to this discussion above, Enker and Frimer argue that these two categories map very nicely onto our two scenarios of self-defense (which we based on *rodef* and *ba ba-maḥteret* earlier). In the former case, the justification is that the life of the attacker is forfeited, and therefore it is not justified for the attacker to "turn around" and kill the defender. However, in a case that does not rise to the level of *rodef*, including passive threats (such as one who falls off a cliff and will crush someone below),[75] the justification for that action is based only on personal partiality, and therefore the person who poses the threat would be justified in killing his now-attacker. To provide a somewhat sensational example of this, suppose that person A is falling off a building and will land on bystander B, such that B will die and not A. Bystander B, noticing this and utilizing the category of *ba ba-maḥteret* and personal partiality, picks up a gun to shoot A and save himself. In that case, A would be justified by himself taking preemptive action to kill B. Allowing innocent attackers to kill those who try to "defend" against them is argued for by McMahan, who sees it as a real strength of the personal partiality approach.[76]

well with our claim that the vigilante acts not out of a sense of justice.

73. Num. 35.

74. See n. 62 above and *Mishneh la-Melekh, Ḥovel u-Mazzik* 8:10, which may be related to his comment in *Hilkhot Roẓeaḥ* based on this analysis.

75. Note that this does not apply to innocent attackers, such as an intent-less three-year-old with a gun, who is considered a *rodef* on my approach; see n. 81 below.

76. "Self-Defense and the Problem of the Innocent Attacker," 269 (all brackets mine):"It [an approach of personal partiality] also has the further advantage that it supports another intuitively plausible claim: namely, that the moral reason that the Victim has to resist the IA [Innocent Attacker] is also available to the IA as a justification for resisting the Victim's counter-attack."

This justification for the attacker to kill someone trying to kill him also fits in a case of an unclear threat—in this case, if the homeowner (for example) is justified in killing the intruder on the basis of *ba ba-maḥteret*, the intruder himself would be justified in killing the homeowner.[77] Nonetheless, if he had forfeited his life by falling into a *rodef* scenario by clearly being an attacker, he would not be allowed to respond.[78]

VI.

We now move to the question of scope: which scenarios qualify for the Talmud's category of *rodef*, which for *ba ba-maḥteret*, and which for neither? Interestingly, in the context of the Talmud's discussion of *rodef* we find a significant expansion of the rule (*Sanhedrin* 72b):

אמר רב הונא: קטן הרודף ניתן להצילו בנפשו.

R. Huna said: [In the case of] a minor [*katan*] pursuing his fellow [to kill him], he may be saved with [at the cost of] his life.

A minor who is pursuing a person to kill him may be killed (even) by a third party. This is somewhat surprising, since minors are usually considered to lack intent by Jewish law and are therefore excused for their actions, and yet in this case the minor is killed. However, given that this is not a punishment but (at least partially) a preventive action taken to stop the killing from taking place,[79] the Talmud says that killing this child can be justified within the rule of *rodef*; in other words, the minor's right to life is forfeited based on his actions in this situation. We can explain this as

77. *Afikei Yam* (*Teshuvot*, 2:40) argues for something similar: he says that if a third party attacks a tunneler, the tunneler would be justified in fighting back. Presumably, he sees the third party as having license to kill but lacking an objective sense of justice to do so, and therefore the tunneler could turn around and kill him. We can take this a step further and apply this same logic to a case in which the tunneler shoots the homeowner, as well. (*Afikei Yam* may disagree; since the tunneler was the cause of the danger, it would not be sincere to invoke his own self-defense.)

78. One might raise the question of a case of an attacking party coming with all intent to kill but does not clearly appear to be an attacker, who qualifies for *maḥteret* but not *rodef*. Can the attacker kill the attacked party if the latter resists with lethal force? We might respond that, if such a case could be constructed, the attacker is a bad person and is responsible at some level for the death by dint of the fact that he created this situation, but not as a direct murderer. Alternatively, we might argue that if the intruder's intent is to kill, he automatically qualifies as a *rodef*, even if the homeowner's "epistemic radar" might only identify him as a *ba ba-maḥteret*.

79. In other words, though minors are not punished for their actions, there is still a sufficient degree of culpability that, combined with their representing a threat to another individual, they can be killed using the category of *rodef*.

Uniacke analyzes a similar case[80]—that the forfeiture is not based on any fault of the (innocent) aggressor (and it is not based on his guilt *per se*), but on his very conduct itself and the resulting guilt it incurs.[81]

The next line in the *gemara* raises an objection that the Talmud resolves while at the same time limiting the extent of the *rodef* principle:[82]

איתיביה רב חסדא לרב הונא: יצא ראשו—אין נוגעין בו, לפי שאין דוחין נפש מפני נפש. ואמאי? רודף הוא!—שאני התם, דמשמיא קא רדפי לה.

R. Ḥisda challenged R. Huna [from a *mishnah*]: if the baby's head has left [the mother's body] we may not touch [i.e., kill] the baby, as we do not push aside one life on account of another. But why? He is a pursuer? It is different there, because the mother is being pursued by Heaven.

In the case of a newborn baby, the fetus can be terminated prior to birth if it poses a threat to the mother's life.[83] Once its head emerges, though, it cannot be killed, since it is a life, like its mother, and we do not kill one life to save another. But isn't this a case of *rodef*, as the baby is threatening the mother's life? The *gemara* explains that it is not, given that *mi-Shamaya ka radfi lah*—Heaven (or, one might say, nature),[84] not the baby, is pursuing her. In other words, a case in which the baby is indirectly threatening the mother's life does not qualify as a scenario of *rodef*, wherein a third party is allowed to intervene. Given that this is not a case of an attack (not even an innocent one in which the "attacker" does not understand the consequences of his actions), but is merely a threat that the baby poses, the category of *rodef*, with its attendant forfeiture of the newborn baby's life, is not in place. The doctors, then, may not touch this baby, and the mother is left to die.

Upon reading this passage, a practically unfeasible but philosophically pertinent question arises: what if the mother herself would kill the

80. See Suzanne Uniacke's *Permissible Killing* (Cambridge, 1996), esp. chapter 6.

81. An alternate understanding and explanation of this source is presented by Enker and Frimer (223-24). They believe (based on their arguments presented above in n. 75 regarding intent) that this *mishnah* is speaking only about a child who has intent and therefore culpability for his actions. (In order to make this move, they provide a secondary argument for minors only being exempted from punishment rather than lacking culpability for their actions.) However, a younger child (such as a three-year-old), who does not understand what it means to kill, would not fall under the category of *rodef* (though one might be able to kill him in an act of self-preservation). See also "Killing a Rodef," 58, where Zohar suggests that one might maintain that a toddler would not be considered a *rodef,* though a child would.

82. This is a citation of the Mishnah *Ohalot* 7:6, which has several minor variations from the version the Talmud quotes, none of which bear on our issue.

83. This may be because the baby is not considered to be alive at this early stage, or that it is alive but there is some other explanation to justify killing it to save the mother. See *Ḥiddushei R. Ḥayyim ha-Levi*, *Yesodei Ha-Torah* for the latter.

84. See Rambam, *Roẓeaḥ* 1:9, who refers to this as *tiv'o shel olam*, the nature of the world.

newborn baby threatening her life, in an act of self-preservation? Meiri cites an opinion that the mother herself could kill the baby:

> חכמי הדורות שלפנינו כתבוה כן ר"ל שהאשה עצמה יכולה לחתכו שנרדף היא.
> ונרדף מיהא במקום שאין אחרים מחזיקין את הרודפו ברודף הוא עצמו שרי.[85]
>
> The wise men of earlier generations wrote it as folllows: it means that the woman herself can cut it [the baby] up, since she is being pursued. And a pursued party, while it is a case where others do not consider the party pursuing him as a pursuer, for him [i.e. the pursued party] himself it is allowed [to kill the pursuer].

Given the lack of explicit counterevidence, and given that it squares with the source of *im ba lehorgekha hashkem lehorgo*, this opinion holds that the mother is allowed to kill the partially born baby in an act of self-defense in this case, even while doctors and other third-party groups would not be allowed to do so.[86] The baby may not have forfeited its right to life, but that does not mean that the mother must sit back idly as this threat to her life brings about her death.[87] If this is true, then when the *gemara* says *ein noge'in bo*, limiting the agency of the public at large, that would apply only to third parties and would not restrict the actions of the mother *per se*. The philosophical justification for this position would go as follows. The rule of *im ba lehorgekha hashkem lehorgo* provides for not just self-defense, but self-preservation, the right to take extreme measures to continue one's life in the face of a threat,[88] and this stems from one's

85. See Enker and Frimer's discussion of this source on 230-331.

86. Once this conclusion has been reached in theory, one might raise the question of how to view those working on behalf of the mother, but I do not see how anyone other than the attacked party can use the partiality necessary to invoke *ba ba-maḥteret*; he should have as much responsibility for the baby's life as he does for the mother's.

87. Of course, the mere fact that the mother would be justified in killing the baby out of a right of self-preservation based on personal partiality does not mean that she *must* kill the baby, or even that this would be the most laudable approach for her to take. As noted above, *ba ba-maḥteret* self-defense is always an option rather than an obligation, and the mother's sense of responsibility for her child may (or, possibly, should) cause her to spurn her right to self-preservation.

88. Note that the root of the word used in the Talmud is *h.r.g.*, to kill, rather than *r.ẓ.ḥ.*, to murder. Though Gerald Blidstein has argued ("Capital Punishment–The Classic Jewish Discussion," *Judaism* 14 (1965):159-171) that in Biblical Hebrew the distinction between *roẓeaḥ* as murderer and *horeg* as killer does not hold up, it appears that in the Rabbinic Hebrew of the Talmud it does. (Blidstein himself claims it does not.) The Talmud is much more likely to refer to unintentional (*shogeg*) killings as *hareigah* rather than *reẓiḥah*, in a clear shift from the biblical cases, and when *shogeg* cases are called *reẓiḥah,* it is primarily in cases in which the biblical language carries over to the Talmud. For example, see *Makkot* 12a, where the Talmud assumes that the word *roẓeaḥ* means a murderer as opposed to an unintentional killer.

personal partiality.[89] Meiri himself rejects the opinion of the *ḥakhmei hadorot*, but it is possible that those who, like the Meiri, reject this opinion nevertheless accept in general the position that the mother could defend herself against a threat to her life, but considered the baby in this case to not rise to the level of a threat. If the real *rodef* is nature, as the Talmud's formulation has it, that may mean that our scenario does not even qualify as an *im ba lehorgekha* case. If this argument holds, there may very well be room for a category of self-preservation even for *rishonim* who do not apply it here.

Of course, there are limitations on what is allowed in the interests of self-preservation. Completely innocent bystanders cannot be killed, as will be seen from sources below, but anyone who poses a threat to the mother's life—even if that threat comprises simply the natural process of emerging from the birth canal—may be disposed of by the threatened party (in this case the mother), despite the dire consequences for the threatening party (in this case the baby).[90] Note that there is no requirement for the offending party to qualify as a *rodef* or to forfeit its right to life; the fact that this threatening party constitutes a threat is sufficient to allow the attacked party to kill, in an effort to secure his own safety. This is a broad application of the right of self-preservation and personal partiality, as distinct from an approach that limits the permission of self-defense to cases in which one defends against an attacker who has forfeited his or her right to life. It is by no means a simple move, but I believe it justified by the sources under discussion.

VII.

Beyond the cases of intentional attackers, innocent attackers, and unintentional threats, there is yet another category in which two people are involved in a situation where each one's existence presents a challenge to the other's life—competition for resources. The Talmud addresses one such situation in *Bava Meẓi'a* 62a:

שנים שהיו מהלכין בדרך, וביד אחד מהן קיתון של מים, אם שותין שניהם—מתים,
ואם שותה אחד מהן—מגיע לישוב . דרש בן פטורא: מוטב שישתו שניהם וימותו,

89. The response to this question in the Jerusalem Talmud, *Shabbat* 1:4, is that it is not clear who the *rodef* is in this case. Such a line also fits with the position of the "Wise Men of earlier generations" cited in the Meiri that neither side is objectively justified, and therefore both (which, in this case, only feasibly applies to the mother) are entitled to act in the interests of their self-preservation.

90. This formulation is not complete, and will be built upon in the analysis below.

ואל יראה אחד מהם במיתתו של חבירו. עד שבא רבי עקיבא ולימד: "וחי אחיך עמך"—חייך קודמים לחיי חבירך.

> Two people who were traveling along the way, and one of them has in his possession a flask of water. If both drink from it, they will both die; however, if one of them drinks, he will reach a settlement. Ben Petura taught, it is better that both should drink and die than that one should see the death of his fellow. Whereupon R. Akiva came along and taught: "That your brother may live with you" (Lev. 25:36)—your own life takes precedence over your fellow's life.

If two people are stranded on a deserted path with a single jug of water between them that can sustain only one person, what are they to do? Ben Petura suggests that they share the jug and both die, such that one should not "see"[91] the death of the other. The authoritative opinion, however, that of R. Akiva, is that the one in possession of the jug (if we are to assume that holding a jug in one's hand reflects possession) should drink it and save his own life, at the expense of his fellow's. What no one suggests in this case is that the person without the jug of water should steal it from his companion; this appears patently immoral and prohibited.[92] In fact, such an action would appear to be prohibited based on the Talmud's rule, in *Pesaḥim* 25b, of *mai ḥazit dedama di-dakh sumak tefei; dilma dama de-hahu gavra sumak tefei*, that one cannot assume that his blood is "redder" than that of his fellow for the purposes of killing his fellow to save his own life.[93] These sources

91. The word *yir'eh* literally means "will see," but here it may have the implication of "seeing the other die as a result of having caused his death." It is otherwise difficult to explain how the prospect of "seeing" the other's death militates against drinking the water.

92. See R. Mosheh of Coucy (Ramakh), quoted in *Shittah Mekubbeẓet, Bava Mezia* 62a, s.v. *shenayim she-hayu*, who says that one who takes the jug is *ḥayyav bi-dinei shamayim* for the death of his companion. (That is, he is held culpable in the heavenly court but not in human court.)

93. The context in that case is that one person is told to kill someone else, and is told that he will be killed unless he complies. He must let himself be killed rather than kill the other. There are two basic understandings of this line, one taken by Tosafot (*Pesaḥim* 25b, s.v. *af*; *Yoma* 82b, s.v. *mah*; *Yevamot* 53b, s.v. *ein ones*; *Sanhedrin* 74b, s.v. *ve-ha Ester*) and the other by R. Ḥayyim Soloveitchik, *Yesodei ha-Torah*, (based on Ramban's commentary on *Yevamot* 53b; see R. Elḥanan Wasserman's *Koveẓ He'arot* 48). For Tosafot, this rule states that one may not privilege one's life over that of his fellow by *actively* killing him, but one need not submit to being killed by the evil conspirator, and he may allow himself to be thrown onto a baby to kill it. For R. Ḥayyim Soloveitchik, however, the prohibition against killing the other is based on an obligation to ensure that this person dies and his fellow lives, so the potential human projectile must resist and lose his life. This paper assumes the reading of Tosafot (keeping in mind that the principle of *im ba lehorgekha hashkem lehorgo* is a trump that overrides this usual rule). See Enker's discussion of the topic on 193-94.

prohibit the killing of innocent bystanders to save one's own life.[94] For our purposes, then, we can say that self-preservation extends to cases of killing (even directly) someone who poses a threat to one's existence, but does not justify killing (even indirectly, by diverting the resources of) one who only presents a problem by being a competitor, or one who is a mere bystander.

As we discussed above, any approach that uses personal partiality to justify self-defense faces the problem of how to distinguish that from killing completely innocent people for the purpose of personal gain. Or, as McMahan put it, "It is unclear how it [personal partiality] can justify killing an IA [innocent attacker] in self-defense without also justifying killing an IB [innocent bystander] in self-preservation,"[95] when one's intuitions affirm the morality of the former but not the latter. Understanding *ba ba-maḥteret* as a divinely granted right, but so granted only in cases of *im ba lehorgekha*, where one is attacked, solves this problem. The right of self-preservation, while similar to a personal partiality approach, is in fact a right that may only be applied in the cases where it is granted. Actions taken by "Person A" in pursuit of his self-preservation are justified, but only when they are taken against a participant ("Person B") who is by his actions a lethal threat to the actor. However, if Person B is not a threat, but circumstances are such that Person A will die unless Person B is removed, Person B's incidental juxtaposition to a danger to Person A's life does not trigger the right of *im ba lehorgekha hashkem lehorgo* and, hence, does not justify Person B's actions as self-preservation in the face of a threat. In such a situation, we apply the rule of *mai ḥazit de-dama di-dakh sumak tefei*, and the bystander may not be killed.

94. In another chapter ("*Reẓaḥ mi-Tokh Hekhreaḥ ve-Ẓorekh be-Mishpat ha-Ivri,*" 188-211), Enker points out that it is possible to provide an impartialist account of R. Akiva's position that stresses, in prioritizing lives, changing the status quo as little as possible, so that the owner drinks rather than give the water to the other fellow. This approach reconciles R. Akiva's ruling with Rabbah's argument that one may not actively kill another to save one's own life because we do not know whose blood is redder (*Pesaḥim* 25a, *Sanhedrin* 74a). In the latter case, killing the other is a greater change; in the other, saving him is the greater change. For further discussion of the impartialist reading and its implications, see David Shatz, "'As Thyself': The Limits of Altruism in Jewish Ethics," in idem, *Jewish Thought in Dialogue: Essays on Thinkers, Theologies and Moral Theories* (Boston, MA, 2009), 326-54.

95. "Self-Defense and the Problem of the Innocent Attacker," 271; brackets mine.

VIII.

At this point, I would like to review the four categories discussed, note the conclusions reached, and contrast them with certain positions in contemporary philosophical literature:

1) A man is chasing after his fellow with clear intent to kill him. This is the classic case of *rodef*, and in this case both the attacked person and a third party are allowed to kill the pursuer, based on both talmudic sources and widespread philosophic agreement (leaving aside pacifist approaches). We took this to be based on a theory of rights—that the attacked party holds a right to life which he may exercise by killing the attacker, who himself has forfeited his own right to life by attempting murder.

2) A person is threatening another person, presenting a clear threat to his life, but an unintentional one (e.g., he is about to pull an apparently innocuous lever, unaware that it will trigger a bomb that will kill his friend). This case squares with the Talmud's case of a minor *rodef*,[96] who is not considered to have *da'at* or be legally responsible for his actions, which, given the Talmud's broad and undiscriminating formulation, should apply to toddlers as well. The Talmud states that both the attacked party and third parties may kill this *rodef*, and, though Thomson seems convinced such a response is justified,[97] that position is not without opposition.[98] It is important to note that, as the Talmud classifies this under the category of *rodef*, the attacker forfeits his right to life, which may be somewhat surprising.

3) A person presents an active threat to another person's life, not through a lethal act of violence he is about to carry out but by some other means. This category includes an "Innocent Threat" case of

96. It would be possible to argue that the minor is even more innocent than a usual innocent aggressor, either because of his limited intelligence or due to some formal removal from a legal system, but the Talmud makes no such distinction.
97. "Self-Defense," 284.
98. Noam Zohar ("Collective War and Individualistic Ethics," 610) claims that whether killing the "Innocent Aggressor" is justified or not depends on the exact details of the case under discussion: a person having a seizure who will pull a lever that, indirectly, connects to some killing mechanism, may not be killed, while a psychotic person who will arbitrarily kill the first person in his path may be lethally stopped. Zohar does not provide a justification for this distinction other than that the latter killer "is not totally innocent," in contrast to the former.

the cave-blocking large man as well as the talmudic case of a baby whose impending birth will kill his mother. The Talmud distinguishes this case from the previous ones (of unintentional murder acts) by saying that this baby is not a *rodef*, and we have noted that, if we accept a separate principle of partiality, the mother, by dint of her right to self-preservation in the face of attack (based on the category of *ba ba-maḥteret*), and following the *ḥakhmei ha-dorot*, may herself take action and kill the baby.[99] What is needed here is not "moral guilt," but for the situation to be labeled as one of *im ba lehorgekha*, where the attacked party has a right to kill threats to his life in self-preservation.

4) The final category is a case in which neither person is directly threatening the life of the other, but the situation is such that one will likely die due to the presence of the other (or, in an even more obvious case, due to his lack of utilization of the other's resources). One example of this is a case in which there is a shortage of resources such that only one of two people can survive. This reflects the Talmud's case of two people stranded, where one person has just enough water to allow either him or his fellow to survive, and where stealing the jug is not allowed; how can the proposed purloiner know that his life is worth more than that of his fellow? There seems to be a fairly strong consensus not to take action in this case.

IX.

The talmudic account provides a rich understanding of two related but distinct tracks to justify lethal intervention against an attacker. The case of *rodef* teaches the principle of intervention against a clear attacker which may be carried out by anyone, as it is based on justice and the attacker's forfeiting his life, and it has higher standards and therefore often enjoys narrower application. The case of *ba ba-maḥteret* teaches the principle of

99. This category makes up the bulk of a dispute between Zohar and Thomson. Thomson claims that, since the Innocent Threat would still be killing the protagonist, the same way that a falling piano would, the protagonist has a right to kill this human projectile by deflecting him to his death. Zohar responds that "we must conclude that self-defense cannot serve as the grounds for permitting the deflection, unless we are prepared to broaden the notion of self-defense to permit any destruction of another to buy one's own life." Rather, "something more is required to tip the scales: a minimal measure of moral guilt (on the part of the aggressor), which distinguishes self-defense from mere substitution" ("Collective War and Individualistic Ethics," 608-09).

self-preservation in the face of an attack, where the person partial to the situation may invoke a Divinely granted right and kill his (possible) attacker. This presentation of a double-headed justification for self-defense found within Halakhah, and particularly the *sugyot* in *Sanhedrin* chapter 8, is similar to but distinct from several approaches to self-defense that have been promulgated in philosophical literature, and it provides a consistent account of the halakhic material.

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DANIEL RYNHOLD

Letting the Facts Get in the Way of a Good Thesis: On Interpreting R. Soloveitchik's Philosophical Method

Introduction

Many great thinkers, especially those whose legacy is not confined to the academy, suffer at the hands of their interpreters, and R. Joseph B. Soloveitchik is no exception. When one begins studying the thought of the Rav, one is struck by the at times diametrically opposed approaches to his work in the scholarly and not so scholarly literature that it has generated. For example, among the various communities that view themselves as the true heirs of R. Soloveitchik, we find, on the one hand, those that marginalize the philosophical import of his work and, on the other, those that emphasize it almost to the exclusion of anything else.[1] I initially thought that this was merely an expression of the particular conscious or unconscious prejudices of the scholars in question, myself included, but as I continue to engage with R. Soloveitchik's thought, it strikes me that while this is undoubtedly a factor, the varying views often each have a genuine foothold in his work, making for a rather more complicated picture of both his thought and its interpreters. In this paper, I wish to illustrate what I mean with reference to R. Soloveitchik's

1. For an analysis of the posthumous treatment of R. Soloveitchik's work, see Lawrence Kaplan, "Revisionism and the Rav: The Struggle for the Soul of Modern Orthodoxy," *Judaism* 48 (1999): 290-311.

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theory and practice of his philosophical method as presented in *The Halakhic Mind*.[2] In this case, I began with an initial interpretation of R. Soloveitchik's method, only to be convinced subsequently that it was erroneous, but then returned to my starting point.[3]

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I recall, from my time as a philosophy undergraduate, once sitting among students and lecturers in Cambridge during a meeting of what was still quaintly called the Moral Sciences Club. During a discussion of some now forgotten metaphysical theory, someone objected to a particular position being taken and interjected, "But the facts are . . . ." He was immediately interrupted by a professor, who shouted, "For goodness sake! We're philosophers. We're above facts." Along these same lines, the objection to my original reading of R. Soloveitchik's method was that although my interpretation of the text in question seemed coherent, I was ignoring the rather recalcitrant fact that R. Soloveitchik did not actually use the method I was attributing to him. At the time, this was a point that I felt I had to concede, but on further reflection, I have come to the conclusion that there is a sense in which both my interpretation and the objection have merit. It is this intellectual journey that this paper describes.[4]

I will begin with my reading of R. Soloveitchik's philosophical method and the central objection to it. I will then examine his philosophy of prayer as a basis for discussion of whether or not the method used in that context is indeed the one I have suggested. This will lead in conclusion to a brief observation on the implications of all of this for the interpretation of R. Soloveitchik's thought more generally.

The Method

What, then, was R. Soloveitchik's philosophical method as outlined in *The Halakhic Mind*? The method he ends up with is one that he terms "descriptive reconstruction," and it is with the details of this method that I am particularly concerned. In broad summary, the method can be presented

2. Joseph B. Soloveitchik, *The Halakhic Mind: An Essay on Jewish Tradition and Modern Thought* (New York, 1986). References to this work in the text will be in the form *HMD* followed by page number.

3. The objection to my interpretation was brought to my attention by David Shatz at the beginning of a dialogue that to this day remains a source of immense intellectual value.

4. This paper essentially makes good on a promise in an earlier piece to return to this topic and address these uncertainties. See my "The Philosophical Foundations of Soloveitchik's Critique of Interfaith Dialogue," *Harvard Theological Review* 99 (2003): 101-20, esp. 108-12.

as follows. In order to do Jewish philosophy, we must reconstruct our theory out of the halakhic data of Judaism. As R. Soloveitchik puts it, our philosophy cannot be formed "through any sympathetic fusion with an eternal essence, but must be reconstructed out of objective religious data and central realities" (*HMD*, 62). We will leave arguments regarding exactly how R. Soloveitchik understands the concept of objectivity in this context for another time. However, for R. Soloveitchik, it is clearly the Halakhah that is Judaism's equivalent of this objective order.

At this point, I note that one would imagine from this that R. Soloveitchik's method is to utilize halakhic data in order to construct a conceptual system that conforms to that data. We begin with the Halakhah and simply build our Jewish philosophy. However, on a closer reading of the work, the approach actually seems a little less straightforward than this uncomplicated one-way method. As William Kolbrener has pointed out,[5] at the methodological center of this work is the modern scientist whose method becomes the model for the modern philosopher of religion. While I would emphasize that one can also clearly detect the influence of certain philosophers of the human sciences on the argument of *The Halakhic Mind*, Kolbrener's essential (and to my mind correct) point is that it is as a result of engaging in a two-way rather than a one-way process that the modern scientist becomes paradigmatic for the philosopher of religion.

According to R. Soloveitchik, the Newtonian scientist could not be a role model for the philosopher of religion. The problem with the Newtonian scientist was his method, which R. Soloveitchik terms "atomistic." In other words, the Newtonian scientist would build his mechanical picture of the universe through a piecemeal approach, taking each individual element in order to produce a picture of the universe that would be purely quantitative. What is important for our purposes is that such an approach is rejected as irrelevant to the most central concerns of the philosopher of religion. The religious philosopher is concerned with meaning, with what R. Soloveitchik calls the "subjective aspect"—the ideas that lie behind the observed phenomena of the objective order. The philosopher of religion is not interested in the purely quantitative universe of the Newtonian scientist.

It was quantum physics, according to R. Soloveitchik, that necessitated bringing a subjective element into the picture. This was occasioned by the discovery of quantum phenomena that could not be accounted for by the old atomistic approach. The quantum scientist was forced to

5. William Kolbrener, "Towards a Genuine Jewish Philosophy: *Halakhic Mind*'s New Philosophy of Religion," reprinted in *Exploring the Thought of Rabbi Joseph B. Soloveitchik*, ed. Marc D. Angel (Hoboken, NJ, 1997), 179-206.

look beyond the objective information and take a holistic approach in order to understand this newly acquired recalcitrant data. R. Soloveitchik's "subjective aspect" was required to yield a conceptual scheme that would enable the understanding of the new "objective" data.

For R. Soloveitchik, the quantum scientist's interest in the holistic aspect of his universe—in the whole rather than just the parts—was essential if the method was to be of any use in the religious sphere. Thus, quantum physics becomes the savior of scientific method for the religious philosopher.

> As long as physics operated with a single atomistic approach, its method could not benefit the humanistic sciences, which can ill afford to ignore the subjective aspect. . . . However, as soon as the modern physicist had evolved a subjective "cosmos-whole" out of the objective summative universe, the humanist found his mentor. . . (*HMD*, 71).

Leaving aside the accuracy of R. Soloveitchik's account of modern science and the many other important aspects of this method that could detain us, I would like to focus purely on what appeared to be the most significant idea of all in my initial engagement with this method—that the approach being recommended here is a dualistic or two-way, rather than a one-way, approach. By R. Soloveitchik's own account:

> The understanding of both nature and spirit is dualistic, both mosaic and structural—*but (and this is of enormous importance) the mosaic and structural approaches are not two disparate methodological aspects which may be independently pursued: they form one organic whole* (*HMD*, 60, emphasis added).

With the terms "mosaic" and "structural" standing in here for "atomistic" and "holistic" respectively, it seems to me that this quotation is highly significant. If we are to carry the point through, while initially the idea of descriptive reconstruction suggested a one-way system of interpretation from the halakhic data to the concepts it yields, in fact, these conceptual underpinnings *themselves* are required to correctly understand the parts. If we simply use the parts to understand the whole, we are taking the rejected Newtonian atomistic approach. But if we ignore those parts, we are back to the sorts of "sympathetic fusions" with the mind of God that R. Soloveitchik cannot abide because they bypass any form of objective constraint. The appearance of this two-way approach—in which we not only construct the theory out of the halakhic parts but also use the theory to comprehend those parts and, indeed, at times to come to an entirely new understanding of them—seems to me to be the very essence of the approach that he is arguing for in *The Halakhic Mind*.

As I have argued elsewhere,[6] the method of descriptive reconstruction as I interpret it looks very much like the method of reflective equilibrium that has become a focus of philosophical attention since its use by John Rawls in *A Theory of Justice*.[7] The method of reflective equilibrium, which appears to be much the same as that termed the hermeneutic circle[8] by those working in a Continental idiom, has over recent decades become a popular method of forming ethical theories for justifying ethical practices. Rawls believes that in constructing a theory of justice, we ought to begin our deliberations from our settled convictions about justice at various degrees of generality—what Rawls terms our "considered judgments"—and "try to organize the basic ideas and principles implicit in these convictions into a coherent political conception of justice."[9] The process through which this is achieved is the taking of sets of moral principles, along with the background philosophical arguments for them, and seeing which best fit the considered judgments. Norman Daniels has termed this a "wide reflective equilibrium" that attempts "to produce coherence in an ordered triple of sets of beliefs held by a particular person, namely, (a) a set of considered moral judgments, (b) a set of moral principles, and (c) a set of relevant background theories."[10] But significantly for Rawls, these judgments are merely a provisional starting point. The idea behind reaching a reflective equilibrium is that once formed, the principles of the theory might actually force us to rethink some of our considered judgments and revise or even withdraw some of them.[11] What we have here, therefore, is a process that continually works both from the considered judgments to the theory and back again in order to adjust the two into a mutually justificatory system.

At this point, I ought to enter a couple of caveats. First, I am obviously not intending to make any sort of anachronistic historical claim—Rawls

6. The most detailed account can be found in my *Two Models of Jewish Philosophy: Justifying One's Practices* (Oxford, 2005), chapter 2. This paper contains further developments and clarifications of some of the themes discussed there.

7. John Rawls, *A Theory of Justice* (Oxford, 1973). Coincidentally (or not), much as R. Soloveitchik is seen as indebted to Kant and his Neo-Kantian successors, Rawls was seen as proffering a form of modern-day Kantianism in his political thought.

8. The term originates in the field of textual interpretation, describing the need for the same back and forth movement between part and whole that we have described, in that context between the individual parts of the text and the nature of the structural whole.

9. John Rawls, *Political Liberalism* (New York, 1993), 8. A more detailed account of the nature of these considered judgments can be found in Rawls' "Outline of a Decision Procedure for Ethics," *Philosophical Review* 60 (1951): 177-97 and in *A Theory of Justice,* 46-53.

10. Norman Daniels, "Wide Reflective Equilibrium and Theory Acceptance in Ethics," *The Journal of Philosophy* 76 (1979): 257.

11. Rawls uses both terms in *A Theory of Justice*, 20.

wrote far later than R. Soloveitchik. My concerns here are conceptual, and the method that R. Soloveitchik is using, conceptually speaking, appears to be very close to this Rawlsian method, such that we can profit from studying R. Soloveitchik's method in light of it. Second, however, and of greater conceptual import, while R. Soloveitchik speaks of "understanding" in his use of the method of descriptive reconstruction, Rawls speaks of "justification" as the aim of the method of reflective equilibrium. The former idea is used in the realm of interpretation, in the attempt to find the *meaning* of *miẓvot*, but is not, it could be argued, intended to justify them. Finding the meaning of the *miẓvot* is not a justificatory enterprise, whereas Rawlsian reflective equilibrium is just that, so it is wrong to speak of R. Soloveitichik utilizing the Rawlsian method.[12]

The possible significance of this distinction can be seen if we take note of what could be at stake were R. Soloveitchik indeed to apply the method of reflective equilibrium as a *justificatory* enterprise in the realm of Jewish philosophy. In that case, the idea would be that we do indeed create a conceptual underpinning for Judaism by descriptive reconstruction out of halakhic sources (which would be the equivalent of the Rawlsian considered judgments). But the implication of taking the two-way approach of reflective equilibrium is that at the same time, those very halakhic sources would be at the mercy of the philosophical theory that is discovered to best fit them. A particular philosophical position might force the withdrawal of a considered halakhic judgment. This leads to a fear of the potentially antinomian implications the method might have for one bound to the halakhic system, as was R. Soloveitchik.

In terms of the interpretation of R. Soloveitchik's work, this would be a perfect example of his using a philosophical method consonant with significant contemporary philosophical trends, thus yielding support, if it were needed, for his credentials as a serious philosopher and giving a boost to those who would give primacy to R. Soloveitchik's unapologetic commitment to philosophy. Moreover, it is an approach with potentially radical implications, which would further enhance his modernist credentials—or harm his traditionalist ones, depending on one's perspective.

It is here that the facts encroach on the thesis. As David Shatz pointed out to me, although certain quotes in *The Halakhic Mind* might support

12. I am extremely grateful for the insightful comments of the anonymous reviewer for *The Torah u-Madda Journal* on this piece, in which he pointed out this distinction, enabling me to state my position with greater care and clarity than in the original Hebrew version of this article. While I imagine that he might well still disagree with the views I express, our disagreements would now be of a substantive philosophical nature rather than a result of my inattention to the distinction that he correctly pointed out.

my thesis, in practice, it is not at all clear that R. Soloveitchik took this approach. When actually engaged in doing philosophy, it appears as if R. Soloveitchik did, in fact, take a one-way approach. The halakhic data was utilized for the formation of the conceptual underpinnings, rather than *vice versa*. R. Soloveitchik would use the Halakhah in order to form his Jewish philosophy, but the philosophy itself would not be used to revise the halakhic data. Philosophy might allow us to penetrate the meaning of the Halakhah, but is not meant to explain or justify it in a manner that might lead to its revision. As R. Soloveitchik tells us, he would "never say that the message I detected in the *miẓvah* explains the *miẓvah* . . . however, I am permitted to raise the question of what the *miẓvah means* to me" (emphasis added).[13]

As has been noted by a number of scholars, for all his philosophical originality, in the halakhic realm R. Soloveitchik was often very conservative. Even Walter Wurzburger, in the course of a piece that champions the Rav's modernity, notes,

> [I]n many areas, such as *hilkhot avelut*, the construction of *eruvin* in cities, [and] refusal to grant a *shetar mechirah* authorizing non-Jewish workers to operate Jewish factories or commercial establishments on Shabbat, the Rav has consistently issued rulings that surpass in stringency those of right-wing authorities.[14]

As several writers have since pointed out, stringent rulings are not necessarily an argument against one's modernism.[15] Our issue here, however, is not whether R. Soloveitchik's rulings themselves imply a modern or traditionalist approach to the Halakhah. Rather, the point on which all agree—that the end result of R. Soloveitchik's halakhic determinations is conservative—inevitably raises the question of whether he would really apply a philosophical method such as we have described, with its potentially antinomian consequences. The general question that is raised, then, by the abstract methodological issue is whether R. Soloveitchik is forced to stop short of the full application of the reflective equilibrium method—indeed, whether he uses it at

13. Rabbi Joseph B. Soloveitchik, *Out of the Whirlwind*, ed. David Shatz, Joel B. Wolowelsky, and Reuven Ziegler (Jersey City, NJ, 2003), 44. This is but one of many examples that might appear to limit the justificatory pretensions of his method.

14. Walter Wurzburger, "Rabbi Joseph B. Soloveitchik as *Posek* of Post-Modern Orthodoxy," in *Exploring the Thought of Rabbi Joseph B. Soloveitchik*, 4.

15. Ibid. See also David Shatz, "Rav Kook and Modern Orthodoxy," in *Engaging Modernity: Rabbinic Leaders and the Challenge of the Twentieth Century*, ed. Moshe Z. Sokol (Northvale, NJ, 1997), 101; and Moshe Sokol, "*Ger ve-Toshav Anokhi*: Modernity and Traditionalism in the Life and Thought of Rabbi Joseph B. Soloveitchik," in *Exploring the Thought of Rabbi Joseph B. Soloveitchik*, 125-143, esp. 129ff.

all—due to religious constraints. This would support the view that R. Soloveitchik's philosophical endeavors must always come a poor second to his Judaic commitments.

We cannot, in my view, simply ignore the method outlined in *The Halakhic Mind*. The entire thrust of the argument there seems to militate against any sort of one-way approach. Taking such an approach to the objective data would commit the sin of Newtonian atomism. But similarly, any direct approach to the conceptual realm is prey to the dangers of a purely subjective intuitionism that "finds the whole even before he has apprehended the components" (*HMD*, 61). It seems to me, therefore, as if the dualism of reflective equilibrium is essential to the argument of *The Halakhic Mind* if we are to avoid the exclusive choice between a purely quantitative universe and recondite mysticism. Moreover, it is of a piece with the just as radical epistemological pluralism with which R. Soloveitchik begins the book.[16]

Nonetheless, there does appear to be a distinction between R. Soloveitchik's project of interpretation and Rawls' project of justification. Thus, we will need to look at how R. Soloveitchik actually utilizes his method in order to investigate whether it can appropriately be dubbed a method of reflective equilibrium.

R. Soloveitchik's Analysis of Prayer

With my interpretation of the method before us, the only way to ascertain whether or not R. Soloveitchik actually used it is to look at the method in practice. To do full justice to this question would require the detailed study of many topics. Here we can but make a start by looking at R. Soloveitchik's philosophical treatment of prayer,[17] with specific reference to his thoughts on the petitional elements of the *Amidah* presented in the collection *Worship of the Heart*.[18] The purpose here is neither to be

16. I will be dealing with R. Soloveitchik's epistemological pluralism in an article entitled "Perspectivism and the Absolute: Rabbi Soloveitchik's Epistemological Pluralism," forthcoming in *Revue Internationale de Philosophie*.

17. In the original oral presentation of this paper, I focused on the well-known example of repentance, a discussion of which can still be found in *Two Models of Jewish Philosophy*. The discussion that followed led me to believe that prayer might be a more productive area for exploration. I am particularly grateful to Lawrence Kaplan and David Hartman for their contributions to that discussion, which led me to consider this topic. For a critical appreciation of the Rav's thought on prayer more generally, see David Hartman, *Love and Terror in the God Encounter: The Theological Legacy of Rabbi Joseph B. R. Soloveitchik* (Woodstock, VT, 2001), vol. 1, chapter 6.

18. Rabbi Joseph B. Soloveitchik, *Worship of the Heart*, ed. Shalom Carmy (Jersey City, NJ, 2003). It is worth noting that this volume is composed of manuscripts that

exhaustive nor critical, but simply to lay out the conception of prayer that R. Soloveitchik presents for the purpose of our methodological question.

As our starting point, we will take the following definition that R. Soloveitchik gives of prayer:

> Basically, prayer is a mode of expression or objectification of our inner experience, of a state of mind, of a subjective religious act, of the adventurous and bold attempt of self-transcendence on the part of the human being and of his incessant drive toward the infinite and eternal.[19]

The first thing to note is that R. Soloveitchik has made a definite conceptual choice here. To view prayer as essentially an "expression or objectification" of human experience is by no means a necessary conception of prayer. Yeshayahu Leibowitz, for example, would describe prayer as a form of pure worship that, given his understanding of a religious act, must be devoid of such psychological connotations to so qualify. Prayer consists almost entirely of the verbal performance.[20] Notwithstanding the rather radical nature of Leibowitz's stance, it is significant in this context for illustrating that R. Soloveitchik's definition does not exhaust the logical space of conceptions of prayer and therefore indicates a positive and significant choice. Moreover, R. Soloveitchik himself points out that this subjectivism with regard to prayer "is not unanimously asserted in the medieval classics."[21]

How, though, can we "reconstruct" R. Soloveitchik's arrival at this conception of prayer? First, we must refer to a distinction that comes up many times in R. Soloveitchik's analyses of particular commandments—the distinction between actional and experiential *miẓvot*. The former are *miẓvot* the fulfilment of which is exhausted in their actual physical performance (*ma'aseh ha-miẓvah*). R. Soloveitchik often uses the example of eating *maẓẓah* on the first night of Pesach as a commandment that is fulfilled

R. Soloveitchik wrote, but did not himself publish (with the exception of the chapter "Reflections on the *Amidah*"). The use of such material can be a vexed question for scholars. Nevertheless, while one must always give priority to published works, we cannot neglect the manuscript material penned by R. Soloveitchik himself that is now appearing. The volumes in the Meotzar HoRav series always note the provenance of the texts that they utilize and in this particular case, Shalom Carmy, the editor of *Worship of the Heart*, notes on page xxviii that R. Soloveitchik began to review for publication the essays from which I have quoted in this piece. In conversation, R. Carmy further said that the Rav had reviewed these opening essays with him a number of times.

19. "Prayer and the Media of Religious Experience," in *Worship of the Heart*, 3.

20. See Yeshayahu Leibowitz, "Of Prayer," in *Judaism, Human Values and the Jewish State*, ed., Eliezer Goldman (Cambridge, MA, 1992), 30-36.

21. "Intention (*Kavvanah*) in Reading *Shema* and in Prayer," in R. Soloveitchik, *Worship of the Heart*, 87-106, 94.

simply through action and does not express or require any inner subjective correlate (other than possibly the intention to fulfil one's duty).[22] In contrast, experiential commandments[23] are a type of commandment that can only be truly fulfilled if the concrete actions that the Halakhah has prescribed are accompanied by a certain mental state, which is itself the *sine qua non* for the genuine fulfillment of the commandment (*kiyyum ha-miẓvah*). As R. Soloveitchik puts it,

> *Ma'aseh ha-miẓvah* denotes a religious technique, a series of concrete media through which the execution of the *miẓvah* is made possible, while *kiyyum ha-miẓvah* is related to the total effect, to the achievement itself, to the structural wholeness of the norm realization.[24]

Examples of such *miẓvot* would include those of mourning or rejoicing on a festival and, returning to our central topic, prayer, as should be obvious from the initial definition, with its emphasis on subjectivity. Rather than simply asserting this, however, following his methodological stipulations, R. Soloveitchik makes this conceptual categorization based on halakhic sources.

The central source here is the fifth positive commandment of Maimonides' *Sefer ha-Miẓvot*, which R. Soloveitchik presents as follows:

> Commandment 5 is that He has commanded us that we are to serve Him. This commandment is repeated twice in His words, "And ye shall serve the Lord your God" and "Him shalt thou serve." Now although this commandment also is of the class of general precepts . . . yet there is a specific duty: the commandment pertaining to prayer. In the words of the Sifre: "And to serve Him [with all your heart]"—this refers to prayer.[25]

22. This depends upon the view one takes on the dispute as to whether or not *miẓvot ẓerikhot kavvanah*; see *Berakhot* 13a.

23. This category itself can be divided into two subgroups, since there are certain experiential commandments that have no prescribed external form, such as the commandment to fear God. See "Prayer, Petition and Crisis," in R. Soloveitchik, *Worship of the Heart*, 13-36, esp. 15-19. A list of further experiential commandments that *are* externalized can be found in Reuven Ziegler, *Majesty and Humility: The Thought of Rabbi Joseph B. Soloveitchik* (Jerusalem, 2012), 86-87.

24. R. Soloveitchik, *Worship of the Heart*, 17-18. The matter is actually rather more complicated than this brief discussion makes it appear. For while the Rav does state that in the example of mourning, one who performs the external rituals without the internal corollary "has failed to fulfil the precept of mourning" (ibid., 17), in *Family Redeemed*, he notes that while it is not the ideal, in the case of love and fear of one's parents, one can fulfill one's obligation through external actions alone. See *Family Redeemed: Essays on Family Relationships*, ed. David Shatz and Joel B. Wolowelsky (Jersey City, NJ, 2000), 126-30. For an excellent analysis of the complex relationship between *kiyyum* and *ma'aseh* in R. Soloveitchik's thought, see Alex Sztuden "Grief and Joy in the Writings of Rabbi Soloveitchik, Part II," *Tradition* 43:4 (2010): 37-50.

25. Moses Maimonides, *Sefer ha-Miẓvot*, Positive Commandment 5, as quoted in "Prayer, Petition and Crisis," 19.

According to R. Soloveitchik, the general precept of *avodah she-ba-lev* had previously been "sentenced to temporary isolation,"[26] and its resurrection had been a central component of the Maimonidean system. Moreover, two of Maimonides' greatest innovations in R. Soloveitchik's mind were this subsumption of prayer under the category of *avodah she-ba-lev* and, following from this, the classification of prayer as a biblical commandment. As R. Soloveitchik goes on to say,

> This great halakhic achievement and philosophical innovation has become a basic principle of our worldview, both in halakhic thought and in the religious experience of our people.[27]

R. Soloveitchik uses the duality that Maimonides presents of the general injunction coupled with its specific expression in prayer as proof of the experiential nature of prayer. Prayer is simply the concretized expression of the more general requirement of *avodah she-ba-lev*, which is clearly addressed to our emotional relationship with God. This is a perfect example of the threefold process of objectification of the religious consciousness that R. Soloveitchik describes in *The Halakhic Mind*, where mention of prayer is conspicuous.

> We may analyze the triad in the God-man relation: first, the subjective, private finitude-infinity tension; second, the objective normative outlook; and third, the full, concrete realization in external and psychophysical acts. A subjective God-man relation implies various contradictory states. These are wrath and love, remoteness and immanence. . . . This subjective attitude in man is in turn reflected either in the form of logico-cognitive judgments or in ethico-religious norms, e.g., God exists; He is omniscient. . . . You shall love God; you shall worship Him. . . . These judgments and norms lying in the immediate proximity of the psychophysical threshold tend to externalize themselves. They find their concrete expression in articles of faith, in prayers. . . . (*HMD*, 69)

As an objectification of the subjective relationship embodied in the general injunction of *avodah she-ba-lev*, the experiential nature of prayer is evident. It is therefore essential that any act of prayer have the concomitant subjective correlate. This, of course, is further emphasized in the halakhic literature in its insistence on the centrality of having the correct intention or *kavvanah* in prayer, with Maimonides again quoted as one amongst many who insist that one who prays without *kavvanah* must pray again.[28]

26. "Reflections on the *Amidah*," in *Worship of the Heart*, 145.
27. Ibid., 146
28. Maimonides, *Mishneh Torah, Hilkhot Tefillah* 4:15.

At this juncture, we have seen only a one-way influence, from the Maimonidean *halakhah* to the conceptual understanding of prayer. But having established that the effective performance of the *miẓvah* of prayer is conditional upon a certain subjective state, R. Soloveitchik turns to the issue of what state we are supposed to be expressing. What is the nature of the inner experience that the performance is supposed to be objectifying?

First, R. Soloveitchik analyses the idea of *avodah she-ba-lev* as described by Maimonides in *The Guide of the Perplexed* (3: 51). According to R. Soloveitchik, there are two levels evident in the Maimonidean description. The first, which he terms psychological, centers on the exclusivity of its focus, what R. Soloveitchik terms its "mono-ideism, the giving of attention to one idea exclusively."[29] The second strand he terms mystical and is simply the idea that "*avodah she-ba-lev* is identical with communion, with closeness to God."[30] Having defined the general injunction of *avodah she-ba-lev*, the internal *kavvanah* that is essential to its fulfillment through prayer is defined by Maimonides as containing precisely these two elements in the *Mishneh Torah*:

> Now, what is *kavvanah*? One must free his heart from all other thoughts and regard himself as standing in the presence of God.[31]

At this point R. Soloveitchik is still drawing his subjectivism regarding prayer primarily from Maimonidean Halakhah and defining the structure of the *kavvanah* required within prayer in the same manner. But while the structural nature of that *kavvanah* is now clear, R. Soloveitchik goes on to define the content of the subjective relationship that is at the heart of this conception by turning to the connection between prayer and crisis *(ẓarah*), culminating in his famous analysis of the dispute between Maimonides and Nahmanides over the status of the *miẓvah* of prayer. For while Maimonides believed the fundamental obligation to pray to be of biblical origin (*de-Oraita*), the majority of halakhic authorities—most notably and in direct criticism of Maimonides' view, Nahmanides—held it to be rabbinic in origin (*de-Rabbanan*).

R. Soloveitchik begins by establishing the link between prayer and *ẓarah* through an analysis of biblical and rabbinic sources, as well as the standard format of the *Amidah* itself. From King Solomon through both Maimonides and Nahmanides, the link between prayer and distress is a

29. "Prayer Petition and Crisis," 24.
30. Ibid.
31. Maimonides, *Mishneh Torah, Hilkhot Tefillah* 4:16, as quoted in R. Soloveitchik, "Petition, Prayer, and Crisis," 24.

constant theme according to R. Soloveitchik. Thus, while Nahmanides disagrees with Maimonides on the biblical nature of our daily obligation to pray, he does hold that there is a biblical obligation to pray at times of distress, according to R. Soloveitchik. Indeed, Maimonides precedes Nahmanides in making this link in *Hilkhot Ta'anit* 1:1, in which he writes of the commandment "to cry out and blow the trumpets… whenever trouble befalls the community."

Most significant here, however, is R. Soloveitchik's analysis of the true nature of the disagreement between Nahmanides and Maimonides on the status of prayer. Having stated that both assert the relationship of dependence between our biblical obligation and *ẓarah*, R. Soloveitchik believes that their true disagreement is located in their differing understandings of *ẓarah* and the human condition.

R. Soloveitchik distinguishes between two "distinct and incommensurate"[32] forms of *ẓarah*. There is, on the one hand, surface *ẓarah*, something that strikes a person from without and that causes him distress in its most obvious objective forms, the sort of pain and suffering that occurs at particular moments in time as a result of specific external factors. As R. Soloveitchik puts it,

> Many a time, a crisis develops independently of man, brought about in the main by environmental forces. . . . This crisis, this *ẓarah*, strikes man suddenly, uninvited by the people who succumb to its crushing force. Their plight is obvious, exposed to the public eye, its apprehension as natural as the perception of lightning or thunder. . . . Under the category of surface *ẓarah* we may classify all forms of conventional suffering: illness, famine, war, poverty. . . .[33]

Such distress, which on the whole R. Soloveitchik believes to be communal in nature, is dealt with by the Torah through communal prayer. According to R. Soloveitchik's interpretation, it is this surface crisis that occasions our biblical obligation to pray for Nahmanides. While our daily obligation to pray was only rabbinic, a person is under a biblical obligation to pray when suffering from external crises.

But there is a further form of distress, which R. Soloveitchik terms "depth crisis." This is not a temporary response to external events, but rather an existential condition. This sort of crisis, R. Soloveitchik tells us,

> is encountered in the strangeness of human destiny, of which man is not aware at all unless he is willing to acquaint himself with it . . . which stems from the deepest insight of man—as a great spiritual personality, endowed

32. "Prayer, Petition and Crisis," 30.
33. Ibid.

> with Divine wisdom and vision—into his own reality, fate, and destiny. Man is not thrown into this kind of crisis but finds it within himself.[34]

Most significantly of all, for R. Soloveitchik, Judaism, he writes, "wants man to discover the tragic element of his existence,"[35] which is not an accident of circumstance but rather a universal truth about the human condition.

This in turn accounts for the centrality of petitional prayer in Judaism. As R. Soloveitchik's pithy summary has it, "Man is always in need because he is always in crisis and distress."[36] Petition is the expression of this need. The depth crisis that is the human condition yields feelings of dependence that translate into our crying out in need. The *Amidah* therefore is centrally concerned with petition, which is the subject of its lengthiest section. Our human crisis can only be alleviated by petitional prayer that allows for "the metaphysical formation of a fellowship consisting of God and man."[37] Returning to our initial definition, then, we see through an analysis of various canonical texts that prayer is an expression of this experience of crisis and dependence.[38]

All of the above ultimately explains R. Soloveitchik's decision to side with Maimonides over Nahmanides on the halakhic status of prayer. First, according to R. Soloveitchik, it is presumably because the human condition is tragic and conflicted in this manner that the commandment to pray on a daily basis as an expression of this inner experience has to be biblical. We are biblically obligated to pray at a time of crisis, and as humans, crisis is at the root of our very being. The fact that we are in a constant existential crisis therefore means that we are likewise under a constant biblical obligation to pray, an obligation that is actualized in daily prayer, and not simply at those moments when we are responding to a crisis that external conditions impose upon us. Second, given that this condition leads to the centrality of petition, there is the question of how one can have the audacity to trouble God, the King of Kings, with our

34. Ibid., 32.
35. Ibid.
36.Ibid., 35.
37. Ibid.
38. It is important to note that this does not mean that each person who prays has discovered such existential levels of crisis. R. Soloveitchik's understanding here surely does not describe the experience of most Jews. He seems to admit this when he writes that the awareness of distress needs to be concretized for "the average reader, who lacks philosophical training" ("The Human Condition of Prayer," *Worship of the Heart*, 37). Presumably, prayer is supposed to elicit such awareness through reflection on the petitional elements that present the sense of dependence at an exoteric level for those as yet unaware of the depth-crisis.

petty human requests. For R. Soloveitchik, it appears, only the full force of a biblical obligation could justify approaching God in this way. The fact that our forefathers prayed—as well as the commandment of sacrifice, which legitimates approaching God—gives us biblical precedent for such behavior. This puts the finishing touch on our justification of the definition with which we began. For this constitutes permission to engage in the absurdity that is the yearning to transcend our finitude and approach the infinite, yearning reflected in the prayers of praise that precede our petitions. It permits us to express the love of God that is also a part of this paradoxical religious consciousness.

Applying the Method?

What exactly is going on in this example? One might say that this is a perfect illustration of the one-way approach. We begin with the halakhic data and find that it yields a certain picture of prayer—as an experiential *miẓvah*, closely related to the concept of *ẓarah* and therefore fundamentally about petition and dependence. All of this allows us a more integrated understanding of the original data, not least the dispute between Maimonides and Nahmanides. One might argue that the original data do not at any point seem to be up for revision, and thus the process remains a one-way process more concerned with meaning than with justification. This, together with the many other cases for which a similar methodological description could be given, leads directly to the critique of my interpretation.

More to the point, R. Soloveitchik appears to advocate a similar one-way approach in his second order discussions of the nature of the halakhic process, most significantly in parts of *Mah Dodekh mi-Dod* [39] and *U-Vikkashtem mi-Sham*, where Halakhah, it is said, "cannot free itself from its subordination to a system of *a priori* postulates."[40] A number of scholars have noted that for all his emphasis on the creativity of the Halakhic Man, creativity is confined to his "laboratory"—the *Beit Midrash*—and does not translate into *halakhah le-maʿaseh*. As Lawrence Kaplan writes, "R. Soloveitchik unnecessarily diminishes the powerful, free, creative spirit of the halakhist . . . if he takes halakhic texts, cases,

39. Joseph B. Soloveitchik, "*Mah Dodekh mi-Dod*," in *Be-sod ha-Yaḥid ve-ha-Yaḥad*, ed. Pinchas H. Peli (Jerusalem, 1976), 189-254.

40. Joseph B. Soloveitchik, "*U-Vikkashtem mi-Sham*" in *Ish ha-Halakhah: Galuy ve-Nistar* (Jerusalem, 1979), 205. In English, see *And From There You Shall Seek*, trans. Naomi Goldblum (Jersey City, NJ, 2008), 108.

rulings, as fixed postulates rather than simply as data posing the problems which the halakhist answers."[41]

Indeed, while there is some controversy surrounding the precise relationship between the Neo-Orthodoxy of R. Samson Raphael Hirsch and the Modern Orthodoxy of R. Soloveitchik,[42] in this instance, rather than following the method of reflective equilibrium, R. Soloveitchik's approach seems closer, if not identical, to that described by Hirsch in his introduction to *Horeb*:

> Wherever a personal opinion either wholly or in part is likely to conflict with a legal dictum, the opinion must give way to the dictum, not *vice versa*; for the law as transmitted by tradition can alone set the standard for an idea about the law, not the reverse; the idea cannot dominate the law to the extent of altering it, for the very fact that the idea about a law conflicted with the content of the law it would show itself to be wholly or partly mistaken. . . .[43]

Thus, while R. Soloveitchik's more liberal interpreters might prefer to emphasize the methodological discussion that led us to a two-way method, with its potentially radical implications, those of a more conservative disposition can apparently emphasize R. Soloveitchik's actual practice and its seeming independence from these methodological strictures. Although it may be that no revision is called for in this case, if we are to argue that his method is that of reflective equilibrium, we still have to face the problem of his apparently principled objection to revision *ab initio* in the meta-halakhic statements above. Would we not, therefore, be better off seeing his method as one of attributing meaning to the *miẓvot*, rather than as one that attempts to justify them via the method of reflective equilibrium? On further consideration, there may actually be rather less to this apparent distinction than meets the eye, but in order to understand this, we need to consider again precisely what R. Soloveitchik does and the nature of the method of reflective equilibrium.

Initially, we presented R. Soloveitchik's philosophy of prayer as if it were a straightforward process of drawing that philosophy from the halakhic texts. If, however, we look again at our case study, the

41. Lawrence Kaplan, "Rabbi Joseph B. Soloveitchik's Philosophy of Halakhah," *The Jewish Law Annual* 7 (1988): 180. See also Avi Sagi, "Rav Soloveitchik and Professor Leibowitz as Theoreticians of the Halakhah" (Hebrew), *Daat* 29:1 (1992): 131-48, esp. 133-4.

42. See Chaim Waxman, "Dilemmas of Modern Orthodoxy: Sociological and Philosophical," *Judaism* 42 (1993): 59-70.

43. Samson Raphael Hirsch, *Horeb*, trans. I. Grunfeld (London, 1997), clix.

process turns out to be a little more complex. First, we can distinguish between the actual practical laws concerning prayer and certain higher-level principles that govern the halakhic process, which Joel Roth has termed "systemic principles."[44] One of these fundamental systemic principles is the existence of the distinction between those laws that are *de-Oraita* and those that are *de-Rabbanan*. Thus, in our case study, in which R. Soloveitchik decides to follow Maimonides in the dispute over the status of the *miẓvah* of prayer, he is making a decision at the level of principle, rather than at the level of what we might have taken to be the considered judgments that are not up for revision—the practical *halakhah*.

But this principled decision, according to which the *miẓvah* is *de-Oraita*, does have practical halakhic effects. To take the simplest of examples, if one is in doubt as to whether or not he has prayed during the day, if one takes the Maimonidean view, one would need to pray, according to the further systemic principle that any doubtful case that arises concerning a biblical law must be treated stringently (*safek de-Oraita le-ḥumra)*. If the obligation is simply rabbinic, then, as the Talmud itself states (*Berakhot* 21a), one ought not to do so, since any doubtful case that arises concerning a rabbinic law should be treated leniently (*safek de-rabbanan le-kula*). This in turn means that taking the Maimonidean view has further ramifications for how one understands the statement of the Talmud that appears to contradict him. According to R. Yosef Karo, in order to maintain consistency with the Talmudic statement, Maimonides must believe that when the Talmud states that one is not required to pray in this case of doubt, it must be speaking of a case in which one had already prayed once, thereby discharging the biblical obligation. The doubt of which the Talmud is speaking must relate to whether or not one had prayed one of the further *rabbinic* prayers of that day. Maimonides must maintain that the Talmud presumes that one has already fulfilled the biblical obligation, in which case even Maimonides would agree that one ought not pray again, since one would now only be in doubt regarding a rabbinic prayer.[45]

44. See Joel Roth, *The Halakhic Process* (New York, 1986).

45. See R. Yosef Karo, *Kesef Mishneh* on *Mishneh Torah, Hilkhot Tefillah* 1:1. One could, of course, take the simpler alternative and say that Maimonides simply rejected that particular talmudic opinion. See also R. Teumim, *Peri Megadim, Petiḥah le-Hilkhot Tefillah* to *Shulḥan Arukh, Oraḥ Ḥayyim* 89, for a useful summary of a number of halakhic issues raised by the *de-Oraita/de-Rabbanan* dispute.

Thus, what we have at this stage is a decision taken at the level of systemic principles that has practical ramifications when we return to the micro level of practical Halakhah and which also informs our interpretation of talmudic passages. This is hardly out of the ordinary, being the sort of thing that goes on in traditional talmudic study on a daily basis. One might argue that here we do have something that comes closer to a two-way process, at least inasmuch as we have general principles having effects on practical judgments.[46] In this case, however, everything is taking place within the halakhic system. Halakhic decisions at the systemic level filter down to practical and interpretive results in the system. The halakhic system itself is still the sole basis for all of the ideas presented.

But from this starting point, we can go on to pressurize further the straightforward one-way view of R. Soloveitchik's process by tracing the precise nature of his argument for accepting the *principle*—that is, the *de-Oraita* status of prayer. In terms of the study we have set out before us, the primary reason seems to be the interpretation that R. Soloveitchik gives to the human condition.

As we have noted, it is R. Soloveitchik's description of the universal depth crisis that can be viewed as leading him to side with Maimonides for two reasons. First, the fact that we are always in such crisis, whether we are conscious of this or not, means that the necessary connection between prayer and *ẓarah* is always present. As such, our obligation to pray is not simply occasioned by external crisis, and therefore must be continually present as a biblical commandment. Moreover, it is because of this crisis, which in turn leads to utter helplessness and dependence, that we need the biblical permission in order to redeem ourselves from this pathetic state and enable us to take the radical step of petitioning God. As such, the decision to side with Maimonides appears to be occasioned by R. Soloveitchik's philosophical stance regarding human nature, stated explicitly in his discussion there:

> Human existence exhausts itself in the experience of crisis, in the continual discovering of oneself in distress, in the steady awareness of coming closer and closer to the brink of utter despair, the paradoxical concept of being born out of nothingness and running down to nothingness. This is part of the ontic consciousness of man.[47]

46. Indeed, it seems to me that whether consciously or not, a two-way process is always and inevitably the method of all human theorizing, but this is not the place to elaborate further on this point.
47. "Prayer, Petition and Crisis," 32.

Regardless of the apparent connection that R. Soloveitchik finds in halakhic texts between prayer and crisis, what forces him into this interpretation? Why not settle for the idea of external crisis occasioning a biblical obligation to pray? The reason for this, of course, is that the theme of the conflicted and paradoxical nature of the human condition runs through R. Soloveitchik's entire corpus, in particular when discussing the condition of the man of faith. To quote but two extracts from his best known works:

> The role of the man of faith, whose religious experience is fraught with inner conflicts and incongruities, who oscillates between ecstasy in God's companionship and despair when he feels torn asunder by the heightened contrast between self-appreciation and abnegation, has been a difficult one since the time of Abraham and Moses. . . . The Biblical knights of faith lived heroically with this very tragic and paradoxical experience.[48]

> That religious consciousness in man's experience which is most profound and most elevated, which penetrates to the very depths and ascends to the very heights, is not that simple and comfortable. On the contrary, it is exceptionally complex, rigorous, and tortuous. Where you find its complexity, there you find its greatness. The religious experience, from beginning to end, is antinomic and antithetic.[49]

This suddenly casts a rather different light on the process through which R. Soloveitchik arrives at his view of prayer. We now see that while it is true that the philosophical picture of prayer is built up out of the texts, at the same time, there is a primary philosophical stance that lies deep in the background, and that itself pushes the principled decision on the *de-Oraita* status of prayer. We have here a philosophical background that explains the choice between Maimonides and Nahmanides, which in turn goes on to play itself out in the realm of practical Halakhah. Moreover, this philosophical background of underlying existential crisis that, as quoted above, brings us to "the brink of utter despair" has at least one direct halakhic consequence, as noted by David Hartman: R. Soloveitchik's decision to forbid the voluntary offering of prayer, *tefillat nedavah*:[50]

> Were it not that scriptural passages speak of prayer, we would have no right to pray. For that reason, one should not add to the standard format of prayer. . . . No Jew has the right to add to the three prayers ordained by the

48. Joseph B. Soloveitchik, *The Lonely Man of Faith* (New York, 1992), 2.
49. Joseph B. Soloveitchik, *Halakhic Man*, trans. Lawrence Kaplan (Philadelphia, 1983), 141, endnote 4.
50. Hartman, *Love and Terror in the God Encounter*, 188-9.

> sages of Israel; we have no license to compose new prayers. . . . We today are no longer competent in the articulation of elective prayer (*nedavah*); hence we do not have such prayers.[51]

This is all the more striking given the fact that Maimonides codifies the permissibility of *tefillat nedavah* in *Hilkhot Tefillah* (1:9)[52]—because, of course, Maimonides forms a central pillar of R. Soloveitchik's data set.

There is admittedly a tension here. On the one hand, R. Soloveitchik writes that we are "no longer competent" to articulate such prayers, echoing previous halakhic concerns regarding *tefillat nedavah* predicated on our inability to have the proper *kavvanah* or to introduce something original into our prayers.[53] All of this implies that once upon a time, humanity did have such a capacity. Yet, on the other hand, R. Soloveitchik's rejection of *tefillat nedavah* appears to run deeper than this, given that the underlying point is that our ontic consciousness renders us unworthy in principle to add such prayers.[54]

Leaving aside this tension, however, the question that now arises is the extent to which this ought to be characterized as the justificatory enterprise of reflective equilibrium or the interpretive enterprise of finding meanings for our practices. Despite the possible objections that we have rehearsed, it nonetheless seems to me that R. Soloveitchik's method is indeed that of wide reflective equilibrium—the mutually supportive set of considered moral judgments, moral principles, and background theories, even though R. Soloveitchik might not always explicitly distinguish each level. We have here a philosophical background theory that takes the form of a general conceptual approach to the human condition as essentially conflict-ridden and existentially lonely, a theme that runs through R. Soloveitchik's writing. This ultimately leads R. Soloveitchik to a certain choice of principle—that prayer is *de-Oraita*—in the manner

51. "Reflections on the *Amidah*," 151-2.

52. This rather suggests that R. Soloveitchik's interpretation of the Maimonidean texts tells us more about R. Soloveitchik's philosophy than it does about what was going through Maimonides' mind at the time. The same point has been made regarding his interpretation of Nahmanides as believing that the obligation to pray at a time of crisis is *de-Oraita*. See Ehud Benor, *Worship of the Heart* (New York, 1995), 85.

53. See, for example, R. Yeḥiel Mikhel Epstein, *Arukh Ha-Shulḥan* 107:12.

54. Such tensions run through R. Soloveitchik's account of prayer. For example, on the one hand, as we have seen, he believes that only biblical precedent can justify our having the audacity to approach God with our petty needs—we need a *mattir* to overcome our unworthiness before God. Yet, on the other hand, petitionary prayer is a basic need given the human ontological condition, which would appear to obviate the need for such a *mattir*. In this connection, Reuven Ziegler cites R. Aharon Lichtenstein's observation that R. Soloveitchik de-emphasized the notion of the *mattir* in his later thought. See Ziegler, *Majesty and Humility: The Thought of Rabbi Joseph B. Soloveitchik*, 227.

that we have described. These are now the theory and the principle that in R. Soloveitchik's eyes "best fit" the considered judgments of the Halakhah. But at the same time, these theories do induce a level of "revision" of the Halakhah, whether in terms of the trickle-down effect of the decision on the *de-Oraita* status of prayer or in more directly affecting the issue of *tefillat nedavah*. We see, therefore, that while considered halakhic judgments are used in order to build up a theory of prayer, the theories and principles that best fit them in R. Soloveitchik's eyes go on to affect our interpretation of the halakhic data, such that ultimately there does seem to be a philosophical commitment affecting the manner in which the halakhic material is utilized.

However, the key question is whether or not the idea that R. Soloveitchik's theory and principle "best fit" the halakhic data is equivalent to saying that they justify it. This brings us to a more substantive philosophical question regarding the nature of justification that is best articulated by considering again the original objection—that R. Soloveitchik *cannot* be using the method of reflective equilibrium given his treatment of halakhic postulates as beyond revision.

There does remain a kernel of truth in the objection. In our case, we have a philosophically informed decision taken at the systemic level over the status of our obligation to pray, a decision that has practical halakhic ramifications, although only inasmuch as it yields specific decisions and interpretations from among the various halakhic options. There is a level of pluralism within the halakhic realm widely conceived, such that all these choices remain within it. And thus, contra Daniels, who speaks of "drastic theory-based revision"[55] as characteristic of the method of wide reflective equilibrium, it is not at all clear that the reflective equilibrium approach would lead to anything particularly radical in *any* sphere, whether halakhic or not. For example, in the sphere of justice or morality, while a principle that has been formed on account of theories and considered judgments might well cause us to revise some of those judgments, one would hope that they would not lead us to decide that, for example, the wanton torture of children is a moral obligation. If they did, then we would probably reject the theories or principles that led us there and start again. Similarly, just because R. Soloveitchik is "restricted" by the halakhic data, it does not mean that he fails to utilize the method of reflective equilibrium. Using the method simply may not *require* withdrawing "absolute

55. Daniels, "Wide Reflective Equilibrium and Theory Acceptance," 266.

halakhic postulates." In utilizing a particular set of considered judgments, one is "constrained" regarding the types of theories and principles that one is likely to accept, given that they must be in equilibrium with the judgments as much as the judgments are with them. Which of the two will give way when there is a contradiction will always be an interpretive question, as indeed will the question of what constitutes a revision that is "too radical."

Thus, the kernel of truth in the objection that R. Soloveitchik does not apply a justificatory two-way method is that, indeed, R. Soloveitchik would balk at any radical antinomian consequences of his philosophical method. But the key point here is that it is a mistake to think that reflective equilibrium would lead to any such conclusions. Indeed, one of the central criticisms of the method of reflective equilibrium when used as a method of justification in moral philosophy is that it is a highly conservative method; it begins with what we already believe, and is thus likely at best simply "to make people better aware of the implications of views which they already hold."[56] It merely establishes a set of theories and principles that "best fit" the data with which one begins. The real question, it appears to me, is not whether R. Soloveitchik's method is that of reflective equilibrium, but rather whether the method of reflective equilibrium really does yield something that we can call a justification,

My point here is that while R. Soloveitchik and Rawls do indeed use the same method, they may well have different views of what it produces. Rawls appears to speak the language of justification, while his critics believe he at best is entitled to the language of coherence, or perhaps the language of description. R. Soloveitchik, in contrast, uses the language of description and interpretation, and in so doing he finds theories that "indicate parallel tendencies in both the subjective and objective orders" (HM, 96), rather than theories that "justify" the objective order. But these theories are not simply arbitrary subjective parallels to the objective Halakhah; they are the theories that in his mind "best fit" his data. Moreover, they enable him to appropriate his practice in a meaningful way and they affect the manner in which he treats the original data, as we have noted.

This type of coherent balance between all of these elements might be all the discursive justification that we can hope for. The method of reflective equilibrium simply requires that R. Soloveitchik's philosophical standpoint inform the reading of the texts as much as those texts inform

56. Joseph Raz, "The Claims of Reflective Equilibrium," *Inquiry* 25 (1982): 311.

the philosophy, allowing him to plot a particular path within the halakhic tradition.[57] There is little doubt that this is indeed what is going on. The fact that this does not result in thinking that is entirely "outside of the box" is of the very essence of this method. That, in the eyes of those who criticize halakhic conservatism, is a problem for the method, but for R. Soloveitchik, it may be its saving grace. Whether or not this yields a full "justification" can certainly be questioned, but just because Rawls might overegg the pudding with his claims to have justified a practice in a manner that R. Soloveitchik avoids does not mean that they are not using the same method.

The method of reflective equilibrium would always view the Halakhah—widely conceived to include the various opinions between which R. Soloveitchik can legitimately choose—as a factor informing or mutually adjusting in accord with one's philosophical views. The delicate interplay between all the various influences in R. Soloveitchik's thought would seem to render impossible any attempt to reconstruct the precise strands of his thinking in such a way as to trace direct and independent lines of thought that could be seen as exclusively philosophical or exclusively halakhic.[58] It is rather the balance between these influences that leads to the particular interpretative system that R. Soloveitchik produces in this field and others. The ultimate provenance of a view is impossible to second guess, but it is unlikely to have been formed in so simplistic a manner as the one-way process would suggest.

Furthermore, this gives the lie to the claim that R. Soloveitchik's philosophical ideas float quite as freely above Halakhah as some seem to think. David Hartman, for example, goes so far as to conclude that the picture of prayer that we have presented is a product of R. Soloveitchik's philosophy alone, rather than a product of any halakhic reconstruction:

> When he is reflecting on the "bold adventure" of standing in the presence of God in prayer, R. Soloveitchik allows his God consciousness to be informed by sources independent of the Judaic halakhic tradition. . . . God consciousness, when not filtered and controlled by the normative

57. It is worth noting that despite his general conservatism, in the realm of prayer, the Rav appears to have followed many minority traditions, as evidenced by the lengthy *Hanhagos HaRav* sections in the Rosh Hashanah and Yom Kippur editions of *Machzor Mesoras HaRav*, ed. Arnold Lustiger (New York, 2006).

58. Regarding this point, it turns out that David Shatz and I agree on this substantive issue. See his "On a Seeming Disconnect Between Halakhah and Theology," in *Mishpetei Shalom: A Jubilee Volume in Honor of Rabbi Saul (Shalom) Berman*, ed. Yamin Levy (Jersey City, NJ, 2010), 447-48.

> halakhic tradition, explodes into existential antinomies and sharp dialectical movements.[59]

While I would not dispute the very obvious philosophical influences here—in part, their emphasis has been the aim of this essay—the point that I would make contra Hartman is that this God consciousness is constantly being filtered by the halakhic tradition. After all, we have the *two-way* process of reflective equilibrium at work here. The philosophical theories float no freer of the halakhic practices than do the practices of the theories.[60]

It seems, then, that we can happily say that we do not have here a simple process of reconstruction from halakhic texts. What we find instead is a fit between background theories, principles, and data that has been arrived at by the mutual adjustment of the three. That is precisely why these same texts can be and have been used to derive very different philosophies of prayer. There is not a single philosophy that falls fully formed off a page of Talmud or the *Mishneh Torah*. Indeed, one could ask how a one-way approach would allow R. Soloveitchik to make the significant choices at varying degrees of generality within the tradition that he does, for surely that would require certain criteria that inform those choices. When one thinks about it critically, the very idea of a one-way process of interpretation begins to look like an oversimplified abstraction that cannot possibly be of any use.[61]

Thus, it is indeed true that the halakhic data, widely conceived so as to include more than just majority views that have become normative practice, is never withdrawn. But if the method of reflective equilibrium is one in which theories can force us to reconsider our interpretation of certain considered judgments rather than forcing a total and radical withdrawal of them, it seems to me that there is little doubt that R. Soloveitchik's method goes through this process. Moreover, it often does

59. Hartman, *Love and Terror in the God Encounter*, 202.

60. However, it is worth mentioning here Ya'akov Blidstein's review of the collection of R. Soloveitchik's writings titled *Family Redeemed: Essays on Family Relationships*, ed. David Shatz and Joel B. Wolowelsky (New York, 2000). Blidstein notes that for a number of its themes, the "link with halakhic traditions is also problematic." See Ya'akov Blidstein, "All You Need is Love," review essay at www.haaretzdaily.com (December 17, 2002). It may well be then that there are cases for which Hartman's statement is true.

61. In support of my argument more generally, we find clear interplay between Halakhah and philosophy in certain decisions included in the collection of R. Soloveitchik's letters found in *Community, Covenant, and Commitment*, ed. Nathaniel Helfgot (Jersey City, NJ, 2005). This is noted explicitly in Gerald J. Blidstein, "Rabbi Joseph B. Soloveitchik's Letters on Public Affairs," *The Torah u-Madda Journal* 15 (2008-09): 1-23.

so in relatively radical ways that allow for the minimizing or rejection of highly traditional modes of thought found in traditional texts, and this may occasionally have certain practical effects, whether in his treatment of prayer or elsewhere. The method of reflective equilibrium by its very nature may not allow for radical thinking "outside of the box," but the fact that the particular box that R. Soloveitchik is dealing with is Halakhah does not mean that he is not fully utilizing that method.

Where does this leave us with respect to the interpretation of R. Soloveitchik's thought? Initially, the impression was that R. Soloveitchik's philosophical method might create the impression of a freethinking philosopher, especially given the potentially antinomian consequences of the theory. Those with an interest in portraying R. Soloveitchik in a certain light might be attracted to such a picture. But here the facts got in the way of a good thesis, since his commitment to fundamental halakhic postulates and the fact that he confines himself to the halakhic tradition seem to suggest a limit on such philosophical freedom and thus almost to a rejection of the method altogether. This, of course, would be an attractive picture for those interested in portraying R. Soloveitchik in the opposite light. In fact, however, it seems to me that the method is used, just without the antinomian consequences. The point is that the method itself need not have such consequences, for to a large extent, the limits on R. Soloveitchik's philosophical "freedom" are built into the philosophical method of reflective equilibrium from the start. All of which means that the brakes that R. Soloveitchik apparently puts on the application of his method might not simply be dictated by his religiosity overcoming his philosophical inclinations; they may be partly a function of his very choice of philosophical method. But that, in turn, might be influenced by his halakhic commitments—and so the circle continues.

The tensions that are undoubtedly there in much of R. Soloveitchik's thought can be described in different ways, and many of the descriptions can be grounded in R. Soloveitchik's life and work. Do we have his Orthodoxy preventing the full application of a philosophical method of reflective equilibrium? Or do we have a conservative philosophical method that is being given full rein? Is the very choice of such a conservative philosophical method dictated by his Orthodoxy? If his method is that of reflective equilibrium, these questions might prove very difficult to answer. Indeed, our answers may ultimately be less relevant as descriptions of how R. Soloveitchik thought and more reflections of how we as readers choose to use his philosophy as a springboard for further thought, which

ultimately might be a more important legacy. To conclude with the wise words of Aviezer Ravitzky,

> We have learned a great deal from R. Soloveitchik, and there has not yet arisen another like him. But it is precisely for this reason that when we learn from him an orientation towards modernity, we are students; however, when we learn from him what modernity means, we are not students but *hasidim*—and he never wanted *hasidim*.[62]

62. Aviezer Ravitzky, "*Ḥadash Min Ha-Torah*? Modernist vs. Traditionalist Orientations in Contemporary Orthodoxy," in *Engaging Modernity*, 47.

Acknowledgments
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ALEX SZTUDEN

Behaviorism and the Unity of Knowledge, Love and Action in Halakhic Man

In reality, this equation of knowledge, will and action with one another is one of the principles of imitatio Dei. [1]

The Halakhah is a doctrine of the body.[2]

The question of whether Judaism accords supreme value to study or to action—*limmud* or *ma'aseh*—has an ancient and venerable pedigree. In *Halakhic Man*, Rabbi Joseph Soloveitchik (the "Rav") seems to proffer his own answer to that question, affirming that the life of study is the highest ideal in Judaism. But matters are not so simple.

The Rav is rightly known as a dialectical thinker of immense power and originality. Never satisfied with simplistic doctrines of harmony, the Rav often highlighted two opposing ideals or emotions that must be held in tension by the religious personality. Yet alongside the tension-riddled nature of the Rav's thought, at times we also find an emphasis on unity and integration. In *U-Bikkashtem mi-Sham*, the Rav proclaims the unity of knowledge, will and action. This unity is central to his elaboration of the main dialectic in *U-Bikkashtem mi-Sham*, and exists right alongside numerous works where he emphasizes tensions and conflicts that are never harmonized.

Is halakhic man a figure of unity or of permanent conflict? According

1. Rabbi Joseph B. Soloveitchik, *And From There You Shall Seek (U-Bikkashtem mi-Sham),* trans. Naomi Goldblum (Jersey City, 2008), 93.
2. Ibid., 117.

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to the Rav, halakhic man is a stable hybrid of cognitive man and *homo religiosus*:

> Halakhic man is not some illegitimate or unstable hybrid. On the contrary, out of the contradictions and antinomies there emerges a radiant, holy personality whose soul has been purified in the furnace of struggle and opposition and redeemed…[3]

As Lawrence Kaplan elaborates:

> Harmony, rather than incongruities and contradictions, is the ultimate criterion, although this harmony indeed emerges from an entanglement of contradictions and incongruities. Moreover, attaining this harmony is indeed the main religious aim of the ideal man living within the covenant. Halakhah itself . . . gives man the means to achieve this end.[4]

But even within the ostensibly unified personality of an archetype such as halakhic man, we nevertheless still find hints of ruptures, unresolved tensions, and conflicting ideals. As we touched upon at the outset, one such conflict—well-known throughout the history of Jewish thought and re-played in halakhic man—is that of the ultimate supremacy of study *vis-a-vis* action.

As mentioned earlier, on some readings, *Halakhic Man* provides a rather straightforward answer as to which is to be regarded as greater, study or action. That answer is: study. Indeed, a central theme of *Halakhic Man,* if not the central theme, is that the primary activity of halakhic man is the cognition of the theoretical law. The Rav majestically proclaims the supremacy of study for its own sake, not for the sake of action: "The foundation of foundations and the pillar of halakhic thought is not the practical ruling, but the determination of the theoretical Halakhah."[5] Halakhic man focuses his intellect on the construction and elaboration of an ideal world, replete with abstractions and generalizations. In this singular focus on a cognitive experience detached from the realities of daily living and the humdrum emotions that make up most of our waking lives, the Rav, following in the tradition of R. Ḥayyim of Volozhin, elevates study for its own sake to the loftiest of heights.

Yet that is not the whole of halakhic man. For while glorifying study for its own sake, halakhic man also desires nothing more than the

3. Joseph B. Soloveitchik, *Halakhic Man*, trans. Lawrence Kaplan (Philadelphia, 1983), 4.
4. Lawrence Kaplan, "Models of the Ideal Religious Man in Rabbi Soloveitchik's Thought" (Hebrew), *Jerusalem Studies in Jewish Thought* 4 (1985): 329-30, cited in Dov Schwartz, *Religion or Halakha: The Philosophy of Rabbi Joseph B. Soloveitchik, Volume 1,* trans. Batya Stein (Leiden, 2007), 12.
5. *Halakhic Man,* 24.

transformation of the physical world: "Halakhic man's most fervent desire is the perfection of the world…the realization of the a priori, ideal creation…in the realm of concrete life."[6] So halakhic man both cognizes *and desires to actualize* the Halakhah. The contrast between cognition and actualization, or study and action, runs through the entirety of *Halakhic Man*. The chart below reveals just how pervasive this contrast is:

Highest Ideal is Cognition of Halakhah	***Ultimate Desire is Actualization of Halakhah***
His deepest ideal is not the realization of the Halakhah, but rather the ideal construction which was given to him from Sinai . . . (23).	The most fervent desire of halakhic man is to behold the replenishment of the deficiency in creation, when the real world will conform to the ideal world . . . and the ideal Halakhah, will be actualized in its midst (99).
Halakhic man is not particularly concerned about the possibility of actualizing the norm in the concrete world (63).	Halakhic man implements the Torah…for such implementation, such actualization is his ultimate desire, his fondest dream (90).
The maxim of the sages: "Great is study, for study leads to action", has a twofold meaning: 1) action may mean determining the . . . ideal norm. . . . Halakhic man stresses action in its first meaning (64).	Halakhic man's yearnings for the national redemption . . . draw upon his hidden longings for the full and complete realization of the ideal world. . . . (28-29).
The foundation of foundations and the pillar of halakhic thought is not the practical ruling, but the determination of the theoretical Halakhah (24).	The perfection of creation, according to the view of halakhic man, is expressed in the actualization of the ideal Halakhah in the real world (107-108).

The apparently contradictory statements in *Halakhic Man* regarding the ultimate supremacy of study or action have led some scholars to question the consistency of the Rav's writings on this topic:

6. Ibid., 94.

> Rabbi Soloveitchik's writings do not reflect clearly his views on the teleology of the Halakhah. In his paper on "Ish Ha-Halakhah," he seems to express contradictory views. In one place he maintains that the ideal halakhic forms rather than their realization constitute the objective of halakhic thinking [*Halakhic Man*, 23—A. S.]. Elsewhere he states that the ontological approach merely serves as a vestibule through which one enters into the temple of the normative conception. The man of Halakhah perceives the world as an object to be subjected to religious deeds and sacred acts. . . . A clarification of this problem by Rabbi Soloveitchik is a desideratum.[7]

Lawrence Kaplan takes issue with the charge of inconsistency; there is, rather, only a tension:

> Cf., however, [p. 23], where Rabbi Soloveitchik states that the ideal halakhic forms revealed at Sinai, rather than their realization constitutes the objective of halakhic thinking. No doubt there is a tension in Rabbi Soloveitchik's thought between the cognitive and normative aspects of Halakhah but he would contend, I believe, that this tension exists in the consciousness of every concrete halakhic personality. . . . We must, therefore, reject David S. Shapiro's contention . . . that this tension constitutes an inconsistency in Rabbi Soloveitchik's thought. On the contrary, this "inconsistency" is of the very essence of his thought.[8]

Presumably, for Kaplan, the tension between cognition and action as each forming the highest aspiration of halakhic man is yet another one of the many dialectical struggles of halakhic man. However, the problem with Kaplan's interpretation is that the Rav never displays this particular dialectic as fraught with tension, never betrays any anxiety generated by the opposing ideals of study and action. In fact, the Rav asserts the opposite—that halakhic man does not despair and does not feel anxious when the ideal cannot be actualized:

> Halakhic man's ideal is to subject reality to the yoke of halakha. However, as long as his desire cannot be implemented, halakhic man does not despair, *nor does he reflect at all* concerning the clash of the real and ideal, the opposition that exists between the theoretical Halakhah and the actual deed, between law and life [emphasis added].[9]

7. David Shapiro, "The Ideological Foundations of the Halakhah," *Tradition* 9, 1 (Spring-Summer, 1967): 116, n. 2.
8. Lawrence Kaplan, "The Religious Philosophy of Rabbi Joseph Soloveitchik," *Tradition* 14, 2 (Fall, 1973): 62, n. 60. See also Aharon Lichtenstein, "The Rav at Jubilee: An Appreciation," *Tradition* 30, 4 (Summer, 1996): 45-48, where he discusses the tension between study and action in the thought of the Rav.
9. *Halakhic Man,* 29.

The quotation above shows that this tension does not "exist in the consciousness of every halakhic personality," since halakhic man does "not reflect at all" concerning the dual ideals. In *U-Bikkashtem mi-Sham*, the Rav explicitly rules out both inconsistency and tension and asserts a fundamental unity between cognition and action: "In reality, this equation of knowledge, will, and action with one another is one of the principles of *imitatio Dei*."[10]

There is no tension between cognition and action because they are not two separate values pulling halakhic man in opposing directions. Rather, cognition and action are unified in the thought of the Rav. "Thus have true halakhic men always acted, for their study and their deeds have blended together beautifully, truly beautifully."[11]

But how are we to understand this unity? As Dov Schwartz has put the challenge:

> [H]alakhic man strives for the full realization of the ideal halakhic world. . . . And the question is: What for? Such a realization will contribute nothing to halakhic cognition, which is already fully revealed now, or, more blatantly: Will the future implementation of, for instance . . . the four varieties of capital punishments, add anything to the creative process of halakhic knowledge?![12]

According to Schwartz, this desire for the actualization of the Halakhah is completely independent of halakhic man's cognition. Nothing with respect to his cognitive activity is changed as a result of this extrinsic desire to actualize the Halakhah; in particular, nothing is added. There is cognition of the law on the one hand, and desire for actualization on the other, but there is certainly no unity, merely two independent aspects of halakhic man.[13]

10. Soloveitchik, *U-Bikkashtem mi-Sham*, 93. This essay assumes a somewhat unified picture of the Rav's works. However, Dov Schwartz has argued that the man of God in *U-Bikkashtem mi-Sham* and the figure of halakhic man have almost nothing in common. See Schwartz, *Religion or Halakha*, 55. For a more moderate overview of the differences between these two works, see the introduction to *U-Bikkashtem mi-Sham* by David Shatz and Reuven Ziegler, xxxv-xxxvii. A moderate understanding of the differences is consistent with my claim that the unity of knowledge, will, and action espoused by the Rav in *U-Bikkasthtem mi-Sham* is also applicable to halakhic man. Moreover, the doctrine of the unity of knowledge, will, and action is *expressly* connected to halakhic man in *U-Bikkashtem mi-Sham*, where the Rav writes that the doctrine is applicable to *both* "halakhic man" and "the man of God." See p. 93.

11. Soloveitchik, *Halakhic Man,* 95.

12. Schwartz, *Religion or Halakha*, 121-122.

13. More precisely, for Schwartz, halakhic man's primary concern is the cognition of the theoretical law, not its actualization. The statements regarding halakhic man's deepest desires for the realization of the Halakhah are not to be taken at face value. See Schwartz, *Religion or Halakha*, 120-125.

The problem is exacerbated by the Rav's assertion that cognition is not limited to the practical ruling, as we have seen: "The foundation of foundations and the pillar of halakhic thought is not the practical ruling, but the determination of the theoretical Halakhah." How then, are we supposed to unify action with the cognition of theoretical norms which are far removed from daily life? What does it mean to assert that knowledge and action are unified when the knowledge is of "seemingly 'irrelevant' halakhic minutiae"[14] which are unlikely ever to be actualized? It would seem that cognition of the theoretical law has absolutely nothing in common with action.

This essay proposes a novel way of understanding the unity between cognition of the theoretical law and action, inspired by the writings of a group of contemporary philosophers who could not have been more temperamentally different from the Rav—the philosophical behaviorists who flourished in Oxford in the 1950's. The behaviorists denied the existence of consciousness, subjectivity and mental states, were thoroughgoing materialists, asserted that many philosophical problems were merely linguistic in nature, and generally betrayed no awe, reverence, anxiety or existential angst in their writings. And yet, they produced a genuine breakthrough in conceptually unifying thought and action, and it is this development which I wish to exploit in order to render the Rav's reflections on the unity of thought and action philosophically coherent and compelling. *I am not claiming that the Rav's "authorial intent" was a behaviorist one.* There is no reason to think that the Rav ever read behaviorist writings— and certainly he would not have endorsed them. Rather, I am trying to provide a coherent account of the Rav's doctrine regarding the unity of knowledge, will, and action, and I argue that the core insight of behaviorism contributes mightily to such an account.[15]

14. Aharon Lichtenstein, "Talmud and *Ma'aseh* in *Pirkei Avot*," in *Rav Chesed: Essays in Honor of Rabbi Dr. Haskel Lookstein*, ed. Rafael Medoff (New York, 2009), 2:1-25.

15. This is an important methodological point. In his discussion of the relationship between R. Ḥayyim's interpretations of Rambam and Rambam's texts, Marc Shapiro distinguishes between "historical" and "philosophical" understandings of a text. If I may be permitted to oversimplify, if you believe that upon being confronted with R. Ḥayyim's novellae on the *Mishneh Torah*, Rambam would have responded: "Yes, that's what I meant," then you are in the realm of historical understanding. However, if you believe that after having been confronted with R. Ḥayyim's novellae, Rambam would have been just as puzzled as Moses was when he was shown R. Akiva's expositions of Mosaic law, then you would be discussing a "philosophical" understanding of Rambam's texts. My essay proposes a "philosophical" understanding of the Rav's works, in Shapiro's terminology. See Marc Shapiro, "The Brisker Method Reconsidered," a review of Norman Solomon's book, *The Analytic Movement: Haym Soloveitchik and his Circle*, in *Tradition* 31, 3 (Spring, 1997): 78-102. David Shatz distinguishes between "studying" and "doing"

But in order to understand this unity between cognition and action through behaviorist lenses, we will need to avail ourselves of another of the Rav's unities—the identity of love and cognition. What could the Rav have meant with his cryptic assertion that there is an "identity between love and cognition"? We can understand how love and other emotions can accompany or arise out of cognitive activity, but those relations hardly amount to that of an "identity." Is the Rav's language hyperbolic, or is there a deep truth in this identity that the Rav was gesturing towards? My argument is that the identity of love and cognition can be used to clarify the other of the Rav's unities—that of cognition and action. So these "two unities" form an interlocking whole that can illuminate the unified nature of knowledge, love, and action in halakhic man.

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Any Jewish discussion of the relationship between study and action must begin with the *gemara*'s famous question—"Which is greater, study or action?" (*Kiddushin* 40b). According to the *gemara*, study is greater, because it leads to action. This answer is enigmatic, as R. Norman Lamm points out:

> Indeed, the very statement appears to be self-contradictory, for if study's greatness lies in the fact that it leads to practice and is only penultimate to it, does this not imply that practice, which is the ultimate goal, is really superior?[16]

Nevertheless, whatever the correct interpretation of the *gemara's* response, it seems clear that the *gemara* is attempting to connect the two activities. It isn't just that study is greater as a self-sufficient

philosophy, that is, between interpreting a thinker and advancing one's own position. Shatz recognizes that there is no easy divide between the two. See David Shatz, *Jewish Thought in Dialogue: Essays on Thinkers, Theologies and Moral Theories* (Boston, 2009), xii-xiii. My essay straddles the borders with respect to Shatz's distinction. That is, it is partly interpretive in that I am attempting to elucidate the texts of the Rav and the meaning of the various unities that he espouses, yet it is also partly "doing" philosophy, in that I am also trying to advance a coherent and compelling understanding of the unity between cognition and action that expands upon the Rav. I am providing an account of the doctrine regarding the unity of knowledge, will, and action that attempts to overcome some of the shortcomings of the Rav's own account of this doctrine (see note 22).

16. Norman Lamm, *Torah Lishmah: Torah for Torah's Sake in the Works of Rabbi Hayyim of Volozhin and his Contemporaries* (Hoboken, 1989), 141. R. Lamm outlines the various interpretations of the *gemara's* enigmatic answer. See pgs. 141-43 and corresponding notes.

enterprise. Rather, its stature in part depends on its link to the world of action. The *gemara*, while wrestling with the precise nature of the relationship between the two, attempts to unify the two activities by at least connecting the stature of one (learning) with its capacity for it to lead to the other (action).

According to R. Lamm, Rambam, who considers the *gemara* above as normative,[17] prioritized knowledge and rendered observance a means to such knowledge, thereby subordinating action to knowledge.[18] As R. Lamm points out, his interpretation of Rambam is inconsistent with R. Yitzhak (Isadore) Twersky's, wherein Rambam did not prioritize one over the other. Rather, according to R. Twersky, Rambam espoused "the unity of practice and concept, external observance and inner meaning, visible action and invisible experience."[19]

But what does this unity amount to? Twersky, in his book on Rambam, goes to great lengths to show that the latter did not have split allegiances. Rather, he believed that his philosophic and theoretical studies could inform halakhic observance and that the halakhic-normative laws furthered philosophic ends.[20] So for Twersky, study and practice inform one another, are consistent with one another and live together in harmony. But where is the fundamental unity? The kind of unity that Twersky attributes to Rambam is what may be called an "empirical" unity—that is, a unity in which two terms may be consistent with one another or may inform one another or be in harmony with one another. But this is not the kind of unity that the Rav requires for his equation. For the Rav, the unity between cognition and action isn't merely an *empirical* one, but a deeper, *conceptual* one:

> In reality, this equation of knowledge, will and action with one another is one of the principles of *imitatio Dei*. In Him, Blessed Be He, is revealed the absolute identity of intellect, will, and action. By imitating this marvelous identity, man becomes like Him. . . .[21]

According to the Rav, the doctrine of the unity of cognition and action is an aspect of *imitatio Dei*. In God, cognition and action are mysteriously unified and are really one. While of course humans cannot

17. Maimonides, *Mishneh Torah*, *Hilkhot Talmud Torah* 3:3.
18. Lamm, *Torah Lishmah*, 144.
19. Cited in Lamm, ibid., 174, n. 33.
20. Isadore Twersky, *Introduction to the Code of Maimonides (Mishneh Torah)* (New Haven, 1980), 356-507.
21. Soloveitchik, *U-Bikkashtem mi-Sham,* 93.

approach this level of unity, the best we can do is to establish a conceptual unity, as opposed to an empirical one. If we were to establish a conceptual unity, one in which each term could not be understood apart from the other, we would thereby establish a much deeper and richer unity than a contingent, empirical unity where study and action cause one another or are harmonized with one another, but are not defined in terms of one another. If this is the case, then even if Twersky is correct in his interpretation of Rambam, he has not established this kind of deep unity. It therefore remains a puzzle as to how to provide a philosophically coherent account of the unity between thought and action, where the claimed unity is necessary and conceptual, and not merely empirical.[22]

Moreover, the Rav exacerbates the issue, as we have seen, by insisting that cognition is primarily of the theoretical law, not of the practical ruling. So even if we can account for the first problem, that is, we can provide a coherent account of the *conceptual*, and not merely empirical, unity between cognition and action, we are still left with a second problem, which is to find a compelling account for the unity of a very special type of cognition: cognition of the *theoretical* law with action.

So cognition seems to be one thing—a mental process, and action seems to be another—a physical process. But in the middle part of the twentieth century, this dualistic view of how the mind and body were related (or separated) came under assault. In the overly exuberant and triumphant scientific spirit of the day, philosophers known as logical behaviorists argued that all internal states, including thoughts, beliefs, desires, moods, sensations, pains, and emotions, were to be understood with reference to external, publicly observable behaviors or dispositions to behave.

While logical behaviorism was the subject of vigorous and devastating attacks almost as soon as it was proposed, and I reject its sweeping program emphatically, it produced some genuine insights. The behaviorists

22. The Rav himself provides an account of this unity, but his account does not rise to the level of a conceptual unity and, more problematically, entirely sidesteps the problem of unifying knowledge of the *theoretical* law with action. When the Rav discusses the unity of the knower and the known, he has in mind the cognition of the theoretical law, but when he switches to the equation of knowledge, will, and action he ignores the cognition of the *theoretical* law (and seems to have in mind only knowledge of the *practical* law) and the problems this would create for his account of such an equation with action. See *U-Bikkashtem mi-Sham*, 91-95. In other words, the Rav never shows how this equation of knowledge with action is to make sense if knowledge is of the *theoretical* law, as opposed to the practical law. (Also note that I leave out the third term—"will"—in my account, as I believe that this omission will not affect the substantive argument.)

were the first philosophers to attempt to provide a coherent account of how mind and body were *conceptually* related, and it is this account that can help illuminate the strength of the unity between cognition and action. On this view, there is no opposition or tension between cognition and action because cognition is partly defined in terms of action, and conceptually linked to it in important ways, and therefore both can serve, at the same time, as the highest ideals of halakhic man. In the fullness of halakhic man's cognitive/active state, there are not two ideals, there is only one complex ideal.[23] To see how this conceptual unity is arrived at, we need to examine how behaviorists explained the mind in terms of action. Moreover, the behaviorist emphasis on *dispositional* states of the body will also provide insight into the further problem generated by a central feature of halakhic man's cognizing—the cognizing of a theoretical norm. These dispositional states will help unify action with cognition of a theoretical norm far removed from the demands of practical life.

Behaviorism

Overview

The style of thought of philosophical behaviorists[24] is captured succinctly by John Searle, a leading contemporary analytic philosopher: "In its simplest version, behaviorism says the mind just is the behavior of the body. There is nothing over and above the behavior of the body which is constitutive of the mental."[25] For the behaviorists:

> [a] statement about a person's mental state, such as the statement that . . . a person is feeling a pain in his elbow just means the same as, it can be

23. As an analogy, the legal theorist Ronald Dworkin has mounted a spirited attack on Isaiah Berlin's pluralism, focusing his ire on Berlin's claim that liberty and equality are two opposing ideals of Western liberal democracies, forever doomed to live in irreconcilable tension with one another. Dworkin has argued that Berlin is wrong, that when understood correctly, liberty and equality should be not be seen as antagonists or opposing ideals. Rather, for Dworkin, liberty and equality are defined in terms of one another. They are not two independent concepts. Therefore, Berlin's tragic pluralism, argues Dworkin, is misguided. See Ronald Dworkin, "Do Liberal Values Conflict?" in *The Legacy of Isaiah Berlin,* ed. Mark Lilla, Ronald Dworkin, and Robert B. Silvers (New York, 2001), 73-90. The strategy adopted in this essay is similar.

24. Logical behaviorism should not be confused with the famous behaviorist doctrines of B. F. Skinner and others. The latter restrict research in psychology to the study of observable behavior, and seek to explain human and animal behavior using concepts like conditioning, which make no reference to inner states. The two forms of behaviorism, logical and Skinnerian, may go together, but need not.

25. John Searle, *Mind: A Brief Introduction* (New York, 2004), 49.

> translated into, a set of statements about our actual and possible behavior. . . . The idea was that having a mental state was just being disposed to certain sorts of behavior. . . .[26]

In his influential *The Concept of Mind*, Gilbert Ryle, the leading behaviorist philosopher, explains what he means by defining inner states in terms of behavior and behavioral dispositions by providing an analogy to the properties of everyday objects:

> When we describe glass as brittle, or sugar as soluble, we are using dispositional concepts, the logical force of which is this. The brittleness of glass does not consist in the fact that it is at a given moment actually being shivered. It may be brittle without ever being shivered. To say that it is brittle is to say that if it ever is, or ever had been, struck or strained, it would fly, or have flown, into fragments. To say that sugar is soluble is to say that it would dissolve, or would have dissolved, if immersed in water.[27]

For Ryle, properties of physical objects serve as appropriate analogies to his recasting of "inner" states, which in his view are in reality dispositions to behave in certain ways under the appropriate conditions.

For instance, it is commonly assumed that if we label a person vain, we are ascribing a character trait to him over and above his behavior or his disposition to behave. Feelings of vanity are supposed to be "internal," and are to be distinguished from actions which may be caused by the "internal" feeling of arrogance and which may serve as evidence of the "inner" trait. But Ryle thinks this way of talking about character traits is wrong-headed. Rather,

> When someone is described as a vain or indolent man, the words 'vain' and 'indolent' are used to signify more or less lasting traits in his character. . . . His vanity and indolence are dispositional properties, which could be unpacked in such expressions as 'Whenever situations of certain sorts have arisen, he has always or usually tried to make himself prominent'. . . . Motive words used in this way signify tendencies or propensities and therefore cannot signify the occurrence of feelings.[28]

Vanity, for Ryle, is not some occult or mysterious inner character trait or feeling tucked deep inside the labyrinths of the mind, subsisting far beyond the reach of the discerning eye. We do not infer vanity, we see it. To be vain just is to be disposed to act in certain ways under the appropriate circumstances.

26. Ibid., 51-52.
27. Gilbert Ryle, *The Concept of Mind* (Chicago, 1984; original publication 1949), 43.
28. Ryle, 85.

And what of the arrogant man who hides his arrogance? Is he not still arrogant even though no behavior can be considered to be an explicit manifestation of his arrogance? Doesn't this possibility show that arrogance is really "in the heart"? This fundamental—and rather obvious—problem led behaviorists to modify their theory, spawning a view now labeled functionalism.[29] This is how behaviorists and their contemporary descendants—known as functionalists—handle "secretive" vanity.

When we say that wood is combustible, we are attributing a dispositional property to wood. We are in effect saying that if fire touches wood, it will burn. True, we are not saying that wood will burn under *all* circumstances in which fire touches it. For let us suppose that while we light the wood on fire, we also apply a neutralizing chemical to the wood which blocks and cancels out the effect of the fire. In such a case, wood is still in part defined by the property of combustibility, even though not all instances of fire touching wood will lead to the wood's burning. What is important to note, however, is that "combustibility" is not some property over and above the disposition to burn under the appropriate circumstances. There is no mysterious force called "combustibility." Similarly, arrogance, for a behaviorist, is defined by certain behavioral traits and dispositions. If an arrogant man hears talk of himself, he is likely to encourage more talk and lean in closer, and so on. However, it can also be the case that this arrogant man has another desire, such as a desire to keep his arrogance secret, and this desire for secrecy—like a neutralizing chemical—cancels out and blocks the realization of the normal behavioral dispositions associated with arrogance. But the fact that the dispositional traits of a vain man are sometimes not "activated" is no reason to assume that those dispositional traits are not essential to the definition of vanity.[30]

29. Behaviorists would note that dispositions need not be translated into overt behavior in each instance. Dispositional traits or "feelings" such as arrogance or sadness are behavioral in the sense that they are defined by a *pattern of behavior.* This can only be part of the story, which was filled out in more detail by the functionalists, as per the sketch above and in the two notes below.

30. To be more precise, "secretive" pride posed a problem for behaviorists, since it became clear that in addition to claiming that feeling arrogant is the disposition to behave in certain ways when circumstances are appropriate, behaviorists had to add that arrogance is the disposition to behave in x fashion *as long as there is no countervailing belief or desire* (say for secrecy). But this desire for secrecy is itself also a mental state, so behaviorists would have to analyze *that* desire in terms of behavioral dispositions, and round and round it went, until it became clear that mental states needed to be defined not just in terms of the behavioral dispositions, but also in relation to other mental states. So the theory of functionalism was born (which was also a response

It still remains the case that vanity is the *behavior* of vanity or the *disposition* to behave vainly. For behaviorists, the mind is just the body behaving in certain ways.

The behaviorists didn't just explain character traits along the lines suggested above. Their goal was nothing short of a fundamental transformation in the way we conceptualize *all* mental states, including desires and emotions. For instance, most of us intuitively think that fear is an internal, mental state. But a typical behaviorist query might be:

> Can we imagine a world in which fear has no tendency to give rise to avoidance of the thing feared, or in which desire has no tendency to give rise to pursuit of the thing desired? Offhand it would seem not.[31]

In other words, isn't a tendency to avoidance—which is a behavioral dispositional state—what we *mean* by the claim that something is feared? The behaviorist focuses on tendencies and dispositions as being necessary features of a mental state.

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to the weaknesses of the other leading materialist theory of mind, the mind-brain identity theory), which asserts that mental states are those which play a causal role in the behavior of the organism, in conjunction with other mental states. What matters for functionalists is that mental states should be seen as being defined by their overall relation in the causal structure of an organism. That is, a mental state's "causative" powers (powers which cause behavior) are *constitutive* of what it means to have that mental state, keeping in mind that the causative powers of a particular mental state will be determined in part by the agent's other mental states. In this essay, I sometimes provide a functionalist account of a mental state under the guise of behaviorism for clarity of exposition, as the differences between the two theories are inconsequential to the argument of this essay.

31. Sidney Shoemaker, "Conceptual Connections and Other Minds," in his *Identity, Cause, and Mind* (Cambridge, 1984), cited in Nick Zangwill, "Direction of Fit and Normative Functionalism," *Philosophical Studies* 91 (1998): 184. We could object that sometimes we are so irrational that we are drawn to what we fear. See the discussion by Zangwill, 184-85. This may be so, but what matters here is that we could not imagine this "mad fear" all the way down, that is, if people systemically were drawn to what is "feared," we would no longer be discussing the concept of "fear" but something else. In other words, there may be "tokens," or particular instances, where fear does not lead to avoidance, but those instances must be understood against a background of the concept of fear that is in part defined by a tendency to avoid that which is feared. Particular instances of "mad fear" can be used as an argument against "token reduction," but not against "type" reduction. The general type or concept of fear is in part constituted by a tendency to avoid the thing feared. Even within one individual, if he were always drawn towards a particular object that he feared, we would not, I think, say that he really did fear that object. This is even more the case with love, which involves a more fundamental, longer-term orientation towards the object of one's love.

The Double Life of Mental Terms

Yet the behaviorist account of the inner life and of emotions is radically incomplete. Behaviorists are wrong: emotions are not just the behavioral expressions or dispositions of the body. There is something internal as well, a subjective feeling of *what it is like* to be in love or feel anger that cannot be reduced to the outward expressions of such love or anger.[32] But despite the failure of their program of eliminating inner feelings, and despite their over-exuberance, exaggeration, and ultimately error, what behaviorists got right is that internal feelings and emotions are tied to the body in very strong ways. In fact, they were right in pointing out that *part* of what is meant by having an emotion is the outward expression of that emotion. A person cannot be angry if there is no trace of that anger either in physiology or behavior. Someone who claims to love her children cannot in fact love them if she exhibits absolutely no behavioral expressions of that love. Part of what it means to love someone is to act compassionately towards him, and to behave or be disposed to behave in ways that manifest care for that person.[33] In other words, behaviors of love are built into the concept of love itself.

This dual aspect of emotions (and other mental states) has led the contemporary philosopher David Chalmers to espouse what he calls "the double life of mental terms."[34] As the philosopher Peter Goldie explains:

> The two sorts of perspective . . . are in different businesses, deploying different kinds of concepts—call them respectively, *phenomenal* and *theoretical* concepts. When we use a phenomenal concept to talk about, for example, the experience of being afraid . . . we are thinking partly in terms of *what it is like* to be afraid. On the other hand, a purely theoretical concept of being afraid would be one which, roughly, picks out the emotional experience by its causal role, and which leaves out entirely what it is like to be afraid . . . our Martian, in possession of

32. See the classic article by Thomas Nagel, "What Is It Like to be a Bat?," *Philosophical Review* 83 (October, 1974): 435-50.

33. This may help answer the well-known question of how God can command us to love our neighbor, for how can God command feelings? A traditional response is that God commands us to act *as if* we loved our neighbors, and eventually through those actions, the inner feeling of love will arise. But if the foregoing analysis is correct, this response is too mild. Behaviors of love *are* part of what is meant by loving our neighbor. Not all of it, too be sure, but part of it. Therefore, when God commands us to at least behave in ways associated with a loving person, he is commanding us to love. There is no need for the "as if".

34. David J. Chalmers, *The Conscious Mind: In Search of a Fundamental Theory* (New York, 1996), 16.

> a complete scientific account of the workings of the human being, would still have *no conception of what it is like* to have the experiences that the impersonal experience picks put using its theoretical concepts.[35]

For Goldie and Chalmers, mental terms have two aspects, but what is crucial for our purposes is to point out that the objective, scientific, behavioral aspects of a mental state are essential. In other words, while "mental" states are not exhausted by their physical manifestations, they are in part constituted by them.[36] Subjectivity does not exhaust what it means to have emotions, which contain both phenomenal and scientific/behavioral properties. The disposition to act in loving ways is built into the concept of love. And to say that manifestations of behavior and dispositions to behave in loving ways are built into the meaning of love is to say that action is conceptually a part of the meaning of love. On this account, "love" contains an irreducible, behavioral component, and so love and action form a conceptual unity. To love someone *is* in part to be disposed to act in certain ways.

Love, according to the analysis we have offered, is irreducibly and conceptually tied to actions. But what about cognition—what is the conceptual relationship between cognition and action? In *U-Bikkashtem mi-Sham*, the Rav espouses his claim that there is an identity between love and cognition. If this identity is to be taken seriously, it follows that insofar as love is in part a behavioral disposition, and love and cognition are identical, it must be the case that cognition is also in part a behavioral disposition.

35. Peter Goldie, "Emotion, Feeling, and Knowledge of the World," in *Thinking about Feeling*, ed. Robert C. Solomon (Oxford, 2004), 95. Chalmers distinguishes between phenomenal and 'psychological' properties of mental states, including emotions. See Chalmers, *The Conscious Mind*, 16-17. Psychological properties are analogous to theoretical properties in Goldie's terminology.

36. Indeed, the view sketched here may be usefully referred to as "weak analytic functionalism." It is a functionalist account because it asserts that for an organism to have a mental state is for that state to play a causal role—in conjunction with other mental states—-in the behavior of the organism. It is analytic because I am not making an empirical claim. The behavioral dispositions and causal roles such states play are conceptually built into the meaning of concepts such as grief and love. And finally, it is "weak" in two ways: 1) I make no claims that a functionalist account can completely describe a mental state. There is a subjective, inner feeling of what it is like to be in grief and feel anger that cannot be reduced in the manner of a thoroughgoing functionalist. Consciousness and what philosophers call qualia (that is, subjective, experiential "inner" states, such as feeling pain or seeing blue), are real; and 2) not all terms can be given a functionalist account, even a partial one. While fundamental orientations, such as love, are susceptible to a partial functionalist account, it is likely that many other mental states, such as minor aches or the contemplation of set theory, are not.

The Identity of Love and Cognition

> *In my thesis the passions are not to be separated from reason; they are to be welded together into a single unit. I should like to view all of our acts as Shelley envisioned dreams, as "passion-winged ministers of thought."*—Robert Solomon.[37]
>
> *What Maimonides wanted to do was establish an enduring conjunction of the psyche with the intellect. Reason conjoins with emotion and is enriched by it*. —R. Soloveitchik.[38]

There is a standard view of the relationship between emotion and reason that runs roughly as follows. Emotions are biased, subjective, and irrational attitudes that people express, while reason is cold, objective, dispassionate, and able to ascertain the truth. Emotions are:

> "nonreasoning movements," unthinking energies that simply push the person around and do not relate to conscious perceptions. Like gusts of wind or the currents of the sea, they move, and move the person, but obtusely, without vision of an object or beliefs about it. . . . This view is connected with the idea that emotions derive from the "animal" part of our nature. . . . [39]

The Rav, however, rejected the false dichotomy between reason and emotion. For the Rav, emotions are not just subjective outpourings of the heart. They can, and do, reveal an objective world to us. In *The Halakhic Mind*, the Rav states that emotions are cognitive—that they should be seen as making claims about the way the world is.[40] And the specific aspect of the world that the emotions cognize is the *value-laden* world. As the Rav writes: "Emotions are the means by which the value universe opens up to us."[41]

In an important note on the nature of cognition in *U-Bikkashtem mi-Sham*, the Rav asserts the identity of cognition and love, and in doing so, places emotion at the heart of cognition:

> What Maimonides wanted to do was establish an enduring conjunction of the psyche with the intellect. Reason conjoins with emotion and is enriched

37. Robert C. Solomon, *The Passions: Emotions and the Meaning of Life* (Indianapolis, 1993), 15.
38. *U-Bikkashtem mi-Sham*, 156.
39. Martha Nussbaum, "Emotions as Judgments of Value and Importance," in *Thinking about Feeling*, 186.
40. Joseph B. Soloveitchik, *The Halakhic Mind* (London, 1986), 42-43.
41. Cited in the editors' introduction to Rabbi Joseph B. Soloveitchik, *Out of the Whirlwind*, ed. David Shatz, Joel B. Wolowelsky, and Reuven Ziegler (New York, 2003), xliv.

> by it. Reason supports emotion but is also nourished by it; there is reciprocity here. On the one hand, when the affects blend with the intellect, their nature changes, and they become less passive. In place of involuntary impressions, free activity blooms. When cognition absorbs emotion, it converts it and subsumes it under free action and creation. Cognition bestows some of its glory onto emotion—the glory of free action and the desire for accomplishment. On the other hand, cognition too is elevated through its melding with emotionality. The unity of the knower and the known . . . occurs only in a cognition imbued with love and desire. . . . Maimonides set forth love as the goal of divine worship. *There is an identity of love and cognition* [emphasis added]. . . .[42]

In the text above, the Rav makes the far-reaching claim that there is an identity between cognition and love. He further adds that Rambam focuses on "the emotional heart of logic."[43] This phrase shows that emotions are central to cognition in such a manner that they actually help to form the content of "logic."

Contrast the claim of identity above with some other writings that do *not* amount to a relation of identity. For instance, in *Halakhic Man*, the Rav writes that:

> Halakhic Man is worthy and fit to devote himself to a majestic religious experience. . . . However, for him, such a powerful, exalted experience only follows upon cognition, only occurs after he has acquired knowledge of the a priori, ideal Halakhah and its reflected image in the real world. But since this experience occurs after rigorous criticism and profound penetrating reflection, it is that much more intensive.[44]

The passage above clearly displays the centrality of subjective experience and emotion for halakhic man—to be sure, not a sentimental or ecstatic and uncontrolled emotion—but an emotion which arises from cognition. Nevertheless, it does not show, on its own, that emotions are a constitutive part of cognition. In the passage, emotions "top off" or follow upon cognition, but they do not increase understanding, nor do they shape what halakhic man cognizes.

42. Soloveitchik, *U-Bikkashtem mi-Sham*, 156. See also *The Halakhic Mind*, 108-109, where the Rav writes that: "Our multi-methodological approach is warranted . . . by a multitude of interests latent in the cognitive act. . . . The reason is the instrument of the will, and the theoretical act is subordinated to the volitional. . . . [Pascal's] 'reason of the heart' . . . represents . . . specific cognitive designs that govern man's "volitional and emotional life." The Rav makes it clear here that the act of cognition is not "pure" or disinterested, but is rather based on the specific cognizer's volitional and emotional make-up. I thank David Shatz for this reference.

43. Ibid., 156.

44. Soloveitchik, *Halakhic Man*, 83-84.

Similarly, consider the following famous passage from Rambam:

> What is the path [to attain] love and fear of Him? When a person contemplates His wondrous and great deeds and creations and appreciates His infinite wisdom that surpasses all comparison, he will immediately love, praise, and glorify [Him].[45]

In the passage above, no relationship of identity is established. Rather, according to Rambam, love follows cognition. It is the end result of a cognitive process (and may accompany it), but it is separable from it.[46] While we may not experience appropriate love of God without knowledge, the two terms in no way stand in a relation of identity; one merely follows from the other. Emotion, in this reading, is not a constitutive part of cognition. So if we conceive of the relationship between emotion and cognition along temporal dimensions, whereby emotions precede, accompany, or follow cognition, emotions are not central to the cognitive process. They are "extrinsic" or external, to halakhic man's primary activity—the cognition of the theoretical law.

But there is a way in which emotions are to be considered *essential* to the cognition of halakhic man. This way is hinted at in the Rav's discussion of the arguments for the existence of God. In *U-Bikkashtem mi-Sham*, the

45. Maimonides, *Mishneh Torah*, *Hilkhot Yesodei Torah*, 2:2. It may be thought that Spinoza's *amor intellectualis dei*, the intellectual love of God, which the Rav cites in *Halakhic Man*, 85, may serve as a model for the identity of cognition and love. But it does not, since according to Spinoza, this intellectual love is the feeling of pleasure which accompanies the act of cognizing God as the First Cause. Here, the affect doesn't do any of the cognitive lifting; it simply arises out of or accompanies the act of cognition. Without the love, nothing *cognitively* is lost. See Jonathan Bennett, *A Study of Spinoza's Ethics* (Cambridge, 1984), 370.

46. And as Rambam continues in the same passage, such love, engendered by knowledge, may then lead one to yearn to attain even more knowledge, so that love first follows cognition, and then precedes it by serving as motivation to cognize even more. But an identity is never established. The Rav cites a similar passage from Rambam in his elaboration of the identity between love and cognition, but the Rav is engaging in creative interpretation of Rambam. Moreover, Rambam's position is difficult to decipher as he says different things in different places. One may claim that the intellectual apprehension of God—that is, being in a state of constant and intense contemplation of God—-is just what is meant by "loving" God. But then this "identity" is accomplished by sleight-of-hand, by *a reduction and collapse* of love into cognition. The love here is not shaping the content of what is being cognized. "Love" would here mean "being intensely attuned to" or "always thinking of" the object of one's love. Some mystical doctrines perform the collapse the other way, by collapsing cognition completely into subjective experiential loving/knowing. What we need is to *preserve in some sense both* the meaning of love and the meaning of cognition in this identity, even as the meaning of each term will doubtless be altered.

Rav writes that the main problem with the cosmological and ontological arguments is that they have devolved into logical constructs divorced from the foundational experience which gives rise to a sense of God's reality.[47] It is the subjective experience of God's reality which matters, and the logical arguments cannot be divorced from such experiences. If they are, they will be barren and empty and devolve into casuistry. Here, experience/subjectivity is doing more than merely serving as the contingent means of discovering certain truths. Experience here is primary.

Consider also the color red. As we previously discussed, there are two components to the color red, the "experiential" component, "what is like to see red," and the "objective" components, red, translated into wavelengths and the science of optics.[48] In both cases, whether we are discussing knowledge of red or knowledge of God, *experience and subjectivity are essential to knowledge.* In this way then, we can begin to approach the Rav's "identity" thesis between love and cognition. In this account, love, emotions and subjectivity are primary modes of knowledge, and the objective constructs, like the cosmological argument or the objective wavelength nature of "red," are derivative.[49] The identity of love and cognition essentially amounts to the claim that subjectivity, emotion and experience form the core of the objective constructs that are derived from them.[50]

So when the Rav writes that Rambam was trying to focus on the "emotional heart of [halakhic] logic," he is not being hyperbolic.[51] Subjective experience and emotions are central to the cognition of the man of God. They don't just serve to motivate or accompany the cognitive process, but rather, they help to shape *the very content* of cognition,

47. See *U-Bikkashtem mi-Sham*, 13, 157. On the relationship between the ontological argument and religious experience, see Ermanno Bencivenga, *Logic and Other Nonsense: The Case of Anselm and His God* (Princeton, 1993).

48. Recall our earlier discussion of "The Double Life of Mental Terms."

49. The section on the identity of love and cognition groups together three different terms—subjective experience, emotion, and love. Each term is actually a sub-set of the previous term. What really matters is the cognitive value of subjective experience, broadly conceived. Emotion is a central component of subjectivity, and love is the paradigmatic emotion.

50. This claim is elaborated upon at length in my forthcoming essay, "On the Identity of Love and Cognition in the Thought of Rabbi Soloveitchik." An abridged version of the essay served as the basis for a presentation at the Joint Yeshiva University/Bar-Ilan University International Conference—Reflections on the Thought and Scholarship of Rabbi Joseph B. Soloveitchik (July 31, 2012).

51. Justification for my addition of the word "halakhic" in brackets comes from Aviezer Ravitzky, who notes that when the Rav interprets Rambam in order to advance his own philosophy, he often changes the focus of Rambam from the world to that of Halakhah. See Ravitzky, "Rabbi J. B. Soloveitchik on Human Knowledge: Between Maimonidean and Neo-Kantian Philosophy," *Modern Judaism* 6:2 (May 1986): 157-88.

since the objective laws are external manifestations of inner, "spiritual phenomena" that lend that content its meaning. When halakhic man cognizes the law, he does so in a state of "ecstatic cognition"[52]—wherein subjectivity and emotion are constitutive of the cognitive act. "There is an identity of love and cognition."

The Unity of Ecstatic Cognition and Action

We have seen that the cognition of halakhic man is not a "pure" cognition, devoid of emotion.[53] Rather, halakhic man attaches himself to the theoretical Halakhah in a state of ecstatic cognition, and as we said, this ecstatic cognition is not just one whereby an emotion accompanies cognitive activity, but one whereby emotion and subjectivity are essential to his cognitive activity. It is through his ecstatic cognition, a cognition merged with and constituted by subjectivity and love, that halakhic man constructs the actual content of the theoretical law.

We are now in a position to unify cognition and action with the kind of unity that imitates God's absolute unity: a necessary and conceptual unity. Our argument began with a behaviorist account of love, which necessarily includes manifestations of love and dispositions to behave lovingly. We then showed that in halakhic man, cognition and love are unified and merged with one another, and by straightforward deduction, it becomes clear that insofar as cognition is merged with love, it must also be merged with manifestations and dispositions of love, i.e. with actions of love. Cognition and action are conceptually unified through love. The ecstatic cognition of halakhic man, whereby love and other experiences help to shape and mold the content of the theoretical law, contains within it a disposition to act in loving ways.[54]

52. The term "ecstatic cognition" is inspired by—although different in meaning from—the "ecstatic rationalism" that Rebecca Goldstein attributes to Spinoza. See Rebecca Goldstein, *Betraying Spinoza: The Renegade Jew Who Gave Us Modernity* (New York, 2006), 186.

53. The Rav uses "pure cognition" pejoratively in *U-Bikkashtem mi-Sham*, 104.

54. See also Maimonides, *Guide for the Perplexed*, trans. Shlomo Pines (Chicago, 1974), 1:54, in his discussion of knowing God by knowing His attributes of action. With respect to emotions ascribed to God by the Torah, in particular the thirteen attributes (*raḥum*, *ḥanun*, etc.), Maimonides adopts somewhat of a behaviorist posture. We have inner states; God does not. Therefore, the attributes that ostensibly imply divine emotions should be analyzed as referring to God's acts, not His inner states. In that chapter, however, Maimonides says also that a leader should eradicate feelings when he performs appropriate acts. Since he regards such emotionless acts as emulations of God's attributes, the leader's "attributes" (emotions) could be analyzed behavioristically. By contrast, in *Hil. De'ot* 2:3, Rambam advises that a person should not feel anger but at times should act

Can this ecstatic cognition of the objective norm, replete with love, be a purely internal act? As we have shown, if a man loves his beloved, he must necessarily manifest that love in the concrete world. That is what the behaviorists, for all their fatal weaknesses, rightly intuited. Behaviors of love are built into the concept of love. And if halakhic man loves the norm, he must also manifest that love in the concrete world. In other words, he must actualize it. There is an equation which captures the conceptual unity of thought and action: To cognize the norm is to love the norm, to love the norm is to subordinate oneself to the norm, and to subordinate oneself to the norm is to act on that norm.[55] In short, to cognize is to actualize.[56]

Unlike other dichotomies that the Rav spells out in tragic language, where he emphasizes the discontinuities, ruptures and conflicts tearing at the heart of man, the Rav never evinces any sort of tension or anxiety generated by the twin ideals of cognition and action. There is no tension because there is no conflict. Cognition and action are unified and in part defined by each other. Ecstatic cognition of the norm is the love of the norm, and the love of the norm is the disposition to act on that norm when conditions warrant it.[57]

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as if he does. *This* implication is *anti*-behaviorist: a person who acts angrily but feels no anger, and is *not* properly called angry. I thank David Shatz for this point.

55. "Subordination to a norm" cannot be a wholly internal state. An "argument" inspired by Wittgenstein's *Philosophical Investigations* might run as follows. What does it mean to "subordinate oneself" to a norm? Is this merely an "inner" state? What is the difference between contemplation of a norm and subordination to a norm? Let us imagine a man, sitting down, upright back, eyes shut tightly, in intense contemplation of a norm. Where is the "subordination" to be located? Is it in the quantity or intensity of the contemplation, so that if he closes his eyes more tightly, focuses more intently, he is now not only contemplating, but also subordinating himself, to the norm? Or is subordination to be located in the contents of the thought itself, so that in addition to the contemplation of the structure of the norm, there is an *additional* thought simultaneously passing before his mind, whose content is "I am subordinating myself to this norm"? But then, what does "subordination" mean in *that* additional thought?" In other words, subordinating oneself to a norm cannot be merely an inner process, for the difference between one who contemplates the norm and one who subordinates himself to that norm cannot be located in the intensity or the contents of the cognition itself. It is, rather, in part "located" in the dispositions to behave in accordance with that norm when conditions warrant it. That is what "subordination" *means*.

56. As David Shatz has noted, there are many contemporary accounts of what it means to hold a belief which explicate possession of a belief partly in terms of how one would act.

57. This position should be differentiated from the position advocated by R. Aharon Lichtenstein, which states that when one is engaged in Torah study for its own sake, one must also possess a desire to actualize the Torah. In R. Lichtenstein's account, the desire is "external" to the cognitive act. That is, there is cognition which is accompanied by desire, but if the desire were lacking, there would be no decrease in understanding. There would simply be a separate moral-spiritual defect, not a cognitive one. See R.

Theoretical norms and the practical ruling

Cognition and action are unified by love. But what about the cognition of theoretical norms which have only the barest connection to the concrete world? As we have seen, halakhic man focuses on the theoretical norm, not the practical ruling. If this is the case, then how can we understand the unity between this kind of theoretical cognition and action? The role of *dispositional* states can bridge that gap.

Recall that Ryle noted that for glass to be brittle, it does not actually need to be shaking: "The brittleness of glass does not consist in the fact that it is at a given moment actually being shivered. *It may be brittle without ever being shivered.*"[58] Brittleness is a dispositional property. Analogously, the dispositions created by subordination to a theoretical norm need never be actualized. It is enough that they *would* be actualized if circumstances warranted it. This point is central to understanding the conceptual link between action and cognition of a theoretical norm. It is of the essence of ecstatically cognizing a theoretical norm that it be, in part, understood as necessarily being constituted by dispositions to act on that norm. So cognition need not be limited to the practical ruling in order to remain conceptually tied to actions. *The ecstatic cognition of a theoretical norm includes the dispositional state to act in accordance with that norm when circumstances warrant such action, even if the conditions for the actualization of that norm are unlikely ever to materialize.* [59]

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Halakhic man is always and everywhere disposed to act in accordance

Aharon Lichtenstein, "Talmud and *Ma'aseh* in *Pirke Avot*." My claim, on the other hand, is that as there is an identity of cognition and love, a lack of "love" necessarily involves a lack of cognition. This claim is defended at length in a forthcoming paper on the identity of cognition and love. See note 50.

58. Emphasis added.

59. What is the dispositional state of the ecstatic cognition of a dissenting opinion, or of an irresolvable dispute where the cognizer does not take sides, but merely analyzes the nature of the disp ute? In the latter, halakhic man would have clashing dispositions, similar to feeling contradictory emotions or impulses. This is certainly possible, unlike having a belief that A and a belief that not-A. See Ronald de Sousa, *The Rationality of Emotion* (Cambridge, MA, 1987), 26. Alternatively, recall that dispositional states are not always triggered—they work in conjunction with other mental states and relevant circumstances—to cause overt actions. Here, halakhic man contains dispositional states to act on the basis of a dissenting opinion or on the basis of either of the two sides of a theoretical dispute *if circumstances warrant it*, that is, if either position should prove to become the normative Halakhah in the eyes of the halakhist. If this condition is not met, the dispositions to act are not triggered.

with the norm, but if circumstances in the concrete world do not warrant the realization of the norm, halakhic man does not despair, for when conditions warrant it and circumstances change, halakhic man's entire being will leap into action like a lion in order to actualize the norm. "The most fervent desire of halakhic man is to behold the replenishment of the deficiency in creation, when the real world will conform to the ideal world…and the ideal Halakhah, will be actualized in its midst."[60] This deepest desire of halakhic man is not only consistent with his primary activity of cognition, but, as I have argued, it is an essential aspect of it. In the ecstatic cognition of halakhic man, wherein knowledge, love and action "blend together beautifully," we are afforded a fleeting glimpse of the most fundamental unity of all, the unity of God Himself.

60. *Halakhic Man*, 99. With respect to the dialectic between cognition of the law and its actualization, there is one final step that the Rav takes, and it is the move beyond halakhic man, to the realm of the prophet, for the highest type of person according to the Rav, is not halakhic man, however remarkable his personality may be, but the prophet: "The most exalted creation of all is the personality of the prophet" *(Halakhic Man*, 128). While halakhic man longs for the implementation of the Halakhah, and is sometimes able to realize that longing, he is content to be disposed to act when conditions warrant it. If the real world does not conform to the ideal world, he does not despair; he simply continues cognizing, all the while knowing that one day the Halakhah will be implemented in its full glory and majesty. But the prophet is not content with dispositions. "When a person actualizes the ideal Halakhah in the very midst of the concrete world, he approaches the level of that godly man, the prophet, the creator of worlds" (Ibid., 90). *The prophet is the one who changes the conditions*, who transforms the concrete world, its institutions, its structures and societies, in order for the ideal Halakhah to be realized in the midst of the concrete world. *The prophet is not just disposed to act when circumstances warrant such action; the prophet actually transforms the circumstances* and realizes the glory and splendor of the Halakhah in this world. Beyond halakhic man lies the prophet, that godly figure who transforms the world in accordance with the ideal Halakhah. *In the end, the Rav asserts that the actualization of the Halakhah is the highest activity of the highest type of person, the prophet*: "When a person reaches the ultimate peak—prophecy— he has fulfilled his task as a creator" (ibid., 130). I do not think this point has been sufficiently appreciated.

YAKOV NAGEN

Scholarship Needs Spirituality, Spirituality Needs Scholarship: Challenges for Emerging Talmudic Methodologies

Introduction

One of the most exciting and influential revelations of my life has been my encounter with the rich and varied possibilities entailed in "learning Gemara."[1] This includes both the process, including the multiple paths and methodologies of study, as well as the results, the multifaceted forms of understanding or experience that are sought or achieved.

R. Yehuda Amital *zẓ"l*, Rosh Yeshivah of Yeshivat Har Etzion, once commented that it used to take a generation for a new generation to emerge; now it happens every few years! This observation is particularly relevant to the study of Gemara, as we shall see below. Over the last thirty years, I have witnessed how dynamic and changing the study of Gemara truly is.

Along with my enthusiasm for many of the new methods and techniques, I have also become increasingly aware of the challenges they present. I have learned that every new approach has its price. My reservations

1. I will capitalize "the Gemara" when referring to the total corpus, and will use lower case and italics when referring to a specific textual unit.

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have sometimes led me to reconsider the value of certain methodologies, but more often they have encouraged me to a search for ways to overcome these obstacles and shortcomings, a process that itself has often led to new forms of creativity.

Many of these new approaches provide opportunities for "spiritual" elements in Gemara learning that are absent in the traditional approaches. "Spirituality" in this sense refers to the quest for meaning and personal significance, and that is how I use the word in the context of this discussion.

The first part of this article is descriptive; it presents the stages of my journey to discover what "learning Gemara" means. I will then present models for implementing some of the lessons I have learned within the framework of the contemporary *beit midrash*. I present only what I know from personal experience; it is beyond the scope of this article and my ability to present the totality of the phenomena of the emerging methodologies. Thus, this section will focus on how new methods are applied in Yeshivat Otniel, the *hesder* yeshivah where I teach. Finally, I will present an attempt to grapple with some of the problems, pitfalls, and even dangers that may result from the use or misuse of these approaches.

My purpose is not to promote the particular methodologies discussed here, nor to debate the merits of these approaches in relation to others. *Ḥazal* teach us that "*ein adam lomed Torah ella mi-makom she-libbo ḥafeẓ*" (*Avodah Zarah* 19a)—a person learns Torah best from a place that his heart desires, and I believe that this concept includes not only *what* one learns but *how* one learns it. Similarly, the principle of "*yagdil Torah ve-yadir*" (Is. 42:21), of strengthening and glorifying the Torah, is fulfilled in part by the fact that there are so many different ways to learn. The fact that different *yeshivot* learn Torah differently is therefore "*le-khatteḥillah*" and not "*be-di'avad*." My goal in this article is thus primarily to share my own experience and perspective about the possibility of implementing these methodologies with those who are inclined to learn about them.

Since the ideal way to learn about these new approaches is through examples, I will cite links to internet materials that serve as illustrations for ideas discussed here.

Encounters with the World of Learning

The Methodological Journey

When I first began learning Gemara in elementary school, I thought that the hallmark of a *talmid ḥakham* was his ability to translate the difficult Aramaic words of the Talmud. Some time during high school, I discovered the important role of asking questions and seeking answers. The fundamental litmus test of scholarly development thus became what types of questions are asked and what forms of answers are sought. When I began my studies at Yeshivat Shaʿalvim, I was taught that the goal of study is not only the understanding of a particular Rashi or Tosafot, but the comprehension of the topic that is presented by the *gemara* and discussed by the *rishonim*. As a student of R. Ahron Soloveichik and R. Michael Rosensweig at Yeshiva University, and later as a student of R. Aharon Lichtenstein at Yeshivat Har Etzion, I first encountered the approach that sought to uncover and analyze the conceptual ideas underlying the topics discussed in the Gemara ("Brisker" analysis).

At each of these stages of my learning, I was convinced that the basic methodological possibilities of how to relate to a *gemara* had been exhausted, but I was proven wrong time and time again.

The next stage in my thinking included two parallel developments. I discovered the approach of philosophical analysis, in which concepts are not related to in the abstract, but are rather ascribed philosophical meaning and significance. To truly understand Gemara, one must uncover the "philosophy of Halakhah." This drive stems in large part from R. Avraham Yiẓḥak ha-Kohen Kook's call for the fusion of "Aggadah" and Halakhah.[2] (In this article, I will generally use the term "*maḥashavah*," and not "Aggadah," as my intent is to refer not only to a particular literary genre, but to the philosophical realm in general.)

I soon discovered, however, that this philosophical inquiry is not highly regarded at some of the institutions in which I had studied, in part because of ideological and theological issues that these methodologies present. In a lecture I once heard during Ḥanukkah, a prominent Rosh Yeshivah explained that the difference between Hellenism and Judaism is that the Greeks asked not only "what," but also "why." Another Rosh Yeshivah brought Koraḥ's rebellion as an example of the dangers in searching for the philosophy of *miẓvot* (based on his understanding of Rashi's comment at the beginning of the *parashah*). I later

2. *Orot ha-Kodesh* (Jerusalem, 1985), vol. 1, p. 25.

heard R. Kook's son, R. Ẓvi Yehuda, quoted as warning that combining Halakhah and Aggadah violates the prohibition of *kil'ayim*; it is a forbidden mixture.

My second discovery related to the academic world. Sensitivity to textual aspects of the Gemara, which I imbibed from my *Rebbe Muvhak*, R. Shmuel Nacham of Shaalvim, led me to explore this type of study in the venue of academic scholarship at Bernard Revel Graduate School, primarily with Professors Yaakov Elman in relation to Talmud and Haym Soloveitchik in relation to the *rishonim*.

Academic Talmud scholarship deals with the entire gamut of sources in *Ḥazal*, not only the *Bavli*, but the *Yerushalmi*, *Tosefta*, *midreshei halakhah* and *midreshei Aggadah* as well. More significantly, each source is understood on its own terms. This is in contradistinction to classical approaches, in which the *Torah She-bi-ketav* is defined exclusively by the *Torah she-be-al peh*, the Mishnah by the Gemara, the *Yerushalmi* by the *Bavli*, and the *Bavli* itself by the *rishonim*. Indeed, when a friend of mine commented that the "Book" referred to in the phrase "People of the Book" was once the Bible, but is now Gemara, a second friend disagreed, claiming that what is in fact studied in the *yeshivot* is primarily *rishonim*. The academic methodology takes a different approach.[3]

Part of the richness of the experience of traditional talmudic learning is the study of a variety of different opinions, the "*shiv'im panim la-Torah.*" We can relate to the *lamdan*'s joy in contrasting the approach of Rambam with that of Tosafot, for example. An approach that views each work of *Ḥazal* in its own light, as the academic approach does, reveals many more possibilities! The differences between the *Bavli* and the *Yerushalmi* are often much more fundamental then those between two *rishonim* who are ultimately focused on interpretation of a particular passage in the *Bavli*.

Although this approach does not limit the study of a source to its classical commentators, this does not necessary lead to rejecting or differing with those commentators. Rather, it stresses that we can only understand why *Ḥazal* interpreted a text the way they did if we are sensitive to the fact that the *derash* is not identical with the *peshat*. Viewing a ge*mara* on its own terms also allows us to deal with questions and categories to which classical commentaries did not relate.

3. While students in traditional *yeshivot* may be exposed to the whole range of sources, those sources are not generally viewed on their own. In cases in which an earlier text is interpreted by later authorities, the range of legitimate interpretation is limited to those that have already been offered. For example, in *yeshivot*, the *Yerushalmi* is studied in light of the *Bavli*, not as an independent source.

As enthusiastic as I was about this type of study, I quickly realized that the opposition to philosophical inquiry in relation to Halakhah pales in comparison to the opposition to textual methodologies. The possibility that there was a process of development within Halakhah, as suggested by the academic approaches, is antithetical to a perception of the Torah as abstract and unchanging. In addition, if this method leads to an interpretation of texts that differs from the classical interpretation, it may undermine the authority of these sources and, thereby, the binding nature of Halakhah.

In Israel in particular, the polemics against these approaches have been fierce. These include attacks against the attempt to interpret *Tanakh* outside of the prism of *Ḥazal*, as well as against "*Revadim*," an approach that aims to make the student aware of the stages in the Gemara's development (*Tannaim*, *Amoraim*, *Stammaim* [anonymous redactors], etc.). Both of these polemics were spearheaded by R. Ẓevi Tau of Yeshivat Har Ha-Mor, the leader of the movement referred to as "Yeshivot Ha-Kav" ("The Line"). A full discussion of these polemics is beyond the scope of this article, but I will offer a partial response below.

The development of new approaches to Gemara study did not end with the philosophical and academic methods. One of the most fruitful methodological developments in recent years is the literary approach, which fuses the textual with the conceptual. This approach studies the structure of a text and its use of language in terms of word-plays and imagery in order to ultimately uncover the meaning of the text. These methodologies were first applied to Torah study in regard to *Tanakh* and Aggadah, most prominently at Herzog College in Gush Etzion. It was and is promoted by teachers such as R. Mordechai Breuer *ẓ"l*, R. Yoel Bin Nun, and R. Yaakov Medan, and through the *Tanakh* journal "*Megadim*." A major turning point in my learning was exposure to the work of R. Avraham Walfish, who applied these methodologies to the texts of the Mishnah. From the Mishnah, it was but a small step to apply this approach to other sources in *Ḥazal,* including the Gemara, and R. Walfish and others have continued exploration in this vein in recent years. *Netu'im* is a *Torah she-be-al peh* journal edited by R. Walfish that includes many articles that utilize the literary approach. In particular, the first issues include a series of methodological articles by R. Walfish that I found very significant.[4]

4. "Word-Plays in the Mishna," available at www.herzog.ac.il/vtc/0039563.html.

From the Beit Midrash to the University and Back

In the mid-1990's, the desire to fuse the tools of the academic world with those of the *beit midrash* brought me back to the university, this time The Hebrew University in Jerusalem. In yeshivah, I had studied the philosophy of Halakhah in the context of the holiday of Sukkot. One of the major critiques of attempts to link Halakhah and *maḥashavah* is the lack of rigor and the unclear boundary between *peshat* and *derash* in many of these attempts. Thus, efforts in this vein have generally been regarded, often rightfully so, as homiletics. I hoped that developing my findings in the course of a doctorate would help grapple with this challenge. My goal was to fine-tune the approach by utilizing the methodologies offered in the academic world and through the very fact that my findings would be open to critique; my advisors, various doctoral committees, the judges of my dissertation, and the editors of journals and their professional readers would evaluate my work. Generally, each of these stages does not end with a simple approval, but rather with long lists of questions to be dealt with, with rejection of particular ideas, and suggestions for improvement.

In the context of my doctoral work, I was exposed to additional fields that contributed to my research. The study of ritual and symbolism in general, whether from the vantage point of anthropology or comparative religion, can lead to insight into Halakhah. One can apply basic questions that are raised in these fields to the study of Halakhah, and these studies also offer a broader context to particular ideas that appear in Judaism. This method does not necessarily lead to "parallel-mania" between Judaism and other traditions. Often, quite the opposite results—comparison highlights what is unique about Judaism.[5]

During this period (in 1997), I became a *Ram* at Yeshivat Otniel, a yeshivah I had barely known existed before I was offered the position. (It has since become one of Israel's largest *hesder yeshivot*, with 350 students and fourteen *Roshei Yeshivah* and *Ramim*). I assumed that a traditional yeshivah setting would not accept either of the basic approaches to Talmud study that I had pursued; a "*maḥashavanik*" would be seen as too "*ruḥani*," too spiritual, in contrast to the classical *lamdan*, while the academic scholar would b e viewed as not *ruḥani* enough. To my surprise, I

5. See my *Nittuaḥ shel Motivim be-Hilkhot Ḥag ha-Sukkot be-Sifrut ha-Talmudit*, dissertation for the Degree of Doctor of Philosophy (December, 2003) (Heb.), available at www.daat.ac.il/daat/vl/nagendoc/nagendoc01.pdf.

found that the yeshivah was open to and involved in both the forging of *maḥashavah* and Halakhah and the methods of academic scholarship.

I later discovered that much of the inspiration for this approach came from R. Shagar *zẕ"l* (R. Shimon Gershon Rosenberg), who had taught one of our *Rashei Yeshivah*, R. Beni Kalmanson, as well as several of the *Ramim*. R. Kalmanson eulogized R. Shagar as a "*gadol ha-dorot*," as opposed to a "*gadol ha-dor*"; individuals who have significant impact on future generations are often by definition less recognized by the generation in which they live.

Although I joined the yeshivah in Otniel as a *Ram*, I felt that I had once again become a *talmid*, as there was so much for me to learn. The yeshivah has a Ḥasidic bent, which seeks the spiritual that goes beyond the intellectual. I discovered that uncovering philosophical meaning in Halakhah is a not an end, but a beginning; the challenge is to translate the philosophical meaning into personal meaning and significance and then to figure out how to incorporate it into one's life.

I have since given up believing that the journey to discover what it means to learn Gemara will ever reach a definitive conclusion. In recent years, in fact, a number of additional approaches have developed. A colleague from *Beit Midrash Ra'ava*, R. Shimon Klein, has developed an approach that allows the imaginative faculties to play a role in learning.[6] R. Dov Berkovits of *Beit Midrash Beit Av* demonstrates the dynamics of group discussions in developing personal significance for the ideas raised in the course of study.[7] I view these approaches as following, or at least carefully integrating, the use of the intellect, not supplanting it.

Applying Integrative Methodologies in the *Beit Midrash*

Although the approaches to Gemara study that I have encountered over the years are "new," methodologies in learning have constantly been evolving. The *aḥaronim* clearly related to the Gemara differently than the *rishonim*. R. Hayyim Soloveitchik changed the nature of *lamdanut*, and his students, such as R. Shimon Shkop, took his methodology to new spheres. In recent times, however, this process has been greatly accelerated. The combination of interdisciplinary approaches and the

6. R. Shlomo Klein, *Divrei Shalom ve-Emet: Megillat Esther, Iyyun ve-Hakshavah* (Jerusalem, 2011).

7. See his book on *Massekhet Kiddushin*: Dov Berkovits, *Marriage and the Limits of Personal Power: Talmudic Creativity in the Eye of the Storm* (Heb.) (Israel, 2008).

explosion of information in our times have led to unlimited possibilities. This rapid rate is inevitably problematic, as new approaches are often not yet ripe or properly developed. In addition, the eclectic nature of interdisciplinary approaches is limited by time constraints. One can devote years to writing a doctoral dissertation, but how does one incorporate various methodologies in a yeshivah, where a new *sugya* is studied every week?

I wish to present a model for coherently applying the methodologies we have mentioned. As previously noted, these are not theoretical models; they are based on experience from thirteen years of teaching in Yeshivat Otniel.

What is Studied

One important factor that contributes to a methodological approach is the choice of what to learn. This includes both the choice of which *massekhtot* are studied as well as what is stressed in a given *massekhet*.

Meaning and significance for the student is a crucial criterion in choosing a text. For example, as I write this essay, this year we are learning *Bava Batra*. Although we hope our students will learn the entire *massekhet* in *beki'ut*, we ultimately decided that the first two chapters would be studied *be-iyyun*, despite the fact that the third chapter is, in many respects, more "*lumdish*." This decision was made in large part because of the significance and relevance of these chapters, which deal with the relationship between the individual and society. Similarly, when learning *Gittin*, we focused on the last chapters, which deal with *gerushin*, divorce itself, and not the first chapters, which focus on the complexities of the *get*. This choice was made in part because the process of *gerushin*, more than the *get*, sheds light on the nature of marriage; moreover, the problem of refusal to offer a *get*, a burning issue in Israel, is rooted in this topic.

After choosing the text, there is the question of focus in each chapter. When studying the first chapter of *Kiddushin*, one could focus on *kinyanim* or on the nature of marriage and the meaning of the marriage ceremony. Through studying *Nedarim*, one could fine-tune the difference between a "*ḥeftza*" and a "*gavra*" or contemplate the very nature of language. Ultimately, the issue is what to stress, as both approaches have merit and neither should be ignored entirely.

This approach to choosing the text to study does not limit the scope of *massekhtot* learnt in yeshiva—it actually expands it. In choosing a text,

meaning is a goal, but that does not only imply practical relevance; texts that express values are existentially significant. The yeshivah has in the past studied *Zevaḥim*, a *massekhet* that is unfortunately not currently *halakhah le-maʿaseh*. Nevertheless, the world of the *Mikdash*, for the restoration of which we pray daily, should be an essential part of a Jew's worldview even today.

A famous cover of *The New Yorker* depicts how New Yorkers perceive the map of the world. Not surprisingly, New York City takes up most of the map. Similarly, many traditional *yeshivot* have adopted an outlook wherein legal aspects compose the bulk of *Shas*, while the rest is just peripheral. As a result, even when learning topics beyond *Seder Nezikkin*, these topics are found and stressed. When learning *Gittin*, focus is placed on testimony and validity of legal documents (*edut* and *shetarot*); when studying *Kiddushin*, stress is placed on *kinyanim*; analysis of *Ketubbot* is associated with clarifying *sefekot*. These abstract and legal concepts are important and must be studied, both for their inherent value and in order not to be completely disjointed from the "*olam ha-yeshivot*," but in our yeshivah, they are studied in smaller proportion. Our goal is meaning and significance for the student.

Introduction to the *Massekhet*

The second stage after choosing the text to study is devoting time to an introduction to the *massekhet*. The study of the relevant *pesukim* in the Torah is but a small investment in terms of time, but it is of great qualitative value for the course of learning. Study of the basic ideas that emerge from the *Torah she-bi-ketav* is a significant backdrop for tracing the development of these ideas and seeing how they are applied in the *Torah she-be-al peh*. It also sharpens the ability to contemplate the relationship between the *Torah she-bi-ketav* and the *Torah she-be-al peh*.

For example, when the Yeshivah studied *Bava Kamma*, there was a weekly *shiʿur* in which each of the *Ramim* was able to express his understanding of *Ḥazal*'s interpretation of "an eye for an eye" as referring to monetary compensation.

The introduction includes the study of the *mishnayot* of the relevant chapters as well. The ability to see the entire chapter of Mishnah as a unit and contemplate its structure is yet another significant point of reference before the study of the Gemara actually begins. For example, study of the *mishnayot* of the first chapter of *Kiddushin* allows the student to analyze

the similarities between the *kinyan* of *kiddushin* and other *kinyanim* and to uncover what is unique about it, a study that sheds light on the essential nature of *kiddushin*.

Plan for the Zeman

This introduction generally takes about a week. The bulk of the *zeman* will be dedicated to the routine of learning *sugyot* one by one. By now, there have been a number of staff meetings to decide which *sugyot* to study and which to skip. The goal is to create a curriculum in which the major topic of the *massekhet* is covered, along with some unrelated *sugyot* whose significance demands that they be discussed.

For example, the topic of *kinyan devarim* (acquiring by verbal expression) appears in *Shas* only in the first chapter of *Bava Batra*. Although it is not relevant to the major topic of the *massekhet*, this would be the only opportunity to study it. On the other hand, although this chapter also discusses the laws of *sefekot*, they are discussed extensively elsewhere, and would thus be more likely to be skipped in this context.

Individual Sugyot

Here we have arrived at the heart of the challenge—the study of each individual *sugya*. Obviously, each rebbi has a different style; I will refer to a major trend among the *shi'urim* in our yeshivah, but I cannot speak for all. Furthermore, every *sugya* presents its own challenges, and no one formula is appropriate for all. The discussion below is thus purely a model.

The stages in learning a *sugya* are generally chronological. By virtue of the introduction, the relevant *pesukim* and *mishnayot* have already been studied, so it usually only takes a short time to complete the biblical and tannaitic sources, reviewing the above in the particular context of the given *sugya* and adding *midreshei halakhah* and *Tosefta* when relevant.

The next stage is the *gemara* itself—primarily *Bavli*, but the *Yerushalmi* as well. Within this stage, an attempt is made to build up the basic *sugya* from within the *gemara* itself. This certainly takes more time than if the *gemara* is treated as a jumping board to the *rishonim*. However, if the student arrives at the next stage of studying the *rishonim* and *aḥaronim* after having himself dealt with the challenges that these commentators faced in unraveling the *gemara*, he actually saves time in the end; this approach makes it easier to understand the commentators. In addition, the student attains added insight into the paths each commentary has taken.

What takes place during each of these stages? When I studied at Yeshivat Har Etzion, I was taught a basic formula for breaking down and analyzing a *sugya*: seek the source (*makor*), the halakhic definition (*hagdarah*), and scope (*hekef*). From these, one attempts to uncover the nature (*ofi*) of the particular law. In my teaching, I add two additional steps. Once the *ofi* of the law has been determined, we ask the "why" and search for the meaning. To this conceptual approach, textual sensitivity is applied by noting the literary structure of the sources and by studying each within its own terms, that is, clarifying what is mentioned and what is not mentioned in each source.

An example of this method is demonstrated in the appendix at the end of this article.

Shi'ur Kelali

One basic way of broadening the scope of use of methodologies is through the *shi'ur kelali*, the *shi'ur* given by the Rosh Yeshivah to the entire yeshivah. In many *yeshivot*, the *shi'ur kelali* is on a topic that has not been studied over the course of the week. In Otniel, the *shi'ur* deliberately focuses on what was studied during the week to allow different approaches to be aired, thus turning the *shi'ur* into a discussion in which both staff and students actively participate, rather than a lecture. The Rosh Yeshivah giving the *sh'iur* sees his role not as a solo performance but as a conductor of an orchestra.

Yemei Iyyun

Another method of enrichment is through *yemei iyyun* for the entire *beit midrash*. These generally take place towards the conclusion of a *massekhet*. In these contexts, staff and students have the opportunity to share insights and discoveries that arose during their learning. This is also an opportunity to invite guest speakers who specialize in the relevant fields.

For example, at the conclusion of studying *Bava Kamma*, we examined how Israeli law relates to the *halakhot* of *nezikkin* (torts). Judges Neal Hendel and Mosheh Drori were invited to present the similarities and differences between current Israeli law and Halakhah. To allow for a meaningful discussion, the students prepared in advance by studying a number of these judges' court decisions.

Throughout the study of *Massekhet Kiddushin*, the *beit midrash* contemplated the nature of marriage that emerges from the study of the *massekhet*. Towards the end of the *zeman*, we studied the validity of civil

marriage based on the conclusions of various *sugyot*. R. Shlomo Dichovsky, a leading member of the rabbinical high court, shared his opinion and experience on this issue. In order to relate to policy issues, we hosted R. Yaakov Medan, who has written a covenant for Israeli general society together with Judge Ruth Gavison in an effort to overcome the gap between religious and secular Israelis when it comes to civil marriage.

While studying *Massekhet Shevi'it*, we traveled to fields and met with farmers. This contributed to understanding the realia concerning the agricultural aspects of the *sugya*. Students also heard first-hand how farmers planned to meet the challenges of observing the laws of the (then) upcoming *shemittah* year. We also hosted a professor of agronomy, who gave a more scientific view of the agriculture elements involved.

When we finished *Massekhet Gittin*, we attempted to study the different sides and approaches to dealing with the *agunah* issue. We met R. Eliyahu Ben Dahan, head of the *Beit Din* in the Israeli rabbinical court system, and once again with R. Shlomo Dichovsky. In addition, R. Elyashiv Knohl came to the Yeshiva to present his proposal for prenuptial agreements.

Throughout the course of the year, we conduct ancillary studies to the topic of the major *massekhet* studied. While we were studying *Massekhet Berakhot*, *tefillah* workshops took place. When we were studying *Massekhet Shabbat*, classes exploring the different meanings of *Shabbat* were held. When we were learning *Massekhet Nedarim*, which deals with the ability to create commitments and prohibitions through the power of speech, the parallel "spiritual" work was focus on uplifting speech. In addition, there were classes on *Sefer Yeẓirah*, which deals with the spiritual and philosophical underpinning of language in Judaism. Learning *Massekhet Bava Kamma*, which focuses on damages to property and theft, led one of the staff members to give a lecture series about ethical and spiritual issues relating to money.

Beyond the Beit Midrash

While there is certainly an inherent value to the Torah studied in yeshivah, every institution aims to give its students the tools to continue learning Torah after leaving the confines of the *beit midrash*. The *miẓvah* of learning Torah applies "*be-shivtikha be-veitekha u-ve-lekhtekha ba-derekh*" (Deut. 6:7), in the home and on every path in life, not only to time spent in the *beit midrash* as a formal student. Torah learning must eventually be applied in the home, in discussion between parents and children, and in

the encounter with the outside world. This means that *yeshivot* must be realistic about the time constraints and environments that students will one day find themselves bound by.

I recall that when I studied at Yeshiva University, there were a number of students who explained that they didn't learn during night *seder* because only learning Gemara *be-iyyun* is of value, and in a two-hour night *seder* there was not enough time to properly learn in depth. It seems that the forms of Gemara study stressed in yeshivah, and the use of multiple methodologies in particular, are often too complex to be continued in their original form after leaving that environment, when students face the challenges and limitations of family life and profession. I believe that the challenge is not to try to replicate what is done in the *beit midrash*. Rather, students should find ways to use the many facets of learning as ingredients to be rehashed in appropriate and relevant forms.

A good example is the study of Mishnah. The text of the Mishnah itself is short and easily understood, making it appropriate to learn even in short time periods or in a family setting with people of different ages and backgrounds. The study of Mishnah is often technical and dry, however. Using the literary tools developed by R. Walfish mentioned earlier and using the resultant literary structures to uncover meaning can turn the study of Mishnah into a rich Torah learning experience.

The task of preparing students for study after leaving the *beit midrash* must begin within the *beit midrash* itself, where the process can be guided. For years, there was a group in our yeshivah that met weekly to study a chapter of Mishnah. In a short time, the students became active participants, picking up the basic methodologies. Evidence of their participation can be found in the numerous insights of the students quoted in the book that evolved from these classes, *Nishmat Ha-Mishnah*.[8]

Similarly, our staff prepares students for a different type of Gemara study. One of our teachers, R. Amnon Dukov, begins each morning with a daily Gemara *shiur*, going page by page, and he tries to limit it as much as possible to the basic text of the *gemara* being studied. He uses a number of basic techniques, among them focusing on understanding what underlies the flow between the seemingly associative topics within the *gemara*, to make it a significant learning experience. A step up from regular *beki'ut* study, this presents a realistic style for graduates to continue after they leave the yeshivah. The yeshivah's website also includes

8. Available at www.daat.ac.il/daat/vl/yakov-negen/yakov-negen01.pdf.

a forum that coordinates the study of Gemara for graduates. Everyone can post ideas and insights about the *daf* (folio page) currently studied by the forum.[9]

Challenges of New Methodologies

Dangers of the Eclectic

Now that we have seen the possibilities for Torah study that have been provided by new approaches, we must discuss the potential pitfalls of using them and how these problems may be addressed.

I strongly believe that different methodologies should be used in tandem. The complex nature of Gemara is a reality that requires a multifaceted approach; using only one methodology can allow a student to exhaustively apply it, but this does not prevent the ultimate conclusions from being skewed, as other dimensions are invariably ignored. For example, there are many learned articles that analyze in overwhelming detail the textual aspects of the *sugya*—the manuscripts, philological issues, knowledge of the relevant realia, etc.—but when making the jump to the conclusion, the lack of grasp of the conceptual or philosophical underpinning of the topic often leads to a misunderstanding of the issue at hand. The opposite phenomenon of conceptual study without textual analysis can similarly lead to problems.

There is a threefold danger, however, in using multiple methodologies.

First, a little knowledge is a dangerous thing; it is certainly perilous to use methodologies without knowing how to use them. Using several methodologies generally leads to being less familiar with each of them, and thus may lead to a more confused process than had one focused only on one approach. The student must recognize this danger and be aware of what he does not know. There should also be means for students to learn the basics of the methodologies that they are exposed to and expected to apply. If this exposure is not offered in the context of special classes, the teacher must make a conscious effort to relate to the methodologies themselves during the *shi'urim*. We cannot assume that students will absorb these foundations by osmosis.

Second, when a *shi'ur* is tackling a topic from many vantage points, less time can be devoted to any particular methodological tool. To avoid being sloppy regarding what is essential, the teacher must often skip what

9. The Yeshiva's website is www.otniel.org.

is not. Ultimately, there is a price for this approach, but it is a price I am willing to pay considering the alternative.

Third, with many tools at one's disposal, there are great temptations to sacrifice intellectual honesty. Instead of using multiple methodologies to allow one to check and balance a particular idea, one may use them to create a "supermarket" to pick and choose items that push a pet theory.

The use of manuscripts is a good example. Alternative *girsa'ot* (versions of a text) must be invoked not only in order to promote a particular idea, but also to temper it. For example, I have argued that the celebration of the *Simḥat Beit ha-Sho'evah* is a reenactment of the story of the bringing of the ark to Jerusalem by King David and that the singing and dancing of the "*ḥasidim*" represent that of David himself. What could be a better proof than the *mishnah* that states that the *ḥasidim* said "*shirot ve-tishbaḥot*," a phrase also used by *Ḥazal* to describe David's poetic endeavors? All the manuscripts of the *mishnah*, however, read "*tishbaḥot*," instead of "*shirot ve-tishbaḥot*," creating a much less striking analogy to David.[10]

Similarly, I argue that *Massekhet Tamid* 1:4 parallels *Shir Ha-Shirim* 2:12-14. After all, the *mishnah* uses the phrase "*higgia et*" ("the time has come"), matching the words of the verse, "*et ha-zamir higgia*" (the time of pruning has come). Once again, however, the word "*et*" does not appear in the reliable manuscripts of the *mishnah*.[11]

Ultimately, to overcome the challenge of selective use of methodological tools, it is critical that there be an opportunity for interaction, feedback, and critique between *lomedei Torah*.

Halakhah and Maḥashavah

As I mentioned earlier, R. Ẓvi Yehuda Kook quoted Ḥatam Sofer as stating that mixing Halakhah and Aggadah is forbidden as *kil'ayim*.[12] The attitude opposing interaction between Halakhah and *maḥashavah* is often based on the assumption that the genre of classical *lamdanut* is more of a vehicle to uncover the "*peshat*," to touch on the original meaning of *Ḥazal*, than *maḥashavah* is.

I believe that, in essence, the opposite is true. I do not mean to devalue classical *lamdanut*; rigorously uncovering the implications of the *halakhot*

10. *Nishmat ha-Mishnah*, 140, n. 16.
11. Ibid., 216, n. 4.
12. The original statement of Ḥatam Sofer was somewhat different: "So I do declare—anyone who mixes words of Kabbalah with the conclusions of Halakhah is guilty of planting *kil'ayim*." See *Responsa Ḥatam Sofer*, *Oraḥ Ḥayyim* 1:51.

concluded by *Ḥazal* has significance and legitimacy even if it does not uncover the conscious intent of the *ḥakhamim*. *Lamdanut* is, in fact, an essential source for the model of learning Gemara that I have presented. However, the genre of *maḥashavah* is closer to that of Halakhah. As I heard Yonah Frankel point out, all of our sources from *Ḥazal* contain both Halakhah and Aggadah—the *Bavli*, *Yerushalmi*, *Midreshei Halakhah*, and, to a lesser extent, the Mishnah and Tosefta. The same *ḥakhamim* engaged in both genres.[13] The idea that Halakhah and *maḥashavah* are unrelated would also belie all we have learnt from anthropology and comparative religion—that rituals have significance and meaning and often reflect a value system. The burden of proof is on anyone who would argue that Judaism is the exception.

In practice, however, matters are more complicated. There are indeed serious challenges to attempts to uncover the "*maḥashevet ha-Halakhah*." Just as many dogmatically deny the very possibility that *maḥashavah* considerations form the basis for the Halakhah, there are those who dogmatically have gone to the other extreme, maintaining that every detail of the *shakla ve-tarya* of the Gemara teaches us a fundamental idea relating to the essence of the topic at hand. The famous Guru Gurdjieff tells of a man walking with the devil. The man asks the devil what another man is doing, and the devil responds that he is collecting truths. The man then asks why the devil is not frightened by this attempt, and the devil replies that he has no reason for concern; ultimately, the person will turn the truths into a dogma.

A second problem of intertwining Halakhah and *maḥashavah* is its newness. For many years, methodologies of *lamdanut* were created, exercised, and polished. No such methodologies have been formed for *maḥashevet ha-Halakhah*. In my doctorate[14] and book[15] on *Sukkot*, I grapple with this challenge, but there is still a long road ahead.

In the next section, I address the third and, in my opinion, most serious problem.

Spirituality Needs Scholarship

Academic scholarship and the search for spiritual meaning are two

13. On the relationship between Halakhah and Aggadah in *Ḥazal*, as well as the development of the view that seeks to dislocate them, see Yair Lorberbaum, *Ẓelem Elokim: Halakhah ve-Aggadah* (Jerusalem, 2004), 105-40.

14. See note 5 above.

15. Yakov Nagen (Genack), *Mayim, Beri'ah, ve-Hitgallut: Hag ha-Sukkot be-Maḥashevet ha-Halakhah* (Otniel, Israel, 2008).

different drives, but both are significant, and it is necessary to incorporate both in learning. I believe that this is true not only because each contributes to and deepens study, but precisely because the differences between them may help each overcome the pitfalls and dangers of the other.

Although I believe in the essential relationship between *maḥashavah* and Halakhah, the fact that *maḥashavah* has personal, subjective significance—as opposed to *lamdanut*, which is generally more abstract and detached—leads to a gap between critically and objectively understanding the sources on the one hand and expressing a subjective, personal worldview through the sources on the other. The subjectivity of *maḥashavah*, the "spiritual meaning" of the text, must somehow be counterbalanced.

The following anecdote articulates both the problem and an approach to respond to it. When Professor Benjamin Ish-Shalom opened his institution, Beit Morasha, R. Amital asked him whether it would be like a university or a yeshivah, the difference being that "in university, you want to know what Rav Kook *said*; in yeshivah, we want to know what Rav Kook says *to us*." Ish-Shalom, who desired to combine the best elements of both approaches, replied, "I want to know what Rav Kook says to *me*."[16] Ultimately, the professor agrees that study should lead to personal significance, but he demands that it be based on and follows from the best effort to uncover the original meaning. To do this, one must be conscious of what emerges from the text itself and what its implications are. Academic scholarship, which seeks to at least partially detach a person from his subjective understanding of the matter studied, allows for a two step process that can temper getting carried away with subjective interpretations. Without this, the search for meaning can leave one looking at a mirror instead of through a window.

Scholarship Needs Spirituality

Academic scholarship attempts to view each source in its own context. This, of course, leads to the realization that *peshuto shel mikra*, the simple reading of the Torah, is not necessarily always identical with the commentary of *Ḥazal*. The challenges raised by this situation are more of an educational nature than a theological one, as there are many sources for this type of explication and many instances of *rishonim* and *aḥaronim*

16. Ish-Shalom noted that if one who studies Rav Kook in yeshivah is called a Kooknik, whereas one who studies Rav Kook in the university is called a Kookolog, one who combines both approaches is a Kooknikolog.

who justify or practice this approach.[17] The problem must be dealt with, however; if this method leads to an interpretation of texts that differs from the classical interpretation, it may undermine the authority of these sources and, thereby, the binding nature of Halakhah. It is beyond the scope of the present discussion to adequately address this issue, but I will attempt to point to a general approach.

Those with experience in Gemara study recognize that not every commentary they encounter provides the simple meaning of the source it intends to explain. There may be an educational danger in acknowledging this reality, but there is an educational danger in denying it as well, especially as students themselves often raise this issue. The educational approach of a teacher who offers far-fetched explanations, trying to convince students that the problem surfaces only because of the limits of students' intellectual grasp and refusing to accept the problem that the students see, may ultimately, God forbid, cause severe damage in the students' trust in their teachers and the Torah itself. Basing the sanctity of and commitment to the *Torah she-be-al peh* only on the argument that it involves no development whatsoever may cause some to abandon it entirely. Those students who sense that commentary includes a creative process in addition to a descriptive one may conclude that the *Torah she-be-al peh* lacks sanctity and that there is no need to be committed to it. It is essential that these issues be raised and grappled with within the *beit midrash*, as often students face these questions only later, when they are no longer part of an atmosphere that can help them deal with these issues from a vantage point of *yir'at Shamayim* and theological depth.

R. Kook writes about three major revolutions of the (then) "new thinking"—new conceptions in sociology, cosmology, and the theory of evolution. Each of these changes was perceived as threatening to faith. R. Kook's approach was to meet the challenges not by ignoring them or by denying them all validity, but by viewing them as challenges to discover the divine within them, and ultimately to enrich faith and achieve a deeper understanding of God through them.[18] Similarly, questions rooted in academic study may serve as an opening for deepening the study of

17. See *Divrei Rishonim ve-Aḥaronim be-Inyan Havanat Darkhei ha-Talmud*, ed. Asaf Malakh (Ramat Gan, 5763). Certainly, this fact does not prevent accusations of heresy. Dr. Moshe Bernstein told of a *ḥasid* who entered one of his classes, politely listened, and then thanked Dr. Bernstein at the end of the class. When Dr. Bernstein asked him what he had learned, the response he received was, "That the Rashbam and Ibn Ezra are *apikorsim*!"

18. *Orot Ha-Kodesh* 2: 538-62.

Torah she-be-al peh. A believer says, "When *Mashiaḥ* comes, my grandmother will rise from her grave," while a non-believer says, "When my grandmother rises from the grave, *Mashiaḥ* will come!" The formulation and the melody can make all the difference between faith and heresy; a *beit midrash* is capable of offering the correct melody.

The traditional method of Gemara learning leaves little room for any approach that stresses the development of the *Torah she-be-al peh*, primarily as a result of assumptions relating to two fundamental issues—the nature of commentary and the nature of the Oral Torah itself. Rethinking these topics—and teaching them differently—can help us successfully grapple with the challenges posed by developmental theories.

What is commentary? If the value and meaning of commentary is entirely related to its ability to passively uncover the original intent of the author, it is difficult to accept any view that sees the role of commentary as doing more than that. One of the major revelations in our times (although often taken to an extreme in postmodern thought) is the realization that legitimate commentary can be much more dynamic. It seems clear that *Ḥazal* themselves had a complex conception of commentary. Statements such as "*lo ba-Shamayim hi*"[19] stress the preference of the commentator's understanding of the text over that of God. "*Eilu ve-eilu divrei Elokim ḥayyim*"[20] envisions a possibility of multiple truths in interpretation, and the famous story of Mosheh Rabbeinu not understanding what R. Akiva quotes in his name attests to this as well.[21]

What is the *Torah she-be-al peh*? Some suggest that the fact that there are two *Torot* reflects the fundamental differences between them: the Written Torah is by nature fixed, whereas the Oral Torah is not written deliberately in order to maintain its fluidity. R. Mosheh Glazner, author of the *Dor Rivi'i*, writes:

> Know that there is a major and obvious difference between the *Torah she-bi-ketav* and the *Torah she-be-al peh*: The *Torah she-bi-ketav* was given to Moshe word for word, from "*Bereishit*" to "*le-einei kol Yisrael*," whereas the *Torah she-be-al peh* conveyed to him included the content, but not the words . . . as words can be passed down only in writing. . . . By the very nature of oral transmission, there will be differences in understanding between people, as each will put in some of his personal understanding. . . . In truth, we see the Torah's wonderful wisdom in that it gave the *ḥakhamim* of each generation [the ability to give] the commentary on the Torah, so that

19. *Bava Meẓi'a* 59b.
20. *Eruvin* 13b.
21. *Menaḥot* 29b.

> the Torah will live with the nation and develop with it, and this is its eternality. With this [understanding] we can explain the phrasing of the blessing recited after [reading] the Torah: "Who gave us a Torah of truth (*Torat emet*) and implanted eternal life (*ḥayyei olam*) within us." The Tur explains that the "Torah of truth" is the *Torah she-bi-ketav*, whereas "eternal life" refers to the *Torah she-be-al peh* . . . . Thus, [R. Glazner argues] the *Torah she-be-al peh* is not called absolute truth, but "agreed upon truth," which is dependent on the understanding of the judge in your time. For this very reason, it is called "eternal life implanted within us," because through it, the living spirit of each generation will come to fruition.[22]

Thus, the Torah is eternal precisely because it is fluid and dynamic. R. Kook similarly acknowledges human input in the *Torah she-be-al peh* :

> The spirit of the nation did not generate *Torah she-bi-ketav,* but the spirit of God, creator of all, created it. . . . In the *Torah she-be-al peh* . . . we feel the spirit of the nation, which is connected like a flame to a coal to the true light of the Torah, causing, through its special qualities, that the *Torah she-be-al peh* was formed in its unique form. Certainly, man's Torah is included in God's. The spectator's open eye looks through the lighted speculum; [this is] true to all houses of God. . . . These two lights make a complete world, wherein heaven and earth meet.[23]

The source of this passage has, in fact, been censored. In the original passage taken from R. Kook's journal, the line reads "*she-Torah she-be-al peh noẓeret,*" that the *Torah she-be-al peh* is formed, in present tense, and not in the past, as indicated in the printed version. R. Kook viewed the formation of the *Torah she-be-al peh* as a process that not only occurred in the past, but continues to occur in the present as well.[24]

Rav Kook's conception of the *Torah she-be-al peh* is rooted in that of the Kabbalah. In Kabbalistic thought, the *Torah she-bi-ketav* and the *Torah she-be-al peh* are represented in the ten Divine *sefirot*; *Torah she-bi-ketav* is represented by *Tif'eret*, "splendor," and *Torah she-be-al peh* by *Malkhut*, "royalty." *Malkhut* reflects the Divine presence within reality and is the spiritual representation of Israel within the *sefirot*. Much of Kabbalah deals with the interaction between *Tif'eret* and *Malkhut*, including the interaction between God and Israel and the *Torah she-bi-ketav* and *Torah she-be-al peh*. In simple terms, the Kabbalistic conception of the Divine is that God is not only transcendent but immanent, and can be expressed and revealed

22. *Dor Revi'i*, introduction to *Ḥullin.*
23. Introduction to *Orot Ha-Torah* (Jerusalem, 5745).
24. *Shemonah Kevaẓim* (Jerusalem, 5764), vol. 2, *piska* 56.

through human endeavor. Therefore, the fact that there is human creativity and participation in the formation of the *Torah she-be-al peh* does not undermine its status as an expression of the divine. The sanctification of the human element of the *Torah she-be-al peh* gives it greater validity and legitimacy than if it were merely "Human, all too Human."[25]

While this is obviously a simplistic explanation of the Kabbalistic concept underlying R. Kook's approach, I believe it is important to stress that the Kabbalah offers a perspective on dealing with these issues.

There is a further important point relevant to academic study of the *Torah she-be-al peh*. Seeing a creative process within the insights of the anonymous editors of the Gemara is problematic if this leads to the impression that their innovations are less authoritative. But the authority of the Gemara stems from its acceptance by *Kelal Yisrael*,[26] and the anonymous parts of the Gemara are certainly included in what was accepted. We know that "*Gadol mei-rabban shemo*"—when a rabbi is cited by his name alone, without any title (such as Hillel), it is a reflection of his greatness.[27] I would add that "*Gadol mi-shemo stam*"—remaining anonymous is even greater than being named at all.

Academic scholarship needs spiritual tempering to protect faith, but also because an approach that lacks faith ultimately limits a student in the search for truth. I have a friend who studied Greek philosophy because he recognized that the works of the Greek philosophers changed the world. He complained that the professors had no faith. "Why would you expect the professors to be religious?" I asked. "You don't understand," he replied. "I mean they have no faith in Homer, Aristotle, and Plato!" The prevalent presumption of the academic world—that one must be emotionally detached from the topic studied in order to be objective—undermines the ability to uncover the deep truths of the topics studied. Lack of spiritual context not only makes an academic approach to the Gemara dangerous; it impedes a basic understanding of the text.

R. Shagar goes a step further in criticizing the academic world's claim of truth based on its "objectivity" and detachment from the text, challenging this assumption based on the postmodern argument that all readers have preconceptions when approaching a text.[28] Commentary may come

25. A title of one of Nietzsche's works.
26. See Rambam's introduction to *Mishneh Torah.*
27. Some see this phrase as a paraphrase of the closing line of Tosefta *Eduyot.*
28. R. Shagar, in *Be-Torato Yehgeh: Limmud Gemara ke-Bakkashat Elokim*, ed. Zohar Maor (Alon Shevut, 2008), 154.

from the outside; the commentator deliberately detaches himself from what he is studying, thus giving him a broader perspective, as he looks from afar. However, commentary may emanate from a different direction; the commentator identifies with what he is studying and has the advantage of understating it from the inside. Ultimately, the postmodern preference is for understanding that comes from within.[29]

I would add the need to be aware of the strengths and limitations of both the inside and outside commentary; a balance between scholarship and spirituality, a golden mean, must be navigated.

The Mixed Blessing of the Experiential

A balance is necessary not only between spirituality and scholarship, but within spirituality itself.

I grew up in a "*Litvish*" environment, in which religious values focused on *yir'at Shamayim* and commitment particularly in the context of fulfilling the Halakhah. In Israel, I encountered additional dimensions in *avodat Hashem*, a more Ḥasidic approach that focuses on love, joy, and seeking to experience God.[30] In this context as well, there is a need for synthesis, as opposed to a black and white choice between alternate paths.

After several years of teaching, I realized that enthusiasm for the more Ḥasidic approach was actually doing a disservice to many of my students, who did not have the privilege of growing up in the *Litvish* tradition and for whom the experience of *avodat Hashem* was thus primarily experiential, the "*ḥavayah*." This approach is problematic for three reasons. First, instead of being a means to greater closeness to God and a deepening of one's service to the divine, the spiritual experience becomes an end in and of itself, a phenomenon evidenced by the growing popularity of the "New Age" movements. Second, personal experience becomes the only criterion for legitimacy; if I can't relate to something, I simply don't do it. Finally, focus on the experiential can lead a person to be self-involved and less attuned to others.

In order to preserve the experiential element of *avodat Hashem* while avoiding its descent into amorphous "spirituality," a focus on *yir'at Shamayim* is necessary. We are taught that "*Reshit ḥokhmah* [wisdom] *yir'at Hashem*" (Ps. 111:10); in our time, we should add that "*Reshit*

29. Ibid., 160–67.

30. In other contexts, I have written about the power of Judaism to incorporate both "doing" and "being," which is often viewed as the east-west divide. See *Parshat Bereshit*: Doing and Being, http://www.notes.co.il/yakov/61535.asp. Om Shalom: Jewish Spirituality between East and West, http://www.notes.co.il/yakov/16266.asp

ḥavayah [experience] *yir'at Hashem*." Similarly, just as the *mishnah* (*Avot* 3:17) calls for a balance between wisdom and action so that the wind will not uproot a flourishing tree with shallow roots, we must stress the balance between action and experience.

From an educational perspective, it is no small challenge to achieve that balance. It is not sufficient to simply note each value, especially if the other is stressed. I ultimately realized that this balancing must be a day-to-day challenge, and not merely a topic for an occasional talk. For many years, I have begun each class with my students by noting the date and then adding the verse, "This is the day that God has made; we will rejoice and be glad in it" (Ps. 118:24), thereby expressing the perspective that life itself is a blessing and that joy is to be found in recognizing this reality. As a result of the concerns outlined above, I have adapted my practice somewhat; before this verse, my students and I recite the last verse of *Kohelet* together: "The end of the matter, when all is said and done: Fear God, and keep His commandments, for that is the whole duty of man" (Eccl. 11:13).[31]

Use of New Methodologies in Israel and in America

Many have noted that the use of the approaches discussed above is much more prevalent in Israel than in America. Many view this as stemming from the fact that the thought of R. Kook is much more pronounced in Israel, while that of R. Joseph B. Soloveitchik has been influential in American trends of learning. In reality, however, I think the answer is more complex. As I have already noted, many of R. Kook's followers are at the forefront of the polemics against these approaches, often fiercely criticizing the concept of *maḥashevet ha-Halakhah*. On the other hand, many of the figures promoting these methodologies are American-born, including R. Avraham Walfish and R. Dov Berkovits, as well as R. David Bigman, Rosh Yeshiva of *Yeshivat Ha-Kibbutz Ha-Dati*, R. Mayer Lichtenstein, my colleague in Otniel, and R. Tzuriel Wiener, head of *Beit Midrash Ra'ava*. Furthermore, many of these teachers view themselves as students of R. Soloveitchik or of his students, and they draw inspiration from his genre of thought.

As is the case with many great men, both R. Kook and R. Soloviechik were many things to many people. R. Yoel Bin Nun once described the difference between the way R. Kook's two primary students approached R. Kook's thought. R. Ẓvi Yehudah Kook would skip the philosophical and kabbalistic

31. This combination of joy and *yir'ah* is organic, as attested to by the reading of *Kohelet* on *Sukkot*, "*zeman simḥatenu*" (time of our rejoicing).

passages in his father's writings, focusing on the more tangible aspects, while R. David Ha-Kohen, the "Nazir," would begin each *shi'ur* by asking one of the students to recite the ten *sefirot* in their proper order. Ultimately, R. Zvi Yehuda's approach, with its strong focus on *Am Yisrael* and *Ereẓ Yisrael*, became dominant in Mercaz Harav; the impact of the more philosophical side of R. Kook is sensed through those works edited by the Nazir, such as *Orot Ha-Kodesh*. As a result, the impact of the latter approach was felt initially on an individual rather than an institutional level, until those individuals ultimately became part of or founded institutions themselves.

Similarly, R. Soloveitchik was a complex personality. In addition to being a successor to the tradition of Brisk and his commitment to many aspects of that conception of Torah, he demonstrated interest in knowing philosophy, Ḥasidut and Kabbalah, and openness to academic studies (although not in relation to the study of Talmud). This complexity impacted on his Torah study as well. The same R. Soloveitchik who was able to eloquently present the classical distinction attributed to the Brisker method—the distinction between searching for the "what" as opposed to the "why"—often engaged in a more philosophical quest in his explanation of the Halakhah as well.

Ultimately, then, the issue is more fundamental than the difference or similarity between two prominent personae. The question becomes why certain sides of each personality were perpetuated and developed while others were not.

A possible theory regarding the different trends in Israel and America was suggested by R. Shagar. A major thesis of R. Shagar's book[32] is the relationship between methodology and motivation for Torah study within the worldview of the student. As he discusses this extensively, in this context, I will relate only to the implications for the issue at hand.

R. Shagar distinguishes between two basic approaches to the relationship between Torah and life. One conception, which he attributes to the Brisker approach, views the divinity and eternality of the Torah as part and parcel of its being abstract and autonomous, and thereby disjointed from life and reality. The Torah's alienation from the natural flow of life is in many ways a dogma and ideal. It leads to the creation of a closed language of *lamdanut*, denigration of "*ballabotish*" reasoning, seeing a divide between how people think and how the Torah thinks, and viewing the Torah as devoid of emotional or human elements, and thus claiming that the *miẓvot* lack reasons.[33]

32. *Be-Torato Yehgeh* (note 28).
33. Shagar, *In His Torah*, esp. 92-95. Regarding lack of reasons for all *miẓvot*, see 96.

Within Israel, R. Shagar discerns a growing thirst for ways that Torah can illuminate life's questions and challenges, to a linkage between the flow of life and the Torah. Is God's will manifested exclusively within the realm of Halakhah, or can God be found within life itself? The return to *Ereẓ Yisrael* and the fact that they live as part of *Medinat Yisrael* has led the Dati Leumi community in Israel to prefer the latter approach.

The prominence of American-born teachers in these trends in Israel is logical, simply because their range of knowledge in different realms is broader in many ways. Thus, the new approaches link the potential presented by American Jewish education with the milieu of *Ereẓ Yisrael*.[34]

I believe that there is a necessity for the application of these methods in the American Modern Orthodox community as well. There is a value to openness to the world which may justify its price, but this is a potential that must be actualized in practice. In a community that values Torah, exposure to secular pursuits must lead to significant impact on the study of Torah, including the study of Talmud, which remains the primary text of Torah study in high schools and *yeshivot*. When members of the Modern Orthodox community feel that openness has enabled them to better serve God and study His Torah, the Modern Orthodox community will have succeeded in validating its decision to accept the challenges of openness.

Conclusion

In this article, I have argued that new methodologies and approaches to the study of Gemara present exciting possibilities and potential for advancement and learning. Although these approaches must be fine-tuned and more fully developed, their application in the yeshivah setting has been successfully implemented.

Numerous objections have been raised to these newer approaches, but many can be overcome. Among the principal difficulties that I have outlined is the use of multiple approaches. On the other hand, I have noted the danger of limiting study to one approach alone, which can at times skew the picture of the *sugya* at hand. As my title suggests, scholarship needs spirituality and spirituality needs scholarship; each force tempers and develops the other, and both are crucial.

The challenge of our generation of Torah teachers is to find the proper balance between these two trends so that we can convey the wisdom of the Gemara in the most productive way possible.

34. Ibid., 143.

Appendix: Stages of a *Sugya*

In the context of describing how individual *sugyot* are taught, I presented a model for studying the various stages of a *sugya*. So that the model will not remain theoretical, I will bring an example from one *sugya* in *Bava Batra*, "*hezek re'iyyah*," dealing with the protection of privacy from visual intrusion. This is not designed to be an article on the topic, but rather a general description of the stages of study passed through by my second-year students. Therefore, no attempt will be made to prove or fully develop any particular point. I will not focus on the early stages of learning, defining the "*makor*," "*hagdarah*," "*hekef*," and "*ofi*," but rather on the additional aspect of incorporation of different methodologies and strategies. My goal is to give a feeling of the flow of the study process.

We ultimately dedicated two weeks to this topic. Most of the first week was focused on studying the sources in *Ḥazal*. We then devoted a week of study to the major *rishonim* and *aḥaronim*, and finally concluded the third stage by going through the *posekim*, focusing on recent halakhic responsa.

The *sugya* of *hezek re'iyyah* focuses on one central question: By what authority can one be forced to build a wall to protect his neighbor's privacy? The conclusion of the *gemara* is that it results from the principle of *hezek re'iyyah*. Presumably, this means that it is an act of *nezek* (harm) to look into your neighbor's property. Since it is forbidden to be a *mazzik*, one can be forced to build a wall in order to prevent this damage.

The phrase "*hezek re'iyyah*" does not appear in the *mishnah*, *Yerushalmi*, or even in statements by *Amoraim* in the *Bavli*, but rather only in the *Stamma* of the *gemara*.[35] This certainly does not preclude the possibility that the concept precedes its first literary mention, but it does open the possibility to investigate if there are other approaches to understand the principles that emerge from the *mishnah*. It is plausible that the wall is built to ensure privacy, but the question remains whether the invasion of this privacy *must* be defined as an act of *hezek*, as would seem to be implied by the *Stamma*, a definition that has multiple ramifications. If this is not an act of *hezek*, by what right can we force a neighbor to build the wall?

The premise of our course of study is that all opinions must accept the conclusion of the *gemara*, the *halakhah* that a neighbor must build a wall between properties, and that that *halakhah* is based on the principle of *hezek re'iyyah*. But different *rishonim* and *aḥaronim* may assume

35. The *stammaim* are the redactors of the Talmud and authors of the anonymous questions, answers, and comments in the Gemara's discussion.

different underlying conceptual bases for that principle, and thus reach different conclusions.

Our study of the *sugya* began by learning the *mishnayot* of the first chapter of *Bava Batra*, which deals with situations in which one is obligated to participate in a joint building endeavor that serves a common need. The chapter relates to this in contexts of relationships between partners, neighbors, and members of a city. From the structure of the chapter, it appears that the relationship itself leads to obligations in situations of mutual need when that need is determined to be fundamental. In the case of partners or members of a city, the logic of this point is self-evident, as one is part of a unit. The *ḥiddush* of the *mishnayot* is the application of this concept to the relationship between neighbors. Even though the neighbors have not explicitly created a contractual relationship, there is a relationship between them that cannot be denied and which can lead to mutual responsibility.

This point is highlighted by comparing Rambam's codification of these *halakhot* to the discussion in the *mishnah*. According to the *mishnayot* (*Bava Batra* 1:1-4), there are three principles to consider when determining whether one can force someone else to participate in a joint venture: 1) One can force participation for needs that are fundamental or customary; 2) One cannot force participation for needs that are not fundamental; 3) If it can be determined that a person utilizes something that was paid for by the other person alone, he can retroactively be forced to pay his part of the venture, even if it is not a fundamental need. According to the simple reading of the *mishnayot*, this list of principles, which appears twice, applies in the context of the relationship between neighbors (with the possible exception of *mishnah* 1:1).

Rambam (*Hilkhot Shekheinim* 5:1) brings the same list in the same order, but he limits the application of these three principles to one who wishes to compel a partner to participate in a joint venture. Partners are bound by these logical principles because they have entered into an agreement together.

Rambam limits the application of these principles to partners, and not to neighbors, because he follows the *Bavli*'s development of the *mishnah*, which is based on a number of *ukimtot*. In the context of partners, Rambam intuitively reaches the same principles that the simple reading of the *mishnah* does.[36]

36. See R. Kook, *Iggerot ha-Re'ayah* (Jerusalem, 5745), vol. 1, p. 124 (letter #103). On the *mishnayot* of the first chapter of *Bava Batra*, see Yakov Nagen and Baruch Siach, "*Mishnat Perek Ha-Shuttefim*," available at http://upload.kipa.co.il/media-upload/

Understanding the structure of the *mishnayot* helps explain the *gemara*'s discussion. Should we interpret the *Stamma* in light of that structure, leading to the conclusion that *hezek re'iyyah* is fundamentally connected to the relationship and responsibilities between neighbors, or should we interpret the *mishnayot* in light of the *Stamma*, concluding that the principles guiding neighbors are governed by the concept of *hezek re'iyyah*?

Among the *Amoraim*, we find that the building of a wall can be obligated even when it does not serve a mutual need. For example, when a roof overlooks a courtyard, Shemuel obligates the owner of the roof to build a wall four *ammot* high to protect the privacy of those who live in the courtyard (*Bava Batra* 6b). However, here, too, it is not obvious that the prohibition to be *mazzik* underlies the obligation. As R. Isser Zalman Meltzer points out,[37] the owner of the roof is also obligated to build a wall of ten *tefaḥim* between his roof and adjacent neighboring roofs. The purpose of this short wall is not to prevent *hezek re'iyyah*, but rather to delineate the properties and identify the owner of the roof as a thief if he tries to enter his neighbor's property. Clearly, there is a mechanism that forces a person to build to protect a neighbor's needs, even when one is not a *mazzik*. R. Isser Zalman Meltzer views that mechanism in the context of neighbors' mutual obligations not to infringe on each others' property rights.

Yet another approach to the nature of the problem of invading privacy appears in the context of the prohibition to open a window facing an existing window (*Bava Batra* 60a). R. Yoḥanan seems to view the problem as lack of *ẓeni'ut*. The *Stamma*, however, masterfully presents the approach that the problem is that of *hezek re'iyyah*.

The first *sugya* of *hezek re'iyyah* (*Bava Batra* 2a–3a) is far from spontaneous *shakla ve-tarya*; it is carefully orchestrated. There are seven parts of the first part of the *sugya*, a typological structure for talmudic *sugyot*.[38] Five of the six *mishnayot* of the first chapter, a *mishnah* in the second chapter, and the statement of Shemuel are interpreted as focusing on looking into the neighbor's domain as the central problem. Although the first part of the *sugya* takes the position that *hezek re'iyyah* is not *hezek*, this ultimately holds true only in regard to the first *mishnah*, whereas in

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37. *Even Ha-Azel*, *Hilkhot Shekhenim* 2:16.

38. See Shamma Friedman, "*Mivneh Sifruti be-Sugyot ha-Talmud*," Sixth Congress of Jewish Studies, (1973), 389-402.

all the other cases there is an obligation to build a wall. Finally, the *sugya* comes to the conclusion that, in fact, *hezek re'iyyah shemei hezek,* damage through looking into another's property is considered damage, even in the case of the first *mishnah*.[39]

That the *sugya* is a deliberate literary creation can be demonstrated from even minor points. For example, the *sugya* begins by bringing a proof that the word "*meḥiẓah*" in the *mishnah* means "wall." There are many *mishnayot* from which this point could be proven; it is thus surprising that the *sugya* chooses to prove it from a *baraita* in *Kil'ayim*. Recognizing the objective of the *sugya* leads to an explanation for this choice. According to the cited *baraita*, the owner of a vineyard must build a wall in order to prevent his grapes from creating *kil'ayim* with the grain in his neighbor's field; if he does not build the fence, he will be responsible as a *mazzik*. This source serves as a significant precedent for the approach that the *Stamma* later presents: that the obligation to build a wall stems from the need not to be a *mazzik*. Additionally, the case of *kil'ayim*, like that of *hezek re'iyyah*, is a form of non-tangible *nezek*; the lack of a wall between the grain and vines does not physically damage the grain, but rather leads to a halakhic prohibition.

The one *mishnah* in the chapter in which the *Stamma* does not identify *re'iyyah* as being the problem, *mishnah* 3, discusses a case in which one neighbor builds a wall that ultimately encompasses his neighbor's field from all four sides, thereby protecting the neighbor's field as well as his own. Nevertheless, the basis of the obligation is not viewed as resulting from a relationship between the neighbors participating in a project because of a common need, but rather from the fact that receiving benefit is considered a sufficient cause to obligate (*zeh neheneh ve-zeh ḥaser–ḥayyav*).[40]

Reviewing the different possibilities within *Ḥazal* for the requirement to build the wall serves as preparation for understanding much of the dynamics within the *rishonim* and *aḥaronim*. Those who see the problem as essentially that of relationships between neighbors' relative rights and obligations invariably bring proofs from the *mishnah*. For example, R. Isser Zalman Meltzer claims that the phrase "*hezek re'iyyah*" cannot be taken literally to imply that looking at another's property is

39. In our text, the conclusion is presented as "*lishna aḥarina*." In manuscripts, it is brought as "*ika de-amri*" (see *Dikdukei Soferim*). The significance of the difference is that "*lishna aharina*" implies a parallel *sugya*, whereas "*ika de-amri*" implies that it is all part of one *sugya*.

40. See *Bava Kamma* 20b, which quotes and interprets this *mishnah*.

a *nezek*, as in that case, the discussion belongs in the second chapter of *Bava Batra*, which discusses avoidance of damages, and not in the first, which discusses laws that emanate from partnership. Similarly, Rashba views *hezek re'iyyah* as an issue of *ẓeni'ut*,[41] expanding R. Yoḥanan's statement regarding creating a window that faces other windows to encompass the general problem of looking into other courtyards. Those who focus on the *nezek* aspect of *hezek re'iyyah*, such as Ramban, build their case on the *Stamma*'s statements.

Thus, there are a number of currents within *Ḥazal*, and the challenge that the commentaries deal with is to which to give predominance and which to reinterpret. Many commentators choose to harmonize the sources instead of viewing them as reflecting different perspectives. The preliminary step of seeing various approaches in *Ḥazal* does not necessarily preclude ultimately harmonizing them, but rather allows the student to see the basic tensions between the sources.

Philosophical and Meta-Halakhic Considerations

Once we have discussed the different approaches to the concept of *hezek re'iyyah,* we can contemplate the significance of the differences between these approaches.

Ultimately, the underlying issue is the relationship between the categories of *Bava Kamma* and those of *Bava Batra*. In *Bava Batra*, the two sides are not strangers; there is a relationship between them. These cases are thus different from the situations in *Bava Kamma*, which focus on damages, and wherein there is no previous relationship between the sides.[42] To what degree is this difference significant? The variance of opinions stretches from those who see the relationship between neighbors as the basis for mutual obligation to those who see that relationship as a hindrance to obligating each other.[43] It is easier to obligate the other when the situation is construed as if they were strangers, since a stranger does his work exclusively on behalf of the recipient, while a neighbor acts also out of self-interest. If a stranger builds a wall around your property, he benefits you and not himself. When your neighbor builds the wall, he benefits as well.

41. *Teshuvot Ha-Rashba* 2:268.

42. For a summary of many elements of the *sugya*, see Yakov Nagen and Yehuda Katz, "*Mavo Le-Sugyat Hezek Re'iyyah*," available at http://upload.kipa.co.il/media-upload/otniel/otniel3620.doc. That article was written ten years ago, and some of the points mentioned here do not appear.

43. See, for example, Ramban, *Milḥamot Hashem,* on the *sugya* on 4b.

The differences between these two basic approaches are not only philosophical; they touch on meta-halakhic issues as well. In the introductory *shi'ur kelali* that he delivered at Mercaz HaRav on *Bava Batra* in 1929, Rav Kook pointed out that while the *halakhot* of *Bava Kamma* are ultimately based on *pesukim* from the Torah, *Bava Batra* is almost entirely devoid of *pesukim*.[44] Rav Kook's insight leads to an important question—where are these laws coming from? From where does their authority derive?

It seems that this is also a major point of divergence between the two basic approaches. One approach takes explicit, pre-existing categories and expands them. Thus, the approach of the *Stamma* is to take the pre-existing category of *nezek* and to expand it to include invading privacy, thus creating the concept of *hezek re'iyyah*. Similarly, the concept that one must pay for benefit received when it comes at the expense of the giver (*zeh neheneh ve-zeh ḥaser*) is expanded to include cases in which the receiver of the benefit did not actively take the benefit (as opposed to the original case of *zeh neheneh ve-zeh ḥaser*, wherein one actively and without permission dwells in a area that was designated for rent). The application of this principle to situations in *Bava Batra* also entails an expansion of the concept of what is defined as a loss, as in *Bava Batra* situations, the builder is generally unilaterally building for his own benefit and the neighbor benefits only incidentally; in those cases, it is unclear what loss is entailed by the builder.

On the other hand, the approach that focuses on the relationship between neighbors is not building on previous categories. From where do these laws and their authority derive? Here again, Rav Kook's insights about Halakhah are pertinent. The Torah teaches that when faced with a halakhic dilemma, "You shall approach the *kohanim,* the *leviyyim*, and the judge who live in those days" (Deut. 17:9). Rav Kook explains that there are two approaches to Halakhah, that of the *kohen* and that of the judge.

> The specific laws of the Torah can be analyzed according to the general spirit of the Torah, according to the power of the reasons for the Torah, appropriate to the general message of the Torah. Alternatively, one can analyze the details according to isolated study, comprehending one idea from the other without looking at the overall spirit.[45]

The approach of the *kohen* intuitively derives the *halakhah* from a

44. Chaim Mescheloff, *Tov Ro'i al Bava Batra: Yalkut Bi'urim, Ḥiddushim, He'arot, u-Derushim shel Maran ha-Re'ayah Kook zẓ"l al Massekhet Bava Batra* (Jerusalem, 5758), 13.
45. See R. Kook's introduction to *Ein Ayah* (Jerusalem, 5755), vol. 1, 16.

broad perspective of the values of the Torah. This approach was dominant when *Am Yisrael* was concentrated in *Ereẓ Yisrael*. The second approach, that of the judge, focuses on building analogies from one detail to the next. This reflects the situation of Torah study outside of *Ereẓ Yisrael*. In other contexts, Rav Kook contrasts these approaches, terming them "*Torat Ereẓ Yisrael*" and "*Torat Bavel*."[46]

I find it difficult to accept Rav Kook's distinction as characterizing the difference between the *Bavli* and that of the *Yerushalmi*, as he does; there are many *sugyot* in the *Bavli* that reflect what R. Kook characterizes as *Torat Ereẓ Yisrael*. The basic insight about the existence of two basic approaches to halakhic thinking, however, is often reflected in differences in approach to particular *sugyot*, as in our case.

The lack of textual sources specifically in the realm of *Bava Batra*, which deals with issues of relationships within the community, is not accidental. The nature of these areas demands a fluidity that rigid and detailed legislation would prevent. As the *Maggid Mishnah* points out at the close of *Hilkhot Shekheinim* (14:5):

> Our perfect Torah was given to perfect man's character and behavior. . . . "And you shall do the right and the good" (Deut. 6:18), meaning that one should behave in a good and righteous manner with other people. It was not appropriate to command details, as the commands of the Torah apply in every day and age and in every situation . . . and man's qualities and behavior change with the times and people. . . .

Thus, the approach that does not interpret *Bava Batra* in light of pre-existing categories views these laws as based on the general values of "*ve-asita ha-yashar ve-ha-tov*," doing what is right and good.

Pesak Halakhah

The final stage of our discussion is confronting the challenge of applying the *gemara* to the changing realia. Ḥazon Ish, for example, views modern courtyards as serving different functions than those that existed during talmudic times, making many of the laws of *hezek re'iyyah* less relevant.[47] *Minḥat Ẓevi* views the Israeli law that obligates a builder to insert shutters on bedroom windows as alleviating the problem of *hezek re'iyyah*.[48]

46. *Iggerot Ha-Re'ayah*, vol. 1, 124 (letter #103).
47. *Ḥazon Ish*, *Bava Batra* 12:3.
48. *Minḥat Ẓevi*, reponsa 3.

It is interesting to note that many *ḥaredi* decisors are open to consideration of changes in realia, and they stress that Israeli law, as well as *ḥazakah* and *minhag*, play a role regarding the application of *hezek re'iyyah*. In a *pesak* by a *beit din* in Alon Shevut composed of rabbis from the Religious Zionist community, on the other hand, we find a very straight application of the prohibition of *hezek re'iyyah*.[49] Part of the difference may stem from the fact that *hezek re'iyyah* poses different problems based on the surrounding community, whether a dense urban society or a private villa in an upper middle class suburb.

One lesson learned from study of this topic is that even after the laws are essentially fixed in the *Shulḥan Arukh*, there is still fluidity in applying these *halakhot*, allowing them to fulfill the condition of the *Maggid Mishnah* mentioned above: "The commands of the Torah apply in every day and age and in every situation . . . and man's qualities and behavior change with the times and people. . . ."

49. See R. Gidon Pearl, "*Ḥovat ha-Reshuyot Limnoa Hezek Re'iyyah*," *Techumin* 19 (5759): 55-59.

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RAPHAEL AFILALO AND HYMAN SCHIPPER

The Kabbalistic Radla and Quantum Physics: Analogies and Differences

There currently exists a burgeoning literature that attempts to relate contemporary science—and in particular, quantum physics—to the Jewish mystical tradition.[1] This enterprise is pursued for varied purposes. Sometimes religious Jews mobilize the similarities in an attempt to show what they regard as the prescience of Kabbalah, its foreknowledge of modern physics; sometimes scientists, whether religious or not, extract from Kabbalah metaphors that clarify or lend vividness to scientific theories, particularly in cosmology; and sometimes the enterprise is pursued simply because it is interesting and curious that ostensibly disparate systems—one founded on empirical research, the other virtually anti-empirical—can have such affinities with each other. We live in an age in which, for whatever reason, Kabbalah and mysticism in general resonate intellectually, emotionally, and spiritually, and in which mysticism and science show an unprecedented degree of confluence.

1. See Nathan Aviezer, "Kabbalah, Science, and Creation," *Jewish Action* 65 (Fall2004/5765); Daniel Matt, *God and the Big Bang: Discovering Harmony between Spirituality and Kabbalah* (Woodstock, Vt, 1996); Adam McLean, "Kabbalistic Cosmology and its Parallels to the Big Bang of Modern Physics," *Hermetic Journal* 39 (1988):11; Joel R. Primack and Nancy Ellen Abrams, "In A Beginning: Quantum Cosmology and Kabbalah," *Tikkun* 10 (1995): 66-73; Aaron M. Schreiber, *Quantum Physics, Jewish Law, and Kabbalah: Astonishing Parallels* (New York, 2009); Gerald Schroeder, *Genesis and the Big Bang: The Discovery Of Harmony Between Modern Science And The Bible* (New York, 1991); Howard Smith, *Let There Be Light: Modern Cosmology and Kabbalah: A New Conversation Between Science and Religion* (Novato, CA, 2006). (Not all these books and articles highlight quantum mechanics, but all engage contemporary physics.)

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We agree that fundamental concepts of twentieth century physics have analogues in Kabbalah, and our innovation in this paper is to introduce into an ever-growing discussion a particular Kabbalistic construct known as *Radla*, found in Lurianic Kabbalah and developed by R. Mosheh Ḥayyim Luzzato (Ramḥal). There are striking parallels between statements about *Radla* made by Kabbalists and statements by twentieth century physicists, in particular about Heisenberg's uncertainty principle (UP). Of course, there are differences too. Note that most attempts to relate quantum physics to Kabbalah have focused on cosmology—views about the origins of the universe.[2] We focus on descriptions of a world already in place.

Importantly, we do not argue that Kabbalists of centuries ago were prescient and knew quantum physics. After all, non-Jewish metaphysical systems contain motifs that are similar to the kabbalistic ones we explore, and we would not attribute prophetic gifts to them.[3] Nor will we explore in depth the fascinating question of how to account for the similarities between mystical systems as a collective– systems not founded on experimentation and which indeed make claims that are counterintuitive and contrary to ordinary experience—and scientific theories that put forth similar-sounding counterintuitive claims. Rather, our aim is to present certain similarities between the metaphysics of *Radla* and quantum physics to demonstrate how they resonate with and complement one another, and to note differences. We also wish to comment on the value of such exercises.

We will first present briefly the ontology of quantum mechanics (QM), with emphasis on Heisenberg's principle. We then explain the *Radla* concept, and next illustrate similarities between that system and contemporary physics. We then note certain limitations of the analogies. In the concluding section, we reflect on the value of comparisons between Kabbalah and science, and discuss some implications of their similarities for science, religion, and our understanding of the universe.

I. Quantum Mechanics

A. Historical Perspective

Quantum mechanics (QM) is a highly successful discipline of physics that builds upon and transcends classical (Newtonian) conceptualizations of

2. This should be evident from the titles of the works cited in note 1.

3. For example, Plotinus's *Enneads* 5. Of course, the fact that a particular argument for Kabbalistic prescience is suspect because non-Jewish systems likewise resemble claims of modern science, does not refute the position that Kabbalah is a product of divine revelation. Rather, it undercuts a particular argument for that claim. But again, we bracket these questions.

physical reality.[4] It is very much a product of the twentieth century, with many identifying its origins with the discovery of "blackbody radiation" (the delivery of energy in discrete packets, or "quanta") by Max Planck in 1900. A quantum mechanical understanding of space, time, matter, and energy unfolded apace with the seminal contributions of Albert Einstein, Ernest Rutherford, Niels Bohr, Erwin Schrodinger and others in the first half of the latter century. During the last sixty years, input from outstanding physicists, such as Richard Feynman, Stephen Hawking, and Edward Witten, have enabled further refinements of the theory, contemporaneous with the advent of numerous technological innovations based on this knowledge.

The astounding success of QM has led to the widespread belief that the most fundamental principles underpinning physical existence are now known and that all that remains to be accomplished is more refined and precise measurement of the phenomena disclosed. However, the latter is by no means a simple task. As discussed below, the very act of measurement, when conducted on the infinitesimally small quantum scale, necessarily perturbs and is inextricably linked with the system undergoing observation.

B. The Heisenberg Uncertainty Principle

In 1927, Werner Heisenberg published his seminal paper on the "uncertainty principle" in *Zeitschrift fur Physik*. The UP maintains that paired physical properties of a system cannot both be measured to arbitrary precision; the more accurately one property is known, the less precisely the other can be known. Importantly, this is not contingent upon the resolution of the measuring apparatus or the skills of the observer, but is an inherent characteristic of physical systems as dictated by the equations of quantum mechanics. While it is true that the very act of measurement affects the physical properties of particles (e.g., its position or momentum), the UP makes a more fundamental claim—that we *cannot* know, as a matter of principle, the present in all its details.[5]

In classical physics, it is theoretically possible to determine the position and momentum of every particle in the universe and thereby predict the future with complete precision. In contemporary quantum physics, it is fundamentally impossible to predict future events because one can never attain full knowledge of the position and momentum of even a

4. See David Z. Albert, *Quantum Mechanics and Experience* (Cambridge, MA, 1992); John Gribbin, *In Search of Schrödinger's Cat* (New York, 1984); Steven Weinberg, *Dreams of a Final Theory* (New York, 1992). Our criteria for "success" are common ones—explanation, prediction, control, and technological application.

5. Werner Heisenberg, "Über den anschulichen Inhalt der quantentheoretischen Kinematik und Mechanik," *Zeitschrift für Physik* 43 (1927): 172–98.

single particle. In the standard (Copenhagen) interpretation of quantum mechanics (e.g., the results of the famous "2-slit experiment"[6]), every possible outcome for an event, represented mathematically as a statistical wavefunction, exists in the unobserved state. The act of observation engenders a "collapse of the wavefunction," whereby one of these many potential outcomes is "selected" as the reality actually experienced.

The Copenhagen interpretation of QM was strengthened after attempts to refute it failed. Examples of such investigations include the "gedanken (thought)" experiments of the famous Einstein-Bohr debate of the 1920's[7] and, more tellingly, resolution of the EPR (Einstein-Podolsky-Rosen) paradox,[8] which resulted from repeated experimental violation (1972-1982) of "Bell's inequality" (1964) in favor of quantum theory.

Moreover, the results of these experiments (especially that of Alain Aspect in 1982) implied that all particles emerging from the Big Bang maintain an indefinite "connectedness" to one another and that each particle therefore "knows" about the existence of every other particle. Furthermore, the Copenhagen interpretation embodies the concept of preserved complementarity, whereby the properties of one particle (e.g., position, momentum, spin, etc.) change instantaneously and commensurate with changes in a "partner" particle, regardless of the extent of their physical separation (Einstein's "spooky action at a distance"). For the latter to occur by classical causal interaction, information would need to pass from particle A to particle B at impossible supraluminal speeds. Quantum theory dictates that the shared history of the two particles forever "locks" them in a reciprocal dance ("quantum entanglement") that does not require new information to pass between them ("acausality").

In this article, we will refer primarily to the classical Copenhagen interpretation of QM. However, the reader should be aware that there exist competing variations of this interpretation (e.g., Bohr vs. Von Neumann), as well as several non-Copenhagen conceptualizations. Prominent among the latter are Heisenberg's Ghost Reality, Einstein's Neo-Realism, David Finkelstein's New Quantum Logic, David Bohm's Undivided Wholeness (cited in section III.6), Hugh Everett's Many-Worlds interpretation, and Information Theory.[9] As one illustration of a distinctly non-Copenhagen

6. Explained in, *inter alia*, Gribbin, 154-57.
7. See Abraham Pais, *Subtle is the Lord* (Oxford, 1982).
8. Albert Einstein, Boris Podolsky, and Nathan Rosen, "Can Quantum-Mechanical Description of Physical Reality be Considered Complete?" *Physical Review* 47:10 (1935): 777–80.
9. See Charles Seife, *Decoding the Universe* (London, 2006).

perspective, Everett's model of QM states that all outcomes that could possibly occur actually do so in some version of reality. In this model, observations do not "collapse" the wavefunction into a singular reality but generate a multiverse of innumerable parallel, non-intersecting worlds.[10]

II. The Kabbalah

The Kabbalah teaches about the beginning of Creation, the unfolding of worlds, and the various lights or energies that emanate from the highest level of the superior worlds to our existence. It explains, often allegorically, the mysterious ways in which God guides the universe and the dynamic systems that are put in place to interact with Nature and Man. As depicted in the Kabbalah, the universe is guided by a complex system of "forces" or "lights," which, through their interactions, provoke chain reactions that impact Man and the world.[11] The concept of quantum mechanics approximates the Kabbalistic view of the universe's fundamental unity and the idea that all semblances of separateness and differentiation become apparent only after "filtration" of the one Infinite Light (*Or Ein Sof)* through the various *Sefirot*.

The primary Kabbalistic texts we will use are the *Zohar*, the teachings of R. Yiẓḥak Luria (*Arizal*; 1534-1572) as transmitted by his student R. Ḥayyim Vital (1543-1620), and the works of R. Mosheh Ḥayyim Luzzatto (*Ramḥal*; 1707-1746]). The *Arizal* elaborated all the main concepts of the Kabbalah and provided innovative explanations of the *Sefirot* and *Parẓufim* (configurations). The corpus *Eẓ Ḥayyim*, compiled by R. Ḥayyim Vital, encompasses the teachings of the *Ari* and remains the major reference text of Lurianic Kabbalah. In eighteenth century Europe, *Ramḥal* greatly facilitated the contemporary understanding of the Kabbalah by explicating and organizing many cryptic passages of the *Zohar* and *Eẓ Ḥayyim*.[12]

A. The Sefirot and Parẓufim

Although the Light (emanation) of the Infinite is a unified whole, each of ten *Sefirot* represents a "filter" that holds and transforms a certain part of this light into a particular force, attribute, or action. Each *Sefirah* is composed of a vessel (*keli)* which holds its part of light (*or)*. There is no differentiation of the *or* within the *keli* itself, since it is a part of the original light; differences emerge from the particularity or position of the

10. Hugh Everett, "Relative State Formulation of Quantum Mechanics," *Review of Modern Physics* 29 (1957): 454-62.
11. See Raphael Afilalo, *Kabbalah Concepts* (Montreal, 2006), 13.
12. See ibid.

Sefirah. Arrangements of ten *Sefirot* are the blueprint of all things created, as everything that exists is comprised of ten forces.

A *Parẓuf* (face, visage, or countenance) is a configuration of one or more *Sefirot* acting in coordination. Some *Parẓufim* are masculine, while others are feminine. The masculine correspond to kindness—*Ḥesed*—and are manifestations of the Divine name of *MaH* (45 in *gematriyah*, derived from the numerical rendering of a specific configuration of the Tetragrammaton). The feminine correspond to *Gevurah*—a word that in Kabbalah refers not to rigor alone, but to a combination of rigor and limitation—and are manifestations of the name of *BaN* (numerical value of 52). Different formulae of the unions (combinations) of *MaH* and *BaN* (*Ḥesed* and *Gevurah*) are responsible for bringing into existence and guiding the Creation. The *Parẓufim* exist in a dynamic state of action, illumination, and interaction referred to as *tikkunim* of the *Parẓufim*. The *tikkunim* transduce the Higher Will into particular effects for the guidance of the universe; certain manifestations vary with time and are influenced by the actions of Man.

The six main *Parẓufim* (in order of spiritual "descent") are:

- *Attik Yomin*—Ancient of Days
- *Arikh Anpin*— Long Countenance
- *Abba*—Father
- *Imma*—Mother
- *Ze'ir Anpin*—Small Countenance
- *Nukva*—Feminine

B. The Radla

The configuration *Attik Yomin* is superior to all the configurations and is itself composed of ten *Sefirot*. Its manifestation of the name *MaH* (45) corresponds to its masculine principle; its manifestation of the name of *BaN* (52) corresponds to its feminine principle. It is the innermost configuration, the leading force and the source of all the others.

The guiding force for all existence "under" the *Parẓuf Attik Yomin* comprises the first three *Sefirot* of its *Nukva*/feminine aspect. Together they constitute the *Radla*— רישא דלא אתידע, the "Unknowable Head." The term is found in the Zohar.[13] The *Radla* encompasses all possible realities; everything that came or will come into existence has its roots in it. The *Radla* is called unknowable because the outcomes of its actions (in unfolding the Creation) are in no way graspable by our understanding or imagination.

13. *Zohar* 3:288b. Earlier roots are not significant for our purposes.

All possibilities exist within her, but in our perceived reality, they manifest themselves in all manner of uncertainty in which what appears to be is and is not at the same time. These counterintuitive notions of multiple and contrary realities are inherently paradoxical and unique to the *Radla.*

III. The Radla and Quantum Uncertainty

In this section, key descriptions of quantum uncertainty and the *Radla* are juxtaposed in order to underscore their similarity of meaning. The sources regarding the latter are mostly *Ramḥal*'s writings because of his tendency to explain these concepts in a more systematic fashion than earlier sources.

In drawing these comparisons, we are sensitive to a distinction between two categories of uncertainty: epistemological uncertainty (the inability of human beings to know the ultimate reality due to limitations of their cognitive faculties) and ontological uncertainty (the inherent unknowability of ultimate reality due to its character). The former, which represents the term's ordinary usage, focuses on cognitive limitations of human beings, the latter on the reality itself. The terms "inherent unknowability" and **"**character of reality**"** are very difficult to define, but one instance of ontological uncertainty would be a self-contradictory reality. Although many of our quotations from Kabbalistic literature reflect only the thesis of epistemological uncertainty, several of the passages we will cite verge on, if not enter into, ontological uncertainty of the sort found in contemporary physics.

1. The Fabric of Reality

Leading physicists have underscored the inadequacy of classical physics in fully explaining physical existence, the quantum worldview, and the essential significance of the "Uncertainty Principle." Kabbalistic sources similarly implicate the *Radla* construct as the ultimate source or progenitor of physical reality. We do not mean for the quotations to be mapped one-on-one; rather, the quotations set out basic features of each theory, and we believe that, taken as a whole, the writings of quantum physicists and those of Kabbalists who discuss *Radla* show similar approaches to understanding reality.

A. Quantum Physics:

> "The great extension of our experience in recent years has brought light to the insufficiency of our simple mechanical conceptions and,

as a consequence, has shaken the foundation on which the customary interpretation of observation was based."[14]

"[Uncertainty is] perhaps the central feature of quantum theory."[15]

"The quantum is the crack in the armor that covers the secret of existence."[16]

"I would conclude that extra dimensions really exist. They're part of nature."[17]

B. The Kabbalah:

רדל"א הוא סוד חיבורי מ"ה וב"ן למעלה מקור לכל הנהגה.

"In the *Radla* is the secret of the union of *MaH* and *BaN* at their highest level, to become the origin of the total governance."[18] (Both QM and the *Radla* conception relate to the notion of total governance of the universe.)

שהיא הראשונה, שבה נולדים הספיקות בתחלה.

"[The *Radla*] is the source; from it issues forth all uncertainty at the outset."[19]

2. The Intrinsically Incomprehensible Universe

The overarching opinion of leading quantum physicists is that essential spacetime and the fabric of the Universe are unknowable *by their very nature*, and not on account of the imprecision of our measuring devices. Similarly, the Kabbalah in places indicates that the workings of the *Radla* are fundamentally opaque to human reason, not because of any limitations in our understanding *per se*, but as a consequence of the *Radla*'s inherent unknowability. The extent to which conceptual elucidation of this aspect of unknowability remained consistent across the centuries, spanning the writings of the *Zohar*, the *Arizal*, and the *Ramḥal*, is noteworthy and attests to the authors' conviction and fidelity to the *Zohar*'s intended meaning.

14. Niels Bohr, *Atomic Theory and the Description of Nature* (Woodbridge, CT, 1934/1987), 2.
15. Gribbin, *In Search of Schrödinger's Cat*, 155.
16. John Wheeler, as cited in Denis Brian, *Genius Talk: Conversations With Nobel Scientists and Other Luminaries* (New York, 1995), 122.
17. Edward Witten, as cited in Jeremy Bernstein, *Quantum Profiles* (Princeton, 2003), 138.
18. R. Mosheh Hayyim Luzzatto, *Kalach Pitḥei Ḥokhmah* (Friedlander, [1785] 1992), 297-98.
19. Ibid., 269-71.

A. Quantum Physics:

"Science cannot solve the ultimate mystery of nature."[20] (Although this and the idea in the next quotation have been expressed often--even before QM came on the scene-- QM provides an explanation for why science cannot solve the mystery.)

"We *cannot* know, as a matter of principle, the present in all its details."[21]

"In more than forty years, physicists have not been able to provide a clear metaphysical model [of quantum reality]."[22]

"It is safe to say that nobody understands quantum mechanics."[23]

"The creation lies outside the scope of the known laws of physics."[24]

"The very concept of spacetime…isn't precisely defined."[25]

B. The Kabbalah:

עתיקא דכל עתיקין , סתימא דכל סתימין, אתתקן ולא אתתקן , אתתקן בגין לקיימא כלא, ולא אתתקן בגין דלא שכיח.

"Ancient of all the ancients, concealed of all the concealed, acting and not acting, it [*Radla*] acts to sustain all. Not acting [from our perspective] because it is not in any way graspable."[26]

ואקרי מוחא עלאה, מוחא סתימא , מוחא דשכיח ושקיט, ולית דידע ליה.

"It [the *Radla*] is called the superior, concealed wisdom; a wisdom that may not be graspable or manifest; no one can understand it."[27]

עתיקא קדישא סתימא דכל סתימין, רישא דכל רישא רישא דלאו רישא, ולא ידע, ולא אתידע.

20. Max Planck, cited in *The Constants of Nature,* ed. John D. Barrow (New York, 2003), 23.
21. Heisenberg, "Über den anschulichen," 172-98.
22. Erwin Schrodinger, cited in Fritjof Capra, *The Tao of Physics An Exploration of the Parallels Between Modern Physics and Eastern Mysticism*, (Berkeley CA, 1975), 132
23. Richard Feynman, *The Character of Physical Law* (Boston, 1965).
24. Stephen W. Hawking, *The Large Scale Structure of Space-Time* (Cambridge, 2003), 364.
25. Edward Witten, *The Elegant Universe* in *Nova Science Programming* (July 2003): *wgbh/nova/elegant/view-witten www.pbs.org/.html.*
26. *Zohar* 3:288a, *Idra zuta*. The translation of דלא שכיח follows *Ha-Sullam* and *Matok Mi-Dvash.*
27. Ibid.

"*Attika Kadisha*, most concealed of all that is concealed, Heads of all heads [the construct above *Arikh* in all Worlds], a head which is not a beginning [there exist still higher realities than the *Radla*], presently not understandable and will never be understood."[28]

נקרא רדל"א ע"ש הספיקות שיש בה.

"It is called *Radla* because of all the uncertainties that are in it."[29]

אינם מושגים ונודעים כלל, זהו ענין דלא אתידע.

"We cannot imagine or know anything [of the *Radla*]. This is the concept of 'unknowable'" [by its very nature, and not merely unknown—R. A. and H. S.].[30]

כל זה הוא ענין הספיקות.

"All of this [the interaction of *MaH* and *BaN* in *Radla*] is the matter of 'uncertainty.'"[31]

3. Translation of Indeterminacy into Experiential Reality

Quantum mechanics and the Kabbalah concur that the principles governing the existence of our universe at its most fundamental level operate according to "laws" that differ radically from those mediating the day-to-day reality we experience. This paradoxical "disconnect" between the micro- and macro-worlds is amply acknowledged as the interface between quantum uncertainty and Newtonian mechanics in physics, and in the relation of the *Radla* to *Arikh Anpin* and "lower" manifestations within the Kabbalah's hierarchical cosmology. Both disciplines go to great lengths in their attempts to delineate precisely what takes place at this critical interface, aptly described by R. Mosheh Schatz as the enigmatic "great bridge" between the quantum and familiar words.[32] Ultimately, contemporary physics and the Kabbalah conclude that a thorough comprehension of the

28. *Zohar*, 3:288a, *Idra zuta*.
29. R. Yiẓḥak Luria, *Eẓ Ḥayyim,* 1: 178.
30. From at least one passage, it appears that we are not allowed to explain Radla, which ostensibly implies that Radla is comprehensible:

כי רדל"א היא עליונה מאד ואין בנו רשות לבאר ענינה.

"The *Radla* is most supreme and we are not allowed to explicate it."
However, because this passage is inconsistent with the many that stress the incomprehensibility of Radla, we are inclined to interpret it differently, e.g., we are barred from explaining it because we cannot understand it. Or perhaps, as will be suggested later, rare individuals can grasp it.
31. Luzzatto, *Kalach Pitḥei Ḥokhmah*, 268.
32. Mosheh Schatz, *Sparks of the Hidden Light* (Jerusalem, 1996), 54-57.

mechanism responsible for transducing quantum/*Radla* indeterminacy into experiential reality may never be achievable by dint of the former's inherent unknowability.

A. Quantum Physics:

"Everything we call real is made of things that cannot be regarded as real."[33]

"All we know about [the world] are the results of experiments [observations];" i.e. we have no knowledge about the complete state of even a single particle in the quantum realm which gives rise to the reality we perceive.[34]

B. The Kabbalah:

כי הז"ת המתפשטין בא"א, כבר אמרתי שהם לפי הנהגת הזמן.

"The seven lower *Sefirot* [of *Attik Yomin*] are enclothed in the configuration *Arikh Anpin* and, as I indicated, are expressed within [the governance of] time."[35] (*Arikh Anpin*/*Attik Yomin* is the transition point between the unknowable thought of the Creator and the familiar concept of time. Likewise, quantum uncertainty is translated into familiar spacetime.)

רדל"א היא עומדת למעלה מא"א, והוא סוד חיבור הנהגה הנצחיות בהנהגת הזמן.

"The *Radla* is above *Arikh Anpin* and is the secret of the union of the eternal and temporal guidance."[36] (See our comment to the preceding quotation.)

ולפי מה שמתנהג בה—נולד הנהגה גדולה בפרצופים אך בין היא ובין תולדותיה אינם מושגים ונודעים כלל.

"And from what occurs in it [the *Radla*], emanates the main guidance conveyed by the *Parẓufim*. From the *Radla* to its outcomes [in our experiential reality], we can grasp and understand nothing."[37]

33. Niels Bohr, cited in Thomas George Wisdom-of-the-Wise, www.wisdom-of-the-wise.com/Niels-Bohr-on-Theory.htm (2009).
34. Gribbin, *In Search of Schrödinger's Cat*, 161.
35. Luzzatto, *Addir ba-Marom* (J Spinner, [1780] 1995), 187. We have translated according to our understanding of the concepts in the passage, rather than the literal meaning.
36. Ibid.
37. Luzatto, *Kalach Pitḥei Ḥokhmah*, 267.

מקום ההנהגה לפי ענין התחברות של מ"ה עם ב"ן הוא ברישא דלא אתידע. ולפי מה שמתנהג בה—נולד הנהגה גדולה בפרצופים.

"The origin of the governance according to the amalgamations of *MaH* and *BaN* is in the *Radla*. And according to this governance, the main governance of the *Parẓufim* arises."[38] (This and the next quotation state that events—combinations of *MaH* and *BaN*—within the unknowable *Radla* give rise to the familiar emanation of the lower *Parẓufim*. Likewise, we find: "All actions performed in this world come about according to these amalgamations [of *MaH* and *BaN*]. Nothing that is not rooted there [in the *Radla*] can occur."[39] Here we have a homology to the translation of quantum uncertainty [which most likely is a probability curve] into defined realities.)

על פי כל החיבורים האלה נמצאים כל המעשים שנעשו ושנעשים בעולם. כי לא יהיה מה שלא הושרש כאן.

"All actions performed in this world come about according to these amalgamations [of *MaH* and *BaN*]. Nothing that is not rooted there [in the *Radla*] can occur."[40]

4. Worlds in Potentia

From the Copenhagen (and other) interpretations of QM stems the spectacular and counterintuitive notion that all possible outcomes of an event, as determined by the statistical wavefunction, indeed exist as potential states capable of exerting detectable influences within the familiar world.[41] This remarkable concept is similarly encapsulated in Kabbalistic accounts of the *Radla*.

A. Quantum Physics:

"In QM, every possible outcome for an event exists in the unobserved state prior to collapse of the wavefunction."[42]

B. The Kabbalah:

כל מיני החיבורים שהיה אפשר להמצא בין מ"ה וב"ן—באמת נעשו.

"Every combination of *MaH* and *BaN* [reality] that could possibly be found was, in fact, made."[43]

38. Ibid.
39. Ibid., 272.
40. Ibid.
41. Cf. the 2-slit experiment, n.7 above.
42. Gribbin, *In Search of Schrödinger's Cat*, 82.
43. Luzzatto, *Kalach Pitḥei Ḥokhmah*, 268.

5. The Inherently Paradoxical Universe

The tenets of QM and the *Radla* embody a definition of "paradox" that diverges from other conventional usages of the term. In general, we attribute paradox to an incomplete understanding of an event or state. We assume that the paradox would spontaneously dissolve upon elucidation of all its relevant components, belying an intuition that nature is inherently rational (non-paradoxical). Both QM and the Kabbalah teach that this belief in the rational nature of physical existence is ultimately incorrect; at its deepest level, the observable universe obeys laws that are fundamentally paradoxical. Far from merely representing a manifestation of the incompleteness of our knowledge, paradox is the warp and woof of physical reality.

A. Quantum Physics:

> "It's not that we can't simultaneously specify the position and motion of an electron, but that it *does not have* a simultaneous specific position and motion."[44]

According to the Copenhagen interpretation of QM, the superposition of states comprises many possible, even mutually-exclusive outcomes, e.g., a cat in a box that is both dead and alive in the famous Schrodinger thought experiment; or a single (unobserved) photon that passes simultaneously through slit A and B in the 2-slit experiment. Each time the cat (or photon) is observed, the wavefunction collapses, with repeated observations yielding one result or its opposite in seemingly random order. Although counter-intuitive, the "real" (macro-) world as we perceive it is a manifestation of this quantum uncertainty.[45]

B. The Kabbalah:

> ויש חיבורים הפכיים, ואף על פי כן שניהם נמצאים, כי הפרצופים מורכבים כך ומשניהם נמצאים איכויות בפרצופים. ולפי שליטתם למעלה—כך נעשה מה שנעשה בפרצופים, אך אינו מושג ונראה כלל.

"There are combinations [outcomes of *MaH* and *BaN*] which are opposites; still, both are there, because *Parẓufim* [which transmit the outcomes of the *Radla*] are constructed in that way and from these two [opposites] derive the qualities of the *Parẓufim*. According to their dominance above,

44. George Wald, cited in Denis Brian, *Genius Talk* (New York, 1995), 143
45. Albert, *Quantum Mechanics and Experience*, (Cambridge, 1992), 80-111; Weinberg, *Dreams of a Final Theory* (New York, 1992), 65-89.

actions are carried out by the *Parẓufim*; however, this is in no way evident or comprehensible."[46]

מה שהרישא הזאת עצמה, כפי מה שמשיגים בה, גורמת הספיקות האלה כי פעם אחת נראה שיש בה כך, ופעם אחת יש בה כך. . . . ואם מסתכלים באותו הענין יותר—נראה שאינו כך, אלא בדרך אחר מתחלף ממנו.

"This Head [*Radla*], from what we understand of it, causes all the uncertainties. One moment it appears that [the outcome is] one thing, in another moment it looks like something else. . . . If we look into this matter more deeply, it appears not this way, but in a changed manner."[47]

שאין הספיקות ההם כמו ספיקות דעלמא, שאנו בספק אם יש דבר אחד, או אם אינו, אלא האמת הוא, כל מה שאנו מזכירים בספיקות—כל אותם הדברים ישנם באמת בה.

"These 'uncertainties' [of the *Radla*] are unlike the uncertainties of the [familiar] world. In the latter, we may be uncertain whether a thing exists or not; whereas, in truth, all things perceived as 'uncertain' are present in her [the *Radla*]."[48] (In our opinion, this description of the inherent paradox of reality is the most supportive Kabbalistic statement in favor of ontological, as opposed to epistemological, uncertainty.)

6. Unicity on a Grand Scale

In virtually all of its iterations over the many centuries, a "prime directive" of the Kabbalah remains disclosure of the absolute oneness of the Creator and His Creation in the face of apparent separateness and individualization, with the *Radla* representing the critical nexus between the whole and its parts. Mainstream interpretations of contemporary quantum physics point similarly to a blatant interconnectedness of all particles and forces comprising the observable universe.

A. Quantum Physics:

"Quantum physics reveals a basic oneness of the universe."[49]

"The world acts more like a single indivisible unit, in which even the 'intrinsic' nature of each part (wave or particle) depends . . . on its relationship to its surroundings"[50]

46. Luzzatto, *Kalaḥ Pitḥei Ḥokhmah*, 268.
47. Ibid., 270.
48. Ibid.
49. E. Schrodinger, cited in Capra, *The Tao of Physics*, 68.
50. F. D. Peat, *Infinite Potential: The Life and Times of David Bohm* (New York, 1997), 106.

Experiments refuting challenges to QM (especially that of Alain Aspect in 1982) imply that particles sharing common origins maintain an indefinite "connectedness" with one another notwithstanding their separation in time and space.[51]

"The inseparable quantum interconnectedness of the whole universe is the fundamental reality, and [the] relatively independent behaving parts are merely particular and contingent forms within this whole."[52]

B. The Kabbalah:

דהא כלא ביה מתדבקן והוא מתדבק בכלא, הוא כלא.
"Everything is connected to it [the *Radla*] and it is connected to all; it encompasses all."[53]

שכל ההנהגה היא אור אחד. והנה רדל"א הוא מין אור אחד.
"All reality is [fundamentally] governed by a single light [force]. The [forces comprised by the] *Radla* is [are] in actuality a part of this encompassing light."[54]

להיות כל ההנהגה בכל חלק.
"So that the entire guidance [of the Universe] is contained within each of its parts."[55]

IV. Implications

We have attempted to show that concepts analogous to those associated with quantum uncertainty are manifested in the Kabbalistic concept of *Radla*. In both Kabbalah and contemporary physics, the reality of the familiar macro-world is entirely contingent upon (and flows from) fundamental, but counter-intuitive, phenomena. Within these fundamental

A similar and widely-cited statement by Bohm to this effect is: "individuality is only possible if it unfolds from wholeness." We could not identify the original source of this quote.
51. Griffin, 228-31.
52. David Bohm, "On the Intuitive Understanding of Nonlocality as Implied by Quantum Theory," *Foundations of Physics* 5 (1975): 93-109
53. *Zohar* 3:288a, *Idra Zuta.*
54. Luzzatto, *Kalaḥ Pitḥei Ḥokhmah*, 270.
55. Ibid., 273.

domains, there is no causality as we intuit it, but rather a non-deterministic universe in which multiple, even mutually exclusive possibilities co-exist for every possible outcome or observation. In both systems, nothing is known concerning the mechanism whereby "events" in the quantum/*Radla* realm "translate" into phenomena of the experiential world. Seemingly random, uncaused fluctuations inherent to this realm limit what can be predicted about all future events. The *Zohar* writes that the *Radla* "is not attainable by wisdom or knowledge; a Head which is not understandable and will never be understood." These words are an equally apt depiction of the quantum world.

It is interesting that an adherent of Kabbalah, if so disposed, has the capacity to embed quantum uncertainty within the *Radla* framework, thereby creating not only a parallelism but also a synthesis between Kabbalah and QM. Fig. 1 (p. 152) illustrates how such a synthesis might proceed. In this schema, the evolution and boundaries of human insight into the fabric and workings of the universe are represented by a set of three stacked cubes: a small Classical (Newtonian) box contained within an intermediate Quantum box, which, in turn, is encompassed by a large Kabbalah box. The perimeters of the cubes denote the theoretical limits of fundamental knowledge about the universe attainable by each discipline. In the classical (pre-quantum) era, Newtonian physics sufficed to resolve, with relative precision, numerous queries concerning the mechanical operations of the universe (line 1). Deeper, more refined insights into the nature of reality could only be roughly approximated by (or were entirely opaque to) Newtonian thought and required the advent of quantum theory for their satisfactory resolution (line 2). The tenets of QM dictate that it is impossible to predict future events with any degree of certainty because one can never attain full knowledge of the position and momentum of even a single particle. But this statement may be true only within the Quantum box which, restricted by the UP, establishes a barrier beyond which science cannot probe. By contrast, in Kabbalah there are named constructs, such as the masculine aspect of Attik Yomin (mentioned above) and Adam Kadmon, *which are beyond or "outside" the Radla*. These Divine manifestations lie beyond the reach of science but are still potentially available to human insight (line 3). In this respect—the existence of a realm 'beyond' the Radla—Kabbalistic cosmology differs from the tenets of QM.

How can this realm beyond the *Radla* be accessed? One plausible answer is: prophecy (*nevu'ah*). Indeed, the existence of the realm beyond or

outside the *Radla* affords a suggestion for understanding the nature of prophecy in the *Radla* framework. On rare occasions, the Creator confers upon select persons the capacity for prophetic vision. From the current perspective, one might say that, in these instances, God wills individual minds to transcend spacetime and the indeterminacy of the *Radla* (point Y in Fig. 1) in order to glimpse the singular reality of the Divine plan. This would entail, of necessity, the suspension of the randomness of quantum uncertainty for as long as the *Radla* barrier is rendered permeable to the prophet's thought. Scripture suggests further (e. g., Num. 12:6-8) that this anomalous peek behind the *Radla* curtain and the ensuing awareness of Divine Intent varies in duration and lucidity commensurate with the stature of the individual prophet.

We may go a step further. Consider the Torah's account of the story of Bil'am (Num. 22:2-25:25). The Moabite king Balak is cognizant of Bil'am's capabilities as a master conjurer and recruits him to curse the nation of Israel. According to the current suggestion, when not receiving *nevu'ah*, Bil'am's mind operates within the confines of the *Radla* (point X in Fig. 1), on par with the rest of humanity. As such, his option to curse (or bless) Israel may be exercised as he sees fit. Not so when Bil'am is made recipient of Divine prophecy; throughout the narrative the Torah indicates (and Bil'am himself acknowledges) that his power to choose a course of action is abrogated for the duration of the prophetic experience, and his activities are compelled to conform to the Divine plan. The analogous mechanistic explanation would argue that permeation of the *Radla* membrane (point Y in Fig. 1), when it is enabling prophetic instruction, interfaces with and subjugates Bil'am's will to the singular design accruing from a Divinely-inspired "collapse of the universal wavefunction"—a state incompatible with personal agendas and autonomy.

V. Conclusion

We have attempted in this essay to demonstrate that the operations of the Radla as described in the Zohar and in the major works of the *Arizal, Ramḥal*, and other Kabbalistic luminaries bear suggestive and thought-provoking similarities to Heisenberg's uncertainty principle, a pillar of quantum mechanics. Viewing these homologies in juxtaposition, we illustrated how they may inform our understanding of several fundamental cosmological principles, including the very fabric of Creation,

the translation of indeterminacy into experiential reality and the intrinsically paradoxical, but ultimately unified, nature of the physical universe. Finally, possible implications of the quantum/*Radla* paradigm for epistemology and prophecy were considered.

In short, two highly counterintuitive systems—one rooted in rigorous scientific experiment and the other in mystical thought—exhibit a striking convergence in their description of certain fundamental aspects of existence. One might ask: What is the value of this exercise in comparative analysis? As we noted at the outset, many philosophers, historians, scientists, and of course many of the religiously committed, become fascinated by comparisons of this nature for a variety of reasons. The physicist Joel Primack and the historian of science Nancy Ellen Abrams have emphasized one important dimension, albeit they deal with cosmology rather than QM. They were inspired to proclaim the following:

> We will turn to Kabbalah, medieval Jewish mysticism, as a possible source of language and metaphor, because certain kabbalistic concepts fit our picture amazingly well. Moreover, Kabbalah's cosmology gave meaning and purpose to the everyday lives of its adherents, which we hope may become possible with the scientific cosmology emerging today.[56]

The material presented in this article should be construed as a work in progress, one which has left many questions unanswered or only partially addressed. We hope that we have articulated the homologies between quantum physics and the Kabbalah in a balanced manner—refraining from leaps even while insisting on certain commonalities—and that this project will serve as a stimulus for further reflection and research on what we think is an intriguing way of relating Torah and *Madda*.

56. Primack and Abrams, "In A Beginning" http://physics.ucsc.edu/cosmo/primack_abrams/InABeginningTikkun1995.

Acknowledgments

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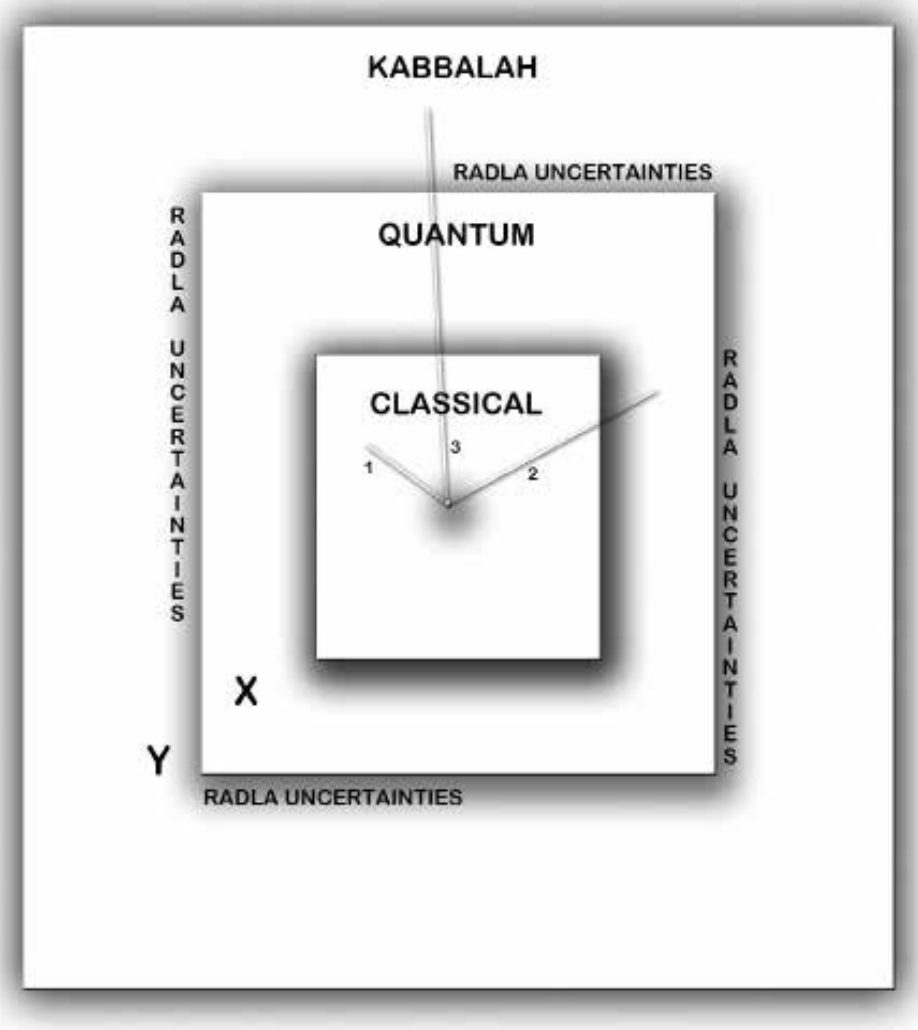

Fig. 1 (See p. 149)

WILLIAM L. GEWIRTZ

Zemannim: On the Introduction of New Constructs in Halakhah

It is a truism that Halakhah responds to scientific and technological innovations. But sometimes scientists and technologists develop new or modified notational conventions or conceptual constructs that measure or specify certain phenomena with precision. The question *poseḳim* face in such cases is whether, when and how such innovations impact halakhic determinations concerning the phenomena that the innovations are designed to address. How should the new scientific language and conceptual frameworks enter halakhic decisions? When should traditional methods prevail, and when should the new constructs be utilized?

This paper deals with four examples of the phenomenon just described, all drawn from the topic of *zemannim*—the determination of times for various events, such as the onset and departure of *Shabbat* or the times of various *tefillot*. Specifically:

1. Datelines are notational constructs for longitudinal lines that can specify the place where the new day begins.

2. Depression angles are mathematical measurements that allow astronomers to specify levels of darkness with accuracy.

3. Clocks are a technological innovation that allow us to specify time more precisely.

4. A phrase like "the number of minutes after sunset" is a mode of expression used to communicate various *zemannim*.

There are yet other such constructs within *zemannim*, such as sea-level and the classification of stars. Similar examples also exist in other domains where measurements, statistics, probabilities, and other mathematical /

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scientific notions are relevant. But my discussion is confined to the four categories just mentioned.

I offer no general solution to determine how new concepts of time measurement impact upon Halakhah, just some examples to motivate careful investigation.[1] In fact, the diversity of halakhic options that result from analyzing the examples might indicate there are no well defined principles. Rather, *posekim* must judge the impact of these constructs carefully and strive to understand and either accept or reject the assumptions and reasoning that the new constructs introduce. The discussion assumes some familiarity with the halakhic topics discussed; the notes provide additional background.

Datelines

Going back at least eight hundred years, scholars hypothesized a scenario in which two people leave a particular locale, travel in the eastern and western directions respectively, traverse the globe and eventually return to their point of origin. They correctly concluded that (regardless of how long it takes for them to return) relative to one who stayed at home, the person who travelled west would assume it is a day earlier and the one traveling east would assume it was day later.[2] A mechanism is needed to resolve the issue. The dateline, to be sure, is a construct

1. In most of my examples, I assume that both the construct and the associated reality were understood correctly by *posekim*. There are areas, such as latitude, where that was not uniformly the case.

2. This was of course validated when Magellan first circumnavigated the globe. The individual travelling west would observe one less sunset, and the individual travelling east would observe one additional sunset, causing each to believe it was a different day in the calendar. In modern times one can imagine a scenario in which two planes circumnavigate the globe in exactly 24 hours flying in opposite directions, leaving, say, from New York on Tuesday afternoon at 1 PM, and returning to New York 24 hours later. Those flying west, staying home, and flying east see zero, one and two sunsets respectively. Upon returning, those who flew west never seeing a sunset might assume it is still Tuesday. Those who flew east seeing two sunsets might assume it is already Thursday. Those staying at home know that it is Wednesday. After observing sunset in New York on Wednesday, those flying east will need to convince themselves that they will have observed the two sunsets of Tuesday and Wednesday a total of three times, observing the end of the same day twice. Those flying west (or east) and arriving at the same place 24 hours later must know that it is 1 PM a day later. A dateline is an artifice that solves this problem. For those flying over the dateline heading west, the day advances. Those flying east can think of each time they observe nightfall as advancing the day forward; however, crossing the dateline in the eastern direction moves the day back to the preceding day.

If two of three newborn triplets were aboard the two planes, while one stayed home, the day of each child's *berit* would present an interesting halakhic quandary.

created by convention; despite its artificiality, it provides an effective and practical solution.

Is the notion of a dateline, however, an unavoidable halakhic necessity? I presume that many believe the answer is yes, and that the question is only how to determine where the dateline is. But let me formulate the opinion of a number of *posekim* who questioned the very need for a dateline.[3]

Consider the following simple decision rule: Choose any specific location and determine how the first or current community of Jews came to the area, assuming, as we do, that humanity's origin was in the Middle East. As they travelled from west to east (Israel to India, for example), their *Shabbat* would start continually earlier; as they travelled from east to west (Israel to Europe, for example), their *Shabbat* would start continually later. There was no knowledge of datelines or other global measurement systems. Rather, each community established its day of *Shabbat* based on the direction from which it came. I assume that it is highly unlikely that the first (or current Jewish) inhabitants of Japan or the Philippines or New Zealand did not arrive via Asia or that the first visitors to Hawaii did not arrive via North America. Certainly, the (Jewish) communities that currently inhabit those locations can trace their origins.[4] Can this create theoretical or even real situations that still need to be adjudicated?[5]

3. These include R. Tzvi Pesach Frank, *Har Ẓevi*, *Oraḥ Ḥayyim* (henceforth *O.Ḥ.*), 138; R. Menachem Kasher, *Kav ha-Ta'arikh ha-Yisraeli*; R. Isser Zalman Meltzer, in letters referenced below; and R. Yonason Steif, *Limmudei ha-Shem*, *Parashat Bereshit*, 156. The formulation of their view has been slightly simplified/modified to enhance clarity. A sequence of *shiurim* by R. Aaron Rakeffet-Rothkoff at Gruss *Kollel* at the end of 2004 covered multiple sources including: Radbaz, *Shut Radbaz* 1:76; R. Yaakov Emden, *Mor u-Kezi'ah*, *O.Ḥ.* 344; and R. Yosef Shaul Nathanson, *Sh'oel u-Meshiv*, *mahadura* 4, part 2, 154; as well as other authorities who provide support for their point of view. A *shi'ur* by R. Zalmen Koren on January 9, 2011 in Jerusalem, in which he discussed recently uncovered letters by R. Meltzer on this topic, also supports the approach taken here.

4. Given the Seward purchase in 1867, the case of Alaska might raise complex issues. In addition to the move from the Julian to the Gregorian calendar, the day of the week was changed when Alaska moved from one side of the international dateline (the Asian) to the other (the North American). Some might argue that a potential community from an earlier period may have established a precedent before it disappeared. Alternatively, one could argue that once a community disappears, its customs disappear as well. Thus, any customs of a Jewish community from before the Seward purchase evaporate; a place that loses its community maintains no custom.

5. In theory two groups can arrive from opposite directions to some island in the Pacific and need to establish the day of *Shabbat*. This method may also need to establish what day it is when flying over uninhabited land or an ocean. I have also avoided any discussion of whether there may be an additional need for an individual to maintain a personal count for, say, *Shabbat*, independent of the community he may have traveled to during the week. Assume that it is Sunday in place A and Monday in place B and one travels from A to B in a few hours without seeing any sunset. Independent of the issues discussed, it has been argued that during his first week in place B, there would be a need to keep *Shabbat* on Sunday as well.

Certainly, but other established halakhic principles can be applied to these situations. My point is a simple one. A straight longitudinal line or one that bends with the edge of a continent is a construct used to describe the earth (or other round objects); it is a measurement system, not a description of the object's intrinsic properties. Even if the use of such a line is not fundamentally foreign to the halakhic determination of the day of *Shabbat*, other, older methods may be more consonant with existing halakhic principles, and might solve the problem without need for a line.[6] Yet, Ḥazon Ish, R. Yeḥiel Mikhel Tukitzinky and many other *posekim* advocated use of a dateline.[7]

I will not try to resolve the dispute. It should be noted, though, that the non-dateline based approach of R. Isser Zalman Meltzer and others would celebrate *Shabbat* in Hawaii, Japan, New Zealand and the

In general, it is important to differentiate between how a community is to determine the day of the week in a particular locale, and how an individual is to behave when moving between locales that observe days of the week differently. Those two issues are related but distinct; this paper is focused only on the former issue.

6. Imagine a very different geography for the Pacific Ocean, where Asia extends further east than New Zealand in the southern hemisphere, while in the northern hemisphere, Alaska occupies much of Siberia and is separated from the rest of Asia by a large body of water much further to the west. I suspect that a straight (or landmass / continent conforming) line might be viewed as less intuitive.

7. Ḥazon Ish (R. Avraham Yeshayahu Karelitz), *kuntres* 18; R. Tukitzinsky, *Yomam be-Kaddur ha-Olam*. These authorities chose 90 and 180 degrees west of Jerusalem, respectively. The former (90 degrees) relies on R. Yehudah ha-Levi (*Kuzari* 2: 19) as well as R. Zeraḥyah ha-Levi's interpretation of *Rosh ha-Shanah* 20b. This conclusion faces at least three challenges:

1) The *gemara* in *Rosh ha-Shanah* may be interpreted differently, as Rashi and others do.
2) Even if the *gemara* is to be interpreted in accordance with R. Zeraḥyah ha-Levi, who specifies that at noon in Jerusalem, somewhere on earth it is 18 hours earlier and the day is beginning, what he implied was a location but not necessarily a strict longitudinal line.
3) Even if R. Zeraḥyah meant a strict longitudinal line, his source was not necessarily (entirely) traditional and may well have reflected familiarity with contemporary science.

My view is that all three are, in decreasing order, likely. I have no evidence, but R. Zeraḥyah HaLevi could be reflecting thinking of gentile scholars of his period around whose time these issues were first recorded in detail. As far as I know, there is no such recorded discussion of datelines going back to the period of R. Yehudah Halevi.

Sources supporting the 180 degrees view are midrashic, and may not provide a compelling halakhic basis. Of course, there is no evidence that either of these approaches was ever used in practical *pesak* prior to the end of the nineteenth century. One would also be hard-pressed to explain how such a degree-based rule could be applied before global measurements were in use.

Philippines according to local custom.[8] Neither the approach of Ḥazon Ish nor that of R. Tukitzinky does that.[9]

Depression Angles

Consider a depression angle[10] that measures the angle between the sun's current position and the horizon; a larger angle indicates that the sun is further below the horizon, which would mean less visible light could be coming from the sun. If a depression angle of, say, 12 degrees[11] occurs before sunrise at 4:30 AM in London and 4:50 AM in New York on the same or different days, then one can be certain that the amount of illumination from the sun is the same at those two times. It is normally assumed by those using depression angles that:[12]

– an angle of approximately 16 degrees is equivalent to *alot ha-shaḥar,* the first light of day;[13]

8. Some prefer this approach because it conforms to local practice. There was a particularly novel opinion of R. Dovid Shapiro (*Shut Benei Ẓiyyon*, vol. 1:#14 and slightly modified in vol. 2:#10 where R. Shapiro moved the dateline a few degrees to account for the time between sunset and nightfall) that determined that the halakhic dateline happened to be about two degrees from the standard international dateline. Use of the halakhic method that examines the direction from which the original community arrived, happens to largely coincide with the international dateline and R. Shapiro's *pesak*. This fascinating topic still lacks a comprehensive historical treatment.

9. I would also argue that the non-dateline based approach makes the case of Antarctica significantly more tractable. Treating Antarctica as a land mass does not resolve the issue; how one arrived there may be more helpful.

10. To explain: Before it rises and after it sets, when the sun is only a few degrees below the horizon, illumination from the sun is apparent. The degree of illumination corresponds to what is termed a depression angle. Given the earth's tilt and rotation, computing depression angles involves spherical trigonometry, which is fortunately not needed for our purposes. Depression angles provide a mechanism that measures precisely the amount of light from the sun that is visible during the twilight period before or after sunset. Similarly, albeit without the precision, *Ḥazal* used terms like *mi-she-yakkir*, *hikhsif ha-elyon*, the appearance of small/medium stars, etc. all of which relate to the degree of darkness or equivalently the amount of residual illumination from the sun.

11. Because of the mathematical and scientific nature of the subject matter, I generally use Arabic numerals, but, when more appropriate, I spell out the word.

12. Depression angles were popularized by R. Tukitzinsky in his work *Bein ha-Shemashot* and by Leo Levi in his book *Halakhic Times* (Jerusalem, 1967). In recent times, most online internet sites that provide *zemannim* (as well as many printed calendars) use this methodology extensively.

13. Approximately 16 degrees corresponds to the more prevalent 72 minutes before sunrise, while approximately 20 degrees corresponds to 90 minutes before sunrise. There are other less common opinions about the time of *alot ha-shaḥar*, including 120 minutes before sunrise. While the *gemara* in *Pesaḥim* 94a concludes that the interval from *alot ha-shaḥar* to sunrise is the period of time needed to walk four *mil*, the 72 versus 90

– the opinions of *posekim* regarding the later point of *mi-she-yakkir* equate to around 11.5 degrees,[14] when more light is visible;

– 8.5 degrees is the most common current measurement for *ḥashekhah*, the requisite level of darkness[15] that equates to the conclusion of *Shabbat* according to the *ge'onim*.[16]

The time between sunset/sunrise and occurrences like *ḥashekhah* or *mi-she-yakkir* vary based on latitude and season; neither the appearance of three stars nor the first light of day occur a fixed number of minutes from sunset and sunrise, respectively. Depression angles capture the latitudinal and seasonal variations precisely.

Hardly a long-standing halakhic notion, depression angles first appeared in a halakhic context around the time of R. Naftali Ẓevi Berlin (Neẓiv)[17] and R. Dovid Ẓevi Hoffmann,[18] during the latter half of the nineteenth century.

Perhaps because such measurements seem so new and are certainly

minutes debate centers around whether one walks 40 *mil* per day starting at sunrise or *alot ha-shaḥar*; does one walk four *mil* during the twilight period before and after sunrise and sunset respectively and 32 *mil* in between, or are all 40 *mil* walked between sunrise and sunset? Dividing the number of *mil* walked (40 or 32) into the 720 minutes, that equates to an average day of 12 hours, gives the period of time needed to walk one *mil* (18 or 22.5 minutes). Interestingly, at about 80 minutes before sunrise, currently available scientific measurements detect the first light from the sun (in the Middle East around either the spring or fall equinox, the time of the year all commentators assert the *gemara* is referring.) A halakhic definition of either 72 or 90 minutes before sunrise is remarkably consistent; either can be reconciled with scientific observation, although 72 minutes is much easier. The difference between approximately 80 minutes and 72 minutes can be explained either by a slightly greater level of illumination and/or a level of illumination that is visible to the average person. While 90 minutes clearly precedes the first appearance of light, it may correspond to the slightly earlier point when daytime activity begins in anticipation of the day beginning.

14. This is the point when there is sufficient light to recognize a friend at four *ammot*. This *zeman* is broadly disputed. Extrapolating from the custom of certain *posekim* in Jerusalem (see Benish, chapter 23, esp. page 212) would set *mi-she-yakkir* at over 13 degrees. At the other extreme, R. Feinstein (*Iggerot Mosheh, O.Ḥ.* 4:6) seems to support a point of *mi-she-yakkir* of less than 9 degrees. R. Feinstein assumes *mi-she-yakkir* occurs 35 to 40 minutes before sunrise, an opinion that is different than commonly accepted *pesak*.

15. The point at which *Shabbat* ends is referred to as *ḥashekhah*. This is more commonly referred to as the appearance of three (small) stars.

16. With a few exceptions, the opinions of a vast majority of *posekim* equate to a point less than or equal to 8.5 degrees, with almost all falling in a range from approximately 7.5 to 9.3 degrees. Note that using 7.5 to 9.3 degrees for the conclusion of *Shabbat,* as opposed to approximately 6 degrees, parallels the extension from three medium stars to three small (and adjacent) stars.

17. *Melammed le-Ho'il*, # 30. R. Hoffmann considered dispensing with *mi-she-yakkir*, given the ability to specify *alot ha-shaḥar* precisely based on depression angles.

18. Benish (453) has a copy of a table using depression angles prepared at the request of Neẓiv. I do not know Neẓiv's reaction to the table, or how he might have used it.

modern, adoption of depression angles in Halakhah has been uneven. On one end of the spectrum, for example, R. Mordechai Willig,[19] consistent with the practice of R. Joseph B. Soloveitchik, applies depression angles across the board, to all determinations concerning *alot ha-shaḥar*, *mi-she-yakkir*, the end of *Shabbat*, etc. In fact, he claims that, in the more northern latitudes of Europe, those who waited 72 minutes after sunset to end *Shabbat* were more closely following the opinion of the *ge'onim* than that of Rabbenu Tam. If one waits for three small stars,[20] then in Vilna, one would have to wait approximately 72 minutes[21] and perhaps longer during the summer; similarly, Rabbenu Tam's 72 minutes after sunset must be adjusted using depression angles.[22] At a location much further north than the Middle East, this would require maintaining *Shabbat* for well over two hours after sunset (in the summer), as was the Rav's personal practice in Boston.[23] R. Willig's elegant and conceptually cogent formulation of the opinion of Rabbenu Tam was practiced only by isolated individuals; in the vast majority of cases, practice did not comport with the model.[24]

19. See *Am Mordekhai*, *Berakhot*, chap. 2, particularly the end section on page 16, and *Am Mordekhai*, *Shabbat*, chap. 39, pp. 215-19.

20. Three small stars appear when the level of darkness reaches a requisite level, a particular depression angle. Whether darkness or three stars define the end of *Shabbat* is a largely theoretical dispute; practically, the times at which each occurs are very close to each other. Thus, depression angles correlate to both the degree of light and the appearance of stars.

21. In the summer in Vilna, at approximately 55 degrees north latitude, 72 minutes after sunset equates to a depression angle of less than 8.5 degrees. The seasonal variation in the length of time after sunset to reach a depression angle of 8.5 degrees is more than 40 minutes in Vilna, ranging from approximately 55 minutes in the spring and fall to 95 minutes in the summer.

22. The end of *Shabbat* would occur when the level of darkness equals that observed in the Middle East 72 minutes after sunset around either the spring or fall equinox, i.e. a depression angle of approximately 16 degrees. In the summer in Vilna, that level of darkness is never reached, leading some to suggest halakhic midnight as the end of *Shabbat*.

23. This was further lengthened because he, as well as his grandfather and others, assumed 90 rather than 72 minutes as the period of time needed to walk four *mil*. Despite the fact that 90 minutes, which equals 1/8th of the 720 minutes of a 12 hour daytime period, is the time endorsed by all *ḥakhmei Sefarad*, in the modern day, it is often called the "*Brisker akhtel*," *akhtel* meaning 1/8th in Yiddish.

24. A full discussion of this topic is well beyond the scope of this paper. However, it should be noted that common practice among those who maintained the position of Rabbenu Tam was to wait either exactly 72 minutes, or ***less*** than that. As far as I know, this was first mentioned quantitatively by R. Avraham Pimential in his seventeenth century *sefer, Minḥat Kohen*, and practiced widely thereafter; those following the opinion of Rabbenu Tam actually reduced his 72 minutes (often to around 50 minutes) based on the observation of three stars. See *Iggerot Mosheh O.Ḥ.* 4:62 for R. Feinstein's similar position regarding 50 minutes in the New York area. It is very plausible that R. Pimential was reflecting on how Rabbenu Tam's view was practiced, despite the conceptual difficulties

At the other end of the spectrum, after carefully explaining the views of modern *zemannim* calendars, R. Yisroel Reisman maintained a strong preference for an invariant 72 minutes over a 16 degree depression angle as defining the time of *alot ha-shaḥar*.[25]

To this day, the 72 minute nighttime opinion of Rabbenu Tam is normally applied uniformly, regardless of latitude or season, while use of depression angles for *alot ha-shaḥar*, and the resulting variation based on latitude and season, is currently debated.[26] However, the conclusion of *Shabbat* according to the *ge'onim* is (almost) always determined in a manner that equates to depression angles or its more traditional equivalent – the appearance of three stars.[27] From a scientific perspective, this is surprising; the need for depression angles should be more apparent with a larger angle (*alot ha-shaḥar*) than a smaller one (as at *ḥashekhah*).[28]

From everything I can determine, depression angles capture the *gemara's* notion of darkness and light, corresponding accurately to the events the *gemara* describes. No other mathematically precise alternative for "measuring" *ḥashekhah* or *alot ha-shaḥar* has ever been formulated, nor has anyone ever proposed any problem that depression angles might create. Clearly, we may not need such precision; observation was adequate for generations. *Nevertheless, a depression angle is to darkness/illumination what a clock is to time.* I know of no instance where depression angles would yield a different result than (careful) observation. The problem

with this position, given Rabbenu Tam's equating the time interval between *alot ha-shaḥar and* sunrise and the interval between sunset and *ẓet ha-kokhavim*.

25. This was the practice of his *rebbi*, R. Avraham Yaakov Pam, as well as numerous other *posekim*. Rabbi Reisman's *shi'ur*, given on October 13, 2007, is titled: "A Dawn's Early Light."

26. According to the opinion of Rabbenu Tam, these points are identical and adjusting one and not the other makes no sense conceptually. For the *Ge'onim*, *alot ha-shaḥar* is unrelated to the transition point between days, the time that *Shabbat* ends.

27. Some calendars disguise their use of depression angles for the end of *Shabbat*, associating the times given for the end of *Shabbat* with medium/small *stars*, perhaps not wanting to create marketing problems by mentioning depression angles. At the other extreme, R. Yisroel Belsky, provides his approbation to the myzemanim.com website, which adjusts R. Moshe Feinstein's *pesakim* (which are season invariant) to conform to depression angles. They do this by assuming that the times that R. Feinstein provides are the maximum (applying only around the summer solstice) and are shorter during other times of the year.

28. For example, on May 1st, using depression angles of 8.5 and 16 degrees, *Shabbat* ends 39 minutes after sunset in Jerusalem and 58 minutes after sunset in London, while *alot ha-shaḥar* is 122 minutes before sunrise in London versus only 78 minutes in Jerusalem. The difference resulting from the larger depression angle is significant and the reason to adjust is yet more evident. Choosing a city further north than London (Vilna, for example) or a date closer to the summer solstice illustrates these phenomena yet more dramatically.

is that observation itself has been replaced by a clock—and depression angle measurements conflict with clock measurements, which are used to set *zemannim* at a precise number of minutes before or after a particular event like sunrise or sunset, as will now be elaborated.

Clocks

While clocks existed in antiquity, they qualify as a more recent technological innovation because their widespread use began only in the fifteenth century. Their availability in Northern Europe was certainly rare or nonexistent during most of the period of the *rishonim*. Clocks had a seductive influence in reducing reliance on observation, perhaps even introducing a (questionable) sense of certainty. For example, this paper assumes that *alot ha-shaḥar* correlates with the first light of day, however that may be precisely defined. Four common clock based surrogates for *alot ha-shaḥar* are*:*

1) a fixed 72 minutes before sunrise,
2) a fixed 90 minutes before sunrise,
3) a varying 72 minutes before sunrise based on the length of the day from sunrise to sunset, longer in the summer and shorter in the winter, and
4) a varying 90 minutes before sunrise based on the length of the day from sunrise to sunset, longer in the summer and shorter in the winter.

None of those four alternatives coincides with observation.[29] While the appearance of the first light of day clearly varies by latitude and season, the last two methods, which assume that the length of the twilight period varies with the length of the day, are even more acutely at variance with reality.[30] All are likely to have gained prominence as clocks reduced

29. By observation, an interval of 72/90 minutes only applies around the spring and fall equinox and only at the latitude of the Middle East. Commentators limit the *sugya* in *Pesaḥim* 94a (from which 72/90 minutes is derived) to the days around the equinox, as it assumes a twelve hour day. The limitation to latitudes of the Middle East requires an appreciation of the impact of latitude; that impact was not mentioned by early commentators, and was first discussed at length by R. Pimential in *Minḥat Kohen*.

30. Both observation and scientific theory assert that dawn precedes sunrise by a *longer* interval in the winter than in the fall or spring. The latter two approaches do not account accurately for the combined impacts of season of the year and latitude. First, even in the Middle East, where latitude is not an issue, and where using 72/90 minutes as the base for *alot ha-shaḥar* around the spring and fall equinox on a 12 hour day is accurate, correlating the period between *alot ha-shaḥar* and sunrise with the duration of the sunrise to sunset daytime period is directionally correct in the summer although inaccurate computationally and entirely incorrect in the winter. As the days get shorter

the need for observation. Rambam in his commentary to the Mishnah (*Berakhot* 1:1) mentions 1 and 1/5th hours. Normally, however, a less precise "period of time needed to walk four *mil*" is cited. Before widespread use of clocks, observation was required; clocks and the accuracy they provided made observation less necessary. Observation is unlikely to have produced either a non-seasonally and certainly not a non-latitude adjusted interval or an interval whose variance is inconsistent with actual seasonal variation.[31]

These alternative views on *alot ha-shaḥar* are good examples of the likely consequences of clocks. Nevertheless, because this particular issue is a practical halakhic matter that is broadly disputed and of widespread consequence, it would require a longer and more detailed analysis than I can undertake here. Instead, we will examine a different illustration of the probable impact of clocks, one that is more intriguing, albeit of lesser consequence: the calculation of *zemannai ha-yom* according to what is commonly referred to as the opinion of Magen Avraham.[32]

The calendar of Jerusalem was heatedly debated slightly over a century ago.[33] For our purposes, I will simplify the history. At that time, the calendar defined the length of a day using *alot ha-shaḥar* together with the normal end time for the days of the week (to be defined shortly). The calendar was used to calculate all the *zemannim* of the day, implementing the opinion of Magen Avraham. This view had clear precedent in many major European cities where prominent rabbinic authorities were the halakhic decisors.[34] In any case, the young R. Tukitzinsky approached his wife's grandfather, the venerable R. Shmuel Salant, with the following problem: the calendar is miscalculating an observable point of

in the winter, the length of the twilight period actually increases. (*Posekim* likely had some hesitation with this conceptual approach that would shorten the twilight period, as many asserted that one should not use the leniencies that derive in the winter months.) Second, at latitudes other than the Middle East, the base of 72/90 minutes must be adjusted by latitude even on a twelve hour day.

31. This linear correlation was (first) proposed by R. Pimential (see *Minḥat Kohen, ma'amar* 2, chap. 5) when he generalized a relationship between the length of the day and a (particular) twilight period (1/15th of a day) from two observations that he fit to a straight line. Since the relationship is non-linear, that extrapolation was incorrect. It is unclear whether he meant this to apply generally. Unlike some *posekim* who followed him, he was troubled by a shorter twilight period in the Netherlands, further from the equator than the Middle East. (His solution, ascribing a 24 minute discrepancy to elevation, was incorrect.)

32. Earlier sources (see for example the chapter headings in *Minḥat Kohen)* attribute the position we refer to as Magen Avraham's to R. Israel Isserlein; it can be traced to Ramban and perhaps even earlier.

33. See Benish, 1:114-18.

34. See multiple examples in Benish, 1:118-19, 2: 258-59.

ḥaẓẓot, viz., the midday point when the sun would be directly overhead. That fact should be both observable and provable since the time between *alot ha-shaḥar* and sunrise (the time the sun travels 16 degrees) is significantly longer than the interval between sunset and the end of the day (the time the sun travels only 8.5 degrees.)[35] If sunrise and sunset are at 6:00 AM and 6:00 PM respectively, and *alot ha-shaḥar* was at 4:40 AM, and three stars are visible at 6:30 PM, then *ḥaẓẓot* would be calculated at 11:35 AM, a full 25 minutes too early. R. Yosef Ḥayyim Sonnenfeld, adopting an expected traditional stance,[36] was neither able to resolve the problem nor accept the proposed change that would, as we will see, add a few minutes to *sof zeman keri'at shema*. Therefore, it remained unchanged for another few years, until R. Yiẓḥak Goldberg of Minsk visited Jerusalem and strongly supported the position of R. Tukitzinsky. R. Tukitzinsky then created an astronomically compliant calendar, supported by the *gemara* in *Pesaḥim* 94a.[37] What he did to establish the revised calendar of Jerusalem was to utilize the time the Gaon defined as the nighttime equivalent of *alot ha-shaḥar*, a point the Gaon referred to as *ẓet* ***kol*** *ha-kokhavim,*[38]

35. R. Tukitzinsky would have recognized that both by his meticulous observation and his knowledge of astronomy.

36. A ruling of R. Sonnenfeld adds a sense of balance and consistency to the view that some might otherwise presume about this prominent *ḥaredi* authority. It provides a remarkable reminder of a past that focused on traditional community practices. The *ḥevra kadisha* of Jerusalem wanted to attend to a decedent 40 minutes after sunset. R. Sonnenfeld, contrary to the wishes of the family, ruled that the *ḥevra kadisha* can attend to the body at that time—even though both R. Sonnenfeld and the deceased customarily waited 72 minutes after sunset for the end of *Shabbat*. Later that afternoon, news of a second death caused the widow to suggest that the second man can now be tended to first, which would leave her late husband untouched until well after 72 minutes following sunset. R. Sonnenfeld insisted that the *ḥevra kadisha* work in their normal order, tending first to her husband, who died earlier. His logic was that even when personal stringencies (72 minutes) conflict with the community's traditional practice (the equivalent of an 8.5 degree depression angle or about 40 minutes), the latter is overriding.

37. That *gemara i*n *Pesaḥim* asserts an equal period of twilight in the morning and evening. It is possible to treat this *sugya* as only theoretical, without necessarily specifying a position on how hours of a day are to be calculated even for those who compute from *alot ha-shaḥar.* However, Ramban and the many *ḥakhmei Sefarad* who declare that *pelag ha-minḥah* occurs at the period of time needed to walk 1/6th of a *mil* prior to sunset used this *sugya* as a basis for computation; their views support R. Tukitzinsky's method of calculation explicitly. If Ramban and others were using an earlier point like *ḥashekhah* / three small stars, then *pelag ha-minḥah* would occur well before sunset.

38. The Vilna Gaon (*O.Ḥ.* 459) associated no halakhic significance with *ẓet* ***kol*** *ha-kokhavim*, as opposed to three stars, as it indeed is not needed in his system; he calculated *sha'ot zemanniyyot* from sunrise to sunset. Assuming that *ẓet kol ha-kokhavim* has no halakhic significance beyond its use in the calculation of the times of Magen Avraham adds credence to the alternative to be proposed below. In the last century, a number of Brisker conceptual talmudists have hypothesized significance for *ẓet* ***kol*** *ha-kokhavim,* differentiating the end of the day, three stars, (*ẓet ha-kokhavim*), from the end of the daytime period (*ẓet* ***kol*** *ha-kokhavim*).

which occurs when the sun is again 16 degrees below the horizon.[39] If *alot ha-shaḥar* occurred 80 minutes before sunrise, then *ẓet kol ha-kokhavim* would occur 80 minutes after sunset. Using those endpoints, *ḥaẓẓot* would be calculated at the astronomically observed point as opposed to some number of minutes earlier. This calendar is used primarily for morning *zemannim*, but rarely for *zemannim* in the afternoon.[40]

I cannot attribute this miscalculation of *ḥaẓẓot* entirely to clocks. However, consider the practice required before clocks and long arithmetic enabled a precise calculation of *shaʿot zemanniyyot*. Here is a scenario to consider that is consistent with the oft quoted verse in Neḥemiah (4:15) specifying the daytime period: "*Va-anaḥnu osim ba-melakhah . . . me-alot ha-shaḥar ad ẓet ha-kokhavim*," "We worked . . . from *alot ha-shaḥar* until *ẓet ha-kokhavim*." As interpreted explicitly by the *Yerushalmi* at the beginning of *Berakhot* and by many commentators, including Rabbenu Tam and some of his followers, the daytime period defined by the verse is, by observation, asymmetric with respect to sunrise and sunset.[41] It also may be the antecedent of what became the calendar of Jerusalem and other cities. The beginning and end of the day specified in the verse are interpreted as *alot ha-shaḥar* and three stars respectively, the endpoints used by many calendars like the one of Jerusalem that R. Tukitzinsky attacked.

Without a doubt, Ramban[42] defined the hours of the day by what centuries later was called the opinion of Magen Avraham. It is absolutely clear as well that the process of calculation that Ramban endorsed divided the period between *alot ha-shaḥar* and its evening equivalent[43] into

39. The view of the Gaon is broadly disputed; those who assert that he concluded that the period of time needed to walk a *mil* was 22.5 minutes would change the period of time needed to walk four *mil* from 72 to 90 minutes and change the associated depression angles from 16 to 20 degrees.

40. None of the opinions of Magen Avraham are commonly used in setting afternoon *zemannim,* particularly at the more northern latitudes of the United States and Europe.

41. Those who followed Rabbenu Tam equated the appearance of three stars with the end of the period of time after sunset needed to walk four *mil*. Nonetheless, many of those authorities used the appearance of three stars (with various stringencies), without regard to the number of minutes after sunset when stars appeared. This was, in a certain sense, implicit in the Gaon's rejection of Rabbenu Tam, who treated three stars and *alot ha-shaḥar* as symmetric. The Gaon deemed this assumption factually incorrect and contradicted by observation. Discussions of stars were common among *rishonim* as well as in the *pesakim* of R. Pimential, R. Sofer, and R. Feinstein, referenced in notes 24 and 63, to name just three *posekim*. The above authorities all focus on the appearance of stars instead of just the period of time needed to walk four *mil*.

42. *Torat ha-Adam*, in *Kitvei ha-Ramban*, ed. C. B. Chavel (Jerusalem, 1964), 2:251–55.

43. The point when "all the stars," as opposed to only three stars, are visible.

twelve parts to derive the length of an hour.[44] However, despite the theory articulated by Ramban, the practical process even for those who followed Rabbenu Tam[45] may have been implemented differently before the era of clocks. I would conjecture that:

- *Ḥaẓẓot* was not calculated; time was estimated by angles that were approximated from the high point in the sky (equal to *ḥaẓẓot*) to a point in the morning and the evening.[46]
- The evening point was set not by the Vilna Gaon's notion of *ẓet kol ha-kokhavim*[47] but by the appearance of three stars, which was assumed by a significant number of *rishonim* to occur the same length of time after sunset as *alot ha-shaḥar* occurred before sunrise.

To be concrete, assume that sunrise and sunset are at 6 AM and 8 PM. Assume further for computational simplicity that *alot ha-shaḥar* is observed at 4:40 AM and three stars are observed at 8:40 PM, with the evening counterpart of *alot ha-shaḥar, ẓet kol ha-kokhavim* occurring at 9:20 PM. Taking the midpoint between 4:40 AM and 9:20 PM, *ḥaẓẓot* can be calculated and also observed at exactly 1 PM, with *sof zeman keri'at shema* occurring at 8:50 AM. However, using the calendars of old we would compute *ḥaẓẓot* at 12:40 PM, off by 20 minutes—which is the problem

44. That is derivable from Ramban's assertion that *pelag ha-minḥah* occurs at the time it takes to walk 1/6th of a *mil* before sunset. I cite Ramban because, as noted, the *gemara* in *Pesaḥim* 94a itself can be interpreted as not necessarily providing a normative opinion to be used in calculating *zemannim;* Ramban unquestionably does.

45. The followers of Rabbenu Tam include many *rishonim*, *Shulḥan Arukh*, and all its major commentators until the middle of the eighteenth century. From then on the opinion of the *Ge'onim* began to gain more adherents.

46. See Ravyah, vol. 2, p. 64, who, as I read his words, used *ḥaẓẓot* as an anchor for his approximations for *zemannim*.

47. *Ẓet kol ha-kokhavim* as the counterpoint to *alot ha-shaḥar* is a logical consequence of Rabbenu Tam's position, particularly as formulated by Ramban. *Ẓet kol ha-kokhavim* as the position of Rabbenu Tam was formulated even more profoundly in R. Soloveitchik's *yahrzeit shiur* titled "*Yom va-Laylah*," in *Shiurim le-Zekher Abba Mori z"l* (Jerusalem, 2002), 107–27. However, despite the compelling logic behind *ẓet kol ha-kokhavim* and support derivable from the position of Ramban, I have found no historical reference to its ever being used *in practice* prior to recent times. The Gaon used it only to explain the difference between the *sugyot* in *Pesaḥim* and *Shabbat,* without ascribing to it any practical halakhic significance. In fact, as noted, many *posekim* who claimed to follow Rabbenu Tam used the appearance of three (adjacent) stars as defining the end of *Shabbat*, well before even 72 minutes and certainly before *ẓet kol ha-kokhavim*, despite the fact that it does not comport with Rabbenu Tam's conceptual position. This dissonance between concept and practice is one of the most difficult issues in the entire area of *zemannim*. While making this change from *ẓet kol ha-kokhavim* to three stars in the opinion of Rabbenu Tam is challenging conceptually, it does not create such challenges with respect to calculating the hours of the day.

R. Tukitzinsky raised.[48] Assume now that we have no precise clocks and known times and we need to observe the hours of the day. It is hardly likely that we would calculate *ḥaẓẓot;* we would simply assume it occurs when the sun is directly overhead. The morning hours would be calculated/approximated between *alot ha-shaḥar* and *ḥaẓẓot,* the afternoon hours between *ḥaẓẓot* and the appearance of three stars. Of course, those who are mathematically oriented will immediately note that afternoon hours are (slightly) shorter than morning hours.[49] As surprising as that may be, it is not contradicted by any principle I have ever found in *zemannim*[50] and is certainly less troublesome than miscalculating *ḥaẓẓot.*[51] My suspicion is that this may have been the practice used for approximation before widespread use of clocks; it is the only methodology that uses non-equidistant endpoints for calculation without deriving an inaccurate point for *ḥaẓẓot*. With the invention of clocks it may have naturally morphed into a calculation from *alot ha-shaḥar* to the appearance of three stars, creating uniform hours throughout the daytime but a miscalculated point of *ḥaẓẓot.*

Posekim maintained the traditional endpoints of *alot ha-shaḥar* and three stars, but their use of a new method of calculation led to issues with *ḥaẓẓot*. The approach adopted in Jerusalem maintained the method of calculation but changed the endpoints; what I am suggesting maintains the endpoints but changes the method of calculation. Were this argument adopted, *posekim* could reestablish the use of the traditional endpoints of *alot ha-shaḥar* and three stars by taking *ḥaẓẓot* as observed and then establishing both morning and afternoon *zemannim* by calculating from midday to *alot ha-shaḥar* and three stars respectively.[52]

48. *Sof zeman keri'at shema*, which is halfway between *alot ha-shaḥar* at 4:40 AM and *ḥaẓẓot* at 12:40 PM, occurs at 8:40 AM, ten minutes earlier than when using R. Tukitzinsky's calculation.

49. Assuming *alot ha-shaḥar* is 80 minutes before sunrise and three stars appear 40 minutes after sunset, then the six morning hours would be (40/6=) 6 and 2/3rd minutes longer than the six afternoon hours, 73 and 1/3rd minutes versus 66 and 2/3rd minutes.

50. R. Feinstein in *Iggerot Mosheh O.Ḥ.* 1:24 and *Iggerot Mosheh O.Ḥ.* 2:20, for different reasons and in conjunction with his view that *ḥaẓẓot* is always at the same time at a given location (see note 56), writes "*she-shenei ḥaẓa'ei ha-yom einam shavim*." Despite the fact that I do not know his rationale, his view is nonetheless supportive.

51. See for example, *Minḥat Yiẓḥak* 4:53, where R. Weiss asserts that any approach that does not calculate *ḥaẓẓot* accurately is untenable.

52. The approach of R. Tukitzinsky and the one suggested are identical with respect to the morning *zemannim,* but differ significantly with respect to all afternoon *zemannim*. Both approaches, however, happen to create a practical time for *pelag ha-minḥah* in the New York area for those wishing to *daven* early in the summer, but with *minḥah* and *maʿariv* before and after *pelag ha-minḥah*, respectively. I leave the verification as an exercise for the reader.

Personally, I find the calendar of R. Yeḥiel Mikhel Tukitzinsky most compelling,[53] but I strongly suspect that a calendar that uses three stars versus *ẓet kol ha-kokhavim* may be more consistent with tradition from at least the sixteenth to nineteenth century and perhaps even in antiquity.[54] In any case, clocks may have altered the method of calculation for *zemannei ha-yom,* as well as created a simplified version of the position of Magen Avraham, often referred to as Magen Avraham *ke-nahug*.[55] I would guess that the reason the proposed explanation of the more traditional approach was never put forward is that, in the century since the problem was identified, we appear to have all been fixated on clocks and long arithmetic; the thought of not calculating *ḥaẓẓot* still appears unnatural.[56]

A careful reader will also note that the latter two opinions, that of R. Tukitzinsky and the one I suggest, produce two additional opinions, by replacing 72 minutes with 90 minutes. The use of 90 minutes is, in fact, the custom of Jerusalem and the clear position of Ramban, a point I will set aside. In a forthcoming paper on *Sha'ot ha-Yom*, I hope to illustrate that the approach of R. Tukitzinsky to Magen Avraham and the use of 90 versus 72 minutes, both part of the established *minhag* of Jerusalem, create some anomalies when computing *pelag ha-minḥah* during certain seasons of the year. Both the method employed previously in Jerusalem that R. Tukitzinsky successfully opposed, and one using an observed *ḥaẓẓot* and an earlier point of three stars versus *ẓet kol ha-kokhavim*, avoid this issue.

53. It is a more mathematically appealing computation, and more importantly, consistent with the formulation of Ramban in *Torat ha-Adam* and *ḥakhmei Sefarad* who followed his approach.

54. There are a number of challenges to the opinion of Magen Avraham and some earlier adherents of his position that this approach would address. We will detail these challenges and that referenced in note 52 in a paper on *Sha'ot ha-Yom* that deals extensively with the opinion of Magen Avraham.

55. Magen Avraham *ke-nahug* typically calculates from a fixed 72 minutes before sunset to a fixed 72 minutes after sunset. To the best of my knowledge, although Magen Avraham *ke-nahug* is often used in setting *zemmanim* in the morning, it is never used to set *zemmanim* in the afternoon. In addition to a fixed 72 minutes, each of the other three alternatives for calculating *alot ha-shaḥar* that were previously associated with the introduction of clocks create an associated method for calculating according to the position of Magen Avraham. The issues raised with respect to those four alternatives for *alot ha-shaḥar* apply to calculating according to the position of Magen Avraham, as well.

56. R. Moshe Feinstein's position (*Iggerot Mosheh O.Ḥ.* 2:20) is that *ḥaẓẓot* is always at the same time and is not calculated but observed, a practice that he asserts without detailed explanation and attributes to his father. Astronomically, in the New York area, *ḥaẓẓot* varies during the year by approximately 20 minutes. I strongly suspect that his position is somehow related to this approach where *ḥaẓẓot* was not calculated but observed, a phrase R. Feinstein employs—*she-hu ke-she-ba ha-shemesh le-emẓa ha-darom*. It is also plausible that the difficult position of R. Shlomo Zalman Auerbach (*Minḥat Shelomoh* 1:91 and 2:58) on the nighttime point of *ḥaẓẓot*, which deviates as well from the precise astronomical point, derives from this type of approach. It is ironic that both of these recognized *posekim* would maintain unexplained positions on *ḥaẓẓot*. At the very least this approach might provide a point from which both positions may have originated.

Clocks, as well as the calculations they enabled, may have provided a level of precision that is neither accurate halakhically nor in consonance with (traditional) observance or observation.

Minutes after Sunset

The three previous examples all involve something of an innovation, an artifact like the clock or a new concept like the dateline or depression angles. The final example represents a gradual change over a long period of time in colloquial manners of expression. Consider two near contemporaries, R. Nosson Adler and R. Yaakov Lorberbaum. R. Adler's period of *bein hashemashot*, as quoted in an addendum at the end of *massekhet Pesaḥim* in the *ḥiddushim* of his student, R. Mosheh Sofer, is between 24 and 35 minutes. Shnayer Z. Leiman, in a taped lecture,[57] told the history of how this line was deleted in an edition of the Ḥatam Sofer's *ḥiddushim* published by Satmar Ḥasidim after the Second World War. As Leiman explained, they did not want to acknowledge that R. Adler maintained so early an end to *Shabbat*, one they assumed was at most 35 minutes after sunset.[58] There have been many attempts to explain this remark of R. Adler.

Similarly, the section of R. Lorberbaum's *Derekh ha-Ḥayyim* about the start of *Shabbat* has been amended with the original numbers assumed to be incorrect.[59] What R. Lorberbaum was specifying was (A) the absolutely latest point to start *Shabbat* (after which one could not light candles, for example), which occurs 37.5 minutes after sunset; as well as (B) the earliest point when one can accept *Shabbat* by an action (lighting candles, for example) without an explicit declaration, which occurs 57 minutes earlier or about 20 minutes before sunset. Two revisions have been suggested: 1.5 minutes replacing 37.5 minutes and 58.5 minutes replacing 57 minutes. R. Lorberbaum used ¼ hour as an approximation for the period of time needed to walk ¾ *mil* or 13.5 minutes, extending that time slightly to account for *tosefet Shabbat*. The change to 1.5 minutes

57. "Jewish Censorship in Literature in Modern Times," recorded 05/12/99.

58. It is unclear whether Prof. Leiman is criticizing the interpretation or acknowledging its correctness and only criticizing the audacity of its censorship. The latter appears more reflective of his tone.

59. See for example, the edition of *Derekh ha-Ḥayyim* published by Asher Gartner (Bnei Brak, 5747), 76-77. In 2006, R. Reuven Bulka and his sister Rebecca (Bulka) Rivkin, republished the "Bulka *siddur*" in memory of their parents and distributed it at a grandchild's Bar Mitzvah. Originally published by their grandfather in Nuremburg in 1925, it contains an earlier text of *Derekh ha-Ḥayyim*. *Derekh ha-Ḥayyim* was often reprinted in *siddurim*.

reflects the difference between 13.5 minutes and ¼ of an hour. It is easier to reconcile 58.5 minutes[60] with the remainder of the text than 1.5 minutes; 58.5 minutes is the standard [61] opinion of Rabbenu Tam for when *bein ha-shemashot* begins—the length of time *after* sunset to walk 3.25 *mil* is (3.25 x 18 =) 58.5 minutes.

Both changes result from a failure to realize both R. Lorberbaum's linguistic construct and his halakhic position. In fact, and this is what was likely missed by those proposing an emendation, 37.5 minutes is ¾ of a *mil* (13.5 minutes) or 15 minutes prior to the end of *Shabbat* – *counting backwards* from the time that *Shabbat* is likely to have ended at that location.[62] As well, 57 minutes + ¼ hour equals 72 minutes, (as would 58.5 + 13.5 minutes,) counting backwards from the end of *Shabbat* (51 – 53 minutes after sunset) to a point approximately 20 minutes before sunset.

This simple observation partially explains R. Adler's position as well. In common parlance, we say: "*Shabbat* is over X minutes after sunset." For reasons that would require a significant and speculative digression, we tend to count forward (and backward) from sunset. In many contexts, the two cited above being perfect examples, more traditional usage often counts back from *ḥashekhah*, the end of *Shabbat*, rather than only forward from sunset. R. Adler meant that *Shabbat* starts 24-35 minutes before it ends a day later at *ḥashekhah*, not that it ends 24-35 minutes after sunset.[63] Our tendency to count forward from sunset should not

60. Note that either 15 + 57, following the language in the original text, or 13.5 + 58.5, following the suggested emendation, both equal 72; the change is not as fundamental.

61. Again using 72, versus 90, minutes, as the period of time needed to walk four *mil* (the opinion of the *Shulḥan Arukh*).

62. Approximately 51-53 minutes as elaborated in the next note. Clearly, R. Lorberbaum was following a modified version of Rabbenu Tam, similar to R. Pimential as discussed in note 24.

63. Though the point is not directly relevant to this discussion, R. Adler was possibly using (approximately) 72 minutes after sunset as the point from which he was counting back, while R. Lorberbaum was counting back from the practiced end of *Shabbat* in the locale for which he was writing, approximately 51- 53 minutes after sunset. The conceptual rationale for either approach is not provided and is not covered in this paper. While I cannot fully explain the conceptual basis for R. Adler's position, only an approach where he is counting back from some later time than the end of *Shabbat* in Frankfurt can be reconciled with *She'elot u-Teshuvot Ḥatam Sofer* #80, concerning a baby born on *Shabbat* approximately 27 minutes after sunset. While he may disagree with R. Adler in many aspects concerning the end of *Shabbat* and the *bein ha-shemashot* period, I assume that R. Sofer would not dismiss his *Rebbi's* approach where a possible *ḥillul Shabbat* at a biblical level would be involved. If, however, R. Adler was subtracting from 72 minutes, then 35 minutes earlier would also be 37 minutes after sunset, remarkably consistent with R. Lorberbaum and consistent with the later *pesak* of R. Sofer. Any other plausible interpretation of R. Adler places R. Sofer's *pesak* in conflict with R. Adler.

be assumed when reading the halakhic literature. Common modes of expression create assumptions that we then use as we attempt to read non-contemporary texts; both R. Adler and R. Lorberbaum[64] were using a more classical mode of expression. It is plausible that presuming counting forward from sunset as opposed to also considering counting back from *ḥashekhah* may relate to the increased prominence of sunset in both halakhic and secular contexts.[65]

Concluding Remarks

New paradigms, including something as simple as a widely reported point of sunset,[66] can have subtle impact of how Halakhah is expressed. With some reservations, I will outline some rudimentary conclusions, extrapolating from the four examples.

One could argue that clocks, depression angles, datelines and perhaps sunset as well all have an aura of precision that might be intuitively appealing—but overly valued. One ought to ask whether a particular precise notion is a more exact analogue of a previously used notion or whether the precise notion differs in some relevant detail. Certainly, those cases

(Latitudes for all three cities, Frankfurt, Zolkiev and Pressburg, for which *zemannim* were given by the three *posekim* are within approximately 2 degrees of each other, with Pressburg furthest south. It appears that all three cities ended *Shabbat* approximately 52 minutes after sunset, at least in the summer. Frankfurt started *Shabbat* at sunset; the other two cities apparently did not.) Some more recent attempts to reinterpret R. Sofer are beyond the scope of this paper and, in any case, difficult to maintain both historically and conceptually. Regardless of exactly what point was the anchor, it is clear that R. Adler was counting back from some point of *ḥashekhah*, not forward from sunset or some other point.

64. Shlomo Sternberg makes the point about R. Lorberbaum in passing in an article available at his Harvard website, http://www.math.harvard.edu/~shlomo/docs/beinhashemashot.pdf.

65. The identification of sunset as the precise beginning of *bein ha-shemashot* has become almost universal. It is noteworthy, however, that not all *posekim* through the generations have concurred with this identification. Aside from Rabbenu Tam's opinion mentioned in notes 41 and 47, see: R. Chaim Volozhiner's view, as reported in the *hosafot* (additions) to *Ma'aseh Rav*, section 19; the views reported in R. Yaakov Gliss, *Minhagei Ereẓ Yisrael*, (Jerusalem, 1968), 102, 282; R. Meir Posen, *Or Me'ir* (London, 1973); Rambam, *Mishneh Torah*, *Hilkhot Shabbat* 5: 3,4 and *Hilkhot Kiddush ha-Ḥodesh* 2:8,9, as explicated by R. Yosef Kapaḥ in his commentary to *Mishneh Torah*; R. Moshe Feinstein, *Iggerot Mosheh*, *O.Ḥ.* 4:62.

66. The precise definition of sunset implicitly includes a notion of sea-level, a topic that has received recent attention. Not surprisingly, Ḥazon Ish could find no early source to deal with some of the complexities of sea-level.

where no prior analogue exists must be carefully examined.[67] It would be difficult to argue that depression angles have no talmudic analogue.[68] At best one could try to argue that depression angles are in some way not a precise formulation of what the various *sugyot* were trying to express. Frankly, I have not seen such an argument, nor can I think of how it would proceed. Contrast this with datelines, where I have never seen reference to any talmudic source that discusses anything remotely similar, save the interpretation of R. Zeraḥyah ha-Levi.[69]

Clocks, like depression angles, also provide precision for a well established halakhic concept. However, the popularity of clocks and the comforting sense of exactitude they provided likely morphed from just adding accuracy to observation to replacing the need for observation *in toto*.[70] At least in popular culture, and I would argue on occasion in *pesak* as well, measured time replaced astronomical events as the underlying definition of a particular *zeman*.[71] Furthermore, the issue with clocks involves perhaps not just (unwarranted) dependence on time as the defining concept, as for example in the significance that 72 minutes holds for many in actually defining as opposed to approximating *alot ha-shaḥar*, but its use in defining halakhic processes as well. The precision that clocks provide may have facilitated change to a halakhic calculation that resulted in complexities vis-à-vis determining *sha'ot zemanniyyot* represented by calculating an inaccurate point of *ḥaẓẓot*. Clocks may have made approximation unnecessary only to be replaced by a precise, albeit flawed method of calculation, when using non-equivalent endpoints.

67. Of course, one can argue similarly about any new conceptual category created. This is particularly relevant given the dominance of a modern conceptual methodology in the study of Talmud. For example, in an area we noted earlier concerning any halakhic significance to *ẓet* ***kol*** *ha-kokhavim*, modern adherents of the Brisker methodology distinguish between the "day of the week" that ends with *ḥashekhah*, approximately *ẓet ha-kokhavim* (the appearance of three stars), and the "daytime period" that perhaps extends until *all* the stars are visible, *ẓet kol ha-kokhavim*. They can then hypothesize cases where *ẓet* ***kol*** *ha-kokhavim* versus *ẓet ha-kokhavim* would (or should) have practical significance. Support for such a position from traditional sources is limited at best.

68. Terms like *ḥashekhah* and *mi-she-yakkir* measure levels of darkness. The *gemara*'s description of *ovei ha-rakia* (*Pesaḥim* 94a) is remarkably similar to depression angles, a point that R. Hoffmann takes even a step further in *Melammed le-Ho'il*, #30.

69. This was a major point of contention between many *posekim* and Ḥazon Ish.

70. A somewhat related and more conceptual point concerning not clocks but time in general is argued with multiple examples by Sacha Stern in *Time and Process in Ancient Judaism* (Oxford, England and Portland, Oregon, 2003), chapter 2.

71. The classical disagreement centers on whether the appearance of stars or a requisite level of darkness (or equivalently the appearance of the sky), not time, define the end of *Shabbat*. Similarly, physical phenomena are the basis for defining almost all *zemannim*.

Thus, an important question applicable to both the clock and the dateline is how the process of determination might have been executed in antiquity. Absent a clock or a dateline, one can easily conceive of an alternate methodology to address the question, providing not just a less precise answer, but one that also differs in some critical aspect.

In summary, the halakhic impact of datelines, depression angles, clocks and sunset each requires its own detailed analysis. While the "modern" issues around datelines and depression angles have received adequate halakhic attention, more complex issues surrounding clocks, whose history stretches back half a millennium and beyond, and sunset require more study. Of interest in many of these cases is the tension between using modern developments in science and technology to render halakhic concepts more precise, and relying on more traditional modes of observation, approximation and/or decision making.

My own leanings in each of the areas are clear. I remain skeptical about the need for and the validity of a dateline, and I believe strongly that depression angles capture accurately the halakhic notions of light and darkness. Clocks had significant effect, at times weakening a tradition that relied on approximations based on observation; definitions depending on observation may have been partially obscured and replaced by focusing on a fixed amount of time and related calculations. Perhaps those traditional definitions will be reestablished and defined for posterity using depression angles, as they are increasingly being adopted (even) within very traditional circles. Depression angles may bring us full circle to the equivalent of classic dependence on observed events rather than on clocks, creating not just clock-like precision but observation-conforming accuracy.

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ABRAHAM OFIR SHEMESH

The Fingered Citron and the Dibdib Citron for the Ritual of the Four Species in Medieval and Modern Literature

The Bible lists the "fruit of a goodly tree" (*peri eẓ hadar*) as one of the four species used for ritual purposes on the festival of Sukkot (Lev. 23: 40). Rabbinic tradition identifies this fruit as the citron—*citrus medica* (*etrog*).[1] The species described in Rabbinic literature are categorized according to their qualities, such as size, color, shape, taste, etc.[2] For example, Rabbinic sources mention *etrog ha-Kushi* (dark citron),[3] *etrog ke-kadur* (round like a ball), *etrog adamdam* (reddish),[4] and the

1. The term "*etrog*" first appeared in the Mishnaic period; see, for example, *Sukkah* 3:4; *Bikkurim* 2:6. On citrons in the Bible and in rabbinic literature, see Yehuda Felix, *Types of Fruit Trees—Biblical and Rabbinical Plants* (Heb.) (Jerusalem, 1994), 150-60. On citrus fruit in ancient and later Jewish sources, see the review by Immanuel Löw, *Die Flora der Juden* (Vienna-Leipzig, 1924-1934), III:279-317.

2. Recent studies have examined known citron species by scientific standards, classifying them, for example, by their genetics. See Elisabetta Nicolosi, Stefano La Malfa, Mohamed El-Otmani, Moshe Negbi, and Eliezer E. Goldschmidt, "The Research for the Authentic Citron (Citrus medica L.): Historic and Genetic Analysis," *HortScience* 40, 7 (2005): 1963-1968; Eliezer E. Goldschmidt, "Genetic Research of 12 Types of Citrons" (Heb.), *Halikhot Sadeh* 146 (2005): 21-31.

3. *Sukkah* 36a. The *etrog ha-Kushi* apparently refers to a dark green citron. In fact, all citrons are black or dark green when young. Apparently, Abbayei believed that this was a species common in the land of Kush, and rarely found elsewhere. Cf. Rashi, *Sukkah* 34b, s. v. *ha-kushi*, who describes it as a darkly hued citron, similar to a dark-skinned person. Samuel Tolkowsky, *Citrus Fruits* (Heb.) (Jerusalem, 1966), 58, identifies it as a lemon, but his evidence is insufficient. For a critique, see Felix, *Types of Fruit Trees*, 155-56.

4. According to Samuel Tolkowsky, the ball-like (*Sukkah* 36a) and the reddish citron

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sweet citron (*ḥalitah*).[5] Halakhic authorities throughout the generations have considered the qualifications of various other species of citron, those grown in countries where Jews resided and those brought to Jewish communities from a distance in order to perform the ritual.[6] These are often distinguished, among other things, by their geographical origins, such as *etrog Teimani* (Yemenite citron),[7] *etrog Marokani* (Moroccan citron),[8] and *etrog Amerikani* (Caribbean citron).[9]

The present article examines historical, botanical, and halakhic data concerning two species of citrons mentioned in medieval and modern halakhic literature. The first, the "fingered citron," originates in Indochina, while the second, the *dibdib*, is a local species of citron that grows in Iraq.[10]

(*Yerushalmi Sukkah* 3:6, 53b) refer to an orange, which is round and reddish-orange in color (Tolkowsky, *Citrus*, 57). However, most researchers agree that oranges and other citrus fruits (with the exception of the citron) were unknown in the Land of Israel in the period of the Mishnah and Talmud; they reached the region only after the Arab conquests. See Andrew M. Watson, *Agricultural Innovation in the Early Islamic World* (London-New York, 1983), 45-48; Löw, *Flora*, III:316. For claims contradicting this identification, see Felix, *Types of Fruit Trees*, 156, n. 37, and compare Zohar Amar, *Agricultural Produce in the Land of Israel in the Middle Ages* (Heb.) (Jerusalem, 2000), 248, who states that the term "round *etrog*" appears in the writings of medieval Arab scholars, although the meaning of the term is uncertain in that context as well.

5. *Shabbat* 109b. See also Zohar Amar, *The Four Species: Halakhic Inquiries from a Historical, Botanical, and Land of Israel Perspective* (Heb.) (Neve Ẓuf, 2009), 37.

6. On the difficulties involved in finding citrons for Sukkot and bringing them to Europe from Mediterranean countries via special community messengers ("etrogerim"), see Tolkowsky, *Citrus Fruits*, 227-233; Dov Berling, "Supplying of Citrus from Italy to Polin," in *Sefer Ha-Mo'adim*, ed. Yom Tov Levinsky (Tel Aviv, 1947), IV: 109-10; Shlomo Ashkenazi, *Generations and their Customs* (Tel Aviv, 1967), 72-98; Yosef Salmon, "The Controversy about the Citrons of Corfu and the Citrons of Israel, 1875-1891" (Heb.), *Ẓion* 65 (2000): 75-106.

7. This is a fairly large citron, which is sweet and edible in its natural form. On its description and use among Yemenite Jews, see Yosef Kapaḥ, C*ustoms of Yemen* (Heb.) (Jerusalem, 1987), 33. On the halakhic debates regarding its permissibility for ritual purposes and possible problems with grafting, see Eliyahu Weissfish, *The Complete Book of the Four Species* (Heb.) (Jerusalem, 1979), 207. This issue merits a comprehensive and systematic discussion of its own.

8.See, for example, R. Ḥayyim David Ḥazan, *Sefer Yishrei Lev* (Izmir, 1870), *Oraḥ Ḥayyim, ot aleph*, 1b; Weissfish, *Four Species*, 206; Yisrael David Harpenes, *Book on the Fruit of the Citrus Tree: On the Issue of the Permissibility of Seedless Moroccan Citrons* (Heb.) (Brooklyn, 1986), 5ff.; Eliezer E. Goldschmidt, "Moroccan Citrons—Impressions from a Tour" (Heb.), *Halikhot Sadeh* 100 (1996): 39-44; Ari Zivotofsky and Ari Greenspan, "The Four Species of the Citron," *Makor Rishon* (October 10, 2008): 4. This issue also merits an independent scientific discussion.

9. These citrons are also called "West Indies *Etrogim*." For a short summary of the halakhic literature on the Caribbean citron, see Ari Zivotofsky and Ari Greenspan, "The Story Behind the Esrog," *The Jewish Observer* (October, 2008): 17-21.

10. I discussed these citrons briefly in my article, "The *Kashrut* of Citrons with Irregular Shape and Taste," *Teḥumin* 24 (2004): 343-47.

The Fingered Citron

Historical and Botanical Background

Citrus fruit, including the citron, are subtropical crops that grow in relatively warm countries, and the trees are sensitive to cold and ailments.[11] Geographically, the citron species (Citrus sp.) originates in eastern Asia, and to this day, citron trees grow wild in northern India. The citron was first domesticated in Persia—citron seeds were found at archeological sites in Mesopotamia and dated at 4000 B.C.E.—and Alexander the Great brought the citron to Greece during his military conquests in around the third century B.C.E.[12]

The scientific name of the fingered citron is *Citron medica* var. *sarcodactylis Swingle*.[13] The tree is small and bush-like and is commonly grown as an ornamental tree, similar to bonsai trees. The size of the fruit ranges from 15-30 cm., and it has a fragrant yellow peel. This particular citron lacks a gene that causes the sections of the fruit to fuse; the top of the fruit is thus split in a way reminiscent of human fingers, thus earning it its name.

The fingered citron has been known in the Far East for thousands of years, and it is considered a symbol of happiness in China.[14] In early European studies of Chinese flora, reference to the fruit was first made by Martinus Martini in 1650, who described seeing these fruits in Tchang-teh-fu of Hunan province. Although Chinese botanical works do not describe the fingered citron before the sixteenth century, there is evidence that it was known in Chinese culture significantly earlier.[15]

11. On climactic effects on the cultivation of citrus trees, see *Encyclopedia of Agriculture* (Heb.), ed. Ḥayyim Halperin (Tel Aviv, 1966-1982), II:144.

12. On the ancient history of citrus fruit, see the monograph by Pierre Laszlo, *Citrus: A History* (University of Chicago Press, 2007), 12-13. Some suggest that the citron first appeared in the Land of Israel only when Jews returned from Persia or Babylon. Yehuda Felix rejects this opinion, arguing that the citron arrived in Israel from Eastern Asia at an earlier stage along with the other tropical perfumes (Felix, *Types of Fruit Trees*, 150). Recently, two scholars claimed that the *etrog* in the literature of the Mishnah and Talmud is the Lisbon lemon; see Gidon Biger and Nili Lifshitz, "The Citron is a Fruit of the Citrus Tree: On the Question of the Citron's Prior Existence in Israel" (Heb.), *Beit Mikra* 42 (1997): 28-33. Felix, whose explanations are based on rabbinic sources, supplies more persuasive evidence that the citron is *C. medica*; see Yehuda Felix, "Fruit of the Citrus Tree: The *Etrog*" (Heb.), *Beit Mikra* 42 (1997): 288-92.

13. A synonym is *Citrus medica* var. *digitata*.

14. On the shape and qualities of the fingered citron, see Frederick J. Simoons, *Food in China: A Cultural and Historical Inquiry* (Boca Raton, 1991); Haruyasu Shiota, "Volatile Components in the Peel Oil from Fingered Citron (Citrus medica L. var. sarcodactylis Swingle)," *Flavour and Fragrance Journal* 5, 1(1990): 33-37; Abraham Fahan, David Heller, and Michael Avishai, *The Cultivated Plants of Israel* (Heb.) (Jerusalem, 1998), 222; Tolkowsky, *Citrus*, 20, 22.

15. Terrien De LaCouperie et al., "On the Buddha's Hand Citron of China," *The*

Ancient tradition identifies the special shape of the citron as Buddha's fingers; this is the source of its Chinese name, *fo shou*, and its Japanese name, *bushukan*, which mean "Buddha's hand citron" or "Buddha's fingers citron." Due to its strong fragrance, the finger citron has been used as an ingredient in China to perfume rooms and for religious ceremonies. It is also used as an ingredient in some Eastern recipes and for medical purposes.[16]

Samuel Tolkowsky, who studied the history of citrus fruits, noted that this citron was known to the ancient Egyptians as well, and it is featured on Egyptian wall drawings at *al-Kab*.[17] Most Jewish communities in ancient times, however, were clearly not familiar with it.

In the writings of Tanḥum ha-Yerushalmi

To the best of my knowledge, the fingered citron was first mentioned in Jewish sources in the 13th century by the Yemenite sage R. Tanḥum ha-Yerushalmi.[18] He mentions it by its Arabic name, *etrog al-ma'lab*, and identifies it with the *teyom* citron mentioned in the Talmud (*Sukkah* 36a). He writes: "Of the *al-ma'lab* citron, which has many fingers, two or more, it is said that the *teyom* and the *boser* may be used. And *boser* means unripe."[19] Two centuries earlier, Rashi described the *teyom* citron as two fruits that had grown as twins, probably as a result of stunted growth.[20] In contrast, R. Tanḥum states that the term indicates the fingered species, in which the fleshy part of the fruit splits into several finger-like segments. Tanḥum does not explain why this citron is considered permissible for use in the four species, but its legitimacy may be based on the fact that this is the citron's natural state.

Babylonian and Oriental Record: A Monthly Magazine of the Antiquities of the East VI (July1892–June 1893): 202–3.

16. Zivotofsky and Greenspan, "The Story Behind the Esrog," 20.

17. Tolkowsky, *Citrus*, 44. On the history of the finger citrus in Egypt, see also Terrien De LaCouperie et al., "The Antiquity of the Citron Tree in Egypt," *The Babylonian and Oriental Record: A Monthly Magazine of the Antiquities of the East* VI (July1892–June 1893): 203-8.

18. On R. Tanḥum ha-Yerushalmi and his contribution to the study of ancient Jewish flora, see Hadassa Shy, *Al-murshid Al-kafi by R. Tanḥum ha-Yerushalmi* (Doctoral dissertation, Hebrew University; Jerusalem, 1975); "R. Tanḥum ha-Yerushalmi—The 13th Century Commentator and Lexicographer" (Heb.), in *Chapters in the History of Jerusalem in the Middle Ages*, ed. Ben Zion Kedar (Jerusalem, 1979), 191-2.

19. Hadassa Shy, "Al-murshid Al-kafi by R. Tanḥum ha-Yerushalmi" (Heb.), *Leshonenu* 33 (1969): 280. See also Assaf Gur, *History of the Citron (Pri Eẓ Hadar) in the Land of Israel Over the Generations* (Heb.) (Tel Aviv, 1966), 31.

20. Rashi, *Sukkah* 36a. A similar interpretation was proposed by the *Arukh* in the entry for *teyom* and by Rashba in his *Ḥiddushim* to *Sukkah* 36a. The citron has one ovary, but the Rashba may be referring to the genetically irregular growth of two ovaries.

The etymological source of the word "*teyom*" is unclear, and it is thus difficult to decide between the two possible meanings of the term. To date, there are no sources indicating whether the fingered citron was known to Jews living in ancient Israel or Babylonia.[21]

In the writings of Iraqi rabbis

The fingered citron is mentioned in other Jewish sources only around six hundred years later, in the writings of R. Abdullah Somekh (1813–1889), a senior Jewish spiritual leader in 19th century Babylon.[22] He discussed the issue in response to a letter sent by the Jewish community of the city Hankan, China, asking whether this citron may be used for ritual purposes on Sukkot. The letter was not dated and seems to have been sent during the second half of the nineteenth century.

R. Somekh's reply was published in his *Responsa Zivḥei Ẓedek*.[23] The reply is followed by the opinion of R. Yosef Ḥayyim (Baghdad, 1835-1909), R. Somekh's student, who is known by the name of his famous work, the *Ben Ish Ḥai*. R. Ḥayyim was renowned for his greatness in *musar* and Kabbalah, and particularly for his halakhic rulings, and he was highly esteemed in Oriental communities.[24] We have no way of knowing whether the two rabbis were asked about the citrons at the same time or whether R. Ḥayyim's reply was added to his teacher's response at a later stage.

It is important to note that as dominant Jewish legal authorities, R. Somekh and R. Ḥayyim received queries from all over the world regarding various halakhic questions, including from the Jewish communities in China[25] and India, which, although distant, were closest to the Babylonian center of Torah study.[26] A well-known responsum of R. Ḥayyim to the

21. It is possible that in Babylonia, which is geographically closer to India, the fingered citron was indeed familiar, but we have no proof of this.

22. On his life and achievements, see Abraham Ben Yaakov, *History of Rabbi Abdullah Somekh* (Heb.) (Jerusalem, 1949).

23. *Oraḥ Ḥayyim* no. 37. In the current study, we used the Jerusalem, 1969 edition, a facsimile reprint of Baghdad, 1896.

24. Among his writings are the halakhic work *Ben Ish Ḥai—Halakhot*, I-II (Jerusalem, 1986); *Responsa Rav Peʿalim* (Jerusalem, 1970), and *Ben Yehoyada* on the legends of the Talmud. On his life and literary work, see at length Abraham Ben Yaakov, *Jews of Babylon* (Heb.) (Jerusalem, 1979), 190-206; idem, *Rabbi Yosef Ḥayyim of Baghdad* (Heb.) (Or Yehuda, 1984); Yitzchak Avishur, "Characteristics of the Literary-Popular Works of Three Babylonian Rabbis in the Latter Half of the 19th Century" (Heb.), *Peʿamim*, 59 (1994): 105-23.

25. Another halakhic question was sent by the people of Jin (China) to R. Yosef Ḥayyim regarding a certain card game popular among the local population; see *Responsa Rav Peʿalim*, *Yoreh Deʿah* 2: #30.

26. Regarding the cultural ties and correspondence between the Jews of India and the communities of Babylon and Yemen, see Yosef Kapah, "Letters between the Leaders

Jews of India deals with the issue of whether the laws of *orlah* apply to the papaya (*Carica papaya*) and which blessing should be recited over this fruit. In that case, the correspondence dealt with a local crop with which nearly the entire Jewish world was unfamiliar, and R. Ḥayyim's reply was considered a first attempt at defining its halakhic status.[27] In the current case as well, the rulings of R. Somekh and R. Ḥayyim regarding the fingered citrons form the basis for halakhic discussions on their permissibility in recent generations as well.

The question submitted to R. Somekh includes information explaining the circumstances leading to the dilemma:

> Question from the province of Jin, Hanchan city. The citrons of Hanchan resemble those of Baghdad in their shape and marks, but there is one difference. From the middle of the citron towards the top, its shape resembles human-like fingers, and each citron has ten or fifteen fingers, some long and some short. What is the status of this citron; is it permitted or not? And the Jews of the city of Hanchan send for citrons from Egypt, but these become damaged on the way, and sometimes the citrons arrive from Egypt on the intermediate days of the festival, and for these reasons I ask whether these local citrons may be used to fulfill the ritual obligation and whether the blessing may be made over them or not.[28]

The identity of the city of Hanchan is unclear (perhaps "Han-chan"=Hong Kong?),[29] but there is no doubt that Jin is China, a country in which Iraqi Jews lived during the 19th century.[30]

The Jews of Hanchan usually did not use the fingered citron for ritual purposes. It seems that they had an ancient tradition that questioned its

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of Cochin and the Jews of Yemen and Babylon" (Heb.), *Sinai* 79 (1976): 63-81; idem, "Letters Between the Leaders of Cochin and the Jews of Yemen and Babylon" (Heb.), *Sinai* 80 (1977): 61-71.

27. *Responsa Rav Pe'alim*, *Oraḥ Ḥayyim* 2:#30. For a thorough discussion of the status of the papaya as a tree or vegetable in R. Yosef Ḥayyim's response and in the response of modern *posekim*, see Abraham Ofir Shemesh, *Flora Blessings in Halakhah and Tradition from the Sixteenth Century Until Today* (Heb.) (Doctoral dissertation; Ramat Gan, 1999), 254-57.

28. *Responsa Zivḥei Ẓedek*, *Oraḥ Ḥayyim* #37.

29. I thank Dr. Ber Boris Kotlerman of Bar Ilan University, who suggested this possibility. On the history of the Jews of Hong Kong, see, for example, Caroline B. Plüss, "Sephardic Jews in Hong Kong: Constructing Communal Identities," *Sino-Judaica* 4 (2003): 57-79.

30. On the Iraqi Jews in China in the nineteenth century, see Joan G. Roland, "Baghdadi Jews in India and China in the Nineteenth Century: A Comparison of Economic Roles," *The Jews of China* I (1999): 141-56; Chiara Betta, "Baghdadi Jews in the Shanghai International Settlement: The Rags to Riches Story of Silas Aaron Hardoon (1851-1931)," *Studies in the History and Culture of the Jews in Babylonia* (2002): 43-62. On the Jews of China throughout the generations, see the rich bibliography of Shlomi Raiskin, "Bibliography of Chinese Jewry," *Moreshet Israel* 3 (2006): 60-85.

permissibility, and members of the community preferred to make the blessing over citrons of similar shape and nature to those used in other Jewish communities and described in rabbinic sources. The issue of the permissibility of the fingered citron for ritual purposes was raised due to various technical problems that prevented shipments of citrons from reaching their destination on time and in good condition. The imported citrons were sometimes found upon arrival to be flawed as a result of inadequate storage (leading to rotting and shriveling) or mechanical damage. In other cases, the citrons did not arrive at their destination in time for the festival due to difficulties with transportation, weather, or trade delays. As a result of delayed shipments, the citrons sometimes arrived only on the intermediate days of the festival, when the primary, biblically-mandated part of the ritual could no longer be fulfilled. The members of the community thus wondered whether the local fingered citron could be used in such times of emergency.

R. Somekh ruled, like Tanḥum ha-Yerushalmi before him, that it is permitted to make the blessing over the fingered citron, as this is its natural shape. In his opinion, it is not deemed a citron "made to resemble a different creature," which would make it impermissible; that law relates to irregularly shaped citrons produced artificially by growing them in a mold or with various implements.[31] Although the fingered citron has about fifteen fingers, in principle it is comparable to the *teyom* citron, which is permissible despite the fact that it is divided in two.

In contrast to his teacher, R. Ḥayyim disallowed use of the fingered citron for use as one of the four species:

> The citrons mentioned in the question are not permissible since in the case of citrons, the identifying marks are insufficient, and we should allow only those that have a tradition of being citrons or that are very similar to citrons of another city that have a tradition of being permissible. But in the case of any tree of which we have no tradition that it is a citron tree and its fruit are not very similar to the citrons of another place that has a tradition, its fruit should not be allowed even if we see that its fruit have all the marks of a citron. In any case, those that have one major difference should not be permitted since in the case of fruit, some have the marks of a citron but are

31. See *Sukkah* 36a. This is the law as ruled by the *Shulḥan Arukh*, *Oraḥ Ḥayyim* 648:19. This source is relevant to the contemporary custom of using citrons with a "*gartel*" (belt), which is popular among Ḥasidim. Prof. Yehuda Felix claimed that these citrons are not natural; they are tied around the middle when small to produce their special shape, which raises doubts regarding their permissibility; see Felix, *Types of Fruit Trees*, 153). In fact, many citrons naturally have a *gartel*, as can be seen in orchards and even in an ancient mosaic in Caesarea, Israel. Regarding this citron, see Moshe Bar-Yosef, "Etrogs Bound at the Waist" (Heb.), *Galileo* 7 (1994): 39.

not considered citrons and some citrons are grafted and are not permissible despite having the marks of a citron.[32]

R. Ḥayyim presents two central reasons for disallowing the fingered citron:

1. **The fingered citron has no multi-generational tradition of being used for Sukkot.** The main reason for disallowing this citron is the concern that Halakhah does not consider the fingered citron a "type of citron" permitted for ritual use, as it has no historically continuous tradition of being ritually certified. The fingered citron is a local species that grows in a specific area. Because it was not common in European and Oriental Jewish communities, it had no associated tradition similar to other citrons. Although the fingered citron has the shape and qualities of a citron, it is not permissible because it was not used for ritual purposes even in communities familiar with it; this historical fact proves that it was not considered a certified citron.

The requirement of a reliable tradition seems to have been rooted in the concern that the fruit was grafted, which would render it unsuitable for ritual use. Grafting was a common agricultural technique among farmers in previous centuries; citrons were grown on the stump of a tree (*roḥev*) that was durable and resistant to disease, particularly lemon trees and more often that of the *hushhash* (sour orange, *Citrus aurantium)*.[33] The concern that citrons were grown in this manner is often mentioned in halakhic literature beginning in the 16th century, and it was voiced concerning citrons that grew in various locations, particularly Greece and Italy.[34]

2. **The fingered citron has an irregular shape, unlike that of other citrons.** Citrons may be considered permissible for ritual purposes even in the absence of a historical tradition provided that they resemble citrons used in other communities. Although the Fingered citron has the characteristics of a citron, its general shape is different than that of citrons commonly used for ritual purposes.[35]

32. *Responsa Zivḥei Ẓedek*, *Oraḥ Ḥayyim* #37.

33. Regarding the attitude of Halakhah towards the agricultural practice of grafting plants, see in detail Yehuda Felix, *Mixed Sowing, Breeding, and Grafting* (Heb.) (Tel Aviv, 1967), 112-15.

34. On the issue of grafted citrons, see, for example, R. Ḥayyim Elazar Wax, *Responsa Nefesh Ḥayah* (1877), *Oraḥ Ḥayyim* #2-4; R. Daniel Tirani, *Ikkarei Ha-Dat* (Vilna, 1880), *Oraḥ Ḥayyim*, *Hilkhot Lulav* #33. For a collection of sources on this matter, see Weissfish, *Four Species*, 188-205. Several articles have been published on this topic; see Yitzchak Refael, "Citrons of Corfu and Citrons of the Land of Israel" (Heb.) in *Sefer Shragai* II (Jerusalem, 1985); Ḥayyim Yitzchak Hamiel, "The Role of Yosef Zekharia Stern in the Controversy Regarding the Citrons of Corfu" (Heb.), in *Sefer Refael: Articles and Research on Bible and Jewish studies in Memory of Dr. Yitzchak Refael* (Jerusalem, 2000), 242-51.

35. This claim is reinforced later in the responsa: "And similar to the citrons mentioned

R. Ḥayyim's requirement of a certain desirable shape is interesting considering the fact that some citrons with a tradition of being permissible, such as Yemenite and Moroccan citrons, differ in size, the lumpiness of the peel, and the presence of seeds (which Moroccan citrons lack entirely). R. Ḥayyim seems to maintain that citrons are considered acceptable if they boast a characteristic common to all familiar citrons; in other citrons, the fruit is not divided into separate segments, while the fingered citron is divided into several fingers.

R. Ḥayyim argues that the irregular *teyom* citron is considered ritually permissible despite its divided shape only when it grew on a regular citron tree. In the case of the fingered citron, however, the entire tree produces irregularly shaped citrons. R. Ḥayyim suggests that when the Bible instructs to take a "fruit of the citrus tree," the injunction encompasses specific species, and does not include the Indian species. He does not, however, explain the reason for this exclusion or specify criteria meriting inclusion. R. Ḥayyim concludes by claiming that R. Somekh also maintained that these citrons are not ritually permissible, but as we have shown, R. Somekh in fact was inclined to accept them.

During World War II, students of the Mirrer Yeshiva fled Eastern Europe for Shanghai, China.[36] There, they encountered the fingered citron and, like the Jews of China centuries before, they deliberated whether it is ritually permissible. They received a ruling not to use it for the Four Species, even without a *berakhah*.[37] The ritual status of fingered citrons remains a relevant issue today as well, particularly for Jewish tourists visiting India and China on the festival of Sukkot and for those who look for "exotic" ways to perform *miẓvot*.

In 2006, the two leading *posekim* of the Orthodox Union (OU) *kashrut* supervising agency, R. Yisrael Belsky and R. Hershel Schachter, ruled against the use of the fingered citron for the *miẓvah*.They asserted that because the fingered citron has a strange shape, it is forbidden to recite a *berakhah* over it even though it is genetically considered a citron. Arguing against those who claim that the citron is permissible, like the

in the query, all of which incorporate a major difference that differentiates them from citrons for which traditions exist among us or in other cities, they should not be permitted, as they may belong to a different species of fruit."

36. On the Jewish refugees in Shanghai, see David Kranzler, *Japanese, Nazis, and Jews: The Jewish Refugee Community of Shanghai, 1938-1945* (New York, 1976); Ernest G. Heppner, *Shanghai Refuge: A Memoir of the World War II Jewish Ghetto* (Lincoln, 1993).

37. On this issue, see Yecheskel Leitner, *Operation Torah Rescue: The Escape of the Mirrer Yeshiva from War-Torn Poland to Shanghai, China* (Jerusalem and New York, 1987), 18–20; Rabbi Dr. Chaim Simons, "The Chinese *Etrog*" (2008), at http://chaimsimons.net/chineseetrog.html.

teyom citron, R. Belsky wrote: "Do not confuse the public again with such strange inventions."[38]

The Dibdib Citron

As a supplement to his discussion of the fingered citron, R. Yosef Ḥayyim considered the permissibility of the *dibdib* citron for use as one of the Four Species. According to his description, this is a local species of citron known for its sour taste, which limited its use to the preparation of jams.

It is difficult to arrive at a precise identification of this citron. The data provided by R. Ḥayyim correspond to a species of citron described in agricultural literature and medieval halakhic sources as sour-tasting, a trait particularly true of its thick peel.[39] Thus, for example, medieval Arab polymath Ibn Rushd (Averroes; d. 1198 in Morocco) wrote that this citron is "Turunj, a lemon type fruit, it is also known as *utroj*, and people from eastern countries call it *kabad*."[40] The *kabad* was described along with other sweet species, called *ḥalitah*[41] or *sidra*.[42]

The *dibdib* is mentioned in several Babylonian halakhic sources. R. Ḥayyim himself mentions it in the *Ben Ish Ḥai* in his discussion of the issue of non-Jewish cooking (*bishul akum*): "And here in our city there is an extremely sour fruit called *dibdib* and it is similar to the citrons and its thick peel is cooked in sugar."[43] R. Somekh mentions it as well in a discussion of the proper blessing to be said over jams prepared in the Babylonian kitchen: "In our country, they make a jam out of the peels of sour citrons called *kushur al-dibdib* in Arabic."[44]

R. Ḥayyim writes regarding the permissibility of the *dibdib* for performing the ritual of the Four Species:

38. Zivotofsky and Greenspan, "The Story Behind the *Esrog*," 21.

39. The inner juicy pulp of the citron, referred to as the "citron's bowels" in rabbinic literature, is sour in all citrons (*Tosefta Terumot* 10:2) and was therefore eaten to increase appetite. See Saul Lieberman, *Tosefta ki-Peshutah* (New York, 1955), *Zeraʿim*, 464.

40. Ibn Rushd, *Katab Alkaliat fi Altab* (Madrid, 1939), no. 41. Compare Amar, *Agricultural Produce*, 250, who asserts that this is probably a type of sour citron and that this name was used for a local species growing in the Land of Israel as well as for other citrus fruits, such as the *hushhash*.

41. See, for example, *Shabbat* 109b.

42. R. Meyuhas ben R. Shmuel, *Peri ha-Adamah* (Salonika, 1752-1763), 1:4.

43. *Ben Ish Ḥai*, Year II, *Parashat Ḥukkat*, *halakhah* 17.

44. *Kushur al-dibdib* = the *dibdib*'s garbage or peel. R. Somekh reports that citron peels were left to dry for a long time to remove all worms and insects before cooking. However, some still avoided eating them; see *Responsa Zivḥei Ẓedek* #906. Regarding the preparation of jams from sweet citrons in eighteenth century Palestine, see R. Mosheh Ben Menachem Mendel, *Shaʿarei Yerushalayim* (Warsaw, 1879), *shaʿar* 6; *Peri ha-Areẓ*, 28.

> You shall find here in our city of Baghdad, may God protect it, a fruit of the tree called *dibdib*, and it has some of the marks of a citron and the appearance of a citron, but it is sour. Nonetheless, there is a tradition here in our city that these fruits are not citrons and that they are inadmissible, and even if one year there are no citrons available, these fruit cannot be used, even without a blessing. But aside from this, the *dibdib* has all the marks of a citron, and its appearance is identical to our citrons. It is no different from our citrons except that our citrons are sweet and this is sour, and what of it? Admittedly, some citrons are sour and some are sweet, and in truth most of the citrons in the world are sour, but nevertheless it is ritually impermissible.[45]

The *dibdib* has all the characteristics of a citron (shape, bumpiness, coloring, etc.),[46] aside from one—its sour taste.[47] As a result of this irregularity relative to other species of citrons, it was traditionally considered ritually impermissible in Babylon, but the reasoning is unclear, this being only a marginal difference. In this case as well, R. Ḥayyim cites historical tradition as the primary reason for prohibiting or certifying citrons for ritual use. The Babylonian tradition insisted on using only sweet citrons for ritual purposes, perhaps because rabbinic sources describe the citron as a fruit that is eaten in its natural form, and the *dibdib* was so sour that this was impossible.

R. Ḥayyim presents another concern regarding the *dibdib* citron, which he noted about the fingered citron as well—that it may have been the result of grafting. He writes, "The *dibdib* that grows here in this city has all the identifying marks of a citron but nonetheless is not traditionally acknowledged as a citron or maybe it is the result of grafting."[48] R. Ḥayyim claims that the concern about grafting is present regarding the *dibdib*, despite the fact that the fruit has the marks and characteristics of a citron, because the marks are not necessarily evidence of the citron's basic nature.[49]

45. *Responsa Zivḥei Ẓedek*, *Oraḥ Ḥayyim* #37.
46. As the result of the growing problem of grafting citrons, rabbinic literature mentions various marks that help distinguish between non-grafted citrons and those grafted on lemon trees. For example, those grafted on lemons have no bumps and *pittam*, and the *okeẓ* is not sunken. On this issue, see Weissfish, *Four Species*, 41-46, 291.
47. Compare *Ben Ish Ḥai*, Year I, *Parashat Re'eh*, *halakhah* 11: "And here in our city, the citron is sweet but is not common, rather rare." According to other testimonies, the scarcity of citrons in Babylon led Jews to import them from other countries. This explains the deliberation regarding whether the *dibdib* could be used when there were no citrons to be found in Iraq, and according to R. Ḥayyim's reply, this was the customary practice. See Abraham Ben Yaakov, "Customs of the Jews of Babylon (Iraq)," in *Collection of Customs—Customs of the Tribes of Israel* (Heb.), ed. Asher Vassertil (Jerusalem, 1996), 170-71.
48. *Responsa Zivḥei Ẓedek, Oraḥ Ḥayyim* #37.
49. Halakhic authorities disputed whether the major factor determining whether

Summary and Discussion

In this article, we have examined the historical, botanical, and halakhic background of two species of citron—the fingered citron and the *dibdib*. In general, there is little evidence of these two citrons in halakhic literature, as they grow in distant areas far from major Eastern and Western Jewish centers, and only local communities in the Far East were familiar with them. Although R. Tanḥum ha-Yerushalmi of Yemen and R. Abdullah Somekh of Baghdad permitted the use of the fingered citron, despite its unusual form, R. Yosef Ḥayyim forbade its ritual use due to a lack of tradition, its irregular shape, and the concern that it may be the result of grafting.

Interestingly, R. Somekh and R. Ḥayyim discussed the question of the fingered citron's permissibility without referring to its significance in Indian culture. They voiced no concern about using the citron based on the citron's identification as "Buddha's fingers," despite the fact that it is likely that they were aware of this ethno-folkloristic aspect.

R. Ḥayyim also discussed the ritual permissibility of a local species of citron called *dibdib*, whose sour taste differentiated it from all other Iraqi citrons and was therefore not used by the local community for the ritual of the Four Species.

The issue of the ritual permissibility of the fingered and *dibdib* citrons is connected to the wider halakhic issue of the definition of species—namely, which principles and criteria determine a plant's species from a halakhic point of view.[50] R. Ḥayyim claimed that a ritually permitted citron should display certain characteristics featured by all other recognized citrons, and any irregularity renders the citron impermissible for ritual purposes. The fruit of familiar citron species is un-segmented, while that of the fingered citron is segmented. Similarly, the *dibdib* is sour tasting, while other citrons are sweet. Clearly, this distinction has no parallel in botanical classifications, as changes in taste or shape may distinguish between different subspecies but are not indications of entirely different species.

In his discussion of the ritual permissibility of these citrons, R. Ḥayyim focused on the historical traditions regarding their use within

a citron is considered grafted or if it is ritually permissible is its shape and marks or the testimony of the seller. Although R. Ḥayyim does not state so specifically, in practice he ruled as R. Mosheh Sofer did in the 19th century—the determining factor is the historical tradition regarding the citron's status. See *Responsa Ḥatam Sofer*, *Oraḥ Ḥayyim* #207. And on this issue, see at length Weissfish, *Four Species*, 57-58; Amar, *Four Species*, 41-54.

50. On this issue see Shemesh, *Flora Blessings*, 18-19.

different Jewish communities. This outlook is characteristic of relatively recent halakhic authorities, who claim that the element of tradition is the determining factor concerning citrons whose grafted status is uncertain. A tradition passed down over the generations provides historical proof of a citron's legitimacy, on the assumption that this was the basis for its use in Jewish communities. However, R. Ḥayyim does not reject the possibility that a citron with no such tradition could be legitimate as well, provided that it has no irregular qualities.

The emphasis on tradition in the discussion regarding citron permissibility is somewhat reminiscent of the process in which certain species of fowl were ruled permissible based on tradition. In both cases, tradition served as a decisive factor in the absence of objective unequivocal criteria for determining the nature of the species.

Review Essay

AARON SEGAL

A Religiously Sensitive Jewish Philosophical Theology

Ezra Bick, *In His Mercy: Understanding the Thirteen Midot*
Translated by David Silverberg
Jerusalem: Maggid Books/Yeshivat Har Etzion 2011. 129 pp. , $22.95.

Jewish theology has been something of a rarity in Modern Orthodox circles for the past several decades. Of course there have been many scholarly works analyzing and evaluating the theologies of other thinkers or historical movements, but there have been few attempts at constructive theology, attempts, that is, to develop and proffer some view about God's nature or His relationship to the world. R. Ezra Bick's rich and ambitious work is a notable and welcome exception.

I.

Organized as an analysis of just a few well-known verses in the *Torah* (Exodus 34:6-7), in which God reveals His so-called thirteen attributes of mercy, the book's stated aims and subject matter are considerably broader.[1]

1. In the book, the thirteen attributes are referred to as the "Thirteen Attributes of Mercy" (capitalized) and each mention of an attribute is capitalized. I will be using lower case, except when citing the book.

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R. Bick makes clear at the outset that he aims not only to analyze those few verses, or even just to sketch a theology rooted in the thirteen *middot* and *Hazal's* interpretation of them, but rather to understand the *middot* as forming one of the most sublime *prayers* in all of Jewish liturgy. Thus, the central questions that occupy the book are these: How is the penitent who is "praying the thirteen *middot*" supposed to understand the words? How should he or she be transformed by uttering them? And, perhaps a logically prior question, in what way are they the text of a prayer at all?

Naturally enough, answering those questions still consists, in large part, in performing the twin tasks of exegesis and constructive theology. Exodus 34:6-7 is, after all, a *locus classicus* in *Tanakh* for any systematic discussion of what God is like or how He relates to the natural world. When the Psalmist speaks of God's informing Moses of "His ways," he adverts not to the verses immediately following Exodus 33:13, in which Moses asks God to show him His ways, but to these verses.[2] Not for naught did Maimonides devote nearly an entire chapter of his *Guide for the Perplexed*, located in the heart of his programmatic discussion of religious language, to a reconciliation of these verses with Maimonides' conception of God as lacking emotions and psychological states.[3] No Jewish theology, in the narrow and etymologically faithful sense of "theology," can reasonably ignore the *middot*. Conversely, one could hardly offer an interpretation of the *middot* that carries no theological implications. R. Bick's work is no exception. It is shot through with theological claims, dealing with topics as diverse as the manifestation of God's Kingship in the natural world, God's relation to evil, God's identification with the suffering of human beings, and God's responsibility for sin, to list just a representative sample.

At the same time, the fact that its theology is strongly tethered to God's self-disclosure and that it is ever mindful of the *middot*'s role in penitence and liturgy allows this work to sidestep many of the religious pitfalls that often accompany theological reflection. The pitfalls are numerous and serious. For one thing, the adverse religious consequences of error are presumably considerably greater in theology than in an ordinary intellectual endeavor. One need not go as far as Maimonides—for whom theological error alone is tantamount to a denial of God's existence and outranks even idolatry in its gravity—to think that one's relationship with God is compromised if one develops a systematic theology that is far wide of the mark.[4]

2. Ps. 103:7-8.
3. *Guide for the Perplexed* 1:54.
4. See *Guide* 1:36 and 1:60, and Moshe Halbertal and Avishai Margalit, *Idolatry* (Boston, 1998), chap. 4.

Moreover, attitudinal dangers attend sustained theological reflection, ones that threaten to undermine a proper creature-Creator relationship even in the absence of any doxastic missteps. The philosopher Alvin Plantinga once ruefully remarked that contemporary discussions of philosophical theology often remind him of someone sitting next to his elderly mother and going on about whether she's "all there," as though she were not there. Indeed, excessive reference to someone in third-person can have that effect! And, even if one manages not to ignore God while talking about Him, one encounters the equally problematic prospect of inadvertently upending, or even just altering, the roles of Master and servant. While it does not follow from the fact that a servant has probed into the character of his Master that the servant is in fact any less indentured, such probing—especially with an ambition of comprehensiveness—can easily engender within the servant an *attitude* of hubris, the feeling that the yawning gap has been closed ever so slightly.[5] "Now I have penetrated his inner workings; I understand what makes him tick," haughtily mutters the servant.

The problem here is not an epistemological or linguistic barrier created by God's transcendence, so often emphasized by latter-day Maimonideans and Kantians, but a religious, perhaps even moral imperative to maintain it. As the philosopher Merold Westphal puts it in explicating Heidegger's similar critique of the dominant Christian theological tradition, "Heidegger's objections to the calculative-representational thinking that places not only the world but God as well at our disposal are more Kierkegaardian than Kantian. What we lack is not so much the power to pull off this project (though, of course, we do) as the right to attempt it."[6]

Confronted with these pitfalls a religious Jew might sensibly abandon the whole enterprise of theology, choosing to invest religious and intellectual energy elsewhere. Usually, the epistemic aim of avoiding falsehood is balanced by the epistemic aim of knowing (or understanding or believing) the truth, so that universal skepticism or agnosticism is not obviously the most epistemically virtuous option. But when it comes to theology, one might reasonably find the former aim to predominate, because the risks involved in error are simply too great.[7] Better no theology than a

5. See Merold Westphal, *Overcoming Onto-Theology: Toward a Postmodern Christian Faith* (New York, NY, 2001), chap. 1, and Michael Rea's helpful discussion of Westphal's critique in *Analytic Theology*, ed. Michael Rea and Oliver Crisp (Oxford, 2011), 9-11.
6. Westphal, 12.
7. On the issue of the appropriate "balance," in general, between avoiding falsehood and pursuing truth (whatever the latter involves exactly), see William James, "The Will to Believe," sec. 7, where he criticizes W. K. Clifford for his nearly obsessive preference for the former. See also Richard Feldman, "Clifford's Principle and James's Options," *Social Epistemology* 20 (2006): 19-33, for helpful discussion.

wrong one! And even if understanding others is, in general, a worthwhile aim and important for the cultivation of personal relationships, it can too easily be detrimental to the radically asymmetric relationship in which we human beings stand to God. The upshot for many: better to leave theology to others.

This is an understandable reaction. Indeed, it has been a historically influential one.[8] After voicing something very much like Heidegger's and Westphal's concerns, Michael Wyschogrod adds:

> This is Jewish intelligence as reflected in Talmudic rationality. The Rabbis of the Talmud, too, could have asked whether something was good because God commanded it or whether God commanded it because it was good. They did not ask this question because *obedient intelligence* has a sense of limit, of the vanity involved in hurling questions at the limits, the very limits that make the asking of questions possible. Jewish intelligence therefore applies itself to delineating concrete moral and ritual issues, using biblical legislation as its point of departure… As the complexity of its reasoning inside the bounds it sets for itself increases, its silence about questions directed at the bounds becomes ever louder and *a witness to the sovereignty of Israel's dialogue partner*. . . .[9] (emphasis mine)

8. Perhaps this goes part of the way to explaining the fact of which I made mention at the beginning, namely the paucity of theological writing—where "theology" is construed narrowly and scholarly work on the theology of *others* is discounted—that has emerged from the Modern Orthodox community in recent decades, at least relative to what has emerged from the *ḥaredi* community. See David Shatz, "Remembering Marvin Fox: One Man's Legacy to Jewish Thought," *Tradition* 36:1 (2002), 59-88, which makes the broader point that the last few decades have seen a precipitous decline in the amount of serious *maḥashavah*—where that includes, but is not limited to, theology proper—coming from centrist Orthodox Jewish circles in America.

There are probably other contributing factors, however. For one, Modern Orthodox thinkers may resonate more with, or be influenced by, the prevalent contemporary attitude that sees something *philosophically* wrong with theology, usually on vaguely Kantian grounds. Furthermore, Yoel Finkelman has argued that much of contemporary *ḥaredi* theology, at least of the popular variety, is geared toward proving a certain univocal theological approach, or, in the case of literature designed for internal consumption, toward creating a wholesale theological package to be accepted on faith. Modern Orthodox thinkers, he notes, do not share those aims. See Yoel Finkelman, *Strictly Kosher Reading*: *Popular Literature and the Condition of Contemporary Orthodoxy* (Boston, 2011), 123-58. It might just be easier to produce theological works with the *ḥaredi* aim in mind. Thus, at least the discrepancy between Modern Orthodox and *ḥaredi* circles might be a function, in part, of the differences in the perceived aims of theological writing.

Shatz (ibid.), who focuses not on the contrast to *ḥaredi* literature as much as the contrast between the desertion of theology and philosophy and the embrace of fields such as history and Jewish studies, offers several other noteworthy explanations. But neither Shatz's explanations nor mine adequately address the fact that as recently as the 60s and 70s, the situation was different.

9. Michael Wyschogrod, *The Body of Faith: God and the People Israel* (New York, 1996), 8. I

But, of course, this has not been the only historical reaction. The history of Jewish thought, in quarters as diverse as medieval Jewish philosophy, biblical exegesis, Kabbalah, and Hasidism, is filled with thinkers who were not coy about theological speculation. Wyschogrod himself is, in fact, such a thinker. And even with respect to "Talmudic rationality," Wyschogrod's description is something of a caricature.[10]

In any case, the reaction seems a bit hasty. First, it is far from obvious that one who lives a genuinely religious life can avoid having *any* theology at all, however unsystematic it might be. It is quite plausible, almost platitudinous, that a religious person will, of necessity, deploy *some* concept of God and possess *some* theological beliefs or stances, even if they are a bit inchoate or largely "negative." How can one meaningfully pray, or repent, or accept the yoke of Heaven when reciting *keri'at shema* if one has absolutely no conception of God and His relation to the natural world?[11] And if one cannot, then adopting no theology, rather than risking acceptance of a wrong one, is simply not possible for a religious person.

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should note that there seems to be in this passage a confluence or conflation of Heidegger's objection—that an intelligence that recognizes no sense of limit is not an obedient intelligence and its exercise would constitute a failure to recognize God's sovereignty—and a Kantian objection—that we are simply powerless to ask certain questions because of epistemic or cognitive limitations that are entailed by the ability to ask any questions at all.

10. Wyschogrod acknowledges that in midrashic literature, "very often we sense philosophical questions in the background," but he says, "the questions are not raised directly" (9). Granted, it is hard to say what the standards are for "directly raising a question," but it seems that by any reasonable standard, *Ḥazal* did directly raise certain theological questions. For example, *Ḥazal* address the problem of theodicy quite explicitly in various places; see, inter alia, the well-known passage in *Menaḥot* 29b and *Bereshit Rabbah* (Vilna), *Parashah* 49. Yaakov Elman, "The Suffering of the Righteous in Palestinian and Babylonian Sources," *Jewish Quarterly Review* 90 (1990): 315-39, remarks that "Babylonian sources, on the other hand, *face the question more directly*, and acknowledge that the righteous often do not receive their just deserts; they suggest some mechanisms to account for the phenomenon" (emphasis mine). And as Warren Zev Harvey cogently argues, it is quite plausible that at least some talmudic Rabbis in the land of Israel engaged in *philosophically well-informed* discussion of theology with non-Jewish philosophers, albeit begrudgingly and cynically, as philosophy was at bottom "foreign to their concerns." See Harvey, "Rabbinic Attitudes toward Philosophy," in *"Open Thou Mine Eyes. . . ": Essays on Aggadah and Judaica Presented to Rabbi William G. Braude on His Eightieth Birthday and Dedicated to His Memory*, ed. Herman J. Blumberg et al. (Hoboken, NJ, 1992), 83-101). (My thanks to David Shatz for this reference.)

11. A thinker like Yeshayahu Leibowitz would, presumably, disagree with my assertion and the implication of my rhetorical question. See, for example, Yeshayahu Leibowitz, "The Reading of Shema," in *Judaism, Human Values, and the Jewish State*, ed. Eliezer Goldman (Cambridge, MA, 1992), 44. But Daniel Statman "Negative Theology and the Meaning of the Commandments in Modern Orthodoxy," *Tradition* 39 (2005): 58-71, very cogently argues that a *wholly* or *radically* negative theology, such as that of Leibowitz, necessarily empties ritual, and human activity more generally, of any religious meaning.

Second, and crucially, the perils of these investigations can be avoided, at the very least partially, in various well-trodden ways. If one is willing to place limits on one's inquiry, to rest content with understanding the implications of what God Himself has revealed even if it offers no promise of a comprehensive theology, then the concerns about theological error and a religiously inappropriate posture are less pressing. One can hardly be faulted for going astray if one takes God's word about matters of theology, and the prospect of hubris does not much arise. The same holds true to the extent that one is working out the theological commitments inherent in one's worship of God. If one is really praying —standing before God and articulating one's all-too-human needs—or approaching God after sin with a contrite heart, it is, needless to say, hard to forget God or to misjudge one's standing.[12] It is certainly difficult to engage in sustained theological reflection *while* praying, but one can presumably call to mind what it's like to pray, to have that experience before "the mind's eye," when engaged in theological reflection.[13] One is almost bound to do so if one is trying to work out the theological commitments inherent in divine worship.

The theology of *In His Mercy* is an illustrative case. At no point does the reader—or this reader at any rate—sense any religious presumptuousness or brazenness. And that is not for lack of bold, even if not wholly original, theological claims: that God *needs* human beings (xix-xx); that God *cannot resist* the cries of a penitent, not because of any prior commitment on His part, but because He sees an image of Himself in us (30-31); that God binds the soul of the sinner to Himself and *absorbs* the stain on his soul (90); and that God shares responsibility for a sin because He has indeed played a vital role in its performance (56). What prevents these claims from sounding as brazen as they do when plucked from their original context? In part, it is due to the book's point of departure. God Himself revealed to Moses the thirteen *middot*, and the content of that revelation serves as the primary "datum" for the ensuing discussion. Of course, the whole Torah is a revelation of God, but there is probably no

12. To be sure, a context of worship can exacerbate some of the dangers involved in holding a wrong theology. Worshipping while holding a faulty theology might very well constitute *avodah zarah*—even if merely holding a faulty theology does not—if it is worship of something other than God. See *Guide* 1:60 and Halbertal and Margalit, *Idolatry*, chapter 5. Cf. William P. Alston, "Referring to God," in his *Divine Nature and Human Language: Essays in Philosophical Theology* (Ithaca, 1989), 103-17.

13. Although for Maimonides, "prayer" might simply refer to a particular sort of theological reflection. See *Guide* 3:51 and Ehud Benor, *Worship of the Heart: A Study in Maimonides' Philosophy of Religion* (Binghamton, NY, 1995), chapter 1. According to such a view, it is of course quite simple to pray and engage in theological reflection at the same time.

other passage in the Torah in which God reveals so pointedly that which human beings are to understand about Him. To be sure, ours is not an unmediated encounter with that revelation; it has been filtered through layers of interpretation, not least of which is our author's. But they are interpretations *of God's self-disclosure* all the same—not the straightforward product of rational reflection or even ordinary religious experience—and the book reminds us of this early and often. The reader repeatedly hears the talmudic remark, "if the verse had not been written, it would be impossible to say it," almost as a refrain.[14] The message is clear: R. Bick would not dare to make these claims but for the fact that it follows from that which God has chosen to reveal.[15]

Perhaps more significant than its point of departure is this work's primary aim—to understand the recitation of the thirteen *middot* as a *prayer* and as a tool of *repentance*. As R. Bick notes before the book even begins, "The chief objective of these discussions was to understand *why* we recite the Thirteen Attributes of Mercy in the *Seliḥot* prayer; the secondary goal was to understand each attribute based on the Talmud, *midrashim*, and major commentaries" (ix). This objective is taken up from start to finish. Right at the beginning of the discussion of the first two *middot*, we are given a clear indication that this will not be merely an academic exercise: "However, the precise meaning that we discover for each name adds an additional requirement of intention, not only regarding the meaning of the words, but also in terms of consciousness and awareness. We must comprehend what facets of God's presence we are bringing down into the world" (1). R. Bick reiterates and applies this general point at several turns, including the discussion of the *middot* of *raḥum* and *ḥanun*:

> If this is the correct understanding of *Ḥanun*, then it requires special intent as one recites this attribute in prayer. As we have noted, each attribute must be accompanied by an awareness on the part of the worshipper, based upon his role as the "chariot" bearing that divine name. According to the

14. In the Hebrew version of the book, at least, its role as a refrain is acknowledged explicitly (p. 45): אחזור למשפט שמלווה אותנו מאז ההתחלה—אלמלא מקרא כתוב אי אפשר לאומרו —"I will repeat a statement that has accompanied us from the beginning: 'if the verse had not been written, it would be impossible to say it. . . .' "

15. Moshe Halbertal has argued that in the large majority of cases in talmudic and midrashic literature in which that remark is used, it serves the function of cloaking an innovative theological idea—particularly one that subverts the prevalent image of God's occupying a "senior" position in an asymmetric relationship—under the guise of an authoritative and inevitable conclusion from Scripture. See his "*Ilmalei Mikra Katuv I Efshar Le-Omro*", *Tarbiz* 68(1998): 39-60. Be that as it may, that certainly does not seem to be its function in *this* book.

> approach proposed here, one who recites the name of *Ḥanun* must cry out from suffering and torment, presenting before God the suffering in the world in a manner that arouses identification. (34)

Obviously enough, R. Bick takes his theology to have implications for the way a penitent ought to pray. Less obviously, perhaps, his theology is in turn shaped by—or at least understood in the context of—the spiritual life of a tormented and helpless penitent, real or imagined. In this way, a theologically bold claim is prevented from becoming a religiously brazen one. Anyone who takes the thirteen *middot* seriously as a prayer—and R. Bick's reader is assumed to be such a person—is unlikely to be led by his or her theological understanding to any hubris, at least not if he or she is cognizant of the religious condition which ought to give rise to the prayer.[16]

In addition to its point of departure and primary aim, a third significant and related element makes R. Bick's theology religiously "safer"—its use of loose and figurative language.[17] The phrase, "as it were" ("*kivyakhol*"), is used numerous times to qualify a statement about God, predicates applied to God are often put in scare quotes, and, in general, the use of metaphor, simile, and allegory when speaking of God—a practice that has deep Scriptural and Midrashic roots—is ubiquitous.[18]

It is important to note that R. Bick is not to be aligned with

16. It is true that the book contrasts the emotional state of one reciting the thirteen *middot* with that of a person engaged in ordinary prayer: "The emotional state of one reciting the Thirteen Attributes differs from that of a person in prayer, who falls upon his face and pleads to God. In prayer, the individual feels weak and helpless, broken and crushed. . . . One who reads the Thirteen Attributes, in contrast, prepares himself to serve the role of a chariot for the *Shekhina*. . . ." (xxiii). But that is not where the penitent *begins*—he must start with a contrite heart. Moreover, R. Bick continues, "On the one hand, this role expresses the greatness of man. . . . On the other hand, it requires *that the individual is no longer his own; he has entirely devoted himself to serving God* by being His bearer in the world" (ibid., emphasis mine). The feeling that one is an *eved Hashem* is strongly reinforced.

17. To be clear, I do not mean to identify *loose* use of language with *figurative* use of language. One can, for instance, speak loosely without speaking figuratively at all.

18. There is a bit of a difference between the Hebrew version of the book and its English translation as to where one finds clear cases of figurative language or explanations of its use. Scare quotes are employed quite frequently in the English translation, but not nearly so much in the Hebrew version. On the other hand, one finds a clear statement, in the Hebrew version, explaining his usage of "*kivyakhol*": גם אני בוחר להסתתר מאחורי חומת ההגנה מרעיונות נועזים מדי שבנו התוספות, ולהוסיף את המלה 'כביכול'—"I too choose to hide behind a wall, built by *Tosafot*, that protects one from ideas that are too daring, and [hence] to add the word '*kivyakhol*' " (47), an explanation that is omitted in the English translation. In any case, it is quite clear from even a cursory reading of the Hebrew version that the use of figurative language is not merely an artifact of the English translation.

contemporary self-identifying Maimonideans and other devotees of "negative theology." These deny, to one degree or other, that we can say anything true and "positive" about God, or more radically even, that we can say anything true about God, period.[19] R. Bick clearly thinks, by contrast, that we can speak truly of God, even when saying things that are "positive," however exactly we are to understand the positive/negative distinction in this context. It is not even that *nothing* can be both *strictly and literally* true and about God; there is no obstacle to truly saying, for example, "God created the world" and meaning it literally.[20] It is just that loose or figurative language is *sometimes* necessary, particularly when the claim would otherwise be too audacious.

For example, it simply cannot be strictly and literally true, R. Bick thinks, that God identifies with the torment of the sinner because He sees in him His own image, or that as a result of that identification He erupts in rage. R. Bick utters and writes sentences that appear to express those claims because he has no *other* way to say what he does want to express. Such statements involve an ineliminable manner of speaking, but they must be understood only as *kivyakhol*, merely "as it were."[21] In using that term, he has blunted the force of an otherwise shocking image, and at the same time, he has replaced direct and precise descriptions of God with oblique and open-ended ones. Again, the attitudinal threat has been at least partly averted.

II.

However, the consistent use of such language presents a difficulty of its own. There is no question that to a significant extent, the book is a work of *philosophical* theology, rather than just theology. One clear indication

19. See Yeshayahu Leibowitz, *Emunah, Historiyyah va-Arakhim* (Jerusalem, 1982), and Eliezer Goldman's "Introduction," in *Judaism, Human Values, and the Jewish State*, xiv. On some of the difficulties facing such a position, see Statman, "Negative Theology."

20. Some liberal theologians have indeed denied that anything can be both strictly and literally true and about God. See William P. Alston, *Divine Nature and Human Language*, 17 and 39-40.

21. Michael Fishbane, *Garments of Torah: Essays in Biblical Hermeneutics* (Bloomington, Indiana, 1992), claims that in midrashic literature, the word "*kivyakhol*" does not indicate a figurative usage at all, but rather serves the function of conditionalizing, i.e., "indicating that *if* one reads the biblical passage midrashically, such and so is the sense which can be construed" (27). But to echo what I said in n. 15, whether or not Fishbane is correct about midrashic uses, R. Bick certainly uses "*kivyakhol*" to indicate a figurative, and even hedged, usage.

is the range of topics it treats. God's relation to the human perpetration of sin (ch. 5), the relation between free will and divine providence more generally (ch. 6), the relation between God and time (chs. 6 and 7), and the purpose of creation (Introduction, chs. 1 and 2)—all have received philosophical treatment, from the medieval period until today. In each of these cases, the work of other philosophers, all of them medieval and Jewish, is brought to bear on the book's discussion. Moreover, and more importantly, the book's approach is often undeniably philosophical, even when taking on issues that are not traditionally philosophical.

It is very difficult to give a clear statement of what the, or even a, "philosophical approach" is—unlike, say, the scientific method, which we all learn to formulate in grade school—but at least two activities seem characteristic of philosophy. Often, philosophers start with some claim or claims and try to systematically draw out its (or their) non-trivial *consequences* or *implications*. This is what philosophers do when they offer an argument, for example. Sometimes they do so in the service of recommending the conclusion for adoption, other times in the service of reducing one of the initial claims to absurdity, and sometimes for neither of those ends, but in any case, they are engaged in the activity of systematically exposing interesting *logical* relations between claims.[22] Perhaps equally as often, philosophers start with some facts and try to offer a deeper (in some sense of "deep") *explanation* or *account* of them, of *why* they obtain. This, too, can be done in the service of different ends. Sometimes they do so in the service of recommending the explanation for adoption—a kind of "inference to the best explanation"—and sometimes they do so to gain a deeper theoretical understanding of the explananda (i.e., the facts to be explained), but in either case, they are engaged in the activity of exposing *explanatory* relations.[23]

Of course, these activities do not uniquely characterize philosophy. Mathematicians are certainly in the business of systematically investigating logical relations and physicists and historians are in the business of discovering comprehensive explanations. But when restricted to

22. Note that the activity of exposing logical relations is broader than the activity of drawing out a claim's logical consequences. When one shows, for example, that certain claims are *logically independent* of one another, one has thereby exposed a certain logical relation between claims, but has not drawn out a claim's logical consequences: one has merely shown something *not to be* a logical consequence of a certain claim.

23. Robert Nozick, *Philosophical Explanations* (Boston, 1983), 8-18, advocates for philosophers to shift their emphasis to the activity of explanation, particularly in order to gain understanding or illumination.

claims or issues of the right *sort*—epistemological, ethical, metaphysical, theological, political, etc.—these activities constitute a philosophical approach to the issue in question. In any case, what matters for present purposes is not the relatively uninteresting question of what counts as philosophy but the fact that the book clearly engages in both of these activities, and often in tandem.

For instance, the attribute signified by "*el*" is understood to be *strength*. Why is that one of the attributes of mercy? A first pass at an answer is that it sometimes requires strength to be merciful. But this in turn calls for explanation. *Why* does mercy sometimes require strength for its implementation? More specifically, why does God, when acting mercifully toward a penitent, need to be strong? The book proposes several layers of explanation for this curious fact, but the common thread is this: altering or overcoming a "natural" state of affairs requires strength. God, in order to show mercy to a sinner, has to overcome both the natural course of creation—the way it was initially designed to work—and His own attribute of justice. He even has to overcome His *goodness*, since He will be, in effect, sustaining evil, at least for a time. And so, as a straightforward *consequence* of these facts, God displays strength by being merciful toward a penitent.

To take another example, in discussing the attribute of *ḥanun*, R. Bick, citing *Tosafot* (*Rosh Hashanah* 17b), explains that God cannot resist the cry of the penitent, even if the penitent is wholly undeserving, because He cannot bear to see him suffering. It torments Him. But why? Why can't God bear to see him suffering? The penitent in question—as per the suggestion of the book—is wholly undeserving, not only by the standards of justice, but even by the ordinary standards of compassion! R. Bick proposes a far-reaching and daring explanation, to which I have already alluded several times: God sees Himself in every human being. If God sees a penitent suffering, He sees Himself suffering, from which it simply *follows* that God is tormented when He sees us suffering.[24]

In both of these cases—as throughout the book—explanatory and logical relations are pursued systematically and methodically. The book seems, then, to be a clear instance of philosophical theology. That is, it

24. This in turn has an important implication. A prominent theme in midrashic and talmudic literature is God's suffering along with the Jewish People; whenever they suffer, God suffers with them. See, inter alia, *Mekhilta De-Rabbi Yishmael, Parashat Bo, Massekhta de-Pisḥa, Parashah* 14; *Mekhilta De-Rabbi Yishmael, Parashat Beshalaḥ, Massekhta de-Amalek, Parashah* 2; and *Midrash Tehillim* (Buber), *mizmor* 27. However, R. Bick's claim would have the wider implication that God suffers with *all* human beings who suffer.

does so until we notice all the aforementioned uses of "*kivyakhol,*" scare quotes, and metaphor. That is certainly not standard fare for contemporary philosophical theology, at least within Anglo-American (or so-called "analytic") circles. One of the hallmarks of contemporary philosophical theology, and analytic philosophy more broadly, is an insistence on speaking strictly and, wherever possible, literally in the course of philosophizing.[25] Of course, eliminating all loose and figurative talk would make for exceedingly dry and unimaginative writing, so philosophers will often pepper their writing with imagery and figures of speech. But almost invariably, they go on to tell the reader what they mean, or it is supposed to be obvious what they mean, *strictly and literally*.

But, one might wonder: is this mere prejudice on their part, perhaps due to the pernicious influence of logical positivism and its outlandishly stringent criteria for meaningfulness? Why shouldn't a deep thinker like R. Bick do philosophical theology without abiding by the strictures of analytic philosophers, so long as he is careful to acknowledge what is merely loose and figurative and what is strict and literal?

Well, first, if it is a prejudice, it is a very old one. It certainly predates logical positivism, and even predates Gottlob Frege, Bertrand Russell, and the birth of analytic philosophy. Hobbes and Locke were both quite adamant that the use of figurative speech is detrimental to proper philosophy.[26] Hobbes even pins part of the blame for the absurdities into which philosophers frequently fall on "the use of metaphors, tropes, and other rhetorical figures, instead of words proper." Of course, the fact that the attitude is as old as Locke and Hobbes does not preclude it from being mere prejudice, but it should lead us to question facile explanations of its contemporary dominance.[27]

Second, a reason for the stern attitude is not so hard to find.[28] Consider a case in which an individual uses figurative language to express some

25. See Rea, *Analytic Theology*, 5. Note that it is not that the practitioners of philosophical theology *always* try to express their theological views in literal terms; many of them belong to rich religious traditions, which, like traditional Judaism, are full of figurative theological discourse and liturgy. Their attempts at eliminating non-literal claims are restricted to the philosophical domain.

26. Thomas Hobbes, *Leviathan* (Oxford, 1909), 36 (part 1, chapter 5) and John Locke, *An Essay Concerning Human Understanding* (ed. P. H. Nidditch) (Oxford, 1979), 508 (book 3, chapter 10, section 34).

27. Other philosophers would object further that it is a naïve attitude, since pretty much all of our thinking and talking is thoroughly metaphorical, some "worn-out" and some fresher. See Friedrich Nietzsche, "On Truth and Falsity in Their Ultramoral Sense," in vol. 2 of his *Collected Works*, ed. Oscar Levy (London and Edinburgh, 1911), 171-92.

28. The following argument is a close adaptation of William P. Alston's in his "Irreducible Metaphors in Theology," reprinted in *Divine Nature and Human Language*, 17-38.

claim about God. On one account of what he is doing, he is presenting to the hearer, as a model for how to think about God, some "exemplar," which is such that his claim would be literally true of the exemplar. And, at least if he is indeed expressing a true claim about God, he is doing more than just *presenting* the exemplar; he is saying—whether in virtue of the semantic features of the utterance or so-called pragmatic features of the utterance and its context—that God is like the exemplar in certain salient ways.

But now suppose further that the individual has no way, even if we were to allow him to expand his vocabulary, of literally expressing any of the specific ways in which God is like the exemplar. Say the best he could do, if he had to speak literally, would be to simply say that God is like the exemplar, period. And suppose that the same is true of everyone else who speaks his language. In such a case, it is difficult to see how the individual could have a *concept* or *notion* that corresponds to any of the specific ways in which God resembles the exemplar. If he did, his linguistic community should be able to introduce a term to express those ways in a literal fashion. But without such a concept, then he cannot say *at all*—no matter what sort of language he uses—that God is like the exemplar in any specific way. The claim he will be expressing in that case is just that God is like the exemplar, period—but that has next to no non-trivial *consequences*. Any two things are alike in some, perhaps quite gerrymandered, respect. It similarly *explains* next to nothing. So if you are looking for interesting explanatory or logical relations between theological claims, it will be fruitless to employ ones that are irreducibly metaphorical or figurative.

What about ones that you can express partially in a literal manner? The same argument shows that the only component that can perform philosophical work of explaining or entailing is the reducible component of the claim; the rest is explanatorily and logically otiose (although by no means does it show that it is otiose, period). Thus, a philosopher who is seeking an explanation—and one that entails the explanandum to boot—is duly warned not to be satisfied with an "explanation" that is irreducibly figurative, and duly advised to recognize that the irreducibly figurative component of a claim can do no heavy philosophical work.

Is the above argument successful? I doubt it. It seems to establish too much; if it were successful, it would show that one could not even *understand* a claim that one could not (even upon Socratic questioning and extensions of one's language) express literally, and this latter assertion appears to be false. More to the point, it relies on a dubious

claim that one cannot express a property, say, without possessing a corresponding concept or notion.[29] Some philosophers think that it is precisely one of the functions of metaphor and other figures of speech to enable the speaker to express a property that the speaker cannot (at present) conceptualize. The speaker does so by exploiting certain features of the context, such as the exemplar, much in the same way as a speaker uses a demonstrative.[30] Thus, the argument probably fails to establish its intended conclusion.

But defending our methodological scruples requires a more modest conclusion, for which the dubious assumption is not necessary. Even if someone could express and vaguely grasp a property-attribution claim without possessing a concept corresponding to that property, and even if that property attribution claim indeed *has* non-trivial consequences and explanatory power, I don't see how he could, with any confidence, *determine* what that claim—or at least the component of the claim that extends beyond his conceptual repertoire—entails or explains. Possessing the relevant concepts seems essential to making such determinations. So, if one grants that ineliminably figurative uses of language entail deficient conceptualization on the part of the speaker, then it is surely good practice to avoid such language when trying to tease out logical and explanatory relations between one's claims.[31]

Consider, in this light, one of the examples I cited from the book. R. Bick offered an explanation for the fact that God cannot bear to see the torment and suffering of the penitent, even if the penitent is entirely undeserving of such help. The explanation was that God identifies with the penitent, that He sees Himself in the penitent. Now, R. Bick is absolutely

29. Where *possessing a concept* entails being able to express the corresponding property in a literal fashion, at least if one expands one's current linguistic repertoire.

30. For a rigorous and original discussion of the view, see Josef Stern, *Metaphor in Context* (Cambridge, MA, 2000), chapter 7.

31. David Shatz noted that Gersonides voices a similar objection to Maimonides' view that any predicate that is either affirmed or denied of God must carry a sense which is wholly unrelated to its ordinary sense. As Gersonides puts it, "For example, we say that God is immovable, since if he were movable He would be a body, for all movable objects [are bodies]. Now it is evident that in this proposition the term 'movable' is not completely equivocal with respect to the term 'movable' when it is applied to nondivine things. For if it were, there would be no proof that God is not movable, since the movable object that must be a body is that which is movable in the domain of human phenomena, whereas the term 'movable' (in the completely equivocal sense) would not imply that it is a body" (*The Wars of the Lord,* vol. 2, trans. Seymour Feldman [Philadelphia, 1987], 110 [3:3]).

clear that he doesn't intend his talk of God's *identifying with human beings* as strictly and literally true. That is all "as it were," or loose talk. It is quite understandable that he would insist on that. (He may also intend his talk of what God can or cannot bear to be loose and figurative, which would only exacerbate the methodological difficulties.) But then the alleged explanation is quite elusive. It is very difficult to see what *is* supposed to be doing the explaining. Is it the fact *that God identifies with human beings*? Strictly speaking, there is no such fact. Is it the fact *that God is like human beings, in some respect or other*? Even if we are willing to say that is strictly speaking true, it neither entails nor explains much of anything. Is it the fact *that God is like human beings in being disposed to ease the burden of a suffering human being*? That seems like no explanation at all—more like a reiteration of what was to be explained! The same dilemma faces other candidates: either they are too bold to be true (strictly speaking) or too weak to serve as an explanation at all. Of course, the fact that God, *as it were*, identifies with human beings, *might* explain the fact that God cannot bear the suffering of human beings, but it is very hard to tell whether it does, and if it does, how the explanation is supposed to go. This pattern repeats itself at various points in the book. When one tries to figure out how exactly a certain entailment or explanation is supposed to go, or even what the explanation *is*, one quickly encounters trouble.

There is a price to be paid for the consistent loose and figurative use of language in theology—the price is that it's very difficult to do *philosophical* theology, at least of the sort that systematically explores logical and explanatory relations between claims. Of course, that is not necessarily a decisive reason to change how one talks in doing theology. After all, the price might well be worth the benefits of a religiously sensitive theology that resonates with our classical sources.[32] Indeed, I think the price is worth it. But it is a price nonetheless, and one we ought to acknowledge.

III.

Suppose we choose to insist that much of our theological talk is only "as it were." Would that leave us with no way to do Jewish philosophical

32. Howard Wettstein has argued for a similar thesis, as part of a larger campaign to emphasize a gulf in content, aims, and style between medieval philosophical theology and classical Rabbinic literature. See, for example, his "Against Theology" in *Philosophers and the Jewish Bible: General and Jewish Perspectives*, ed. Robert Eisen and Charles Manekin, (Bethesda, MD, 2009), 219-45.

theology? To an extent, yes—but not entirely. First, even if *much* of our theological talk is only figurative, not all of it need be. Admittedly, a theology consisting just of what we can say literally and truly will not be as rich as we would like—and almost certainly will not be adequate for a vibrant religious life—but it might provide enough material for philosophizing.

Second, there might be other ways to do philosophical theology aside from exploring logical and explanatory relations.[33] To take one example, the British Idealist F.H. Bradley suggested the following philosophical method:

> I will . . . begin by noticing some misunderstandings as to the method employed in ultimate inquiry by writers like myself. There is an idea that we start, consciously or unconsciously, with certain axioms, and from these reason downwards. The idea to my mind is baseless. The method actually followed may be called . . . a direct ideal experiment on reality. What is assumed is that I have to satisfy my theoretical want, or, in other words, that I resolve to think. And it is assumed that, if my thought is satisfied with itself, I have, with this, truth and reality. But as to what will satisfy I have of course no knowledge in advance. My object is to get before me what will content a certain felt need, but the way and the means are to be discovered only by trial and rejection. The method is clearly experimental.[34]

Philosophical inquiry, on this view, consists in the systematic testing of candidates for belief. One tests them by seeing the degree to which they strike one as *true* or satisfy one's "theoretical want." One progresses by revising one's web of beliefs, after each test, in accord with what seems true, all things considered. No investigation of logical consequences and no purported explanations.

This is surely an eccentric philosophical method and not very popular these days. It's hard to know whether something like it would be a fruitful approach to Jewish philosophical theology, since I doubt the approach has ever been tried. But the sort of "results" it would produce—assuming it produces any—would probably be just as useful as those of other philosophical approaches for the Jew who prays and repents. As R. Bick points out, the one who is praying has no need for grand philosophical theories that show the logical consistency of God's goodness and His granting man

33. There surely are other ways to do philosophy, even religious philosophy, without exploring logical and explanatory relations. Descriptive (religious) phenomenology, which characterizes much, although by no means all, of R. Soloveitchik's philosophical oeuvre, is a good example. But it's hard to see that as philosophical *theology*.

34. F.H. Bradley, *Essays on Truth and Reality* (Oxford, 1914), 311. See W.J. Mander's helpful discussion in *An Introduction to Bradley's Metaphysics* (Oxford, 1994), 14-20.

the capability to do evil (11) or that explain the relation between passions and the intellect in God (43). These issues, R. Bick says, can be left "to the great metaphysicians, the Rambam and R. Hasdai Crescas" (ibid.). The same holds true for the philosophical activities of argument and explanation more generally. Those activities may be of religious importance in their own right, but perceiving a logical or explanatory relation between theological claims is of little importance for those who cry out in prayer. If they cannot see (as I cannot) how it is that God's identifying, as it were, with human beings, *explains* or *entails* God's inability to resist our cry, little is lost. Much more would be lost if they did not see God identifying, as it were, with human beings in the first place.

Consequently, my discussion of the philosophical elements in the book must be put in perspective. Whether or not the philosophical arguments in the book are successful, the book's chief objective is to deepen the understanding of one who prays—to understand why he recites the thirteen *middot* and what he ought to mean when doing so. In order to accomplish that aim, what is really needed is to propose for the reader's consideration penetrating suggestions that seem *right,* both to one familiar with our sources and to one who prays. R. Bick has certainly succeeded in doing that. His insights—those that are local to each attribute together with larger themes that thread throughout the discussion—strike me as true and true to religious experience.

A particularly striking example is the suggestion, which R. Bick returns to in the context of several different *middot*, that there is a price to be paid for invoking the *middot* in the course of repentance: a penitent temporarily relinquishes, to some degree, his freedom, autonomy, creativity, and responsibility.[35] He *must*, if he sincerely asks God to share the burden and responsibility of his sins. Of course, a penitent ought to be willing to pay this price in order to survive and, ultimately, restore his relationship to God, but it is one he would profit from bearing in mind. Speaking from experience, I can say that bearing it in mind can certainly add depth, significance, and gravitas to one's recitation of the *middot*. But in order to adequately appreciate and benefit from this and other suggestions that R. Bick advances, the reader is strongly advised to study R. Bick's rewarding volume for himself.

35. See p. 58 (*Rav Ḥesed*) and p. 91 (*Noseh Avon VaFesha VeḤata'a*).

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Review Essay

CHARLES M. RAFFEL

Reading the Rav: A New Guide

Reuven Ziegler
Majesty and Humility: The Thought of Rabbi Joseph B. Soloveitchik.
Boston: Maimonides School; New York: OU Press; and Jerusalem: Urim Publications, 2012. 432pp. $28.

As the body of Rav Soloveitchik's posthumously published written work grows, it is a challenging question how to introduce all his writings to students unfamiliar with his living, charismatic teaching persona.[1] In addition, the deeply philosophic nature of his overall approach has, at times, stymied students more comfortable with the intricacies of his talmudic and halakhic discourses. R. Reuven Ziegler's examination of the Rav's religious philosophy in this new book is an invaluable resource to perpetuate a meaningful appreciation of the Rav's legacy.[2] He provides a clear overview of the major essays and significant themes, with patient attention to fleshing out the underlying philosophic ideas of the Rav's writings. But the work actually serves a dual function:

1. See the projects of ATID on individual topics, found at www. atid.org/journal/journal05/default.asp. Also see Moshe Simkovich, "Teaching Rabbi Soloveitchik's Thought in the High School Curriculum," in *Wisdom From All My Teachers: Challenges and Initiatives in Contemporary Torah Education,* ed. Jeffrey Saks and Susan Handelman (Jerusalem and New York, 2003), 341-59. These works are cited in the book under review (198-99).
2. The book was commisioned by the Rabbi Joseph Soloveitchik Institute under its then Dean, Rabbi Dr. Jacob J. Schacter.

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as a thorough, systematic introduction to the Rav's thought, and as a rich tapestry woven with myriad insights into the complexities of the Rav's values and commitments, the veritable entirety of *his* teaching program.

Majesty and Humility has its genesis in R. Ziegler's introductory course to second year students at Yeshivat Har Etzion. The plan for that course was transformed, in part, into a "virtual" class on the Yeshiva's Virtual Beit Midrash. And now a full pedagogical program is available to teachers and students of the Rav's writings.

R. Ziegler began Yeshiva College during the Rav's last year of teaching, and did not hear him teach or lecture. Nonetheless, he brings to this project a unique qualification. Not only can he draw on all of the Rav's published volumes, but as Director of Archives of the Rav's legacy, he has access to "hundreds of R. Soloveitchik's unpublished manuscripts, along with thousands of tapes" (415). While the central focus of the book is to guide the reader through all of the Rav's major published works in a clear and pedagogically astute fashion, a second, powerful thrust is to reveal connections, clarifications, and challenges from the treasurehouse of nearly seventy years of the Rav's teaching. That R. Ziegler carries out both these plans clearly and compellingly is the stunning achievement of this book.

The first challenge in explicating the Rav's philosophy is deciding where to start. R. Ziegler's opening chapters proceed as follows. After a brief overview of the arc of the Rav's biography, he devotes six chapters (39-95) to "three shorter and more accessible essays" (38)—"The Community," "Majesty and Humility," and "Catharsis," written from 1962-1976 and all published in *Tradition* in the Spring 1978 issue. By means of these essays, R. Ziegler expertly walks the student/reader through some fundamental concepts—the relative values of individual and community, the complex (read: "dialectical") nature of the in-depth human personality, and the ultimate goals of a fulfilled and fulfilling life. R. Ziegler's approach may be appreciated by noting three levels of his presentation in these opening pages. First, he is unfailingly clear in introducing the Rav's nuanced thinking on these topics, and he judiciously cites digestible passages from the texts, all the while urging the students to read the full texts themselves. Second, the footnotes, in and of themselves, offer an independent, advanced course: clarifications, cross-references to most of the major works, notice of a few apparent contradictions and a careful selection of helpful scholarly literature. Finally, the section, "For Further Reference," at the end of these chapters, charts out for the interested reader, in one or two sentences, or sometimes a couple of paragraphs, more complicated and varied follow-up assignments.

Although other books use this format, R. Ziegler shows special discipline and focus in not straying from his central goal.

Let me offer a concise example of the different levels at which R. Ziegler operates, drawing upon these foundational early chapters. In the body of his text, in discussing "Majesty and Humility," R. Ziegler writes, "In a very acute analysis, the Rav observes that modern society is marked by crisis because it is unable to deal with this duality of advance and retreat" (61). He then reproduces a short selection from the essay itself and then continues, "This tantalizing remark anticipates a theme developed at great length in *The Lonely Man of Faith*" (ibid.). The attending footnote to this passage, relevant only to a reader of *The Lonely Man of Faith*, states that ". . . modern man develops only the Adam I side of his personality." The reader who is interested in pursuing this overarching theme of ultimate human striving is directed in the "For Further Reference" section to three carefully chosen, accessible articles on the concept of *imitatio dei*. In general, the suggestions for further reading are neatly targeted. To be sure, the interconnectedness of all the Rav's essays and monographs, to one another and to the broader elements of Jewish thought, are often only teasingly hinted at in the "For Further Reference" section, reinforcing the notion that the clear and sustained explanation of the Rav's thought is the book's main objective.

If my university students may serve as a reliable guide, many readers can follow and appreciate the essays discussed in the early chapters on their own. But R. Ziegler utilizes their very accessibility to build a storehouse of vocabulary, themes, and methodology in order to build a structure of literacy and confidence so that more difficult and opaque essays can be handled. It is as if R. Ziegler is saying that the religious thought of R. Soloveitchik is a language, and that he plans to teach the student the vocabulary, syntax, and idioms first, based on "beginning" and "intermediate" texts. As a pedagogical strategy, it is too often overlooked by others in favor of overwhelming the student with complexity in the form of, say, initiating students with *Halakhic Man*. R. Ziegler's plan is refreshing and it succeeds convincingly here.

By the time the major essays are to be introduced and explained, the reader is speaking "the language" and knows what to expect—aware that, for example, the Genesis accounts of humanity's birth are texts to be explored and explored again; that the Rav's thought is consistently dialectical; and that the Rav's technical vocabulary is, at once, very precise and unique. Also, the overriding themes of the power of authentic religious experience and the absolute, unwavering centrality of Halakhah to human striving are firmly established in the introductory sections.

After these introductory chapters, the plan of this book is to continue to expose the student to the Rav's religious thought by means of a very thorough treatment of *The Lonely Man of Faith*, chapters on *Family Redeemed*, an examination of the Rav's philosophy of prayer, drawn from different works, and his explorations, over the years, of repentance and suffering. Several of these chapters may be called synthetic; they synthesize from published materials and transcribed talks in order to build major themes and approaches. The same level of clarity of exposition is maintained in the synthetic sections as in those where R. Ziegler discusses and analyzes distinct, self-contained works. A glimpse at the "Index of Rav Soloveitchik's Writings" (pp. 429-32) will give the reader some idea of the many sources (not to mention their complexity) that R. Ziegler is juggling, sorting through and organizing in his presentation, not only in these synthetic sections, but in the single-work focused sections as well.

The chapters on *The Lonely Man of Faith*, even in a book of such uniform clarity, are very impressive in both explication of *peshat* and the teasing out of implications, connections, and consequences. The individual personalities of Adam the first and Adam the second are carefully explained along with portraits of their respective communities. Given R. Ziegler's attention to the argument and structure of the essay, I think one may safely say that "no reader will be left behind" in understanding and appreciating the Rav's "best known and most influential work" (121). R. Ziegler's identification of Ch. IX of *The Lonely Man of Faith* as the "climax"of the book (158) widens the scope of his inquiry, insofar as the chapter wrestles with the appropriate place and function of religion in contemporary society. It is no longer a "close reading" of the text alone, but a thoroughgoing examination of the implications of the values of the Rav in the areas of public policy, halakhic decision-making, ritual, interfaith and interdenominational concerns, and the very essence of what "Modern Orthodoxy" might signify. So R. Ziegler excels both in explaining how to read the text and in demonstrating how to see implicit connections between the author's philosophical positions and his public pronouncements and leadership positions, between the text and the contemporary context.

R. Ziegler next analyzes the collected essays in *Family Redeemed*, and makes for me, implicitly, a convincing case for treating the posthumously published work as carrying equal weight to the Rav's earlier published writings. Within this section, the Rav's cherished topics of prayer and repentance receive close examination and appreciation. In the section on

repentance, R. Ziegler diverges from his single-minded focus and explains the Rav's thinking through a comparison with Rav Kook's thinking on the subject. The comparison seems to enrich the discussion, but I am not convinced that it is needed to clarify the Rav's own thinking beyond what focusing on the Rav in isolation would have unveiled.

Kol Dodi Dofek receives a direct treatment, culminating in a chapter titled quite simply, "The Significance of the State of Israel." This chapter transcends the text of the essay itself to examine and question the core values and nuances of the Rav's position on the "instrumental" value of the state. Here, R. Ziegler seems intent on not only explaining the Rav's position on religion and state, but in pushing and probing it in light of contemporary issues and problems. The treatment is very brief, but suggestive nonetheless.

Left now with two of the Rav's most significant works to tackle, the book concludes with explorations of *Halakhic Man* and *U-Vikkashtem mi-Sham*. R. Ziegler chooses not to present a sustained *explication de texte* of "Confrontation," instead weaving its central themes into a lengthy synthetic section on the autonomy of faith (167-99). *The Halakhic Mind*'s concern with philosophy of religion is somewhat peripheral to the book's central aim, and instead the author opts to explore the theme of subjectivity and objectivity mainly in its specific Jewish context, Halakhah.

Rather than offering a full-blown, detailed guide to *Halakhic Man*, as he did for *The Lonely Man of Faith*, R. Ziegler offers both an overview of its structure and a clear consideration of some of its significant issues. True to his stated belief in the introduction (18) that *Halakhic Man* is more of a character study than a full blown argument, he first offers a brief comparison of the prototypes in *Halakhic Man* to those in *The Lonely Man Of Faith*. In treating *Halakhic Man,* he chooses to focus on two aspects of this very challenging work, the inner-directed desire to undergird the ultimate religious personality on a strong intellectualist foundation and the outer-directed aim of proving caricatures of Judaism—"heteronomous, non-cognitive, non-moral, and slavish" (330)—wrong. R. Ziegler may assume that a student grounded thoroughly in the major aspects of the Rav's religious philosophy, patiently established through his more accessible works (that is, less philosophical) could negotiate the twists and unexpected turns of *Halakhic Man* on his or her own. The treatment is fairly short and purposefully not done chapter-by-chapter (for a reason [see p. 18] that I find unpersuasive; however, I would note the existence of substantial accounts of the intricacies of *Halakhic Man* cited under "Further References").

The section on *U-Vikkashtem mi-Sham* would stand, by itself, as a singular accomplishment. R. Ziegler takes a rigorously elusive work and guides the reader through its complexity, unraveling expertly its dialectical DNA. He then muses on different, competing scholarly assessments of the relationship between these two major works, whether different views of the same personality type are at stake or different aspects of the arc of different personalities. R. Ziegler sees a symbiotic relationship between the two works. Above all, given the essay's unblinking attention to the ultimate goal of human striving, he makes a compelling case that *U-Vikkashtem mi-Sham* may be the Rav's "most profound and heartfelt work" (344).

Besides the individual attention all these works receive, R. Ziegler offers both a "Review Chapter" (chapter 36) and a final chapter, "Major Themes and Concluding Reflections." Rather than shortchanging the significant points that R. Ziegler makes in both these chapters, let me focus on one overwhelming impression that I received from this book. In my own reading and teaching, I have focused, with rare exceptions, on the individual, unique character and logic of each of the Rav's essays. To be sure, I have raised questions about how one work relates to another, more certain that the questions would persist than in believing that an authentic, reliable answer or resolution would emerge. R. Ziegler's stress on the Rav's core concerns, as they repeat throughout the individual essays, is, for me, a kind of revelation—he makes a convincing case for the consistency of the Rav's own intellectual program, throughout his teaching and writing career. While this is a consummate teaching book, it is clearly more than that. R. Ziegler has some intriguing, overarching thoughts about the Rav's writings that he shares, inter alia, as "bench" notes, if you will. One such theory is that some of the Rav's writings have an elusive quality that is underappreciated, what R. Ziegler labels "dual endings" (61, 395). For example, he questions whether *Lonely Man of Faith* (truly) ends with the necessity of human withdrawal from society or rather the necessary re-integration of human initiative with the community at large—in the classic language of the essay, whether Adam the second is allowed, in real life, a fully independent existence on his own terms. If correct, Ziegler's approach would have a profound impact on the Rav's ultimate position on engagement with vs. withdrawal from the world. Related to this notion is a comprehensive view of the Rav's own deployment of two different types of dialectic: one that is unresolved, and one that is fully synthesized and resolved—that is, the Kierkegaardian and Hegelian types of dialectic, respectively, as initially

introduced in the essay "Majesty and Humility." R. Ziegler's statement that "overall, his [the Rav's] writings contain a Kierkegaardian dialectic between the two forms of dialectic themselves" (408) constitutes his incisive, sweeping characterization of the entire *oeuvre*. Teasing out and substantiating such insights are not really part of the book's central program, but one hopes that this other project is not too far off on the horizon.

It is no small irony that only a "virtual" student of the Rav, one who was too young to sit in his actual classes and lectures, would have the courage to take on the task of being a helpful guide to all of the Rav's writings and an insightful reader who can reveal fresh perspectives. This "virtual" student allows a new generation to hear the Rav's cadence, to feel his breath, to witness his undying quest to know divinity and to understand what a divinely ordered life might look and feel like here on earth. The individual essays come alive again here, and the indomitable force of their author's quest for ultimate truth lives in these pages as well.

One may reasonably conclude that a cadre of students, educated and enlightened by this comprehensive and accessible book, will emerge with sufficient fluency in the Rav's writings to meaningfully engage the original texts on their own. For offering such a luminous entry into the heart of the Rav's philosophy, we are all in R. Ziegler's debt.

Review Essay

YOEL FINKELMAN

History and Nostalgia: The Rise and Fall of the Yavneh Organization

Benny Kraut, *The Greening of American Orthodox Judaism: Yavneh in the 1960s* (Cincinnati: Hebrew Union College Press, 2011). xxiv+178pp.

In the 1960s, "college kids" changed the world. Some took the "sex, drugs, and rock 'n roll" route, changing mainstream American culture profoundly. Some protested the Vietnam War and changed American foreign policy and world history. But others, a small group of Orthodox college students, organized *shabbatonim*, invited prominent rabbis as guest speakers, installed kosher sandwich machines on their campuses, and published pamphlets on the meaning of prayer. They may not have changed the world, but they certainly had a profound impact on at least one segment of North American Orthodox Jewry. These kids—by now, some of the rabbinic, academic, and lay leaders of English-speaking Orthodoxy—created "Yavneh," an organization of Orthodox Jewish college students. Based on the contents of tens of boxes of old correspondence, files, and archival material which in 1985 Benny Kraut, himself a longtime member and leader of Yavneh, serendipitously rescued from mold and oblivion, *The Greening of American Orthodox Judaism*, completed just before the author passed away, tells their story with academic rigor and some touching nostalgia.

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Founded in the winter of 1960 by a group of Orthodox students on college campuses throughout the northeast of the United States, Yavneh gradually spread, establishing branches on campuses from Los Angeles to Boston, before its eventual demise in the early 1980s. Like so many countercultural youth movements, Yavneh was motivated by an intriguing combination of idealism, youthful exuberance, and gutsy optimism, all combined with a desire to meet friends and socialize. Kraut describes a group of young people across the country who wanted to do more than just survive religiously and culturally, but thrive. To survive, there had to be kosher food and the possibility of accommodations when exams fell out on holidays. To thrive meant an intellectually and spiritually sophisticated attempt to learn, listen, speak, teach, and reflect on the meaning of Judaism and its observance in the culture of rapidly changing post-industrial America. Toward those ends, Yavneh students sponsored guest speakers, arranged for kosher food on campus, sent young people to Israel to learn for a year, organized educational *shabbatonim*, negotiated with university presidents about exemptions for *yom tov* celebrations, and published stimulating and accessible works of serious Torah topics.

Yavneh organized around two key principles: first, no Yavneh events should be purely social, but rather should be grounded in an educational and religious message; second, that the organization should maintain its independence and autonomy from the oversight and control of the adult Orthodox establishment. "As college students, they did not want to affiliate with any organization controlled by an adult parent body. Policies, directions, and activities were approved and implemented essentially by students; the students really did run Yavneh" (30). While they never quite lived up 100% to these principles—there were occasional events without learning or teaching, and the organization benefitted at various times from the largesse of the OU and the reluctant cooperation of the Hillel Foundation—these two principles helped to maintain the organization's seriousness of purpose and sense of religious and intellectual integrity.

This led to a group of young people who took themselves quite seriously, perhaps more seriously than one would think they deserved at the time, given that they were still college students, inexperienced in the complexities of communal interactions. Yet, when Yavneh leadership encountered oppositional university presidents or ambivalent Hillel directors, they negotiated toughly and drove hard bargains. When board members fought about the legitimacy of inviting guest speakers with connections to the Conservative Jewish Theological Seminary, they—like board members of more established Jewish organizations—threatened to resign and take their constituencies with them. But, in the process of learning and

staking out their place on campuses, Yavneh members found time to hang out, socialize, and, for many, find their *bashert*. Perhaps because of the seriousness with which they took themselves and their cause, they were able to draft as members of their National Advisory Board some of the biggest names in American orthodoxy, from Rav Mordechai Gifter of the Telshe Yeshiva to Prof. Irving Greenberg of Yeshiva University.

Yavneh set the ground for trends in American Orthodoxy that reached their peaks after Yavneh had ceased to be. Yavneh produced two series of publications, *Yavneh Review* and *Yavneh Studies*, which included, for example, David Derovan's collection of translated primary and secondary sources on prayer, collections of essays on *parashat ha-shavua,* a *Guide to Jewish Life on Campus*, as well as more academic essays on Jewish history and philosophy. Kraut correctly points out that by trying to find publishing venues that would make the Jewish tradition accessible in English, "in concept—though certainly not in religious outlook and ideology— . . . Yavneh articulated in embryonic form the animating spirit and educational philosophy that underlies the extraordinary publishing revolution begun in 1976 by the right-wing Orthodox Artscroll/Mesorah publications enterprise" (82). He notes that the handful of Yavneh members who attended Merkaz Harav and Machon Gold in Jerusalem kicked off the by-now much larger trend of the year-in-Israel programs. And, Kraut emphasizes that the organization set the ground for the numerous large and influential Orthodox Jewish organizations on college campuses throughout the country. Kraut contextualizes Yavneh within the coming-of-age and growing self-confidence of Orthodoxy in the second half of the 20th century, as well as within the vibrant youth subculture of the 1960s. And he rightly points to Yavneh's location within Orthodoxy's developing attempts to separate itself from the Conservative movement, as well as the growing split between the right and left in American Orthodoxy. Debates within Yavneh about the legitimacy of people associated with the Conservative movement echoed debates within the larger Orthodox world about the legitimacy of interdenominational organizations such as the Synagogue Council of America, and Yavneh's only minimally successful attempts to reach out to the developing yeshivah world point to growing distance between the various branches of Orthodoxy.

The attempts to bridge the gap between the right and left in Orthodoxy is the focus of the most intriguing and thought-provoking chapter in Kraut's book, describing a meeting that occurred in 1968, and which is today entirely unthinkable. A handful of student leaders had a personal meeting with some of the leading *rashei yeshivah* of America's nascent

yeshiva world, including Rabbis Moshe Feinstein, Shneur Kotler, Yaakov Ruderman, and Yaakov Weinberg. It is difficult to imagine such a meeting occurring today, now that the yeshivah world has become so confident and self-contained. But, smoothed over by some of Yavneh members' personal and familial contacts, the two groups were able to meet, at least that once. Yavneh leaders hoped to build bridges between the college students and the yeshivah world, to encourage the *rashei yeshivah* to find opportunities for college students to spend some time in yeshivahs and to devote some of their own resources to the improvement of the religious conditions of college students, for example by encouraging people to publish English-language guides to aspects of Halakhah. Unfortunately, little came of this, suggesting that mutual rapprochement between the various camps of Orthodoxy was almost as unlikely then as it seems to be today.

But, it is also tempting to think about Yavneh in terms of larger debates about the narrative and trajectory of Orthodoxy in the second half of the 20th century. One could parse Yavneh as simple evidence for the "shift to the right" narrative. During the years that the yeshivahs and Hasidic communities were showing signs of massive growth (creation of Lakewood kollels, *The Jewish Observer*, increase of single-sex schools, demographic changes in Brooklyn neighborhoods, etc.), the ideologically committed Modern Orthodox community, represented by so much of Yavneh, was bickering with school administrators over sandwich machines. When a group of upstart twenty-somethings spoke to the *rashei yeshivah* about their concerns, the *rashei yeshivah* preferred to spend their resources on more narrow constituencies. And, when Yavneh gradually shrank and died by the early 1980s, the more *ḥaredi* institutions were growing rapidly. One could, however, view things differently. Modern Orthodox young people on the elite campuses throughout the United States had enough self-confidence and gumption to insist that their religious needs be met and that there need be no contradiction between the best secular education America had to offer and serious observance. The same years of growth on the right also witnessed the development in Yavneh of an entire generation of incredibly impressive intellectual, educational, social, lay, and political leaders, people such as Yosef and Rivka Blau, David Berger, Harvey Blitz, Joel Wolowelsky, Gerald Blidstein, Joseph Telushkin, Shnayer Leiman, Heshie Billet, Malcom Hoenlein, Mark Steiner, Dov Zakheim, and many more. While Yavneh itself may not have survived, in part it ceased to be because it became superfluous. Orthodox Jews became a fixture on elite college campuses, establishing for themselves regular classes, *shiurim*, *minyanim*, social events, and Shabbat activities. Kosher

food became readily available, and accommodation for *yom tov* observance was no longer controversial. Yavneh's demise signified not its failure, but its success, its growing redundancy. During the late 20th century, the right was not defeating the left, but the two sides of Orthodoxy were growing simultaneously, were constantly defining themselves through their disagreements with the other.

Kraut ends his careful volume with some thoughtful methodological reflections on writing an academic, disinterested history of the organization to which the author is deeply emotionally attached. "Yavneh . . . certainly was fresh, and as a historian I refuse to let go of that. I have written this story with a sense of wistfulness, with a sense of loss" (p. 166). It is not easy to reflect on both strengths and weaknesses of an organization, its positive aspects and its negative, when you are mourning the loss of the institution and what it represents in your mind. But Kraut does an admirable job of writing both as a disinterested historian and as an individual profoundly moved and shaped by what Yavneh helped create. If only all historians and scholars of Orthodoxy could take that path.

I want to buy a copy of this book for each one of my own students, 18-year-old post-high-school Orthodox Jews on their ways to college campuses. By now, students going to Harvard, Penn, NYU, Maryland, Brandeis, Columbia and Barnard, to say nothing of Yeshiva College and Stern College for Women, take for granted the availability of kosher food, accommodation for *yom tov* celebration, regular Torah classes, JLI couples, and Hillel directors who understand the importance of Orthodox presence on campus. How many of these young people suffer from a poverty of riches, not knowing how good they have it, and the potential complacency—and complacency may be Modern Orthodoxy's most significant failing—that comes with having services and needs met effortlessly. Yavneh thrived because of the urgency and importance of what they felt the need to fight for. One wonders if many of today's students might be better off if they, too, had to fight for what now comes so easily.

Guide to Transliteration Style

Format of References

GUIDE TO TRANSLITERATION STYLE

Letters of the Hebrew Alphabet

א	transliterated as ’, but only when it begins a syllable other than the first. (Examples: *nevi’im;* but: *adam*.) In the case of common transliterations like *yisrael* and *geulah*, you may omit the ’.
בּ	*b*
ב	*v*
ג	*g*
ד	*d*
ה	*h* (including at the end of a word) (*asah*, *modeh*)
ו	(when a consonant) *v*
ז	*z*
ח	*ḥ*
ט	*t*
י	*y*
כּ	*k*
כ	*kh*
ל	*l*
מ	*m*
נ	*n*
ס	*s*
ע	transliterated as ‘ , but only when it begins a syllable other than the first. (Examples: *eved*; but *pa‘am*)
פּ	*p*
פ	*f*
צ	*ẓ*
ק	*k*
ר	*r*
שׁ	*sh*
שׂ	*s*
תּ	*t*
ת	*t*

Double the letter for *dagesh ḥazak*, except ש.

Vowels

שוא נע	*e (berit)*
שוא נח	not transliterated *(mashpil)*
קמץ גדול	*a (parah)*
קמץ קטן	*o (ḥokhmah)*
פתח	*a (ammi)*
סגול	*e (regel)*
חיריק (מלא and חסר)	*i (binah, simḥah)*
קבוץ, שורוק	*u (suru)*
צירה with י	*ei (beit, yesodei)*
צירה without י	*e (shem, esh)*
חולם חסר, חולם מלא	*o (sod, poh)*

Proper Names

The above rules must be used for proper names when you are transliterating them from Hebrew. Otherwise, you may follow an individual's own spelling of the name .

Prefixes

• Insert a hyphen after each prefix. To aid the reader in recognizing the main word, the word after the prefix generally should be spelled with its original *dagesh kal* and *sheva na*, even if in Hebrew the *dagesh* drops out after that prefix and the *sheva* is generally regarded as a *sheva naḥ*. Examples: *ke-bakkarat, u-bikkashtem, ki-ketavam ve-ki-zemannam, beneikhem u-benoteikhem*. But: *lefi zeh*, *lifneikhem*, since these are not pure prefixes.

• After a prefix, do not double the letter to indicate *dagesh ḥazak*. Example: in *ha-Torah*, *ha-banim, va-tomeru* the t, b, and t respectively are not doubled.

• Words like מיהודה ,וירושלים should be transliterated as *mi-Yehudah* and *vi-Yerushalayim*, despite the fact that the י is silent.

• In words that are capitalized, generally keep the prefix lower case and the main word upper case. Examples: *u-Mosheh, Ḥiddushei ha-Ramban*. Do capitalize a prefix to the *first* word in a book, journal or article title. There are exceptions to the above, e.g., Hashem, or when the term appears frequently in the article.

Italics

Words in languages other than English should be italicized. Italics need not be used for transliterated words within quotation marks, or for Hebrew and other foreign words that have become part of English.

FORMAT OF REFERENCES

Short references to Tanakh, Talmud and Midrash normally should appear in parentheses in the text.

Tanakh: Ex. 1:2 (no italics)

Mishnah: *Kinnim* 3:2

Talmud Bavli: *Sanhedrin* 74a

Talmud Yerushalmi: *Yerushalmi Bikkurim* 1:3; or *J. T. Bikkurim* 1:3. If a page citation is added, it should refer to the Venice edition.

Tosefta: *Tosefta Terumot* 7:20

Midrashim: *Gen. Rabbah* 44:1

Zohar: *Zohar*, *Emor* 91b

Biblical commentaries: Rashi, Gen. 1:4. Use "ad loc." when appropriate (no italics): e. g., Gen. 1:4 and Rashi, ad loc. If the commentator has more than one comment on the verse, add: s.v. _____ .

Talmudic commentaries: *Tosafot*, *Avodah Zarah* 17a, s.v. *ve-al*

Codes: Maimonides, *Mishneh Torah, Hilkhot Avodah Zarah* 11:16; *Shulḥan Arukh*, *Yoreh De'ah* 179:1. Commentaries to codes: *Kesef Mishneh, Mishneh Torah, Hilkhot Sanhedrin* 6:5. If more than one comment is found in the location cited, add: s.v. _____ . If comments are numbered, you may cite the number rather than the *dibbur ha-matḥil.*

Responsa: Make clear whether you are citing the responsum number or the page number. Example: Responsa *Iggerot Mosheh, Ḥoshen Mishpat* 2:#174. When you need to cite a specific page: *Iggerot Mosheh, Ḥoshen Mishpat* 2:#174, p. 127.

Citations to classic works should refer to the book's divisions, e.g.: Moses Maimonides, *Guide of the Perplexed* I:54 (or 1:54).

In the above cases, when necessary—for example, if you are relying on a text as it is printed only in certain editions, or if you want to highlight a passage—indicate the edition and page number.

Authored book: Aaron Levine, *Economics & Jewish Law: Halakhic Perspectives* (Hoboken, NJ and New York, NY, 1987), 78. For translated works, it is preferable to include the translator's name by writing "trans.____" after the title, separated by a comma.

Edited book (when cited as a whole; when an individual article is cited, use the format under "Article in edited book"): Shalom Carmy (ed.), *Jewish Perspectives on the Experience of Suffering* (Northvale, NJ, 1999). If there is more than one editor: use (eds.) instead of (ed.).

Article in edited book: Moshe Halevi Spero, "Metapsychological Dimensions of Religious Suffering: Common Ground Between Halakhic Judaism and Psychoanalysis," in *Jewish Perspectives on the Experience of Suffering*, ed. Shalom Carmy (Northvale, NJ, 1999), 213-76. Here use "(ed.)," not "(eds.)," even if there is more than one editor. When you are citing an individual page, after the comma give the number only of that page.

English article in a periodical: Jacob J. Schacter, "Facing the Truths of History," *The Torah u-Madda Journal* 8(1998-1999): 200-73. When you are citing an individual page, after the colon give the number only of that page. Capitalize words in article titles even if the journal does not (as in the case of medical journals). If a journal publishes several issues per volume number but numbers all pages of the volume sequentially (e. g. issue 2 begins with page 146), it is not necessary to supply the issue number. If each issue starts from page 1, give the issue number after the volume number, separated by a comma.

Article in a collection of essays by a single author: Gershom Scholem, "Toward An Understanding of the Messianic Idea in Judaism," in Scholem, *The Messianic Idea in Judaism And Other Essays on Jewish Spirituality* (New York, 1971), 1-36.

Hebrew articles: Same format as for English articles. Use either a transliterated title or a translated title followed by: (Hebrew).

Book review: Isaac Chavel, review of Moshe Koppel, *Meta-Halakhah, The Torah u-Madda Journal* 8(1998-1999): 318-26. If you are citing a review essay whose title does not contain the name of the book under review, after the information on the essay write: [review of _____].

Internet citation: website address, as specific as possible.

References to a work you cited previously: Do not use "op. cit." Refer to the earlier work by the author's name and (if you have cited more than one work by the author) a short title. When you have many endnotes, indicating the note number of the earlier citation will help the reader locate it. Use Ibid. as appropriate.